

copy

Per A Revised Copy 01/10/2023  
of the contents herein  
entered originally, January 2023.

TO: The S.C. State Courts **RECEIVED**

JAN 11 2023

I, Appellant in the Court of Appeals  
for the State of S.C., as I pursue this  
matter, "Summary judgment," handed  
down by the Honorable Mikell R.  
Scarborough, do humbly pray your  
Continual indulgence as I move for-  
ward Pro Se, having no legal background  
and having no success thus far in se-  
curing Counsel.

I am, consequently, following a guide  
or example of an appeal by another  
appellant. I do so in desperation, to  
head off a travesty of justice, an egre-  
gious consequence against me, an eighty-  
five year old widow who has lived on land  
in a dwelling 27 years; Counterclaimed to an  
estranged grand son's Quiet Title Claim, with  
proof of having satisfied six elements where-  
in only five are required by State of S.C.  
Standard. The sixth element, "Ouster," was ar-  
bitrarily entered at the September 21, 2022  
Hearing and became the sole block to my "Ad-  
verse Possession" Claim to Quiet Title. My great  
and sincere desire is to preserve said, sub-  
ject property for worthy siblings and for posteri-  
ty for generations to come. Please find my proofs  
and proof especially of zero contributions  
made by Charles Folbert et al. I shall appreciate your  
Consideration and indulgence. Respectfully, Carolyn Smith

Revised  
from  
Dec. 1<sup>st</sup>, 2022  
CPL  
A-1

# Notice Of Appeal In A Civil Matter

The State of South Carolina  
In The Court of Appeals  
In the Supreme Court  
Appeal From Charleston County  
Court of Common Pleas

The Honorable Mikell R. Scarborough Circuit Court Judge

CASE NO: 2021-Cp-10-04058

Heirs of Property of Helen G. Tolbert

Betty Jean T. Jones

Sara Jo T. Latten

Keith L. Tolbert

Charles L. McMillian AKA Charles Tolbert

III

Carolyn Tolbert Smith

Respondents

v.

Appellant

Carolyn Tolbert Smith

338 Fifth Avenue

Mt. Pleasant, SC

29464

1-843-216-6960

Mon. CPL Pro Se

A-2

Carolyn Tolbert Smith  
338 Fifth Avenue  
Mt. Pleasant, SC 29464  
1-843-216-6960

Appellant Pro Se

South Carolina Court of Appeals  
Ridgeland County, South Carolina  
CASE No: 2021-CP-10-04058

Hearing Date September 21, 2022

Heirs Of Helen A. Grant Tolbert

Sara Jo T. Latten

Betty Jean T. Jones Respondents

Keith L. Tolbert

Charles L. McMillian, III AKA. Charles Tolbert

V.

Carolyn Tolbert Smith Appellant

Appeal From Charleston County SC  
The Honorable Mikell R. Scarborough  
Circuit Court Judge

Carolyn T. Smith, appearing Pro Se submits this  
Opposition To Summary Judgement

Appellant can demonstrate that there is genuine issue as to material fact not heard at the above mentioned hearing. Said material facts preclude the entry of the Court's entry of order [Judgment] entered November 8, <sup>2022</sup> and received by Appellant Dec 1, 2022. Opposition is based upon and

A-2

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JAN 11 2023

SC Court of Appeals



Charleston Common Pleas

**Case Caption:** Keith L Tolbert VS Carolyn Tolbert Smith , defendant, et al  
**Case Number:** 2021CP1004058  
**Type:** Order/Summary Judgment

So Ordered

s/Mikell R. Scarborough 3062

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Keith L. Tolbert

Plaintiff,

vs.

Carolyn Tolbert Smith, Charles Tolbert, Betty  
Jean Tolbert Jones, Sara Jo Tolbert Latten,  
and Estate of Charla Tolbert McMillian,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2021-CP-10-04058

**RECEIVED**  
JAN 11 2023  
SC Court of Appeals

**ORDER GRANTING  
SUMMARY JUDGMENT**

This matter came before me on Defendant Charles Tolbert's Motion for Summary Judgment as to Defendant Carolyn Tolbert Smith's counterclaim for adverse possession. Defendant Charles Tolbert's motion was filed on behalf of Mr. Tolbert individually and also as Personal Representative of the Estate of Charla Tolbert McMillian.

A hearing on the motion was held before me on September 21, 2022. Plaintiff Keith L. Tolbert was present with his attorney, William K. Kalivas. Defendant Carolyn Tolbert Smith was present with her attorney, Malena A. Dinwoodie. Defendant Charles Tolbert, both individually and as Personal Representative of the Estate of Charla Tolbert McMillian, was present with his attorney, Ashley G. Andrews. Defendant Betty Jean Tolbert Jones was present but was not represented by counsel. Defendant Sara Jo Tolbert was not present, however she was represented by her Guardian *ad Litem* and attorney, Taylor Silver, who was present.

The within action involves two adjacent parcels of real property located in Charleston County, South Carolina. The first parcel, referred to as Property 1 in the Complaint, is commonly known as 338 5<sup>th</sup> Avenue, Mt. Pleasant, South Carolina. The second parcel, referred to as Property

2 in the Complaint, is a vacant lot located at the corner of 5<sup>th</sup> Avenue and 6<sup>th</sup> Street, Mt. Pleasant, South Carolina.

Plaintiff brought this action seeking to quiet title to the property and to partition the property. A consent Order to Quiet Title was filed on August 15, 2022 (the "Consent Order"). The Consent Order confirmed title to both Property 1 and Property 2 as follows: Keith L. Tolbert a 20% interest, Carolyn Tolbert Smith a 20% interest, Charles Tolbert a 10% interest, Betty Jean Tolbert Jones a 20% interest, Sara Jo Tolbert Latten a 20% interest, and the Estate of Charla Tolbert McMillian a 10% interest. Thereafter, a Deed of Distribution conveying the interests of the Estate of Charla Tolbert McMillian to Charles Tolbert was recorded in the ROD Office for Charleston County on August 18, 2022 in Book 1132, Page 072.

In the Consent Order, Defendant Carolyn Tolbert Smith reserved her right to have her counterclaim for adverse possession heard at a hearing scheduled for September 21, 2022.

After considering the memoranda, documents, and arguments of counsel, this Court hereby GRANTS the Motion for Summary Judgment as to Defendant Carolyn Tolbert Smith's counterclaim for adverse possession.

#### **FINDING OF FACTS**

At the time of her death on December 25, 2003, Helen Alice Grant Tolbert owned a 75% undivided interest in Property 1 and was the sole owner Property 2. Helen Alice Grant Tolbert also resided in the home located on Property 1 as evidenced by her Certificate of Death.

Helen Alice Grant Tolbert's estate was probated in Charleston County, South Carolina as Probate File No. 2010-ES-10-01356 (the "Estate").

Defendant Carolyn Tolbert Smith was duly appointed and served as Personal Representative of the Estate both in the Estate's initial administration and a subsequent administration.

As Personal Representative, Defendant Smith executed several Deeds of Distribution including a corrective Deed of Distribution dated January 17, 2013 and recorded in the RMC Office for Charleston County on January 25, 2013 in Book 0306, Page 283.

### LEGAL ANALYSIS

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E. 2d 868, 874 (2001). Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 875, 860 (2002). Nonetheless, when determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn from it, must be viewed in the light most favorable to the nonmoving party. See *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (2002).

### DISCUSSION

Keith L. Tolbert, Carolyn Tolbert Smith, Charles Tolbert, Betty Jean Tolbert Jones, and Sara Jo Tolbert Latten are tenants in common having inherited Property 1 and Property 2 through the Estates of Fred William Tolbert and Helen Alice Grant Tolbert. When a claim for adverse possession is made by a cotenant against another cotenant the party claiming adverse possession must prove all of the elements of adverse possession, namely that the party claiming adverse possession has possessed the property for a period of ten (10) years and that such possession has been actual, open, notorious, exclusive and hostile. In addition, the party claiming adverse

possession must also establish that the cotenants have been ousted from the property. See *Fender v. Heirs at Law of Smashum*, 354 S.C. 504, 581 S.E.2d 853 (Ct.App. 2003). This is based, in part, on principals applicable to cotenancy. “A cotenant has the right, in common with his cotenants, to the possession of the property owned in common, so ordinarily the possession of one cotenant is the possession of all. The latter ceases when the exclusive possession of a cotenant becomes adverse to the right of possession by the other cotenant or cotenants; but the hostile character of the possession must be such as to amount to an ouster of the other cotenant or cotenants and must be clearly and unmistakably established by the evidence.” *Watson v. Little*, 224 S.C. 359, 364, 79 S.E.2d 384, 387.

Ouster is the actual turning out or keeping excluded a party entitled to possession of any real property. See *Grant v. Grant*, 288 S.C. 86, 340 S.E.2d 791 (Ct.App. 1986). “Only in rare, extreme cases will the ouster of one cotenant of other cotenants be implied from exclusive possession and dealing with the property, such as collection of rents and improvements to the property.” *Felder v. Fleming*, 323 S.C. 95, 473 S.E.2d 467 (Ct.App. 1996).

The conduct and nature of the possessor’s exclusive adverse possession must be (sufficiently clear to “bring it home” to the other cotenants). See *Watson v. Little*. Possession with the permission of the cotenants does not meet the requirements of ouster. Ouster may be presumed by possession only if possession is continued for a period of twenty years. See *Freeman v. Freeman*, 323 S.C. 95, 743 S.E.2d 467. *In as much as ouster can/may be acknowledged by inferences*

### CONCLUSION

Even when viewing the evidence and all inferences, which can reasonably be drawn from the evidence, in the light most favorable to Defendant Smith, it appears that there is no issue of material fact as to Defendant Smith’s possession of the subject properties. It is clear that her possession of the subject properties has not been exclusive for more than twenty (20) years. Her

mother, Helen Alice Grant Tolbert resided at 338 5<sup>th</sup> Avenue and owned an interest in both Property 1 and Property 2 until her death on December 25, 2003. Further, Defendant Smith, as Personal Representative of the Estate of Helen Alice Grant Tolbert, executed a corrective Deed of Distribution on January 17, 2013 confirming title in her name and in the names of the other parties to the within action. The execution of the 2013 Corrective Deed of Distribution defeats a claim of ouster, which is a necessary element to Defendant's counterclaim for adverse possession. There is no genuine issue as to any material fact and Defendant Charles Tolbert is entitled to judgment as a matter of law.

IT IS THEREFORE, ORDERED that Defendant Charles Tolbert's Motion for Summary Judgment as to Defendant Carolyn Tolbert Smith's counterclaim for adverse possession is granted.

IT IS FURTHER ORDERED that this court shall retain jurisdiction over the partition action which is still pending.

IT IS SO ORDERED!

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Keith L. Tolbert

Plaintiff,

vs.

Carolyn Tolbert Smith, Charles Tolbert, Betty  
Jean Tolbert Jones, Sara Jo Tolbert Latten,  
and Estate of Charla Tolbert McMillian,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2021-CP-10-04058

**RECEIVED**

PLAINTIFF'S RESPONSE TO  
DEFENDANT CAROLYN TOLBERT  
SMITH'S FIRST SET OF

INTERROGATORIES

**RECEIVED**

JAN 11 2023

SC Court of Appeals

TO: MALENA A. DINWOODIE, ESQUIRE, ATTORNEY FOR DEFENDANT  
CAROLYN TOLBERT SMITH:

INTERROGATORIES

1. Give the names and addresses of persons known to Plaintiff or Plaintiff's counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses as well as who has possession of such statements.

**RESPONSE:**

- Keith Tolbert - Estranged  
c/o Smith Closser, PA  
7455 Cross County Road, Suite One  
Charleston, SC 29423

No written or recorded statements; is an heir and has firsthand knowledge of the facts and circumstances alleged in the Complaint and surrounding the properties at issue therein, to include the deed of distribution and the last will and testament of Helen G. Tolbert.

- Carolyn Tolbert Smith  
c/o Finkel Law Firm, LLC  
4000 Faber Place Drive, Suite 450  
North Charleston, SC 29405

No written or recorded statements; is an heir and has firsthand knowledge of the facts and circumstances alleged in the Complaint and surrounding the properties at issue therein, to include the deed of distribution and the last will and testament of Helen G. Tolbert.

- Charles Tolbert, Esq.

Please note:  
All needed proceedings  
enroute when I heard which off

c/o LaFond Law Group, P.A.  
544 Savannah Highway  
Charleston, SC 29407

No written or recorded statements; is an heir and has firsthand knowledge of the facts and circumstances alleged in the Complaint and surrounding the properties at issue therein, to include the deed of distribution and the last will and testament of Helen G. Tolbert.

- Dr. Betty Jean Tolbert Jones  
1311 Delaware Ave. SW, Ste. S843  
Washington, DC 20024

No written or recorded statements; is an heir and has firsthand knowledge of the facts and circumstances alleged in the Complaint and surrounding the properties at issue therein, to include the deed of distribution and the last will and testament of Helen G. Tolbert.

- Sara Jo Latten  
whereabouts unknown

No written or recorded statements; is an heir and has firsthand knowledge of the facts and circumstances alleged in the Complaint and surrounding the properties at issue therein, to include the deed of distribution and the last will and testament of Helen G. Tolbert.

- Warren Smith  
338 5<sup>th</sup> Avenue  
Mt. Pleasant, SC 29464

No written or recorded statements; is the son of Defendant Carolyn Tolbert-Smith and has familiarity with the allegations at issue in the Complaint and the property in general.

2. Set forth a summary sufficient to inform Defendant of the important facts known or observed by each witness, or provide a copy of any written or recorded statements taken from each witness.

**RESPONSE:** Please see Plaintiff's response to Interrogatory No. 1.

*By the Court* 3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff that relate to the allegations set forth in the Complaint.

*None* **RESPONSE:** Please see Plaintiff's discovery documents bates-labeled KT001 through KT047 being produced in response to Defendant's Requests for Production. = description of subject property

4. List the names and addresses of any expert witnesses whom the Plaintiff proposes to use as a witness at the trial of the case.

**RESPONSE:** None at this time, but Plaintiff reserves the right to retain an expert and will supplement this response accordingly.

*None* 5. Set forth an itemized list of any improvements made to the Property by Plaintiff since 2015, including the approximate date the improvement was made, a description of the improvement, and the cost incurred by Plaintiff in making such improvement, if any.

*Never* **RESPONSE:** None at this time. Discovery remains ongoing and this response will be supplemented when any information relevant to this response is discovered.

*None ever* 6. Set forth an itemized list of any repairs made to the Property by Plaintiff since 2015, including the approximate date the repair was made, a description of the repair, and the cost incurred by Plaintiff in making such repair, if any.

*Never* **RESPONSE:** None at this time. Discovery remains ongoing and this response will be supplemented when any information relevant to this response is discovered.

*None* 7. Describe in detail any and all contributions Plaintiff has made to the routine maintenance of the Property since 2015, including a description, approximate dates made, and any cost incurred by Plaintiff in said maintenance.

*Never* **RESPONSE:** None at this time. Discovery remains ongoing and this response will be supplemented when any information relevant to this response is discovered.

*None ever* 8. Set forth a list of the dates and amounts of payments made by Plaintiff toward the property taxes and/or insurance premiums related to the Property.

*Nor ever* **RESPONSE:** None at this time. Discovery remains ongoing and this response will be supplemented when any information relevant to this response is discovered.

*None* 9. Set forth a list of any other pecuniary contributions made by Plaintiff related to the Property since 2015, including dates, amounts, and descriptions of the contributions made.

*There is none* **RESPONSE:** None at this time. Discovery remains ongoing and this response will be supplemented when any information relevant to this response is discovered.

10. Please identify any time periods that Plaintiff resided at the Property, including his age

*Never in his life time.*

at the time and length of residency.

**RESPONSE:** Plaintiff <sup>visited</sup> spent one night at the residence in October of 2014 after visiting his father, Blanton W. Tolbert, in the hospital.

11. Identify any times that Plaintiff has visited the Property over the past twenty years, including approximate dates, length of stay, and purpose of the visit.

**RESPONSE:** Please see Plaintiff's response to Interrogatory No. 10. *Above = 1*

12. Describe any pecuniary contributions made by Blanton William Tolbert toward the Property during the period of 2000-2015 that Plaintiff is aware of, which may include, but is not necessarily limited to improvements, maintenance, repairs, taxes, insurance, etc.

**RESPONSE:** Plaintiff is not aware of any pecuniary contributions made by Blanton William Tolbert during the period of 2000-2015.

*Name Defendant paid him \$100.00 per wk to sit + (w) Ma' + Pa' for a while 1998-2000  
except paid \$100.00 for 3-4 wks to sit with parents.*

13. Provide addresses for any and all real properties owned by Plaintiff, regardless of location, and identify the primary use of each (i.e., primary residence, rental property, etc.). *Covington, GA*

**RESPONSE:** The only real property owned by Plaintiff is his primary residence located at:  
*52 Windcrest Dr  
Covington, GA 30016-1299  
Augusta, GA? Stone Mountain, GA? Grandmother's*

14. Besides this lawsuit, please identify any other litigation in which Plaintiff has been involved in any capacity including the name of the case, the date, the jurisdiction, and the disposition of the matter.

**RESPONSE:** None

15. Other than Plaintiff's attorney and/or his staff, identify all individuals or entities with whom Plaintiff has communicated with regarding the Property and/or allegations contained in the Complaint. State the dates and describe the substance of such communications. *Ma', aunts, other Plaintiffs*

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Keith L. Tolbert

Plaintiff,

vs.

Carolyn Tolbert Smith, Charles Tolbert, Betty  
Jean Tolbert Jones, Sara Jo Tolbert Latten,  
and Estate of Charla Tolbert McMillian,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO.: 2021-CP-10-04058

PLAINTIFF'S RESPONSE TO  
DEFENDANT CAROLYN TOLBERT  
SMITH'S FIRST SET OF  
REQUESTS FOR PRODUCTION

**TO: MALENA A. DINWOODIE, ESQUIRE, ATTORNEY FOR DEFENDANT  
CAROLYN TOLBERT SMITH:**

**DOCUMENTS TO BE PRODUCED**

1. Any and all documents in the Plaintiff's possession, custody, or control which are in any way related to his claims against Defendant in this action.

**RESPONSE:** Please see Plaintiff's discovery documents bates-labeled KT001 through KT047.

2. Any and all documents identified or described in Plaintiff's answers to Interrogatories.

**RESPONSE:** Please see Plaintiff's discovery documents bates-labeled KT001 through KT047.

3. Any and all documents evidencing Plaintiff's monetary contributions toward the improvements, maintenance, repairs, property taxes, insurance premiums, or other common expenses related to the Property.

**RESPONSE:** None at this time. Discovery remains ongoing and this response will be supplemented when any information relevant to this response is discovered.

4. Any and all documents evidencing Plaintiff's non-monetary contributions toward the Property.

✓ **RESPONSE:** None at this time. Discovery remains ongoing and this response will be supplemented when any information relevant to this response is discovered.

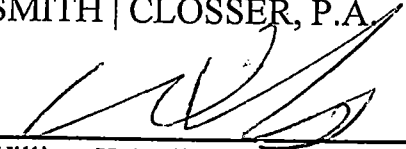
5. Any and all documents evidencing any contributions toward the Property made by Blanton William Tolbert, whether monetary or otherwise, that Plaintiff is aware of.

✓ **RESPONSE:** None that Plaintiff is aware of. Discovery remains ongoing and this response will be supplemented when any information relevant to this response is discovered.

6. Copies of any communications received or sent by Plaintiff from or to any other person or entity (other than his attorney and/or his attorney's staff) in relation to the Property and/or allegations in the Complaint.

**RESPONSE:** Please see Plaintiff's discovery documents bates-labeled KT031 through KT038, and KT043 through KT047.

SMITH | CLOSSER, P.A.

  
William K. Kalivas- SC Bar No. 80201  
7455 Cross County Road, Suite 1  
P.O. Box 40578  
Charleston, SC 29423-0578  
(843) 760-0220  
(843) 552-2678 facsimile  
wkalivas@scnlaw.com  
*Attorneys for the Plaintiff*

May 10, 2022  
Charleston, South Carolina  
21-280

2c Corporal W. L. Smith  
338 Fifth St  
Mt Pleasant, SC 29464



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