

RECEIVED

May 23 2022

DARDS Partnership

Charlie Dorn Smith, III and

PLAINTIFF(S)

Kate E. Smith
DEFENDANT(S)

SC Court of Appeals

Submitted by: S. Bryan Doby, Special Referee	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order Xends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Charlie Dorn Smith, III & Kate E. Smith		\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Special Referee for Clarendon County

Judge Code

4/13/22
Date

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

FINDINGS OF FACT

- (5) Plaintiff is the owner of a 220 acre tract of land located in Clarendon County, South Carolina (“Plaintiff’s Property”).
- (6) Defendants are the owners of a tract of land adjacent to the Plaintiff’s Property (“Defendants’ Property”).
- (7) Defendant Charlie Dorn Smith, III is a member of Plaintiff partnership along with siblings Andrew B. Smith, Dixie S. Bullock, Robert Sidney Green Smith, the Estate of Ralston E. Smith and Elanor G. Smith.
- (8) Andrew B. Smith and Stacey Fitts, the trustee of the Estate of Ralston E. Smith testified for the Plaintiff at the hearing of this matter.
- (9) Plaintiff submitted into evidence at the hearing three (3) exhibits. Exhibit 1 is an amendment to the DARDS Partnership Agreement. Exhibit 2 is a 1977 Plat of the Plaintiff’s Property. Exhibit 4¹ is a deed from Burnt Branch Properties, Inc. to DARDS Partnership recorded August 30, 1991.
- (10) Neither Plaintiff’s Exhibit 2 nor Plaintiff’s Exhibit 4 show Plaintiff’s Property to be under common ownership with Defendants’ Property.

CONCLUSIONS OF LAW

- (11) “The legal requirements of an easement by necessity are: (1) unity of title, (2) severance of title, and (3) necessity.” *Kennedy v. Bedenbaugh*, 572 S.E.2d 452, 352 S.C. 56 (2002). “For unity of title to exist there must have been an absolute ownership of both tracts of land.” *Id.* “The necessity element of easement by necessity must exist at the time of the severance...” *Boyd v. Bellsouth Telephone*, 633 S.E.2d 136, 369 S.C. 410 (2006).

¹ Exhibit 3 was not admitted into evidence.

(12) As to the first cause of action, although Plaintiff endeavored to demonstrate unity of title, I find that there is insufficient evidence to establish unity of title between the Plaintiff's Property and Defendants' Property.

(13) I further find that, despite the Plaintiff's effort to demonstrate the elements of easement by necessity, the evidence for a claim of easement by necessity was not sufficient.

(14) "[A] party must prove the following six factors to establish the right to an easement implied by prior use:

(1) unity of title; (2) severance of title; (2) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual; (4) the prior use was apparent or known to the parties; (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (6) the common grantor indicated an intent to continue the prior use after severance of title."

Hynes Family Trust v. Spitz, 682 S.E.2d 831, 384 S.C. 625 (Ct.App. 2009).

(15) As to the second cause of action, although Plaintiff endeavored to demonstrate unity of title, I find that there is insufficient evidence to establish unity of title between the Plaintiff's Property and Defendants' Property.

(16) I further find that despite Plaintiff's effort to demonstrate the elements of prior use/quasi-easement that the evidence for a claim of prior use/quasi-easement was not sufficient.

(17) In order to establish a prescriptive easement, 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. *Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 797 S.E.2d 387 (2016). The establishment of a prescriptive easement must be shown by clear and convincing evidence. *Bundy v. Shirley*, 412 S.C. 292, 772 S.E.2d 163 (2015).



(18) As to the third cause of action, I find that the evidence presented by Plaintiff does not rise to the elevated burden of clear and convincing that meets the elements necessary to establish a prescriptive easement.

(19) I further find that, although the Plaintiff endeavored to do so, it, Plaintiff, was unable to prove adverse use of the identified road.


(20) A partnership relationship is characterized as one mutual trust and confidence, imposing upon the partners the usual trust requirements of loyalty, good faith and fair dealing. *Whitman v. Bowden*, 27 S.C. 53, 2 S.E. 630 (1884).

(21) As to the fourth cause of action, I find that there is no evidence of any bad faith, breach of loyalty or unfair dealings by Defendant Charlie Dorn Smith, III in his dealings with other partners.

ORDER

Based upon the foregoing findings of fact and conclusions of law, it is ordered that each cause of action alleged by Plaintiff in this matter be dismissed with prejudice.

IT IS SO ORDERED!



The Honorable S. Bryan Doby

April 10 2022