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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

MIKELL R. SCARBOROUGH, Master in Equity

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Appellate Case No. 2019-001289

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Raven's Run Homeowners Association, Inc., ..... Appellant/Respondent,  
v.

Crown Pointe Association, Inc., Lois K. Novak as Trustee of the Lois K. Novak Living Trust dated 10/14/2013; Laurie T. Herron and Mark D. Herron; James B. Kubu and Melissa F. Kubu; Leila June Johnson; Danny Ta and Anita McCauley; Robert E. Luby, Jr., and Barbara Luby; Joshua D. Coonce; Lucius Roy Junevicius; Katherine Kinlaw; Thomas K. Kuyk and Melissa Ward; Roland Franklin Wooten, III, and Teresa Key Wooten; Michael P. Horvath; Timothy E. Moylan and Karen G. Moylan; Carl A. Counasse and Maureen Counasse; David A. Frielinghaus and Holly C. Frielinghaus; Christopher S. Finley and Holly M. Finley; Shirley D. Spigner a/k/a Shirley Deanna Spigner, Deirdre C. Knight; Robert Shane Johnson; Eric R. Sigman; Lamar R. Graves, Jr., and Terry W. Graves; Mary Elizabeth Gladden; Philip Wallace and Naomi Grad; Thomas Edwin Davis and Luis Miguel Gonzalez Melchor; John R. Funkhouser and Jennifer L. Funkhouser; Gregory S. Cooper and Jane B. Cooper; Frank C. Jones, Jr., and Elise Ubele Jones; William P. Topping and Kris B. Topping; LaRhonda S. Ptichko; Kenneth L. Tully and Anna J. Tully; Defendants,

Of Whom James B. and Melissa F. Kubu, and  
Leila June Johnson are the ..... Respondents

And Katherine Kinlaw is the ..... Respondent/Appellant.

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**FINAL RESPONDENT'S BRIEF OF APPELLANT/RESPONDENT**

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## STATEMENT OF THE CASE

This appeal arises from a dispute over ownership of a lake and buffer strip lying between two Low Country subdivisions, Raven's Run and Crown Pointe.

### I. FACTS

The Raven's Run Subdivision is separated from the Crown Pointe Subdivision by a small lake, which the special master found is owned by Appellant/Respondent Raven's Run Homeowners Association, Inc. ("Raven's Run"). (R. p. 22 (Recons. Order, at 4).) Respondents Leila June Johnson and James B. and Melissa F. Kubu, and Respondent/Appellant Katherine Kinlaw (collectively, "Respondents"), are the owners of three lots in Crown Point Subdivision (Lots 39E, 40E, and 45E, respectively). The primary dispute between the parties concerns ownership of a 10- to 12-foot-wide buffer strip of dry land lying between Respondents' rear lot lines and the waterline of the lake. The buffer strip is intended to provide a screen of trees and greenery that enhances the value of the lots in Raven's Run by creating a feeling that its lots and houses are located in a secluded woodland. (R. p. 296 (MSJ Ex. 10).)<sup>1</sup>

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<sup>1</sup> The Charleston County Zoning Ordinance defines the term "Landscape Buffer" as, "A vegetated area of varying width (ranging from five to 100 feet) designed exclusively to provide screening between adjoining properties, rights-of-way, parking lots and structures." Charleston Cty. Zoning & Land Dev. Regs. art. 12.1. Similarly, the Ordinance defines the term "Wetland Buffer" as, "An area of varying width (ranging from 15 to 35 feet), providing a visual, spatial, and ecological transition zone between the OCRM Critical Line and land development, as described in Article 9.7. The wetland buffer is designed to protect water quality and wildlife habitat." *Id.*

Raven's Run's ownership of the buffer strip and the lake is established through a chain of title that begins with a deed from Yaupon Plantation Investors to RAC Enterprises, Inc., conveying approximately 117 acres of land south of Rifle Range Road in Mt. Pleasant. (R. p. 72 (Deed T130/205<sup>2</sup>, MSJ Ex. 1(I).) The parcel is rectangular in shape and oriented at an angle going from northwest to southeast. RAC Enterprises developed three subdivisions on this land. East Crossing Subdivision, containing 65 lots, is located in the northwest corner of the parcel. (R. p. 346 (Plat BK-3<sup>3</sup>, Recons. Ex. 3).) Crown Pointe Subdivision, containing 79 lots, is located to the southeast of East Crossing Subdivision and is separated from it by a "green area" of trees and greenery. (R. p. 380 (Plat BK-1, Attachment F to Affidavit of E.M. Seabrook, III)<sup>4</sup>; R. p. 345 (Plat BK-2, Recons. Ex. 3); R. p. 340 (Plat BP-161, MSJ Ex. 4(B)).) Raven's Run Subdivision, the largest and oldest of the three, lies to the southeast of Crown Pointe Subdivision and is separated from it by the lake. (R. p. 265 (MSJ Ex. 1(A)).)

#### **A. Conveyance of the Lake and the Buffer Strip**

RAC Enterprises began developing the Raven's Run Subdivision in the mid-1980s. In 1985, in connection with its development of the first portion of the subdivision, RAC

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<sup>2</sup> "Deed T130/205" refers to the deed recorded in Deed Book T130, at page 205.

<sup>3</sup> "Plat BK-3" refers to the plat recorded in Plat Book BK, at page 3.

<sup>4</sup> Plat BK-1 was presented to the master and discussed by the parties during the summary judgment hearing. (R. pp. 142-146, 151, 182 (MSJ Tr. at 14-18, 23, 54); *see also* R. p. 254 (Recons. Tr. at 56).)

Enterprises conveyed certain land to Raven's Run (the "1985 Deed"). (R. p. 268 (Deed E150/875, MSJ Ex. 1(F)).) The 1985 Deed conveyed all "parcels or strips of land [and] bodies of water ... below described," including all "lakes, fingers, coves and other bodies of water" as shown on Plat BG-52, 53, and 54. (R. p. 268 (Deed E150/875, at 1).) The 1985 Deed also conveyed "two irregular strips of land situate to the east and west of the intersection of Omni Boulevard and Rifle Range Road" lying "[along] the southern right-of-way of Rifle Range Road." (*Id.*) The 1985 Deed states that the parcel being conveyed is designated as tax map number 561-01-00-093. (*Id.*) Charleston County's GIS system shows that the parcel designated as tax map number 561-01-00-093 consists of the lake and the buffer strip. (R. p. 265 (MSJ Ex. 1(A)).) There is no dispute that Raven's Run has paid the property taxes on this parcel since 1985. (R. p. 351 (Recons. Ex. 7).)

In 1987, RAC Enterprises made another conveyance to Raven's Run in connection with further development of the Raven's Run Subdivision (the "1987 Deed"). (R. pp. 118 (Deed R163/134, MSJ Ex. 1(C)).) Like the 1985 Deed, the 1987 Deed conveyed certain property, including "all lakes and bodies of water," to Raven's Run. (R. p. 118 (Deed R163/134, at 1).) The 1987 Deed incorporates Plat BL-57, which shows the part of the lake that lies between Raven's Run Subdivision and lots 37E through 66E of the Crown Pointe Subdivision. (R. p. 120 (Plat BL-57, MSJ Ex. 1(E)).) The 1987 Deed also notes that the property being conveyed is designated as tax map number 561-01-00-093, *i.e.*, the lake and the buffer strip. (R. p. 118 (Deed R163/134, at 1).)

## B. Crown Pointe Restrictive Covenants

On August 21, 1986, RAC Enterprises recorded plats for the East Crossing and Crown Pointe Subdivisions. (R. pp. 380-383 (Plat BK-1 to -3, Attachment F to Seabrook Aff.)) The following week, RAC Enterprises recorded restrictive covenants for the Crown Pointe Subdivision. (R. pp. 38-47 (Deed O158/414, MSJ Ex. 5).)

The restrictive covenants address owners' rights with respect to "lakes and bodies of water" in the Crown Pointe and Raven's Run Subdivisions, clearly distinguishing between them:

The lakes, canals or other bodies of water *in Crown Pointe Subdivision* and/or adjacent to any residential lot are designed solely for the purpose of drainage. ...

No owner shall have access to or use of said bodies of water, except for view. Prohibitions shall specifically include fishing, boating and/or swimming. ...

*No use* may be made by any owner, family member or invitee *of lake systems of Raven's Run Subdivision* which abut Lots 37E through 66E of Crown Pointe; this *total prohibition* of use shall specifically include boating, swimming and fishing. The portion of land between the rear lot lines of such lots and the water line of the Raven's Run lakes is owned by the Raven's Run Homeowners Association, Inc.

(R. pp. 43-44 (Deed O158/414, at 6-7) (emphasis added).) Thus, the restrictive covenants allow *no use except for views* of lakes within Crown Pointe Subdivision and *no use at all* of the lake between the Raven's Run Subdivision and the Crown Pointe Subdivision. The deed for Kinlaw's property, which was recorded on September 11, 2015, provides that

her ownership of Lot 45E is subject to, *inter alia*, “all restrictions” and “covenants.” (R. p. 291 (MSJ Ex. 4C).)

**C. Conveyance of the East Crossing/Crown Pointe Lake and Green Area**

In addition to the lake that separates the Raven’s Run subdivision from lots on the east side of the Crown Pointe subdivision, there is another small lake and a “green area” adjacent to the East Crossing Subdivision and the western side of the Crown Pointe Subdivision. On December 18, 2001, RAC Enterprises executed two quitclaim deeds (the “2001 Quitclaim Deeds”) conveying the latter areas. In the first quitclaim deed, RAC Enterprises conveyed to East Crossing-Crown Pointe Association, Inc., the following property:

ALL that certain common area, including any “lake” and “green area”, located in East Crossing Subdivision ... as shown on [Plat BK-3] ...

**ALSO**

ALL that certain common area, including any “lake” and “green area”, located in Crown Pointe Subdivision ... as shown on [Plat BK-2] ....

TMS # 561-05-00-145

(R. pp. 84-85 (Deed C392/756, Recons. Ex. 4); *see* R. p. 346 (Plat BK-3); R. p. 345 (Plat BK-2).)

On the same day, East Crossing-Crown Pointe Association, Inc. executed a quitclaim deed conveying a portion of the property conveyed in the first quitclaim deed to Crown Pointe Association, Inc.:

ALL that certain common area, including any “lake” and “green area”, located in Crown Pointe Subdivision ... as shown on [Plat BK-2] ....

....

TMS # 561-05-00-145 (a portion)

(R. p. 332 (Deed H394/181).)

The Charleston County GIS map shows that parcel number 561-05-00-145 lies to the north and west of Crown Pointe Subdivision. It is entirely distinct from parcel number 561-01-00-093 *i.e.*, the buffer strip and lake owned by Raven’s Run. (R. p. 358 (Recons. Ex. 11).)

## **II. PROCEDURAL HISTORY**

### **A. Claims Asserted by Raven’s Run**

Some of the owners of Crown Pointe Lots 37E through 66E began cutting down trees and greenery growing on the buffer strip and started trespassing across it and using the lake for canoeing and fishing. (R. pp. 300-328 (MSJ Ex. 11).) In particular, on October 22, 2015—shortly after she purchased Lot 45E—Kinlaw’s property manager retained a tree cutting service to cut down the trees in the buffer strip. (R. p. 99 (Am. Compl. ¶ 48); R. pp. 305-306, 309 (MSJ Ex. 11).) These activities violated Raven’s Run’s property rights in the lake and the buffer strip. Additionally, such conduct is expressly prohibited by the restrictive covenants for the Crown Pointe Subdivision, which impose a “total prohibition” on any use of “lake systems of Raven’s Run Subdivision which abut Lots 37E through 66E of Crown Pointe ... includ[ing] boating, swimming, and fishing.”

However, the Crown Pointe Association failed to enforce the covenants.

Raven's Run filed suit on January 31, 2017, naming the Crown Pointe Association and the owners of Lots 37E through 66E, including Kinlaw, as defendants. (R. pp. 24-37 (Complaint).) Raven's Run's amended complaint—the operative pleading at the time of summary judgment—sought a declaratory judgment, injunctive relief, and damages for trespass and nuisance. (R. pp. 89-103 (Am. Complaint).) In particular, Paragraph 44 of the complaint and the amended complaint alleges that the rear lot lines of Lots 37E through 66E “abut common areas owned by the Plaintiff,” *i.e.*, the buffer strip and the lake. (R. p. 33; *see also* R. pp. 99-102 (Am. Compl. ¶¶ 51, 56-58, 63, 66, 71-72, 76-77).).

By August 2018, all but three of the lot owners had reached settlements with Raven's Run, leaving as defendants only the Crown Pointe Association and the owners of three lots: James and Melissa Kubu (Lot 39E), Leila June Johnson (Lot 40E), and Katherine Kinlaw (Lot 45E) (collectively, “Respondents”). *Neither* Crown Pointe *nor* any of the Respondents ever claimed *ownership* of the lake or the buffer strip. Rather, all of them answered Paragraph 44 by denying the allegations and demanding proof of Raven's Run's ownership. (R. p. 65 (Johnson Answer); R. p. 63 (Kubu Answer); R. p. 68 (Kinlaw Answer).)

## **B. Summary Judgment Order**

Shortly before the scheduled trial date in August 2018, Raven's Run moved for summary judgment. (R. pp. 114-116 (Raven's Run MSJ).)<sup>5</sup> In moving for summary judgment, Raven's Run contended that its claims were supported by:

1. Charleston County Parcel I.D. Map for Parcel 561-01-00-093;
2. Deed recorded in Book R163 at Page 134 transferring all right title and interest in the subject property from RAC Enterprises, Inc., to Raven's Run Homeowner's Association, Inc., as set forth there including all bodies and water;
3. Plat recorded in Plat Book BL at Page 057;
- ...
7. The Covenants and Restrictions for Crowne Point Subdivision recorded in Book O158 at Page 414 and as amended in Book 0159 at Page 492 and Book 1392 at Page 700 as relates to the use of the lakes systems and land at the rear of the Lot lines of the Defendants remaining in this case[.]

(R. p. 115 (Raven's Run MSJ, at 2).) The map, deed, and plat were attached as exhibits to the motion. (R. pp. 117-120 (MSJ Exs. 1-3).)

The master heard argument on the summary judgment motions on August 28, 2018. At the beginning of the hearing, the Crown Pointe Association and Raven's Run informed the master that they had reached a settlement, which they memorialized in open court. (R. p. 132-136 (MSJ Tr. at 4-8).) In light of the settlement with Crown Pointe,

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<sup>5</sup> On Raven's Run's motion, the matter was referred to the Honorable Mikell R. Scarborough, master-in-equity for Charleston County. (R. p. 3 (Order of Reference).)

the only parties at the time of summary judgment were Raven's Run and the three individual Respondents.

Although Raven's Run's claims were based on its ownership of the buffer strip and the lake, Respondents' arguments during the summary judgment hearing focused instead on a 60-foot public drainage easement that that lies "20 feet within" each platted lot and "40 feet towards the lakes." (R. p. 345 (Plat BK-2).) At the conclusion of the hearing, the master granted summary judgment to Respondents on the grounds "that Crown Pointe Subdivision has the ownership and use not exclusively with the homeowners of those 60-foot easements outside the parameter essentially of the lots in Crown Pointe Subdivision." (R. p. 193 (MSJ Tr. at 65).)

The master explained his reasoning in an order entered on November 8, 2018. (R. pp. 9-18 (MSJ Order).) The master found that Plat BK-2, recorded in 1986, shows "lakes and drainage easements ... immediately to the east of" Respondents' lots and that "RAC Enterprises, Inc., the common owner of the two subdivisions" dedicated "'the green areas and lakes shown'" on Plat BK-2 "'to the use of the East Crossing Subdivision and the Crown Pointe Subdivision Homeowners Association forever.'" (R. p. 10-11 (MSJ Order, at 2-3 (quoting plat BK-2)).)

The master recognized that Raven's Run claimed title to the buffer strip adjacent to Respondents' rear lot lines under the 1987 Deed. (R. p. 11 (MSJ Order, at 3).) However, the master found that plat BL-57 "shows no land in Crown Pointe Subdivision, and

neither the deed nor the plat references Crown Pointe Subdivision, its lands, lakes, or easements,” and therefore “neither implicitly nor explicitly convey[s] the disputed property.” (R. p. 11 (MSJ Order, at 3).)

The master ruled that Plat BK-2, which shows the property conveyed in the 2001 Quitclaim Deeds, was dispositive as to ownership of the buffer strip:

RAC dedicated the lakes and green areas on Plat BK-2 recorded August 21, 1986 to Crown Pointe. This dedication predates the conveyance [in] the deed into Raven’s Run relied on by Raven’s Run. As between the private parties, this dedication is complete when made. *This dedication effectively conveys the portion of Plat BK-2 that shows the 60 foot drainage easement on the lot lines to Crown Pointe.*

(R. p. 16 (MSJ Order at 8 (citation omitted; emphasis added)).) The master further found that the 2001 Quitclaim Deed from RAC Enterprises to East Crossing-Crown Pointe Association, Inc., referencing Plats BK-2 and BK-3, “show[ed] the intent of RAC [Enterprises] to convey everything on the plat pages of BK-2 to Crown Pointe. This undoubtedly includes the portion of the 60 foot easement that extends 40 feet into the lake.” (R. p. 17 (MSJ Order, at 9).) On this basis, the master found “that Crown Pointe has ownership and a non-exclusive right to use this 40-foot wide area as depicted on Plat BK-2, and has a non-exclusive drainage easement of 20 feet.” (*Id.*)

### **C. Order on Reconsideration**

Raven’s Run moved for reconsideration, arguing that the summary judgment order was contradicted by Deed R163/134, Plat B-57, and tax map number 561-01-00-093.

(R. p. 127 (Mot. for Recons., at 2).) Raven's Run also argued that the master had failed to consider the 1985 Deed (Deed E150/875), recorded on December 11, 1985. (R. p. 127 (Mot. for Recons., at 2).) In the 1985 Deed, RAC Enterprises conveyed to Raven's Run all "pieces, parcels or strips of land ... *bodies of water*," and all "*lakes fingers, coves, and other bodies of water*," as shown on Plats BG-52, -53, and -54. (R. p. 268 (emphasis added).) The 1985 Deed refers to and incorporates tax map number 561-01-00-093. (R. p. 268.)

At the hearing on the motion for reconsideration, Raven's Run argued that RAC Enterprises had conveyed the lake, which is a single continuous body of water, and the buffer strip to Raven's Run by the 1985 Deed. (R. p. 211-212 (Recons. Tr. at 13-14); *see also* R. p. 246 (Recons. Tr. at 48 ("Your Honor, it's actually all connected in one body of water. This deed says all lakes[.]").) The conveyance by the 1985 Deed was completed by the 1987 Deed, and Raven's Run's ownership of the entire lake and buffer strip was confirmed by the Crown Pointe restrictive covenants recorded in 1986. Raven's Run also argued that the 2001 Quitclaim Deeds conveyed only the lake and green areas located within the East Crossing and Crown Pointe Subdivisions, not the lake and buffer strip between the Raven's Run Subdivision and Crown Pointe Subdivision. (R. p. 212-213 (Recons. Tr. at 14-15).)

The master orally granted reconsideration in part, holding that Raven's Run owned the entire lake as a result of the conveyance in the 1985 Deed. (R. p. 258 (Recons.

Tr. at 60).) The master nevertheless denied reconsideration as to ownership of the buffer strip, stating that title to the buffer strip was “in Crown Pointe free and clear of Ravens Run.” (R. p. 258 (Recons. Tr. at 60).)

In a written order entered on July 10, 2019, the master acknowledged that he had “failed to consider the full record of deeds, plats, and covenants” pertaining to the buffer strip and the lake. (R. p. 20 (Recons. Order at 2).) The master then analyzed the relevant documents and ruled that the lake is owned by Raven’s Run:

**a. The 1985 Deed**

The deed recorded on December 11, 1985 at Book E150 at Page 875 (“1985 Deed”) ... referenced a plat dated November 20, 1985, recorded on December 3, 1985 in Book BG at pages 052, 053, 054 (“1985 Plat”).

BG 052 shows Raven’s Run Subdivision, the numbered lots thereon, the 60’ easement, and the Lake. It also vaguely shows a shape of the property which later became Crown Pointe. The 1985 Deed into Raven’s Run includes language conveying “[a]ll those certain pieces, parcels or strips of land, bodies of water ... below described, all of which are shown on a certain plat [BG 52, 53, 54]” which includes “[a]ll lakes, fingers, coves and other bodies of water ...” marked on the plat. Again, Crown Pointe is not shown on the 1985 Plat.

**b. The 1987 Deed**

Plaintiff’s Motion also referenced the 1987 deed of the common areas between RAC Enterprises, Inc. and the Raven’s Run Homeowner’s Association, Inc. (“1987 Deed”) ... in Book R163 at Page 134, recorded April 1, 1987, using Plat BL 057 (“1987 Plat”) ... recorded December 5, 1986. This 1987 conveyance includes all lakes or bodies of water and grants an ingress-egress easement held in common with lot owners in Raven’s Run for drainage purposes. These described parcels and water are shown on Plat BL 057. This plat also shows Raven’s Run Subdivision, the numbered lots thereon, the 60’

easement, and the Lake but again does not show any portion of Crown Pointe.

### **c. The Crown Pointe Covenants and Restrictions**

The Covenants and Restrictions for Crown Pointe (“Covenants”) ... were recorded on October 17, 1986 in Book 0158 at Page 414. Section 26 of the Covenants captioned “Lakes and Bodies of Water” stated the lakes are “solely for the purpose of drainage” and “no owner shall have access to or use of said bodies of water [including boating, swimming and fishing], except for view.” Section 26 states further “No use may be made by any owner of lake systems ... of Raven’s Run Subdivision which abut Lots 37E through 66E of Crown Pointe” thereby prohibiting boating, swimming and fishing in those bodies of water by these Crown Pointe landowners.

*Based on the language in the 1985 and 1987 deeds, the accompanying plats, and the Covenants, the Court finds the Lake, as labeled, is owned by Ravens Run.* Crown Pointe residents are subject to the drainage easement on their lots. Crown Pointe residents cannot use the Lake for swimming, boating, and fishing but the Covenants do allow them to use the Lake for water views.<sup>6</sup>

(R. pp. 21-22 (Recons. Order, at 3-4) (emphasis added).)

As to the buffer strip, the master ruled:

the land behind these Defendants’ Lots, which was not conveyed by deed either to Crown Pointe Association or the three Defendants, and which is burdened by Crown Pointe’s Restrictive Covenants, is burdened by the nonexclusive drainage easement which was dedicated to the public, *and on that basis is owned by Crown Pointe.*

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<sup>6</sup> This statement appears to rest on a misreading of the restrictive covenants for Crown Pointe. As noted in Part I(B), *supra*, the covenants allow Crown Pointe owners to use “[t]he lakes, canals or other bodies of water *in Crown Pointe Subdivision*” for water views. (R. p. 43 (emphasis added).) The covenants do not allow Crown Pointe owners to use the Raven’s Run lake for water views. (R. p. 44.) Such a right would be inconsistent with the purpose of having trees and greenery growing in the buffer strip, namely, to create a feeling of seclusion for owners of lots in Raven’s Run Subdivision.

(R. p. 22 (Recons. Order, at 4) (emphasis added).) However, and inconsistent with this holding, the master also stated that Respondents—*i.e.*, the Kubus, Ms. Johnson, and Ms. Kinlaw, individually—“have fee simple title to their parcels of land all the way to the waterline.” (R. p. 23 (Recons. Order, at 5).)<sup>7</sup>

Raven’s Run timely filed a notice of appeal. Thereafter, Respondent Katherine Kinlaw filed a notice of cross-appeal.

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<sup>7</sup> In other words, the master held that *both the Crown Point Association and the three individual Respondents* own the buffer strip.

## SUMMARY OF ARGUMENT

In her cross-appeal, Respondent/Appellant Katherine Kinlaw attempts to assert a right on behalf of *non-party* Crown Pointe. Kinlaw has never contended—either in the lower court or in her appellate brief—that *she* has any property interest in the lake. Rather, she contends that the lake is owned by Crown Pointe and that the master erred in ruling, on reconsideration, that the lake is owned by Raven’s Run. This argument fails for three reasons.

First, Kinlaw’s cross-appeal should be dismissed for lack of standing. Kinlaw is *not* asserting her own rights, she is attempting to assert rights on behalf of Crown Pointe. Because she does not, and has never, asserted a claim of ownership or any other property interest in the lake on her own behalf, she did not—indeed, could not—suffer any loss as a result of the master’s finding that Raven’s Run owns the lake. Accordingly, Kinlaw cannot show that she was aggrieved by the order on reconsideration and lacks standing to appeal. *See* Rule 201(b), SCACR (“Only a party aggrieved by an order, judgment, sentence or decision may appeal.”).

Second, Kinlaw’s cross-appeal is improper because she failed to preserve the issue for appellate review. The master’s order on reconsideration did not address Kinlaw’s assertion about Crown Pointe’s alleged ownership of the lake, and Kinlaw failed to move for reconsideration under Rule 59(e), SCRCF. Under settled precedents of the Supreme Court of South Carolina, therefore, the issue is not preserved for appellate review.

In light of Kinlaw's lack of standing and her failure to preserve the claimed error for review, this Court does not need to consider the merits of her cross-appeal. Nevertheless, the master was clearly correct in finding that the lake is owned by Raven's Run. The intent of the grantor, RAC Enterprises, to convey the lake to Raven's Run is clearly established by the 1985 and 1987 Deeds, including the plats and tax map number referenced therein. RAC Enterprises' intent is confirmed by all of the available evidence, including the 2001 Quitclaim Deeds, the Crown Pointe restrictive covenants, and the plat referenced in the deed conveying Lot 45E to Kinlaw.

## ARGUMENT

### I. KINLAW LACKS STANDING TO ASSERT A CLAIM ON BEHALF OF CROWN POINTE

The sole ground of Kinlaw's cross-appeal is that the master should have found that the lake is owned by Crown Pointe, not by Raven's Run. (Kinlaw Br., at 2.) However, Kinlaw has no standing to appeal this ruling. Rule 201(b), SCACR, provides that "[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal." "A party is aggrieved by a judgment or decree when it operates on *his or her* rights of property or bears *directly* on his or her interest." *Beaufort Realty Co. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (emphasis added). "The word 'aggrieved' refers to a substantial grievance, *a denial of some personal or property right*, or the imposition on a party of a burden or obligation." *Id.* (emphasis added). "A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person's rights and interests." *Id.* at 301, 551 S.E.2d at 589-90.

Kinlaw is not an aggrieved party because she has not suffered "a denial of some ... property right." Kinlaw has never claimed a property right in the lake. Therefore, she could not be aggrieved by the master's finding as to who—Raven's Run or Crown Pointe—owned the lake. This Court's decision in *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008), illustrates the point. That case involved the apportionment of interpleaded funds between two family members. Although Bank of America ("BOA") did not claim any ownership interest in the funds, it nevertheless

sought to appeal the trial court's decision on apportionment. This Court dismissed BOA's appeal for lack of standing. The Court reasoned that because BOA did not claim any ownership interest in the funds, it could not be aggrieved by the trial court's apportionment decision. *See id.* at 444-45, 665 S.E.2d at 241. Additionally, the Court rejected the notion that BOA could assert the interests of one of the family members. *See id.* at 445, 665 S.E.2d at 241 ("We are unaware of any law (and [BOA] has cited none) supporting the idea that one party may acquire standing by asserting the interest of an adverse party.").

*Powell* is controlling. Like BOA in *Powell*, Kinlaw does not claim any ownership interest in the lake but rather seeks to assert the ownership interest of another (Crown Pointe). Because she does not assert an ownership interest of her own and cannot assert a claim on behalf of Crown Pointe, the master's order on reconsideration did not cause Kinlaw to suffer a "denial of some personal or property right." *Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589. Consequently, she is not "aggrieved by [the] order" and lacks standing to appeal.<sup>8</sup>

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<sup>8</sup> If anything, Kinlaw *benefitted* from the reconsideration order, because the master found—albeit erroneously—that Crown Pointe residents have a right to "water views" of the lake. This finding is flatly contrary to the Crown Pointe restrictive covenants, which allow "access" for "view[s]" of lakes within Crown Pointe Subdivision, while at the same time imposing a "*total prohibition*" on *any* use of the "lake systems of Raven's Run Subdivision which abut Lots 37E through 66E of Crown Pointe Subdivision." (R. p. 44 (emphasis added).)

## II. KINLAW FAILED TO PRESERVE THE ISSUE FOR APPEAL

Not only does Kinlaw lack standing to bring her cross-appeal, her argument for reversal was not preserved in the lower court. Consequently, it is not preserved for appellate review. *See Repko v. County of Georgetown*, 424 S.C. 494, 503, 818 S.E.2d 743, 748 (2018) (“An appellate court may not reverse a lower court order based on a legal or factual premise not advanced by the party who lost at the trial court level.”).

Kinlaw contends that the 1985 Deed does not support the master’s finding that Raven’s Run owns the lake because the plats referenced in the 1985 Deed (*i.e.*, Plats BG-52, -53, and -54) do not show “the water adjacent to Kinlaw’s lot.” (Kinlaw Br. at 8.) In other words, Kinlaw contends that because Plats BG-52, -53, and -54—which are plats of *Raven’s Run*—do not show any part of Crown Pointe, they are insufficient to establish that Raven’s Run owns the lake.<sup>9</sup> However, Kinlaw failed to preserve this argument by presenting it in a motion for reconsideration under Rule 59(e), SCRCP.

“It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [circuit] court to be preserved for appellate review.” *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000). “Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and

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<sup>9</sup> For the reasons discussed in Part III, *infra*, this argument is without merit.

arguments." *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). Unless the lower court has explicitly ruled on an argument, a rule 59(e) motion is required because "[t]he losing party must first try to convince the lower court it has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." *Id.*; see *Elam v. SCDOT*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) (describing a Rule 59(e) motion as "part and parcel of a party's 'single bite at the apple' in presenting his case to the trial court"); see also *id.* at 24, 602 S.E.2d at 780 ("A party *must* file [a Rule 59(e)] motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.")

For purposes of error preservation, it makes no difference that Kinlaw is attempting to appeal a finding made in the master's order on the Rule 59(e) motion filed by Raven's Run. The rule in South Carolina is that "[w]hen a party receives an order that grants certain relief not previously contemplated or presented to the trial court, the aggrieved party must move, pursuant to Rule 59(e), SCRCP, to alter or amend the judgment in order to preserve the issue for appeal." *In re Timmerman*, 331 S.C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998). The Supreme Court of South Carolina has explicitly recognized that "a second motion for reconsideration under Rule 59(e) is appropriate ... if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration." *Elam*, 361 S.C. at 15, 602 S.E.2d at 775.

Kinlaw's attempted appeal presents precisely the scenario contemplated in *Elam*.

The question of ownership of the lake was raised by Raven's Run in its motion for reconsideration, in which it argued that the master's summary judgment ruling failed to take account of, *inter alia*, the 1985 Deed, which "transferr[ed] the lakes and surrounding property [*i.e.*, the buffer strip] to Ravens Run." (R. p. 127 (Recons. Mot., at 2).) At the hearing on reconsideration, Raven's Run explained that the 1985 Deed conveyed "all lakes, fingers, coves, and other bodies of water," as well as an "irregular strip of land" to Raven's Run. (R. pp. 206, 209 (Recons. Tr. at 8, 11).) In ruling on Raven's Run's Rule 59(e) motion, the master found that it was "clear" from the 1985 Deed, the 1987 Deed, and the restrictive covenants that Raven's Run owns the lake. (R. p. 258 (Recons. Tr. at 60); R. p. 22 (Recons. Order, at 4).)

The master's order on reconsideration did not address the contention Kinlaw is now making on appeal concerning the 1985 Deed. Consequently, Kinlaw was required to file a motion for reconsideration under Rule 59(e) in order to preserve the error. Because she did not do so, the claimed error is not preserved for appellate review.

### **III. THE MASTER CORRECTLY FOUND THAT RAVEN'S RUN OWNS THE LAKE**

Because Kinlaw lacks standing to appeal and has failed to preserve the issue by filing a Rule 59(e) motion, this Court need not reach the merits of Kinlaw's cross-appeal. Nevertheless, the master was plainly correct in his ruling that Raven's Run owns the

lake.<sup>10</sup>

The 1985 and 1987 Deeds clearly demonstrate the intent of RAC Enterprises to grant ownership of the lake and the buffer strip to Raven's Run. *See Wayburn v. Smith*, 270 S.C. 38, 41, 239 S.E.2d 890, 892 (1977) (holding that in construing a deed, "the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy"); *see also Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987) (holding that a deed "must be construed as a whole and effect given to every part if it can be done consistently with the law").

**A. The 1985 and 1987 Deeds Clearly Show RAC Enterprises' Intent to Convey the Lake and the Buffer Strip to Raven's Run**

The 1985 Deed plainly demonstrates the intent of the grantor, RAC Enterprises, to convey the lake (as well as the buffer strip) to Raven's Run:

ALL those certain pieces , parcels or strips of land, *bodies of water*, roadways and marsh, below described, all of which are shown on a certain plat entitled "Phase I, Raven's Run ..." recorded on December 3, 1985 ... [in] Plat Book BG at pages 52, 53 and 54.

*ALL lakes, fingers, coves, and other bodies of water*, saving and excluding those bodies of water which are included within specific residential lot lines[.]

(R. p. 268 (1985 Deed, at 1 (emphasis added)).)

The 1985 Deed references and incorporates tax map number 561-01-00-093. (R.

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<sup>10</sup> For the reasons explained in Raven's Run's Appellant's Opening Brief, the master erred in ruling that Raven's Run does not own the buffer strip. (Appellant's Opening Br. at 22-26.)

p. 268 (1985 Deed at 1).) As the evidence in the record clearly shows, the property covered by tax map number 561-01-00-093 clearly includes the lake and the buffer strip. (R. p. 290 (MSJ Ex. 4A).) This is important because “the parties’ decision to include tax map references in their deeds is significant and *reflects their intent* to convey the specific acreages described thereon.” *Millvale Plantation v. Carrison Family Ltd P’ship*, 401 S.C. 166, 175, 736 S.E.2d 286, 290 (Ct. App. 2012) (emphasis added). It is undisputed that Raven’s Run, and only Raven’s Run, has paid the property taxes on the real property identified by tax map number 561-01-00-093, which encompasses the lake and the buffer strip, since at least 1985. (R. p. 351 (Recons. Ex. 7).)

The 1987 Deed is just as clear in showing that RAC Enterprises intended to convey the lake and the buffer strip to Raven’s Run. That deed conveys:

ALL those certain roads, streets and street rights-of-way, walkway, sewer pump station site, and *any and all lakes or bodies of water, saving and excepting those that are excluded within specific residential lot lines* ... All of said above described parcels of land and/or water are shown on an a certain plat of Raven’s Run Subdivision ... duly recorded ... in *Plat Book BL at page 57*.

(R. p. 18 (emphasis added) (1987 Deed at 1).) Like the 1985 Deed, the 1987 Deed specifically references tax map number 561-01-00-093. (*Id.*)

**B. Other Evidence Confirms RAC Enterprises’ Intent to Convey the Buffer Strip and the Lake to Raven’s Run**

The Crown Pointe restrictive covenants—which were recorded in 1986, between the 1985 Deed and the 1987 Deed—clearly recognize that Raven’s Run owns the buffer

strip and the lake:

*No use* may be made by any owner, family member, or invitee of *lake systems of Raven's Run Subdivision which abut Lots 37E through 66E of Crown Pointe*; this *total prohibition* of use shall specifically include boating, swimming, and fishing. The portion of land between the rear Lot lines of such lots and the water line of the Raven's Run lakes is owned by the Raven's Run Homeowners Association, Inc.

(R. p. 44 (emphasis added) (MSJ Ex. 5).)

Additionally, the 2001 Quitclaim Deeds, relied on by the master in his summary judgment order, clearly convey *different* property than what was conveyed by the 1985 and 1987 Deeds. The 2001 Quitclaim Deeds convey the "common area, including any 'lake' and 'green area', *located in* East Crossing Subdivision," as shown on Plat BK-3, and the "common area, including any 'lake' and 'green area', *located in* Crown Pointe Subdivision," as shown on Plat BK-2. (R. pp. 84, 322 (emphasis added).) This description is followed by a reference to tax map number 561-05-00-145. (R. pp. 85.) Tax map number 561-05-00-145 denotes land and water abutting the East Crossing Subdivision and lots on the *western* side of the Crown Pointe Subdivision. (R. p. 358 (Recons. Ex. 11).) It clearly does not include land or water abutting any lots on the *eastern* side of the Crown Pointe Subdivision, including Lots 37E through 66E, the rear lot lines of which abut the buffer strip and the lake.

RAC Enterprises is the grantor for *all* of the foregoing conveyances—the 1985 Deed, the 1987 Deed, and the 2001 Quitclaim Deeds. Likewise, the Crown Pointe

restrictive covenants were recorded by RAC Enterprises. Whether considered singly or together, these all point to the same conclusion: that Raven's Run owns the lake and the buffer strip.

Aside from all of this, the deeds conveying the lots owned by Kinlaw and the other Respondents refer to and incorporate plats that plainly show Raven's Run's ownership of the buffer strip and the lake. Specifically, the deed to Kinlaw refers to and incorporates Plat BP-160 to -161. (R. pp. 339-340.) Kinlaw's lot (45E) is shown on Plat BP-161. This plat was recorded on December 18, 1987, *after* the 1987 Deed (which was recorded on April 1, 1987). It clearly shows that the property beyond Kinlaw's rear lot line—*i.e.*, the buffer strip and the lake—is owned by "Raven's Run Homeowners Assoc." (R. p. 340 (Plat BP-161).)

In light of this overwhelming evidence, the master correctly ruled that the lake is owned by Raven's Run. Accordingly, if this Court reaches the merits of Kinlaw's cross-appeal (despite Kinlaw's lack of standing and failure to preserve the issue for appeal), it should affirm.

## CONCLUSION

For the reasons set forth above, this Court should dismiss Kinlaw's cross-appeal for lack of standing. Alternatively, the Court should affirm on the basis that Kinlaw failed to preserve the claimed error for appellate review. If the Court finds it necessary to reach the merits of Kinlaw's cross-appeal, it should affirm on the grounds that the grantor, RAC

Enterprises, clearly conveyed the buffer strip and the lake to Raven's Run.

Respectfully submitted,

s/William W. Wilkins

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August 3, 2020

Greenville, South Carolina

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**Aug 03 2020**

**CERTIFICATE OF COUNSEL**

**SC Court of Appeals**

The undersigned certifies that this **Final Respondent's Brief of Appellant/Respondent** complies with Rule 211(b), SCACR.

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CERTIFICATE OF SERVICE

I certify that the foregoing **Final Respondent's Brief of Appellant/Respondent** was served on Respondent/Appellant and Respondents by depositing a copy in the United States Mail, postage prepaid, addressed to their counsel of record as set forth below.<sup>11</sup> Additionally, a copy was transmitted to counsel's AIS email addresses, as shown below, in accordance with Supreme Court Order 2020-03-20-1.

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<sup>11</sup> Respondents James B. Kubu and Melissa F. Kubu are currently *pro se* pursuant to the Court's order of July 28, 2020. If new counsel for the Kubus files a notice of appearance by the Court's deadline of August 27, 2020, a copy of this document will be served on counsel.