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THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Marvin H. Dukes, III, Master-In-Equity

Case No.: 2022-CP-07-00967

Rachel M. Polite a/k/a Rachel Chaplin..... Respondent

v.

Karen P. Polite Appellant

FINAL BRIEF OF THE RESPONDENT

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PREAMBLE

The Table of Contents in Appellant's Initial Brief indicates the Statement of Issues on Appeal are found on pages 3 through 9 of the brief, the Statement of the Case is found on pages 2-8 of the brief, and the Standard of Review is found on pages 4 through 9 of the brief. Nothing in pages 3 through 9 of Appellant's Initial Brief concisely states each issue presented for review as is required under S.C.App. Ct. R. 208(b)(B), South Carolina Appellate Court Rules (2022 Edition). Nothing in Appellant's Initial Brief contains a concise history of the proceedings as are necessary to understand the appeal as is required under S.C.App. Ct. R. 208(b)(C), Nothing in pages 2 through 8 of Appellant's Initial Brief concisely sets forth the applicable standard of review with citations relevant to the case law establishing the standard as is required under S.C.App. Ct. R. 208(b)(D), South Carolina Appellate Court Rules (2022 Edition). Therefore, pursuant to S.C.App. Ct. R. 208(b)(2), Respondent is including her own Statement of Issues on Appeal, Statement of the Case and Standard of Review.

Appellant states in her Brief that this case should be reversed and remanded because: 1) "Karen P. Polite is an Heir of her father, The late Bubby Polite .79 acre of land, and should not be Ejected from the property where she lived for more than 30 years..."; and 2) based on "ERRORS, MISTAKES CONFUSION that includes incorrect Dates, years...Deceitfulness, with Possibility of Perjury at the April 11, 2022 at trial."

Appellant did not assert counterclaims for a determination of the heirs of Bubby Polite, for fraud, for deceit, or for perjury, and such accusations were not litigated in the trial court. Claims or defenses not presented in the pleadings will not be considered on appeal. *McNeely v. South Carolina Farm Bureau Mut. Ins Co.*, 259 S.C. 39, 190 S.E.2d 499 (1972). This rule is consistent

with the general restriction that one cannot present and try a case on one theory and then attack the result below by presenting another theory on appeal. *Butler v. Town of Edgefield*, 328 S.C. 238, 493 S.E.2d 838 (1997).

STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT PROPERLY FOUND THAT APPELLANT FAILED TO PROVE ADVERSE POSSESSION BECAUSE HER OCCUPATION OF THE PROPERTY WAS NOT HOSTILE OR EXCLUSIVE.
- II. THE TRIAL COURT PROPERLY FOUND THAT THE RESPONDENT IS THE LAWFUL OWNER AND PAPER TITLE HOLDER OF THE PROPERTY THAT IS SUBJECT OF THE CASE.
- III. THE TRIAL COURT PROPERLY FOUND THAT THE APPELLANT IS TRESPASSING AND RESPONDENT IS ENTITLED TO AN ORDER FOR WRIT OF EJECTMENT OF THE APPELLANT FROM THE PREMISES.

STATEMENT OF THE CASE

Respondent Rachel Polite commenced this action by filing and serving her Summons and Complaint on Karen Polite seeking an order of the court declaring Karen Polite is trespassing on Respondent's property and ordering Karen Polite to vacate the premises and remove her mobile home from the premises, and if Appellant failed to vacate the premises within 30 days, Respondent sought a Writ of Ejectment.¹ Appellant Karen Polite, pro-se, filed her Answer to the Complaint wherein among a myriad of accusations not responsive to the Complaint, she appears to counterclaim that she was on the property by permission from her father, and she is the owner of the property by adverse possession.² Pending the trial of the case, the Court entered a Consent Order for Temporary Injunction wherein the Respondent would temporarily use an alternate route of access to

¹ R.p.125-132.

her mobile home and the parties were enjoined from disturbing each other.³ Trial was held on April 11, 2022 and the Judgment and Final Order was entered on April 27, 2022 finding in favor of Rachel Polite, Respondent, by declaring Respondent was the lawful paper title holder of the property, that Appellant, Karen Polite did not establish adverse possession and was trespassing on Respondents property, and ordering Appellant, to remove her mobile home and vacate the premises within thirty (30) days of the date of the order.⁴ The Court further ordered that Respondent was free to resume accessing her property as she had done prior to the entry of the Consent Order for Temporary Injunction, however the portion of the Consent Order enjoining the parties, their guests, and invitees from harassing or disturbing each other would remain in full force and effect until Appellant vacated the premises.⁵ Appellant filed her “Notice of Motion and Plaintiff’s [sic] Motion to Reconsider the Court’s Order of April 27, 2022 and Motion for Relief from Same” (hereinafter “Motion to Reconsider”) on May 9, 2022.⁶ Respondent filed her Return to Appellant’s Motion to Reconsider Jun 13 2022.⁷ The hearing on Appellant’s motion was held on June 14, 2022. The Motion to Reconsider was denied by the by “Order on Defendant’s Motion to Alter, Amend and Reconsider” entered June 17, 2022.⁸ Karen Polite, Appellant, served her Notice of Appeal on Respondent on July 11, 2022 and filed it on July 12, 2022. (Omitted from Record) Respondent, Rachel Polite, filed her Notice of Motion and Motion for Relief from Stay to obtain a Writ of Ejectment on July 11, 2022.⁹ The Court’s Order on Plaintiff’ Motion for Relief from Stay was entered on August 11, 2022

² R.p. 133-140

³ R.p. 28-31 and R.p. 141-144.

⁴ R.p. 3-10 and R.p. 116-124.

⁵ R.p. 7-8

⁶ R.p. 32-36

⁷ R.p. 37-39 and R.p. 145-147

⁸ R.p. 148-149

⁹ R.p.152-153

wherein the Court found that a reasonable bond pending the appeal would be for Appellant, Karen Polite to pay \$500.00 rent per month to Respondent, Rachel Polite and that nothing in the Order would prevent Respondent from seeking relief from the automatic stay in the Court of Appeals.¹⁰

STATEMENT OF FACTS

The Respondent's case consisted of the testimony of the Respondent, Rachel Polite, and various exhibits. The Appellant's case consisted of her own testimony (pro se), witnesses Antonio Anthony Polite and Thomas Smalls, and various exhibits.

The essential facts elicited at trial are as follows:

Rachel Polite was the only witness in the Plaintiff's case. She testified that she was born on the Property that is the subject of the litigation; she has lived on the Property her whole life except for the three and a half years she lived in Miami, Florida; she has eight children and her youngest is Karen Polite.¹¹ Rachel married her husband, Bubby Polite, in 1965; they were living on the Property at the time they got married and her mother, Nazarene Holmes, was the owner of the Property at that time.¹² Rachel's mother lost title to the property and needed her husband's assistance in getting it back because she did not have good enough credit to get a loan, so her husband co-signed the loan and title was put in her husband's name alone.¹³ Rachel made the monthly payments and paid the loan off. Bubby Polite deeded the property back to her when they were divorced in 1989. The deed was entered into evidence as Plaintiff's Exhibit 1 without objection.¹⁴ The deed to Bubby Polite

¹⁰ R.p. 154-155 (The Corrected Record on Appeal is missing the 3rd page of the Order but is R.p. 146 in the Original Record on Appeal).

¹¹ R.p. 159 Tr. Trans. p. 17 line 18 – R.p. 160 Tr. Trans. p. 18 line 15.

¹² R.p. 160 Tr. Trans. p. 18 line 19 – Tr. Trans. p. 19 line 18.

¹³ R.p. 160 Tr. Trans. p. 19 line 19 – p. 21 line 25.

¹⁴ R.p. 160 Tr. Trans. p. 20 line 25 – R.p. 161 p. 23 line 19; Plaintiff's Exhibit 1 at R.p. 181-184.

from Emily Holmes was entered into evidence as Plaintiff's Exhibit 2 without objection.¹⁵ All of Rachel's children were raised on the Property but only Karen Polite was living on the Property with her when she got the property back in 1989.¹⁶ Before 1989 Bubby Polite had given permission for Karen to put a mobile home on the Property and, going along with Bubby, Rachel gave her permission too.¹⁷

Rachel purchased a new mobile home which was installed in 2016 but before she moved into it, hurricane Matthew caused a tree to fall on it and destroyed it. A plat had been prepared for the placement of the new mobile home; the plat was entered into evidence as Plaintiff's Exhibit 3.¹⁸ The plat shows the location of the old home, Karen's mobile home and the location where Rachel's new mobile home would be placed. A second, replacement mobile home was delivered on February 25, 2017 and Karen called the police because it was being delivered on a Saturday.¹⁹ Karen started doing things to the Property without Rachel's permission. Karen laid a concrete driveway and built a garage to her mobile home without a permit and the code's enforcement told Rachel they would issue a citation against her if she did not have it removed. The citation was put on hold by the county because Rachel got a lawyer. The Notice of Violation was entered into evidence as Plaintiff's Exhibit 5.²⁰ Rachel wrote a letter to Karen giving her 30-days' notice to move her mobile home off the property because Karen had not paid property taxes and would do things to Rachel's property that Rachel did not approve of, and Karen continued to build in violation of the

¹⁵ R.p. 161 Tr. Trans. p. 23 line 21 – p. 25 line 25; Plaintiff's Exhibit 2 at R.p. 186-187.

¹⁶ R.p. 162 Tr. Trans. p. 26 line 19 – p. 27 line 12.

¹⁷ R.p. 162 Tr. Trans. p. 28 line 20 – p. 29 line 19.

¹⁸ R.p. 163 Tr. Trans. p. 31 line 22 – R.p. 164 p. 34 line 15; Plaintiff's Exhibit 3 at R.p. 188.

¹⁹ R.p. 164 Tr. Trans. p. 35 line 16 - p. 36 line 10.

²⁰ R.p. 164 Tr. Trans. p. 36 line 14 – p. 37 line 15; Plaintiff's Exhibit 5 at R.p. 190 (Corrected Record on Appeal on page 190 is not a copy of the document entered into evidence as Plaintiff's Exhibit 5 but the content is the same).

law. The letter was read into the record and admitted into evidence as Plaintiff's Exhibit 4.²¹ Rachel then filed an and action to evict Karen with the Beaufort County Magistrate. The action was dismissed because of competing claims of ownership; the court lacked jurisdiction to hear the matter. See Plaintiff's Exhibit 7.²²

On cross examination by Karen Polite (pro-se), Rachel clarified that Karen stopped paying taxes from around the year 2000.²³ Karen Polite challenged her mother about ownership of two other acres of property that were not a part of the case. Plaintiff's counsel objected to the questions as irrelevant. [Because the Defendant was pro-se, and the questioning confused the Court, the Court gave latitude to Karen Polite's questions about all the property which ultimately clarified that the subject property was originally one acre which was reduced to .79 acre when the county took property to install a water line.²⁴]

Karen Polite, the Defendant/Appellant, pro-se, testified on her own behalf in narrative form. Most relevant of her testimony was that she believed the property was hers for over 30 years.²⁵ Upon completion of her testimony, Respondent's counsel had no questions for Karen Polite and, therefore, she was not cross examined.

STANDARD OF REVIEW

The purpose of Rachel Polite's trespass action was to obtain a court order requiring Karen Polite to remove her mobile home from Rachel Polite's property, and for a writ of ejectment if Karen did not do so within thirty (30) days of entry of the Order. An action in trespass seeking

²¹ R.p. 164 Tr. Trans. p. 37 line 16 – R.p. 165 p. 40 line 24; Plaintiff's Exhibit 4 at R.p. 189 (Corrected Record on Appeal on page 189 is not a copy of the document entered into evidence as Plaintiff's Exhibit 4 but the content is the same).

²² R.p. 166 Tr. Trans. p. 43 line 16 – R.p. 167 p. 46 line 1; Plaintiff's Exhibit 7 at R.p. 195-199.

²³ R.p. 60 Tr. Trans. p. 87 lines 6-25.

²⁴ R.p. 168 Tr. Trans. p. 57 line 10 – R.p. 169 p 58 line 25 and R.p. 171 p. 102 line 4 – R.p. 173 p. 113 line 15.

injunctive relief is equitable in nature. *Santoro v. Schulthess*, 681 S.E.2d 897, 902, 384 S.C. 250 (S.C.App 2009); cf. *Cedar Cove Homeowners Ass'n, Inc. v. DiPietro*, 368 S.C. 254, 258, 628 S.E.2d 284, 286 (Ct.App. 2006) (holding that while a trespass action is generally an action at law, the trespass action at hand was equitable because the plaintiff withdrew its claim for damages and sought only an injunction). In an equitable action tried without a jury, the appellate court can correct errors of law and may find facts in accordance with its own view of the preponderance of the evidence.” *Santoro v. Schulthess*, 681 S.E.2d 897, 901, 384 S.C. 250 (S.C.App 2009). “Our equitable standard of review does not require this court to ignore the findings of the trial judge who heard the witnesses.” *Church v. McGee*, 391 S.C. 334, 342, 705 S.E.2d 481, 485 (Ct.App.2011). “Decisions relative to the veracity and credibility of witnesses can best be made by the trial judge who heard the witnesses and observed their demeanor.” *Id.* at 343, 705 S.E.2d at 485–86.

Karen Polite’s Answer contained a counterclaim for adverse possession thereby causing Rachel Polite to prove her title. Adverse possession and trespass to try title claims are actions at law. *See Frazier v. Smallseed*, 384 S.C. 56, 61, 682 S.E.2d 8, 11 (Ct.App.2009) (holding an adverse possession claim is an action at law); *Knox v. Bogan*, 322 S.C. 64, 66, 472 S.E.2d 43, 45 (Ct.App.1996) (holding an action in trespass to try title is an action at law). In actions at law tried by a judge without a jury, the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports them. *Townes Assocs. Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

ARGUMENTS

²⁵ R.p. 180 Tr. Trans. p. 193 lines 15-21

I. THE TRIAL COURT PROPERLY FOUND THAT APPELLANT FAILED TO PROVE ADVERSE POSSESSION BECAUSE HER OCCUPATION OF THE PROPERTY WAS NOT HOSTILE OR EXCLUSIVE.

Appellant, (hereinafter “Karen “), had lived on Respondents .79 acres of land in St. Helena since 1988 when Appellant was given permission to move a mobile home on to the property by her father, Bubby Polite, and her mother, Respondent, (hereinafter “Rachel). Tensions began between them in 2016 when Rachel had a new home brought in to replace the old home. Karen held up the installation claiming it came in without her knowledge and called the police. Karen began to build onto her mobile home without a permit which violated Beaufort County Codes and subjected Rachel to fines. In October 2019 Rachel gave Karen written notice that Karen had thirty days to move her mobile home off Rachel’s land. The letter was entered into evidence as Plaintiff’s Exhibit 4 and read into the record by Rachel.²⁶ Rachel filed in Magistrate’s court for Karen to be evicted. Karen then claimed she owned the property and the Magistrate’s court case was dismissed. This action followed.²⁷

“In order to establish a claim of 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. “*Millvale Plantation, LLC v. Carrison Family Limited Partnership*, 401 S.C. 166, 736 S.E.2d 286 (S.C.App. 2012). Karen Polite failed to show by clear and convincing evidence that her occupancy was hostile or exclusive. Karen’s testimony was that she always believed the property was hers.²⁸ As correctly stated by the Court, “You have a mistaken belief that this was your property. A mistaken belief cannot develop into the hostility

²⁶ R.p. 164 Tr. Trans. p. 36 line 14 – R.p. 165 p 39 line 25; Plaintiff’s Exhibit 4 at R.p. 189 Corrected Record on Appeal on page 189 is not a copy of the document entered into evidence as Plaintiff’s Exhibit 4 but the content is the same).

²⁷ R.p. 166 Tr. Trans. p. 43 line 9 – R.p. 167 p. 48 line 10.

²⁸ R.p. 180 Tr. Trans p. 193 lines 15-21.

required to take property away from someone else. I mean, that sort of hostility would mean you would block the gates and not let your mother back on the property. That's the sort of hostility they're talking about in this sort of situation.”²⁹ See *Lusk v. Callaham*, 287 S.C. 459, 339 S.E.2d 156, 158 (S.C.App. 1985); *Brown v. Clemens*, 338 S.E.2d 338 (S.C. 1985) (In South Carolina, unlike in most other jurisdictions, possession under a mistaken belief that property is one's own and with no intent to claim against the property's true owner cannot constitute hostile possession.)

Karen's occupancy was not exclusive. Karen and Rachel lived together on a .79-acre parcel of land, in two separate mobile homes, for thirty years. The court said "... the two of you lived 99 percent of the time without any trouble. One percent of the time, it sounds like there was trouble, but the two of you shared this property, which was, without factual dispute, titled in her [Rachel's] name, and that simply cannot ripen into adverse possession under our very high burden, very difficult standards in South Carolina...".³⁰ The element of exclusivity required to acquire title by adverse possession is not met if occupancy is shared with the owner. *Butler v. Lindsey*, 393 S.C. 466, 472, 361 S.E.2d 621, 624 (Ct. App. 1987) (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.)

II. THE TRIAL COURT PROPERLY FOUND THAT THE RESPONDENT IS THE LAWFUL PAPER TITLE HOLDER OF THE PROPERTY THAT IS SUBJECT OF THE CASE.

Because the Respondent brought this action for injunctive relief on grounds of trespass and Appellant claimed she owned the property under the legal doctrine of adverse possession, the action became one to try title. The deed into Rachel Polite from Bubby Polite is dated December 12, 1989,

²⁹ R.p. 179 Tr. Trans. p. 276 line 20 – p. 277 line 7.

recorded January 23, 1990, and was entered into evidence as Plaintiff's Exhibit 1.³¹ The deed into Bubby Polite from Emily Holmes is dated April 18, 1972, recorded April 18, 1972, and was entered into evidence as Plaintiff's Exhibit 2.³² The Appellant did not dispute the validity of the deeds in the chain of title with any documents or factual support. The court properly found that the Respondent is the lawful title holder of the property.

III. THE TRIAL COURT PROPERLY FOUND THAT THE APPELLANT IS TRESPASSING AND RESPONDENT IS ENTITLED TO AN ORDER FOR WRIT OF EJECTMENT OF THE APPELLANT FROM THE PREMISES.

"A trespass is any interference with one's right to the exclusive, peaceable possession of his property." *Ravan v. Greenville Cty.*, 315 S.C. 447, 463, 434 S.E.2d 296, 306 (Ct. App. 1993). The Court Ordered, Adjudged and Decreed that the Respondent is the lawful paper title holder of the property and possess all rights and incidents of ownership. The incidents of ownership include the right to tell someone to get off their property. If that person fails to leave, the owner of the property has the right to bring a court action on the grounds of trespassing to obtain a writ of ejectment for law enforcement to remove them from the premises. SC Code 27-37-160, South Carolina Code of Laws.

Here the court correctly found that the Appellant has been trespassing as of October 31, 2019 when Respondent gave written notice to Appellant to remove her mobile home from the premises and to permanently vacate the premises within thirty (30) days of the Order. The court further ordered that if Appellant failed to vacate the premises within sixty (60) days, a Writ of Ejectment would be issued.

³⁰ R.p. 179 Tr. Trans. p. 277 lines 8-17.

³¹ R.p. 181-184.

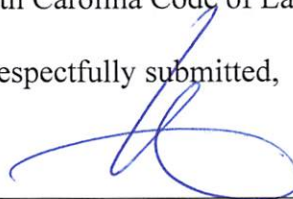
³² R.p. 185-187.

Appellant filed a Notice of Appeal and Respondent filed a Motion for Relief from the Automatic Stay under Rule 62(c) and (d) SCRPC and Rule 225(a) and (b) SCRAP. After hearing the motion, the Court issued its “Order on Plaintiff’s Motion for Relief from Stay and Defendant’s ‘Motion Automatic Stay and Automatic Freeze on Tax Map Because of Notice of Appeal of Defendant’”, setting a bond wherein Appellant was ordered to pay \$500.00 per month rent to Respondent pending the appeal. The Court further stated that nothing in the Order shall prevent Respondent from seeking relief from the automatic stay in the Court of Appeals.

CONCLUSION

For the foregoing reasons, Respondent respectfully submits that the Court should affirm the judgment of Judge Dukes, Master-in-Equity for Beaufort County, and, pursuant to the powers conferred upon appellate court judges by §14-8-290, South Carolina Code of Laws, issue the Writ of Ejectment to the Appellant under §27-37-160, South Carolina Code of Laws.

Respectfully submitted,



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