Rel: January 30, 2026

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2025-2026

CL-2025-0557

Timothy L. Pickens and Melanie T. Pickens

v.

Shirley Ann Osborne

Appeal from Cherokee Circuit Court
(CV-23-900148)

EDWARDS, Judge.

Timothy L. Pickens and Melanie T. Pickens appeal from a judgment of the Cherokee Circuit Court awarding Shirley Ann Osborne a prescriptive easement across their real property. For the reasons set

forth below, we reverse the judgment and remand the case for the entry of a judgment consistent with this opinion.

At issue in this appeal are Lots 28 and 29 of Bayview Estates, a subdivision located on Weiss Lake in Cherokee County. Lot 28 is located directly north of Lot 29, and the two lots are adjoined on the southern border of Lot 28. The owners of Lot 29's access to a public road is predicated on a driveway that crosses Lot 28. The portion of the driveway that is contained within Lot 29 extends across the northern border of Lot 29 where it adjoins Lot 28 and terminates at a boat ramp.

In 1983, Shirley and David C. Osborne ("the former husband") acquired Lot 28. The record indicates that Lot 29 contains at least three separate parcels of real property.[1] In 1983, Howard Simpson owned the parcel of Lot 29 that contains the section of driveway that is at issue in this appeal and the boat ramp ("the east parcel"). The record reveals that in June 1983, a document entitled "agreement and easement" ("the 1983 agreement") between "Simpson and [the former husband], or an agreement between the owners of Lots #28 and Lot #29," was recorded in

[1]The westernmost parcel of Lot 29 is owned by Sonya Sanders, who testified at the October 2024 trial. However, that parcel is not at issue in this appeal.

Cherokee County. Although the 1983 agreement appears to contemplate an agreement between Simpson and the former husband, Shirley also signed the 1983 agreement. The 1983 agreement provided, in relevant part, that Simpson permitted "[the former husband] free access to [the] boat ramp for load[ing] and unloading [his] boat as long as [the former husband] owns Lot #28." In 1995, Shirley and the former husband divorced, and the former husband executed a quitclaim deed transferring his interest in Lot 28 to Shirley.[2] It appears that Shirley has retained sole ownership of Lot 28 since 1995.

Melanie obtained ownership of the middle parcel of Lot 29 ("the middle parcel") sometime before May 2001. The record does not reveal when Simpson's ownership of the east parcel ended. However, David Smitherman and Gail Smitherman obtained ownership of the east parcel in 1999.[3] The record indicates that, in May 2001, the Pickenses, the Smithermans, and Shirley executed a "joint use driveway agreement" permitting the owners of Lots 28 and 29 to use designated parts of the

[2]The former husband was deceased at the time of the October 2024 trial.

[3]The record does not indicate that Simpson sold the east parcel to Smitherman.

driveway for ingress to and egress from their respective residences. David Smitherman sold the east parcel to Gail Smitherman when they divorced in 2008. Gail retained ownership of that parcel until 2015.[4] Doug Turnure owed the east parcel between 2015 and 2017. In 2017, Turnure sold the east parcel to Melanie, his sister, who had recently become divorced from Timothy. Melanie deeded the east parcel and the middle parcel to herself and Timothy after they remarried in 2021. Thus, the Pickenses owned the relevant portions of Lot 29 at all times after 2021, and, hereinafter we refer to the east parcel and the middle parcel collectively at "Lot 29."

In December 2023, Shirley filed a complaint in the trial court seeking, among other things, an award of a prescriptive easement for the use of the boat ramp on Lot 29. The trial court held a trial in October 2024. The following testimony was elicited at trial.

Shirley explained that, beginning in 1995, Lot 28 had been the primary residence of her son, David Scott Osborne ("Scott"), and that he had resided in a manufactured home located on the lot. Shirley's

[4]Gail Smitherman was deceased at the time of the October 2024 trial.

testimony indicates that Lot 28 became her permanent residence sometime between 2001 and 2020. The record indicates that Shirley completed construction of a permanent dwelling on Lot 28 in 2020 and has been residing in that dwelling with Scott since 2020. The evidence reveals that the newly constructed residence buttresses the southern border of Lot 28 and is separated from the driveway by a small patch of grass. According to Shirley, she cannot access the rear of her dwelling with a vehicle without using the section of the driveway located on Lot 29. Shirley stated that she had used the driveway several times to access the rear of her dwelling. Timothy testified that Shirley had requested permission on several occasions to use the driveway to access the rear of her dwelling and that he had granted her request on each occasion. The respective testimony of both Shirley and Scott indicates that they had used the driveway to access the rear of their dwelling until sometime in 2022, when the Pickenses placed railroad ties along the border of the driveway, approximately 6 inches from Lot 28's southern border. Timothy explained that he had placed the railroad ties to prevent newly placed gravel in the driveway from "washing off" into Lot 28.

Shirley testified that she and her family had used the boat ramp since 1983 and that she had assumed that her use of the boat ramp was covered under the 1983 agreement. Shirley stated that she had used the boat ramp approximately twice each year to launch and store her boat and several times each year to launch "jet skis, paddle boats, [and] kayaks." Scott testified that he had consistently used the boat ramp for access to Weiss Lake since he began residing on Lot 28 in 1995. He stated that he had used the boat ramp in the presence of Turnure and the Smithermans. Both Turnure and David Smitherman testified that, during their respective periods of ownership of the east parcel, neither had observed any member of the Osborne family use the boat ramp. Josiah Thomas, the Pickenses' son-in-law, testified that he had visited Lot 29 two weekends each month between 2015 and 2020 and one weekend each month between 2020 and the October 2024 trial. He testified that he had not observed any member of the Osborne family use the boat ramp. Sonya Sanders, who owns the westernmost parcel on Lot 29 ("the west parcel"), testified that she had not seen Shirley use the boat ramp, but she admitted that she could not see the boat ramp from the west parcel. Steve Hamlin testified that he owned the real property

directly north of Lot 28 and that "years ago" he had observed members of the Osborne family use the boat ramp on a regular basis.[5] Hamlin also acknowledged that he had indicated in a text message to Timothy that Shirley had used Hamlin's boat ramp for the 5 to 10 years preceding the October 2024 trial, but he indicated in his testimony that he was unsure how long Shirley had used that boat ramp.

The record reveals that the boat ramp had fallen into a state of disrepair in 2020. Shirley testified that the boat ramp's condition made it impossible to launch boats from the boat ramp but that she and her family continued to use the boat ramp to launch their kayaks and jet skis. Shirley testified that, before Melanie and Timothy had remarried, she had discussed with Melanie splitting the cost of repairing the boat ramp. The record indicates that, after Melanie and Timothy remarried, the Pickenses moved forward with repairing the boat ramp without Shirley's knowledge or assistance.

Documentary evidence was presented of a January 2022 text-message conversation between the Pickenses and Shirley. In that

[5]Hamlin also stated that he had used the boat ramp several times without express permission.

conversation, Shirley requested that the Pickenses grant her an easement for the use of the driveway and the boat ramp. She also offered to pay half of the cost of repairing the boat ramp. Timothy's response acknowledged the offer to help pay for the repairs to the boat ramp but declined her assistance. In that same conversation, he stated:

> "As far as boat ramp access goes, we will do an informal verbal agreement to let you and your family use it with the verbal agreement that nothing gets parked on the ramp or road between you and us on us [sic]. This will be much easier. Formal agreements would have to involve at minim[um], a lawyer consultation. This is the same type of neighborly agreement I have with the Griggs and Keith Daniel on use of the ramp with an informal ask."

The record reveals that Shirley's response to this message indicated that she did not want to hire an attorney but that she was still willing to help pay for repairs to the boat ramp. Melanie later sent a message informing Shirley that the boat-ramp repairs had not been as expensive as the Pickenses had anticipated and that they had covered all the costs of the repairs. Melanie further stated that Shirley and her family could use the boat ramp and that she and Timothy could "write something up" that provided that, if they sold Lot 29, the purchaser would be required to "honor the sharing agreement" between the Pickenses and Shirley.

Although Shirley appears to have agreed to that suggestion in the text-message conversation, no such writing appears in the record.

Shirley testified that, in October 2023, she requested that the Pickenses remove various obstructions from the driveway. Timothy's testimony indicates that the obstructions may have been construction equipment related to his construction of a permanent dwelling on Lot 29. According to Shirley, the Pickenses removed the obstructions as requested, but, she said: "[Timothy] said something to me about that I didn't have access to [the] back of my house." Shirley testified that she immediately had retrieved the "deed" for the 1983 agreement and presented the Pickenses with a letter informing them that she was asserting her right to use the boat ramp regardless of whether the Pickenses had given her permission to do so. Timothy testified that the Pickenses were not aware that Shirley was asserting a right to the use of the boat ramp or the driveway until November 2023. Shirley testified that she did not know how the Pickenses would have been aware of her claim to the use of the driveway and the boat ramp until she presented them with the 1983 agreement and the November 2023 letter.

As discussed above, the trial court entered a judgment in December 2024 awarding Shirley an easement by prescription for the use of the driveway and the boat ramp and denying all other relief. The Pickenses filed a postjudgment motion to alter, amend, or vacate the December 2024 judgment, arguing, in relevant part, that Shirley had failed to meet the burden of proof necessary to establish an easement by prescription. Following the March 2025 postjudgment hearing, the trial court denied the Pickenses' postjudgment motion. The Pickenses timely appealed, arguing that the trial court had erred in granting an easement by prescription in favor of Shirley.

> "'[W]here the evidence has been [presented] ore tenus, a presumption of correctness attends the trial court's conclusion on issues of fact, and this Court will not disturb the trial court's conclusion unless it is clearly erroneous and against the great weight of the evidence, but will affirm the judgment if, under any reasonable aspect, it is supported by credible evidence.'"

Reed v. Board of Trs. for Alabama State Univ., 778 So. 2d 791, 795 (Ala. 2000) (quoting Raidt v. Crane, 342 So. 2d 358, 360 (Ala. 1977)). We also note that the trial court's judgment does not contain specific findings of fact. However, "in the absence of specific findings of fact, an appellate court will presume that the trial court made those findings necessary to

support its judgment, unless such findings would be clearly erroneous." Steele v. O'Neal, 87 So. 3d 559, 569 (Ala. Civ. App. 2011).

This court has stated that,

> "[t]o establish an easement by prescription, the claimant must use the premises over which the easement is claimed for a period of twenty years or more, adversely to the owner of the premises, under claim of right, exclusive, continuous, and uninterrupted, with actual or presumptive knowledge of the owner. The presumption is that the use is permissive, and the claimant has the burden of proving that the use was adverse to the owner. Cotton v. May, [293 Ala. 212, 301 So. 2d 168 (1974)]; Belcher v. Belcher, 284 Ala. 254, 224 So. 2d 613 (1969); West v. West, 252 Ala. 296, 40 So. 2d 873 (1949)."

Bull v. Salsman, 435 So. 2d 27, 29 (Ala. 1983). We are cognizant that Alabama law presumes that "the use of a right-of-way is permissive and that the permissive use of a right-of-way for a period of 20 years or more does not ripen into a prescriptive easement." Smith v. Stowe, 390 So. 3d 1071, 1075 (Ala. 2023). "To rebut the presumption that the use of a [right-of-way] is permissive, the user claiming a prescriptive easement has the burden of showing that his or her use was adverse to that of the owner for the 20-year prescriptive period." Hanks v. Spann, 33 So. 3d 1234, 1238 (Ala. Civ. App. 2009). We also note that

> "'a permissive occupant cannot change his possession into adverse title no matter how long possession may be continued, in the absence of a clear, positive and continuous disclaimer

> and disavowal of the title of the true owner brought home to the latter's knowledge; there must be either actual notice of the hostile claim or acts or declarations of hostility so manifest and notorious that actual notice will be presumed in order to change a permissive or otherwise non-hostile possession into one that is hostile.'"

Smith v. Persons, 285 Ala. 48, 55, 228 So. 2d 806, 811 (1968) (quoting Stewart v. Childress, 269 Ala. 87, 93, 111 So. 2d 8, 13 (1959), citing in turn White v. Williams, 260 Ala. 182, 187, 69 So. 2d 847, 851 (1954)).

The Pickenses assert on appeal that the trial court's December 2024 judgment is erroneous because, they argue, the evidence establishes that Shirley and the Osborne family either had permission to use the driveway and the boat ramp or that Shirley and the Osborne family used the driveway and the boat ramp without the knowledge of the Pickenses or their predecessors in interest. Put differently, the Pickenses argue on appeal that Shirley failed to rebut the presumption that her family's use of the driveway and the boat ramp was permissive. Shirley asserts in her brief on appeal that the issue whether the Pickenses were aware of the use of the boat ramp by the Osborne family was a disputed fact at the October 2024 trial and, therefore, that the ore tenus presumption favors affirming the trial court's judgment.

Initially, we note that Shirley had permissive use of the boat ramp beginning in 1983 under the 1983 agreement. That agreement terminated, at the latest, in 1995 when the former husband deeded his interest in Lot 28 to Shirley. Shirley's use of the driveway and the boat ramp after 1995 was presumed to be permissive, and it was Shirley's burden at trial to demonstrate that her use of the driveway and the boat ramp was adverse to that of the Pickenses or their predecessors in interest.

The evidence Shirley presented at trial largely consisted of her own testimony and that of Scott. That testimony indicated that Shirley and her family had used the boat ramp consistently between 1995 and October 2023. However, that evidence, by itself, does not establish that the Pickenses or their predecessors in interest knew that she was establishing a hostile claim for the use of the driveway and the boat ramp or that her use of the driveway and the boat ramp was adverse to the ownership of Lot 29 by the Pickenses or their predecessors in interest. Even viewing the disputed evidence regarding whether the Pickenses or their predecessors in interest had observed Shirley or members of her family using the boat ramp in the light most favorable to the trial court's

judgment, the record contains nothing to suggest that Shirley's or her family's use of the boat ramp was anything other than permissive.

We encountered a similar issue in Hanks. In that case, this court reversed a judgment of the Marion Circuit Court awarding Billy Spann a prescriptive easement over a road that formed the boundary between real property owned by Louis Hanks and Margaret Hanks and real property owned by Tommy Clement based on Spann's failure to present evidence at trial "indicating that he had engaged in any conduct that would have put the Hankses or Clement on notice that he was asserting a hostile claim to the road." Hanks, 33 So. 3d at 1238. We explained that Spann had failed to rebut the presumption that his use of the road was permissive because his actions concerning the road, such as stating to Louis that he would stop transporting timber if he began to damage the road and ensuring that the Hankses and Clement had unobstructed access to the road after Spann installed a gate, were "in apparent deference to the rights of the Hankses and Clement." Id. at 1239.

Shirley's testimony indicating that she had requested permission to use the driveway to access the back of her dwelling on several occasions and the documentary evidence revealing that she had requested a license

or an easement to use the boat ramp clearly indicates her deference to the Pickenses' rights to the driveway and the boat ramp. Shirley failed to demonstrate that her actions put the Pickenses or their predecessors in interest on notice of her hostile claim to the driveway and the boat ramp. Thus, Shirley failed to present evidence at trial rebutting the presumption that her use of the driveway and the boat ramp was permissive. Therefore, we conclude that the trial court improperly applied the law to the facts of this case when it awarded Shirley a prescriptive easement for the use of the driveway and the boat ramp.

Having determined that the trial court erred in awarding Shirley an easement by prescription, we reverse the trial court's December 2024 judgment, and we remand the case for the entry of a judgment consistent with this opinion.

REVERSED AND REMANDED.

Moore, P.J., and Hanson and Bowden, JJ., concur.

Fridy, J., concurs in the result, without opinion.