

**RECEIVED**

**Jan 28 2021**

**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA**  
In the South Carolina Court of Appeals

---

**APPEAL FROM YORK COUNTY**  
Court of Common Pleas

**Teasa K. Weaver, Master in Equity Court Judge**

---

2020-001129

---

Benjamin J. Russell and Chere Mitchell..... Appellant

v.

Trudy Bolin Mattox ..... Respondent

---

**INITIAL REPLY BRIEF OF APPELLANT**

---

James W. Boyd (SC Bar# 824)  
Post Office Box 36425  
1544 Ebenezer Road  
Rock Hill, SC 29732  
(803) 328-2600 Phone  
Attorney for Appellant

**TABLE OF CONTENTS**

Table of Authorities ..... 3

Argument ..... 4

1. LACK OF OBJECTION DOES NOT ESTABLISH AN EASEMENT BY  
PRESCRIPTION..... 4

2. RESPONDENT DID NOT ESTABLISH AN IMPLIED EASEMENT ..... 4

Conclusion ..... 5

**TABLE OF AUTHORITIES**

**Cases**

Rathbun v. Robson, 203 Mont. 319, 661 P. 2d 850, 852 (Mont. 1983)..... 4

McAllister v. Smiley, 301 S.C. 10, 389 S.E. 2nd 857 (1990)..... 4

Murrells Inlet Corp. v Ward, 378 S.C. 225, 662 S.E. 2<sup>nd</sup> 462 (Ct. App. 2008) ..... 4

## ARGUMENTS

### **1. LACK OF OBJECTION DOES NOT ESTABLISH AN EASEMENT BY PRESCRIPTION.**

Respondent argues that she is entitled to an easement by prescription because the owners of what is now Appellant's property never objected to the use of the road by Respondent and her predecessors in title. Lack of objection does not create a prescription easement. The people who used the road were neighbors and friends. The lack of objection to the use of the road shows that the use was a neighborly accommodation or courtesy as it was in the case of *Rathbun v. Robson*, 203 Mont. 319, 661 P. 2d 850, 852 (Mont. 1983).

### **2. RESPONDENT DID NOT ESTABLISH AN IMPLIED EASEMENT.**

The Respondent's argument in support of an implied easement cites as support the cases of *McAllister v. Smiley*, 301 S.C. 10, 389 S.E. 2d 857 (1990) and *Murrells Inlet Corp. v Ward*, 378 S.C. 225, 662 S.E. 2<sup>nd</sup> 462 (Ct. App. 2008). The rule is that where a conveyance of land refers to a map on which spaces for streets, parks and other common uses are shown the conveyance requires an easement on the stretch shown. The Respondent refers to various deeds and plats which are not conveyances by the Respondent on her predecessors in title. Any easement by implication would have to be based on the plats referenced in the Deed from Mary J. Mitchell, who formerly owned Respondent's property, to Respondent's late husband, Carl E. Bolin. The plats are contained in Plaintiff's Exhibit 8. For the reasons set forth in Appellant's Brief, those plats do not establish an easement by prescription for the Respondent.

**CONCLUSION**

For the reasons stated, the Court should reverse the judgement of the Circuit Court.

Respectfully Submitted,

s/James W. Boyd 824  
1544 Ebenezer Road  
Post Office Box 36425  
Rock Hill, SC 29732  
(803) 328-2600 T  
(803) 328-5747 F  
[jamesboyd@comporium.net](mailto:jamesboyd@comporium.net)

January 28, 2021

**RECEIVED**

**Jan 28 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
In The Circuit Court

Teasa K. Weaver, Master in Equity

Appellate Case No. 2020-001129

Benjamin J. Russell and Chere Mitchell.....Appellant

v.

Trudy Bolin Mattox.....Respondent

---

**PROOF OF SERVICE**

---

I, certify that I served the Reply Brief of Appellant by depositing copies of the same in the United States mail, postage prepaid on January 28, 2021, addressed to its attorney, Law Office of Charles S. Bradford, 4 E. Liberty Street, York, SC 29745.

s/James W. Boyd  
Post Office Box 36425  
1544 Ebenezer Road  
Rock Hill, SC 29732  
(803) 328-2600  
Attorney for Appellant

January 28, 2021