

PROCEDURAL HISTORY

The Plaintiff filed a Summons and Complaint on September 1, 2020. Defendant, Leroy Pinckney, filed a Motion to Dismiss on October 7, 2020. An Order was filed on December 14, 2020 denying Defendant's Motion to Dismiss and also setting forth that Plaintiff was to amend his complaint and include Willis Pinckney and Frank Ravenel as Defendants. Plaintiff filed an Amended Summons and Complaint on December 16, 2022. Defendants, Leroy Pinckney and Willis Pinckney, filed an Answer and Counterclaim on December 17, 2020. Plaintiff filed a Reply on December 18, 2020. An Order of Reference was filed with the Court on March 24, 2022 referring this case to the Master-in-Equity's Court to hear all issues arising in this action. This Order provided any appeal shall be to the South Carolina Supreme Court or South Carolina Court of Appeals as appropriate. The parties acknowledged that they were the only property owners and that a Guardian ad Litem did not need to be appointed.

PARTIES, JURISDICTION AND VENUE

The Plaintiff and Defendants are residents of Berkeley County, South Carolina. The real property parcels which are the subject matter of this action are located in Berkeley County, South Carolina. Accordingly, this Court has personal jurisdiction over the interests of the parties in this action, *in rem* jurisdiction over the properties, and venue is proper because this matter involves ownership and title to real property located in Berkeley County, South Carolina.

BACKGROUND FACTS

The Plaintiff brought this Action claiming ownership by adverse possession and pursuant to the provisions of the South Carolina Code Ann. 15-67-10, et for the purpose of obtaining a decree quieting title to said properties described as follows:

ALL that certain piece, parcel and/or tract of land, situate, lying and being in School District #14, Eutaw Parish, Berkeley County, South Carolina, being more

particularly shown and designated as Lot 4 (1.32) & Lot 5 (1.222) acres more or less on a Plat prepared for Autman Pinckney by Hager Metts, R.L.S. #183 to be recorded in the office of the RMC Office for Berkeley County in Plat Cabinet K at Page 342 A.

Northeast: By lands of Robert Butler
 Southwest: By lands of Leroy and Peggy Pinckney
 Northeast: By lands of Oakland Club
 Northwest: By lands of now or formerly Autman Pinckney, et al

Berkeley County TMS: 042-00-03-083 (Lot 4)
 042-00-03-029 (Lot 5)

The properties described above were owned by John Dandy Pinckney and Geneva P. Brown. John Dandy Pinckney and Geneva P. Brown both died intestate survived by their siblings, Evelena Kinlaw, David Autman Pinckney and Defendant, Leroy Pinckney. Evelena Kinlaw conveyed her interest in the properties to Defendant, Leroy Pinckney. Defendant, Leroy Pinckney, conveyed his interest in Lot 4 to Defendant, Willis Pinckney. David Autman Pinckney conveyed his interest in Lot 5 to Defendant, Leroy Pinckney, and Peggy Pinckney. The Plaintiff claims he adversely possessed the properties for the statutory period and he filed this action to request sole ownership of the properties and to quiet the title to these properties in his name.

FINDING OF FACTS

Plaintiff and Defendants presented testimony and evidence and this Court duly considered all of the testimony and evidence presented by all of the parties. This Court assessed the credibility of the witnesses' testimony and all the evidence presented. This Court compared all conflicting or nonconforming elements of such testimony and evidence, choosing certain elements to the exclusion of others. The Court makes the following findings of facts.

The properties are located in Berkeley County, South Carolina and are more particularly described above. Accordingly, jurisdiction for this matter was properly set in Berkeley County.

John Dandy Pinckney and Geneva P. Brown were conveyed the properties by deed recorded on July 21, 1990 in Book 540 at Page 239. John Dandy Pinckney died intestate in 1995 and his estate was not probated. He died unmarried and with no children. He left as his heirs, his four (4) siblings: Evelena Kinlaw, Geneva Pinckney Brown, David Autman Pinckney and Defendant, Leroy Pinckney.

Geneva P. Brown died intestate in 2010 and her estate was not probated. She died unmarried and with no children. She left as her heirs, her three (3) siblings: Evelena Kinlaw, David Autman Pinckney and Defendant, Leroy Pinckney.

Evelena Kinlaw conveyed her interest in the properties to Defendant, Leroy Pinckney, by deed recorded on August 28, 2014 in Book 10934 at Page 306 and this deed was re-recorded on November 7, 2014 in Book 11060 at Page 77.

Defendant, Leroy Pinckney, conveyed his interest in Lot 4 to Defendant, Willis Pinckney, by deed recorded on January 8, 2016 in Book RB 2089 at Page 845.

Defendant, Willis Pinckney, as Guardian and Conservator on behalf of David Autman Pinckney conveyed Lot 5 to Defendant, Leroy Pinckney, and Peggy Pinckney in Book RB 2089 at Page 849. This deed was re-recorded in Book RB 2110 at Page 25.

Defendant, Leroy Pinckney, and Peggy Pinckney are the owners of Lot 5. Defendant, Willis Pinckney, is the owner of Lot 4.

Plaintiff moved from Pennsylvania into a house located on the properties in 1990 and lived there for around 3 years until 1993. At that time he moved across the street onto a different property where he currently resides. The house was previously owned by the parties' parents/grandparents. No one lived in the house after 1993. The house was torn down by Geneva Brown in 2008 so she could place a mobile home on the property. Geneva Brown lived in this

mobile home until her death in 2010. Defendant, Leroy Pinckney, acquired title to this mobile home through the Berkeley County Probate Court. Defendant, Leroy Pinckney, paid the loan on the mobile home in full. Defendant, Leroy Pinckney, has been renting this mobile home since Geneva's Brown death and currently rents the mobile home to Defendant, Frank Ravenel.

Defendant, Willis Pinckney, placed a mobile home on the properties in 1998. The majority of his mobile home is located on Lot 5 and a portion of the mobile home encroaches onto Lot 4. Defendant, Willis Pinckney, has been residing in this mobile home since 1998. Lot 4 is mostly vacant with some grass but a large portion of this lot is marsh and woods.

In addition to the mobile homes, a building is located on Lot 5. This building was once a grocery store owned by the parties' parents/grandparents. Plaintiff began using this building as a church in 1991. He held one to two church services a year in the building until 1993. He also used the building to practice with his gospel band but has not had any practice sessions since 2015. He has stored some of his personal property and the church property in this building from 1990 until current. He visits the building on a regular basis.

Plaintiff erected a green fence around the building located on Lot 5 in 1990 which deteriorated and has been gone since 2004. Plaintiff has not erected a fence along the boundary lines of the properties. Plaintiff previously cut the grass on Lot 5 but stopped in 2000 and has never cut the grass on Lot 4.

Geneva Brown and Plaintiff paid the property taxes on Lot 5 from 1990 until 2010, when Geneva Brown died. Then from 2010 to 2014, Plaintiff and Defendant, Leroy Pinckney, paid the property taxes on Lot 5. After 2014, Defendant, Leroy Pinckney, has solely paid the property taxes on Lot 5. Defendant, Willis Pinckney, has solely paid the property taxes on Lot 4 since 1998.

Plaintiff never told Geneva Brown that she could not place her mobile home on Lot 5. Plaintiff never told Defendant, Leroy Pinckney, to get off of or move his mobile home off of Lot 5. Plaintiff never told Defendant, Willis Pinckney, to get off or move his mobile home off of Lot 4. Plaintiff never asked Defendant, Leroy Pinckney, to pay rent for his mobile home on Lot 5. Plaintiff never asked Defendant, Willis Pinckney, to pay rent for his mobile home on Lots 4 and 5. Plaintiff never told Defendant, Frank Ravenel, to get off Lot 5 or asked him to pay rent for residing in the mobile home on Lot 5.

Plaintiff never posted No Trespassing Signs on Lot 4 or Lot 5. He erected a sign for his church next to the building and planted a tree next to the building but he has not placed any other improvements on Lot 4 or Lot 5.

Plaintiff's only possession of these properties is to store the church's property and some of his personal property in the building. Plaintiff's use of these properties was to hold a few church services from 1991 – 1993 and to practice with his gospel band, which ended in 2015. Defendant, Leroy Pinckney, knew that the Plaintiff was using the building to store the property and conduct his gospel band practices and gave him permission to do so.

REVIEW OF APPLICABLE LAW

A. Adverse Possession

In order to establish a claim for adverse possession, the claimant must prove by clear and convincing evidence his possession of the subject property was continuous, hostile, actual, open, notorious and exclusive for the statutory period. *All Saints Parish, Waccamaw v. Protestant Episcopal Church In the Diocese of S.C.*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004). The statutory period in South Carolina for adverse possession is ten (10) years. S.C. Code Ann. 15-67-210 (2005). In *Knox v. Bogan*, 322 S.C. 64, 472 S.E.2d 43 (Ct. App. 1996), the court explained

for the possession to be hostile, the adverse claimant is required to show that his possession was actual, exclusive, open, notorious, and *without the consent* of the title owner.

In *Butler v. Lindsey*, 293 S.C. 466, 361 S.E. 2d 621 (Ct. App. 1987), the court set forth that the exclusive possession necessary to acquire title by adverse possession is *not* satisfied if occupancy is shared with the owner. The court in *Butler* also explained that “the general rule is that where an owner of property and an occupier are both in possession, the possession of the legal owner prevails to the exclusion of the other.”

In *McDaniel v. Kendrick*, 386 S.C. 437, 688 S.E.2d 852 (S.C. Ct. App. 2009), the court addressed the requirement of hostility in an adverse possession claim. The court cited *All Saints Parish, Waccamaw* and *Knox v. Bogan* regarding what must be proven to claim adverse possession and specifically, hostility. Citing *Knox v. Bogan*, the supreme court, addressing the requirement of hostility, stated:

“The only issue is whether the Knoxes' possession was sufficiently hostile. As we read *Perry v. Heirs at Law* (316 S.C. 224, 449 S.E.2d 250 (1994) and *Wigfall v. Fobbs*, 295 S.C. 59, 367 S.E.2d 156 (1988) either there is no longer a hostility requirement where the claim is to an entire tract, or South Carolina does in fact follow the majority view that the mental attitude of the possessor of land is immaterial. Under the majority view an actual, exclusive, open and notorious possession without the consent of the title owner is both wrongful and adverse and will ripen into perfect title in the usual way when the statute of limitations has run. The majority view represents the most practical approach to the hostility requirement of adverse possession and is in keeping with the national trend of authority.”

The Court in *McDaniel* explained that the claimant must be on the property *without the consent* of the title owner. *Id* at 442.

If a claimant asserts title by adverse possession and his occupancy is not under a color of title, the claimant must show either fencing or other improvements covering most of the subject

land or some other continuous use and exercise of dominion. *King v. Hawkins*, 282 S.C. 508, 319 S.E. 2d 361 (1984).

CONCLUSIONS OF LAW

Kenneth Pinckney filed a Complaint with the Court requesting it to grant him sole ownership of the above referenced properties because he acquired ownership of these properties by adverse possession. In order for Kenneth Pinckney to establish a claim for adverse possession, he must prove by clear and convincing evidence that his possession of the subject properties was continuous, hostile, actual, open, notorious and exclusive for the statutory period. *All Saints Parish, Waccamaw v. Protestant Episcopal Church In the Diocese of S.C.*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004). According to the South Carolina statute regarding adverse possession, the Plaintiff must show his possession was adverse for ten (10) years.

One element of adverse possession that is relevant in this case is exclusivity. In *Butler v. Lindsey*, 293 S.C. 466, 361 S.E. 2d 621 (Ct. App. 1987) the court set forth that the exclusive possession necessary to acquire title by adverse possession is *not* satisfied if occupancy is shared with the owner. In this instance, the Plaintiff set forth that he began adverse possession of Lots 4 and 5 in 1990. In order for the Plaintiff to prove he possessed Lots 4 and 5 with exclusivity, he must show and prove to the Court that he has not shared occupancy of Lots 4 and 5 with the Defendants, Leroy Pinckney and Willis Pinckney, for ten (10) years or until the year 2000. The Plaintiff is unable to do so because he has shared possession of Lots 4 and 5 with Defendant, Willis Pinckney, since 1998. He also shared possession of Lot 5 with Geneva Brown from 2008 to 2010 and with Defendant, Leroy Pinckney since 2011. It is clear that the Plaintiff's possession has not been exclusive for the required ten (10) years and thus his claim of adverse possession fails.

The court in *Butler* also explained that “the general rule is that where an owner of property and an occupier are both in possession, the possession of the legal owner prevails to the exclusion of the other.” Since the Plaintiff has shared possession with the Defendants, Leroy Pinckney and Willis Pinckney, who are the legal owners of the properties, the Defendants’ possession prevails over the Plaintiff’s possession. Therefore, the Plaintiff’s possession is not exclusive and he has not adversely possessed these properties.

Another element of adverse possession that is relevant in this case is hostility. South Carolina case law is clear that in order for a claimant to prove he has occupied property with hostility he must show that he has occupied the property *without the consent* of the title owner. See *Knox v. Bogan*, 322 S.C. 64, 472 S.E.2d 43 (Ct. App. 1996); *All Saints Parish, Waccamaw v. Protestant Episcopal Church In the Diocese of S.C.*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004); and *McDaniel v. Kendrick*, 386 S.C. 437, 638 S.E.2d 852 (S.C. Ct. App. 2009). In this instance, the Plaintiff must prove that his possession of Lots 4 and 5 are without the consent of Defendants, Leroy Pinckney and Willis Pinckney. The Plaintiff is unable to do so because Defendant, Leroy Pinckney, testified that he knew the Plaintiff was using the building to store his personal property and the church’s personal property in the building on Lot 5 and gave him permission to do so. Since the Defendant, Leroy Pinckney, gave the Plaintiff permission to use the building on Lot 5, the Plaintiff’s possession is not hostile because he had the consent of the title owner. Therefore, his claim for adverse possession of Lot 5 fails.

The Plaintiff’s possession of Lots 4 and 5 is not under a color of title. If a claimant asserts title by adverse possession and his occupancy is not under a color of title the claimant must show either fencing or other improvements covering most of the subject land or some other continuous use and exercise of dominion. *King v. Hawkins*, 282 S.C. 508, 319 S.E. 2d 361 (1984). In this instance,

the Plaintiff has not erected a fence along the boundary lines of Lots 4 and 5. The Plaintiff did erect a fence around the building but the fence deteriorated and has been gone since 2004. The Plaintiff has not placed any significant improvements on either Lot 4 or 5 to prove that he is the owner of these properties. The Plaintiff has failed to prove that he exercised dominion over the properties because he never informed Defendants, Leroy Pinckney and Willis Pinckney, to move their mobile homes; he never informed the Defendants, Leroy Pinckney and Willis Pinckney, to get off the properties; never told Defendant's, Leroy Pinckney, tenant, Frank Ravenel, to pay rent or get off the properties; never posted any "No Trespassing Signs" on the properties; has not paid the property taxes on the properties and has not performed any maintenance on the properties. The Plaintiff has failed to prove that he has asserted ownership over these properties. In addition, the Plaintiff has failed to prove that he exercised the requisite continuous dominion over the properties to claim the properties by adverse possession. Therefore, his claim for adverse possession of the properties fails.

After considering the totality of the evidence, I find that the Plaintiff has not possessed the properties exclusively for ten (10) years. I also find that the Plaintiff's possession of the properties is not hostile. I also find that the Plaintiff's possession of the properties is not adverse because he has failed to fence the properties, not placed significant improvements on the properties or exercised the requisite continuous dominion over the properties.

ORDERS

IT IS THEREFORE ORDERED, that Plaintiff's adverse possession claim of the properties described above is denied; and

IT IS FURTHER ORDERED, that the Defendant, Wil Pinckney, is the owner of the property described above and known as Lot 4 (TMS Number: 042-00-03-083); and

