



## STANDARD OF REVIEW

The determination of title to real property is legal in nature. Moreover, an adverse possession claim is an action at law. Thus, an action to quiet title to real property based on adverse possession should be characterized as an action at law. Because adverse possession is an action at law, the character of the possession is a question for the jury or fact finder. Therefore, appellate court review is limited to a determination of whether any evidence reasonably tends to support the trier of fact's findings. *Jones v. Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009)(per curiam)(citations omitted) as cited in *Taylor v. Heirs of Taylor*, 419 S.C. 639, 799 S.E.2d 919 (Ct. App. 2017). The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time. *Id.* That time is ten years. S.C. Code Ann. §15-67-210. A party asserting ownership by adverse possession must show he has met the elements by clear and convincing evidence, *Jones*, 384 S.C. at 10-11, 681 S.E.2d at 11; *Taylor* 419 S.C. at 651; 799 S.E.2d at 924-925.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Plaintiff filed this case on July 10, 2020, seeking a Declaratory Judgment based upon adverse possession that he had obtained title to real property located on the Isle of Palms in Charleston County. (Summons and Complaint).
2. The Plaintiff had filed a Lis Pendens regarding the same real property on June 30, 2020, in Case Number 2020-LP-10-0424. (Lis Pendens)
3. The property is a vacant lot of land located on Oak Harbor Boulevard more particularly described as follows:

ALL that certain piece, parcel, or lot of land situate, lying and being on the Isle of Palms, County of Charleston, State of South Carolina, being shown and designated as Lot 2 of Block 35-B as shown on a plat called "Part of Section A" of the Isle of

Palms, Charleston County, S.C., made by Rex G. Fuller, Architect, and recorded in the RMC Office for Charleston County, SC, in Plat Book E at Page 96.

Being the same property conveyed to William L. Hemingway by deed of Ethel R. Hiers dated September 2, 1941, and recorded on September 3, 1941, in Book F43 at Page 175 in the Office of the Register of Deeds for Charleston County; and

Being the same property conveyed to Patricia Hemingway Campbell by quit claim deed of Bertie C. Hemingway Bunch and Henry Edsel Hemingway dated September 14, 2020, and recorded on October 1, 2020, in Book 0921 at Page 027 in the Office of the Register of Deeds for Charleston County.

TMS No.: 568-11-00-037 (Deed, Hiers to Hemingway; Deed, Bunch and Hemingway to Campbell)

4. In his Complaint, the Plaintiff named William L. Hemingway as the Defendant along with John Doe and Jane Doe, being persons who may be an heir, distributee, devisee, legatee, widow, widower, assign [sic], administrator, executor, personal representative, creditor, successor, issues [sic], and alienee of William L. Hemingway. (Complaint)

5. On September 5, 2020, Patricia Hemingway Campbell, named in the Complaint as Jane Doe, filed her Answer and Counterclaim. (Answer and Counterclaim).

6. Both the Plaintiff and the Defendant asserted that the real property had been deeded to William L. Hemingway by deed of Ethel H. Hiers dated September 2, 1941, and recorded in Book F43 at Page 175 in the Office of the Register of Deeds for Charleston County. (Deed, Defendants Ex. 4).

7. Both the Plaintiff and the Defendant asserted that from September 2, 1941, the property had been titled in the name of William L. Hemingway.

8. The Defendant Patricia Hemingway Campbell is the daughter of William L. Hemingway, who died in 1955. (Defendant's Ex. 8 and 9).

9. Mr. Hemingway's estate was probated in Georgetown County where he lived and owned property. There was an ancillary probate in Charleston County where he owned property, including the property at issue in this case. (Defendant's Ex. 8 and 9; Charleston County Case No. 861-0074H, 1955).

10. At the time of his death, Mr. Hemingway had three (3) heirs. They were Henry Edsel Hemingway, Bertie Hemingway Bunch, and Patricia Ann Hemingway n/k/a Patricia Hemingway Campbell. (Defendant's Ex. 9) (Transcript, pp. 36-37).

11. Mr. Hemingway's Will left his estate half to his wife and half to his three living children. (Defendant's Ex. 9). Mr. Hemingway's wife predeceased him according to the testimony of Mrs. Campbell at trial, meaning his estate was to be divided between his three living children.

12. At the time of her father's death in 1955, Mrs. Campbell was eighteen (18) years old, being a minor, with the age of majority then being twenty-one (21) years old. (Transcript, p. 37, p. 46; p. 53).

13. According to Mrs. Campbell, Citizens & Southern Bank ("C&S") served as her Trustee until such time as she reached the age of majority at twenty-one (21). (Transcript, p. 45, p. 53)

14. Mrs. Campbell testified that she was to have received the property at issue in this case from her father's estate. (Transcript p. 50). She further testified that she had to contact C&S and Charleston County to make sure the tax bills for the property were properly sent to her address in Greenville, South Carolina, well after she reached the age of majority. (Transcript p. 50, pp. 53-54)

15. Charleston County's GIS page, tax maps, and auditor's information show that tax bills have been sent to Mrs. Campbell's address in Greenville; she testified that she has paid the taxes on the

property continuously since removing C&S as her Trustee. (Defendant's Exhibits 1, 2, 3) (Transcript pp. 55-56) (Transcript p. 69).

16. Mrs. Campbell also testified that the tax bills have always been sent to her address in Greenville, even though the County continued to name William L. Hemingway as the owner of the property. (Defendant's Ex. 6) (Transcript p. 56, p. 59).

17. While this matter was pending, Mrs. Campbell's siblings executed and delivered a Quit Claim Deed to Mrs. Campbell for any interest that they may have still claimed in the property as a result of their being the heirs of William L. Hemingway. That Quit Claim Deed was recorded on October 1, 2020, in Book 0921 at Page 027 in the Office of the Register of Deeds for Charleston County. (Defendant's Ex. 5).

18. At trial, both Mr. Dudley and Mrs. Campbell testified that Mr. Dudley had a conversation at Mrs. Campbell's house in Greenville about buying the property from Mrs. Campbell. (Transcript pp. 49-50, p. 65, p. 82). Mrs. Campbell and Mr. Dudley also testified that Mr. Dudley wrote her a letter asking to buy the property which she had no intention of selling. (Transcript, p. 50, pp. 81-82). Mr. Dudley even offered to have Mrs. Campbell use seller financing of the property, to which Mrs. Campbell declined. (Transcript pp. 82-83).

19. Both parties agreed that Mr. Dudley had presented a check for Fifty Thousand and No/100 (\$50,000.00) Dollars to Mrs. Campbell as a down payment, but that she would not agree to sell the property. (Transcript, p. 50, pp. 65-66; pp. 82-83).

20. At trial, both the Plaintiff and the Defendant differed as to the timing of that conversation, with Mrs. Campbell recalling that conversation being in the 1970s and Mr. Dudley recalling it being in the 2000s. (Transcript, pp. 68-69; pp. 82-83, p. 88). Mr. Dudley testified that he

approached Mrs. Campbell to purchase the property because it had been “hard to find out who owned it” (Transcript, p. 83).

21. Mrs. Campbell testified that at the time of the conversation, she gave Mr. Dudley permission to use the property to store a boat trailer on the property. (Transcript, p. 50) Mrs. Campbell testified that she had no problem with Mr. Dudley parking a trailer on the lot. (Transcript, p. 66).

22. Mr. Dudley disagreed at trial and testified that he had been in possession of the property since 1976, without seeking permission. (Transcript, p. 88).

23. Mr. Dudley’s witnesses, Mr. David Parlman and Mr. Earnest L. Passailaigue testified that they had placed trailers on the property and had parked vehicles on the property, too. Mr. Parlman testified that he had seen other people use the property, too, including a neighbor named Heyward Robinson. (Transcript, p. 13, p. 18, p. 20, p. ) Mr. Parlman testified that Mr. Dudley never told him that he (Mr. Dudley) owned this property. (Transcript, p. 21, p. 23). Mr. Passailaigue also admitted to using the lot, even if that use was infrequent. (Transcript p. 31, p. 32). He, too, used the lot for parking, including overflow parking. (Transcript, p. 33). Mr. Passailaigue knew of Mr. Dudley’s conversation with Mrs. Campbell regarding the purchase of the property. (Transcript, p. 33). Mr. Dudley also confirmed that other people used the lot to park, too. (Transcript p. 79; pp. 88-89).

24. Mr. Dudley testified that other people had used the property during the time he claimed to be in exclusive possession of the property, including the adjacent neighbor Heyward Robinson as well as David Parlman, and Ernest Paissailaigue. (Transcript p. 79; pp. 88-89).

25. Mr. Dudley further testified that he never enclosed the property or fenced the property but that he did put a shed on the property. (Transcript, p. 87).

26. At trial, the pictures of the property showed the shed, trailers, and a “No Trespassing Sign” which the parties agreed had been placed on the property in 2020 by Mrs. Campbell’s son. (Defendant’s Ex. 7) (Transcript p. 64).

27. Mr. Dudley testified that after Hurricane Hugo he cleaned the lot in question and had been using it continuously since he moved in across the street in the 1970s. (Transcript p. 91).

28. Mr. Dudley testified that he never paid any taxes on the property nor did he seek to exclude anyone else from using the property, including a former neighbor named Heyward Robinson, who also parked a boat trailer on the property, which confirmed testimony from Mr. Parlman. (Transcript p. 20).

29. In order to prove that he had adversely possessed the property, Mr. Dudley was required to show by clear and convincing evidence, the highest of civil evidence standards, that he had continuous, actual, open, notorious, and exclusive possession for over ten (10) years. *Jones, supra*; *Taylor, supra*.

30. The Court finds that Mr. Dudley failed to prove these elements by clear and convincing evidence. (Transcript, pp. 101- 103).

31. The Court finds that Mr. Dudley went to Mrs. Campbell’s home seeking to purchase the property which is in contradiction with his alleged intent to adversely possess the property since the 1970s. By this action, Mr. Dudley even told his own witnesses at trial about that conversation and his trip to Greenville. (Transcript p.-23).

32. The fact that Mr. Dudley went to Mrs. Campbell ended the continuous aspect of the claim (Transcript P. 104). He acknowledged Mrs. Campbell’s ownership by making her an offer to buy the land, even if they could not come to terms as to a price. *Id.*

33. That conversation indicates the intent to dispossess the owner was defeated under the continuous aspect of his alleged adverse possession. (Transcript p. 105).
34. That other neighbors on the Isle of Palms, including the two witnesses who came to trial, had also used the property without Mr. Dudley keeping them off the property and without having them seek Mr. Dudley's permission also negates any claim to exclusivity by Mr. Dudley.
35. There is a dispute as to when Mr. Dudley's visit to Mrs. Campbell took place, in either the 1970's or the 2000's, but, either way, the visit and offer indicates that his intention to adversely possess the property was defeated by that very visit.
36. Mr. Dudley testified that he put up no fencing or other means of blocking anyone else's access to the property which also negates any open and notorious quality to his use of the property.
37. The Court finds that there was no continuous, open, notorious, exclusive use by Mr. Dudley proven by clear and convincing evidence.
38. Further, Mr. Dudley brought no action prior to the present one to enforce his alleged ownership of the property.
39. Although the payment of taxes is not dispositive of the ownership of the property, it is an indicium of ownership. Only Mrs. Campbell has paid the taxes on the property for years in sums that are not inconsequential. (Defendant's Ex. 6) (Transcript pp. 56-57).
40. The Court finds that the issues are narrow and that Mr. Dudley has not overcome those issues by clear and convincing evidence as to Mr. Dudley's claim of possession of the property to the exclusion of all others continuously, openly, actually, notoriously, and exclusively.
41. Therefore, the Court must conclude and order that the title to the property has been and remains vested in the name of Patricia Hemingway Campbell; therefore, it is hereby

ORDERED that the title to the following real property is quieted in the name of Patricia Hemingway Campbell as follows:

ALL that certain piece, parcel, or lot of land situate, lying and being on the Isle of Palms, County of Charleston, State of South Carolina, being shown and designated as Lot 2 of Block 35-B as shown on a plat called "Part of Section A" of the Isle of Palms, Charleston County, S.C., made by Rex G. Fuller, Architect, and recorded in the RMC Office for Charleston County, SC, in Plat Book E at Page 96.

Being the same property conveyed to William L. Hemingway by deed of Ethel R. Hiers dated September 2, 1941, and recorded on September 3, 1941, in Book F43 at Page 175 in the Office of the Register of Deeds for Charleston County; and

Being the same property conveyed to Patricia Hemingway Campbell by quit claim deed of Bertie C. Hemingway Bunch and Henry Edsel Hemingway dated September 14, 2020, and recorded on October 1, 2020, in Book 0921 at Page 027 in the Office of the Register of Deeds for Charleston County.

TMS No.: 568-11-00-037

Grantees Address: 212 Pine Forest Drive  
Greenville, SC 29601

and, it is further

ORDERED that the Lis Pendens filed in this matter by William Dudley on June 30, 2020, with matter number 2020-CP-10-0424 is cancelled, struck, and of no further force and effect; and it is further

ORDERED that the Plaintiff shall have thirty (30) days from receipt of the entry of this Order to remove any items he has on the property, including, but not limited to, any boat trailers, utility trailers, sheds, garbage containers, recycling containers, or any other items he has on the property; and

IT IS SO ORDERED!

Charleston, South Carolina

\_\_\_\_\_, 2022

The Honorable Mikell R. Scarborough  
Master in Equity for Charleston County



Charleston Common Pleas

**Case Caption:** William L Dudley VS William L Hemingway , defendant, et al  
**Case Number:** 2020CP1002921  
**Type:** Master/Order/Quiet Title and Form 4

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So Ordered

s/Mikell R. Scarborough 3062