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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

THE HONORABLE MAITE MURPHY
CASE NUMBER: 2020-CP-07-00829
APPELLATE CASE NUMBER: 2023-001278

CAROL JENKINS JACKSON AND
JUDY SHARON JENKINS WATKINS.....Appellants.

v.

MICHAEL F. RIVERS, R.M. LAPP, TRUSTEE FOR THE ST. HELENA ASSETT TRUST, HEIRS OF HARRISON RIVERS, HEIRS OF OPHELIA RIVERS, HEIRS OF HAROLD W. RIVERS, HEIRS OF RACHAEL CHISHOLM, HEIRS OF FLORENCE C. PARKER, HEIRS AT LAW OF REUBEN M. CHISHOLM, AND ALSO VERNELL I. SMASHUM, BARBARA MCCLARKING, BEVERLY J. SCOTT, AMOS WILLIAMS, CLIFFORD HUFF, SANDRA MACK-HUFF, TRUSTEE FOR THE MARGARET LOYD SUMPTER TRUST DATED AUGUST 30, 2002, JOSEPH A. MOORE ALL OF WHOM ARE BELIEVED TO BE ADJACENT LANDOWNERS AND ARE MADE DEFENDANTS IN THIS ACTION, AND ALSO ALL OTHER PERSONS UNKNOWN HAVING OR CLAIMING TO HAVE ANY RIGHT, TITLE, ESTATE, INTEREST IN OR LIEN UPON THE REAL PROPERTY OR ANY PART THEREOF DESCRIBED IN THE COMPLAINT HEREIN, AS JOHN DOE AND MARY ROE, INCLUDING ALL PERSONS WHO MAY BE DECEASED, MINORS, IN THE MILITARY SERVICE OF THE UNITED STATES WITH THE MEANING OF TITLE 50 UNITED STATES CODE, REFERRED TO AS THE SERVICEMEMBERS CIVIL RELIEF ACT, AS AMENDED, PERSONS ON COMPOS MENTIS AND UNDER ANY OTHER DISABILITY.

OF WHOM MICHAEL F. RIVERS IS THE.....RESPONDENT.

INITIAL BRIEF

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November 16, 2023

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TABLE OF AUTHORITIES

Section 15-67-23 of the South Carolina Code of Laws

South Carolina Common Law 20 year presumption of a grant

Getsinger v. Midlands Orthopedic Profit Sharing Plan 327 S.C. 424, 49 SE2d, Court of Appeals,

1997 (This author was the winner of that case.)

STATEMENT OF ISSUES ON APPEAL

- I. **DOES THE EVIDENCE TAKEN AS A WHOLE SUPPORT THE TRIAL JUDGE'S DECISION THAT THE DEFENDANT RIVERS AND THE PERSON FROM WHO HE CLAIMED HAD OWNED THE PREMISES IN QUESTION AS FAR BACK AS 1933?**

- II. **IS THE PLAINTIFF ENTITLED TO A RULING AS TO HIS OWNERSHIP AGAINST ANY OTHERS?**

STATEMENT OF THE CASE

The Appellants filed suit on April 6, 2020 maintaining that they owned 4.33 acres of land as had been determined by a number of surveys as reflected in the record. The Respondent filed a general denial. No pleading of adverse possession was raised or even mentioned in his answer. The trial judge determined that the Respondent proven to be (both himself and his chain of title) owned not just 1.24 acres as is shown on the plats of record but also had proven an adverse possession claim of an additional 1 acre of land as well as an additional one-half acre of land, thus reducing the Appellants' ownership to slightly over 2.5 rather than the 4.33 acres.

While this action was pending Benjamin Jenkins died and by order of the court his heirs, Carol Jenkins Jackson and Judy Sharon Jenkins Watson, were substituted as the Plaintiffs.

STATEMENT OF FACTS

The Appellants' father testified that he had owned the premises for many years. He further testified that he had deeded 1 acre, more or less, to the Respondent's predecessors in chain of title. The testimony by Kathy Altman established that the premises had always been legally described as "one acre, more or less". (TR 46) The Respondent thereafter mortgaged the property and used the same description. (TR Ex. 7) . When the property was purchased out of foreclosure, the exact same description was used "one acre, more or less" (TR Ex. 12) The Respondent filed an answer in this matter (not a counterclaim, just an answer) and introduced a plat using basically the same boundaries and corner markers as the surveyors for the Appellants. He thereafter testified that he had used approximately one acre to the west of the premises (which had not been in question prior to that time) and also approximately one-half acre to the northeast of the property he claimed.

Neither survey showed any adverse claims or any indication of adverse claims by way of buildings, fences, or other indications of adverse claim to be found on the ground. The only testimony in the record which goes back to 1933 is that of the Appellants' father that testified the Respondent's chain of title had ever used any property other than that property he had deeded to

him. It was further testified by neighboring landowner, Mr. Inabinett, that he had never seen an adverse use (during this same time period) of the land claimed by the Respondent in this matter.

ARGUMENT AND CITATION OF AUTHORITY

I. DOES THE EVIDENCE TAKEN AS A WHOLE SUPPORT THE TRIAL JUDGE'S DECISION THAT THE DEFENDANT RIVERS AND THE PERSON FROM WHO HE CLAIMED HAD OWNED THE PREMISES IN QUESTION AS FAR BACK AS 1933?

The only people who testified in this matter who were alive in 1933 was the late Benjamin Jenkins who had deeded the property into the chain of title of the Respondent Rivers. He was quite adamant that the deed was for one acre of land, no more, and that amount of land had been used by the Rivers chain of title. He was further adamant that there had been no agricultural use nor anything else that would act as a claim of more than one acre during the entire time that the Rivers chain occupied the property. This was further buttressed by the testimony of Luke Inabinett who was also, during this period of time, equally adamant that the predecessor in title to Rivers had not had any significant agricultural or any other use of the premises other than a homestead. There was testimony by Doris Holmes that during the 60s there had been agricultural use of the premises by the Respondent Rivers' family. How much it was and where it was, was in some dispute and she finally said it was about half the size of the courtroom. (TR 181, Line 8 – TR 181, Line 5) In further describing the use of the Respondent Rivers referred to it as "his little garden. (TR 186, Line 22). The earliest plats of the premises that are of record are one prepared by Khalil that was done in 2001. (Plaintiff's Exhibit 10) It shows that Appellants' predecessor owned 4.331 acres and importantly, all the corners to the premises were there. (CM (0) is survey talk for corner marker, old concrete monument found). They are exactly what the Appellants' claim is their property. Thereafter, a plat was done by David Youmans which was prepared April 22, 2009 which found the same corner markers but did not show an encroachment on the above property of the Jenkins property by the Rivers claim. It further shown the drain field for the Rivers septic tank was located

on the Jenkins property. It further showed the original corner markers as were established by Khalil some years earlier.

The testimony additionally shows that Mr. Rivers was born in 1958, therefore would not have knowledge of the original history of the property until sometime in 60s or 70s. Mr. Rivers got title to the premises in 1991. (TR Ex. 6). He lost it to a foreclosure in 2005. It remained in the hands of others until he received title back on August 11, 2020. (TR Ex. 17) Thus there is no showing of any adverse possession by persons who held the title during the 15 years that he did not have it. The only substantial evidence of the use of the property was that of Mr. Jenkins and of Mr. Inabinett. They both testified that there had been no use to rise to the standards of adverse possession during the 30s, 40s, 50s, and up to the 60s. Mrs. Holmes did testify as to some use in the 60s but was never actually able to establish where it was.

The surveys have always shown the Appellants and their predecessor in title owning 4.331 acres. They also show the exact same corner markers. The only encroachment shown is a 4 inch chain link fence to the west of the parcel claimed by the Respondent. (TR 10) The Respondent Rivers claims not just the disputed triangle, (Respondent's Exhibit 4) which again list the exact same corners as on the prior plats, but per that exhibit, the Respondent is claiming 1.5 acres (the land to the west of the house spot which is exactly one acre and the triangle to the north of the house spot which is almost exactly one-half acre.) Thus the Respondent has boot-strapped his "one acre more or less" to 1.24 acres per the plat plus 1.5 acres that he has claimed by adverse possession (which was not pled at all). The only actual witnesses to the use of the property being the Appellants' father and his neighbor, were adamant that the use testified to by the Respondent never took place. It is also worthy of note that the surveyors never showed any adverse usage. The Respondent Rivers and his successors in title also consistently used the exact same deed description "one acre, more or less" when the property was deeded, when the property was mortgaged and for every other use of the property. The Respondent Rivers admitted to having never paid taxes on the property, much less as to what amount. The Appellants believe that the evidence, taken as a whole,

shows no claim of adverse possession of a parcel bigger than 1.0 acre has been established by the Respondent Rivers, and that should have been rejected.

II. IS THE PLAINTIFF ENTITLED TO A RULING AS TO HIS OWNERSHIP AGAINST ANY OTHERS?

The Appellants claimed ownership of the premises against all the adjoining landowners and most of the rest of the world. As noted by the Respondent in his answer, Paragraph 4, he agrees that they are proper parties to this. Other than noted in their Order there is actually no finding of fact or conclusions of law as to the Appellants' ownership as to the balance of the premises. South Carolina Law (to quiet title) (Section 15-67-20) holds that only one action such as this can be brought. Thus the Appellants do not have the right to bring an additional action.


The Plaintiff is informed and believes that he is entitled to an order of this court remanding this matter back to the circuit judge for a determination of the claims of any other parties as to the premises and the ownership of the premises being in the Plaintiffs, heirs of Benjamin Jenkins.

CONCLUSION

The Appellants are informed and believes that they are entitled to order of the court reversing the determination by the circuit judge that the Respondent Rivers has proven his claim to any acreage above the one acre on the grounds of adverse possession, as well as an order remanding this case back to the circuit court for a determination of the ownership or claims of any other parties.

Respectfully submitted,

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