

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COMMON PLEAS COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2020-CP-22-00443

Frank McClary,)
)
Plaintiff,)
)
-vs-)
)
Robert C. Watford, Jr., and Cynthia T. Watford,)
)
Defendants.)

**ORDER GRANTING
DIRECTED VERDICT**

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MAY 13 2021

SC Court of Appeals

VIRTUAL HEARING DATE: March 22, 2021
PRESIDING JUDGE: Bentley R. Price
PLAINTIFF=S ATTORNEY: Eleazer R. Carter
DEFENDANTS= ATTORNEY: Ronald J. Talbert
COURT REPORTER: Natalie Dahl

THIS MATTER came before the Court upon a Summons, Complaint, and Petition For TRO and Injunction filed by the Plaintiff on May 19, 2020. The record reflects that the Defendants timely filed an Answer and Counterclaim, and that the Plaintiff timely filed a Reply to Defendants= Counterclaims. The case was called for a trial on the merits on March 22, 2021, present at the trial were the Plaintiff and Plaintiff=s attorney, as well as Defendants and their attorney. After brief opening statements from the parties' respective attorneys, the Court entertained testimony from Mr. Roger Bruce, and the Plaintiff, and the Court admitted fifteen (15) evidentiary exhibits from the Plaintiff, and twenty-one (21) evidentiary exhibits from the Defendants. All evidentiary exhibits were admitted absent objection, subject to Plaintiff=s attorney reserving the right to object at a later time. The Plaintiff rested his case after his testimony at which time the Defendants= attorney moved for a non-suit or directed verdict pursuant to S.C.R.C.P. 41(B). The Court

entertained the Defendants' arguments as to all legal theories presented by the Plaintiff, and the Plaintiff's rebuttal arguments. At the conclusion of the arguments in support of the parties' respective positions this Court found as follows:

SALIENT FACTS

(A) That the Plaintiff and the Defendants are residents of Georgetown County, State of South Carolina.

(B) That the Plaintiff owns Lot Nine (9) of Block 61 as shown on a plat of the Rosemary Lands Association drawn by G. T. Ford in February of 1999, said plat being recorded in Plat Book C at Page 43, in the Office of the Clerk of Court/Register of Deeds for Georgetown County.

(C) That the Defendants own Lots Seven (7) and Eight (8) of Block 61 as shown on that same plat.

(D) That the orientation of Lots Seven (7), Eight (8), and Nine (9) owned by the parties is clearly set out on Defendants' Exhibit 1, and Plaintiff's Exhibit 12, which are the same document, which is a plat of Lots 7 and 8 prepared for Roger Bruce, and drawn by J. Luckey Sanders, R.L.S. and originally dated March 16, 1989, and field surveyed May 31, 2011.

(E) That the Plaintiff and Defendants share a common boundary line which runs perpendicular from Farr Street to a sixteen (16) foot alley at the rear of Lots Eight (8) and Nine (9). The common boundary line is 192 feet in length.

(F) That at the back end of the common boundary line of Lot Nine (9) and Lot Eight (8), is a structure (garage/shed) which sits primarily on Lot 8, and partially on Lot 9.

(G) That based upon the evidence and testimony of the Plaintiff and Mr. Bruce, there is a Guest House attached to the end of the garage/shed. The guest house sits entirely on the

Plaintiff=s property (Lot 9), and connects to the garage/shed via an interior doorway which enters into a utility room/storage room.

(H) That per the testimony of the Plaintiff, this particular dispute allegedly arose when the Defendant Robert Watford, Jr. informed the Plaintiff that the Defendants intended to erect a fence from the point where the common boundary line intersects the garage/shed, to Farr Street.

(I) That the Plaintiff filed this action to obtain a TRO, and injunction preventing the Defendants from erecting the fence along the common boundary line from the garage/shed to Farr Street. The Honorable Benjamin Culbertson issued an Order denying Motion For Temporary Restraining Order on May 20, 2020 due to the fact that the affidavit attached to the Petition/Motion was not signed by the Plaintiff.

(J) That Lots Seven (7), Eight (8), and Nine (9) can be traced to common owners including Gwendolyn Watson who by separate deeds conveyed all 3 lots to James Calvin Elliott and Barbara A. Elliott. Thereafter the Elliotts conveyed Lots Seven (7) and Eight (8) to Mr. Roger N. Bruce by deed filed on September 16, 2003 (see Defendants' Exhibit 3). Thereafter Roger N. Bruce conveyed Lots 7 and 8 to Roger E=leon Bruce (UGMA) and recorded that same day (see Defendants Exhibit 4). Thereafter Roger E=leon Bruce conveyed Lots 7 and 8 to the Defendants herein (see Defendants= Exhibit 5).

(K) That Lot 9 was initially conveyed to James C. Elliott et. al. by the said Gwendolyn Watson. The Elliotts encountered financial difficulties and lost Lot 9 to foreclosure, where it was purchased by Mr. Raymond E. Thompson who later died, and his estate conveyed Lot 9 to the Plaintiff herein on September 1, 2016. (See Plaintiff=s Exhibit 1).

(L) That Roger N. Bruce testified that problems arose between Raymond Thompson regarding Mr. Thompson=s son=s unauthorized use of the AAsphalt@ drive which bisects Lots 7 and 8 as shown on Defendants= Exhibit 1 (Plaintiff=s Exhibit 12), and that Roger N. Bruce erected a fixed barricade across the asphalt access near the boundary line separating Lot 8 and Lot 9 which stopped anyone from using that manner of ingress or egress to Lot 9. Mr. Bruce identified the bolts in the asphalt driveway where he erected the barricade which are shown on Defendants= Exhibits 9 and 10.

(M) That in Plaintiff=s Petition, (paragraph 10) Plaintiff alleges that Aat some point, the original owners also added a detached garage to the guest house. The detached garage lies entirely on the Petitioner=s lot/property at 109 North Farr Avenue”. Plaintiff further testified that all of the detached garage and storage room were conveyed to him relying on the language in his deed stating Awith the buildings and improvements thereon@.

(N) That Plaintiff=s Petition pleads four (4) separate legal theories upon which Plaintiff seeks the injunctive relief, those being as follows:

1. Prescriptive easement
2. Easement by necessity
3. Easement by prior USP
4. Easement by estoppel

(O) The Defendants= Answer denies Plaintiff is entitled to relief on any of the legal theories presented.

(P) That in the Plaintiff=s responsive argument to Defendants= Motion at the end of the Plaintiff=s case the Plaintiff=s attorney Ayielded@ on the theory of AEasement by Estoppel@,

conceding that there was no evidence or testimony in the record upon which Plaintiff could prevail on that legal theory.

THEREFORE, based upon the pleadings of record, evidence, and testimony presented, this Court would conclude as follows:

CONCLUSIONS OF LAW

(1) That this Court is properly vested with jurisdiction over the subject matter presented and the parties to this action.

(2) That inasmuch as the Plaintiff has yielded or conceded to the Defendants' arguments directed at the theory of easement by estoppel, the Court need not consider that theory further.

(3) That the Plaintiff's claim to ownership of the entire garage/shed/storage room located at the rear of Lot 9 and Lot 8 is based upon the language in the 2016 deed into the Plaintiff by the Thompson Estate (Plaintiff's Exhibit 1) such reliance is misplaced. The common Grantors (Elliotts) conveyed all of their rights, titles, and interest in and to Lots 7 and 8 (see Defendants' Exhibit 3) to Defendants' predecessor in interest Roger N. Bruce who through a series of deeds conveyed those rights and interests to the Defendants.

(4) That based upon the language in the deed into the Plaintiff, and the series of deeds into the Defendants, the Plaintiff owns the land and improvements situate on Lot 9 only, and the Defendants own the land and improvements situate on Lots 7 and 8.

(5) That as to the Plaintiff's theory of easement by prescription, the law identifies three (3) essential elements that need to be proven for Plaintiff to be entitled to prevail on that theory:

- (A) Continued, uninterrupted use for 20 years;
- (B) The identity of the thing enjoyed;
- (C) Use which is adverse or under claim of right.

See Pittman v. Lowther, 63 S.C. 47, 610 S.E. 2d 479 (2005).

(6) That the uncontradicted testimony of Roger N. Bruce is that he erected a barricade across the asphalt area bisecting Lots 7 and 8 leading to Lot 9 as shown on Defendants= Exhibit 1/Plaintiff=s Exhibit 12 which interrupted access to Lot 9, across the asphalt area shown on Lots 7 and 8.

(7) That as a consequence of the aforementioned interruption, the Plaintiff has failed to establish a continuous adverse use of the asphalt area bisecting Lots 7 and 8 for twenty (20) years.

(8) That as to the Plaintiff=s theory of easement by prior use, the law identified

- A. Unity of title;
- B. Severance of title;
- C. The prior use was in existence at the time of unity of title;
- D. The prior use was not merely temporary or casual;
- E. The prior use was apparent or known to the parties;
- F. The prior use was necessary in that there could be no other reasonable mode of enjoying the dominant estate without the prior use;
- G. The common Grantor indicated an intent to continue the prior use after severance of title.

(9) That in reviewing all of the testimony and exhibits, there is evidence and testimony that will satisfy the elements of unity of title, severance of title, and that the prior use was in existence at the time of unity of title.

However there is contradicting testimony as to whether or not the use was temporary or casual between the Plaintiff and Defendants= predecessor in interest Roger N. Bruce, and there is no testimony at all regarding what was apparent to the Defendants or what was known by the Defendants. As to the remaining issues there is no proof that the prior use was necessary for the Plaintiff to enjoy the dominate estate. There are multiple pictures showing some manner of access down the far (left) side of the Plaintiff=s home, and conflicting testimony as to what Plaintiff could do to enhance his access to the rear portion of his property such as removing the shrubbery and a decorative 10 foot brick lattice fence extending from Plaintiff=s home. Finally there is no evidence by way of a reservation of rights in any of the deeds, or other recitation of record indicating the common Grantors= intent to continue the prior use after severance.

(10) That as to the Plaintiff=s theory of easement by necessity, the law identifies three (3) essential elements that need to be proven for Plaintiff to be entitled to prevail on that theory:

- (A) Unity of Title
- (B) Severance of Title
- (C) Necessity

(11) That after reviewing all of the evidence and testimony presented by the Plaintiff, the Defendants= concede unity of title, and severance of title, but dispute the element of Anecessity@. The evidence and testimony of record clearly demonstrate that the Plaintiffs' Lot 9 has seventy (70) feet of road frontage on Farr Street, and Defendants argue that there is access

down both sides of the Plaintiff=s home that allow both pedestrian and vehicular access and point to Defendants= Exhibits Eleven (11), Seventeen (17), Eighteen (18), Nineteen (19), and Twenty (20) which all show some manner of access down the left side of Plaintiff=s residence. Defendants also argue that Exhibits Thirteen (13), Fourteen (14), Fifteen (15), and Sixteen (16) show that the Plaintiff can have unrestricted access to the rear of Plaintiff=s property by removing the large bushes and segments of the Plaintiff=s decorative (non-structural) brick fences located on Lot 9.

(12) That one claiming an easement by necessity must establish the element of necessity as being Aactual, real, and reasonable as distinguished from convenient, Boyd v. Bell South Telephone and Telegraph 369 S.C. 410, 633 S.E. 2d 136 (2006), and I conclude that the Plaintiff has failed to prove the element of Anecessity@.

(13) That after the Court ruled on the Defendants= Motion For Directed Verdict, the Plaintiff withdrew his Counterclaims without prejudice.

NOW THEREFORE, given the pleadings, evidence, and testimony given along with the facts and conclusions as set out herein, this Court would order as follows:

- (A) That the Plaintiff is the owner of Lot 9 of Block 61 of the Rosemary Lands Association, and all improvements situate on Lot 9.
- (B) That the Defendants are the owners of Lot 7 and Lot 8 of Block 61 of the Rosemary Lands Association and all improvements situate on Lots 7 and 8.
- (C) That the Plaintiff has failed to carry his burden of proof as it relates to all legal theories for an injunction as plead, and the Plaintiff=s request for the requested injunction is hereby denied.
- (D) That all collateral relief sought by the Plaintiff is hereby denied.

AND IT IS SO ORDERED!

SIGNATURE PAGE TO FOLLOW