

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

RECEIVED

Mar 11 2021

SC 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

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. 2nd 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 on 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. 2nd 857 (1990) and *Murrells Inlet Corp. v Ward*, 378 S.C. 225, 662 S.E. 2nd 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 Respondents late husband, Carl E. Bolin. The plats are contained in Plaintiffs Exhibit 8. (R. page 570, 571) For the reasons set forth in Appellants 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

March 12, 2021