

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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Appeal No. 31127

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DOUGLAS L. HANSON, KIRSTEN K. HANSON, JOAN A. SCHULTZE,  
and JAMES D. SCHULTZE,  
Plaintiffs/Appellees,

vs.

JIMMY D. JORDAN and STEPHANIE L. JORDAN,  
Defendants/Appellants

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APPELLANTS' BRIEF

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Appeal from Circuit Court, Fourth Judicial Circuit,  
Lawrence County, South Dakota,  
The Honorable Michelle Comer, presiding

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Notice of Appeal filed June 26, 2025

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## PRELIMINARY STATEMENT

Throughout this Appellants' Brief, Appellants Jimmy D. Jordan and Stephanie L. Jordan will be referenced as "Jordans." Appellees Douglas L. Hanson and Kirsten K. Hanson will be referenced as "Hansons," Appellees Joan A. Schultze and James D. Schultze will be referenced as "Schultzes," and collectively they will be referenced as "Plaintiffs." The Settled Record will be referenced as "SR." Transcripts will be referenced as "TT" followed by the page and line number. Appellants' Appendix will be referenced as "Appx" followed by the page number.

## JURISDICTIONAL STATEMENT

This Court has jurisdiction under SDCL § 15-26A-3 to consider the Order granting plaintiffs' motion for partial summary judgment entered on July 12, 2024 (SR 250, Appx 008) and Judgment entered May 28, 2025, granting Judgment in favor of Plaintiffs on the Complaint. SR 346, Appx 001. Appellant filed a timely Notice of Appeal from the Judgment on June 26, 2025. SR 349. The Order and Judgment sought to be reviewed are appealable as a matter of right.

## LEGAL ISSUES

I. Whether the Trial Court erred when it concluded that the Contract for Deed refers to an easement across Alpha Lode rather than Starview Lane (the "Old Wagon Road").

Comment: The Trial Court granted the Plaintiffs' Motion for Partial Summary Judgment concluding that there were no issues of material fact and that the Plaintiffs were entitled to judgment as a matter of law establishing an easement across Alpha Lode based on the language of the Contract for Deed.

Most Relevant Authorities:

*Picardi v. Zimmiond*, 2004 S.D. 125, 689 N.W.2d 886  
*Travis v. Madden*, 493 N.W.2d 171 (S.D. 1992)  
*Cleveland v. Tinaglia*, 1998 S.D. 91, 582 N.W.2d 720

II. Whether the Trial Court erred in granting partial summary judgment based on the Jordans' constructive notice of the alleged easement claimed to be across Alpha Lode. Comment: The Trial Court declared that based on the fact that the Jordans knew of the existence of a two-track trail across Alpha Lode that they had constructive notice of the Plaintiffs' alleged easement.

Most Relevant Authorities:

*Tan Corp. v. Johnson*, 1996 S.D. 128, 556 N.W.2d 613

*West Central Electric Cooperative, Inc. v. James River Broadcasting*,  
393 N.W.2d 83 (S.D. 1986)

### STATEMENT OF THE CASE

Plaintiffs commenced this action in Lawrence County seeking a judicial declaration that they hold rights to an easement they claim exists over Jordans' property. SR 2, *Complaint*. Plaintiffs claim that they are successors in interest to and have a right to an alleged easement existing over and across the Jordans' property known as "Alpha Lode." This property is located in Lawrence County, South Dakota. Plaintiffs claim that their right to this alleged easement was created in a Contract for Deed dated December 7, 1977 ("Contract for Deed"). SR 299, *Exhibit 102*; see also SR 2, *Complaint* at ¶ 12. It is undisputed that this Contract for Deed was never publicly recorded at the Lawrence County Register of Deeds Office. Moreover, the description of the alleged easement contained in the Contract for Deed expressly refers to a Mineral Survey plat showing the location of the alleged easement. It is undisputed that this Mineral Survey *does not* show the alleged easement across Alpha Lode as claimed by the Plaintiffs. Instead, the Mineral Survey plat shows a different easement now known as Starview Lane, and previously known as Old Wagon Road.

Plaintiffs moved for partial summary, claiming that there were no genuine issues of material fact and that they were entitled to judgment as a matter of law as to the existence of the easement across Alpha Lode. SR 69. Plaintiffs argued that, even though

the Contract for Deed was not recorded and even though the Mineral Survey does not show an easement across Alpha Lode, the Jordans nonetheless had “constructive notice” of the alleged easement across Alpha Lode based on their knowledge of a two-track trail that existed at the time Jordans purchased the property. The Jordans argued that the language of the Contract for Deed did not create an easement across Alpha Lode, but instead, describes an entirely different access route known as Starview Lane. Starview Lane, also known as the Old Wagon Road (“Old Wagon Road”), *does* appear on the Mineral Survey which, according to the language of the Contract for Deed, delineates the location of the easement created by that document.

The Trial Court granted partial summary judgment in favor of the Plaintiffs concluding that an easement exists across Alpha Lode, and scheduled the matter for further proceedings as to determine the scope and location of the easement. SR 250, Appx. 008. The matter was tried to the Court on the remaining issues concerning the scope and placement of the easement on April 4, 2025. The trial court thereafter entered Findings of Fact and Conclusions of Law on March 3, 2025, determining that the easement exists over and across Alpha Lode at the location of the two track trail as claimed by the Plaintiffs. A final Judgment was entered on May 28, 2025. Appx 002; see also SR 273. Jordans appealed from the Judgment by service and filing of a Notice of Appeal on June 26, 2025. SR 349.

#### **SUMMARY OF ARGUMENT**

The Trial Court erred in concluding that the Contract for Deed established an easement across Alpha Lode. This is because a plain reading of the language of the Contract for Deed shows that the easement referred to in that document is Starview Lane,

which has also been referred to as the Old Wagon Road. There is no language in the Contract for Deed expressly creating an easement across Alpha Lode. Moreover, the Trial Court erred when it granted partial summary judgment based on the Jordans' "constructive notice" of the alleged easement across Alpha Lode.

### STATEMENT OF FACTS

Harold Knutsen purchased several parcels of land in the Black Hills and in 1976 began selling some of those parcels to family and friends. The land included property platted on Mineral Survey Number 1741 ("Mineral Survey") SR 298, *Exhibit 101*, filed with the Lawrence County Register of Deeds as Plat Number 77-5221. SR 298, *Exhibit 101*, Appx 009.

On December 7, 1977, Harold Knutson entered into a Contract for Deed with L. Marlin Jensen, Dora Mae Jensen, Jerry D. Gravatt and Vickie S. Gravatt for the sale of a tract of land known as Emma Lode and Alpha Lode. This is the Contract for Deed which Plaintiffs claim establishes their right to an easement over and across Alpha Lode. SR 299, *Exhibit 102*, Appx 010.

Particular attention to the language used in the Contract for Deed concerning the property sold by Harold Knutsen to the Jensens and Gravatts is important. The Contract for Deed states as follows:

#### PURPOSE:

The purpose of this contract is to set forth the terms and conditions and payments for the sale of the following described real estate, wherein the Seller hereby covenants and agrees to convey and sell to the Buyers in fee simple, clear of all encumbrances, to-wit:

**Tract of land known as Emma Lode and Alpha Lode** in Mineral Survey #1741, consisting of 36.37 acres more or less, located in Section Thirty-

Four (34), Township Four North (T4N), Range Three East (R3E), Black Hills Meridian, Lawrence County, South Dakota.

SR 299, *Exhibit 102* at pg. 1 (emphasis added).

The combined acreage of Emma Lode and Alpha Lode is 36.37 acres. TT 46:1-7. Throughout the Contract for Deed, the real estate that was sold (i.e. “Tract of land known as Emma Lode and Apha Lode...”) is referred to as “the property.” *Id.* For example, the Contract for Deed states “[t]he total purchase prices for *the property* described herein is the sum of Nine Hundred Dollars (\$900) per acre...” and “[i]t is agreed that between the parties hereto, that the Buyers shall have possession of *the property* described herein as of December 7, 1977.” *Id.* at pgs. 1-2. (emphasis added). As such, the Contract for Deed clearly pertains to the sale of a single “tract of land known as Emma Lode and Alpha Lode” referred to throughout that entire document as “the property.” *Id.*

The Contract for Deed also reserves an “easement for private road,” across “the property.” SR 299, *Exhibit 102* at pg. 3, Appx 012. This is the easement that the Plaintiffs claim crosses Alpha Lode. The easement grant language of the Contract for Deed describes the easement at issue in this case as follows:

EASEMENT FOR PRIVATE ROAD:

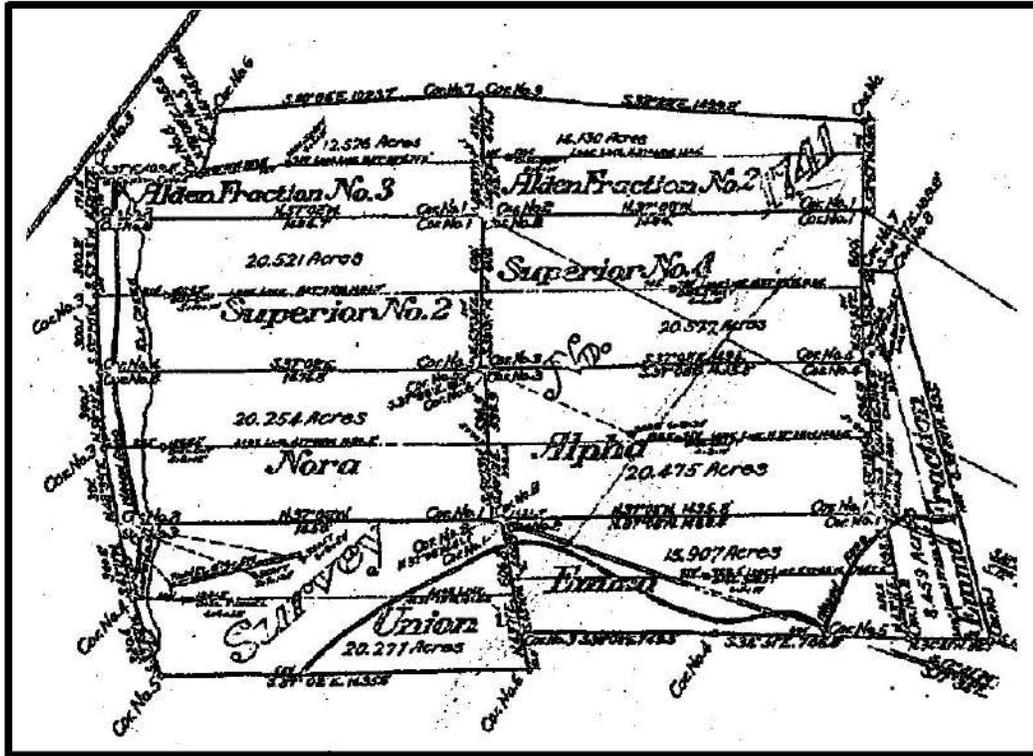
Seller hereby reserves a thirty foot (30’) easement, over and across **the property being sold herein**, as and for a private road as said road presently exists across **said property** and as more fully shown on the **Plat recorded in the Register of Deeds office at Lawrence County, South Dakota, which Plat was filed the 29th day of November, 1977, Plat No. 77-5221**, which road is for ingress and egress purposes for other property presently owned by the Seller, more specifically described as Alden Fraction No. 2, Alden Fraction No. 3, Superior No. 4 and Nora Lodes, located in Mineral Survey #1741 in Section Thirty-four (S34), Township Four North (T4N), Range Three East (R3E), Black Hills Meridian, Lawrence County, South Dakota. *It is specifically*

*agreed by the parties hereto, that this easement shall be for the benefit of and shall run to the Seller and all of his heirs, assigns or representatives, and as a covenant running with the land.*

SR 299, *Exhibit 102* at pg. 3, Appx 012 (emphasis added).

Based on this provision of the Contract for Deed, Plaintiffs claim they have a right to a 30' wide access easement across Alpha Lode. This Contract for Deed was never recorded. Moreover, according to the express language of the Contract for Deed, the easement is shown on Mineral Survey No. 1741, Plat No. 77-5221. SR 299, *Exhibit 102*. The Plaintiffs admit, however, that the easement they are claiming across Alpha Lode does not exist anywhere on Mineral Survey No. 1741, Plat No. 77-5221. TT 23:17-24:14.

The property sold in the Contract for Deed is depicted on Mineral Survey No. 1741 ("Mineral Survey"), which is filed with the Lawrence County Register of Deeds as No. 77-5221. SR 298, *Exhibit 101*, Appx 009, and SR 299, *Exhibit 102*, Appx 010. The Mineral Survey No. 1741, recorded as Plat Drawing Number 77-5221 (*Exhibit 101*) is included below for reference and has been rotated counterclockwise:



The easement claimed by the Plaintiffs across Alpha Lode does not appear on Plat No. 77-5221. This fact is admitted by the Plaintiffs. TT 23:17-24:14. Instead, what is clearly shown on Mineral Survey No 1741/Plat No. 77-5221 (SR 298, *Exhibit 101*) is what is now referred to as Starview Lane. This trail was at one time also referred to as the Old Wagon Road. TT 20:21-21:10. This is a trail that comes off of what is known as Pahkamaa Road and crosses Union and Emma Lode and proceeds to Emma Fraction. TT 41:18-42:6; see also, TT 24:21-24. Emma Lode was part of the single “Tract of land” sold pursuant to the Contract for Deed. SR 299, *Exhibit 102*. Jordans maintain that this is the easement that is referred to and created by the Contract for Deed, not the two track trail across Alpha Lode that doesn’t even appear on Plat No. 77-5221 which, according to the Contract for Deed language, shows “more fully” the easement in question.

Other landowners have interpreted the easement language of the Contract for Deed to refer to Starview Lane (Old Wagon Road). A “Road Easement Agreement” dated

November 26, 2013, that was prepared by Professor/Attorney Jonathan K. Van Patten, relocated that portion of the easement described in the Contract for Deed that runs across Emma Lode. SR 322, *Exhibit 108*, Appx 015. The Road Easement Agreement at ¶ 3 includes the *exact same language* taken from the Contract for Deed which the Plaintiffs claim establishes their easement across Alpha Lode. SR 322, *Exhibit 108*. The Road Easement Agreement is signed by Michael A. Harris and Suzanne K. Harris, who are the owners of Emma Lode, and Diane M. Van Patten, who was the owner of Emma Fraction.

The Road Easement Agreement expressly states that it “concerns property” located in “Mineral Survey 1741” which survey was “filed with the Lawrence County Register of Deeds on November 29, 1977 as Plat No. 77-5221.” SR 322, *Exhibit 108*, ¶ 1, Appx 015. According to the Road Easement Agreement, the Mineral Survey “shows a ‘Wagon Road’ running through the Joyce Property (Emma Lode, 15.907 acres) to Diane Van Patten’s property (Emma Fraction, 8.459 acres).” The Road Easement Agreement then expressly references the Contract for Deed dated December 7, 1977. SR 322, *Exhibit 108*, ¶ 2. The Road Easement Agreement describes the easement that is being relocated by referring to and quoting *the exact same provision* of the Contract for Deed relied upon by the Plaintiffs to claim an easement across Alpha Lode:

EASEMENT FOR PRIVATE ROAD:

Seller hereby reserves a thirty foot (30’) easement, over and across the property being sold herein, as and for a private road as said road presently exists across said property and as more fully shown on the Plat recorded in the Register of Deeds office at Lawrence County, South Dakota, which Plat was filed the 29th day of November, 1977, Plat No. 77-5221, which road is for ingress and egress purposes for other property presently owned by the Seller, more specifically described as Alden Fraction No. 2, Alden Fraction No. 3, Superior No. 4 and Nora Lodes, located in Mineral Survey #1741 in Section Thirty-four (S34),

Township Four North (T4N), Range Three East (R3E), Black Hills Meridian, Lawrence County, South Dakota. *It is specifically agreed by the parties hereto, that this easement shall be for the benefit of and shall run to the Seller and all of his heirs, assigns or representatives, and as a covenant running with the land.*

SR 322, *Exhibit 108*, ¶ 3 (emphasis in original), Appx 016. Compare with *Exhibit 102* at pg. 3, Appx 12.

The Road Easement Agreement then states at ¶ 5: “The parties wish to relocate the road easement to a location acceptable to the Grantee and the Buyers and to memorialize the relocation of this easement through the recording of this document.” SR 322, *Exhibit 108*, ¶ 5. The Road Easement Agreement even includes an attached survey showing the relocation of the road easement across Emma Lode (i.e. Emma M.S. 1741) reflecting how it will run along the boundary of Emma Lode and Alpha Lode to Emma Fraction (i.e. Emma Fraction M.S. 1741). SR 322, *Exhibit 108* at pg. 5. The Road Easement Agreement refers to and uses the exact same language from the Contract for Deed to describe the easement. It does not show or reference an easement across Alpha Lode.

Jimmy Jordan and Stephanie Jordan purchased Alpha Lode on or about June 21, 2013. *Exhibit 105*, TT 40:10-15. The property was purchased on a contract for deed with the Warranty Deed being recorded after the contract was paid on or about December 1, 2016. SR 306, *Exhibit 105*. The Jordans acknowledge that there was a two track trail across Alpha Lode at the time of the purchase. TT 57. Jimmy Jordan testified that the previous owner, Mike Joyce told him that Doug Hanson would occasionally use the trail to access his property to take off trees. TT 42:23-25; 43:1-7.

At all times since the Jordans have owned Alpha Lode, there was a boundary

fence that ran over and across the two tract purporting to be the Plaintiffs' alleged easement. TT 43:16-23. According to Doug Hanson, the fence was put in by a prior owner, Mike Joyce. TT 21:22-25; 22:1, see also TT 19:16-21; 20:13-20. Although Doug Hanson maintains that at one time there was a gate, Jimmy Jordan testified that there never was a gate during his ownership of the property. TT 43:16-23. The same fence runs across Jordans' driveway, where there is a gate. The distance between the driveway to the two track/alleged easement is approximately 35' to 45'. TT 43:24 – 44:2. Jimmy Jordan testified that Doug Hanson, when he would use the two track to access his property to remove trees, would ask for permission. TT 43:8-15; 62:16-24. According to Doug Hanson, he used the two track since 2000 approximately three to four times over the years. TT 15:25; 16:1-8. Doug Hanson's use was two to three years apart depending upon how the pine beetles were. *Id.*

When Hansons claimed to have an easement across Alpha Lode, Jordans challenged this and requested proof. See, TT 63:2-5. Hansons did not provide any of the documents relied upon now to establish the purported easement, such as the 1977 Contract for Deed. Instead, when Jordans questioned Hansons, Doug Hanson showed him an unrecorded survey showing a 66' wide easement over and across Alpha Lode. TT 63:2-12; 68:1-24. The Plaintiffs are not claiming a 66' wide access easement across Alpha Lode, and there are absolutely no documents that have been produced purporting to create such an easement in any event. TT 63:11-13.

The Trial Court granted Plaintiffs' Motion for Partial Summary Judgment concluding that an easement across Alpha Lode was created by the Contract for Deed and that the Jordans had constructive knowledge of this easement. The Trial Court entered an

Order granting partial summary judgment despite the fact that: 1) the Contract for Deed admittedly was not recorded with the Lawrence County Register of Deeds Office; 2) the easement Plaintiffs claim across Alpha Lode *does not exist* on Mineral Survey No. 1741, Plat No. 77-521; 3) Starview Lane is clearly shown on Plat No. 77-521; and 4) Starview Lane runs across Emma Lode which was part of the single “tract of land” sold by way of the Contract for Deed.

The Trial Court erred when it granted partial summary judgment in favor of the Plaintiffs, concluding that there were no genuine issues of material as the existence and location of the easement. Moreover, the Trial Court erred when it ruled that the easement runs over and across Alpha Lode, as it clearly does not based upon the documentary evidence produced and as evidenced by the public record at the Lawrence County Register of Deeds Office. The Trial Court’s decision should be reversed.

#### **STANDARD OF REVIEW – DE NOVO**

The interpretation of a contract is a question of law for the Court. It is reviewed *de novo*. *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 17, 736 N.W.2d 824, 831. There is no presumption in favor of the trial court’s determination. *Id.*; quoting *Ziegler Furniture and Funeral Home, Inc. v. Cicmanec*, 2006 S.D. 6, ¶ 14, 709 N.W.2d 350, 354.

Additionally, on review of a summary judgment ruling, this Supreme Court gives no difference to the lower court’s decision and reviews *de novo*. *Nelson v. Garber*, 2021 S.D. 32, ¶ 17, 960 N.W.2d 340, 345. The Supreme Court will determine “whether a genuine issue of material fact exists and whether the law was correctly applied.” *Bergin v. Bistodeau*, 2002 S.D. 53, ¶ 11, 645 N.W.2d 252, 254 (citations omitted). The evidence must be viewed “most favorably to the nonmoving party.” *Tonsager v. Laqua*, 2008 S.D.

54, ¶ 4, 753 N.W.2d 394, 396 n.1 (internal citations omitted). Then, without weighing the evidence, this Court decides whether the evidence supports the motion. *Center of Life Church v. Nelson*, 2018 S.D. 42, ¶ 18, 913 N.W.2d 105, 110 (citations omitted). This Court then determines “whether a genuine issue of material fact exists and whether the law was correctly applied.” *Id.* (quoting *Jacobson*, 2008 S.D. 19, ¶ 24, 746 N.W.2d at 745). On review of a circuit court’s grant of summary judgment, this Court “will affirm only if all legal questions have been decided correctly.” *Advanced Recycling Sys., L.L.C. v. Se. Prop., Ltd.*, 2010 S.D. 70, ¶ 10, 787 N.W.2d 778, 783 (quoting *Gehrts v. Batteen*, 2001 S.D. 10, ¶ 4, 620 N.W.2d 775, 777).

## ARGUMENT

*I. The Trial Court erred in concluding that the Contract for Deed refers to an easement across Alpha Lode.*

An easement is a property interest in land owned by or in the possession of another, which entitles the easement owner “to limited use or enjoyment of the land in which the interest exists.” *Picardi v. Zimmiond*, 2004 S.D. 125, ¶ 16, 689 N.W.2d 886, 890. An easement may be created by a written grant, by plat or by force of law. *Id.* The extent of an easement by grant, as alleged by the Plaintiffs in this instance, can be ascertained by the “words clearly expressed, or by just and sound construction” of the easement document. *Id.* at ¶ 16; see also *Vander Heide*, 2007 S.D. 69 at ¶ 41. The Court will look to and review the “language used by giving terms their plain and ordinary meaning, and utilize no additional interpretation in the absence of ambiguity.” *Picardi*, 2005 S.D. 24 at ¶ 20. If the terms of the agreement are specific, they are “decisive of the limits of the easement.” *Id.*, citing *Wessington Springs Education Association v. Wessington Springs School District 36-2*, 467 N.W.2d 101, 104 (S.D. 1991).

In the case of *Travis v. Madden*, 493 N.W.2d 171 (S.D. 1992), this Court addressed the terms of an easement for ingress and egress “over and upon the roadway presently existing . . . .” The Court in *Travis* held that the language of the easement was controlling and meant that the easement was limited to the use of the roadway as it presently existed. *Id.* at ¶ 22, see also *Cleveland v. Tinaglia*, 1998 S.D. 91, 582 N.W.2d 720 (interpreting the controlling language of an easement grant “through and over existing trails and roadways.”) In this case, the Contract for Deed, which contains the grant of the easement, states that it is over a roadway presently existing as more fully shown on the Plat No. 77-2551. SR 299, *Exhibit 102*. The only roadway shown on Plat No. 77-2551, which goes over and across Emma Lode, is Starview Lane.

The easement language of the Contract for Deed does not state that the easement runs across Alpha Lode. Rather, the easement language states that the easement runs over and across a single “[t]ract of land” (“the property”) that *includes* Alpha Lode. This single “[t]ract of land” also includes Emma Lode. Plaintiffs claim that their easement is a two-track trail existing across Alpha Lode. Plaintiffs readily admit, however, that even though the Contract for Deed language upon which they rely specifically states that the easement is described as a road that presently exists “as more fully shown on the Plat recorded in the Register of Deeds Office at Lawrence County, South Dakota, which Plat was filed on the 27th day of November, 1977, Plat No. 77-5221” the two-track trail that they claim is the easement created by the Contract for Deed is not shown on Plat No. 77-5221 (Mineral Survey 1741). TT 23:17-24:14. In other words, the alleged easement across Alpha Lode as claimed by the Plaintiffs cannot be located by referring to or

relying upon the express language of the Contract for Deed which the Plaintiffs claim establishes the easement in the first place. TT 63:14-64:8.

Instead, what is clearly and unequivocally shown on Plat No. 77-5221 (Mineral Survey 1741) is an existing road now known as “Starview Lane.” TT 24:21-24. Starview Lane has also been referred to by its previous designation as the Old Wagon Road. Starview Lane (Old Wagon Road) existed on December 7, 1977, the date of the Contract for Deed. Starview Lane is clearly depicted on Plat No. 77-5221 (Mineral Survey 1741) which, according to the Contract for Deed, is the document that shows the easement as said road “presently exists.” Starview Lane runs over and across Emma Lode, which was included in “the property” sold by way of the Contract for Deed. Starview Lane has historically continued past Emma Fraction and, according to Jimmy Jordan, the property owned by the Plaintiffs can be accessed by using Starview Lane. TT 41:22-42:6, See, *Exhibit 113*.

Additionally, the most recent plat completed by a surveyor and recorded at the Lawrence County Register of Deeds, Doc #2023-369, does not show the easement across Alpha Lode as claimed by the Plaintiffs. SR 328, *Exhibit 110*. It does, however, show Starview Lane and the relocation of Starview Lane (Old Wagon Road) as it runs over and across Emma Lode. SR 328, *Exhibit 110*. Plaintiffs have platted access to their lots off Pahkamaa Road. TT 56:1-25. The easement referred to and described in the Contract for Deed is Starview Lane, and not the existing two-track trail running across Alpha Lode.

II. *The Trial Court erred in granting partial summary judgment based on Jordans' constructive notice of the easement claimed to be across Alpha Lode.*

Even if the Trial Court was correct in interpreting the Contract for Deed language to conclude that it creates an easement across Alpha Lode, and assuming the Trial Court

was correct in concluding that the easement was not relocated, the Trial Court nonetheless erred in granting partial summary judgment based on the Jordans alleged “constructive notice.” As stated, the Contract for Deed was never recorded in either short or long form. Moreover, the Plat Number 77-5221 does not show an easement across Alpha Lode. The Trial Court concluded in the partial summary judgment stage that, based upon the existence of the two track trail across Alpha Lode, that the Jordans had constructive notice of the alleged easement.

This Court has held that whether constructive notice exists is generally a question of fact. *West Central Electric Cooperative, Inc. v. James River Broadcasting*, 393 N.W.2d 83 (S.D. 1986). As the Court noted in *West Central Electric Cooperative*, actual notice consists in express information. *Id.* at 86; citing SDCL § 17-1-2. “Constructive notice is notice imputed by the law to a person not having actual notice.” SDCL § 17-1-3. SDCL § 17-1-4 states that “Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.”

Jimmy Jordan acknowledged the existence of the two track across Alpha Lode at the time of the purchase. He testified that he inquired of the prior owner and was informed that Hansons used the trail occasionally to remove trees from his property with permission. TT 42:23 – 43:7. There was a fence without a gate across the two track. TT 43:16-23; 21:22-23. Moreover, had Jordans been able to locate the Contract for Deed it clearly references the easement as “more fully describe on Plat No. 77-5221, which *does not* show an easement across Alpha Lode but, rather, shows Starview Lane.

These facts are distinguishable from the cases relied upon by Plaintiffs. In *Townsend v. Yankton Super 8 Motel, Inc.*, 371 N.W.2d 162 (S.D. 1985), for example, a land purchaser was charged with notice of an easement relating to parking spaces. In *Townsend*, clearly the property/easement for parking was in continual use at the time of the purchase, such use was open and obvious, and reference to the plat would have led the purchaser to conclude that the adjacent restaurant had some easement rights to the parking lot. *Townsend* 371 N.W.2d at ¶ 165-166. In *Wiege v. Knock*, 293 N.W.2d 146 (S.D. 1980), the Court concluded that the purchaser had constructive notice of a well and the adjoining landowner's easement rights to that well. Again, based upon the facts of that case, it was clear, open and obvious with the continual use of the well that the adjoining landowner had some easement rights in existence. *Wiege* 293 N.W.2d at ¶ 148-149. The Jordans knowledge of a two track trail with a fence across it with no gate that was occasionally used with permission is not, under these circumstances, sufficient to constitute "constructive notice."

Here, the circumstances surrounding the use of the two track were not sufficient to indicate the presence of an actual easement. According to Jimmy Jordan, he inquired of the prior owner who told him that the track was used by Hansons occasionally with permission. Doug Hanson, himself acknowledged that the use was occasional from the year 2000 on being approximately every couple of years. There was a fence across the two track. Additionally, when asked to provide proof of the easement, which was admittedly after the purchase, Doug Hanson was only able to provide a unrecorded survey purporting to show a 66' wide access easement – which every party in this case acknowledges does not exist.

Notice of an easement is generally imputed to a purchaser where the easement is of such a character that the purchaser acting with ordinary diligence would know or learn of its existence. Thus, where the easement is open and visible, the purchaser will be charged with notice even though the easement was created by a grant which was not then recorded. The grantee is bound where a reasonably careful inspection of the premises would disclose the existence of the easement or where the grantee has knowledge of facts sufficient to put a prudent buyer on inquiry.

*Tan Corp. v. Johnson*, 1996 S.D. 128, ¶13, 556 N.W.2d 613, 616.

*Tan Corp.* involved the existence of an easement over an improved driveway across the defendant's property. The Court granted summary judgment concluding constructive notice existed on the part of Defendant Johnson. In affirming that decision, this Court observed "*the presence of a curb cut and improved driveway did not, in and of itself, put Johnson on notice of an easement between the lots.*" *Id.* at ¶ 16 (emphasis added). Rather, the Court concluded that it was the use of the common driveway that should have put Johnson on notice of the existing easement. "A prudent purchaser should have made inquiry of the use of the common driveway after observing traffic pass through the driveway and after having been made aware of the existence of an easement on the western boundary." *Id.* at ¶ 16. The Court held:

In light of Johnson's knowledge of the curb cut and improved driveway, the open and visible manner in which he observed the flow of traffic through the driveway prior to purchase and his acquiescence in an easement to share a driveway with the adjoining lot to the west for the purpose of accommodating traffic flow, we hold SDCL 17-1-4 charges Johnson with constructive notice . . .

*Id.* at ¶ 16.

Similarly, in this case, the existence of a two track, without more, is not sufficient to impute constructive notice to the Jordans regarding the existence of the easement purported to be created by the unrecorded Contract for Deed. To that end, the Trial Court

erred in granting partial summary judgment. This error continued on throughout the rest of the case and impacted the Court's ruling after a trial was held to determine the scope and precise location of the easement. (See e.g. SR273, *Findings of Fact and Conclusions of Law*, consistently referring to the partial summary judgment ruling and the "law of the case.")

### **CONCLUSION**

Appellants respectfully request that the Order Granting Plaintiffs' Motion for Partial Summary Judgment and final Judgment be reversed.

### **REQUEST FOR ORAL ARGUMENT**

Appellants respectfully request oral argument.

Dated this 30th day of September, 2025.

Respectfully submitted,

/s/ Michael V. Wheeler

Michael V. Wheeler

DEMERSSEMAN JENSEN

TELLINGHUISEN & HUFFMAN, LLP

*Attorneys for Appellants*

516 5<sup>th</sup> Street; PO Box 1820

Rapid City, SD 57709

(605) 342-2814

**CERTIFICATE OF SERVICE**

Michael V. Wheeler of DeMersseman Jensen Tellinghuisen & Huffman, LLP  
hereby certifies that on the 30th day of September, 2025, he served an electronic copy of  
the foregoing Appellants' Brief in the above-captioned action on the following:

Andrew T. Fick  
Fuller, Williamson, Nelsen & Preheim, LLP  
7521 South Louise Avenue  
Sioux Falls, SD 57108  
(605) 333-0003  
*Attorneys for Plaintiffs/Appellees*

/s/ Michael V. Wheeler  
Michael V. Wheeler  
DEMERSSEMAN JENSEN  
TELLINGHUISEN & HUFFMAN, LLP  
*Attorneys for Appellants*  
516 5<sup>th</sup> Street; PO Box 1820  
Rapid City, SD 57709  
(605) 342-2814

## CERTIFICATE OF COMPLIANCE

This brief is submitted under SDCL § 15-26A-66(b). I certify that the brief complies with the type volume limitation. In reliance upon the document properties provided by Microsoft Word, in which this brief was prepared, the brief contains 4,856 words and 28,683 characters, excluding the table of contents, table of cases, preliminary statement, jurisdictional statement, statement of legal issues, any addendum materials, and any certificates of counsel.

DATED this 30th day of September , 2025.

/s/ Michael V. Wheeler

Michael V. Wheeler

DEMERSSEMAN JENSEN

TELLINGHUISEN & HUFFMAN, LLP

*Attorneys for Appellants*

516 5<sup>th</sup> Street, PO Box 1820

Rapid City, SD 57709

(605) 342-2814

**CERTIFICATE OF PROOF OF FILING**

The undersigned hereby certifies that pursuant to SDCL § 15-26C-3 he served an electronic copy via eFileSD, and the original of the above and foregoing Appellants' Brief on the Clerk of the Supreme Court by mailing the same this date to the following address:

Clerk of the Supreme Court  
State Capital Building  
500 E. Capitol Avenue  
Pierre, SD 57501

DATED this 30th day of September, 2025.

/s/ Michael V. Wheeler  
Michael V. Wheeler  
DEMERSSEMAN JENSEN  
TELLINGHUISEN & HUFFMAN, LLP  
*Attorneys for Appellants*  
516 5<sup>th</sup> Street, PO Box 1820  
Rapid City, SD 57709  
(605) 342-2814

**APPELLANTS' APPENDIX**

<b>PLEADING</b>	<b>PAGES(S)</b>
Judgment	001
Findings of Fact and Conclusions of Law	002-007
Order granting plaintiffs' motion for partial summary judgment	008
Exhibit 101 – Plat No 77-5221 Mineral Survey No. 1741 (November 29, 1977)	009
Exhibit 102 – Contract for Deed – Harold P. Knutsen, Marlin Jensen, Dora Mae Jensen, Jerry D. Gravatt, Vickie S. Gravatt (December 7/8, 1977)	010-014
Exhibit 108 – Road Easement Agreement Doc #2013-05927	015-019

STATE OF SOUTH DAKOTA )  
 )  
:SS  
COUNTY OF LAWRENCE )

IN CIRCUIT COURT  
  
FOURTH JUDICIAL CIRCUIT

<p>DOUGLAS L. HANSON, KIRSTEN K. HANSON, JOAN A. SCHULTZE, and JAMES D. SCHULTZE,</p> <p>Plaintiffs,</p> <p>v.</p> <p>JIMMY D. JORDAN and STEPHANIE L. JORDAN,</p> <p>Defendants.</p>	<p>40 CIV. 23-000041</p> <p>JUDGMENT</p>
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A court trial in the above-captioned action was held on February 4, 2025, at the Lawrence County Courthouse in Deadwood, South Dakota, before the Honorable Michelle K. Comer. Plaintiffs Douglas L. Hanson and James D. Schultze were present, and Plaintiffs Kirsten K. Hanson and Joan A. Schultze appeared through counsel. Plaintiffs were represented by counsel Andrew Fick of Fuller, Williamson, Nelsen & Preheim, LLP. Defendants Jimmy D. Jordan and Stephanie L. Jordan were present and represented by their attorney Michael Wheeler of DeMersseman, Jensen, Tellinghuisen & Huffman, LLP.

The Court heard the testimony of the parties, received the evidence presented, heard the arguments of counsel, and entered Findings of Fact and Conclusions of Law dated March 3, 2025, which are incorporated herein by reference. For these reasons, the other pleadings on file, and for good cause appearing, it is

ORDERED that judgment is granted to Plaintiffs against Defendants as requested in Plaintiffs' Complaint filed on February 22, 2023, and as outlined in the Court's Conclusions of Law filed on March 3, 2025.

5/28/2025 7:38:43 AM

BY THE COURT:



\_\_\_\_\_  
The Honorable Michelle K. Comer  
Circuit Court Judge

Attest: CAROL LATUSECK, CLERK  
Nicolussi, Bree  
Deputy



001



2. Plaintiffs Douglas K. Hanson, Kirsten K. Hanson, Joan A. Schultze, and James D. Schultze (collectively “Plaintiffs”) claim to hold an easement over Alpha Lode.

3. On July 2, 2024, the Court held a hearing on Plaintiffs’ Motion for Partial Summary Judgment.

4. Plaintiffs sought an Order from the Court declaring that Plaintiffs held an easement across Alpha Lode.

5. Prior to the July 2, 2024 hearing, the parties provided the Court written submissions including briefs, affidavits, and exhibits.

6. At the July 2, 2024 hearing, after reviewing the parties’ submissions and hearing the arguments of counsel, the Court granted the Plaintiffs’ Motion for Partial Summary Judgment and ruled that Plaintiffs held an easement across Alpha Lode.

7. The Court reserved ruling on the easement’s scope and precise location.

8. On July 12, 2024, the Court filed an Order granting Plaintiffs’ Motion for Partial Summary Judgment.

9. On February 4, 2025, a Court trial was held on the remaining issues in the litigation.

10. On December 7, 1977, Harold P. Knutsen (“Harold”) entered into a Contract for Deed with L. Marlin Jensen, Dora Mae Jensen, Jerry D. Gravatt and Vickie S. Gravatt (collectively “Jensens and Gravatts”) for the sale of Emma Lode and Alpha Lode (“1977 Contract for Deed”).

11. The 1977 Contract for Deed reserved to Harold, the seller, a thirty foot easement “over and across the property being sold herein, as and for a private road as said road presently exists across said property,” and “as more fully shown on the Plat[,]” which was recorded with the Lawrence County Register of Deeds as Plat No. 77-5221 and dated November 29, 1977.

12. The property being sold in the 1977 Contract for Deed was Alpha Lode and Emma Lode.

13. Plat No. 77-5221 does not depict the 1977 Contract for Deed’s reference to the easement over Alpha Lode.

14. The 1977 Contract for Deed was not recorded with the Lawrence County Register of Deeds.

15. A December 7, 1977 Warranty Deed (“1977 Warranty Deed”) between Harold and the Jensens and Gravatts references the “easement by private road” that was described in the 1977 Contract for Deed.

16. The 1977 Warranty Deed was filed with the Lawrence County Register of Deeds as Doc. No. 88-168.

17. A November 12, 1997 Warranty Deed (“1997 Warranty Deed”) between Richard M. McKee and Jody Lyn McKee (“the McKees”) and Paul D. Love and Vickie A. Love (“the Loves”) for the sale of Alpha Lode was also filed with the Lawrence County Register of Deeds as Doc. No. 98-4194.

18. The 1997 Warranty Deed refers to the private road easement in the 1977 Warranty Deed.

19. On July 1, 2013, the Jordans entered into a contract for deed with the Loves to purchase Alpha Lode.

20. When the Jordans purchased title insurance on January 18, 2017, the title insurance noted the "Easement for private road" as reserved in the 1977 Warranty Deed.

21. At the time the Jordans purchased Alpha Lode, Plaintiff Jimmy Jordan knew that there was a path across Alpha Lode and that the path was readily visible.

22. At the time the Jordans purchased Alpha Lode, Plaintiff Jimmy Jordan knew that people used the visible path across Alpha Lode.

23. On November 26, 2013, Michael J. Joyce, Michael A. Harris, Suzanne K. Harris, and Diane M. Van Patten signed a Road Easement Agreement ("2013 Road Easement Agreement").

24. The Jordans allege that the 2013 Road Easement Agreement impacts the easement over Alpha Lode.

25. At the time the 2013 Road Easement Agreement was signed, none of the parties to the 2013 Road Easement Agreement owned land impacted by the easement over Alpha Lode.

26. The parties all agree that a two-track path crosses Alpha Lode.

27. The parties agree to the two-track path's location as shown with the markings on Exhibit 1, which was admitted into evidence at the February 4, 2025 Court trial and is hereby incorporated by reference.

Based upon the foregoing FINDINGS OF FACT, the Court makes the following CONCLUSIONS OF LAW.

**CONCLUSIONS OF LAW**

1. This Court has jurisdiction over the subject matter and parties to this action.
2. Pursuant to this Court's previous rulings and the law of the case doctrine, the 1977 Contract for Deed created an easement over Alpha Lode.
3. Pursuant to this Court's previous rulings and the law of the case doctrine, the Jordans had constructive notice of this easement due to the 1977 Warranty Deed's reference to the easement.
4. Pursuant to this Court's previous rulings and the law of the case doctrine, the 1977 Warranty Deed was within Alpha Lode's chain-of-title as shown in the Jordan's 2017 title insurance policy.
5. Pursuant to this Court's previous rulings and the law of the case doctrine, the Jordans also had constructive notice of the easement because the easement was clearly visible to anyone who observed Alpha Lode.
6. Thus, pursuant to this Court's previous rulings and the law of the case doctrine, Plaintiffs hold an easement over Alpha Lode to access Plaintiffs' property, namely Superior No. 4 and Alden Fraction No. 2.
7. Plaintiffs' easement over Alpha Lode is 30 feet wide.
8. Plaintiffs' easement over Alpha Lode follows the existing two-track path over Alpha Lode.
9. The two-track path is demarcated on Exhibit 1, which was admitted into evidence at the February 4, 2025 Court trial and is incorporated by reference.

10. The 2013 Road Easement Agreement has no bearing on the easement across Alpha Lode.

11. At the time the 2013 Road Easement Agreement was signed, none of the parties to the Road Easement Agreement held ownership of the dominant tenements to the easement over Alpha Lode.

12. Accordingly, none of the parties to the 2013 Road Easement Agreement had the ability to move the easement over Alpha Lode.

LET JUDGMENT BE ENTERED ACCORDINGLY.

3/3/2025 2:58:28 PM

BY THE COURT:



\_\_\_\_\_  
The Honorable Michelle K. Comer  
Circuit Court Judge

Attest: CAROL LATUSECK, CLERK  
Nicolussi, Bree  
/Deputy



STATE OF SOUTH DAKOTA )  
 )  
:SS  
COUNTY OF LAWRENCE )

IN CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT

DOUGLAS L. HANSON, KIRSTEN K.  
HANSON, JOAN A. SCHULTZE, and  
JAMES D. SCHULTZE,

Plaintiffs,

v.

JIMMY D. JORDAN and STEPHANIE L.  
JORDAN,

Defendants.

40 CIV. 23-000041

ORDER

A hearing on Plaintiffs' Motion for Partial Summary Judgment was held on July 2, 2024, at the Lawrence County Courthouse in Deadwood, South Dakota, the Honorable Michelle K. Comer presiding. Andrew Fick with Fuller, Williamson, Nelsen & Preheim, LLP, appeared on behalf of Plaintiffs, and Michael Wheeler with DeMersseman, Jensen, Tellinghuisen & Huffman, LLP, appeared on behalf of Defendants.

The Court having reviewed the filings and submissions, having heard arguments of counsel, and for good cause appearing, it is

ORDERED that Plaintiffs' Motion for Partial Summary Judgment is GRANTED. It is further

ORDERED that the remaining aspects of Plaintiffs' claim regarding the underlying easement's scope and placement shall be set for trial at a later date.

BY THE COURT:

7/9/2024 4:15:14 PM

*Michelle Comer*

The Honorable Michelle K. Comer  
Circuit Court Judge

Attest: CAROL LATUSECK, CLERK  
Lewis, Bree  
Deputy

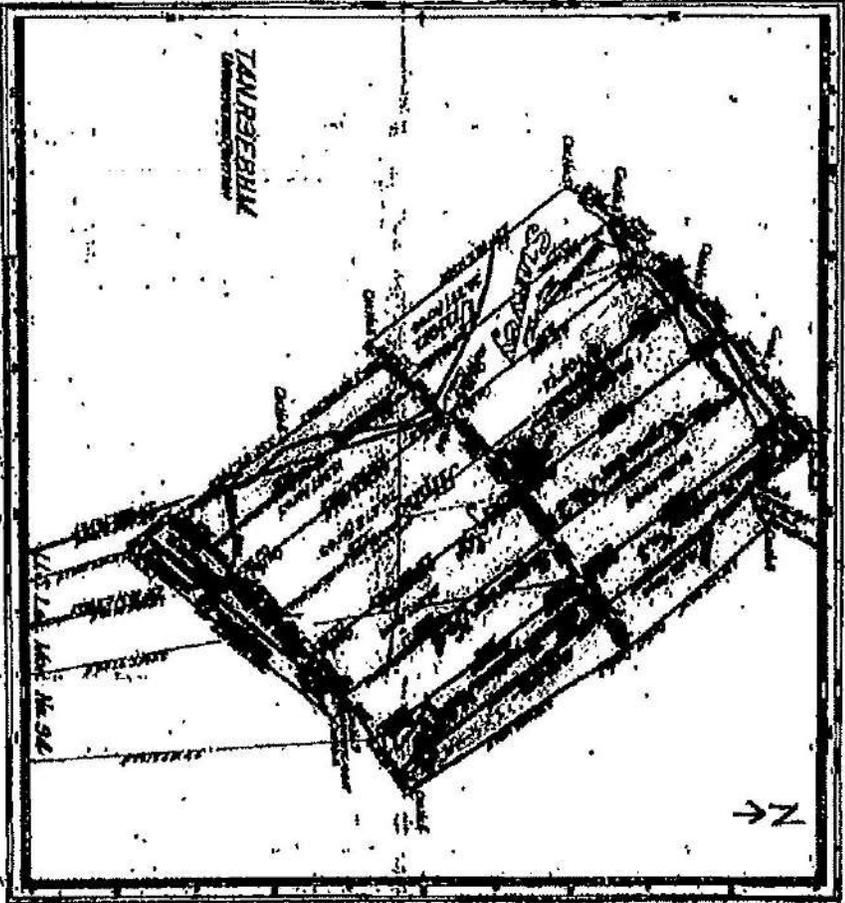
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DRAWING NUMBER  
77-5021

APPROVED  
DATE  
BY



PIANT  
S. B. BAKER  
S. B. BAKER  
S. B. BAKER

EXHIBIT  
101

CONTRACT FOR DEED

PARTIES:

The parties to this agreement are HAROLD F. KNUTSEN, a single person of Rapid City, South Dakota, hereinafter referred to as "Seller" and L. MARLIN JENSEN and DORA MAE JENSEN, husband and wife, and JERRY D. GRAVATT and VICKIE S. GRAVATT, husband and wife, all as joint tenants of Pennington County, South Dakota, hereinafter referred to as "Buyers."

PURPOSE:

The purpose of this contract is to set forth the terms and conditions and payments for the sale of the following described real estate, wherein the Seller hereby covenants and agrees to convey and sell to the Buyers in fee simple, clear of all encumbrances to-wit:

Tract of land known as Esma Loda and Alpha Loda in Mineral Survey #1741, consisting of 36.57 acres more or less, located in Section Thirty-four (34), Township Four North (T4N), Range Three East (R3E), Black Hills Meridian, Lawrence County, South Dakota.

PURCHASE PRICE AND MANNER OF PAYMENT:

The total purchase price for the property described herein is the sum of Nine Hundred Dollars (\$900) per acre or a total sum of Thirty-two Thousand Seven Hundred Thirty-three Dollars (\$32,733) payable as follows:

(a) A down payment in the sum of One Thousand Two Hundred Dollars (\$1,200) is hereby acknowledged by the Seller.

(b) Buyers agree to pay an additional sum of Two Thousand Seventy-three Dollars (\$2,073) at the time of the execution of this contract so that the total down payment on the purchase price is the sum of Three Thousand Two Hundred Seventy-three Dollars (\$3,273).

(c) Buyers agree to pay the remaining balance in the sum of Twenty-nine Thousand Four Hundred Sixty Dollars (\$29,460) plus interest at seven percent (7%) per annum on



the declining balance in the following manner: (1) the sum of Two Thousand Nine Hundred Forty-six Dollars (\$2,946) principal plus seven percent (7%) interest on the unpaid balance, interest commencing on December 7, 1977, will be due and owing on December 7, 1978. (2) the sum of Two Thousand Nine Hundred Forty-six Dollars (\$2,946) on principal, plus interest on the unpaid balance, to be payable on the 7th day of December of each year thereafter until the full purchase price owed herein is paid in full, plus the interest.

It is further agreed that all payments provided for herein, shall be paid by the Buyer to the National Bank of South Dakota at Rapid City, South Dakota as the escrow agent and that said escrow agent shall hold the warranty deed until the purchase price plus interest is paid in full.

DATE OF POSSESSION:

It is agreed between the parties hereto, that the Buyers shall have possession of the property described herein as of December 7, 1977.

TAXES AND ESCROW AGREEMENT:

Seller agrees that the real estate taxes owing on said property for 1977 will be paid by Seller at the time same are due and before they become delinquent. It is further agreed, that all other real estate taxes and assessments and charges on said property will be the obligation of and will be paid by Buyers.

Upon the execution of this agreement, the parties agree to establish an escrow account at the National Bank of South Dakota, Rapid City, South Dakota, the initial expenses of which shall be split equally between Seller and Buyers. All subsequent charges on the escrow account shall be paid for by the Buyers. The Buyers agree to make all the annual payments called for hereunder to the National Bank of South Dakota, and it is understood by the parties, that the escrow agent shall hold the warranty deed until all payments are paid in full.

Upon execution of this agreement, the Seller agrees to furnish to Buyers a title insurance policy, showing fee and merchantable title, subject only to easements for road purposes; and to execute a warranty deed and deliver said deed to the National Bank of South Dakota as escrow agent. This title is subject to easements and right-of-ways of record, declarations of restrictions and other covenants which run with the land as shown on the title insurance policy or on any plats filed on said property:

EASEMENT FOR PRIVATE ROAD:

Seller hereby reserves a thirty foot (30') easement, over and across the property being sold herein, as and for a private road as said road presently exists across said property and as more fully shown on the Plat recorded in the Register of Deeds Office at Lawrence County, South Dakota, which Plat was filed the 29<sup>th</sup> day of November, 1977, Plat No. 22-5211, which road is for ingress and egress purposes for other property presently owned by the Seller, more specifically described as Alden Fraction No. 2, Alden Fraction No. 3, Superior No. 4, and Nora Lodes, located in Mineral Survey #1741 in Section Thirty-four (34), Township Four North (T4N), Range Three East (R3E), Black Hills Meridian, Lawrence County, South Dakota. It is specifically agreed by the parties hereto, that this easement shall be for the benefit of and shall run to the Seller and all of his heirs, assigns or representatives, and as a covenant running with the land.

DEFAULT PROVISIONS:

In the event that the Buyers default in the performance of any of the terms and conditions of this agreement, including payment, the parties agree that the Seller shall have the option to declare all deferred balances due and payable by giving thirty days (30) written notice to the Buyers of the nature of such default. In the event the Buyers fail to cure such default within said thirty day (30) period, then this contract shall be considered terminated and canceled. It is

mutually understood and agreed by the parties hereto, that thirty days (30) is a reasonable and sufficient notice to be given to the buyers, in case of the failure to perform on their part, and shall be sufficient to cancel all obligations on the part of the seller and fully reinvest the seller with all right, title, and interest in and to said property, and the buyers shall forfeit all payments made by them on this contract, and all of their right, title, and interest in all buildings, fences or other improvements whatsoever, and such payments and improvements shall be retained by the seller in full satisfaction and in liquidation of damages sustained by the seller by reason of the default and seller shall have the right to re-enter and take possession of the premises.

This agreement shall be binding upon and inure to the benefit of the representatives, successors and assigns of the seller and buyers.

IN WITNESS WHEREOF the parties hereto set their hand and seal this 7<sup>th</sup> day of December, 1977.

SELLER:

Harold P. Knutsen  
Harold P. Knutsen

BUYERS:

L. Martin Jensen  
L. Martin Jensen

Dorcas Beale Jensen  
Dorcas Beale Jensen

Jerry D. Gravatt  
Jerry D. Gravatt

Vickie B. Gravatt  
Vickie B. Gravatt

State of South Dakota )  
County of: Pennington ) ss.

On this 6 day of December, 1977, before me personally appeared Harold P. Knutsen, known to me to be the person whose name is subscribed to the within instrument and acknowledged

that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*Robert C. Lawrence*  
Notary Public

(SEAL)

MY COMMISSION EXPIRES AUGUST 17, 1984

State of South Dakota }  
County of Lawrence } ss.

On this 2 day of December, 1977, before me personally appeared L. Marlin Jensen, Dora Mae Jensen, Jerry D. Gravatt, and Vickie S. Gravatt, known to me to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*Robert C. Lawrence*  
Notary Public

(SEAL)

MY COMMISSION EXPIRES AUGUST 17, 1984

Prepared by:  
Jonathan K. Van Patten  
12203 Nemo Road  
Nemo, SD 57759  
(605) 578-2125



Doc #: 2013-05927  
Date: 12/04/2013 16:14:00  
Sheree L. Green  
Register of Deeds  
Lawrence Co. - Fee \$30.00

LTC 125654 ROAD BASEMENT AGREEMENT

This ROAD BASEMENT AGREEMENT is made on November 26<sup>TH</sup>, 2013, between MICHAEL J. JOYCE of 21670 Starview Lane, Deadwood, SD 57732 ("Grantor"), MICHAEL A. HARRIS and SUZANNE K. HARRIS ("Buyers") of 11104 Ridge Road, Belle Fourche, SD 57717, and DIANE M. VAN PATTEN ("Seller"), of 12203 Nemo Road, Nemo, SD 57759.

WHEREAS,

1. This matters concerns property (in Section 34, Township 4 North, Range 3 East, Black Hills Meridian), which was partially surveyed in 1903. The surveyed portion related to Mineral Survey No. 1741. The Survey was filed with the Lawrence County Register of Deeds on November 29, 1977 as Plat No. 77-5221. It shows a "Wagon Road" running through the Joyce property (Emma Lode, 15.907 acres) to Diane Van Patten's property (Emma Fraction, 8.459 acres). This property was owned by Diane's uncle, Harold P. Knutsen,

2. On December 7, 1979, Harold P. Knutsen conveyed the Emma Lode and the Alpha Lode to Marlin and Dora Mae Jensen and Jerry and Vickie Gravatt. The purchase was on a contract for deed. For this transaction, the parties recorded a short-form contract for deed. In it, the document set forth the legal description of the property and added;

That, because of the lengthy nature of the aforementioned Contract for Deed, all Parties hereby agree to record a Short Form Contract for Deed rather than the full length Contract of (sic) Deed dated the 7<sup>th</sup> day of December, 1977, which contains all the terms and conditions of the transaction . . . .

That all the terms and conditions of the said Contract for Deed

Doc #: 2013-05927  
Page 1 of 5

015



entered into this 7<sup>th</sup> day of December, 1977, between the Parties hereto and that each of the said Parties has a true and correct copy of the Contract for Deed and that the said Contract for Deed is incorporated herein by reference thereto.

3. The full Contract for Deed provides, in pertinent part:

EASEMENT FOR PRIVATE ROAD

Seller hereby reserves a thirty foot (30') easement, over and across the property being sold herein, as and for a private road as said road presently exists across said property and as more fully shown on the Plat recorded in the Register of deeds office At Lawrence County, South Dakota, which Plat was filed the 29<sup>th</sup> day of November, 1977, Plat No. 77-5221, which road is for ingress and egress purposes for the property presently owned by the Seller, more specifically described as Alden Fraction No. 2, Alden Fraction No. 3, Superior No. 4 and Nora Lodes, located in Mineral Survey #1741 in Section Thirty-Four (S34), Township Four North (T4N), Range Three East (R3E), Black Hills Meridian, Lawrence County, South Dakota. *It is specifically agreed by the parties hereto, that this easement shall be for the benefit of and shall run to the Seller and all of his heirs, assigns or representatives, and as a covenant running with the land.*  
(Emphasis added).

4. When Michael Joyce acquired this property, he took subject to this existing and legally recorded road easement.

5. The parties hereto wish to relocate the road easement to a location acceptable to the Grantee and the Buyers and to memorialize the relocation of this easement through the recording of this document.

THEREFORE, the parties hereto agree as follows:

1. Michael Joyce, for good and valuable consideration, the receipt of which is hereby acknowledged, does grant and convey to Michael A. and Suzanne K. Harris, their successors and assigns, the right, privilege, and private 30 foot wide access and utility easement to enter upon the lands of the undersigned for the purpose of vehicular and pedestrian ingress and egress to the Emma Fraction M.S.1741, 8.459 acres. The location of said easement is described as follows:

The 963.07 foot long by 30 foot wide portion, lying alongside the north east border from the north most corner to the east most corner. Tract 1, a Subdivision of the Emma Lode M.S. 1741 located in Section 34, T4N, R3E, Lawrence County, South Dakota according to Plat Document #2008-2404. See attached "EXHIBIT A".

2. This grant shall be effective if and only if the pending sale between the Seller and the Buyers is completed and may only be recorded upon the close of escrow of said sale. If, for whatever reason, the sale between the Seller and the Buyers is not completed, this document shall be null and void and the easement shall remain as described in paragraphs 1 through 4 above.

Dated this 24<sup>TH</sup> day of November, 2013.

GRANTOR

SELLER

*Michael J. Joyce*  
Michael J. Joyce

*Diane M. Van Patten*  
Diane M. Van Patten

BUYERS

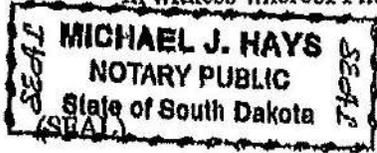
*Michael A. Harris*  
Michael A. Harris

*Suzanne K. Harris*  
Suzanne K. Harris

STATE OF SOUTH DAKOTA )  
  ) ss  
COUNTY OF LAWRENCE )

On this 24<sup>th</sup> day of November, 2013, before me, *Michael J. Hays*, the undersigned officer, personally appeared MICHAEL J. JOYCE, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I have hereunto set my hand and official seal.

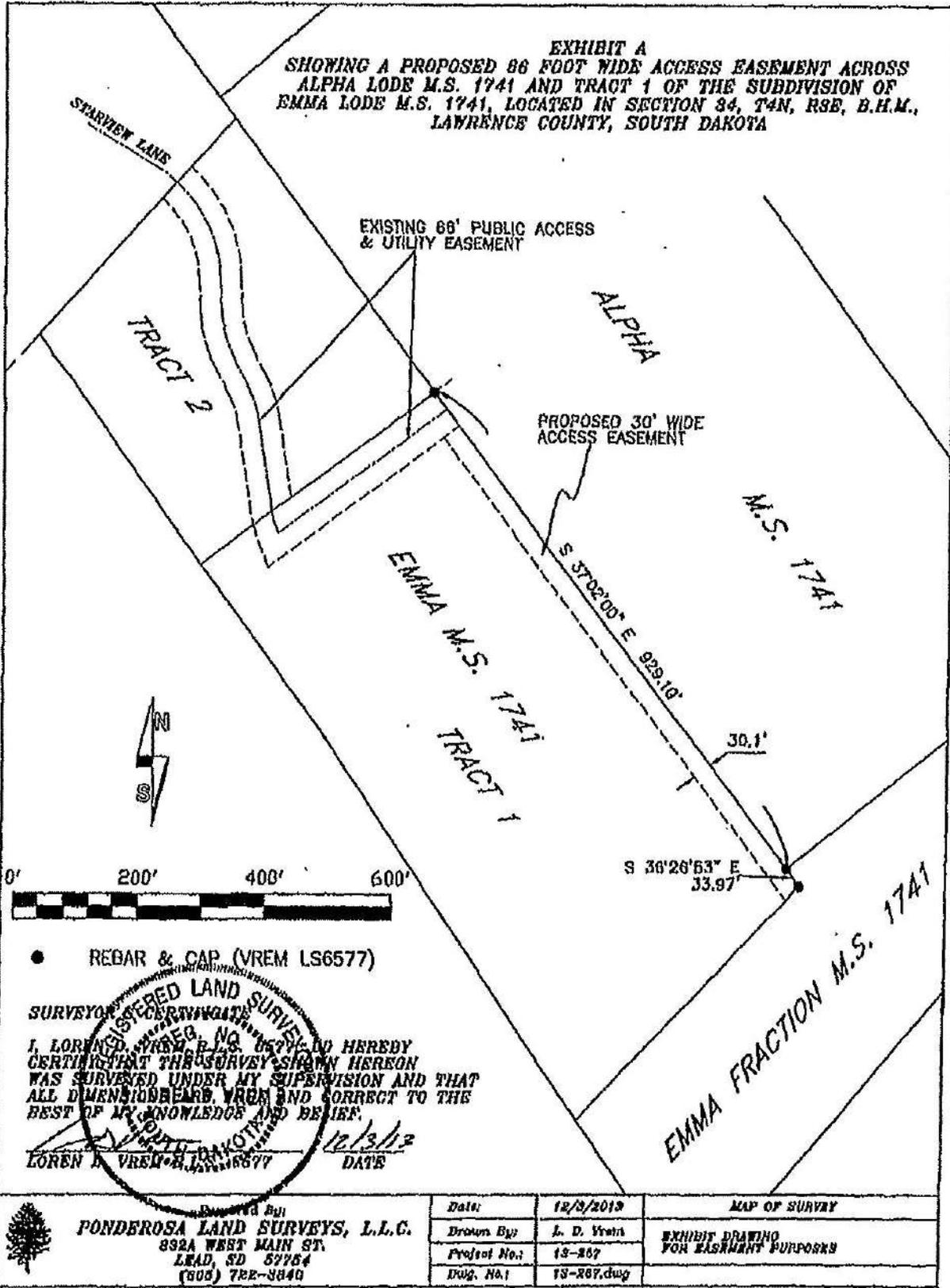


*Michael J. Hays*  
Notary Public  
My commission expires: 2/20/2016

Doc #: 2013-05927  
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**EXHIBIT A  
SHOWING A PROPOSED 86 FOOT WIDE ACCESS EASEMENT ACROSS  
ALPHA LOBE M.S. 1741 AND TRACT 1 OF THE SUBDIVISION OF  
EMMA LOBE M.S. 1741, LOCATED IN SECTION 34, T4N, R8E, B.H.M.,  
LAWRENCE COUNTY, SOUTH DAKOTA**



IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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Appeal No. 31127

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DOUGLAS L. HANSON, KIRSTEN K. HANSON, JOAN A. SCHULTZE,  
and JAMES D. SCHULTZE,

Plaintiffs/Appellees,

vs.

JIMMY D. JORDAN and STEPHANIE L. JORDAN

Defendants and Appellants.

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APPELLEES' BRIEF

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Appeal from Circuit Court, Fourth Judicial Circuit  
Lawrence County, South Dakota  
The Honorable Michelle Comer, Circuit Court Judge

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Notice of Appeal filed June 26, 2025

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### **Preliminary Statement**

Throughout this Brief, Appellees will be referred to collectively as "Plaintiffs" and Douglas L. Hanson will be referred to individually as "Doug Hanson." Appellants will be referred to collectively as "the Jordans" and Jimmy D. Jordan will be referred to individually as Jimmy Jordan. The Record will be referenced as "R. \_\_\_\_" followed by the appropriate page number. The Trial Transcript will be referenced as "T.T." followed by the appropriate page and line number(s) and the Partial Summary Judgment Transcript will be referenced as "P.S.J.T." with the appropriate page and line number(s).

### **Jurisdictional Statement**

Appellees agree with Appellants' Jurisdictional Statement and the conclusion that this Court has jurisdiction of this appeal pursuant to SDCL 15-26A-3(1) & (2).

### **Legal Issues<sup>1</sup>**

1. Did the circuit court correctly conclude, as a matter of law, that Harold Knutson created an easement in favor of the dominant tenement?

The circuit court held that an unrecorded written easement is enforceable against a servient tenement if there is constructive notice of the easement.

*Tan Corp. v. Johnson*, 1996 S.D. 128, 555 N.W.2d 613  
*Townsend v. Super 8 Motel, Inc.*, 371 N.W.2d 162 (1985)  
*Wiege v. Knock*, 293 N.W.2d 146 (S.D. 1980)

2. Did the circuit court correctly conclude, as a matter of law, that the Jordans had constructive notice of this easement?

The circuit court held that the Jordans had constructive notice of the easement that was open and visible and which Jimmy Jordan had observed. The circuit court also found that Jimmy Jordan was bound

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<sup>1</sup> The order of discussion will follow the sequence used by the circuit court, namely: (1) creation of the easement; (2) notice of the easement; and (3) location of the easement.

by his knowledge of facts sufficient to put a reasonable purchaser on inquiry regarding the existence of an easement, as disclosed in the title insurance policy obtained after purchasing the servient tenement.

*Institute of Range and the American Mustang v. Nature Conservancy*,  
2018 S.D. 88, 922 N.W.2d 1

*Johnson v. Radle*, 2008 S.D. 23, 747 N.W.2d 644

*Tan Corp. v. Johnson*, 1996 S.D. 128, 555 N.W.2d 613

*Wiege v. Knock*, 293 N.W.2d 146 (S.D. 1980)

SDCL 17-1-4

3. Was the circuit court's determination of the location of the easement clearly erroneous?

The circuit court found that the Plaintiffs' easement followed the existing two-track path over Alpha Lode.

*Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, 736 N.W.2d 824

*Cleveland v. Tinaglia*, 1998 S.D. 91, 582 N.W.2d 720

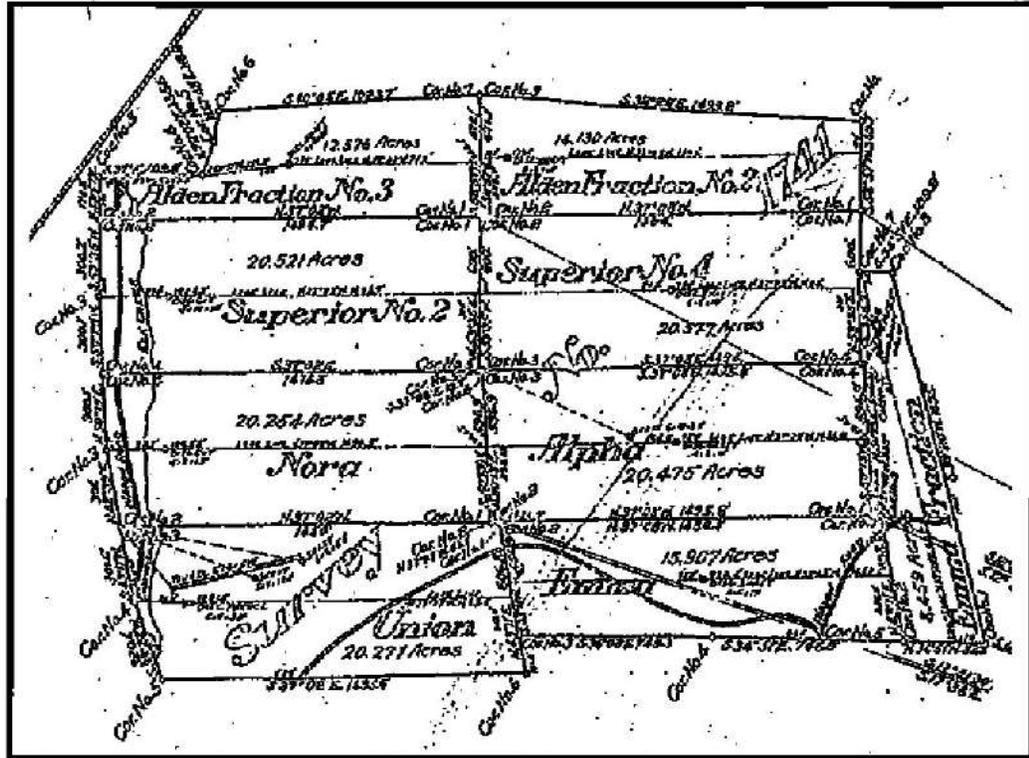
*Travis v. Madden*, 493 N.W.2d 717 (S.D. 1992)

#### **Statement of the Case and the Facts**

During the 1950's, Harold Knutsen ("Harold") acquired land in the Black Hills that is the subject of this appeal. The land is shown on a plat map, Mineral Survey No. 1741, and recorded with the Lawrence County Register of Deeds as Document 77-5221 (Affidavit of Douglas L. Hanson, Exhibit A, R. 124).<sup>2</sup> The map portion of Mineral Survey No. 1741 is shown as follows:

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<sup>2</sup> Mineral Survey No. 1741 was prepared in 1903 to document the mining claim of Seff Anderson. The focus of the survey was on the work related to the mining claim, such as the shafts, cuts, and tunnels. This kept the claim active and eventually sustained the transition from an unpatented claim to a patented (deeded) land claim. The process of completing a mining claim is described in *Marshall v. Harney Peak Tin Mining, Milling & Mfg. Co.*, 1 S.D. 350 (1890).



(R. 72).

In 1976, Harold began to sell off various parcels to family and friends. On January 19, 1976, Harold sold the parcel designated as Superior No. 2 to Brent Hanson, a nephew, and his wife, Karol Hanson. (R. 15). On December 7, 1977, Harold sold the Emma Lode and Alpha Lode parcels to Marlin and Dora Mae Jensen and Jerry and Vickie Gravatt through a Contract for Deed. (R. 16-20).

Although not recorded, the Contract for Deed expressly reserved a road easement, described as follows:

Easement for Private Road:

Seller hereby reserves a thirty foot (30') easement, over and across the property being sold herein, as and for a private road as said road presently exists across said property and as more fully shown on the Plat recorded in the Register of Deeds office at Lawrence County, South Dakota, which Plat was filed the 29<sup>th</sup> day of November, 1977, Plat No. 77-5221, which road is for ingress and egress purposes for other property presently owned by the Seller, more specifically described as Alden Fraction No. 2, Alden Fraction No. 3, Superior No. 4, and Nora Lodes,

located in Mineral Survey #1741 in Section Thirty-four (S34), Township Four North (T4N), Range Three East (R3E), Black Hills Meridian, Lawrence County, South Dakota. It is specifically agreed by the parties hereto, that this easement shall be for the benefit of and shall run to the Seller and all his heirs, assigns or representatives, and as a covenant running with the land.  
(R. 18).

The reference to Plat No. 77-5221, unfortunately, is an error because there is no road shown on the plat map that fits the description in the easement reservation. (See R. 275, ¶ 13 (“Plat No. 77-5221 does not depict the 1977 Contract for Deed’s reference to the easement over Alpha Lode.”)). The plat map was drawn in 1903 (see R. 124), not in 1977, and it is clear that the road intended as the easement in 1977 did not exist in 1903. Fortunately, there were two descriptions of the road easement. The first description from the Contract for Deed stated: “a thirty foot (30’) easement, over and across the property being sold herein, as and for a private road as *said road presently exists across said property.*” (R. 18 (emphasis added)). By 1977, there was an existing road that had come to provide ingress and egress to the dominant parcels. Affidavit of Douglas Hanson (R. 122); Affidavit of Joan Schultze (R. 129). The Contract for Deed demonstrates an intention to create an easement over the property being sold (Emma and Alpha) for the benefit of Alden No. 2, Alden No. 3, Superior No. 4, and Nora Lode. (R. 18; R. 275, ¶¶ 11-12).

Harold continued selling off parcels to family. On June 6, 1978, Harold conveyed to Doug Hanson, a nephew and one of the Plaintiffs here, an undivided ½ interest in Alden No. 3 and an undivided ½ interest in Superior No. 4. (R. 23). He also conveyed on the same date the other undivided ½ interests in those parcels to Brent and Karol Hanson. (R. 24). To confirm the continued existence of the road easement, shortly

thereafter, both Doug and Brent conveyed to Harold a right of way in his favor over Superior No. 4. On June 14, 1978, Harold entered into a Contract for Deed with John Van Balen and Joan Van Balen, a niece, for Alden No. 2. (R. 27). On July 20, 1979, Harold conveyed by Warranty Deed to Dwayne Knutsen, a nephew, and Barbara Knutsen, the East ½ of Nora. (R. 29).

When the Contract for Deed with the Marlins and the Gravatts was paid off, Harold delivered a Warranty Deed (dated the same day as the 1977 Contract for Deed), which was recorded on January 11, 1988 for Emma Lode and Alpha Lode. (R. 33, 304). The Deed specifically referenced the road easement mentioned in the Contract for Deed: “[S]ubject, however, to the easement by private road, reserved in the Seller, his heirs, assigns, or representatives, as provided in the Contract for Deed between the parties hereto dated December 7, 1977.” (*Id.*)

Continuing on with the chain of title, the Marlins and Vickie Gravatt conveyed, on May 12, 1994, their interest in Emma and Alpha to Kevin McKee and Richard and Jody McKee. (R. 35). No mention was made of the road easement. (*Id.*) On March 20, 1996, Kevin McKee conveyed his interest in the two parcels to Richard and Jody McKee, “subject to all rights-of-way, easements, covenants and reservations of record.” (R. 37). On November 12, 1997, Richard and Jody McKee conveyed their interest in Emma Lode to Michael and Neda Joyce. (R. 38). In this document, the road easement was specifically referenced: “SUBJECT TO by private road reserved by prior grantor as provided in Document No. 88-168 from Harold P. Knutsen and L. Marlin Jensen and Dora Mae Jensen, Jerry D. Gravatt and Vickie S. Gravatt.” (*Id.*) On November 12, 1997, Richard and Vickie McKee entered into a Contract for Deed with Paul and Vickie

Love for the sale of Alpha Lode. (R. 38). The Warranty Deed accompanying the transaction specifically noted the road easement: "SUBJECT TO by private road reserved by prior grantor as provided in Document No. 88-168 from Harold P. Knutsen and L. Marlin Jensen and Dora Mae Jensen, Jerry D. Gravatt and Vickie S. Gravatt." (R. 40). On November 21, 2008, Michael and Neda Joyce conveyed their interest in a subdivision tract of Emma Lode (Tract No. 2) to Mark and Laura Longville, "subject to easements, covenants, rights-of-way, restrictions and reservations of record." (R. 45).

On July 1, 2013, Paul and Vickie Love entered into a Contract for Deed with Jimmy and Stephanie Jordan, the Defendants here, for the purchase of Alpha Lode. (R. 46). On July 28, 2015, Mark and Laura Longville executed a Warranty Deed for Emma Lode Tract No. 2 in favor of Jimmy and Stephanie Jordan, "subject to easements, rights-of-way, restrictions, reservations, declarations and covenants of record." (R. 54, 308). Finally, on December 1, 2016, Paul and Vickie Love conveyed title to Alpha Lode by Warranty Deed to Jimmy and Stephanie Jordan, "[s]ubject to any and all easements, reservations and restrictions of record in the Office of Lawrence County Register of Deeds, Deadwood, South Dakota." (R. 55, 306).

Prior to the purchase of Alpha Lode in 2013, Jimmy Jordan knew of the route through Alpha:

Q (by Mr. Fick): And at the time you purchased the property from the Loves, you knew that there was a two-track that went through Alpha; is that correct?

A: I knew there was a two-track on Alpha.  
(T.T., p. 57, ll. 13-16).

\* \* \* \*

Q: [I]t is my understanding when you purchased Alpha, you knew that there was a two-track and that people were sometimes traveling along the two-track. Is that correct?

A: Correct.

Q: And why were people traveling along the two-track?

A: They used it to haul wood. They used it to fence the property. It is the only – we just used it in general because it was on there.

Q: And it seems to me that, from what you were saying, that the area was pretty heavily wooded and that this was a path that you could see and that people used. Is that right?

A: Yeah, but so is a deer trail.

(T.T., p. 61, l. 13 through p. 62, l. 1).

Q (by Mr. Wheeler): Who used it?

A: Paul Love used it. Mr. Joyce used it. The Harrises used it. Mr. Hanson used it. We used it. My kids used it.

(T.T., p. 62, ll. 12-15).

This testimony was consistent with Doug Hanson's testimony, as an owner of the dominant tenement (Alden No. 3 and Superior No. 4), that the two-track route through Alpha was both visible in 1977 and used for access to his property:

Q (by Mr. Fick): How long have you been familiar with this easement or two-track road that goes through the Alpha property?

A: Ever since my uncle first purchased the property and we started coming out here in the summers and spending time and then we have actually owned the property adjacent to it for 51 years. And so it has been a good long time that I have been associated with this and had knowledge of the existence of that road.

Q: During the time that you have been familiar with this area, has the location of the easement ever been moved or shifted to the best of your knowledge?

A: Only when Mr. Jordan constructed his driveway did that change with the exact – because the – his driveway went over the top of one loop of where the existing easement went in there. But otherwise, no, that has not changed at all.

(T.T., p. 12, l. 20 through p. 13, l. 2).<sup>3</sup>

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<sup>3</sup> This is also consistent with the testimony in Doug Hanson's Affidavit in support of the motion for partial summary judgment presented to the circuit court. (R. 122-28). See

Although Jimmy Jordan claimed to have looked for record evidence of the easement, he could not find any:

Q (by Mr. Wheeler): So if we look at Exhibit 102, which is the contract for deed – and you have seen this before?

A: Correct.

Q: Have you looked for this at the registrar of deed's office?

A: Yes. I have looked for it extensively but was not able to find it because it is not recorded there.

Q: And this pertains to the tract of land known as Emma Lode and Alpha Lode, right?

A: That is correct. One tract of land, one property.  
(T.T., p. 44, ll. 3-12).

Of special note here is Jimmy Jordan's admission that he was looking for the Contract for Deed. "I have looked for it extensively but was not able to find it because it is not recorded there." (*Id.*). The Contract for Deed was specifically cited in the 1977 Warranty Deed as reserving a private road for the benefit of the Seller and his assigns. (R. 33). And the 1977 Warranty Deed (filed in 1988) is in the chain of title to the Jordan's property. (R. 277, ¶4).

It was not until 2017, when the Jordans obtained a construction loan, that there was a professional title search, as required by the lender. (T.T., p. 41, ll. 9-14; T.T., p. 44, l. 17 through p. 45, l. 3). The title policy specifically noted an exception to coverage: "2. Terms, Conditions and Provisions of Easement for private road as reserved in Document No. 88-168." (R. 310). Until that time, the Jordans apparently had been content to rely on Jimmy Jordan's own title search efforts, despite language in both

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*also* the testimony presented through Affidavits in support of the partial summary judgment motion. Joan Schultze (R. 129-35); James Schultze (R. 136-42); Dwayne Knutsen (R. 143-49); and Michael Harris (R. 150-56).

warranty deeds given to the Jordans that title was subject to easements of record. (T.T., p. 44, l. 25 through p. 45, l. 6; R. 54, 55).

The Plaintiffs moved for partial summary judgment on two issues: (1) whether a valid easement had been created; and (2) whether the Jordans had constructive knowledge of the easement. The motion came on for hearing on July 2, 2024. After considering the documents presented here and the accompanying affidavits, the circuit court found that a valid easement had been created because this Court's precedents hold that an unrecorded easement is enforceable against a servient tenement. (P.S.J.T., p. 13, l. 24 through p. 14, l. 11). The court also held that the Jordans had constructive notice of the easement. The court made findings on the record that will be discussed below. (P.S.J.T., p. 13, l. 19 through p. 15, l. 7).

On February 4, 2025, the case was tried to the circuit court for resolution of the third issue—the location of the easement. The court reaffirmed the findings and conclusions from the partial summary judgment hearing and made additional findings of fact and conclusions of law in ruling for the Plaintiffs. (R. 273-78).

### Argument

We review a circuit court's decision on a motion for summary judgment under the *de novo* standard of review. *N. Star Mut. Ins. v. Korzan*, 2015 S.D. 97, ¶12, 873 N.W.2d 57, 61. "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' *Id.*" (quoting SDCL 15-6-56(c)).

*Geidel v. DeSmet Farm Mutual Ins. Co.*, 2019 S.D. 20, ¶ 7, 926 N.W.2d 478, 481.

Partial summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, the moving party clearly shows that there is no genuine issue of material fact. *North Star Mut. Ins.*

*Co. v. Kneen*, 484 N.W.2d 908, 910 (S.D. 1992). “Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. If there exists any basis which supports the ruling of the trial court, affirmance of a summary judgment is proper.” *Miessner v. All Dakota Ins. Associates*, 515 N.W.2d 198, 200 (S.D. 1994); SDCL 15-6-56(c).

*Bosse v. Quam*, 537 N.W.2d 8, 10 (S.D. 1995). “[A] disputed fact is not ‘material’ unless it would affect the outcome of the suit under the governing substantive law in that a ‘reasonable jury could return a verdict for the nonmoving party.’” *Weiss v. Van Norman*, 1997 S.D. 40, ¶ 11 n. 2, 562 N.W.2d 113, 116 (quoting *Parsons v. Dacy*, 502 N.W.2d 108, 110 (S.D. 1993)).

With respect to the remaining issue regarding the easement’s location, this Court will review the underlying factual findings for clear error. *State v. Stepikas*, 2021 S.D. 43, ¶ 12, 962 N.W.2d 722, 726. “A trial court’s findings of fact and decision are presumed correct and [this Court] will not seek reasons to reverse.” *South Dakota Cement Plant Com. v. Wausau Underwriters Ins. Co.*, 2000 SD 116, ¶ 10, 616 N.W.2d 397, 401 (quoting *City of Winner v. Bechtold Invs., Inc.*, 488 N. W.2d 416, 418 (S.D. 1992)). This Court “will not disturb findings unless evidence clearly preponderates against them.” *Id.* “ ‘In applying the “clearly erroneous” standard, [this Court will not] ask whether [it] would have made the same findings as did the trial court. Rather, the test is whether, after reviewing all the evidence, [this Court is] left with a definite and firm conviction that a mistake has been made.’ ” *South Dakota Cement Plant Com., supra*, 2000 S.D. 116, ¶ 10, 616 N.W.2d at 401. *See also Picardi v. Zimmiond*, 2004 S.D. 125, ¶ 12, 689 N.W.2d 886, 889.

I. Creation of the Easement. Under South Dakota law, “[e]asements may be created by written grants, pursuant to a plat or by force of law.” *Kokesh v. Running*, 2002

S.D. 126, ¶ 11, 652 N.W.2d 790, 793 (citations omitted). If an easement is “created by an express grant, its terms are controlled by the words of that grant, its physical size and nature of use.” *Id.* Here, the easement was created by an express grant included in the Contract for Deed. (R. 18). The easement was to go “over and across the property being sold herein,” which was Alpha Lode and Emma Lode. (*Id.*) This was the servient tenement. The easement was for the benefit of Alden Fraction No, 2, Alden Fraction No. 3, Superior No. 4, and Nora Lodes – the dominant tenements. (*Id.*) The easement’s location was described as a private road “as said road presently exists across [Emma and Alpha Lodes].” (*Id.*).

The failure to record the easement does not invalidate its legitimacy. *See, e.g., Tan Corp. v. Johnson*, 1996 S.D. 128, ¶ 17, 555 N.W.2d 613, 617 (unrecorded purchase agreement creating easement was enforceable against subsequent purchaser who had constructive notice of the easement); *Townsend v. Super 8 Motel, Inc.*, 371 N.W.2d 162, 165 (S.D. 1985) (unrecorded instrument creating an easement was enforceable against subsequent purchaser who was charged with constructive notice of the easement); *Wiese v. Knock*, 293 N.W.2d 146, 148 (S.D. 1980) (unrecorded agreement concerning right to draw water from well was enforceable against subsequent purchaser where easement was open and visible). An easement created by an oral agreement, however, is not enforceable because of the Statute of Frauds. *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 25, 736 N.W.2d 824, 833.

The description of the easement as the “present roadway” is sufficient as long as it is ascertainable. *See Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 2, 736 N.W.2d 824, 828 (validating easement that referred to “present roadway”); *Travis v. Madden*, 493

N.W.2d 717, 718 (1992) (easement for ingress and egress over property was valid with the description “*over and upon the roadway presently existing and situated on the North 58 feet of said Lot 19.*”) (emphasis in original). “The terms of the grant, as they can be learned either by words clearly expressed, or by just and sound construction, will regulate and measure the rights of the grantee.” *Id.* (quoting *Salmon v. Bradshaw*, 84 S.D. 500, 505-06, 173 N.W.2d 281, 284 (1969)).

The circuit court found and concluded:

[D]ocument 88-168, which is the [warranty] deed . . . from Harold Knutsen to Jerry and Vicki Gravatt, called the Jenson-Gravatt deed. It reserved the contract for deed across the Alpha and Emma Lode. This references the contract for deed.

The Court finds that the Supreme Court has held that an unrecorded easement is enforceable against a servient tenement. *Townsend*, the Supreme Court upheld *Wiege* holding that purchasers of real property were bound by an unrecorded water right easement which is essentially the same thing that is here.

The Court finds that the legal description is sufficient. (P.S.J.T., p. 13, l. 25 through p. 14, l. 13).

Given that the express grant identifies the dominant tenements, the servient tenement, and the easement’s location, the easement was validly created even though unrecorded.

2     Notice of the Easement. The unrecorded written easement, while valid *per se*, is not good against the whole world, but only against those who have actual or constructive notice of the easement. This Court has repeatedly held that an otherwise valid unrecorded easement is good against a person who has constructive notice of the easement. In *Wiege v. Knock*, 293 N.W.2d 146, 148 (S.D. 1980), this Court stated:

Appellants contend, however, that since no documents were on record revealing plaintiffs’ water rights, they should not be bound to any permanent water right easement. We are not persuaded by this argument. Notice of an easement is generally imputed to a purchaser where the

easement is of such character that a purchaser acting with ordinary diligence would know or learn of its existence. Thus, where the easement is open and visible, the purchaser will be charged with notice even though the easement was created by a grant which was not then recorded. The grantee is bound where a reasonably careful inspection of the premises would disclose the existence of the easement or where the grantee has knowledge of facts sufficient to put a prudent buyer on inquiry. (Citations omitted).

*See also Johnson v. Radle*, 2008 S.D. 23, ¶ 18, 747 N.W.2d 644, 652 (“[A]n easement can be valid without a recorded conveyance when there is constructive notice . . .”); *Tan Corp. v. Johnson*, 1996 S.D. 128, ¶ 17, 555 N.W.2d 613, 617 (unrecorded purchase agreement creating easement was enforceable against subsequent purchaser who had constructive notice of the easement); *Townsend v. Super 8 Motel, Inc.*, 371 N.W.2d 162, 165 (S.D. 1985) (unrecorded instrument creating an easement was enforceable against subsequent purchaser who was charged with constructive notice of the easement); *Steele v. Pfeifer*, 310 N.W.2d 782, 786 (S.D. 1981) (“If facts are sufficient to put a purchaser of a title or lien upon inquiry of any adverse right or equity of a third party, his want of diligence in making such inquiry is equivalent to a want of good faith.” Quoting *Madson v. Ballou*, 63 S.D. 501, 505, 260 N.W. 831, 833(1935)).

It should be noted that *Johnson v. Radle*, *supra*, and *Tan Corp. v. Johnson*, *supra* are summary judgment cases, even though they involve the issue of constructive notice. While notice is ordinarily a question of fact (*see West Cent. Elec. Co-op, Inc. v. James River Broadcasting Co.*, 293 NW.2d 83, 87 (1986)), there is something peculiar to constructive notice that makes it somewhat more amenable to summary judgment.

SDCL 17-1-4 provides:

Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself.

The notice here is not subjective notice, but, rather, objective notice. In utilizing a prudent man standard, the question is not whether the Jordans had notice of the easement; it is whether they had actual notice of *circumstances that would cause a prudent person to make further inquiry* about whether there is an easement. This makes determination of constructive notice possible on summary judgment. *Johnson v. Radle* and *Tan Corp. v. Johnson*, in fact, are examples of that. One can also add *Institute of Range and the American Mustang v. Nature Conservancy*, 2018 S.D. 88, ¶¶ 14-16, 922 N.W.2d 1, 6, to that list, a case which opposing counsel is no doubt familiar because he was co-counsel for the winning side in that case.

In *Nature Conservancy*, the Plaintiff claimed that a deed containing a conservation easement had been obtained through fraud. This Court rejected that claim:

Although [the Plaintiff] now claims the property interest provision was not part of the transaction and was inexplicably inserted in the deed signed on December 3, 1998, [the Plaintiff] does not dispute that Hyde signed the option agreement incorporating a draft deed with the property interest provision or that Hyde was present at the closing on the deed. We conclude [the Plaintiff's] active participation in this procedural history and Hyde's execution of the deed imparted sufficient actual knowledge of the circumstances to place a duty on it to further inquire concerning the terms of the deed. Therefore, [the Plaintiff] is deemed to have constructive knowledge of the property interest provision. *See* SDCL 17-1-4. (2018 S.D. 88, ¶ 16, 922 N.W.2d 1, 6).

Summary judgment regarding constructive notice can be appropriate where the actual circumstances would cause a prudent person to pursue further inquiry as to a particular fact.

The circuit court here found constructive notice in two ways:

The Court finds that the servient tenement's owner had constructive notice because he observed the tracks. Similar to the *Townsend* case where he observed cars in that area. There is a two-track open, visible path crossing which is certainly gives rise in connection with

the document that would give constructive notice that there is something -- some sort of easement created.

The Court finds that where the easement -- just as [the] Supreme Court found in *Townsend*, where the easement is open and visible, the purchaser will be charged with notice even though the easement was created by a grant which was not then recorded. This is because the land purchaser is bound by a reasonably careful inspection of the premises that would disclose the existence of the easement. Moreover, the land purchaser is also bound by his knowledge of facts sufficient to put a prudent buyer on inquiry, and the Court finds that based upon the undisputed facts that there is constructive knowledge in this case. (P.S.J.T., p. 14, l. 13 through p. 15, l. 3).

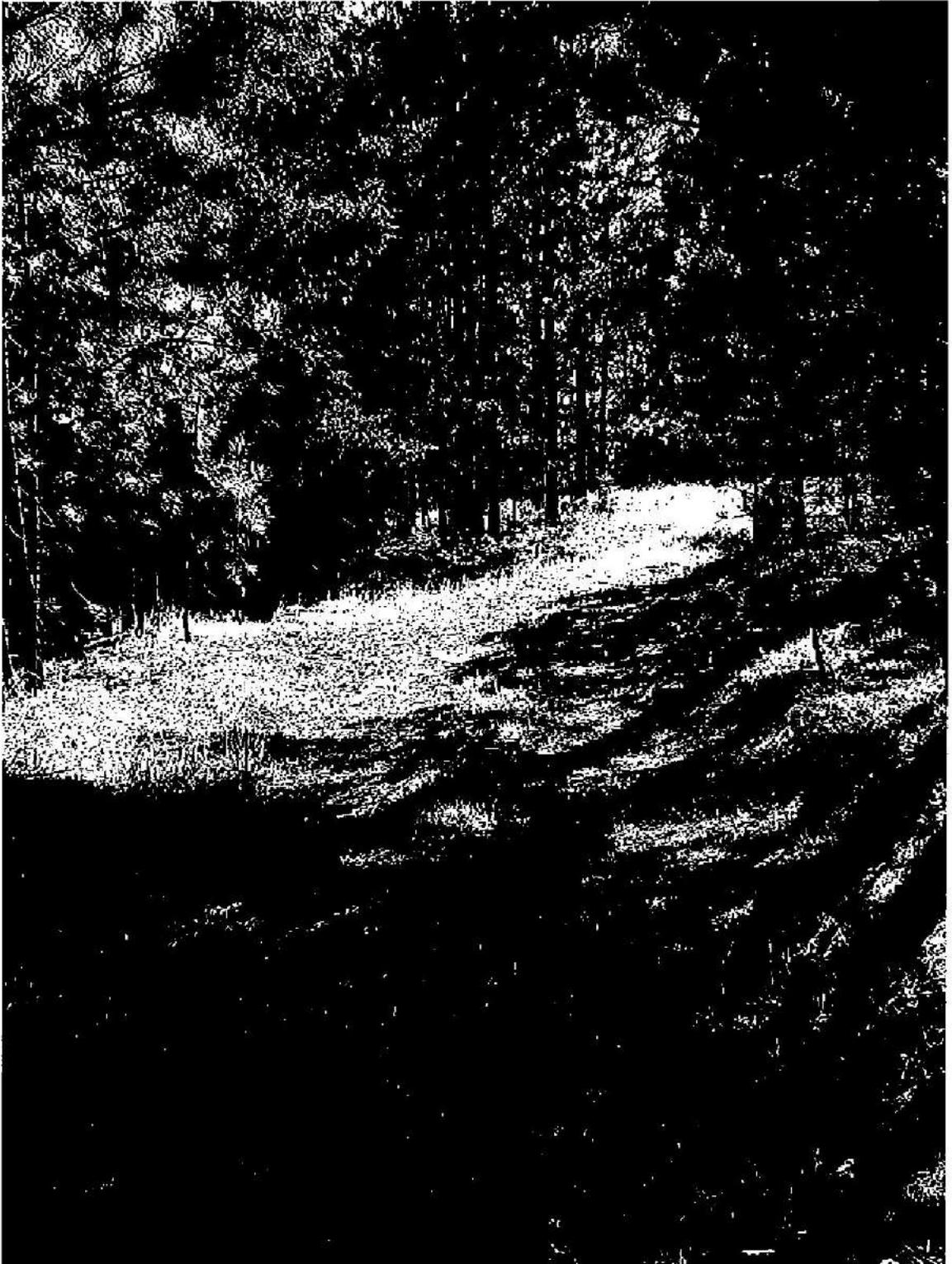
The circuit court considered present day pictures of the easement, which showed a two-track path, but basically unchanged from 1977 when the easement was created.



(Plaintiffs' Exhibit B-1; R. 125).



(Plaintiffs' Exhibit B-2; R. 126).



(Plaintiffs' Exhibit B-3; R. 127).



(Plaintiffs' Exhibit B-4; R. 128).<sup>4</sup>

Doug Hanson, who was familiar with all the properties from the very beginning, testified that the road today is just as it was in 1977:

Q (by Mr. Wheeler): Is it fair to say that that logging activity in the earlier 2000s would have enhanced this two-track in some manner and to make it more visible?

A: No. The two-track was always there. It was always grassed in. We never moved any dirt, never excavated anything. We didn't need to. It was a flat-running surface; the grass was there. We didn't disturb anything. All they did when they went in and out of there was push some grass down that they drove over. It has never been any dirt moving in there or anything. It has never changed that way.

(T.T., p. 15, ll. 14-24).

All I have ever done is, if there [are] any trees grown up in the middle that would snag on a fuel line or a brake line or something, I have cut some of those out of the way.

(T.T., p. 15, ll. 14-24).

[W]e have logged in there three or four times over the years and some of them were, like, two or three years apart depending on how crazy the beetle was going up there.

(T.T., p. 16, ll. 5-8).

What is portrayed here is not a deer trail, but a pathway that a logging truck can pass through. The easement was open and visible and justified a prudent basis for further inquiry regarding the existence of an easement. (R. 277, ¶¶ 5-9). The circuit court's ruling correctly applied the law to facts that were not in dispute.

The second reason supporting the circuit court's conclusion that there was constructive notice as a matter of law based on Jimmy Jordan's own actual knowledge of the circumstances regarding the Contract for Deed:

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<sup>4</sup> Even if a picture is worth a thousand words, this Brief should still come within the 10,000 word limit. SDCL 15-26A-66(b)(2).

Moreover, the land purchaser is also bound by his knowledge of facts sufficient to put a prudent buyer on inquiry, and the Court finds that based upon the undisputed facts that there is constructive knowledge in this case. (P.S.J.T., p. 15, ll.3-70).

Jimmy Jordan testified that he had a discussion with the Loves before purchasing

Alpha:

Q (by Mr. Wheeler): When was the first time you had any discussion with Mr. Hanson or anybody about this alleged easement across Alpha?

A: I had the discussion with the Loves when we went to purchase and he [Paul Love] told me that he used it and that it had been used by – I call them by defendants or by name?

Q: Mr.

A: Mr. Hanson to gain access to his property when he would ask him to use it to take off trees.

(T.T., p. 42, l. 23 through p. 43, l. 7).

He had enough information to know that it was important to investigate the matter of the 1977 Contract for Deed, described in the 1988 Warranty Deed. (T.T., p. 44, ll. 3-12).

When he could not solve that puzzle after “extensive” search at the Register of ‘Deeds, the prudent thing to do was to hire a professional to do the title search. This was not a minor transaction. The Contract for Deed from the Loves disclosed a purchase price of \$85,000. (R. 117). The amount insured for the construction loan was \$263,000. (R. 309). Given his actual knowledge of the Contract for Deed issue, a prudent person would have hired a professional to do the title search.

3. Location of the Easement. Reference in the Contract for Deed to the “private road as said road presently exists across said property” (R. 18) is a sufficient description of the easement. *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 2, 736 N.W.2d 824, 828 (validating easement that referred to “present roadway”); *Travis v. Madden*, 493 N.W.2d 717, 718 (1992) (easement for ingress and egress over property was valid with the description “over and upon the roadway presently existing and

situated on the North 58 feet of said Lot 19.”) (emphasis in original). The circuit court found that it was an adequate legal description and that finding is not clearly erroneous. “The terms of the grant, as they can be learned either by words clearly expressed, or by just and sound construction, will regulate and measure the rights of the grantee.” *Id.* (quoting *Salmon v. Bradshaw*, 84 S.D. 500, 505-06, 173 N.W.2d 281, 284 (1969)).

The circuit court made the following conclusions of law regarding the location of the easement:

6. Pursuant to this Court’s previous rulings and the law of the case doctrine, Plaintiffs hold an easement over Alpha Lode to access Plaintiffs’ property, namely Superior No. 4 and Alden Fraction No. 2.
7. Plaintiffs’ easement over Alpha Lode is 30 feet wide.
8. Plaintiffs’ easement over Alpha Lode follows the existing two-track path over Alpha Lode.
9. The two-track path is demarcated on Exhibit 1, which was admitted into evidence at the February 4, 2025 Court trial and is incorporated by reference.  
(R. 277, ¶¶ 5-9).

The Jordans sought to avoid this conclusion by claiming that the easement was actually on Starview Lane, extending through and past the Harris’s property. (T.T., p. 23, l. 21 through p. 25, l. 6; This turned out to be a “red herring” and had no basis in the actual easement documents. Although Starview Lane is depicted on Mineral Survey No. 1741, it does not match the specific description in the Contract for Deed of an existing road that goes through the land being sold, namely Emma and Alpha Lodes. As Jimmy Jordan testified:

- Q (by Mr. Fick): Okay, just to clarify. So there is no testimony that Starview Lane goes over your Alpha property. Is that right?
- A: Starview Lane does not go over my Alpha property.  
(T.T., p. 64, ll. 19-22).

The ill-fated attempt to claim Starview Lane as the road easement referred to in Mineral Survey No. 1741 was based on a fundamental misconception of what it exhibited. Counsel and Jordan both understood Mineral Survey No. 1741 as speaking in 1977:

Q (by Mr. Wheeler): But can you tell us what this is?

A: At the very top is a copy of 77-5221, which is the Mineral Survey showing the wagon road *as it existed in 1977* and recorded in the registrar of deeds' office.

Q: And so it says 77-5521 on this top paper here, right?

A: Correct.

An examination of the whole page of Mineral Survey No. 1741 (*see, e.g.*, R. 124) reveals that it was prepared in 1903, not 1977. It does show what is now Starview Lane as it existed in 1903 (and also as it existed in 1977, as well as today). But it in no way could it display a road, presently existing in 1977, crossing over both Emma and Alpha Lodes.

The circuit court found:

23. On November 26, 2013, Michael J. Joyce, Michael A. Harris, Suzanne K. Harris, and Diane M. Van Patten signed a Road Easement Agreement ("Road Easement Agreement").

24. The Jordans allege that the 2013 Road Easement Agreement impacts the easement over Alpha Lode.

25. At the time the 2013 Road Easement was signed, none of the parties to the 2013 Road Easement Agreement owned land impacted by the easement over Alpha Lode.

(R. 276, ¶¶ 23-25).

The circuit court concluded:

10. The 2013 Road Easement Agreement has no bearing on the easement across Alpha Lode.

11. At the time the 2013 Road Easement was signed, none of the parties to the Road Easement Agreement held ownership to the dominant tenements to the easement over Alpha Lode.

12. Accordingly, none of the parties to the 2013 Road Easement Agreement had the ability to move the easement over Alpha Lode.

(R. 278, ¶¶ 10-12).

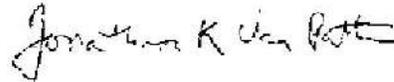
Because the actual road easement, described in the 1977 Contract for Deed and testified to by the Plaintiffs, did exist over Emma and Alpha Lodes, the circuit court's conclusion in locating the easement as depicted in Plaintiffs' Exhibit No. 1 (R. 279) was not clearly erroneous.

**Conclusion**

The Plaintiffs respectfully request this Court to affirm the circuit court's decision in all respects.

Dated: December 1, 2025

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

Jonathan K. Van Patten hereby certifies that on the 1st day of December, 2025, he served an electronic copy of the foregoing Appellees' Brief in the above-captioned action on the following:

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### CERTIFICATE OF COMPLIANCE

This brief is submitted under SDCL § 15-26A-66(b). I certify that the brief complies with the type volume limitation. In reliance upon the document properties provided by Microsoft Word, in which this brief was prepared, the brief contains 5,545 words and   , excluding the table of contents and table of cases, preliminary statement, jurisdictional statement, and statement of legal issues.

26468 characters

Dated this 1<sup>st</sup> day of December , 2025.

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### CERTIFICATE OF PROOF OF FILING

The undersigned hereby certifies that pursuant to SDCL § 15-26C-3 he served an electronic copy via eFileSD, and the original of the above and foregoing Appellants' Brief on the Clerk of the Supreme Court by mailing the same this date to the following address:

Clerk of the Supreme Court  
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Dated this 1st day of December, 2025.

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IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

---

Appeal No. 31127

---

DOUGLAS L. HANSON, KIRSTEN K. HANSON, JOAN A. SCHULTZE,  
and JAMES D. SCHULTZE,  
Plaintiffs/Appellees,

vs.

JIMMY D. JORDAN and STEPHANIE L. JORDAN,  
Defendants/Appellants

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APPELLANTS' REPLY BRIEF

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Appeal from Circuit Court  
Fourth Judicial Circuit,  
Lawrence County, South Dakota,  
The Honorable Michelle Comer, presiding

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Notice of Appeal filed June 26, 2025

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## REPLY ARGUMENT

### I. THE TRIAL COURT ERRED IN CONCLUDING THAT THE 1977 CONTRACT FOR DEED REFERS TO AN EXISTING EASEMENT ACROSS ALPHA LODGE.

The Trial Court concluded that the Contract for Deed created an easement along the two track trail across Alpha Lode. This interpretation of the Contract was erroneous. The interpretation of a contract is a question of law for the Court, which is reviewed *de novo*. *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 17, 736 N.W.2d 824, 831.

The Contract for Deed expressly states that its purpose is to set for the terms and conditions for the sale of described real estate, specifically, a single “[t]ract of land known as Emma and Alpha Lode in Mineral Survey No. 1741, consisting of 36.37 acres more or less, . . .” SR 299, *Exhibit 102 at p. 1*. (emphasis added).

The provision of the Contract for Deed creating the easement then describes the easement as “a thirty foot (30”) easement, over and across the property being sold herein, as and for a private road as said road presently exists across said property *and as more fully shown on the Plat recorded in the Register of Deeds office at Lawrence County, South Dakota, which Plat was filed the 29th day of November, 1977, Plat No. 77-5221 . . .*” *Id.* (emphasis added). SR 299, *Exhibit 102 at p. 3*.

Importantly, the language in the Contract for Deed creating the easement does not specifically state that the easement runs across Alpha Lode. Instead, it states that it runs across “the property being sold herein,” which was a tract of land that included Alpha Lode and Emma Lode. An easement running across Emma Lode satisfies this definition and easement description. Moreover, the Plat recorded in the Register of Deeds Office referred to in the easement creation language *does not* show a road across Alpha Lode.

*Exhibit 101*. This fact is acknowledged by Appellees. The Plat does, however, show Starview Lane (Old Wagon Road) which is a road that traverses across Emma Lode. *Id.*

Appellees attempt to explain this away very express and specific description of the easement and its location in the Contract for Deed as an unfortunate “error”. See *Appellees’ Brief*, p. 4. Appellees state that “the reference to Plat No. 77-2551, unfortunately, is an error because there is no road shown on the plat map that fits the description in the easement reservation.” *Id.* p. 3. Appellees then further attempt to explain that because the plat map was drawn in 1903, and not 1977, “it is clear that the road intended as the easement in 1977 did not exist in 1903.” *Id.* There is no further explanation from Appellees as to why the Contract for Deed language purporting to create the easement they claim across Alpha Lode would refer to the plat map that does not include the easement they claim across Alpha Lode.

What did exist in 1903, and in 1977, was Starview Lane, formally known as the Old Wagon Road. Jordans argued and maintain that this is the easement referred to and described in the Contract for Deed. Not only does Starview Lane (Old Wagon Road) exist on the plat map (Plat No. 77-5221), it runs across Emma Lode. Additionally, it is clear that other interested parties and landowners have previously interpreted this exact easement language to refer to Starview Lane when they relocated the easement.

On November 26, 2013, Michael J. Joyce, Michael A. Harris, Suzanne K. Harris and Diane M. Van Patten, executed a Road Easement Agreement (SR 322, *Exhibit 108*) relocating the easement created in the Contract for Deed. In describing the easement to be relocated, the parties specifically refer to the same Contract for Deed provision and use

the exact same language to describe the easement and its location. Specifically, the Road Easement Agreement describes the easement as follows:

EASEMENT FOR PRIVATE ROAD:

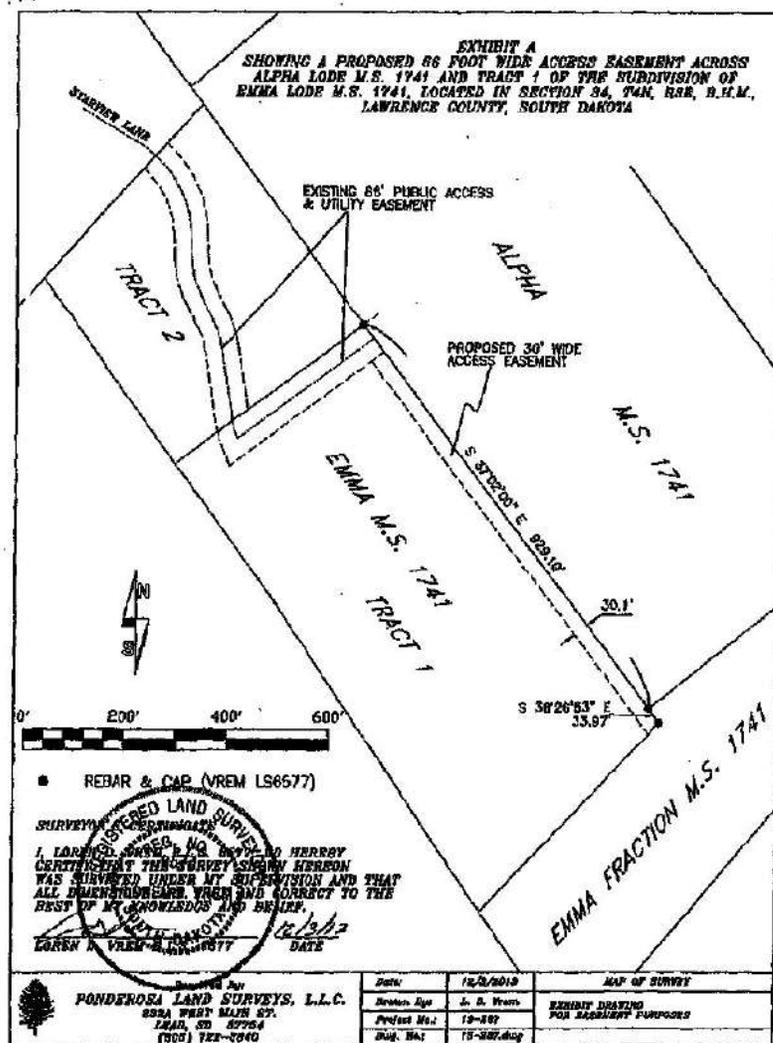
Seller hereby reserves a thirty foot (30') easement, over and across the property being sold herein, as and for a private road as said road presently exists across said property and as more fully shown on the Plat recorded in the Register of Deeds office at Lawrence County, South Dakota, which Plat was filed the 29th day of November, 1977, Plat No. 77-5221, which road is for ingress and egress purposes for other property presently owned by the Seller, more specifically described as Alden Fraction No. 2, Alden Fraction No. 3, Superior No. 4 and Nora Lodes, located in Mineral Survey #1741 in Section Thirty-four (S34), Township Four North (T4N), Range Three East (R3E), Black Hills Meridian, Lawrence County, South Dakota. *It is specifically agreed by the parties hereto, that this easement shall be for the benefit of and shall run to the Seller and all of his heirs, assigns or representatives, and as a covenant running with the land.*

SR 322, *Exhibit 108*, ¶ 3 (emphasis in original). This is the exact provision verbatim from the Contract for Deed. Compare with *Exhibit 102*, p. 3.

Appellees essentially ignore the 2013 Road Easement Agreement, mentioning it only on less than one-half a page at the end of their Brief. *Appellees' Brief*, p. 22. The 2013 Road Easement Agreement is *Exhibit 108*. This is the document, drafted by opposing counsel, which states that it relocates the same easement referred to in the 1977 Contract for Deed. *Exhibit 102 and 108*. There are only two possible explanations. First, either opposing counsel acknowledges that the 2013 Road Easement Agreement was ineffective to accomplish its stated purpose, which was to relocate the easement referred to in the 1977 Contract for Deed. Alternatively, the 2013 Road Easement Agreement does in fact relocate the easement referred to in the 1977 Contract for Deed, which is Starview Lane (Old Wagon Road) and *not* the two track trail going across Alpha Lode.

The Road Easement Agreement states at ¶ 5: “The parties wish to relocate the road easement to a location acceptable to the Grantee and the Buyers and to memorialize the relocation of this easement through the recording of this document.” SR 322, *Exhibit 108*, ¶ 5. The Road Easement Agreement even includes an attached survey showing the relocation of the road easement across Emma Lode (i.e. Emma M.S. 1741) reflecting how it will run along the boundary of Emma Lode and Alpha Lode to Emma Fraction (i.e. Emma Fraction M.S. 1741). SR 322, *Exhibit 108* at pg. 5.

The survey attached to the Road Easement Agreement is reproduced here:



*Exhibit 108.*

The Trial Court concluded that “[t]he 2013 Road Easement Agreement has no bearing on the easement across Alpha Lode.” SR 278, ¶ 10. Given that the Road Easement Agreement refers to and includes the *exact same paragraph* from the 1977 Contract for Deed when describing the easement that it is relocating, this conclusion is baffling. Regardless of any legal issues concerning whether the Road Easement Agreement is effective, it certainly reflects that everyone involved in that process at the time understood that the easement referred to in the 1977 Contract for Deed was Starview Lane, or the Old Wagon Road, and not a trail across Alpha Lode. The Survey clearly shows the location of the easement referred to in the 1977 Contract for Deed. Moreover, the Road Easement Agreement specifically describes the easement as being located in Mineral Survey 1741, which was “filed with the Lawrence County Register of Deeds on November 29, 1977, as Plat No. 77-5221.” The Road Easement Agreement specifically refers to Plat No. 77-5221. SR 322, *Exhibit 108* ¶ 1. The Road Easement Agreement further describes the easement as the “‘Wagon Road’ running through the Joyce property to Diane Van Patten’s property.” *Id.*

There is no presumption in favor of the Trial Court’s determination or interpretation of the Contract for Deed. *Vander Heide v. Boke Ranch, Inc.*, 2007 S.D. 69, ¶ 17, 736 N.W.2d 824, quoting *Ziegler Furniture and Funeral Home, Inc. v. Cicmanec*, 2006 S.D. 6, ¶ 14, 709 N.W.2d 350, 354. The Trial Court is to review the language used and give that language its plain and ordinary meaning. *Picardi v. Zimmiond*, 2004 S.D. 125, 689 N.W.2d 886; see also *Wessington Springs Education Association v. Wessington Springs School District # 36-2*, 467 N.W.2d 101, 104 (S.D. 1991). The Trial Court erred in concluding that the Contract for Deed refers to the trail across Alpha Lode.

II. THE TRIAL COURT ERRED IN GRANTING PARTIAL SUMMARY JUDGMENT BASED ON JORDANS' CONSTRUCTIVE NOTICE OF THE EASEMENT CLAIMED TO BE ACROSS ALPHA LODE.

The Trial Court concluded, as a matter of law, that Jordans had constructive notice of the easement based upon the existence of the trail running across Alpha Lode at the time they purchased the property. At all times since the Jordans have owned Alpha Lode, there was a boundary fence that ran across the trail purporting to be the Plaintiffs' alleged easement. TT 43:16-23. Doug Hanson testified that the fence was put in by a prior owner, Mike Joyce. TT 21:22-25; 22:1, see also TT 19:16-21; 20:13-20. Jimmy Jordan testified that there was never a gate during his ownership of the property that would allow access to the two track. TT 43:16-23. Additionally, Mike Joyce informed Jimmy Jordan that the trail was used occasionally, with permission, to access property to take off trees. TT 42:23-25; 43:1-7.

In this instance, the existence of a trail across Alpha Lode, standing alone, is not sufficient to impute constructive notice to the Jordans. See *Tan Corp. v. Johnson*, 1996 S.D. 128, ¶ 13, 555 N.W.2d 613, 616. In *Tan Corp.*, this Court held that the presence of a curb cut and improved driveway did not, in and of itself, put the landowner on notice of an easement between the lots. *Id.* at ¶ 16. Instead, it was the presence of the curb cut and driveway coupled with the continued use of the same that the Court concluded should have put a reasonable purchaser on notice of an existing easement. The Court stated "a prudent purchaser should have made inquiry of the use of the common driveway after observing traffic pass through the driveway . . ." *Id.* at ¶ 16. Here, there is a fenced off trail that to the Jordans' knowledge was occasionally used with permission. This at the very least created a question of fact precluding summary judgment. This Court has held

whether constructive notice exists is generally a question of fact. *West Central Electric Coop v. James River Broadcasting*, 393 N.W.2d 83 (S.D. 1986).

Notice of an easement is only imputed to a purchaser “where the easement is of such character that a purchaser acting with ordinary diligence would know or learn of its existence.” *Johnson v. Radle*, 2008 S.D. 23, ¶ 18, 747 N.W.2d 644. These facts are far different than the cases cited by Appellees to support the Trial Court’s constructive notice ruling. For example, *Townsend v. Yankton Super 8 Motel, Inc.* 371 N.W.2d 162 (S.D. 1985), is a case where the purchaser was charged with notice of an easement relating to parking spaces that were in continual use at the time of the purchase; See also, *Wiege v. Knock*, 293 N.W.2d 146 (S.D. 1980)(constructive notice of a well that was open and obvious and continually used by the adjoining landowner.) *Wiege*, 293 N.W.2d at 148-149. Appellees also rely upon *Institute of Range and the American Mustang v. The Nature Conservancy*, 2018 S.D. 88, 922 N.W.2d 1 (S.D. 2018). In *Nature Conservancy*, however, the president of the entity challenging the existence of the conservation easement had actively participated in its creation.

Jordans can only be charged with constructive notice of a property interest that they could have reasonably ascertained through a diligent inquiry. To be sure, there is no dispute that the trail across Alpha Lode existed at the time of their purchase. The Contract for Deed purporting to create the easement across Alpha Lode, however, was not recorded and, in any event, contained a description of the easement’s location referring to a plat map that does not include a trail across Alpha Lode. Even if the Contract for Deed had been properly recorded, the Mineral Survey/Plat referenced in the Contract for Deed

*does not show the easement.* It is difficult to understand what, exactly, the Jordan's could have ascertained relative to this alleged easement across Alpha Lode.

The Trial Court erred when it granted partial summary judgment, concluding as a matter of law that the Jordans were charged with constructive notice of an alleged easement across Alpha Lode.

### **CONCLUSION**

Based on the foregoing, Appellants respectfully request that the Order Granting Plaintiffs' Motion for Partial Summary Judgment and the final Judgment be reversed.

Dated this 31st day of December, 2025.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Michael V. Wheeler of DeMersseman Jensen Tellinghuisen & Huffman, LLP hereby certifies that on the 31st day of December, 2025, he served an electronic copy of the foregoing Appellants' Reply Brief in the above-captioned action on the following:

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## CERTIFICATE OF COMPLIANCE

This brief is submitted under SDCL § 15-26A-66(b). I certify that the brief complies with the type volume limitation. In reliance upon the document properties provided by Microsoft Word, in which this brief was prepared, the brief contains 2,115 words and 12,542 characters, excluding the table of contents, table of cases, and any certificates of counsel.

DATED this 31st day of December, 2025.

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**CERTIFICATE OF PROOF OF FILING**

The undersigned hereby certifies that pursuant to SDCL § 15-26C-3 he served an electronic copy via eFileSD, and the original of the above and foregoing Appellants' Reply Brief on the Clerk of the Supreme Court by mailing the same this date to the following address:

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