

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO. 2025-CP-07-01126
	)	
	)	
THE BIG HOUSE CEMETERY	)	
COMMITTEE, <i>et al.</i> ,	)	
	)	<b><u>ORDER</u></b>
<i>Plaintiffs,</i>	)	
	)	
v.	)	
	)	
THERESA AIGNER, <i>et al.</i> ,	)	
	)	
<i>Defendants.</i>	)	

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**INTRODUCTION**

This matter was heard on December 16, 2025 at the Beaufort County Courthouse and is before the Court on Plaintiffs’ Motion for a Temporary Injunction and Defendant’s Motion to Dismiss. Following the hearing, the Court and the parties conducted a site visit at the Big House Cemetery and the two access roads at issue: Everest Road to Everest Lane (“Everest”) and Pope Estates Way. The Court ordered post-hearing briefing to be submitted by January 5, 2026.

After careful consideration of the parties’ submissions, the pleadings, testimony of witnesses, arguments of counsel, the site visit, and post-hearing briefing, the Court hereby **GRANTS in part and DENIES in part** Plaintiffs’ Motion for a Temporary Injunction and **DENIES** Defendant’s Motion to Dismiss.

## **FACTS AND PROCEDURAL HISTORY**

On April 30, 2025, Plaintiffs initiated this action by filing a Summons and Complaint alleging Defendants obstructed Plaintiffs' access to the Big House Cemetery via Everest located on St. Helena Island in Beaufort County, South Carolina. Plaintiffs assert that Everest is the only viable vehicular route to the historic Big House Cemetery.

Plaintiffs allege that Defendants unlawfully blocked access to the Cemetery by padlocking two gates along Everest, thereby preventing Plaintiffs and community members from burying loved ones, conducting funerals, holding cleanup days, or visiting and maintaining gravesites – particularly impacting elderly individuals and those with mobility limitations. Plaintiffs assert claims under South Carolina cemetery access law (First Cause of Action) and for a prescriptive easement (Second Cause of Action).

On July 9, 2025, Plaintiffs filed an Amended Complaint along with a Motion for a Temporary Restraining Order (“TRO”) pursuant to Rule 65(b), SCRCF, seeking to enjoin Defendants from blocking access via Everest.

On July 18, 2025, Defendants filed a Motion to Dismiss under Rule 12(b)(6) and Rule 12(b)(7), SCRCF, arguing failure to state a claim and failure to join necessary parties. Defendants contend that Plaintiffs have legal ownership of the Cemetery and alternative access via Pope Estates Way, and that adjoining property owners along Everest are necessary parties.

## LEGAL STANDARD

### I. Standard for Temporary Injunctive Relief

To obtain temporary injunctive relief, the plaintiff must establish a prima facie case by demonstrating:

- (1) irreparable harm if the injunction is not granted;
- (2) likelihood of success on the merits of the litigation; and
- (3) that there is no adequate remedy at law.

*AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51 (Ct. App. 2009) (citing *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121 (2004)); see also *Cnty. Council of Charleston v. Felkel*, 244 S.C. 483–84 (1964).

A plaintiff need not prove an absolute legal right but must present a reasonable question as to the existence of such a right. *AJG Holdings*, 382 S.C. at 51. (citing *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 456 (Ct. App. 2005)). Once a prima facie showing is made, a temporary injunction may be granted without regard to the ultimate resolution of the case on the merits. *Id.* (quoting *Helsel v. North Myrtle Beach*, 307 S.C. 29, 32 (1992)).

## ARGUMENTS OF PARTIES

### I. Plaintiffs

Plaintiffs argue that they suffer irreparable harm because they are unable to access the Cemetery for burials, visitation, and maintenance. They contend that Everest is the only access route sufficiently wide and suitable for funeral processions, vault trucks, and related vehicles.

Plaintiffs further argue that they are likely to succeed on the merits of both claims. With respect to cemetery rights, Plaintiffs rely on South Carolina's longstanding recognition of the rights of heirs and community members to access, visit, and maintain gravesites.

Regarding the prescriptive easement claim, Plaintiffs assert they have established:

- (1) the identity of the thing enjoyed (Everest);
- (2) open, notorious, continuous, uninterrupted use; and
- (3) for a period of twenty (20) years.

*See Simmons v. Berkeley Elec. Coop., Inc.*, 419 S.C. 223, 229, 231 (2016); *Bundy v. Shirley*, 412 S.C. 292, 304 (2015).

Plaintiffs contend that Everest has been used openly and continuously for decades by Committee members, individual Plaintiffs, and the broader community for cemetery purposes.

## **II. Defendants**

Defendants argue that Plaintiffs have alternative access via Pope Estates Way which defeats any claims of irreparable harm. Defendants rely on a 2016 order dividing parcels of land – including the property that the Cemetery – among various landowners, including certain Plaintiffs.

Defendants further argue that under S.C. Code Ann. § 27-43-310 the legal owner to the Cemetery, identified as Plaintiff Sheila Middleton, bears the responsibility for providing access.

Additionally, Defendants argue that Plaintiff Sherike Bennett has gated and locked the Pope Estates Way entrance, thereby contributing to access limitations. Defendants maintain that Plaintiffs therefore possess an adequate remedy at law.

Finally, Defendants contend that Everest is a private subdivision road and has sustained damage from prior funeral processions. Defendants assert that Pope Estates Way is sufficient for all funeral-related purposes.

## **CONCLUSION**

After consideration of the evidence and arguments, the Court finds that Plaintiffs have established a prima facie entitlement to limited temporary injunctive relief to preserve access to the Cemetery pending trial.

Accordingly, Plaintiffs' Motion for a Temporary Injunction is **GRANTED in part and DENIED in part**, for the limited purpose of allowing access via Everest for burials and clean-up days during the pendency of this action, subject to the following conditions:

1. Funerals and Burials

Plaintiffs, through counsel, shall provide Defendants' counsel at least three (3) days written notice of intent to conduct burial and/or funeral. Defendants shall open the gates on Everest from sunrise to sunset on the specified date(s) to allow access for funeral homes, vault trucks, and related vehicles.

2. Cleanup Day

Plaintiffs, through counsel, shall provide at least fourteen (14) days written notice to Defendants' counsel of any planned cleanup day requiring large vehicle access. Defendants shall open the gates on Everest from sunrise to sunset on the designated date.

3. Bond Requirement

Recognizing the bond requirement is mandatory and must account for potential damage resulting from injunctive relief (*See Spartanburg Buddhist Ctr. of S.C. v. Ork*, 417 S.C. 601, 609–10 (Ct. App. 2016)), Plaintiffs shall post bond in the amount of \$5,000.00 to cover potential roadway repairs necessitated by vehicular access during the pendency of this injunction.

Plaintiffs' temporary injunction shall remain in effect pending trial on the merits or other resolution of this matter.

IT IS SO ORDERED.

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Carmen T. Mullen  
Beaufort County Circuit Court  
Court of Common Pleas



Beaufort Common Pleas

**Case Caption:** Big House Cemetery Committee , plaintiff, et al VS Theresa Aigner ,  
defendant, et al  
**Case Number:** 2025CP0701126  
**Type:** Order/Temporary Restraining Order

So Ordered

s/Carmen T Mullen 2142