The Supreme Court of South Carolina

RE: Administrative Suspensions for Failure to Comply with Continuing Legal Education Requirements

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O R D E R

The South Carolina Commission on Continuing Legal Education and Specialization has furnished the attached list of lawyers who were administratively suspended from the practice of law on April 1, 2011, under Rule 419(b)(2), SCACR, and remain suspended as of June 2, 2011. Pursuant to Rule 419(e)(2), SCACR, these lawyers are hereby suspended from the practice of law by this Court. They shall surrender their certificates to practice law in this State to the Clerk of this Court by July 1, 2011.

Any petition for reinstatement must be made in the manner specified by Rule 419(f), SCACR. If a lawyer suspended by this order does not seek reinstatement within three (3) years of the date this order, the lawyer's membership in the South Carolina Bar shall be terminated and the lawyer's name will be removed from the roll of attorneys in this State. Rule 419(g), SCACR.

These lawyers are warned that any continuation of the practice of law in this State after being suspended by the provisions of Rule 419, SCACR, or this order is the unauthorized practice of law, and will subject them to disciplinary action under Rule 413, SCACR, and could result in a finding of criminal or civil contempt by this Court. Further, any lawyer who is aware of any violation of this suspension shall report the matter to the Office of Disciplinary Counsel. Rule 8.3, Rules of Professional Conduct for Lawyers, Rule 407, SCACR.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina
June 7, 2011

LAWYERS SUSPENDED FOR NON-COMPLIANCE
WITH MCLE REGULATIONS FOR THE
2010-2011 REPORTING PERIOD
AS OF JUNE 2, 2011

Baylor B. Banks
Thompson Law Firm, LLC
3050 Peachtree Road, Suite 355
Atlanta, GA 30355
SUSPENDED BY BAR 2/1/11

Gerald A. Beard
Michelin North America, Inc.
Post Office Box 19001
Greenville, SC 29602
SUSPENDED BY BAR 2/1/11

Margaret H. Benson
DaVita, Inc.
601 Hawaii Street
El Segundo, CA 90245

Teresa D. Bulford
Bulford Law Firm, LLC
107 West 6th North Street, Suite 207
Summerville, SC 29483
INTERIM SUSPENSION 1/20/11

Louis M. Cook
Louis M. Cook & Associates
302 43rd North
North Myrtle Beach, SC 29582

Lisa A. Delzotti-Marion
4201 Bayshore Boulevard, Suite 2001
Tampa, FL 33611

Frank W. Gibbes
214 Robin Hood Road
Greenville, SC 29607

Thomas A. Jones III
Post Office Box 681389
Fort Payne, AL 35968

David R. Lawson
David R. Lawson, Attorney, LLC
12 Carriage Lane
Charleston, SC 29407

Shawn M. Pellow
6 Pequot Square
Mansfield Center, CT 06250
SUSPENDED BY BAR 2/1/11

Amanda G. Steinmeyer
Steinmeyer Law Firm
1622 Sunset Boulevard
West Columbia, SC 29169
INTERIM SUSPENSION 12/2/10

Helen Ann S. Thrower
2604 Burney Drive
Columbia, SC 29205

Irby E. Walker, Jr.
2550 Jordanville Road
Galivants Ferry, SC 29544
INTERIM SUSPENSION 9/18/09

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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 19
June 13, 2011
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Glenn F. McConnell, President, Pro Tempore of the South Carolina Senate, Petitioner,

v.

Nikki R. Haley, Governor of the State of South Carolina, Respondent.

ORIGINAL JURISDICTION

Opinion No. 26982
Submitted June 6, 2011 – Filed June 6, 2011

Michael R. Hitchcock, John P. Hazzard, IV, Kenneth M. Moffitt, of Columbia, for Petitioner.

Kevin A. Hall, Karl S. Bowers, Jr., and M. Todd Carroll, of Hall & Bowers, LLC, of Columbia, for Respondent and Intervenors.

Thaddaeus Viers, *pro se*, of Myrtle Beach, for Amicus Curiae.

CHIEF JUSTICE TOAL, JUSTICE BEATTY, AND JUSTICE HEARN: Petitioner asks this Court, in its original jurisdiction, to declare an executive order issued by respondent to be an unconstitutional violation of the separation of powers and to enjoin, temporarily and permanently, the implementation and effects of the executive order. We grant the petition for original jurisdiction, dispense with further briefing, and stay the executive order.

The South Carolina General Assembly adopted a *sine die* resolution on June 1, 2011, providing for the extension of the regular 2011 annual session after adjournment at 5:00 p.m. on June 2, 2011. The resolution requires the General Assembly to reconvene on June 14, 2011, and continue in session no later than July 1, 2011. In addition, the resolution sets forth the matters which the General Assembly may consider during the extended session. On June 2, 2011, respondent issued an executive order requiring an extra session of the General Assembly to convene at 10:00 a.m. on June 7, 2011.

South Carolina Const. art. I, § 8 provides: "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." The executive order challenged by petitioner was issued pursuant to S.C. Const. art. IV, § 19. That section provides, "[t]he Governor may ***on extraordinary occasions*** convene the General Assembly in ***extra*** session." (emphasis added). The term "extraordinary occasions" is not defined by the Constitution.

State constitutional provisions will not be construed to impose limitations beyond their clear meaning. *Segars-Andrews v. Judicial Merit Selection Comm'n,* 387 S.C. 109, 691 S.E.2d 453 (2010). Because there is no indication in the Constitution as to what constitutes an "extraordinary occasion" to justify an extra session of the General Assembly, this matter

must be left to the discretion of the Governor and this Court may not review that decision. *See Farrelly v. Cole*, 56 P. 492 (Kan. 1899).

However, S.C. Const. art. IV, § 19 limits the Governor's power to convening only an ***"extra"*** session of the General Assembly. Although the General Assembly is currently in recess, it has not adjourned *sine die* and, therefore, is still in its annual session. Under these specific facts, respondent cannot convene an ***"extra"*** session of the General Assembly since it is currently in session. To do so would interrupt the annual session and would violate the General Assembly's authority to set its calendar and agenda and would constitute a violation of the separation of powers provision. *See* S.C. Const. art. III, §9 (the General Assembly has the authority to recede for a time period from its regular annual session); S.C. Code Ann. § 2-1-180 (2005) (the General Assembly may extend its regular annual session). Respondent may only convene an ***extra*** session of the General Assembly after the *sine die* adjournment.[1] Accordingly, we grant the request to permanently stay and enjoin the executive order dated June 2, 2011.

KITTREDGE, J., dissenting in a separate opinion in which PLEICONES, J., concurs.

JUSTICE KITTREDGE: I respectfully dissent. I would accept the Petition in the Court's original jurisdiction, and then dismiss the Petition. The Governor has the absolute authority under the South Carolina Constitution to convene the General Assembly in extra session "on extraordinary occasions," and Petitioner so concurs. The Petition's sole objection to the Governor's exercise of convening an extra session is that the matters included in the Governor's Executive Order are not included in the General Assembly's sine die resolution. Moreover, the Petition even acknowledges the Governor's authority to convene an extra session exists prior to expiration of the sine die resolution "to address matters that were truly unforeseen at the time the sine die resolution was adopted." The

[1] If an extra session is properly convened, there is no requirement that the General Assembly act on the bills referred to by respondent. Although the Governor may convene the extra session, she may not dictate the manner in which the General Assembly proceeds at that session or the topics considered. *Farrelly v. Cole, supra.*

Petition gives examples of an intervening natural disaster or an unanticipated drop in tax revenues. The inescapable conclusion is that the Petition seeks to assess the merits of the Governor's decision to call an extra session. The exercise of discretion in this regard by a Governor is unassailable, and the law in this regard is uniform.

> Under most constitutions, the governor's power to call a special legislative session is absolute, and his opinion concerning the existence of an emergency or special circumstances demanding immediate legislative attention is unimpeachable by the courts.

1 Sutherland Statutory Construction § 5.5, at 235 (7th ed. 2010).

> Where the constitution authorizes the calling of such [special] sessions by the governor, he or she is the sole judge as to whether occasion for such session exists, and the exercise of such discretion is not subject to challenge or review by the courts.

81A C.J.S. States § 105, at 438 (2004).

Rather than deal with the legal issue as presented in the Petition, the majority recasts the issue as one of "timing" and focuses on the word "extra." The basis for the majority's decision is not even argued by Petitioner.

I would follow the prevailing law in this country and dismiss the Petition. I would adhere to the analysis of the Kansas Supreme Court in Farrelly v. Cole, 56 P. 492 (Kan. 1899):

> It would be an unseemly and unprecedented proceeding for this court, or any court, to entertain a controversy wherein, by proof obtained from witnesses sworn in the cause, it sought to ascertain judicially whether an extraordinary occasion existed, of sufficient gravity to authorize the governor to convene the legislature in extra session. If jurisdiction is retained of such a cause, what is

> the rule as to the quantum of evidence necessary to establish that there was no emergency? . . . It perverts and destroys the meaning of the word to hold that exercise of discretion may be reviewed or controlled by some other person or tribunal than the person on whom it is conferred.

Id. at 497.

As for the General Assembly's response to the Governor's called extra session, it is free to act as it deems appropriate in the exercise of its constitutional authority. In other words, the convening of an extra session by the Governor in no manner compels the General Assembly to address the matters raised by the Governor in any particular manner or fashion. The Farrelly Court addressed this matter as well:

> Now, the legislature are to enact the laws upon their own view of necessity and expediency and they will refuse to pass the desired statute, if they regard it as unwise or unimportant. But in so doing they indirectly review the governor's decision, especially if, in refusing to pass the law, they do so on the ground that the specific event was not one calling for action on their part. In such case it is clear that while the decision of the governor is final, so far as to require the legislature to meet, it is not final in any sense that would bind the legislative department to accept and act upon it when they enter upon the performance of their duty in the making of laws.

Id. at 500.

PLEICONES, J., concurs.

IN THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of William Edwin Griffin,

Respondent.

Opinion No. 26983
Submitted May 16, 2011 – Filed June 13, 2011

PUBLIC REPRIMAND

Lesley M. Coggiola Disciplinary Counsel, and C. Tex Davis, Jr., Senior Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

William Edwin Griffin, of Columbia, pro se.

PER CURIAM: The Office of Disciplinary Counsel (ODC) and respondent have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR, in which respondent admits misconduct and agrees to the imposition of either an admonition or public reprimand. In addition, respondent agrees to pay the costs incurred in the investigation and prosecution of this matter. We accept the agreement, issue a public reprimand, and order respondent to pay the costs in this matter. The facts, as set forth in the agreement, are as follows.

FACTS

Matter I

On December 3, 2003, the firm of Likens & Blomquist conducted a real estate closing. Complainants A and B were the sellers in the transaction. The closing was "split" because Complainants A and B executed the closing documents in the morning and the buyers executed the closing documents later in the evening.

After a delay in the receipt of their closing proceeds, Complainants A and B contacted ODC with concerns about possible misappropriation. After several telephone conversations between Likens & Blomquist and ODC, receipt of the original closing documents from the buyers, and confirmation of funds from the lender, Complainants A and B received their closing proceeds on December 10, 2003.

During the investigation, ODC contacted respondent upon the belief that he was the supervising attorney for the associate who was the actual closing attorney. In a telephone conversation and in his initial written response to ODC, respondent stated he had reviewed the lender's documents and the documents prepared by his staff. ODC made it clear to respondent that it was asking questions concerning the conduct in the closing for Complainants A and B. Respondent admits his original statements were not accurate as to his involvement in the closing for Complainants A and B. Respondent now states that the only role he had in the closing was in discussions with Likens & Blomquist and ODC after the closing took place.

Respondent admits he made the misrepresentation because he was frightened about being implicated in an ODC investigation. Respondent understands he has an obligation to be completely truthful in connection with a disciplinary matter.

Matter II

In the process of negotiating a settlement on behalf of a client, respondent sent an October 20, 2004, letter to the opposing party specifying his client's final offer. The opposing party was a South Carolina licensed attorney who had been involved in a real estate transaction with respondent's client. Part of the settlement proposal was that respondent's client would execute an agreement that she would not report alleged unprofessional conduct by the opposing party. To further emphasize this provision of the settlement, respondent wrote that he believed that the settlement was "the best course of action to remedy the situation without having to notify the South Carolina Bar Association." Respondent acknowledges that it was improper to threaten to report a disciplinary matter in order to obtain an advantage in a civil matter.

Matter III

Respondent was the closing attorney for a real estate transaction that occurred on May 31, 2006. According to the Settlement Statement, respondent was to withhold $2,300 from the seller for disbursement to the Homeowner's Association for an insurance assessment. The assessment was to be paid by June 15, 2006, or late charges would be added.

On or about December 22, 2006, Complainant C, the buyer in the transaction, was notified by the Homeowner's Association that the assessment had not been paid. Complainant C obtained the assistance of another attorney to contact respondent to determine why the monies had not been disbursed as set forth by the Settlement Statement. On or about January 17, 2007, respondent paid the insurance assessment and late charges to Complainant C.

In addition, according to the Settlement Statement, respondent was to withhold $5,259.94 from the seller for disbursement to the South Carolina Department of Revenue. The monies payable to the Department of Revenue were not received in a timely manner.

Respondent maintains that, after the closing, he permitted his paralegal to make the disbursements from his trust account consistent with the Settlement Statement. Respondent acknowledges he did not adequately supervise the disbursements. In addition, he acknowledges that he did not reconcile his trust account as required under Rule 417, SCACR, which prevented him from discovering the errors more quickly. Respondent has now paid the overdue tax monies to the Department of Revenue.

Matter IV

On June 29, 2009, respondent conducted a real estate closing in which Complainant D was refinancing his current mortgages. Lend America was the lender in this transaction. Respondent was retained by Carolina Attorney Network Services to perform the closing.

After the closing, respondent forwarded the executed documents to Lend America for disbursement and recordation of the new mortgage. Respondent did not record the new mortgage and failed to take any affirmative action to confirm that the mortgage was properly recorded. Respondent represents that he did request the appropriate disbursement documents from Carolina Attorney Network Services. The initial mortgages were not paid off by Lend America until August 3, 2009.

Respondent was not informed of the difficulties with the closing until he was contacted by Complainant D on September 8, 2009. Respondent attempted to assist in resolving Complainant D's issues with Lend America until Complainant D indicated that he wanted respondent to bring a lawsuit against Lend America. Respondent informed Complainant D that he would have to retain new counsel.

LAW

Respondent admits that, by his misconduct, he has violated the Rules of Professional Conduct, Rule 407, SCACR, particularly

Rule 1.15 (lawyer shall safe keep client property), Rule 4.5 (lawyer shall not threaten to present professional disciplinary charges solely to obtain an advantage in a civil matter), and Rule 8.1(a) (lawyer shall not knowingly make a false statement of material fact in connection with a disciplinary matter). In addition, respondent further admits that he violated the recordkeeping provisions of Rule 417, SCACR. Respondent acknowledges that his misconduct constitutes grounds for discipline under the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct).

CONCLUSION

We find that respondent's misconduct warrants a public reprimand. Accordingly, we accept the Agreement for Discipline by Consent and publicly reprimand respondent for his misconduct. In addition, respondent shall pay the costs associated with the investigation and prosecution of this matter.

PUBLIC REPRIMAND.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Ex parte: Johns Doe C, D, H, J, K, L, M, and B; Janes Doe G, I, and M; and the mother of John Doe J, Appellants,

In re:

John Doe #53, John Doe #66, John Doe #66A, John Doe #67, Jane Doe 1, Jane Doe 2 and Rachel Roe, individually and as representatives of classes of people similarly situated, Respondents,

v.

The Bishop of Charleston, a Corporation Sole, and the Bishop of the Diocese of Charleston, in his official capacity, Respondents.

Appeal from Dorchester County
Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 26984
Heard February 3, 2011 – Filed June 13, 2011

APPEAL DISMISSED

Gregg Meyers, of Charleston, for Appellants.

David K. Haller and Lawrence E. Richter, Jr., of Mt. Pleasant, for Respondents John Doe #53, et al.

A. Peter Shahid, Jr., of Charleston, for Respondents the Bishop of Charleston, a Corporation Sole, et al.

PER CURIAM: This appeal follows a long and complex series of motions related to a class action settlement that was administered in Dorchester County. The underlying class action dealt with allegations that certain minors were victims of sexual abuse at the hands of agents of the Diocese of Charleston.[1] Appellants objected to and opted out of the class action, then reached an independent settlement with the Diocese. Pursuant to that settlement, Appellants executed releases that explicitly discharged *all* claims against the Diocese. We dismiss this appeal as moot.

I.

The plaintiffs in the underlying class action consisted of two classes: one for victims of childhood sexual abuse by agents of the Diocese and one for the spouses and parents of victims. As chief administrative judge for Dorchester County, Judge Goodstein designated the case "complex," and she assigned herself exclusive jurisdiction over it. Judge Goodstein subsequently approved a settlement in the class action over Appellants' objections. Appellants moved to alter or amend the order approving the settlement.

[1] For simplicity, we refer to both "the Bishop of Charleston, a Corporation Sole," and the Bishop of the Diocese of Charleston, in his official capacity, as "the Diocese."

While Appellants' motion to alter or amend was pending, they reached a separate settlement agreement ("the opt-out agreement") with the Diocese and class counsel. This agreement provided that the Diocese would pay Appellants $1.375 million to settle their claims, in exchange for Appellants' agreement to opt out of the class action, execute releases, and withdraw all pending motions and objections with prejudice. Judge Goodstein entered an order dated August 31, 2007, approving the agreement and adopting it as the order of the court to the extent that it resolved the pending motions and objections.

On March 6, 2008, Appellants filed a complaint in Charleston County alleging payment was due under the opt-out agreement. Because the opt-out agreement arose from the Dorchester County class action, the Diocese moved to enforce the opt-out agreement in Dorchester County and to deposit the $1.375 million with the Dorchester County clerk of court. Appellants moved to dismiss the Diocese's Dorchester County motions and moved for Judge Goodstein to recuse herself.

Judge Goodstein held a hearing on these motions on January 29, 2009. After Judge Goodstein orally denied Appellants' motions to dismiss and to recuse, Appellants moved to compel the Diocese to pay the $1.375 million plus pre or postjudgment interest.

Following the January 29 hearing, and while Appellants' motions for interest remained under advisement, Appellants signed releases bearing the title "FULL AND COMPLETE RELEASE," which provided in relevant part:

> For and in consideration of my having received payment . . . I hereby release, acquit, and forever discharge: The Diocese of Charleston . . . from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, up to and including the date of this release, on account of, or in any way growing out of:

> 1. The obligations under the letter agreement dated August 30, 2007, incorporated into and adopted as an order of the Dorchester County Court of Common Pleas dated August 31, 2007 . . .;
>
> . . . .
>
> 3. Any and all claims and/or allegations contained in or relating to the civil action styled Johns Doe C et al. v. The Diocese of Charleston, et al. . . . now pending in the Court of Common Pleas for the Ninth Judicial Circuit (the "Charleston case"), or which could have been alleged in the Charleston case;
>
> 4. Further, in consideration of said payment, I do hereby authorize and direct my attorney to dismiss with prejudice the Charleston case, now pending in the Circuit Court for Charleston County.
>
> . . . .
>
> It is further understood and agreed that there is no promise or agreement on the part of the persons, firms and corporations who are hereby released to do or omit to do any act or thing not herein mentioned, that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

The releases were provided to the Dorchester County clerk of court in exchange for payment of the $1.375 million on deposit with the clerk. As a result, Appellants' counsel received the funds due under the opt-out agreement. Thereafter, by order dated March 23, 2009, Judge Goodstein ended the matter and denied Appellants' motions for pre and postjudgment interest.

Appellants now appeal the denial of their motions and raise challenges to the class action settlement from which they opted out. We certified the appeal pursuant to Rule 204, SCACR.

II.

Appellants opted out of the class action settlement, released all claims against the Diocese, and received payment in exchange for their releases. Thus, as a practical matter, the only relief Appellants could receive from a judgment in their favor is an award of prejudgment interest.[2] However, Appellants waived any right to interest when they signed releases discharging the Diocese from liability for all "actions, causes of action, claims, demands . . . and compensation, **up to and including the date of th[e] release.**" The releases did not reserve any rights as to any pending motions. Rather, by their plain language, the releases resolved **all** of Appellants' claims. See Southern Glass & Plastics Co. v. Duke, 367 S.C. 421, 428, 626 S.E.2d 19, 22 (Ct. App. 2005) ("A release is a contract, and the scope of a release is gathered by its terms." (citing Gardner v. City of Columbia Police Dep't, 216 S.C. 219, 223, 57 S.E.2d 308, 309-10 (1950))). Therefore, this appeal is moot. Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006) ("A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court.").

Moreover, while Appellants now present us with complaints about the administration of the class action, Appellants opted out of the class and thus could not be harmed by any of the irregularities they allege. In fact, Appellants assert their opt-out agreement afforded them more favorable relief than the class action settlement would have. Thus, Appellants can claim no

[2] If Appellants were entitled to interest, it would be prejudgment interest, not postjudgment interest, because the funds due under the opt-out agreement were not payable immediately upon entry of the August 31, 2007, order. The opt-out agreement provided: "The $1.375 million will be paid from the surplus funds, if any, after the [class action] claims process has been completed. . . . Payment is expected sometime after January 1, 2008."

harm from the manner in which the class action settlement was handled. See Bivens v. Knight, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970) ("A party . . . cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.").

At oral argument, perhaps in recognition of the fact that Appellants have waived all claims by their releases, Appellants' counsel insisted that this appeal was not moot because John Doe B did not sign the release quoted above. This assertion is without merit. John Doe B's claim is not before this Court. John Doe B did not fall within the definition of the class, nor was he a party to the opt-out agreement the Diocese sought to enforce. Rather, it appears that the Appellants may have agreed among themselves to distribute a portion of their settlement to John Doe B. No exceptions to the order on appeal were made on John Doe B's behalf, and Appellants' counsel conceded at oral argument that John Doe B's separate claim against the Diocese has been resolved by agreement and John Doe B has signed a release. In sum, the attempt by Appellants to resurrect this appeal through John Doe B is without merit.

III.

We dismiss this appeal as moot. Appellants executed full and complete releases without any reservation of rights, and they received the funds due to them under the opt-out agreement in return. Moreover, Appellants have no stake in the issues they raise regarding the class action settlement because they opted out of the class. Thus, a decision in Appellants' favor would have no practical effect.

APPEAL DISMISSED.

TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Rockville Haven, LLC and
Marc H. Merrill, Appellants,

v.

The Town of Rockville and the
Town of Rockville Design
Review Board, Respondents.

Appeal from Charleston County
J. C. Nicholson, Jr., Circuit Court Judge

Opinion No. 26985
Heard April 20, 2011 – Filed June 13, 2011

REVERSED

John H. Tiller, J. W. Matthews III, and Denny P. Major, all of Haynsworth Sinkler Boyd, of Greenville, for Appellants.

G. Dana Sinkler, of Warren & Sinkler, and Ross A. Appel, both of Charleston, for Respondents.

JUSTICE PLEICONES: This is an appeal from a circuit court order affirming a decision by respondent Town of Rockville Design Review Board (DRB) declining to allow appellants to construct a dock and walkway for which they had obtained a permit from the South Carolina Department of Health and Environmental Control – Office of Coastal Resource Management (OCRM). Finding no evidence to support the finding that the proposed dock and walkway would impede a scenic view, we reverse.

FACTS

Appellant Merrill obtained a dock permit from OCRM to construct a dock and walkway on property he owned in respondent Town of Rockville (Rockville).[1] He then sought approval to construct the dock from respondent DRB which, pursuant to a newly adopted municipal ordinance, had to approve the construction of any dock or walkway already permitted by OCRM.[2] The DRB declined to approve construction, and appellants appealed to circuit court.[3] The circuit court affirmed.

The Town of Rockville is listed in the National Register of Historic Places. Appellants own a historic home in Rockville, the "Whaley House." The property abuts a marsh. The OCRM permit allows appellants to build a 4' by 225' walkway across the marsh leading to a 5' by 10' pierhead, the walkway and dock to be constructed at marsh level and without handrails. The dock, at which no motorized boat may be moored, adjoins Breakfast Creek. Breakfast Creek is navigable, although this small saltwater creek west of appellants' property is frequently dry and has no deepwater access.

The DRB denied appellants permission to construct the dock, finding it contravened the guidelines in the Ordinance in several particulars, among others, that the proposed dock does not meet the R ½ Design Review

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[1] Merrill subsequently assigned the permit to appellant Rockville Haven, LLC.

[2] See Rockville Town Code § 5.109 (2009); Town of Rockville Unified Dev. Ord., Appendix C.

[3] See S.C. Code Ann. § 6-29-900 (Supp. 2010).

Guideline, C.2. Building Orientation, in that "proposed structures shall not impede scenic rural views from the main road, from existing structures or from natural settings" (the Guideline).

Although appellants raise numerous issues on appeal, we find it necessary to address only one:[4]

> Did the circuit court err in finding evidentiary support for the DRB's conclusion that the proposed dock and walkway would impede a scenic rural view?

ANALYSIS

The sole question before the Court is whether there is evidence that the view across the marsh from the road, admittedly both rural and scenic, would be impeded by appellants' dock and walkway. In finding evidence supporting the DRB's conclusion that it would, the circuit court relied upon the statements of two interested persons (Vinson and Brabham) at a DRB meeting, and upon aerial photographs of the area submitted at this same meeting. A close reading of the two statements reveals nothing related to the purported impediment which would be created by this proposed dock and walkway, nor do the aerial photos demonstrate that the view from the roadway would be impeded by a handrail-less dock and walkway constructed at marsh level. Moreover, the Guideline does not purport to forbid the construction of structures such docks and walkways, but simply requires that they be constructed, “where reasonably practical,” so as not to obstruct scenic rural views.

Ms. Vinson spoke generally about the beauty of unspoiled places, other municipalities with dock ordinances, and warned of the dangers of allowing a dock in this area and the precedent it will set. As for this particular dock, the DRB report reflects:

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[4] Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999) (no need to address other appellate issues after deciding dispositive one).

> There is not much to be gained by allowing this dock, a boat can't be put into it and it is not navigable[5] in her view. The property owner may be able to get a slightly different view but would not really gain a particular [sic] better one by standing on the road and looking over the marsh or from his home. The reason the ordinance was created was to protect the view.

The DRB report reflects this regarding Ms. Brabham's statements:

> She has studied this a good bit, and that she fears the precedent that would be set if a dock is built is very risky, knowing that there are other houses above [appellants'], and other small creeks (such as the creek behind her home) would also be placed at risk, thus interrupting and upsetting the scenery of the marshes of the town. You can see it from the road and other people's houses, and from experience, noting her little creek behind her home being the same as this, the OCRM did not let her know of the dock that was being built to come up right up to her marsh view…[t]he dock stops the eye and the beautiful expanse she did have is cut off, not blocked out but cut off. "The scenic and rural views from the town that DRB is supposed to protect need to be thought about as this makes all other small creeks at risk…I know how it looks. My main objection is the precedent of allowing the first one."

Ms. Vinson and Ms. Brabham offered no evidence that appellants' dock and walkway would impede a scenic rural view, instead raising concerns about the impact of multiple docks on such views. In addition, Ms. Brabham stated that her view was "cut off" by an existing dock, but did not suggest whether that dock had handrails or was built at marsh height. The only statement of the impact of appellants' proposed dock and walkway was given

[5] OCRM found Breakfast Creek navigable, however, and there was no appeal from this finding.

by a code enforcement officer, who acknowledged that it would "almost disappear" and be "hidden from view."

We agree with respondents that state law permits local governments to require docks and walkways comply with local laws and regulations, including those which address aesthetic concerns. Here, however, there is simply nothing in the record to support the DRB's finding, affirmed by the circuit court, that appellants' dock and walkway would impede a scenic rural view within the meaning of the Guideline. For this reason, the decision of the circuit court is

REVERSED.

TOAL, C.J., BEATTY, KITTREDGE and HEARN, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Edward D. Sloan, Jr.,
individually and as a citizen,
resident, taxpayer and
registered elector of the State of
South Carolina, and on behalf
of all others similarly situated, Respondent,

v.

Friends of the Hunley, Inc., and
Warren F. Lasch, its Chairman,
Of Whom Friends of the
Hunley, Inc., is, Appellant.

Appeal from Richland County
Joseph M. Strickland, Special Circuit Judge

Opinion No. 26986
Heard April 6, 2011 – Filed June 13, 2011

AFFIRMED IN PART, REVERSED IN PART

Thornwell F. Sowell, Roland M. Franklin, Jr., and Bess J. DuRant, all of Sowell Gray Stepp & Laffitte, of Columbia, for Appellant.

James G. Carpenter, Jennifer J. Miller, and L. Warren Clayton, III, all of Carpenter Law Firm, of Greenville, for Respondent.

JUSTICE KITTREDGE: This is an appeal from an award of attorney's fees pursuant to the Freedom of Information Act. We conclude that Respondent Edward D. Sloan, Jr., was a "prevailing party" and the trial court properly awarded Sloan attorney's fees. However, in view of the law of this case in Sloan v. Friends of the Hunley, Inc. (Sloan I), 369 S.C. 20, 630 S.E.2d 474 (2006), we find the trial court erred in awarding fees beyond the time that Appellant Friends of the Hunley, Inc., provided the requested information to Sloan. We affirm in part and reverse in part.

I.

Friends of the Hunley, Inc., (Friends) is a non-profit corporation dedicated to the recovery and conservation of the *H.L. Hunley* Confederate submarine. Sloan is a citizen of Greenville County, South Carolina. In June 2001, Sloan submitted a Freedom of Information Act (FOIA) request to Friends seeking a list of documents[1] pertaining to Friends' corporate structure and legal relationship with the Hunley Commission, a state agency. S.C. Code Ann. §§ 30-4-10 to -165 (2007 & Supp. 2010) (FOIA). Friends denied that it was subject to FOIA and declined to produce the documents for Sloan.

Sloan filed a complaint on July 18, 2001, seeking production of the documents based on Friends' status either as a public body under FOIA or as an alter ego of the Hunley Commission. On August 16, 2001, approximately one month later, Friends fully complied with Sloan's document request, but stated that it was not tendering the documents "due to any concession that [Friends] is subject to the Freedom of Information Act," but "in the spirit of

[1] Sloan sought Friends' bylaws, minutes from board meetings, tax information, financial statements, retail sales information, and a list of Friends-owned real estate.

cooperation." Following a series of cross-motions, the trial court granted Friends' motion for summary judgment, finding Sloan lacked standing to maintain the action and that no justiciable controversy existed since Friends had produced the very documents sought in the complaint.

Sloan appealed that order, which was heard by this Court. Prior to oral argument, Friends conceded it was a public body for purposes of this action. In Sloan I, we affirmed the trial court's grant of summary judgment on the basis that the action was moot and non-justiciable in light of Friends' production of the documents.[2] 369 S.C. at 25–28, 630 S.E.2d at 477–478.

Following our decision, Sloan moved in the trial court for an award of attorney's fees under FOIA. In 2009, the trial court granted Sloan's motion and awarded attorney's fees to include those incurred from the beginning of the litigation up to the granting of the motion. Friends appealed, which we certified pursuant to Rule 204, SCACR.

II.

Friends challenges the FOIA-based attorney's fee award to Sloan. Specifically, Friends argues Sloan was not a prevailing party and, in any event, was not entitled to relief beyond the date the requested documents were produced.

"The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." Kiriakides v. Sch. Dist. of Greenville County, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) (citing Layman v. State, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008)). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." Id., 675 S.E.2d at 445 (quoting Layman, 376 S.C. at 444, 658 S.E.2d at 325). The issue before the Court presents a series of legal questions in terms of determining (1) whether Sloan may be considered a prevailing

[2] We further found that the trial court erred in denying Sloan standing to bring the action, but that finding has no bearing on this appeal. 369 S.C. at 28 – 29, 630 S.E.2d at 479.

party under the FOIA statute; (2) if Sloan is a prevailing party, whether his entitlement to fees may extend beyond the production of the requested documents; and (3) whether the law of the case from Sloan I affects the time period for the attorney fee award.

Section 30-4-100(b) of our FOIA statute provides for an award of attorney's fees in a FOIA dispute:

> If a person or entity seeking such [declaratory or injunctive] relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

The initial question turns on whether Sloan was a prevailing party under the statute. While the statute does not define prevailing party, this Court has previously stated that a prevailing party is "one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered." Heath v. County of Aiken, 302 S.C. 178, 182–83, 394 S.E. 2d 709, 711 (1990) (alteration in original) (quoting Buza v. Columbia Lumber Co., 395 P.2d 511, 514 (Alaska 1964)).

Friends argues that Sloan was not a prevailing party under this definition "because Sloan did not receive any of the relief he requested in his complaint . . . ." We reject Friends' position and agree with the trial court that Sloan was a prevailing party for purposes of the FOIA attorney's fees provision. We find persuasive the decision of the Montana Supreme Court in Havre Daily News, LLC v. City of Havre, 142 P.3d 864 (Mont. 2006). The Havre court addressed whether the post-complaint voluntary production of disputed documents precludes prevailing party status to a plaintiff:

> Although Havre correctly observes that the Newspaper did not technically "prevail" in its action in the District Court, the court

> granted summary judgment in favor of Havre precisely because Havre mooted the case by providing the Newspaper with unredacted copies of the Reports. Absent Havre's conduct, the case would not have become moot. **In mooting the case, Havre provided the Newspaper with the very relief it sought to procure through litigation; thus, the Newspaper has prevailed in substance, albeit without court intervention.** Given these circumstances, we will consider the Newspaper to be the prevailing party with respect to its request for unredacted copies of the Reports. Otherwise, a similarly situated party could, after extensive litigation, at the eleventh hour, and facing imminent defeat, simply moot a case in order to dodge this fee-shifting statute.

Id. at 878 (emphasis added). Similarly, under the facts of this case, we find that Sloan is the prevailing party under section 30-4-100(b). When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed. See Litchfield Plantation Co. v. Georgetown County Water & Sewer Dist., 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994) (Toal, J., concurring in part, dissenting in part) ("A governmental agency should not be allowed to stonewall an FOIA request without some penalty for its actions."); see also Wildlands CPR v. U.S. Forest Serv., 558 F. Supp. 2d 1096, 1098 (D. Mont. 2008) (finding that if a complainant receives relief "via . . . unilateral change in position by the agency," he is entitled to fees under the federal FOIA statute); Spokane Research & Def. Fund v. City of Spokane, 117 P.3d 1117, 1125 (Wash. 2005) (en banc) ("[P]ermitting an agency to avoid attorney fees by disclosing the documents after the plaintiff has been forced to file a lawsuit . . . would undercut the policy behind the act." (alteration in original) (quoting Coal. on Gov't Spying v. King County Dep't of Pub. Safety, 801 P.2d 1009, 1013 (Wash. Ct. App. 1990))).

We believe this approach is in harmony with legislative intent, as expressed in the preamble to our FOIA statute:

> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials **at a minimum cost or delay** to the persons seeking access to public documents or meetings.

S.C. Code Ann. § 30-4-15 (emphasis added). Honoring legislative intent as expressed in FOIA by awarding attorney's fees in these circumstances may serve as an impetus for public bodies to comply with a FOIA request and thus avoid the imposition of an attorney's fee award. See Soc'y of Prof'l Journalists v. Sexton, 283 S.C. 563, 324 S.E.2d 313 (1984) (finding attorney's fees may be awarded to encourage agencies to comply with FOIA requests).

Here, Sloan's complaint prompted Friends to do what a series of FOIA letter-requests could not accomplish—produce the requested documents. Accordingly, Sloan prevailed and is entitled to an award of attorney's fees. However, we are constrained to reverse the award of fees beyond the time Friends produced the requested documents. In Sloan I, we affirmed the trial court's grant of summary judgment because the production of the requested documents rendered the complaint moot and non-justiciable. 369 S.C. at 26, 630 S.E.2d at 477 ("[O]nce the requested documents are produced, a justiciable controversy no longer exists."). These declarations of mootness and non-justiciability are the law of this case. The parties and this Court are bound by Sloan I, which clearly limits the time period for which Sloan would be entitled to an award of attorney's fees. Rather than delay the matter further

by remand, we have reviewed the appropriate billing records and modify Sloan's award to $6,467.50.[3]

We affirm the trial court's finding that Sloan is a prevailing party under FOIA and is thus entitled to an award of his attorney's fees. We reverse the award of fees beyond the time Friends produced the requested documents and modify Sloan's attorney's fees award to $6,467.50.

AFFIRMED IN PART, REVERSED IN PART.

TOAL, C.J., PLEICONES, BEATTY and HEARN, JJ., concur.

[3] Prior to oral argument, we requested the billing records and the attorney's affidavit from Sloan's counsel. Friends does not challenge the reasonableness of Sloan's attorney's fees. That concession allows this Court to end the matter.

The Supreme Court of South Carolina

In the Matter of
William Jefferson McMillian,
III, Petitioner.

ORDER

On May 17, 2004, the Court disbarred petitioner from the practice of law. In the Matter of McMillian, 359 S.C. 52, 596 S.E.2d 694 (2004). Petitioner filed a Petition for Reinstatement which was referred to the Committee on Character and Fitness (the Committee) pursuant to Rule 33(d), RLDE, Rule 413, SCACR.

After a hearing, the Committee filed a Report and Recommendation recommending petitioner be reinstated to the practice of law with conditions. Neither petitioner nor the Office of Disciplinary Counsel filed exceptions to the Committee's Report and Recommendation.

The Petition for Reinstatement is granted. Petitioner is reinstated to the practice of law subject to the following conditions:

1) once he returns to the practice of law, petitioner shall be prohibited from practicing as a solo practitioner for a period of

three (3) years and shall, instead, practice law in association with an experienced supervising attorney;

2) at a minimum, petitioner shall be required to meet with the supervising attorney on a weekly basis to discuss matters of concern related to petitioner's practice;[1]

3) the supervising attorney shall submit quarterly reports concerning petitioner's compliance with this order to the Commission on Lawyer Conduct (the Commission) for a period of three (3) years;

4) on an annual basis for a period of three (3) years, petitioner's firm shall be required to submit a Certificate of Coverage documenting malpractice insurance on petitioner of at least $500,000.00 to the Commission; and

5) petitioner shall complete the South Carolina Bar's Legal Ethics and Practice Program Trust Account School within one (1) year of the date of his readmission to the South Carolina Bar and shall submit timely proof of completion to the Commission.

Petitioner is warned that his failure to comply with the terms of this order may result in his termination or suspension from the practice of law.

The Office of Bar Admissions shall schedule petitioner to be sworn-in and admitted as a member of the Bar at the next regularly scheduled admission ceremony.

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[1] Petitioner is also subject to the requirements of the Lawyer Mentoring Second Pilot Program.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina

June 9, 2011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Johnnie Major, Personal Representative of the Estate of Ed Major a/k/a Edward Major a/k/a Edward Major, Sr., Appellant,

v.

Penn Community Services, Inc., a South Carolina Not-For-Profit Corporation, Respondent.

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

Opinion No. 4838
Submitted March 1, 2011 – Filed June 8, 2011

AFFIRMED

Ray A. Lord, of Irmo, for Appellant.

Louis O. Dore, of Beaufort, for Respondent.

WILLIAMS, J.: On appeal, Johnnie Major, as personal representative for the estate of Edward Major (the Estate), contests the master-in-equity's finding that Penn Community Services, Inc. (Penn) is the fee simple owner of 6.2 acres of real estate in Beaufort County (the Property). The Estate first claims the master lacked subject matter jurisdiction because the master's decision to quiet title to the Property required a determination of intestate heirs, which is exclusively within the probate court's jurisdiction. The Estate also argues the master erred in concluding a certain deed conveyed the Property to Penn because the master's decision was based upon an erroneous determination of intestate succession. We affirm.

FACTS/PROCEDURAL HISTORY

Sub Lot 8,[1] bordered in part by Johnson River, is located on Saint Helena's Island in Beaufort County, South Carolina. Sub Lot 8 comprises 14.13 acres of real estate, and of the 14.13 acres, the Estate undisputedly owns 7.93 acres. At issue in this appeal is whether the Estate or Penn possesses title to an additional 6.2 acres located in the southern portion of Sub Lot 8 (the Property).

In 1866, Edward Philbrick deeded "[] Lot No. (8) . . . containing eighteen acres more or less" to Scipio Josiah. Scipio Josiah later died intestate, leaving his only child, William Josiah, as his sole heir. On January 5, 1932, William Josiah conveyed Lot 8 to F.R. Ford for payment of delinquent taxes. The 1932 deed described Lot 8 as "eighteen acres, more or less, being bounded . . . on the North by the marshes of Johnson River, East by lands of Penn School, South by lands of Penn School, [and on the] West by [m]arshes of Johnson River." On June 17, 1936, F.R. Ford conveyed the same parcel to brothers Edward and James Major. The 1936 deed described Lot 8 with the identical language stated in the 1932 deed.

[1] For ease of reference, this court refers to "Lot 8" as the original eighteen acres, "Sub Lot 8" as the 14.13 acres, and "the Property" as the disputed 6.2 acres that is in the southern portion of Sub Lot 8.

On September 23, 1950, the brothers partitioned the eighteen acres in Lot 8, with the northern ten acres deeded to James Major and the southern eight[2] acres deeded to Edward Major. After Edward Major passed away in 1997, the Estate brought an action to quiet and confirm title to Sub Lot 8 as well as to confirm the southern boundary line of Sub Lot 8. In its complaint, the Estate asserted it was the rightful owner of "the southern portion of Sub Lot 8," which, in addition to its ownership of 7.93 acres, totaled 14.13 acres. The Estate averred it never conveyed away any portion of Sub Lot 8, and Penn's only rightful claim of ownership was to 3.11 acres undisputedly owned by Penn. In response, Penn asserted it had obtained lawful title of the Property from R.R. Legare in 1916,[3] which was duly recorded at the Beaufort County Register of Deeds office. Penn claimed it immediately entered into possession of the Property after this conveyance.

The parties introduced various plats at trial in an attempt to accurately document the master chain of title. Penn first submitted the Simons-Myrant Plat, which was prepared and recorded in 1905 before Penn purportedly purchased the Property. The Simons-Myrant plat illustrated Penn's northernmost boundary including land only up to the disputed 6.2 acres. Penn also submitted the Palmer and Malone Plat, which was prepared and recorded in 1967. This plat included the disputed 6.2 acres, which was consistent with Penn's claim that it acquired the Property in 1916. Last, the Estate submitted the Gasque plat, which was prepared by a local surveyor, David Gasque, for trial and was not recorded. The Gasque plat depicted Sub Lot 8 as consisting of 14.13 acres, which included the disputed 6.2 acres and the 7.93 acres originally deeded to Edward Major in 1950. Besides the Gasque plat, the Estate presented no other evidence to show it ever surveyed, platted, or recorded Sub Lot 8.

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[2] The record reflects the Estate owns exactly 7.93 acres.

[3] Penn initially asserted in its Answer and Counterclaim that it obtained title from Jane Chisolm in 1959. Penn orally amended its Answer and Counterclaim, without objection, at trial to allege a conveyance from R.R. Legare to Penn by deed dated October 12, 1916.

In support of its claim that the Estate was the rightful owner of the Property, several family members testified they used the Property to graze animals for a number of years and had, at some point in time, planted a small garden on the Property. The Major family also stated they, along with other citizens in the community, frequently used the "Penn dock" on the eastern end of the Property for swimming, boating, and crabbing.

In support of its claim of ownership, Penn's acting executive director and two past executive directors testified Penn had been in possession of the Property for thirty-five years without any claims of adverse ownership by the Major family. The directors noted various Major family members lived adjacent to the Property; however, they claimed none of the Major heirs ever questioned Penn's ownership, despite Penn's establishment of a nature trail and construction of a dock on the eastern end of the Property.

Additionally, Penn presented the 1916 deed from R.R. Legare to Penn, which was duly recorded. The 1916 deed stated R.R. Legare was conveying "the same land inherited by Florence Major from her grandfather, Scipio Josiah, containing 6 acres, and portion described as being bounded by Penn School lands, by the 'Corner' by land of Rachel Simmons and by land of William Josiah." Penn also presented a property record card prepared by Arthur Christensen, a surveyor in Beaufort County during the relevant time period. The property record card for William Josiah stated, "left daughter, Florence, who married Tom Major . . . Lot 8 Corner from [William's] father, Scipio Josiah." The card subsequently noted a conveyance from William Josiah to F.R. Ford on January 5, 1932.

Because the R.R. Legare deed to Penn did not contain a metes and bounds description but was only defined by adjacent landowners' property lines, the master resorted to the various plats and deeds as well as witnesses' testimony to determine whether the Property was located in Sub Lot 8. In his final order, the master found Penn was the fee simple owner of the Property, free and clear of any claims of ownership by the Estate. This appeal followed.

STANDARD OF REVIEW

Generally, an action to quiet title is one in equity. Fox v. Moultrie, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008). However, when the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat plaintiff's action, the issue of title is legal. Dargan v. Tankersley, 380 S.C. 480, 483, 671 S.E.2d 73, 74 (2008). Therefore, in a case tried without a jury, the factual findings of a judge regarding title will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Assoc., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). This scope of review is equally applicable to the factual determinations of a master when, as in the present case, he enters final judgment. May v. Hopkinson, 289 S.C. 549, 554-55, 347 S.E.2d 508, 511 (Ct. App. 1986).

LAW/ANALYSIS

The Estate first claims the master did not have subject matter jurisdiction to quiet title to the Property because his ruling necessarily involved a determination of intestate heirs, which can only be decided by the probate court. We disagree.

The Estate filed an action in circuit court "for the purposes of quieting and confirming title to the [P]roperty . . . and confirming the southern boundary line thereto . . . ."[4] An action to quiet title is governed by section 15-67-10 of the South Carolina Code (2005). Pursuant to section 15-67-10,

> Any person in possession of real property . . . or any person having or claiming title to vacant or

[4] A review of the Estate's complaint and the parties' briefs establish the main purpose of this suit was to determine title to the disputed 6.2 acres. We find the boundary line question is incident to the action to quiet title. See Knox v. Bogan, 322 S.C. 64, 67, 472 S.E.2d 43, 45 (Ct. App. 1996) (finding disputed boundary lines may either be directly or indirectly judicially settled in actions to quiet title).

> unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively.

Once the Estate filed this action, the circuit court was required to refer the action to a master-in-equity to first determine rightful ownership of the Property and then to enter final judgment. See S.C. Code Ann. § 15-67-60 (2005) ("In all actions brought under this article the court, or a judge thereof, shall refer the action to a master or special referee to take the testimony as to the plaintiff's claim or title and as to all the facts and circumstances unless the testimony shall be taken in open court and carefully inquire as to the existence of claim by and residence of all nonresidents."); see also S.C. Code Ann. § 14-11-85 (Supp. 2010) ("When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals . . . .").

While the Estate claims the master improperly asserted subject matter jurisdiction in contravention of section 62-1-302(a)(1) of the South Carolina Code (2009)[5] when the master found "Florence Major acquired an intestate share in the Scipio Josiah estate," we find this argument unpersuasive.

The master was not required to make a determination of heirs to establish rightful ownership of the Property. In order to identify the subject matter of the grant, and as such, whether Penn had paramount title to the disputed land, the master had to determine whether the R.R. Legare deed was in the chain of title and constituted a conveyance out of Sub Lot 8. See Powers v. Rawles, 119 S.C. 134, 156, 112 S.E. 78, 86 (1922) ("The sole

[5] Section 62-1-302(a)(1) grants "the probate court . . . exclusive original jurisdiction over all subject matter related to . . . [the] determination of heirs and successors of decedents . . . ."

purpose of a description of land as contained in a deed is to identify the subject-matter of the grant."). Accordingly, the master recited certain lineage that was already documented in the R.R. Legare deed and the property record card in an effort to identify the exact location of the Property. See Richardson v. Register, 227 S.C. 81, 88, 87 S.E.2d 40, 43 (1955) (parol evidence is admissible to elucidate latent ambiguities in written instruments).

Specifically, the R.R. Legare deed conveyed roughly six acres to Penn, described as "the same land inherited by Florence Major from her grandfather, Scipio Josiah . . . and . . . bounded by Penn School lands, by the 'Corner' by land of Rachel Simmons and by land of William Josiah." The property record card for William Josiah stated, "left daughter, Florence, who married Tom Major . . . Lot 8 Corner from [William's] father, Scipio Josiah" and later noted a conveyance "to F.R. Ford on January 5, 1932." While the deed and property record card appear to conflict on whether Florence acquired her share of the estate directly from her grandfather, Scipio, or directly from her father, William, this discrepancy is immaterial for purposes of determining whether Penn or the Estate possessed paramount title. Both the deed and the property record card establish Florence Major had ownership rights to approximately six acres that were described in both documents as the "Corner" of Lot 8. Because the R.R. Legare deed expressly conveyed six acres in Lot 8 owned by Florence Major to Penn, it was reasonable for the master to conclude the disputed 6.2 acres is the same six acres conveyed to Penn in 1916.

Other evidence supports this conclusion as well. Each deed in the Estate's chain of title conveyed a total of eighteen acres. The partition deed between Edward and James Major divided eighteen acres, which indicates the 6.2 acres of disputed land was not a part of the Estate's chain of title. If F.R. Ford had received title to the Property, which he then conveyed to Edward and James Major, we conclude it would be reasonable for the specified acreage in the deed to be greater than eighteen acres. See Von Elbrecht v. Jacobs, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct. App. 1985). ("[A] grantor of real property generally can transfer no greater interest than he himself has in the property."). Moreover, both the 1932 and 1936 deeds

expressly described the eighteen acres as being bound on both the east and the south by "the lands of Penn School." This description is consistent with the master's finding that R.R. Legare conveyed these southern six acres in Sub Lot 8 to Penn in 1916, prior to the 1932 and 1936 deeds to the Majors. In addition, Penn's recorded plats all support the master's conclusions. The 1905 plat illustrated Penn's northernmost boundary as land bordering, but not including, the disputed 6.2 acres. The 1967 plat, on the other hand, included the disputed 6.2 acres, which is consistent with Penn's claim that it acquired the Property in 1916. See King v. Hawkins, 282 S.C. 508, 510, 319 S.E.2d 361, 362 (Ct. App. 1984) (finding party was record owner of property when deed matched recorded plats indicating disputed property was owned by the party and party's predecessors in interest). Last, Penn had been in possession of this land for over thirty-five years without any adverse claims of ownership by the Estate, which lends support for the master's conclusion that Penn was the rightful owner of the Property. Because the foregoing evidence reasonably supports the master's finding that Penn possessed fee simple title to the Property, we affirm the master's decision.

CONCLUSION

Based on the foregoing, the master-in-equity's order is

AFFIRMED.

GEATHERS and LOCKEMY, JJ., concur.