STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2001-CP-10-4359
East Cooper Civic Club, Dell Alston, Antherenette Anderson, Helen Brown, Timothy Brown, Fred Evans, Sr., Ronald Fordham, William Fordham, Jacqueline Lucille Gore, David Simmons, and Mildred Clark Wise,	)	
Plaintiffs,	)	**ORDER**
vs.	)	
Remley Point Development, LLC, Thomas D. Rogers, III, and Victoria Rogers,	)	
Defendants.	)	

This Court has before it plaintiffs' suit to determine their legal interests in a cemetery located on Remley's Point in Mount Pleasant, South Carolina. Plaintiffs include ten individuals with relatives buried in the cemetery and the East Cooper Civic Club, a community group whose members also have relatives buried there. Defendants Thomas and Victoria Rogers are the present holders of title to the property surrounding the cemetery who seek to relocate the graves in the Graveyard to another location. Defendant Remley Point Development, LLC is the predecessor-in-title of defendants Rogers.

Plaintiffs seek a declaratory judgment that the land in dispute has been publicly dedicated for use as a burial ground. They assert that the Graveyard (known either as the Remley's Point Graveyard or Scanlonville Graveyard) has been consistently and regularly used since at least 1870 and that hundreds of individuals are buried therein. In the alternative to the cause of action for public dedication, they seek a declaration that they possess easements for the land in which their

relatives are buried.

For their part, defendants Rogers deny that the land has been publicly dedicated. As to any private interests in the property of the relatives of the deceased, they assert that such interests have been abandoned through non-use and neglect. They assert that at the time they purchased the surrounding land in 1999, the Graveyard was overgrown and no longer in use. Defendants Rogers seek a declaratory judgment that the Graveyard has been abandoned and that the graves may be removed. Defendants Rogers additionally bring cross-claims against defendant Remley Point Development, LLC for fraud, misrepresentation, and breach of deed warranties arising from the sale of the land.

This case went to trial before this Court from June 16-22, 2005. All parties were present, represented by counsel, and presented witnesses and documentary evidence. After a thorough consideration of the evidence before this Court and of the legal arguments of all sides, this Court is prepared to render its findings of fact and conclusions of law. For the reasons set forth below, this Court holds that plaintiffs are entitled to a declaratory judgment that the Graveyard has been publicly dedicated. Furthermore, this Court holds that the Graveyard has not been abandoned.[1]

I. FACTS

The history of this land centers upon the African-American community of Scanlonville, which was established in the years following the Civil War. In 1868, John L. Scanlon, on behalf of the Charleston Land Company, purchased approximately 300 acres of land comprising the former Remley Plantation. In 1870, a plat entitled "Plans of a Portion of the Tract of Land Known as

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[1] This Court's holding on defendants Rogers cross-claims against defendant Remley Point, LLC is addressed in a separate order.

Remley Point, Laid out in lots and now called Scanlonville." Many of the lots depicted on the 1870 plat were purchased and lived on by freed slaves. This 1870 plat clearly identifies a large tract as the "Graveyard" which the court finds is the land in dispute in this case. The Graveyard is approximately 3.8 acres and fronts Molasses Creek.

The Graveyard, as shown on the 1870 plat, has been used from that time on. While the exact number of graves is unknown, the parties agree that over one hundred persons are buried on the site. At trial, plaintiffs and other witnesses testified that they have relatives buried in the Graveyard, they attended other burials on the site, and that they regularly visited and maintained individual graves over the years. Among others, this Court heard testimony about relatives buried in the Graveyard, from Dell Alston (her grandmother, aunt, and several cousins are buried there), Antherenette Anderson (grandparents, aunt and uncles, and others), Helen Brown (grandfather, uncle, niece, and cousin), William Fordham (his grandparents and others), David Simmons (father, uncle, and aunt), and Mildred Clark Wise (father). Each testified they regularly visited their relatives's graves on at least an annual basis.

In 1981, the Town of Mt. Pleasant issued a resolution under which approximately 30 graves were moved from another burial ground in the town to the Remley's Point Graveyard. In addition, at least 27 other members of the public were buried at the Graveyard during the 1980s. In 1989, Hurricane Hugo damaged the Graveyard, primarily by uprooting and overturning trees. The most recent documented burial occurred in December 1989.

Through the testimony of Dr. Michael Trinkley (plaintiffs' expert witness) and Herbert and Julius Fielding (two funeral directors from a longstanding funeral home in Charleston), it is apparent that the Graveyard has never operated like a modern, perpetual-care cemetery. No entity supervised

the site and there were no restrictions, limitations, or regulations governing its use. Typical of other African American rural burial grounds in the area, the deceased were generally buried in family groupings, not in organized plots. Although, upon viewing the site at the agreement of counsel, a brick enclosed area was clearly located. Also of note was the consistent east-west orientation of the gravestones. There was no permission needed, no fee paid, and no assignment of burial sites. Normally, the family of the deceased would pick a location for the grave to be dug, or many times, the family members dug the grave themselves).

As discussed in detail in the chain of title discussion below, the land was sold by Dorothy Ayers to Remley Point Development, LLC by way of quit claim deed in 1999. The quit claim deed specifically provided that the interest in land was "subject to the graveyard." That same day, on June 9, 1999, Remley Point Development, LLC sold the land to defendants Rogers by way of general warranty deed. At trial, all defendants admitted to their knowledge of the presence of graves on the site prior to these conveyances.

In 2001, defendants Rogers petitioned the Town of Mount Pleasant under the statutory procedure for the removal of graves. 1976 S.C. Code of Laws § 27-23-10 et seq. This suit was then filed and the Rogers withdraw their petition to remove the graves.[2] Thereafter, in 2002, the Graveyard was deemed eligible for inclusion on the National Registry of Historic Places and was identified as one of South Carolina's most endangered historic places by the Palmetto Trust for Historic Preservation.

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[2] In 2002, defendants Rogers re-petitioned the Town of Mount Pleasant for permission to remove the graves. The petition was tabled by Town Council. Defendant Rogers then sued the Town for a writ of mandamus and additional relief. *Rogers v. Town of Mount Pleasant,* C.A. No. 2002-CP-10-4881. That suit is pending.

II. CHAIN OF TITLE

Recorded in 1787, a deed from John Severance, executor of the Estate of William Watson, to his daughter Ann Prince, conveyed some 305 acres, a portion of which was the Graveyard. This deed is recorded in DB A6, page 26. The next deed in the chain was recorded in 1828, at DB M10, page 390. This deed conveys the 305 acres to John Walker pursuant to the public auction of the property because of the default of one Clement Lempriere Prince on a mortgage given to Mr. Walker. Thereafter, Mr. Walker conveyed 300 acres to John H. Mey by way of a deed recorded in 1832 at DB 110, page 266. The next deed is from Mey to Paul Remley recorded in 1836. This deed contains a reference to any graves on the property thereby conveyed as follows - "to myself [Mey] and my heirs and family the right of free ingress and egress through the said plantation to the Burial Ground thereon and the right of burying in the said Burial Ground." As testified by plaintiffs' expert witness, Dr. Michael Trinkley, this graveyard used by the previous plantation owners and their families was located on another site on the property, not in the Graveyard in dispute in this case.

The next deed in the chain is from one Ziba Oakes to John L. Scanlon, and is dated January 23, 1868. It appears from the recitals in this deed that Paul Remley died in 1863, leaving a will. His estate apparently was not fully administered and Mr. Oakes was appointed as Remley's administrator *de bonis non.* The property conveyed by this deed is described as containing 300 acres and being known as "Princes Ferry." The deed conveys this property to Scanlon "in trust" first to pay certain mortgages placed on the property to secure the payment of the major portion of the purchase price, and then for the "use of the subscribers to or shareholders in a voluntary association known now as Charleston Land Company, ... for such uses and purposes as the said association shall direct or appoint or until they shall become a body corporate and then convey the said premises ... to said

corporation ...." This deed also contains a reservation similar to the one in the Mey deed, but in this case the reservation provides "[t]he right of free ingress and egress through the said plantation to the Burial Ground thereon and the right of burying in the Burial Ground being reserved to the heirs and family of the said Clement S. Prince." Again, as testified by Dr. Trinkley, the plantation burial ground is located on another site.

Thereafter, there was a gap in the chain, i.e., no conveyance into the Charleston Land Company, until an action was filed in the Court of Common Pleas for Charleston County, styled A. Robinson, et al., Plaintiff v. The Charleston Land Company, et al. Defendants, which was referred to F. K. Myers, Master in Equity, on June 6, 1908. The Master issued his report on June 23, 1908. That report found, per the 1868 deed, that Ziba B. Oakes, acting as Remley's administrator *de bonis non*, conveyed the Remley property to John Scanlon, "Trustee" to hold the property in trust as indicated above, until the Charleston Land Company obtained a corporate charter. The report states that the Charleston Land Company obtained its corporate charter in 1884, but that a deed from Scanlon, while prepared, was found unexecuted (and therefore unrecorded) "among the papers of the Charleston Land Company...." The Master recommended that he be authorized to execute a deed conveying the Remley property to the Charleston Land Company. That recommendation was accepted and on July 3, 1908, a deed from the Master to the Charleston Land Company was recorded at DB H25, at page 497. This deed recites the basic findings of the Master and goes on to describe the property generally as containing some 300 acres. The deed recites the boundaries of the property by reference to adjoining tracts and reserves "[t]he right of free ingress and egress through the said plantation to the Burial Ground thereon and the right of burying in the Burial Ground being reserved to the heirs and family of the said Clement S. Prince."

The Master's deed then excepts from the property it is conveying certain lots depicted on a plat recorded on Plat Book D, page 180. This plat bears the title "Plan of a Portion of the Tract of Land Known as Remley Point, Laid out in lots and now called Scanlonville." The plat is dated February 14, 1870, and there is a notation to the effect that it was revised "Dec, 1894." North of lot numbers 143 - 151 is an area not platted into lots that is referenced thereon as "grave yard" and has been clearly identified as the property in dispute in this case.

The next deed is dated February 6, 1932, and is recorded in Book G36, at page 251. This deed is from the Charleston Land Company to Ernest A. Morris, "as Trustee." The property conveyed by way of this deed is described with reference to the 1870 plat (which clearly identified the Graveyard) and lists a number of lots depicted on that plat and includes as a catch-all description of the property thereby conveyed, all "the right, title, interest and estate of Charleston Land Company of, in and to all other lots or parcels of land situate on Remleys Point in Charleston County, it being the intention of Charleston Land Company to sell and convey by this deed all of its said property on Remelys [sic] Point...." This deed provides that the property is conveyed in "trust" to the grantee, the purpose of the trust apparently being to dispose of the property "in pieces or in blocks of more than one or as a whole...." The proceeds of such sale or sales were to be disbursed first to pay the expenses of the sale, then to repay the grantee the purchase price he paid for the property and the remainder was to be distributed equally between the grantee and Charles E. Rausch.

The next deed in the chain is from Ernest A. Morris, as Trustee to Ayers, is dated May 1, 1953, and is recorded at Book R56, at page 527. This deed describes the property with reference to the 1870 plat, showing the Graveyard. This deed also recites that Charles E. Rausch is deceased and the grantee - Ayers - is the sole legatee and devisee of the Charles E. Rausch will.

The two final deeds in the chain are a quit claim deed from Ayers to Remley Point dated June 9, 1999, recorded at Book F328, at page 237, and a general warranty deed from Remley Point to the Rogers also dated June 9, 1999, and recorded at Book F328, at page 302. The quit claim deed describes the Property with reference to the 1870 plat as "any highland and marsh to the center line of Molasses Creek located to the north of small black numbered lots 145 - 151..." and goes on to say that a "part of the above described property is subject to the Graveyard" shown on the 1870 plat (emphasis added).[3]

The general warranty deed from Remley Point to the Rogers describes the property with reference to a new plat which refers to the "Graveyard Site" and combined it into the 3.8 acre tract (Tract "A") the property lying north of lots 145-151 as shown on the 1870 plat, lots 148, 149, and a portion of lot 147, all of which are shown on the 1870 plat.

III. PUBLIC DEDICATION

"Dedication" is the setting aside of land or an interest therein for public use, and once complete, is irrevocable. Boyd v. Hyatt, 294 S.C. 360, 364, 364 S.E.2d 478, 480 (Ct. App. 1988). It is well established that land can be dedicated for cemetery purposes. See, generally, 14 Am. Jur. 2d Cemeteries § 19. To prove public dedication, plaintiffs must satisfy two elements: 1) the clear and unmistakable intention to dedicate the property to public use, and 2) acceptance of the property by the public. See Pittman v. Lowther, 586 S.E.2d 149, 152, 355 S.C. 536 (Ct. App. 2003); Vick v. S.C. Dept. of Transportation, 347 S.C. 470, 477, 556 S.E.2d 693 (Ct. App. 2001).

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[3] In 1999, defendant Remley Point Development, LLC had entered into an Agreement to Buy and Sell Real Estate with defendants Rogers under which Remley Point contracted to sell "*approximately 5 acres.*" This agreement includes a special stipulation stating that Rogers are "*responsible for moving any graves on the property.*" It is undisputed that at the time of entering into the initial contract, both sets of defendants had actual notice of the Graveyard.

A. Intent to dedicate

As to the first element, the intent to make a public dedication of property may be express or implied from the circumstances. Boyd v. Hyatt, 294 S.C. at 364. It is well established that "no particular instrument or ceremony is required to dedicate a tract of land to cemetery purposes. Actual use of land for burial purposes is sufficient." Davis v. May, 135 S.W.3d 747, 749 (Ct. App. Tex. 2003) (citations omitted). And once dedicated, even absent reservations in the deed, a graveyard is held in trust for the benefit of the public. Davis, 135 S.W.3d at 749.

South Carolina law recognizes two types of implied dedication: 1) arising from acquiescence to public use, and 2) arising from reference to maps or plats. Vick, 347 S.C. at 477. Both types of implied public dedication are found here. As to public use, a dedication "'may be implied from long use by the public of the land claimed to be dedicated.'" Boyd at 364 (quoting Anderson v. Town of Hemingway, 269 S.C. 351, 353, 237 S.E.2d 489, 490 (1977); see also Hoogenboom v. City of Beaufort, 315 S.C. 306, 883, 433 S.E.2d 875, 883 (Ct. App. 1992) ("Intent to dedicate may also be implied from long public use of the land to which the owner acquiesces."). "Such an intention may be manifested by the owner's acquiescence in continuous use of the land by the public under the claim of a general public right." County of Darlington v. Perkins, 269 S.C. 572, 575, 239 S.E.2d 69, 71 (1977).

This Court finds that the Graveyard has been used as a public burial ground for at least 130 years without interference or limitation from any putative landowner or any other person or entity. This Court is convinced that there was acquiescence to its long, open, and notorious use as a cemetery, and thus holds that there was a clear and convincing intent to dedicate the land to the public. As to references to the site on maps and plats, this Court finds consistent and regular

reference from 1870 until the present. The 1870 plat clearly and unequivocally allots space for a public cemetery. As introduced at trial, subsequent inclusion of the Graveyard on 20th century maps and surveys constitutes continued references and is evidence of public dedication. Most notably, the Graveyard is included in plats relied on in the land transactions through which defendants Rogers claims an interest in the Graveyard and the surrounding land.[4] Furthermore, the Town of Mt. Pleasant 1981 resolution evinces a public acknowledgment and dedication of the Remley's Point graveyard.

B. Acceptance of dedication

Formal acceptance of a dedication is unnecessary. Mack v. Eden, 320 S.C. 236, 239, 464 S.E.2d 124, 126 (Ct. App. 1995). Continuous use or maintenance of the property in question by the public or a public authority may imply acceptance and no specific duration of use is required to make such a showing. See Vick, 347 S.C. at 478; Boyd, 294 S.C. at 366. However, there must be sufficient time to show the intent of the public to accept the offer of dedication. In *Boyd*, a period of thirteen years was regarded as sufficient. Id.

Both the public and a public authority (Town of Mt. Pleasant) have demonstrated their acceptance of the dedication of the Graveyard. There can be no clearer acceptance than the public

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[4] Plaintiffs assert that the 1870 plat, which clearly identifies the Graveyard, constitutes an express public dedication. Defendants argue that the 1870 plat is merely an identification of a previously existing burial ground, in which private rights were reserved for use by the owners of the plantations which had existed on the 300-acre Scanlonville tract. In support of plaintiffs' position, Dr. Trinkley testified that the Graveyard at dispute is not the site of the historic plantation burial ground (which he located on another parcel of land), and that the 1870 plat indeed created something new. Plaintiffs also rely upon the language of the 1999 quit claim deed, in which Ayers conveyed any interest she held expressly "subject to the Graveyard," as evidence of an express dedication. While this Court is persuaded by plaintiffs' evidence, it need not decide whether the evidence rises to the level of an express dedication because it is clear that such a dedication was implied.

use of the property to bury their loved ones. As testified by the plaintiffs and other witnesses, many families (as recently as 1989) have chosen the Graveyard as the final resting place for their loved ones. In 1981, the Town of Mount Pleasant recognized the Graveyard as an appropriate place for public burial by issuing a resolution allowing the relocation of graves to the Graveyard.

For these reasons, this Court holds that the Graveyard has been publicly dedicated.[5]

C. Public status

Defendants Rogers argue that the Graveyard is not public, but rather private, and thus was not publicly dedicated. They assert that many of those buried at the Graveyard have a connection to the Scanlonville community. This Court finds that the Graveyard was not restricted to any group. As testified by Herbert Fielding from Fielding's Home for Funerals, along with other witnesses, the public's use of the Graveyard has never been restricted or limited. There has never been a fee for burial sites or an entity that regulated the use of the Graveyard. Defendants presented no evidence that anyone seeking to bury their loved ones has ever been prevented from doing so.

But even if the Graveyard was solely for the use of those connected to the Scanlonville community, courts have recognized that a cemetery used by a neighborhood is considered "public." In contrast, and unlike here, a private burial ground is one used by a family or very small group. See, e.g., Peterson v. Stolz, 269 S.W. 113 (Tex App 1925). In Smith & Gaston Funeral Directors v.

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[5] In reaching this conclusion, this Court need not address the private rights of the plaintiffs in the Graveyard. Even if this Graveyard were private (which as explained below, it is not), the plaintiffs would have permanent easements on the property. There is no question that there exists a private right to access, visit and maintain graves. See, e.g. Mingledorff v. Crum, 338 So.2d 632 (Fla. Dist. Ct. App. 1980) (listing various rights in private cemetery); Walker v. Ga. Power Co., 339 S.E.2d 728 (Ga. Ct. App. 1986) (holding that descendants hold an easement "to enter, care for and maintain the burial plots, of freedom from damage or disturbance, and to use and enjoy the property."

Dean, 80 So.2d 227 (Ala. 1955), the Alabama Supreme Court expounded on this rule, holding that a cemetery, "though privately owned, is properly classified as a 'public cemetery .'" The court reasoned that a graveyard was public even if it had some restrictions as to burials:

> The law contemplates two classes of cemeteries, public and private. The former class is used by the general community or neighborhood or church, while the latter is used only by a family or a small portion of a community. The test is public user. [A] cemetery, though maintained by a private corporation, may fairly be deemed a public burying ground if it is open, under reasonable regulations, to the use of the public for the burial of the dead. (internal quotations omitted).

Likewise, the South Carolina Supreme Court has held that a church graveyard is public, even though it was "held and used" under private deeds and burials were ostensibly restricted to church members. In County Board of Commissioners for Clarendon County v. Holliday et al., 182 S.C. 510, 515, 189 S.E. 885, 888 (1937), the Supreme Court defined a church graveyard as a public cemetery and declared that the state's condemnation statue did not allow the state to condemn the church's cemetery (under the general rule that lands applied to one public use may not be taken or devoted to another inconsistent use). Thus, this Court finds and concludes that the Remley's Point Graveyard is public in nature.

IV. GRAVEYARD NOT ABANDONED

Defendants Rogers seek a declaration that the Graveyard has been abandoned and that they should be allowed to remove and relocate the graves. According to defendants Rogers, the graves have been abandoned because of non-use and neglect. At trial, defendants presented witnesses who testified that by 1999, the property had become overgrown, and at its entrance, had piles of dumped trash and building debris. For their part, plaintiffs produced expert testimony that the Graveyard's condition was consistent with active African-American graveyards in the Lowcountry. Plaintiffs and

other witnesses testified that they regularly visited and maintained individual grave sites without interruption up to the present. Several witnesses testified that Hurricane Hugo had a large impact on the property in 1989, including downing many trees. The most recent burials on the site took a place a few months after the hurricane.

To prove abandonment, defendants seek to rely on the common law of South Carolina. Before addressing their argument, this Court must recognize that there is a South Carolina statute that directly addresses the relocation of graves. Section 27-43-10, S.C. Code of Laws, provides that:

> A person who owns land on which is situated an abandoned cemetery or burying ground may remove graves in the cemetery or ground to a suitable plot in another cemetery or suitable location if:
>
> (1) It is necessary and expedient in the opinion of the governing body of the county or municipality in which the cemetery or burying ground is situated to remove the graves. The governing body shall consider objections to removal . . . ."

S.C. Code Ann. §27-43-10 (emphasis added). From the express language of the statute, it appears that the determination as to removal is to be made by the "governing body of the county or municipality," in this case the Town of Mt. Pleasant. In an earlier motion in this case, plaintiffs sought to have the Rogers' counterclaim dismissed for lack of subject matter jurisdiction because of this statutory provision. The Court denied plaintiffs' motion to dismiss, but only as to whether the statutory remedy was exclusive as to the question of "abandonment." The Court did not consider the second statutory prong of "necessary and expedient" as a precondition to grave removal.

This Court, however, need not address the second prong or whether it has the jurisdiction over the removal of graves because this Court holds that the graveyard has not been abandoned. The South Carolina case of Frost v. Columbia Clay, 130 S.C. 72, 124 S.E. 767 (1924), addressed the issue of abandonment directly. In Frost, a graveyard was so overgrown and unused that even the

plaintiff (who sought to prevent the removal of graves) was unable to identify a single grave and was able to locate grave sites only after remains were unearthed by mistake by the defendant. Significantly, the Plaintiff in Frost testified that the family never intended to use the graveyard again as a family burial ground. On these facts, the Supreme Court held that as long as the graves are buried in the site, it had not been abandoned.[6] Clearly, under Frost, the Remley's Point Graveyard, with over one hundred identified grave sites and in light of the testimony of relatives at trial, has not been abandoned.

Defendants Rogers seek to rely on the dissent in Frost. Even if the dissent in Frost were an accurate description of the law, however, defendants would not prevail. Reviewing case law from other jurisdictions, the Frost dissent concludes that a graveyard is abandoned only when its character as a final resting place is completely lost and forgotten:

> "When these graves shall have worn away, when they who now weep over them shall have found kindred resting places themselves, when nothing shall remain to distinguish this spot from the common earth around, and it shall be wholly unknown as a graveyard . . . ; for it will then have lost its identity as a burial ground, and, with that, all right founded on the dedication must necessarily become extinct."

Id. (Cothran, J., dissenting) (quoting Hunter v. Trs. of Sandy Hill, 6 Hill 407, 414-15 (N.Y. Sup. Ct. 1844)).

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[6] While Frost is the only South Carolina case which addresses the issue of abandonment, other cases support its reluctance to disturb graveyards. See, e.g., Kelly v. Tiner, 91 S.C. 41, 49, 74 S.E.30, 32 (1912) ("It shocks and outrages the feelings, and arouses the indignation of every right minded person in a Christian country, that the resting place of the dead should be interfered with, ... plowed over and cultivated and wiped out and obliterated as a cemetery."); Bd. of Comm'rs for Clarendon County v. Holliday, 182 S.C. 510, 517, 189 S.E. 885, 888 (1937) ("In process of time, [the sepulchers of the dead] are made the seats of cities ... and daily trodden by the feet of man. ...But while these places are yet within the memory and under the active care of the living, which they are still devoted to pious uses, they are sacred ....").

The defendants cite Justice Cothran's dissent to illustrate instances in which abandonment of a graveyard can be said to have occurred in some circumstances. But the facts in the two cases are different. In Frost, the landowner could not identify the location of a single grave. The existence of human remains – indeed, the very existence of a graveyard in the first place – was discovered accidentally, only after excavations began. No headstones existed, and no one knew exactly where the graves were located. Here, in sharp contrast, the parties agreed that there are well over a hundred identified graves. Plaintiffs and other witnesses have testified that they have regularly visited and maintained the grave sites of their family members. All defendants admitted that they saw grave markers (including ones from the late 1980s) on the property before any of the land conveyances at issue. Thus, even under the dissent in Frost, this Court would not find that the Graveyard was abandoned.

Based on the common law of South Carolina, the testimony of plaintiffs and other relatives of the deceased, an expert witness in African-American burial practices, and the Fielding funeral home representatives, this Court finds that the Remley's Point Graveyard has been in active use for over 130 years. This Court therefore holds that the graveyard has not been abandoned.[7]

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[7] This Court also recognizes that the grave relocation statute further provides in § 27-23-40 that evidence of abandonment" includes a "conveyance of the land upon which the cemetery or burying ground is situated without reservation of the cemetery or burying ground shall be evidence of abandonment for the purposes of this chapter." As defendants Rogers' predecessor in interest included an express reservation in her quitclaim deed, such limiting language also constitutes evidence that the Graveyard has not been abandoned.

V. CONCLUSION

For the foregoing reasons, the Court hereby GRANTS plaintiffs' request for a declaratory judgment that the Graveyard has been dedicated to the public and not abandoned and DENIES defendants Rogers counter-claim.

Mikell Ross Scarborough
Master-In-Equity for Charleston County

August 31, 2005
Charleston, South Carolina

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