

This is an action to quiet and confirm title to real estate located on St. Helena Island, in Beaufort County, South Carolina. The fundamental issue in this case is the location of the boundary line between real estate belonging to the Plaintiffs and adjoining real estate belonging to the Defendant Michael F. Rivers. For the reasons hereinafter set forth I find and conclude that the boundary line is that line delineated as a chain link fence marked "Fence Encroachment" on Exhibit A attached hereto.

I. PROCEDURAL HISTORY

This action was commenced by the filing of a Summons and Complaint in the Beaufort County Court of Common Pleas on April 6, 2020. In his Complaint the original Plaintiff Benjamin Jenkins¹ alleges that he is the owner of a 4.3 acre tract of unimproved land and that the Defendant Michael Rivers, who owns adjoining real estate, had recently attempted to alter the boundary between their two properties by planting small trees on Jenkins' property and erecting fences that encroached onto Jenkins' 4.3 acres. In his first cause of action, Jenkins prays for a judgment against Michael Rivers for the actual damages he has sustained, and in his second cause of action Jenkins prays for a declaration that he is the owner of the entire 4.3 acre parcel.

Contemporaneously with the filing of the Summons and Complaint, Jenkins also filed a Lis Pendens regarding the subject action.

On May 8, 2020 the Defendant Michael Rivers, through his attorney H. Fred Kuhn, Jr., Esquire, accepted service of the Summons, Complaint, and Lis Pendens.

On June 4, 2020 Michael Rivers filed his Answer to the Complaint, denying the material allegations thereof and requesting, among other things, an Order directing Jenkins not to interfere with Michael F. Rivers' peaceful enjoyment of his property.

¹ During the pendency of this action Benjamin Jenkins passed away and the current Plaintiffs, who are the beneficiaries of his Estate and his successors in title, were substituted as Plaintiffs.

On September 8, 2020 an Order appointing Frampton L. Harper, II, Esquire as Guardian *ad Litem* for unknown party defendants, resident or non-resident, minors, defendants in the Armed Forces of the United States, and defendants who are *non compos mentis* or under any other disability, was filed. The Answer of the Guardian *ad Litem*, which neither admits nor denies the allegations of the Complaint, was filed on February 23, 2022.

An Order authorizing service by publication was filed on September 8, 2020 and the pleadings were subsequently published in the Beaufort Gazette, a local newspaper, once a week for three (3) consecutive weeks.

Other than Michael Rivers, all other Defendants are in default.

On October 23, 2020 an Order referring this action to the Beaufort County Master in Equity was filed, but on October 27, 2020 the Master in Equity, *sua sponte*, due to a conflict, recused himself from the case.

On August 5, 2021 a Consent Order was issued substituting Jenkins, who passed away on November 2, 2020 with his daughters, Carol Jenkins Jackson and Judy Sharon Jenkins Watkins who had been appointed by the Beaufort County Probate Court as the Personal Representatives of his Estate and who are the beneficiaries of his Estate.

On February 22, 2022 this matter came to be heard before me without a jury in the Beaufort County Court of Common Pleas. Present and appearing on behalf of the Plaintiffs was their attorney, C. Scott Graber, Esquire. Present and appearing on behalf of the Defendant Michael Rivers, was his attorney, H. Fred Kuhn, Jr., Esquire. No other Defendant appeared, nor did anyone appear on their behalf.

At the trial, the Plaintiffs and Michael Rivers testified, and they each called various witnesses in support of their respective positions.

After careful consideration of the record in this matter, the arguments of counsel, the testimony of the witnesses, and the various documents entered into evidence, I make the following findings of fact.

II. FINDINGS OF FACT

1. The real estate which is the subject of this action is located in Beaufort County, South Carolina. Benjamin Jenkins, prior to his passing, was a citizen and resident of Beaufort County, South Carolina. His Estate is currently being probated by the Beaufort County, South Carolina Probate Court. Michael Rivers is currently a citizen and resident of Beaufort County, South Carolina.

2. On March 11, 1913 Ruben Chisolm acquired a ten (10) acre parcel of land pursuant to a Deed recorded in Deed Book 33 at Page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina.² This 10 acre parcel is simply described as being bounded on the North by lands belonging to John Ford, on the East by lands of Joseph Logan, on the South by lands of William Wallace, and on the West by lands of Butler Mitchell. Each of these surrounding properties, as well as the property conveyed to Ruben Chisolm, is a ten (10) acre square lot of land.

3. Ruben Chisolm retained ownership of the entire ten (10) acre square lot of land until March 13, 1933, when he sold and deeded sold a portion of this land to Harrison Rivers, who is the father of Michael Rivers. This Deed, which is recorded in Deed Book 51 at Page 213, describes the property being conveyed as follows:

A certain part of a ten acre tract described as follows: - bounded on the North by lands now or formerly of John Ford, on the East by lands now or formerly of Joseph Logan, on the South by lands now or formerly of William Wallace and on the West by lands now or formerly of Butler Mitchell, it being a part of what is known as the Frogmore Plantation and purchased by me from N. Christensen by deed dated February 10, 1913, the road leading from Club Bridge to Coffins Point running

² All Deeds referenced hereinafter are Deeds recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

through this lot in a southwest to northeast direction: Beginning at the point where the said highway intersects with the southern line of said ten acre lot and running in a westerly directing (sic, direction) along the boundary two hundred and ten feet, thence in a northerly direction two hundred and ten feet, thence in an easterly direction two hundred and (sic) feet to the said highway, thence along the said highway in a southerly direction to the point of starting, said lot containing one (1) acre, more or less.

4. Attached hereto as Exhibit A is portion of a plat dated April 23, 2019 entitled "Boundary Survey Prepared for Benjamin Jenkins," by David S. Youmans, Registered Land Surveyor. North is directly to the top of this plat. On this plat there is depicted the location of a chain link fence which is labeled "Fence Encroachment." It is not disputed by any of the parties that the Plaintiffs own that portion of the 4.31 acres located to the north of the "Fence Encroachment." Also on this plat is a 1.24 acre parcel on which the location of a house, among other things, is depicted. It is undisputed by the parties that this 1.24 acres is owned by Michael Rivers.

5. The Plaintiffs contend that the boundary line between their property and the property of Michael Rivers are those two solid straight lines, shown on Exhibit A, one running S00-14'24" West for a distance of 300.94 feet, which then takes a right turn in the direction S89 46'53" E for a distance of 210.60 feet.

6. Michael Rivers, on the other hand, contends that the location of the boundary line between his property and that of the Plaintiffs' is the chain link fence labeled "Fence Encroachment."

7. Accordingly, there is a dispute between these parties as to owns the roughly rectangular shaped parcel of property immediately to the west of the 1.24 acre parcel (hereinafter the "Disputed Rectangle") and the triangular shaped parcel located immediately to the north of the 1.24 acre parcel (hereinafter the "Disputed Triangle").

8. The legal description of the property conveyed by Ruben Chisolm to Harrison Rivers in the 1933 Deed is ambiguous and, as the Plaintiffs' own expert title researcher put it, "vague". It is not possible for the conveyed property to be bounded on all four sides by the lands of John Ford, Joseph Logan, William Wallace and Butler Mitchell, and yet be only one acre in size, since "bounded by," means the properties share a common boundary. Additionally, none of the conveyed parcel's property lines can run "along the said highway in a southerly direction," since the highway does not run in a southerly direction. As the legal description itself recites, the road runs in a "southwest and northeast direction."

9. Most significantly, the metes and bounds expressly set out in the 1933 Deed begin "at the point where the said highway intersects with the southern line of the said ten (10) acre lot and running in a westerly direction along the boundary two hundred and ten feet." This boundary line coincides with the southern boundary line of the Disputed Rectangle. If the metes and bounds are then followed, going north, then east, then due south for two hundred and ten feet each, the property expressly conveyed by this deed encompasses nearly all of the Disputed Rectangle.

10. The aforesaid ambiguity, however, begins to make sense when one recognizes that at the time of this conveyance there was a house on the 1.24 acre parcel that was located immediately to the east of the current house that is depicted on the 1.24 acre parcel on Exhibit A. Benjamin Jenkins testified that this old house was in existence when Ruben Chisolm sold this property to Harrison Rivers. Jenkins Deposition, pg. 12, line 25 to page 12, line 1. Ruben Chisolm was Benjamin Jenkins' grandfather, and Benjamin Jenkins was Ruben Chisolm's ultimate heir. Benjamin Jenkins testified repeatedly that his grandfather, Ruben Chisolm, sold one acre **and** the house to Harrison Rivers. *Id.*, pg. 13, lines 23 – 24; pg. 14, line 23, pg. 23, line 12, pg. 40, lines 2

– 3 (“he . . . sold the house and that acre of land to Harrison Rivers”). It was clearly the intent of the parties in the 1933 Deed to convey both the house **and** the acre of land described in the deed.

11. By its express terms, the 1933 Deed conveyed most of the Disputed Rectangle to Harrison Rivers.

12. Upon execution of the 1933 Deed, Harrison Rivers, together with his wife Ophelia, moved into and occupied as their home the then existing house and the property which now comprises the 1.24 acre parcel. This is effectively admitted by the Plaintiffs in their Complaint, in which they allege:

“When Harrison Rivers acquired his acre from Ruben Chisolm in 1933, he and his wife Ophelia went into possession of a dwelling house that was not within the description of the one acre that he was conveyed by Ruben Chisolm.”

Complaint, ¶6.

13. Ruben Chisolm passed away on January 31, 1944. Complaint, ¶8. During his lifetime, the only property that he conveyed out of the ten (10) acre parcel which he acquired in 1913 is that property that he conveyed to Harrison Rivers in 1933.

14. Ruben Chisolm left as his sole heirs his wife Rachel Chisolm and a daughter Florence C. Parker. On January 20, 1960 Rachel Chisolm died, leaving her daughter Florence C. Parker as her only heir. Complaint, ¶¶8 and 11.

15. In 2000, Florence C. Parker died intestate, leaving her son Benjamin Jenkins, the original Plaintiff to this action, as her sole heir. Complaint, ¶11.

16. Following the death of Ruben Chisolm his heirs conveyed out of the original ten (10) acre parcel a piece of property Amos Williams. The Amos Williams property is shown on as Exhibit A as lying immediately to the west of the Disputed Rectangle.

17. Following the death of Ruben Chisolm, his heirs conveyed out of the original ten (10) acre parcel a piece of property to Margaret Loyd Sumpter. The Sumpter property lies immediately to the east of the 1.24 acre parcel and the Disputed Triangle shown on Exhibit A.

18. Shortly after the execution and filing of the 1933 Deed, Harrison and Ophelia Rivers occupied, used, and began exercising dominion and control over not just the 1.24 acre parcel, but also the Disputed Rectangle and the Disputed Triangle. The land in this area is heavily wooded, and the Disputed Rectangle and Disputed Triangle were cleared up to the Fence Encroachment line as shown on Exhibit A. To the south of that line the land is cleared. Immediately to the north of that line the land is heavily wooded. There was a wire fence in the location of the Fence Encroachment line, remnants of which are still visible today.

19. After moving onto the property in 1933, Harrison and Ophelia Rivers utilized the Disputed Rectangle as if it were their own property. Primarily, they used the Disputed Rectangle for farming and growing various crops such as corn, beans, peas, squash, and watermelon. They tilled the land with a horse and plow. The Disputed Rectangle is easily observable from Seaside Road, a public road, and this use of the Disputed Rectangle was open, obvious, and apparent to anyone passing by.

20. After moving onto the property in 1933 Harrison and Ophelia Rivers used the Disputed Triangle as if it were their own property. On the Disputed Triangle, since the ground was a little higher, they grew peanuts. In this area they also built a stable to house the horses which they used in farming. They also raised hogs and constructed a hog pen on the Disputed Triangle. For a while Ophelia Rivers raised turkeys in this area. Once their son, the Defendant Michael Rivers, was born, they built a tree house on the Disputed Triangle for him.

21. In 1958 Michael Rivers was born and was raised as an only child by Harrison and Ophelia Rivers in the house on the property. His earliest memories as an infant are of his father and mother farming the Disputed Rectangle with the horse and plow, as well as the horses and hogs maintained in the stable and pen. He recalls the wire fence that ran along a line of the Fence Encroachment, and his parents treated the land south of the wire fence as their property, and recognized the heavily wooded land to the north of the wire fence as belonging to the Jenkins family.

22. In 1970 Harrison and Ophelia Rivers built a new house immediately to the west of their existing house. The footprint of this new house is shown on Exhibit A within the 1.24 acre parcel, labelled "House." At that time, they moved into the new house and razed the old house. Harrison and Ophelia Rivers, together with the help of Michael Rivers, continued their use and dominion of the Disputed Triangle and the Disputed Rectangle until the death of Harrison Rivers in 1980. Ophelia Rivers continued the farming and other activities on the Disputed Rectangle and Disputed Triangle following the death of her husband, albeit on a smaller scale, until shortly before her passing in 1991.

23. Following the passing of her husband, Ophelia Rivers erected a chain link fence for security purposes around three (3) sides of the residence, since at that time she was residing there alone, and her son Michael Rivers was serving a tour of duty in the military.

24. Upon her death in 1991, Ophelia Rivers passed her interest in the property to her son Michael Rivers. Michael Rivers lost the property in a foreclosure to Wells Fargo Bank. Michael Rivers arranged for his aunts, Shirley B. Mack and Arabelle Bonds, to be the successful bidders at the foreclosure sale, and he continued to occupy the property pursuant to an agreement with them where they were to serve as "placeholders" until he could regain title. This was in 2006.

In 2012, the property was again lost at a foreclosure sale and Calvin Scott was the successful bidder. Michael Rivers continued to reside in the property pursuant to an agreement with Calvin Scott. Mr. Scott subsequently sold the property to R.M. Lapp, Trustee, and once again, Michael Rivers continued to reside on the property, except for about six (6) months, pursuant to an agreement with Mr. Lapp. In 2020, Mr. Lapp deeded the property to Michael Rivers, who continued to reside in his parents' former house.

25. Each of the deeds of conveyance in the foregoing chain of title to Michael Rivers utilizes the same legal description in the original Deed from Ruben Chisolm to Harrison Rivers that references the property as being bounded on all four sides (i.e., north, south, east and west) by the ten (10) acre parcels formerly belonging to Ford, Logan, Wallace, and Mitchell. Each of these deeds also expressly recite that this is the same property acquired by the Grantor in the Deed from that Grantor's previous Grantor. In 2006, however, the deeds began referencing a plat prepared by Surveyor Zyad Kahlil which was recorded in Book 81 at Page 77 on June 26, 2001. This plat was prepared for Benjamin Jenkins and is the plat upon which the 2019 Youmans' plat is based. This plat shows, for the first time, the boundary line between the Jenkins and the Rivers property that is now claimed by the Plaintiffs. I do not give this plat much weight. The Plaintiffs did not call Surveyor Kahlil as a witness. There is no evidence explaining how he arrived at the boundary line shown on this plat. This plat is in direct conflict with the express language of the 1933 Deed which, as previously noted, expressly conveys most of the Disputed Rectangle to Harrison Rivers.

26. Since 1933 the 1.24 acre parcel, as well as the Disputed Rectangle and the Disputed Triangle, have been exclusively occupied, used, and controlled by Harrison and Ophelia Rivers, and following their passing, by their son Michael Rivers. Since 1933 they are the only ones who have occupied these properties or exercised any dominion or control over these properties. The

only time these properties were not being occupied or used by either Harrison Rivers, Ophelia Rivers, or Michael Rivers, was for a few months during the second foreclosure, at which time they were vacant until Michael Rivers resumed residing on the property.

27. Since 1933, no one in the Plaintiffs' chain of title has exercised any dominion, control, use or occupation of the Disputed Rectangle or the Disputed Triangle. The only time anyone in their chain of title has stepped foot on this property is when the Plaintiffs, as children, visited the Rivers family at their residence.

28. Since 1933, the use of this property by the Plaintiff and his predecessors in title, has been continuous, hostile, open, adverse, notorious, and exclusive to all others.

29. Over the years the original wire fence located on the Fence Encroachment line has fallen into an extreme state of disrepair. In approximately 2019 Michael Rivers erected a new chain link fence in the same area as the old wire fence. This is the fence that is currently shown on Exhibit A in the area of the Fence Encroachment.

30. Until shortly prior to this filing of this lawsuit, no one, including the Plaintiffs and all those in the Plaintiffs chain of title, objected to or contested Michael Rivers' and his family's use and occupation of the Disputed Rectangle or the Disputed Triangle.

31. Following his mother's passing, Michael Rivers continued to reside on the property, where he now resides with his wife. He continued to farm the property although on a much smaller scale inasmuch as, unlike his parents, he was not dependent upon farming for his sustenance. He has extensively landscaped the property with trees, azaleas, and crepe myrtles, has cleared old stumps, and mows and keeps the property cleared, landscaped and maintained. He had to replace the septic tank and drain field to his house, and this extends well into the Disputed

Rectangle. Until shortly prior to the filing of his lawsuit, none of these actions were contested or objected to by the Plaintiffs or their predecessors in title.

Pursuant to the foregoing findings of fact I make the following conclusions of law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and venue properly lies with the Beaufort County Court of Common Pleas.

2. Michael Rivers is claiming ownership of the disputed parcels partly by virtue of the express language in the 1933 Deed and partly by adverse possession under color of title. The color of title is the 1933 Deed.

3. Section 15-67-230 of the South Carolina Code of Laws sets forth what constitutes adverse possession under a written instrument, such as a 1933 Deed, as follows:

“For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

- (1) When it has been usually cultivated or improved;
- (2) When it has been protected by a substantial enclosure;
- (3) When, although not enclosed, it has been used for the supply of fuel or the fencing timber, for the purposes of husbandry or for the ordinary use of the occupant; and
- (4) When a known farm or a single lot has been partly improved the portion of such farm or lot that may have been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

S.C. Code Ann §15-67-230. See also, *Woods v. Bivens*, 292 S.C. 76, 354 S.E.2d 909 (1987) and *Butler v. Lindsey*, 293 S.C. 466, 361 S.E.2d 621 (Ct.App. 1987).

4. The Disputed Rectangle and the Disputed Triangle were “usually cultivated or improved” by Harrison and Ophelia Rivers from 1933 up until the time of their deaths in 1980 and 1991, respectively, within the meaning of Subsection (1) of §15-67-230.

5. The Disputed Rectangle and the Disputed Triangle were both “protected by substantial enclosure” by Harrison and Ophelia Rivers from 1933 up until the time of their deaths in 1980 and 1991, respectively, within the meaning of Subsection (2) of §15-67-230.

6. The Disputed Rectangle and the Dispute Triangle were utilized for “purposes of husbandry or for the ordinary use of the occupant” by Harrison Rivers and Ophelia Rivers until the time of their deaths in 1980 and 1991, respectively, within the meaning of Subsection (3) of §15-67-230.

7. During the timeframe when Harrison Rivers and Ophelia Rivers were utilizing the Disputed Rectangle and the Disputed Triangle for farming and husbandry, particularly during the earlier decades, these activities were not engaged in not as a hobby, but for needed sustenance, and accordingly Subsection (4) of §15-67-230 applies to the facts of this case.

8. Even if there were no claim under color of title or under a written instrument such as the 1933 Deed, ¶15-67-250 of the South Carolina Code of Laws includes fencing, cultivation, and improvements within the definition of adverse possession. These are circumstances that are present within this case. See S.C. Code Ann. §15-67-250; *Miller v. Learid*, 307 S.C. 56, 413 S.E.2d 841 (1992); *Woods v. Bivens*, 292 S.C. 76, 354 S.E.2d 909 (1987).

9. In South Carolina, adverse possession may be established under a ten (10) year statute of limitation.

10. In addition to the ten (10) year statute of limitation for adverse possession, South Carolina Common Law also recognizes the twenty (20) year presumption of a grant.

11. In this case, Michael Rivers claims that his predecessors in title, Harrison Rivers and Ophelia Rivers, obtained title to the premises in dispute by virtue of both the ten (10) year statute of limitation as well as the twenty (20) presumption of a grant.

12. For Michael Rivers to establish title by ten (10) years adverse possession, he must show that either he himself had been in the actual, open, notorious, continuous, hostile and exclusive possession for ten (10) full years, or alternatively, that one of his predecessors in title had been in actual, open, notorious, continuous, hostile and exclusive possession for ten (10) full years. In order for Michael Rivers to prevail on ten (10) years adverse possession, he must show ten (10) full years of adverse possession by only one (1) person in his chain of title. Harrison and Ophelia Rivers, from the time they moved onto and took possession of the disputed property in 1933 until they passed away in 1980 and 1991, respectively, were in actual, open, notorious, continuous, hostile and exclusive possession of the disputed premises for the full ten (10) year period and accordingly obtained title by adverse possession at the end of the ten (10) year period and such title would accrue to the benefit of those in the subsequent chain of title, including Michael Rivers.

13. Additionally, with respect to the twenty (20) year presumption of a grant, Harrison and Ophelia Rivers were in actual, open, notorious, continuous, hostile and exclusive possession of the disputed premises, claiming the property as their own, for well in excess of the required twenty (20) years. Since Michael Rivers' predecessors in title continuously held the disputed premises adversely for a period of twenty (20) years, he now holds title as a result of the twenty (20) year presumption of a grant. See, *Terwilliger v. White*, 222 S.C. 176, 72 S.E.2d 169 (1952); *Terwilliger v. Daniels*, 222 S.C. 191, 72 S.E.2d 167 (1952); *Weston v. Morgan*, 152 S.C. 177, 160

S.E. 436 (1931); and *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 489 S.E.2d 223 (Ct. App. 1997).

14. Pursuant to the clear and express terms of the 1933 Deed to his father, Michael Rivers holds title to the square shaped parcel of land that begins at the point where the southern line of the original ten acre lot intersects with Seaside Road and then runs for 210 feet each west, then north, then east and, south to the point of beginning, finally.

15. Michael Rivers has established title to the remainder of the disputed property by the adverse possession of his predecessors in title, Harrison and Ophelia Rivers, pursuant to both the ten (10) year statute of limitations and the twenty (20) year presumption of a grant. Once Harrison and Ophelia Rivers acquired title by adverse possession to the disputed properties, in either 1943 pursuant to the ten year statute or 1953 pursuant to the twenty (20) year presumption, this title was successively passed down to each of Michael Rivers' predecessors in title, and ultimately to Michael Rivers.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

a. Michael Rivers holds fee simple absolute title in and to the Disputed Rectangle and the Disputed Triangle as shown on Exhibit A hereto and the boundary line between the property of the Plaintiffs to the north and the property of Michael Rivers to the south is that fence line marked "Fence Encroachment" on Exhibit A; and

b. That this Order, together with that plat dated April 23, 2019 entitled "Boundary Survey Prepared for Benjamin Jenkins" by David S. Youmans, R.L.S. 9765, from which Exhibit A is excerpted, shall be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

AND IT IS SO ORDERED.

Honorable Maite Murphy
Beaufort County Court of Common Pleas

Beaufort, South Carolina