THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Carolina Center Building Corp., Appellant,

v.

Enmark Stations, Inc.; and the Town of Hilton Head Island, Respondents.

Appellate Case No. 2017-001555

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Opinion No. 5804
Heard February 12, 2020 – Filed February 10, 2021

AFFIRMED AS MODIFIED

H. Fred Kuhn, Jr., of Moss Kuhn & Fleming, P.A., of Beaufort, for Appellant.

Russell Pierce Patterson and Lauren Patterson Williams, of Russell P. Patterson P.A., of Hilton Head Island, for Respondent Enmark Stations, Inc.

Gregory Milam Alford, of Alford Law Firm, LLC, of Hilton Head Island, for Respondent Town of Hilton Head Island.

WILLIAMS, J.: In this appeal, Carolina Center Building Corporation (Carolina) appeals the master-in-equity's order finding Enmark Stations, Inc. (Enmark) had a prescriptive easement to use a paved roadway (Roadway) situated on Carolina's

property. Carolina also appeals the master's refusal to issue a writ of mandamus ordering the Town of Hilton Head (Hilton Head) to enforce Hilton Head's Land Management Ordinance Official's (LMO Official) order that the Roadway be removed. We affirm as modified.

FACTS AND PROCEDURAL HISTORY

Carolina owns property on Greenwood Drive near Sea Pines Circle on Hilton Head Island, and on its property sits multiple buildings (Welcome Center). Enmark operates a gas station (Station) on Palmetto Bay Road adjacent to the Welcome Center. Behind the Station and adjacent to Carolina's property is a restaurant and shopping complex (Shopping Center). The Roadway covers a portion of the Welcome Center's property at its northern border and connects the Station's southern border to the parking lot on the restaurant's and Shopping Center's southern border. The Roadway initially forked around a small vegetative island located on the Shopping Center's property and had two connections to the parking lot, but now only one exists after the Shopping Center removed the island and placed a trash dumpster in its place. The Station's patrons use the Roadway as an alternative entrance and exit for the Station. The general public also uses it to bypass Sea Pines Circle and access the Shopping Center.

The chain of title for the Station is as follows. On March 12, 1974, Chevron Oil Company (Chevron) purchased the real property. On August 1, 1983, Chevron obtained a development permit to build the Station and completed construction on June 1, 1984. In 1985, Chevron leased the Station to Ron Ballenger, who was married to Alice Means. Means and Ballenger divorced in 1989, and Means assumed the lease following the divorce. Sometime before the divorce, Ballenger made repairs to the Roadway due to customer complaints. On August 23, 1993, Means, through her company, ASA, Inc. (ASA), purchased the Station from Chevron. During her ownership, Means also performed maintenance on the Roadway due to complaints. On March 19, 2009, Enmark purchased the Station from ASA.

As to the Welcome Center, State Savings Service Corporation purchased it from Sea Pines Plantation Company on January 29, 1973. On November 26, 1986, Fogelman Properties purchased the Welcome Center and subsequently sold it to SeP Limited Partnership on March 7, 1990. The Welcome Center was conveyed to Palmetto Federal Savings Bank of South Carolina on January 11, 1994, who then sold it to Sea Pines Company, Inc. on July 21, 1994. On October 31, 1996, Carolina purchased the Welcome Center.

On July 24, 2013, Enmark and Carolina entered a tolling agreement (Tolling Agreement) in which they agreed Carolina would file a complaint seeking a declaratory judgment to determine each party's rights attendant to the Roadway. The Tolling Agreement also provided that the parties would not close or impede travel over the Roadway in any way and any applicable limitation period related to the Roadway would be tolled.

After entering the Tolling Agreement but prior to filing a complaint, Carolina asked Theresa B. Lewis, the LMO Official, who interprets and enforces Hilton Head's Land Management Ordinances (LMO), whether the Roadway violated the LMO. In a letter sent on August 8, 2013 (2013 Letter), the LMO Official notified Carolina that the Roadway violated the LMO and ordered it to remove the Roadway and plant a vegetative buffer. Carolina subsequently forwarded the letter to Enmark. After receiving the 2013 Letter, Enmark contacted the LMO Official and informed her of (1) the Roadway's importance to its business and the public and (2) the Tolling Agreement and its provision providing for a court determination of the parties' rights and obligations attendant to the Roadway. Enmark also informed the LMO Official it believed the Roadway predated the LMO.[1] On September 26, 2013, the LMO Official sent Carolina an email (2013 Email) stating that after discussing the situation with Hilton Head's attorney, the 2013 Letter was premature and she should have advised Carolina that a court would need to address the issue of the Roadway's existence before she could determine whether the Roadway violated the LMO. She also indicated she would formulate a new response and send it to Carolina and Enmark. The LMO Official subsequently decided the Roadway was grandfathered into the LMO. Pursuant to the LMO Official's request, Hilton Head's attorney informed Carolina of the decision and stated Hilton Head would not require the Roadway's removal.

Carolina filed a complaint on August 15, 2013, and subsequently amended it on November 19, 2014. Carolina sought an order (1) finding Enmark did not have an express or prescriptive easement to use the Roadway, (2) ordering Enmark to remove the Roadway and to deter the public from using it, (3) permitting Carolina to make reasonable changes to the Roadway at Enmark's expense should an easement exist, and (4) prohibiting Enmark from using the Roadway. Carolina additionally brought causes of action for slander of title, nuisance, and trespass and also requested a writ of mandamus against Hilton Head to enforce the LMO. Enmark and Hilton Head filed answers seeking dismissal of Carolina's claims, and

[1] Hilton Head enacted the first version of the LMO in 1987.

Enmark filed a counterclaim asserting it had an easement over the Roadway. Carolina moved for summary judgment, and on October 23, 2015, the trial court granted summary judgment in its favor as to the issue of an express easement but denied summary judgment as to all other issues.

The matter was referred to the master on November 30, 2015, and the trial occurred on June 20–21, 2016. On March 30, 2017, the master issued an order finding Enmark established by clear and convincing evidence that it had a prescriptive easement to use the Roadway.

The master denied Carolina's request for a writ of mandamus, finding the LMO Official's 2013 Letter was not a final decision. The master further found a writ was inappropriate because (1) the Roadway did not violate the LMO, (2) Hilton Head had discretion in fashioning a remedy, and (3) Carolina failed to exhaust its administrative remedies.

Finally, the master dismissed Carolina's actions for slander of title, nuisance, and trespass, finding Carolina failed to establish these claims because Enmark possessed a prescriptive easement to use the Roadway.

Carolina filed a Rule 59(e), SCRCP, motion, which the master denied. This appeal followed.

ISSUES ON APPEAL

I. Did the master err in failing to issue a writ of mandamus ordering Hilton Head to enforce the LMO Official's 2013 Letter requiring the removal of the Roadway?

II. Did the master err in finding Enmark satisfied the elements of a prescriptive easement?

LAW AND ANALYSIS

I. Writ of Mandamus

Carolina argues the master erred in failing to issue a writ of mandamus compelling Hilton Head to enforce the LMO Official's decision contained in the 2013 Letter. We affirm.

"Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy." *City of Rock Hill v. Thompson*, 349 S.C. 197, 199, 563 S.E.2d 101, 102 (2002). The master exercises discretion in determining whether to issue a writ of mandamus, and its decision will not be overturned on appeal absent an abuse of that discretion. *Steele v. Benjamin*, 362 S.C. 66, 70, 606 S.E.2d 499, 501 (Ct. App. 2004). An abuse of discretion occurs when the master commits an error of law or bases the order on factual conclusions lacking any evidentiary support. *Id.* "An appellate court will not disturb the factual findings of the [master] on a mandamus petition if the [master]'s findings are supported by any reasonable evidence." *Id.*

Carolina asserts the master erred in finding the 2013 Letter was not a final decision. Carolina contends the 2013 Letter was a final decision because it found the Roadway violated the LMO and prescribed the specific remedy of removing the Roadway and restoring the vegetative buffer. Carolina therefore argues the master erred in declining to issue a writ of mandamus.

We find the master did not abuse its discretion in denying Carolina's petition for a writ of mandamus. The master found that the 2013 Letter was not a final decision because the LMO Official later rescinded it. The record reasonably supports this finding. *See id.* (stating the master's factual findings on a mandamus petition will not be disturbed if supported by reasonable evidence). In the 2013 Email, the LMO Official informed Carolina that the 2013 Letter was premature and that she would formalize a new response for Carolina. Furthermore, the LMO Official testified that even though it did not include the word "rescission," her 2013 Email rescinded the 2013 Letter. The LMO Official testified the 2013 Letter was based on evidence supplied only by Carolina. She stated that when she issues a decision based on information supplied only by one party in a dispute and subsequently learns new information from the other side, her practice is to retract the decision and issue a new one. We find this evidence supports the master's factual finding that the 2013 Letter was not a final decision. Therefore, the master did not err in refusing to issue a writ of mandamus enforcing the 2013 Letter. *See Thompson*, 349 S.C. at 199, 563 S.E.2d at 102 ("Mandamus is . . . issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy."). Accordingly, we affirm the master on this issue.

II. Enmark's Prescriptive Easement

Carolina argues the master erred in holding Enmark established the elements of a prescriptive easement. We affirm as modified.

"An easement is a right given to a person to use the land of another for a specific purpose." *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016) (quoting *Bundy v. Shirley*, 412 S.C. 292, 304, 772 S.E.2d 163, 169 (2015)). "The determination of the existence of an easement is a question of fact in a law action and subject to [the] any evidence standard of review when tried . . . without a jury." *Kelley v. Snyder*, 396 S.C. 564, 571, 722 S.E.2d 813, 817 (Ct. App. 2012) (quoting *Pittman v. Lowther*, 363 S.C. 47, 50, 610 S.E.2d 479, 480 (2005)). In an action at law tried without a jury, the master's factual findings will not be reversed on appeal unless the record contains no evidence reasonably supporting the finding. *Id.* Additionally, "questions regarding the credibility and the weight of evidence are exclusively for the [master]." *In re Estate of Anderson*, 381 S.C. 568, 573, 674 S.E.2d 176, 179 (Ct. App. 2009) (quoting *Golini v. Bolton*, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997)).

"[The] party claiming a prescriptive easement has the burden of proving all elements by clear and convincing evidence." *Bundy*, 412 S.C. at 306, 772 S.E.2d at 170. "To establish a prescriptive easement, one must show: (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; and (3) use or enjoyment which is either adverse[,] or under claim of right."[2] *Id.* at 304, 772 S.E.2d at 169–70. "[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse." *Simmons*, 419 S.C. at 229, 797 S.E.2d at 390 (alteration in original) (quoting *Williamson v. Abbott*, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917)). Once the presumption applies, the servient owner bears the burden of rebutting the presumption, which can be done by showing permissive use. *See Kelley*, 396 S.C. at 575–76, 722 S.E.2d at 819; *see also Williamson*, 107 S.C. at 401, 93 S.E. at 16 ("The asking and obtaining of permission[] . . . stamps the character of the use as not having been adverse[] . . . and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription."). To satisfy the twenty-year prescriptive period, the

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[2] Recently, our supreme court clarified the third element of a prescriptive easement, holding "adverse" and "claim of right" are in effect the same thing rather than two alternative ways of satisfying the element. *Simmons*, 419 S.C. at 232, 797 S.E.2d at 392. The court then simplified the elements for a prescriptive easement, stating "the claimant must identify the thing enjoyed, and show his use has been open, notorious, continuous, uninterrupted, and contrary to the true property owner's rights for a period of twenty years." *Id.* at 233, 797 S.E.2d at 392.

claimant can tack his use to use by prior owners, provided the prior owners' use also satisfies the prescriptive easement elements. *See Bundy*, 412 S.C. at 313, 772 S.E.2d at 174; *see also Morrow v. Dyches*, 328 S.C. 522, 527, 492 S.E.2d 420, 423 (Ct. App. 1997) ("A party may 'tack' the period of use of prior owners in order to satisfy the 20-year requirement.").

A. Identity of the Thing Enjoyed

Carolina argues the master erred in finding Enmark established the identity of the thing enjoyed. We disagree.

The master found Enmark established the identity of the thing enjoyed: the Roadway, which provided a second method of entering and leaving the Station. *See Bundy*, 412 S.C. at 304, 772 S.E.2d at 169 ("To establish a prescriptive easement, one must show: . . . the identity of the thing enjoyed . . . ."). Carolina asserts Enmark failed to prove this element because the Roadway is an "easement to nowhere" because it terminates on another's property instead of a public road. However, Carolina fails to cite supporting authority for this proposition. The Roadway is a right of way, and we find our jurisprudence does not require a right of way to terminate on public property. *See* 12 S.C. Jur. *Easements* § 18 (1992) ("A right of way is simply an easement *across another's land* along a particular line *for a particular purpose, such as for ingress and egress*, utility lines, drainage or other such purposes." (emphases added)); *see also Simmons*, 419 S.C. at 229, 797 S.E.2d at 390 (stating a prescriptive easement is established by identifying the things used or enjoyed and showing it was used or enjoyed adversely, continuously, and uninterrupted for twenty years). Because the record contains reasonable evidentiary support regarding the identity of the easement, we affirm the master as to this element.

B. Continuous and Uninterrupted Use for Twenty Years

Carolina argues the master erred in finding Enmark and its predecessors used the Roadway continuously and uninterrupted for the twenty-year prescriptive period. We affirm as modified.

1. Continuous Use

Because Enmark owned the Station for only three years prior to the Tolling Agreement, it must tack on to the use by its predecessors, Chevron and ASA. *See Bundy*, 412 S.C. at 313, 772 S.E.2d at 174 ("A party may 'tack' the period of use of

prior owners in order to satisfy the 20-year requirement." (quoting *Morrow*, 328 S.C. at 527, 492 S.E.2d at 423)). We hold the master properly found Enmark was able to tack the use of the Roadway by its predecessors.

The master found the Roadway existed when Chevron opened the Station in 1984 or shortly thereafter and therefore, the prescriptive period began running at that time. The record supports this finding as Means—whom the master found credible—testified she remembered the Roadway being there when the Station opened. *See In re Estate of Anderson*, 381 S.C. at 573, 674 S.E.2d at 179 ("In a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the [master]." (quoting *Golini*, 326 S.C. at 342, 482 S.E.2d at 789)). The record also reasonably supports the master's finding that Chevron's, ASA's, and Enmark's use was established by Means's and Ballenger's repairs to the Roadway and the use of the Roadway by the Station's patrons.[3] *See Kelley*, 396 S.C. at 571, 722 S.E.2d at 817 (stating factual findings by the court in an action at law will be overturned only if without reasonable evidentiary support). Accordingly, provided Enmark and its predecessors' use satisfies the remaining prescriptive easement elements, the twenty-year period ended in 2004. We address the remaining elements in turn.

2. Uninterrupted Use

Carolina argues the master erred in concluding Enmark proved this element. First, it asserts the use was interrupted when the Shopping Center placed a trash dumpster on part of the Roadway. Second, Carolina contends it sent three letters containing verbal threats that interrupted the use by Enmark and its predecessors

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[3] Multiple witnesses, including Carolina's president, Kumar Viswanathan, testified the Station's patrons used the Roadway, and Carolina never argued the patrons' use was insufficient to establish Enmark's, ASA's, or Chevron's use. Because the question of whether Enmark and its predecessors could rely on their patrons' use of the Roadway to establish an easement was never raised during trial but assumed by the parties and the master, we make the same assumption for the purpose of this appeal. *See I'On, L.L.C. v. Town of Mount Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("[The] preservation requirement . . . is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and *arguments*." (emphasis added)); *cf. TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 617, 503 S.E.2d 471, 474 (1998) ("An issue conceded in a lower court may not be argued on appeal.").

and the master erred in ruling verbal threats were insufficient to interrupt the prescriptive period.

In *Pittman*, our supreme court considered what constituted an interruption of a prescriptive period and elected not to adopt an "effective interruption" standard. 363 S.C. at 50–52, 610 S.E.2d at 480–81. In that case, the servient landowner placed numerous obstacles—posts, cables, and crops—over a road used by the dominant landowner, but the dominant landowner either traversed around the obstacles or pushed them over. *Id.* at 49, 52, 610 S.E.2d at 480–81. The servient landowner replaced the barriers when the dominant landowner moved or destroyed them, and he also notified law enforcement of the dominant landowner's destruction of the barriers. *Id.* In ruling the servient landowner sufficiently interrupted the dominant landowner's use, the court referenced an Oregon Court of Appeals case, quoting the following:

> A landowner . . . is not required to battle successfully for his rights. It is enough if he asserts them to the other party by an overt act, which, if the easement existed, would be a cause of action. Such an assertion interrupts the would-be dominant owner's impression of acquiescence, and the growth in his mind of a fixed association of ideas; or, if the principle of prescription be attributed solely to the acquiescence of the servient owner, it shows that acquiescence was not a fact.

Id. at 51–52, 610 S.E.2d at 481 (omission in original) (quoting *Garrett v. Mueller*, 927 P.2d 612, 617 (Or. Ct. App. 1996)). The *Pittman* court then stated,

> [A]ctions are sufficient to interrupt the prescriptive period when the servient landowner engages in overt acts, such as erecting physical barriers, which cause a discontinuance of the dominant landowner's use of the land, no matter how brief. In addition to physical barriers, verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period.

Id. at 52, 610 S.E.2d at 481. The court further noted that mandating successful interruption would require additional actions that "would encourage wrongful or

potentially violent behavior that is contrary to sound public policy considerations and the peaceful resolution of disputes." *Id.*

In *Kelley*, this court relied on *Pittman* and held a servient landowner failed to interrupt a dominant landowner's use. 396 S.C. at 573–74, 722 S.E.2d at 818. In that case, the dominant landowners used a road that crossed the servient landowner's property. *Id.* at 569, 722 S.E.2d at 816. The dominant landowners installed a gate on the road, and on two occasions, the servient landowner talked to them about the gate and asked them to move it. *Id.* at 569–70, 722 S.E.2d at 816. The dominant landowners moved the gate, but they did not move it off of the servient landowner's property. *Id.* The dominant landowners offered the servient landowner a key to the gate, but he refused it. *Id.* at 570, 722 S.E.2d at 816. Citing *Pittman*, this court held that merely asking the dominant landowner to move a gate did not convey to the dominant landowner that the servient landowner did not acquiesce to the easement's use, noting the servient landowner never conveyed to the dominant landowners that they could not use the road. *Id.* at 573–74, 722 S.E.2d at 818.

Initially, we find the master erred in ruling verbal threats, without an accompanying physical act, are insufficient to interrupt a claimant's use. The language utilized in *Pittman* expresses a position contrary to this holding. Specifically, we find *Pittman*'s use of the phrases "in addition to" and "also sufficient" indicates that verbal threats are intended to serve as an *alternative method* for interrupting the prescriptive period. *See* 363 S.C. at 52, 610 S.E.2d at 481 ("*In addition to* physical barriers, verbal threats which convey to the dominant landowner the impression the servient landowner does not acquiesce in the use of the land, are *also sufficient* to interrupt the prescriptive period." (emphases added)). This court's analysis in *Kelley* regarding the servient landowner's statements to the dominant landowners further supports this interpretation. *See* 396 S.C. at 574, 722 S.E.2d at 818 ("Although [the servient landowner] asked [the dominant landowners] to move the gate, there is no indication that [the servient landowner's] request conveyed to [the dominant landowners] the impression that he did not acquiesce in [the dominant landowners] using the road. . . . Further, [the servient landowner] never told [the dominant landowners] they could not use the road."). Moreover, our supreme court rejected an "effective interruption" standard partly out of a desire to not "encourage wrongful or potentially violent behavior" but rather encourage peaceful resolutions. *See Pittman*, 363 S.C. at 52, 610 S.E.2d at 481. This policy consideration is served by allowing verbal threats to interrupt a prescriptive period.

However, although we find the master erred in holding verbal threats are generally insufficient to interrupt a prescriptive period, we affirm the master's finding that the Roadway's use was uninterrupted. First, the obstructing dumpster did not interrupt the use of the Roadway. Because the Shopping Center, not Carolina, placed the dumpster in the Roadway, Carolina cannot rely upon this action as an interruption. *See Pittman*, 363 S.C. 52, 610 S.E.2d at 481 ("[A]ctions are sufficient to interrupt the prescriptive period *when the servient landowner* engages in overt acts, such as erecting physical barriers . . . ." (emphasis added)). Accordingly, the master did not err in finding the placement of the dumpster did not interrupt the prescriptive period.

Second, we hold the master did not err in finding the letters sent by Carolina failed to interrupt the prescriptive period. Carolina sent three letters: the first on June 15, 1994; the second on September 15, 2008; and the third on October 29, 2012. Carolina sent the 2008 and 2012 letters twenty-four years and twenty-eight years, respectively, after the use of the Roadway by Enmark's predecessors began; thus, those letters could not interrupt the prescriptive period. *See Matthews v. Dennis*, 365 S.C. 245, 249–50, 616 S.E.2d 437, 439–40 (Ct. App. 2005) (per curiam) (finding the servient landowner's attempt to barricade an easement did not interrupt the prescriptive period because the prescriptive period ended years before the attempt). As to the first letter, Carolina sent it two years before it purchased its property in 1996, and the letter itself states it was from a "prospective purchaser." Because Carolina did not own its property when it sent the letter, it cannot later rely upon it as an interruption to the prescriptive period. *See Pittman*, 363 S.C. at 52, 610 S.E.2d at 481 ("[V]erbal threats which convey to the dominant landowner the impression *the servient landowner* does not acquiesce in the use of the land, are also sufficient to interrupt the prescriptive period." (emphasis added)). Furthermore, our review of the record failed to reveal any subsequent verbal threats or actions taken by Carolina following its purchase of the property and within the twenty-year prescriptive period.

Based on the foregoing, we hold the master did not err in finding Enmark established continuous and uninterrupted use of the Roadway for twenty years. Accordingly, we affirm the master as to this issue.

C. Adverse Use

After reviewing the evidence, the master found Enmark was entitled to the presumption of adverse use. *See Simmons*, 419 S.C. at 229, 797 S.E.2d at 390 ("[W]hen it appears that claimant has enjoyed an easement openly, notoriously,

continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse." (alteration in original) (quoting *Williamson*, 107 S.C. at 400, 93 S.E. at 16)). The master further found Carolina failed to rebut this presumption. *See Kelley*, 396 S.C. at 575–76, 722 S.E.2d at 819 (stating the servient estate's owner bears the burden of rebutting the adverse use presumption).

Carolina raises multiple arguments as to why the master's finding of adverse use was error. However, in its posttrial brief,[4] Carolina conceded that Enmark would be entitled to the presumption "only if use of the [Roadway] during the entire prescriptive period was not interrupted." Carolina argued the Roadway's use was interrupted by the aforementioned letters and obstructive dumpster. Carolina further contended it rebutted any presumption of adverse use by showing (1) the use was permissive and (2) Means's testimony established her use was not adverse. Because these were the only arguments raised to the master, we only address these assertions. *See I'On*, 338 S.C. at 422, 526 S.E.2d at 724 ("[The] preservation requirement . . . is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and *arguments*." (emphasis added)); *see also Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (stating a party may not raise an issue in a motion to reconsider, alter, or amend a judgment that could have been presented prior to the judgment); *TNS Mills*, 331 S.C. at 617, 503 S.E.2d at 474 ("An issue conceded in a lower court may not be argued on appeal."); *Wogan v. Kunze*, 366 S.C. 583, 608–09, 623 S.E.2d 107, 121 (Ct. App. 2005) (stating an appellant cannot argue one ground at trial and another ground on appeal), *aff'd as modified*, 379 S.C. 581, 666 S.E.2d 901 (2008).

As discussed above, the master did not err in finding the Roadway's use was uninterrupted. Therefore, the presumption of adverse use applies, and Carolina must rebut the presumption. *See Kelley*, 396 S.C. at 575–76, 722 S.E.2d at 819 (stating the servient estate's owner bears the burden of rebutting the adverse use presumption). We find the record supports the master's finding that Carolina failed to do so.

As to permissive use, the record contains evidence Enmark's and its predecessors' use was not permissive. *See Ehlke v. Nemec Constr. Co.*, 298 S.C. 477, 481, 381 S.E.2d 508, 510 (Ct. App. 1989) ("[T]he burden of showing error by the [master] is on the appellant."); *see also Williamson*, 107 S.C. at 401, 93 S.E. at 16 ("The

[4] The parties submitted post-trial briefs in lieu of making closing arguments.

asking and obtaining of permission[] . . . stamps the character of the use as not having been adverse[] . . . and therefore as lacking that essential element which was necessary for it to ripen into a right by prescription."). There was conflicting testimony at trial regarding permissive use. Viswanathan testified he gave ASA and Enmark permission to use the Roadway. Conversely, Means, Jim Scott Middleton—Means's son-in-law who was a general manager at the Station while she owned it—and Enmark's Vice President, Robert Houstoun Demere, III, all testified they never received permission. The master, noting the lack of any documentary evidence of permission, found Means's and Middleton's testimonies credible and held the Roadway's use was not permissive. *See In re Estate of Anderson*, 381 S.C. at 573, 674 S.E.2d at 179 ("In a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the [master]." (quoting *Golini*, 326 S.C. at 342, 482 S.E.2d at 789)). Because the record contains reasonable evidentiary support, we affirm the master's finding. *See Kelley*, 396 S.C. at 571, 722 S.E.2d at 817 (stating factual findings by the court in an action at law will be overturned only if without reasonable evidentiary support).

Carolina also argues ASA's use was not adverse because Means testified she was not attempting to exercise ownership over the Roadway or the property. However, the elements for obtaining a prescriptive easement do not require the dominant landowner to intend to take ownership of that portion of the servient estate. *See Simmons*, 419 S.C. at 229, 797 S.E.2d at 390 (stating a prescriptive easement is established by showing (1) continued and uninterrupted use or enjoyment for twenty years, (2) the identity of the thing used or enjoyed, and (3) the use or enjoyment was adverse). Further, establishing a prescriptive easement does not confer ownership of property; it only confers the right to use that property. *See id.* ("An easement is a right given to a person to use the land of another for a specific purpose." (quoting *Bundy*, 412 S.C. at 304, 772 S.E.2d at 169)). For these reasons, we find Carolina failed to rebut the presumption of adverse use.

Based on the foregoing, we hold the master did not err in finding Enmark established the element of adverse use. Accordingly, we affirm on this issue.

D. Exclusivity

Carolina also argues the master erred in granting a prescriptive easement because Enmark's and its predecessors' use was not exclusive of the general public. However, "there is no requirement of exclusivity of use to establish a prescriptive easement." *Jones v. Daley*, 363 S.C. 310, 317, 609 S.E.2d 597, 600 (Ct. App. 2005), *overruled on other grounds by Simmons*, 419 S.C. at 232, 797 S.E.2d at

392). Although our supreme court discussed exclusivity in *Bundy*, it did not list exclusivity when it recited the elements of a prescriptive easement. *See* 412 S.C. at 304, 311, 772 S.E.2d at 169–70, 173. Additionally, when the court subsequently clarified the test for a prescriptive easement, it did not include an exclusivity requirement in its recitation or its simplification of the elements. *See Simmons*, 419 S.C. at 229, 233, 797 S.E.2d at 390, 392. Accordingly, we affirm the master on this ground.

E. Created as the Result of Wrongful Acts and Potential Violation of Hilton Head Ordinances

Carolina also argues Enmark failed to establish a prescriptive easement because the Roadway was created as the result of wrongful acts and violates Hilton Head's ordinances. However, Carolina provides no authority for the proposition that a prescriptive easement cannot begin by a wrongful act and only cites equitable maxims. *See, e.g.*, *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 259, 715 S.E.2d 348, 358 (Ct. App. 2011) ("In order for justice to be done between parties, a party is required to do equity when asking the court to invoke the aid of equity."). Because determination of the existence of an easement is an action at law, equitable considerations are irrelevant. *See Kelley*, 396 S.C. at 571, 722 S.E.2d at 817 ("The determination of the existence of an easement is a question of fact in a law action . . . ." (quoting *Pittman*, 363 S.C. at 50, 610 S.E.2d at 480)). Moreover, because the dominant estate's use must be "contrary to" the servient owner's rights, every prescriptive easement begins as a "wrongful act." *See Simmons*, 419 S.C. at 233, 797 S.E.2d at 392 ("In order to establish a prescriptive easement, the claimant must identify the thing enjoyed, and show his use has been . . . *contrary to the true property owner's rights* for a period of twenty years." (emphasis added)). Finally, the elements of a prescriptive easement do not require that the thing used or enjoyed satisfy all local ordinances. *Bundy*, 412 S.C. at 304, 772 S.E.2d at 169–70 ("To establish a prescriptive easement, one must show: (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; and (3) use or enjoyment which is . . . adverse . . . ."). Based on the foregoing, we affirm the master on this ground.

CONCLUSION

Accordingly, the master's order is

AFFIRMED AS MODIFIED.[5]

KONDUROS and HILL, JJ., concur.

[5] Carolina also asserts the master erred in failing to issue a judgment in its favor on its claims for slander of title, trespass, and nuisance. Because Carolina's actions under those theories rely on the assertion that no easement exists, our affirmation of the master's finding that Enmark holds a prescriptive easement disposes of these issues, and we decline to address them. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when disposition of a prior issue is dispositive).