

IN THE DISTRICT COURT OF APPEALS
DISTRICT, STATE OF SOUTH CAROLINA

CAROLYN T. SMITH
APPELLANT,

v.

CHARLES TOLBERT
THE HEIRS OF HELEN G. TOLBERT
RESPONDENTS

RECEIVED

JAN 11 2023

SC Court of Appeals

INITIAL BRIEF OF APPELLANT
ON APPEAL FROM THE CIRCUIT COURT
NINTH JUDICIAL CIRCUIT IN AND FOR
CHARLESTON COUNTY, SOUTH CAROLINA
HONORABLE MIKELL R. SCARBOROUGH CIRCUIT
JUDGE

CAROLYN T. SMITH
PRO SE
APPELLANT
338 FIFTH AVENUE
MT. PLEASANT, SC 29464
(1-843) 216-6960
PRO SE

South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201
January 7, 2023

CASE No.: 2021cp1004058

Carolyn T. Smith Charles Tolbert et al.
Appellant Pro Se Respondents

By Order Of The Court:

Appellant, Carolyn T. Smith appeals the Order [Judgment] by the honorable Mikell R. Scarborough entered November 8, 2022 following a hearing September 21, 2022. Appellant received notice December 1, 2022 i.e. notice of Order [Judgment]. Appellant now without Counsel and in search of Counsel proceeds Pro Se. Appellant has contacted two attorneys unable to take my case. I can only use limited legal sources supplied to me by assistants at the reference desks of the county libraries. I continue my serious search for help. I certify that you will find enclosed a copy of the original Court order [Judgment].

In conclusion, I shall deeply appreciate the Court's indulgence herein. I hereby beg your decision to allow the extension of time that I've requested in a motion.

(B)

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	1
TABLE OF AUTHORITIES-CITATIONS	11
PRELIMINARY STATEMENT OF REFERENCES	7
STATEMENT OF THE CASE AND FACTS- ISSUES	1

SUMMARY OF ARGUMENT ARGUMENT

4.

I. The Circuit Court erred in granting Summary Judgment to Charles Tolbert in the Appellant's Counterclaim to the Plaintiff's Quiet Title Claim

II There is clearly genuine issue as to material fact by passed by the Circuit Court so the Circuit Court erred herein.

III The Circuit Court erred in its statement under "Legal Analysis," line no. one and no. two. See Order granting Summary Judgment.

IV The Circuit Court erred in ignoring, "Standard of Review page two; Fender v. The Heirs of Smashum, paragraph eight extending to the top of pg. three, end of line four and lines five to ten.

V Please see Table of Authorities & Cases Cited.

6

Table of contents continued below

Please be advised of the following;
that Appellant shall utilize to demonstrate
the Court's errings in granting Charles Tol-
bert Summary Judgment in the subject case.
Cases cited in, "The Table of Authorities"

III The Final Order referenced in this case that
of Summary Judgment in favor of Charles Tolbert
was the Harshes most drastic possible a par-
ty represented by Counsel that did not argue or
was not allowed to argue multiple genuine issues
as to material fact pushed aside by the circuit Court.
hence never heard at the hearing September 21, 2022.

Conclusions - Please see Separate Sheets
Certificates of Service
The Clerk of The Court

Table Of Authorities

CASES:

George v. Fabri, 345 S.C. 440, 452, 548, S.E. 2d 868, 874 (2001).

Watson v. Little, 224 S.C. 359, 364, 79 S.E. (384) 2d 384, 387, (1953).

Watson 224 S.C. at 365, 79 S.E. at 387.

Grant v. Grant, 288 S.C. 86, 340 S.E. 2d 791. (Ct. App. 1986)

Fender v. the Heirs of Smashum opinion No. 3239 Heard March 11, 2008. Counter claim to Quiet Title successful inspite of distribution. Fender filed Quiet Title.

Standard Of Review

Fleming v. Rose 350 S.C. 488, 493, 567 S.E. 2d 857, 860 (2002).

Young v. S.C. Depart. of Corrections, 333 S.C. 714, 719, 511 S.E. 2d 413, 415 Ct. App. (1999).

Hall v. Fedor 349 S.C. 169, 173-74, 561 S.E. 2d 654, 656 (Ct. App. 2002)

Lanham v. Blue Cross and Blue Shield of S.C. 349 S.C. 356, 363, 563 S.E. 2d 331, 334 (2002).

Wood v. Bivens, 292 S.C. 76, 354 S.E. 2d 909 (1987) Brevard v. Fortune 221 S.C. 117, 69 S.E. 2d 365, (1952).

TT

11

Table of Authorities Continued
CASES:

Lusk v. Callahan, 287 S.C. 459, 460,
~~339 S.E.2d 156, 157~~ (Ct. App. 1986)

Preliminary Statement Of Reference

In this the revised Brief the parties will be referred to by the names Charles T. Defendant and the Plaintiff as C. T. Smith and the Appellant. Record on Appeal will be known by the symbol "R." They, I believe are Summary Judgment, Ouster, Quiet Title, Five SC approved elements to be satisfied in a claim of Title to Adverse Possession = "R" also

Statement Of The Case And Facts - Issues

This is an appeal from the final order handed down by The Honorable Mikell R. Scarborough as a Summary Judgment or Order [Judgment] in favor of Charles T.

The appellant is a widow, (85) eighty-five years of age; a life time care giver to Fred W. and to Helen G. Tolbert, Appellant's parents. C. T. Smith uprooted, leaving jobs to support and care for her parents whenever critical need(s) plagued them. Examples - ① 1920-61 to care for Helen + family, Betty Jean and Sara Jo. Helen had surgery, a mastectomy. ② C. T. Smith left then; had to return 1985-1987. Helen had surgery involving the colon and liver. ③ Fred and Helen performed poorly after the death of their first born, gifted voice music major of legendary significance. Once again C. T. Smith gave notice to her employer(s) that she would have to live with and care for her parents, Fred + Helen Tolbert at the subject properties. Appellant from 1995-

to present 2023 the Appellant took employment with the Charleston County School District in 1995 and continued said employment through March 2020 when Covid-19 struck. Said employment was uninterrupted as was my residency at the subject properties. The Appellant will continue to demonstrate in narrative form multiple genuine issues as to material fact entitled to judgment as a matter of law. Appellant will make opposition to summary judgment convincingly arguable.

Facts And Issues

1. The Circuit Court erred in viewing the purpose of summary judgment when the Court decided that there no requirement for the service of a fact finder. It followed that genuine issues as to material fact were overlooked. It, the Court, erred in not following, "Standard of Review," express in the case of Fender v. The Heirs of Smashum page two paragraph eight, the SC Court of Appeals. Statement

Summary judgment is appropriate when there is no genuine issue as to material fact and the moving party (the Appellant) is entitled to judgment as a matter of law. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

Even where no dispute as to evidentiary facts exists, but only as to the conclusions of inference to be drawn from them Summary judgment should not be granted. *Hall v. Fedor*, 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002). Moreover, Summary judgment is a drastic remedy that should be cautiously invoked to ensure no person is improperly deprived of a trial of disputed factual issues. *Lanham v. Blue Cross & Blue Shield of S.C.*, 349 S.C. 356, 363, 563 S.E.2d 331, 334 (2002).

Appellant was deprived of any opportunity to defend my Case of Adverse Possession. The Circuit Court gave precedent to hearing first the Claim for Summary judgment; accepted an argument that falsely accused the Appellant of having executed some kind of corrective deed which bore forgeries of my signature and of my name printed where a signature should have been. Counsel for Keith L Tolbert and Charles Tolbert alone saw to execution of a said Corrective Distribution Deed. The circuit court erred in not establishing or not determining veracity per said Corrected Deed. Appellant never signed on to said Deed that could be and was used to aid Charles Tolbert's efforts to prevail and further his drastic Quiet Title claim. The circuit court failed - The circuit erred in the matter describe above. The circuit court erred in arbitrarily con-

dd

Considering a sixth element, "Ouster" to be satisfied in order to prevail as to Title to Adverse Possession

The state of SC requires that only five elements be satisfied, verified by two different references from the reference desks of The Charleston County main library and by the Mt. Pleasant Branch of said library system

The Circuit Court erred when it did not consider any and all of triable issues below, issues of fact the triable issues are: The Circuit Court claimed that it did consider the memoranda, documents and arguments of counsel yet determined that to Grant the motion of summary judgment as to Carolyn Tolbert Smith:

The circuit Court erred in that Appellant satisfied six of the required five elements required by the state of S.C. for a claim to Adverse Possession. Said elements are:

① Occupation is actual and open?

Ans. Appellant resided at the subject properties beginning nineteen-ninety five to ~~twenty~~ twenty-three i.e. 19 ⁷/₁₀ years, provided the following before and after having been assigned power of Attorney for mother 1990's between 1995 and 1997: Provided needs per hygiene, meals groceries, Supplements (food), medicals, spiritual, physical, social i.e. concert, physiological (tube feedings for father, Fred, restaurant outings (hotels & restaurants, travels (Hippocrates Health Resort in W. Palm Bch., FL

(three weeks), Miami, FL, trips to funerals, weekly hospital visit for post cancer treatments for mother, hospitalization and after care for daddy, Fred, wheel chair walks daily for Fred, lake walks for Helen, at home socializing at I left work, daily outs sightseeing by car and much more during the years 1995-2003 eight yrs.

① Occupation was continuous, uninterrupted.

② Occupation was notorious-famous 1995-2023? Ans. Appellant's address that of the subject properties was known by the I.R.S., the Chas. Count. School District, Appellant's employer when Kelly Services became the employer for (the) said School District Appellant continued to work in the system to end until schools were closed March 20, 2020. In addition the postal service continually delivered mail to the Appellant 1995-2023. Appellant adopted utility pymts. but never removed my mother's name from the account. The Appellant has some invoices of many improvements made at the subject properties. Upkeep by the Appellant include a new six thousand dollar roof, yard care and ground build up costing \$3000.00 three thousand plus dollar. Appellant added new appliances to the kitchen including a \$1400.00 refrigerator, new toilet \$250.00, decorative shelves (wall) fixtures, tree trimmings (Several) one for \$200.00, one for \$250.00 and one for \$400.00. New repairs start 01/09/23 for roof, ceiling and plumbing.

ft

Said occupation one (1) and (2) above as well as occupation time 2003 to 2022 at the time of the subject hearing i.e. nineteen and nine-tenth years allowed all co owners to evince Appellant's intention to dispossess, said intention was clear and unmistakable, Felder 278 S.C. at 330, 295 S.E. 2d at 642. This claim of Adverse Possession claim to Counterclaim Quiet Title is rare and extreme, a "Little More Than The Law Allows." The possession has been attended with such circumstances as to evince a claim of exclusive right and title and a denial of the right of the other owners to participate in the profits. Woods v. Bivens, 229 S.C. 76, 354 S.E. 2d 909 (1987) Brevard v. Fortune, 221 S.C. 117, 69 S.E. 2d 355 (1952) Herein "ouster," element no. six, is established in consideration of both the first two elements already satisfied and the remaining and cited below: Occupation is hostile?

Ans. Occupation is hostile and has been since the time that Helen gave the P.A. of Helen's finances, health and more, one sibling refused to sign on with approval. Charles T. visited only to have an acquaintance of Charles T. witness my answer to his concerns about Helen Charles T's grand mother's properties upon her death. She was in his presence listening, Charles T. showed no love, no concern for Helen only for her money. Charles T. was ousted in 1985, 86 when Charles T. and Charla wrote separate smutty nasty (Appellant lived with Fred and Helen, 1985-1987)

198

letters to Helen, their loving, caring grandmother in response to their darling grandmother's invitation to Helen and Fred's renewing of their vows after fifty years of marriage. Charles T only returned for Helen and Fred's funeral. Charla and Charles stayed at a hotel. Keith chose to disrespect his grandmother Helen. He did not attend her funeral but was quick to file, "Quiet Title," the obnoxious claim to gain Helen's money. Appellants exclusive possession was clearly viewed as a certain, turning out; the owner of co owners because among other evidence already cited, the Appellant gave rooms designated for the co owners previously for the sole occupancy of each co owner and or the family members thereof, Appellant denied said former occupants their rooms. Appellant assigned said rooms to the Appellants family members. Co-owners no longer had free run-of the home. The Appellant's family had exclusive possession of subject properties clear and convincingly Watson, 224 S.C. at 365, 79 S.E. 2d at 387, one claiming title to land by adverse possession has the burden of providing adverse possession by clear and convincing evidence; Per The adjacent lot the Appellant maintained fencing around said lot 327. Appellant dogs (fourteen) were allowed to run freely on said lot and to live on said lot 1998-2015. Appellant paid (for) the taxes 2003-2022; paid yard care.

h h

Lusk v. Callahan, 287 S.C. 459, 460,
339 S.E. 2d 156, 157 (Ct. App. 1986)

④ Ouster took place? = Arbitrary element "2"
Ans. Title by ten years adverse possession
by a Co owner against another may be ac-
quired only after actual ouster of which
the the latter has notice, Or should have in
the exercise of a reasonable diligence
and vigilance. Watson v. Little, 224 S.C.
359, 364, 79 S.E. 2d 384, 387 (1953).

⑥ Ouster is the actual turning out or keep-
ing excluded a party entitled to posses-
sion of any real property, Grant v. Grant,
288 S.C. 86, 340 S.E. 2d 791 (Ct. App. 1986)

④ Hostility?

Ans. While the possessor need not give ex-
press notice of the hostility of his possession
to the others, the nature of it must be brought
home, as if it had been said to the other
owners - Page five, paragraph two lines 8, 9, 10.
Examples of Convincing, unmistakable, un-
equivocal and clear hostile possession and
Ouster was seen and known by Co owners never
having been given keys to the subject property,
But Appellant's grand child and children had
keys given by the Appellant. Said children + grands
took over rooms designated for the Co-
owners and their families. Only the Appellant
family could spend holidays at the subject home.

ii
5) Exclusive Possession?

Ans: Co owners acknowledged my exclusive possession convincingly by their letters and phone calls to Appellant, asking of me a share in the profits by the sale of the subject property, more than once. Co owners, seeing that unmistakably the Appellant had exclusive possession, that their vigilance, their exercise of reasonable diligence proved the Appellant's exclusive possession of the subject properties; Co Owners hastily came to the decision to attempt to share in the profits by filing the claim of the drastic measure, Quiet title, to combat what they interpreted as hostile i.e. Appellant's possession and sole authority in ownership of the subject properties where the Appellant occupied for (27) twenty-seven years without interruption, eight of said years, caring for their parents, saving said Co owners hundreds of thousands of dollars and doing so without any help of theirs. The lower court, the Circuit Court erred in relying on the following statement that Appellant's Counter claim to Quiet Title would be defeated by a Deed of Distribution. Indication herein is that Counsel for Charles T. needed a Corrective Deed of Distribution to make the case hence manufacture another deed to make the, "Defeat" case.

Response Queen Smashum successfully Counter Claimed to Quiet Title. See Fender v the Heirs to Smashum page two, paragraph Six.

Summary Of Argument

The Circuit Court erred in Granting Charles T. Summary judgment. The Circuit Court erred in not examining the veracity of signatures on the alleged executed Corrective Deed of Distribution used by Counsel for Charles T. in an effort to block Ouster and in turn to try to halt my ability to prevail in/with my Adverse Possession Claim. The Circuit Court erred in allowing Counsel for a Summary judgment matter, on behalf of Charles T. to be heard first at the hearing, September 26, 2022. The Circuit Court erred in hastily ending the hearing, making said hearing an open and shut case in favor of Charles T. and Counsel for Charles T. and Keith L. Tolbert et al. except Appellant, Carolyn T. Smith. The Circuit Court erred in arbitrarily making "Ouster" an element among the five elements prescribed by the State of S.C. and recognized as sufficient to be satisfied to prevail in an Adverse Possession case. The Circuit Court erred in its decision to have a Deed of Dist. defeat all the means of Ouster. Surely if a Met Title is not defeated by a Deed of Distribution Adverse Possession nor Ouster can be defeated by said Deed.

Argument

The circuit Court erred in Granting (Charles Tolbert) Charles T. Summary Judgment in the Subject Case wherein Carolyn T. Smith Counterclaimed to Quiet Title. Hence Appellant brings and appeals the cause. Summary Judgment is a drastic remedy and should be invoked with caution so that no one is improperly doled or deprived of a trial of disputed, factual issues

Lanham v. Blue Cross and Blue Shield of S.C. 349 S.C. 356, 363, 563 S.E. 2d 331, 334 (2002)

Herein as Appellant referce all argument cited under, "Statement of the Case And Facts - Issues"

Conclusion

For all the reasons set forth above (the) Summary Judgment should be reversed and the cause be remanded for a new trial and be remanded for entry of a new mediation "hearing" and trial by jury should mediation results warrant a trial

Respectfully Submitted

Mme. C. Smith

Carolyn Tolbert Smith

Pro Se

338 Fifth Avenue

Mt. Pleasant, SC 29464

(843) 216-6960

Pro Se Party

Certificate of Service

I hereby certify that a true and correct copy of the foregoing is being sent, furnished by U.S. Mail to the Clerk of Court, William K. Kalivas and Attorney Ashley Andrews.

Julie Armstrong
Clerk of Court

100 Broad Street

Ste. 106?

Charleston, SC 29401-2258

Memo Smith
Pro Se

Attorney William Kalivas

7455 Cross County Rd

Ste. 1

North Charleston, SC 29418

Ashley Andrews

544 Savannah Hwy

Charleston, SC 29407

10 Corporal W. L. Smith
338 Fifth St.
Mt Pleasant, SC 29464



7022 2410 0001 2288 1875

U.S. POSTAGE PAID
 FOLLOWS
 MOUNT PLEASANT, SC
 29464
 JAN 10, 23
 AMOUNT
\$9.89
 R2307N163234-85

RENDER: COMPLETE THIS SECTION
 Complete items 1, 2, and 3.
 Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:
 SC State Court of Appeals
 1220 Senate St.
 Columbia, SC 29201

9590 9402 7888 2234 6485 98

7022 2410 0001 2288 1875

S Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type Priority Mail Express®
 Adult Signature Registered Mail™
 Adult Signature Restricted Delivery Registered Mail Restricted Delivery
 Certified Mail® Certified Mail Restricted Delivery
 Collect on Delivery Signature Confirmation™
 Collect on Delivery Restricted Delivery Signature Confirmation Restricted Delivery
 Insured Mail™ Insured Mail Restricted Delivery

Domestic Return Receipt

RECEIVED
 JAN 11 2023
 SC Court of Appeals

South Carolina Court of Appeals
 1220 Senate Street
 Columbia, South Carolina 29201