

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Kenneth Curtis,)
)
)
Plaintiff,)
)
vs.)
)
Cynthia Glenn,)
)
Defendant(s).)
_____)

IN THE COURT OF COMMON PLEAS
13th JUDICIAL CIRCUIT

C.A. NO.: 2020-CP-23-00939

ORDER

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SC Court of Appeals

This action involves a dispute between the Plaintiff, Kenneth Curtis (hereinafter "Plaintiff" or "Mr. Curtis"), and the Defendant, Cynthia Glenn ("hereinafter "Defendant" or "Ms. Glenn"), over access to property owned by the Plaintiff and the status of Plaintiff's property ownership and the rights Defendant has to access the property in order to visit her deceased husband's grave site. The Plaintiff timely initiated this case in the Greenville County Court of Common Pleas on January 14, 2020, pursuant to a Greenville County Magistrate's Court order directing Plaintiff to do so. The Defendant timely answered the complaint and brought counterclaims against the Plaintiff. The case was referred and tried on October 13, 2020 in an all-day trial.

PROCEDURAL HISTORY

On January 15, 2020 Greenville County Magistrate Judge, The Honorable Kenneth G. Southerlin, Jr., issued an order ("Order") amending two previous orders involving the Plaintiff and Defendant in cases 2019CV2311101849 and 2019OR2311100028 originally filed *pro se* by both parties, which were consolidated for trial before the North Greenville Summary Court. The Order directed Plaintiff to "file an action with the Circuit Court to determine Plaintiffs status as a cemetery." Plaintiff filed this lawsuit on February 14, 2020 in the Court of Common Pleas.

Defendant timely filed an answer and counterclaims against the Plaintiff. Defendant also filed a pre-trial motion to dismiss, which was denied in part and granted in part, the court ruling that any issues that occurred between the parties prior to January 15, 2020 (the date of Judge Southerlin's Order) may not be re-litigated in this court. See, Order filed 7/8/2020. Further, the court imposed a mutual restraining order, punishable by a minimum sanction/fine of \$500.00 per violation and/or jail, against any harassment or interference by and between the parties, directly or indirectly. Plaintiff filed a motion for summary judgment prior to trial. Defendant filed a motion for injunctive relief prior to trial. The court instructed the parties, based upon the timing of the motions being filed, that both of those pre-trial motions would be taken up during the proceedings on the trial date. The case was then set for trial on all causes of action in the aforementioned pleadings.

HISTORY

The property subject to this case is located in Greenville County, South Carolina, made up of two adjacent parcels owned by the Plaintiff at 113 Edwards Rd. Marietta, SC 29661 (TMS: 0522010100304) and 177 Edwards Rd. Marietta, SC 29661 (TMS: 0522010102301) containing a combined approximately 49.28 acres. There is a lengthy and very volatile history between the parties. Plaintiff operates an organization he calls Saluda Rest Natural Burials and Ministries (hereinafter "Saluda Rest") on both parcels. One of the activities conducted at Saluda Rest are services related to the burial of human remains and cremated remains by family members or other legally authorized representative of the deceased. The Defendant's husband was buried at one of the Saluda Rest properties in December of 2019. Since that time, Plaintiff and Defendant have had ongoing disputes between them regarding both time and manner for Defendant's access to the Plaintiff's property and Defendant's stated desire that Plaintiff's property should be open to the

public without any restriction or limitation to anyone with regard to access. The Magistrate Court's Order found that Plaintiff had opened his property to the public for use as a cemetery. See, Mag. Ct. Order signed 1/15/2020.

The dispute has resulted in a complicated set of facts and bitterness between the parties that is evident, and both parties believing they have been grievously wronged by the other and an inability to see any in between. Plaintiff in his complaint seeks a determination pursuant to the Order of Judge Southerlin brought in the form of a declaratory judgment action for declaratory relief, along with causes of action for breach of contract, abuse of process. Plaintiff seeks a declaration from the court that Plaintiff owns private property and that Plaintiff operates a private ministry, church, religious organization and/or a private natural preserve and burial ground. Plaintiff further seeks a declaration that that that there is no condition of entry, no matter how limited in time, manner, or otherwise restricted, that would allow the Defendant to enter the property for the purposes authorized by the statute without substantially and unreasonably interfering with the use, enjoyment, or economic value of the property by the owner or an occupant of the Plaintiff's private property and therefore Defendant should be denied any access to Plaintiff's property. Defendant brought counterclaims alleging abuse of process, harassment and intimidation, and exploitation by misrepresentation.

FINDINGS

On October 13, 2020 a trial was conducted in this case. Present at trial, was the Plaintiff, Kenneth Curtis, along with counsel for the Plaintiff, Michael B. Dodd. The Defendant, Cynthia Glenn, appeared *pro se*. At the call of the case the court took brief remarks concerning a pre-trial motion for Summary Judgment by the Plaintiff and a pre-trial motion for Injunctive Relief by the Defendant. The court determined that these motions would be taken up after each side had

presented their case and testimony presented. Plaintiff presented evidence and testimony, including nine (9) witnesses. Defendant presented evidence and testimony from three (3) witnesses. After considering the numerous pieces of evidence and lengthy testimony from both the Plaintiff and the Defendant, a review of the record, as well as argument on the outstanding motions by both parties, the court finds as follows:

1. There are genuine triable issues of fact that exist. The Plaintiff's motion for summary judgment is denied.
2. Defendant did not present sufficient evidence regarding Defendant's motion for injunctive relief. Defendant has not filed any complaint or cause of action related to the motion for injunctive relief, so there is no underlying claim for which relief may be granted, nor has Defendant successfully shown or argued any element that would allow this court to grant an injunction. The Defendant's motion for injunctive relief is improper and is denied.
3. Defendant did present some evidence regarding Defendant's counterclaims for abuse of process, harassment and intimidation, and exploitation by misrepresentation. Defendant has not sufficiently proven any element of any of those alleged claims.
4. Plaintiff presented evidence and lengthy testimony from nine (9) witnesses, including the Plaintiff, that he owns 113 Edwards Rd. Marietta, SC 29661 (TMS: 0522010100304) and 177 Edwards Rd. Marietta, SC 29661 (TMS: 0522010102301) containing approximately 49.28 acres and together those parcels make up what Plaintiff refers to as Saluda Rest.
5. Plaintiff's testimony and testimony of witnesses along with evidence entered into the record has conclusively established that Plaintiff owns the property subject to this

- action and that Plaintiff owns private property.
6. Testimony of Plaintiff, Defendant, and witness testimony, along with evidence entered into the record has conclusively established that Plaintiff buries human remains and cremated human remains on his property at the request of others. Whether such complies with applicable laws and regulations of any administrative agencies is beyond the jurisdiction of this court.
 7. Defendant's husband is buried at Saluda Rest at 177 Edwards Road. Defendant and Plaintiff entered into an agreement made up of a form prepared by Plaintiff with a heading "Legal Representative" and other verbal agreements between the parties regarding Defendant's husband's remains and burial which formed the basis of a purported contract. The terms of the written contract are vague and, based on evidence from others who have entrusted their loved ones to Saluda Rest, there have been significant changes made in these written agreements over the years. Much of the current issues arise out of a lack of clarity in the original agreement between the parties.
 8. Plaintiff did not prove sufficiently the elements of the contract or that breach of the contract by the Defendant occurred.
 9. Both parties presented some amount of evidence and testimony regarding their claims for alleged abuse of process against each other.
 10. Plaintiff presented evidence and testimony that Plaintiff operates a private ministry, church, and/or religious organization, that Plaintiff performs religious functions like baptisms, marriages, church services, prayer walks, and burials as a part of Plaintiff's ministry. Plaintiff's testimony indicated that Plaintiff buried Defendant's husband as a part of his ministry and church known as Saluda Rest. The court finds that whether

Plaintiff's operation known as Saluda Rest is a legally, administratively or ecumenically recognized church is beyond the jurisdiction of this court. Plaintiff argued that should the court not find that Saluda Rest was a church, and thereby exempt from any local, state, or federal requirements, then the court should find that Plaintiff's property is subject to South Carolina Code Section 27-43-10 and what followed, specifically South Carolina Code Section 27-43-310, "Access to Cemeteries on Private Property."

11. Defendant presented evidence and witness testimony that she and others had been allowed to access Plaintiff's property by vehicle and access her husband's burial site by vehicle, and that is was her expectation that she be allowed to do so for future visitation. Plaintiff's competing testimony indicated that it was his intention not to allow future vehicle access beyond a gate that Plaintiff testified was the entrance to Saluda Rest. Evidence and testimony indicated that there is a dirt path/roadway, that is filled with gravel in some places, traversable by vehicle, that would allow Defendant access to her husband's burial by vehicle. Defendant has previously used this path/roadway by vehicles to access her late-husband's grave site.
12. The court finds that Plaintiff has not done anything to open his property up to the general public and Plaintiff owns the private property. However, it is clearly in the best interests of all that there be some reasonable limitation on access to Saluda Rest.
13. Testimony indicated that there are many other burial sites, over 50 currently being on Saluda Rest, which could be affected if Plaintiff were required to open his property to the public, and that the operations of Saluda Rest would also be impacted in a negative way.

Having made the above findings, the question before the court then becomes, what relief, if any, is may be granted to the parties in this case?

LAW AND ANALYSIS

“When a case is referred to a master [in equity], Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers.” *Deep Keell, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 75, 773 S.E.2d 607, 616 (Ct. App. 2015). “Once the case is referred to the master, he has subject matter jurisdiction to resolve the action to the extent the order of reference provides, and with the authority a circuit court judge would have in a similar matter.” *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012). In this case, the order of reference provides that this court is to “take testimony, make determinations of facts and conclusions of law, and to direct entry of final judgment in this action...and all matters arising from or reasonably related to such action.” Therefore, this court, in equity, may look at all the facts presented and related to the dispute between these parties, and the relief sought, and make conclusions of facts and direct an entry of final judgment as to these matters.

A. Pre-Trial Motions

The Plaintiff filed a motion for summary judgment. “To obtain summary judgment, the moving party must show that no genuine issue exists as to any material fact and that he is entitled to judgment as a matter of law. In determining whether triable issues of fact exist, all inferences from facts in the record must be viewed in the light most favorable to the party opposing the motion for summary judgment motion.” *Manning v. Quinn*, 294 S.C. 383, 385, 365 S.E.2d 24, 25 (1988). The court finds that there are genuine issues of fact and so must deny the Plaintiff’s motion for summary judgment.

As to Defendant's motion for injunctive relief, "An injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff." The plaintiff's complaint must allege facts sufficient to constitute a cause of action for injunction and demonstrate it is reasonably necessary to protect the rights of the plaintiff pending in the action." *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 50-51, 647 S.E.2d 505, 508-509 (Ct. App. 2009). Defendant seems to argue, in part, that Saluda Rest should be required to be managed by an independent management company. Because Defendant has not filed a complaint alleging a cause of action for injunction and has not demonstrated it is necessary to protect any of Defendant's legal rights, and because as a practical matter, the trial of this case has determined any relief that Defendant may have been entitled to in her motion for injunctive relief, the court denies her motion for injunctive relief finding either a lack of sufficient evidence or a lack of jurisdiction for the court to take such action.

B. Defendant's Counterclaims

Defendant has asserted counterclaims against the Plaintiff alleging abuse of process, harassment and intimidation, and exploitation by misrepresentation. While Defendant did present some evidence at trial related to any of these causes of action, such is insufficient. Plaintiff has denied all of the allegations related to Defendant's counterclaims. "It is incumbent upon a party to argue specifically what is complained of so that the trial court will have an opportunity to rule on the point." *Hendrix v. Eastern Distribution, Inc.*, 316 S.C. 34, 446 S.E.2d 440, 442 (Ct. App. 1994), *affirmed in result*, 320 S.C. 218, 464 S.E.2d 112 (1995). Here, because Plaintiff has denied all counterclaims by the Defendant, and Defendant has made no argument or presented any evidence or testimony in furtherance of proving the counterclaims, the court finds that Defendant has not proven any elements of her counterclaims nor has Defendant made any showing for relief that this court is able to provide.

C. Plaintiff's Claims

Plaintiff alleged claims for breach of contract and for abuse of process. “To recover for a breach of contract the plaintiff must allege and prove, (1) a binding contract entered into by the parties, (2) breach or unjustifiable failure to perform the contract, and (3) damage suffered by the plaintiff as a direct and proximate result of the breach.” *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962). To recover for abuse of process a plaintiff must allege and prove “ (1) ulterior purpose, and (2) willful act in the use of the process not proper in the regular conduct of the proceeding.” *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693 (1967). Although testimony and evidence was presented to support both of those claims and causes of action, the court finds that Plaintiff did not prove that Defendant breached the contract nor that Defendant brought forth any legal proceeding with ulterior purpose or willful act in the use of the process that was not proper. Therefore, judgment must be entered against the Plaintiff on these causes of action.

Plaintiff additionally pled in his complaint and argued at trial, asking for a declaratory judgment pursuant to South Carolina Code Section 15-53-10 et seq. to satisfy the Magistrate Court order, but also seeking an additional determination that Saluda Rest is a church, and thereby exempt from any local, state, or federal requirements, or in the alternative, that the court should find that Plaintiff's property is subject to South Carolina Code Section 27-43-10 and what followed, specifically South Carolina Code Section 27-43-310, “Access to Cemeteries on Private Property” and should deny Defendant access to Plaintiff's property. South Carolina case law “has recognized that civil courts ‘do have jurisdiction as to civil, contract[,] and property rights which are involved in a church controversy,’ even though they have no jurisdiction of ‘ecclesiastical questions and controversies.’” *Pearson v. Church of God* , 325 S.C. 45, 51, 478 S.E.2d 849, 852

(1996) (quoting *Bramlett v. Young*, 229 S.C. 519, 537-38, 93 S.E.2d 873, 882 (1956)). *Jenkins v. Refuge Temple Church of God in Christ, Inc.*, 424 S.C. 320, 818 S.E.2d 13 (S.C. App. 2018). Additionally, South Carolina courts have long held that “equitable jurisdiction lies only in civil cases. *Ezell v. Ritholz*, 188 S.C. 39, 198 S.E. 419, 422 (1938). And while expansive, a court of equity generally will not determine questions of religion or faith...” 27A Am, Jur. 2d Equity §37.

There is a question and controversy between these parties and declaratory judgement and or relief is proper. However, the Plaintiff asks this court to determine whether or not Saluda Rest is a church. That question is one that is an ecclesiastical question, one of religion and faith, and is a question beyond the jurisdiction of this court. The court makes no ruling on whether Saluda Rest is a church or not.

As to whether Saluda Rest is private property, Plaintiff has repeatedly asserted in pleadings, affidavits and in other documents submitted to this court that he owns private property. The Evidence and Testimony presented at trial conclusively show Plaintiff owns the property and that he has never opened the property to the public. South Carolina courts have spoken on the issue of private property and change in status such that a piece of property may become public. They are instructive. “Two elements are required to perfect dedication. First, the owner must express in a positive and unmistakable manner the intention to dedicate his property to public use. Second, there must be acceptance of such property by the public. *Helsel v. City of North Myrtle Beach*, 307 S.C. 24, 413 S.E.2d 821 (1992). Dedication is an exceptional manner of passing an interest in land and proof thereof must be strict, cogent, and convincing. *Mack v. Edens*, 320 S.C. 236, 464 S.E.2d 124 (Ct.App.1995).” *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (S.C. 1997). No such proof of dedication has been presented either through evidence or testimony. No evidence to suggest that Plaintiff has ever dedicated his property for public use has been put forth

and therefore, Plaintiff's property is private.

Because Plaintiff's property is private and because Plaintiff has buried human remains and cremated human remains buried on his property, Plaintiff's property, referred to as Saluda Rest in these proceedings, is subject to the jurisdiction of this court of equity to pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the court may "grant relief, either legal or equitable, to which any of the parties show themselves entitled, in the subject matter of the controversy." *Bramlett v. Young*, 229 S.C. 519, 535, 93 S.E.2d 873, 881 (1956). Therefore, this court has jurisdiction to grant relief between the parties to this case as the court determines to be just and equitable.

RULING

This court, sitting in equity, and having the authority to make a determination based in equity as to the dispute between the parties, and considering the relief sought, has concluded that what is supported by the evidence in the record and what is fair between the parties, rules as follows:

1. The Plaintiff owns the properties known as Saluda Rest.
2. The Plaintiff's property is private property. The Plaintiff's property is not open to the general public.
3. The court makes no ruling as to whether Plaintiff's operation called Saluda Rest is or is not a church, legally recognized cemetery, nature preserve or nonprofit entity.
4. The Defendant is entitled to access her husband's burial site with ingress and egress by vehicle through the gate at Saluda Rest at 177 Edwards Road, accompanied by up to three (3) persons. Defendant may visit any day between the hours of 8:00AM and 8:00PM. Defendant must provide the Plaintiff with notice by text message, email, or

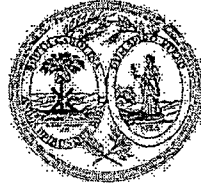
- in writing at least twenty-four (24) hours in advance of each planned visit to Saluda Rest.
5. Should there be a legitimate and objective reason (such as inclement weather, previously scheduled burial, etc) to not allow access, Plaintiff shall respond to any notice in the same manner as the request is made, with the same to be within 8 hours of the request and with a proposed alternative date and time for Defendant to visit, with said time to be no more than 48 hours later.
 6. Should Defendant cause any damage to Plaintiff's property while visiting, Plaintiff shall within 72 hours, provide Defendant written notice (text, email, letter, etc.) and proof of the damage. Defendant shall undertake to repair the damage within fourteen (14) days of notice and at Defendant's cost.
 7. Plaintiff shall not place any burial site within fifteen (15) feet on either side of the gravel path/roadway, which shall be designated as eight (8) feet wide beginning at the gate of Saluda Rest and ending at the burial site of Defendant's husband. There shall also be sufficient room for an average size vehicle to turn around in order to allow proper and safe ingress and egress. This order shall not affect the placement of burials already there or those planned by Plaintiff that may be within fifteen (15) feet on either side of the path from the gate of Saluda Rest to the burial site of Defendant's husband.
 8. A permanent mutual restraining order is to remain in place prohibiting either party from harassing the other, and no contact with the exception of communication regarding visitation, punishable by fine of \$5,000.00 and/or jail time in the court's discretion.
 9. This order shall supersede and overrule any previous orders or rulings related to these matters between the Plaintiff and Defendant that are addressed herein, specifically

related to summary court cases 2019CV2311101849 and 2019OR2311100028. The Circuit Court shall retain jurisdiction to hear any dispute related to this order, including enforcement.

10. The visitation provisions of this order allowing access to the burial site of Defendant's husband shall only apply to the Defendant and up to three (3) persons accompanying her.

IT IS SO ORDERED.

ELECTRONIC SIGNATURE PAGE FOLLOWS



Greenville Common Pleas

Case Caption: Kenneth Curtis vs. Cynthia Glenn

Case Number: 2020CP2300939

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)