



set for a hearing. At trial the parties agreed the issues raised in the said Motion would be addressed during the trial.

Now therefore, from the pleadings, the credible testimony and the relevant evidence presented, I make the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. The property mentioned and referred to in this Complaint (hereinafter the “Property”) and the basis of this cause of action herein is described as follows:

ALL that certain piece, parcel or tract of land, with improvements thereon, if any, situate, lying and being in the Southeastern corner of Lot 51, Section 22, 1S1E, on St. Helena Island, Beaufort County, South Carolina, and being more particularly bounded and described as follows, to-wit: On the North by a Public road and on the East, South and West by land now or formerly of Emily Holmes. For a more complete description as to metes, bounds, courses and distances, reference is made to that certain plat made by H.F. Wilson, Jr., R.L.S, dated April 13, 1972, a copy of which is recorded in the Beaufort County Register of Deeds Office in Deed Book 197 at Page 679.

R300 017 000 114A 0000

2. The Property had at one time belonged to the Plaintiff’s mother, who lost title to it many years ago. In 1972 the Plaintiff wanted to re-acquire the Property but was unable to obtain a bank loan on her own, so her husband, Bubby Polite, obtained the financing. The deed was put in his name. **Plaintiff’s Exhibit 2.** The Plaintiff made the payments on the loan. Later, the Plaintiff and Bubby Polite divorced. Pursuant to the Divorce Decree, **Defendant’s Exhibit 1,** Bubby Polite was ordered to deed the property to the Plaintiff, which he did in 1989. **Plaintiff’s Exhibit 1.**

3. The Defendant is the Plaintiff’s youngest daughter. In about 1983 the Defendant was given permission by Bubby Polite to put a mobile home on the Property. The Plaintiff also gave permission but on the condition that the Defendant would contribute to payment of the real

property taxes and not make any changes to Defendant's mobile home, or the Plaintiff's Property without the Plaintiff's permission. The Defendant contributed to the payment of the real property taxes up until 2013.

4. Beginning in about 2016, disagreements and numerous personal problems arose between the Plaintiff and the Defendant, including but not limited to, the Defendant interfering with the Plaintiff bringing in a new double-wide mobile home to install on the Property, the Defendant constructing additions to her mobile home without Plaintiff's permission and disregarding Plaintiff's demands to stop the construction. The Defendant's construction resulted in Beaufort County Codes Enforcement issuing a Notice of Violation and assessing the fine against the Plaintiff as the landowner. **Plaintiff's Exhibit 5.**

5. On October 31, 2019, the Plaintiff wrote and delivered a letter to the Defendant giving the Defendant thirty (30) day's notice to vacate the Property. **Plaintiff's Exhibit 4.** The Defendant did not respond to the letter. On July 23, 2020, the Plaintiff filed an action in the Beaufort County Magistrate's Court to eject Defendant from the Property. **Plaintiff's Exhibit 7.** The Defendant, in her written response and in court, claimed she owned the Property. The Magistrate entered an Order stating there were competing claims of ownership, therefore it lacked jurisdiction to hear the matter, and this suit resulted.

6. With respect to the Defendant's "Notice of Motion and Motion for Violation or in the Alternative a Motion for Preliminary Injunction against the Plaintiff" filed September 28, 2021 (hereinafter "Motion"), the Defendant presented video evidence to support her Motion, **Defendant's Exhibit 20.** The videos were date stamped July 18, 2020. I find the date stamps of July 18, 2020 in the videos pre-date the entry of the Consent Order for Temporary Injunction filed December 2, 2020.

## CONCLUSIONS OF LAW

7. I conclude that the real property that is the subject of this litigation is situate in Beaufort County, South Carolina, and this court has jurisdiction to hear the matters set forth in the pleadings and venue is proper.

8. In order for the Defendant to prevail in her counter claim for Adverse Possession, she must prove that she has been in open, notorious, hostile, exclusive and continuous occupation of the Property against the true legal owner for the statutory period. Each and every element must be proven by clear and convincing evidence. I find the Defendant has failed to prove the elements of exclusivity and hostility. Exclusivity does not exist because the parties together occupied the Property, consisting of (.79) acres of land, and the Defendant contributed to the payment of the real property taxes as required by the Plaintiff by paying her portion to the Plaintiff up until 2013.

Under South Carolina law, hostile possession requires an intent to dispossess the true paper title holder of the property. The intent should be so notorious that the legal owner by ordinary diligence should have known about possessors intent to claim the property adversely. *Graniteville Co. v. Williams*, 209 S.C., 120-21, 39 S.E. 2d at 206; *Jones v. Leagan*, 681 S.E.2d 6, 384 S.C. 1, (SC App. 2009) Here, the Plaintiff is the true paper title holder of the Property having acquired it by deed of Bubby Polite in 1989, **Plaintiff's Exhibit 1**. the Defendant's occupancy was permissive until October 31, 2019, when the Plaintiff wrote the letter to the Defendant giving her thirty (30) days notice to vacate the Property. Thus, the permissive occupancy became hostile on October 31, 2019 and now constitutes a trespass. The statutory period required to obtain title by adverse possession has also not been met.

9. I conclude that the video evidence presented by the Defendant to support her Motion is date stamped July 18, 2020 which predates the Consent Order for Temporary Injunction

entered December 20, 2020. The Plaintiff cannot, as a matter of law, violate a court order that was entered after the complained of activity took place. Therefore, the Defendant's Motion is Denied.

10. I conclude from the facts and evidence presented in in this case that the Plaintiff is entitled to Judgment in her favor, and a Writ of Ejectment.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREEND that the Plaintiff, Rachel M. Polite, is the lawful paper title holder of the Property described in Paragraph 1, above, who possesses all rights and incidents of ownership in the Property, and that the Defendant has not proven by clear and convincing evidence that she has adversely possessed the Property against the true owner, the Plaintiff Rachel M. Polite; It is further,

ORDERED, ADJUDGED AND DECREED that as of October 31, 2019 the Defendant has been trespassing on the Plaintiff's Property and, therefore, the Defendant shall, within thirty (30) days from the date of this order, remove her mobile home from the Property and permanently vacate the Property. It is further,

ORDERED, ADJUDGED AND DECREED that the Defendant's "Notice of Motion and Motion for Violation or in the Alternative a Motion for Preliminary Injunction against the Plaintiff" is Denied for the reasons set forth in Paragraph 9, above; It is further,

ORDERED, ADJUDGED AND DECREED that the Consent Order for Temporary Injunction entered December 2, 2020, is hereby lifted and terminated with respect to the Plaintiff's method of ingress and egress to her home, and Plaintiff is free to access her property from Ladson Road. However, the portion of the Consent Order enjoining and restraining the parties, or their guests, invitees or agents, from harassing, threatening, intimidating, molesting, assaulting, stalking or destroying personal property of the other party, shall remain in full force and effect until such

time that the Defendant's mobile home from the Property and, thereby, has permanently vacated the Property. It is further,

ORDERED, ADJUDGED AND DECREED that if you, the Defendant, Karen P. Polite, fail to remove the mobile home and vacate the Property within sixty (60) days from the date of this Order, a Writ of Ejectment shall be issued without further delay for the Sheriff of Beaufort County, South Carolina to proceed to the Property to gain access and forthwith remove the mobile home and its contents from the Property, and deposit the said mobile home and personal property at or near, but not obstructing, the nearest public roadway, or otherwise disposing of your mobile home and personal property as allowed by law.

DONE AND ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Marvin H. Dukes, Master-in-Equity and Special  
Circuit Court Judge for Beaufort County, South  
Carolina

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO.** 2020-CP-07-00899

Rachel M. Polite

Karen P. Polite

PLAINTIFF(S)

DEFENDANT(S)

**Submitted by:** Alysoun M. Eversole, Esq.

**Attorney for :**  Plaintiff  Defendant  
or  
 Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (*CHECK REASON*):**  Rule 12(b), SCRCP;  Rule 41(a), SCRCP (Vol. Nonsuit);  Rule 43(k), SCRCP (Settled);  Other
- ACTION STRICKEN (*CHECK REASON*):**  Rule 40(j), SCRCP;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :           This is a Quiet Title Action, Reformation, and Declaratory Action          

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Rachel M. Polite	Karen P. Polite	\$ N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:  
TMP#R300 017 000 114A, .79 acre, Address: 6 and 8 Ladson Dr., St. Helena Island, SC,

\_\_\_\_\_

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

\_\_\_\_\_  
**Circuit Court Judge**

\_\_\_\_\_  
**Judge Code**

\_\_\_\_\_  
**Date**

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.**

\_\_\_\_\_

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Beaufort Common Pleas

**Case Caption:** Rachel M Polite , plaintiff, et al VS Karen P Polite

**Case Number:** 2020CP0700899

**Type:** Order/Judgment and Form 4

So Ordered:

s/Marvin H. Dukes III #3069