

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
COURT OF COMMON PLEAS

EDWARD VAN SLAM BRASK MASTER-IN-EQUITY

Case No. 2020 CP 08 01945

RECEIVED

DEC 06 2023
SC Court of Appeals

Kenneth S. Pinckney

APPELLANT

v.

Leroy Pinckney, John Dandy Pinckney
Heirs of John Dandy Pinckney, Ederlena
Pinckney Kinlaw, Adman Pinckney,
Lena Brown, Joe Loris Pinckney,
Theresa Pinckney Richard, Peggy Pinckney
Franklin Roscwell and Willis Pinckney
And John Doe and Mary Doe, Fictitious.
Names used to represent any and all other
Persons unknown who have or may claim
any rights title, interest or estate herein
upon the real property herein after described
including any such as may be infants,
Incompetents or otherwise under any
disability and heirs of any deceased
Defendants NAMED above

Respondent

INITIAL BRIEF OF APPELLANT

BRUSH LAW FIRM
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2. THE LOWER COURT MASTER-IN-EQUITY ERRED IN VIOLATION OF RULE 53. FAILURE TO EXECUTE PROPER ORDER OF REFERENCE WITH RESPONDENT AND APPELLANTS DOCUMENTED SIGNATURES OF BOTH PARTIES, OF CASES 2020 CP 08 01945 and 2022 CP 08 00478.

3. THE LOWER COURT MASTER-IN-EQUITY ERRED IN HIS ORDERS SAYING APPEALS GOES TO THE APPELLATE COURT. CASES 2020 CP 08 01945 and Case Number 2022 CP 08 00478

4. THE LOWER COURT MASTER-IN-EQUITY ERRED IN NOT SEEING THE FRAUDULENT DEEDS THAT ARE VOIDABLE. 28 AUG 14, 7 NOV 14 8 JAN 16 AND 11 FEB 16.

5. THE MASTER-IN-EQUITY ERRED IN NOT HAVING TRANSCRIPTS TO MAKE FINAL ORDERS. ORDER LACKING DISCLOSURE, INTERROGATORIES AND PRODUCTION FROM DEFENDENT.

6. THE MASTER-IN-EQUITY ERRED SAYING APPELLANT DID NOT HAVE EXCLUSIVE, HOSTILE AND CONTINUOUS POSSESSION OF PROPERTIES 042 003029-LOTS, AND TMS 042-00 3083-LOT 4.

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STATEMENT OF THE ISSUES ON APPEAL

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5. DID THE MASTER-IN-EQUITY ERRED IN NOT HAVING TRANS-CRIBES TO MAKE FINAL ORDERS. ORDERS LOCKING DISCOVERY, FURTHER DISCOVERY AND PRODUCTION FROM RESPONDANTS
6. DID THE LOWER COURT MASTER-IN-EQUITY ERRED IN ORDER SAYING THAT APPELLANT DID NOT HAVE EXCLUSIVE HOSTILE AND CONTINUOUS POSSESSION OF PROPERTIES TMS 042 00 3029-LOTS AND TMS 042 00 3023-LOT 4.

7. DID THE LOWER COURT MASTER-IN-EQUITY ERR IN ORDER SAYING LEROY PINCKNEY GAVE APPELLANT PERMISSION TO USE THE MULTI-PURPOSE BUILDING AT 271 ST. JUSTIN DRIVE
8. DID THE LOWER COURT MASTER-IN-EQUITY ERR IN HEARING AND TRANScribing THAT ONE(O) PROPERTY WAS TO GO TO WILLIS PINCKNEY/RESPONDENT 20 YEARS ON THE PROPERTY AND TO APPELLANT KENNETH S PINCKNEY ONE(O) PROPERTY, BE CAUSE I LIVED THERE 18 YEARS ON THE PROPERTY BY HIS ESTIMATE.

STATEMENT OF THE CASE

THE Appellant Kenneth S. Pinckney, is a resident of Berkeley County, South Carolina. Commenced this action on September 1, 2020 in CHARLESTON County. This case was brought forth by Attorney Jeffrey Scott Weather. As a Adverse Possession Case. An action to quiet title in my name of properties TMS 042 00 3029 - Lot 5, and TMS 042 00 3083, Lot 4. 5.7 Acres were divided into five lots. in 1993. The case was amended on December 16, 2020. The properties described in the complaint were owned by my uncle John Dandy Pinckney and my Aunt Geneva Brown, both now Deceased. I was the Guardian Conservator for uncle John Dandy Pinckney for about 9 years and a half years. Geneva Brown Deed Her property 20T (5) back to her brother on May 14, 1994. in Book 546 and page 245. Record on Appall Deeds. Respondent Leroy Pinckney and wife Peggy S. Pinckney sent letter to Appellant on August 22, 2020, saying Appellant must vacate building 271, remove property from building, remove tall cedar tree that causes a blind spot to his home, with thirty days to vacate. I annexed the building in 1990. Planted trees. up to that time thirty 30 years. Letter from Respondents.

Summons and Complaint initiated on September 1, 2020. Jury Trial demanded. Pleading. Respondent's Attorney sent Letter on September 8, 2020. Attorney Pleading.

Respondents and Attorneys from British Law Firm, Thomas A Brush and J. Chris Lanning did alleged fraudulent deeds: First deed 28 Aug 14, an Affidavit says sister to Brother. Respondent Leroy Pinckney is my mother Cassin. Deed 2, recorded on 7 Nov 14. Deed number (3) Respondent deeded property to Respondent Willis Pinckney on 8 Jan 16 and the fourth deed was done by Respondent Leroy Pinckney at Respondent Willis Pinckney's House. Where Respondent Willis Deeded the property back to Respondent's Leroy and Peggy J. Pinckney. Leroy Paying Taxes from 2014. Except the (4) checks he gave to me. 11/25/2011 11/3/2012, 11/3/2012 and 1-6-2014. Production.

Motion to Dismiss was done in the small claims court by Judge Diane Schaefer Goodstein. Motion Denied. Motion Pleading. Four deeds were done 28 Aug 14, 7 Nov 14, 8 Jan 16 and 11 Feb 16. Pleading 6/21/21, too was Deposition of Office of Attorney Jeffrey Weathers. Respondent Leroy Pinckney was the only one to show up. Court Reporter Laura Coccor for Ray Swartz and associates transcript had irregularities in it. I inform my Attorney about it.

I saw publication of case number 2022 CP 88 00478 in the newspaper. I joined the case and paid my Attorney his fee. My Attorney intentionally let the case go into default. This case started in March of 2022 and caught up to my case of 2020 CP 88 001945. The other case started at 4:30 8 Sep 22. My case at 10:00, 8 Sep 22. I did not request a case before a matter-in-Equity. I did not go before a Circuit Court Judge or Clerk of Court to request a reference order. I did not discuss discovery, interrogatories or payment of fees. There was no communication with my Attorney, the Respondent or his Attorney. I signed no documents with my Attorney for a reference order to Master-In-Equity Dale Edward Van Stombrock. Court Reported Melly Powell recorded testimony for both Hearings.

Mosser Slom Brook said he was perplexed by my facts and evidence. saying, "What did I get myself into". He also stated in the hearing that I would get (1) property. He fabricated 18 years. I was then 32 years by then. He said Willis would get the other property, that Respondent Willie Pinckney was there 20 years. Respondent Leroy Pinckney testified he did not give me permission for use of the property or building at 271 St-Julien Drive. A building I completely renovated. From roof, ceiling, floor, electrical, windows, doors stove/counter and church equipment, furnishing and other property items. I still pay the electric bill and gas bill and home rental, now 33 consecutive years. Respondents Leroy and Willis Pinckney only paid the taxes, Leroy 2014 and Willis 2016 by deeds. Except for the (4) Leroy gave to me 2011, 2012 and 2014 for some strange reasons? Please see Taxes of Appellate and Respondents. Taxes.

I brought forth testimony of facts and evidence that Leroy Pinckney is not my mother's brother or my uncle in both cases 2020 CP 08 01548 and 2022 CP 08 00418. which I feel was executed to cover up the fraudulent deeds of 28 Aug 14, 7 Nov 14, 8 Oct 16 and 11 Feb 16. The 11 Feb 16, deed did not show up in the deposition, even though I published it. It shows up under Plot. It did not show up in motion to dismiss, memorandum in support of Respondents motion to dismiss, the order or in the deposition of 6 Oct 21. Nor Defendants Leroy Pinckney and Willis Pinckney, first set of requests for Admission to Plaintiff. Deeds that don't have the first page, (B) of them are Exhibit A, Exhibit B and Exhibit C. Pleading/Admissions.

Properties belonged to John Dandy Pinckney from 1893 to 2014. Geneva his natural sister deeded her 132 acres to her brother John Dandy Pinckney 14 May 1994. My uncle John Dandy Pinckney died in May of 1995. Leroy is a cousin on Affidavit of Probate Court. My sister Therese Richard is a niece on documents. Our mother is Everlara Kinlow on 28 Aug 14 Deed saying

She and Leroy are sister and brother. Probate Documents on Real Property Services Address change form. Respondent Leroy Pinkney says he is now a brother to deceased John Dorely Pinkney and Geneva Brown. He is neither... Real Property Documents. I am on one to continue to pay the Taxes.

Respondent Leroy Pinkney Attended a Family Reunion August 30-31, 1999 in Cross South Carolina. Picture of him and I at Table. Family Genealogy in program clearly shows his mother, Family and Siblings. Also his Grand Children. Genealogy Documents. I grew up in Philly with Respondent's Leroy's mother and his siblings - Attending the same Church his mother and my mother are first cousins.

I had clear and convincing evidence of the elements of actual, open hostilities, Hostile, continual and exclusive possession of properties 842003029-Lot 5 and 842003083-Lot 4.

I now have 5 complaints at the office of Disciplinary Counsel.

For Attorney Jeffrey Scott Weathers, J. Chris Lanning, Thomas H. Brushy Master-In-Equity, Dale Edward Van Slambrock, Magistrate Edouard Jenkins Whaley, Administrative Supervisor, and Constable Lewis Brown have been noted by the office of Disciplinary Counsel.

A Complaint is being looked at for Judge Diane Schotter, Court Clerk. For misconduct, Abuse of discretion, due process, equal protection of the Law, Subject matter Jurisdiction and Venue. have been violated and weighted against me with an undue burden that cannot be overcome unless the Court rectifies to execute a fair and just ruling from facts, evidence and the knowledge of the unjust legal machinations of ~~these~~ (5) possible (6) officers of the Court.

The Master-In-Equity presided over a 5Horn, Kangaroo Hearing. The Transcripts of the (2) cases have been intentionally withheld because of the facts and evidence of my testimony. Ray Schwartz and Magna Legal Services along with my Attorney and Respondents

Attorney refuse to send Transcripts that Court Reporter Molly Powell Took. Magna Legal in Philadelphia says she was just Attending and that Attorney T. Chris Lanning was responsible for both transcripts.

The master-In-Equity overlooked competent, reliable, facts and evidence from my testimony from the witness stand. Stating that Respondent Leroy Pinckney gave me permission to use property, Building 271 St Julian Drive, when the respondent did not say so. The Master-In-Equity had dates and length of times wrong. He stated things that were not relevant due to the passage of time. Thirty years had passed before anybody said anything about the property. Hence Leroy/Respondent's Letter of 22 August 2020.

The Master-In-Equity in both cases one with a Order of Reference the other with a Consent order of Reference, on both they say the appeal is to the Appellate Court. Rule 14-11-85 says to the Supreme Court. Attorney Jeffrey Weather in the notice of the Appeal also mentioned the Appeal to the Appellate Court. Attorney weather failed to produce the Transcript for the Appellate Court. Refusing to give a status report to the Appellate Court but sending a letter to Court Administration.

I sent Letter to Court Administration misconduct by Court Reporter Laura Locour of Oct 21 Deposition, said they could do nothing but records show Court Administration is over the courts and Master-In-Equity. Document. Attorney Weather sent Letter to Court Administration. Document. There is communication by Attorney weather to Magna Legal Services, about the two transcripts. Magna Document. Received call or called Magna Legal Services in Philly. They told me. Mrs Susan MacCalluck that they did not have the transcripts. That the Court Reporter Molly Powell was just attending. I wrote it down quickly on a envelope. It is faint but you can make out the word Attending. This is what Mrs MacCalluck said the court Reporter was claiming at both of the hearings. Please see the South Carolina Appellate

Case management system Event Information. It shows the evasive actions of Attorney Jeffrey Scott Weather about getting the transcripts. Document please see South Carolina Court of Appeals November 14, 2022 letter to Attorney Jeffrey Weather that ordering the Transcripts has expired. Document

The Appellate still the Appellate Court for Abeyance which it denied and cited Rule 221 (c) S.C.A.R. - It is out of order, evasive and does not clarify my motion for Abeyance. It speaks about rehearing? Abeyance is a temporary halt, inactivity, suspension. Why wasn't it granted?

Attorney G. Chris Conroy on April 15, 2023 asking me to vacate property 642-00-0329. Even though Appeal was in process. Respondent Lory Pinekney frustrated action to vacate property on 22/05/23. The Court had a sham set up. Court (Pinekney) was cancelled on 13 Jun 23. I was not notified. I showed up DNR (4) of John in Parking Lot. Security is there, Mrs. Veronica Reed, Kim and Constable Lewis Brown. Court document says the case was settled. How can it be settled when it was cancelled by Respondent Lory Pinekney on 7 Jun 23. Magistrate Evonne Jenkins who by is being investigated by the Office of Disciplinary Counsel along with Attorney G. Chris Conroy. Document.

There is a image of 1452 and associated building that does not exist. Image. There are (17) pages from the Deposition. Page 2 showing how the fence line was hidden. Deposition. There is one plot. Plot There is one map. map. There are six pages of photos of the property I offered for 33 years, and 12,045 days. There is the Title that Lory receive on 1/3/11. That he could legally rent a bike here. We have the order by Judge Piana Schacter Goodstein that says in order to establish adverse possession, the Plaintiff must show continuous, hostile, actual, notorious, and exclusive possession of the property for a certain period of time. Mullis v. Winchester, 237 S.C. 487, 491, 118 S.E.2d 61, 63, (1961); In South Carolina, adverse possession may be established if the elements of the claim are shown to exist for it

Least ten years SC Code Ann § 15-67-210 (Supp. 2008) I find that the plaintiff has sufficiently pled the requirements for Adverse possession for the required period of time of ten years. Therefore, I decline to dismiss Plaintiff's Adverse Possession claim. Pleading

We have the (2) orders from the Master In-Equity. At the Hearings of 8 Sep 22. Case # 2022 CP 88 01945 and 2022 CP 88 00478. The first case with a reference order and the case with a consent order of reference. Both executed by Judge Jennifer B. McCoy #2764. Both of these cases on the same day. A six month case catches up to a Two (2) year case and the six month case is heard at 9:30 and the Two year case is heard at 10:30? Case # 2022 CP 88 00478 has Attorney Thomas H. Brush as Attorney of record on the final order granting title, although he did not attend the hearing as my former Attorney Jeffrey Scott weather informed me he would.

We have five (5) letters from the Supreme Court of South Carolina Office of Disciplinary Counsel. For my former Attorney Jeffrey Scott weather, Attorney T. Chris Lanning, Attorney Thomas H. Brush, Judge Diane Schaefer Goodstein, Pending. Master In-Equity Dale Edward Jon Slambrook and Magistrate Judge Eworne Jenkins wholly. Complaints.

I initiated Retail License State of South Carolina February 5, 1991 out of the building I renovated in 1990 along with the old house of my Grand parents. It was first the Pinckney's neighborhood Grocery Store. In July 26, 2001, there was a Revocation of Retail License. I expected saying I wanted to turn the building into a Christian Book Store. But I wanted to do repairs to the building. This is 8/17/01.

Business Documents. I became the Guardian Conservator for my Uncle John Dondy Pinckney 10 Dec 93 with Certificate of Appointment. with petition for Appointment of Guardian Conservator. Aug 27, 93. Respondent's Name is not listed. There is Report of The Probate Hearing with Attorney Kevin Keorse who executed

The dividing of the 5.7 Acres and the procedure for me to become my uncle John Dandy Pindley guardian-conservator.

I request suit be granted, special damages, including the cost and attorney's fees (for Both cases 2020 CP 08 01945 and 2022 CP 08 00498), associated with bringing this action, and punitive damages. Such other and further relief as the Court deems just and proper. In addition, Appellant prays for Judgment against Respondent, as follows A. For Actual damages according. B. For punitive damages as permitted by Law; for reasonable attorney's fees and costs and D. For Such other relief as is just and proper.

STANDARD OF REVIEW

Abuse of Discretion. Arthur v. Sutton Dental Clinic 368 S.C. 320, 333 S.E.2d 894, 898 (Ct. App. 2006) The determination of Real estate is legal in nature. Wiggall v. Jabbs, 295 S.C. 59, 367 S.E.2d 156; Clock v. Hargrove, 323 S.C. 84, 473 S.E.2d 474 (Ct. App. 1996)

ARGUMENTS

1. THE LOWER COURT MASTER-IN-EQUITY ERRED IN EXECUTING A STAM KANGAROO COURT OF TWO CASES. NOT SEEING IN COURT RECORD CASE STARTED IN COMMON PLEA COURT, BERKELEY COUNTY. MOTION TO DISMISS WAS AT SMALL CLAIMS COURT. VIOLATION OF SUBJECT MATTER JURISDICTION AND VENUE.

The hearing heard on 8 Sep 22, at 10:30 2020 CP 08 01945. (2 years) was preceded by a 9:30 case (6 month) 2022 CP 08 00478. Was covered under a sham, BLACK LAW DICTIONARY, 2 ED. something that is not what it seems. It was a Kangaroo court. A sham legal proceeding, used to establish Respondent Leroy Pinckney as a sibling of Respondent Everlena Kimbrow. who on deed of 28 Aug 14, on AAA-deed, says sister to brother. They are cousins. Respondent's Attorney knowingly did the deeds, SCRAP 82 (a) (b) *Simms v. Phillips*, 46 S.C. 24 S.E. 37 (1906) *Good v. Unkoyel*, Inc. 278 S.C. 571 300 S.E.2d 78 (1983) *Penneyer v. Neff*, 95 U.S. 714, 733, 24 S.Ct. ed (1878) "When a court acts with proper subject matter jurisdiction, but takes action outside of its authority, the party against whom the act is done must object and directly appeal." 1st (quoting *Leon v. Leon*; 356 S.C. 342 1347-48, 588 S.E.2d 642, 627 Ct App. 2003) 14th Amendment

2. THE LOWER COURT MASTER-IN-EQUITY ERRED IN VIOLATION OF RULE 53. FAILURE TO EXECUTE PROPER CONSISTENT ORDER OF PREFERENCE WITH RESPONDEND AND APPELLATE WITH DOCUMENTED SIGNATURES OF BOTH PARTIES. OF CASES 2020 CP 08 01945 AND REFERRABLE ORDER OF CASE 2022 CP 08 00478.

Pursuant to rule 53 (b) (c) (e) the Circuit Judge or Clerk of Court may order, by order, some or all of the course in a default case or fore closure action, and with parties consent, other civil action SCRAP 53 (b) (c) (e)

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, ... and it must afford a reasonable time for those interested parties to make their appearance but with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the Constitutional requirements are satisfied. SCRPC 53(b)(c)(e). *Milliken v. Central Haverhill Bank and Trust Co.*, 339 U.S. 306, 314-15 (1950)

3. THE LOWER COURT MASTER-IN-EQUITY ERRED IN HIS ORDER SAYING THAT APPEAL GOES TO THE APPELLATE COURT.

Appeals from an order or judgment entered by a Master or Referee "must be to the Supreme or the Court of Appeals as provided by the South Carolina Appellate Court Rules. SCRPC 14-11-85. Both case of 8 Sep 22. Case # 2022 88 00478 at 9:30 and case # 2022 CP 08 01945 at 10:30 with court reporter Molly Powell. 9:30 case Attorney Thomas A. Birch did not show up but is on order of Referee. Appeals to Appellate Court. Case with Attorney G. Chris Zimling, Consent Order of Referee states, direct appeal to South Carolina Court of Appeals. SCRPC 14-11-85.

4. THE MASTER-IN-EQUITY ERRED IN NOT SEEING THE FRAUDULENT DEEDS THAT ARE VOIDABLE. 28 AUG 14, 7 NOV 14, 8 JAN 16 and 11 Feb 16. THE MASTER-IN-EQUITY ORDERS ARE VOIDABLE.

The final order from the Master-in-Equity is a void judgment. As one that from its inception; is a complete nullity and is without legal effect. *Thomas and Howard Co. v. The Graham and Co.* 38 S.C. 286, 291, 487 S.E.2d

368. 891 (2d App. 1996) Generally, a person whom a Judgment or order is taken without notice may rightly ignore it and may assume that the Court will enforce it against his person or property. The requirements of due process not only include notice, but also the opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 223 U.S. 385, 399 (1914)

5. THE LOWER COURT MASTER-IN-EQUITY ERRED IN NOT HAVING TRANSCRIPTS TO MAKE FINAL ORDER. LACKING DILIGENCE, FORWARD-GATED AND PRODUCTION FROM DEFENDANTS AND ATTORNEYS THOMAS H BACCH and JAMES LANNING

- Appeals before the Supreme Court or Appellate Court receive the Transcripts from the Lower Court. In this case, the Respondent's Attorney in some allege illegal maneuvering with Ray Swartz and Associates and Magna Legal Services in Philadelphia have refused to send transcripts of Cases 2020CB 08 01945 and 2022 CB 08 00478. Case from Hearing date 8 Sep 22. 9:30 and 10:30 Cases transcription by Rowley Powell. Susan mezzanotte from Magna Legal Services saying they have both Transcripts; then saying they don't have any. That the Court Reporter (Arlly Powell) was NOT attending at both Hearing. That Attorney J. Chris Lanning was responsible for both Transcripts / attending, and fees. Also my Attorney at the time Attorney Jeffrey Coast Weathers had the information there to request Transcripts. He also refused to give the Appellate Court ms. Sierra Richie a simple status report of what he was doing to get the Transcripts. There are no documents that Attorney Weathers sent me that he filed with ms Sierra Richie Team Leader at the Appellate Court. That was his responsibility as a Attorney to do so. SLP 207, (a) Appellate Court Form II, Form 12.

6. THE MASTER-IN-EQUITY ERRED IN ORDER SAYING THAT APPELLANT DID NOT HAVE EXCLUSIVE, HOSTILE AND CONTINUOUS POSSESSION OF PROPERTY. 0420003029 - LOT 5 and 0420003083 LOT 4.

In order to establish adverse possession the Plaintiff must show continuous, hostile open, actual, notorious and exclusive possession of the property for a certain

Period of time. *Mullis v. Winchester*, 237 S.C. 484, 491, 118 S.E.2d 61, 63 (1961) In South Carolina, Adverse possession may be established if the elements of claim are shown to exist for at least 10 years. S.C. Code Ann. § 15-67-210 (Supp. 2008) Under the common law, the period for adverse possession was twenty years but in South Carolina the period for adverse possession is only 10 years 3 Am. Jur. 2d 1298. To meet this burden of proof, the party asserting the claim must show "clear and convincing" evidence he has met the requirements for adverse possession. *Davis v. Monteith*, 285 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) To establish Exclusive, to be successful, an adverse possession claimant's possession must be such as to indicate his exclusive ownership of the property. *Condit v. Deschamps*, 290 S.C. 315, 350 S.E.2d 201 (Ct. App. 1986) not only must his possession be without subordination to or recognition of the title of the true owner, but it must be hostile to the owner and to the whole world. *Mullis v. Winchester*, 237 S.C. 489, 118 S.E.2d 61 (1961). Ten years "open, notorious, adverse and exclusive possession ripens into title as against parties other than the state. *D.W. Aldenman and Sons Co. v. McKnight*, 72 S.E. 982, 95 S.C. 245. The 7th element in claiming property by adverse possession is continuously and exclusively - you have to hold the property continuously and exclusively without any interference from anyone else and you have to hold that property for a certain period of time in excess of ten (10) years. Each element must exist and concur for the claim of adverse possession to be sustained." S.C. Code page (8)

In South Carolina, the time during which, one must be in possession of real property in order for the possession to ripen into good title ranges from 10 to 40 years." S.C. Code, page 5. Exclusive is South Carolina Code 15-67-250. What constitutes adverse possession under claim of title not under written instrument or court judgment or decree. Code shall be deemed to have been possessed in the following cases only.

- (1) when it has been protected by substantial enclosure and
- (2) when it has been usually cultivated or improved.

Generally claimant's possession to constitute adverse possession must be

Such as to indicate his exclusive ownership of the property and not only
must his possession be without subsequence to, or recognition of the title
of the true owner, but must be hostile thereto and to the whole world.
Gregg v. Moore, 85 S.E.2d 279, 226 S.C.366. Exclusive possession. Walker
v. Lindsey (2005) Hostile possession has been defined as possession "with
the intention to dispossess the owner." Lynch v. Lynch, 230 S.C. 612, 623, 115
S.E. 2d 301, 306 (1960). Adverse possession is hostile possession. "which is
possession with the intention to dispossess the owner. O'Day v. Menight, 103
103 S.E. 561, 114 S.C. 303 one must support a claim of title by
adverse possession with proof the possession was hostile. Taylor v. Goodwin,
375 S.E. 2d 346, 297, S.C. 204. Holding the property continuously for the
statutory period of ten years in South Carolina, under S.C. Code Ann. §
15-67-210. However the rule requiring continuity of possession does
not mean the person in possession must actually be on the land
during the whole of the statutory period. Mullis.

"It is elementary that it is essential to the acquisition of the title by
adverse possession that the claimant be in continuous and uninterrupted
possession for the full statutory period Smith v. Southern Ry. - Carolina
Division, 237 S.C. 597, 118 S.E.2d 446, 442 (1961). This does not require
the presence of the claimant, his agent or tenant on the property for the
whole statutory period. Cathert v. Matthews, 105 S.C. 329, 89 S.E. 1021
(1916) The determination of title to real estate is legal in nature. Wigzell
v. Jobbs, 295 S.C. 59, 66, 367 S.E. 2d 156 (1988); Clark v. Hargrove, 323
S.C. 84, 87, 473 S.E.2d 474, 476 (Ct. App. 1976) Likewise, an adverse
possession claim is an action at law "the appellate court's review
is limited to the correction of any error of law; it must affirm the
master's factual findings unless there is no evidence that reasonably
supports these findings. Clark, 323 S.C.; at 87, 473 S.E.2d at 476
Cory Posteries v. Phillips Const. Co., 316 S.C. 523, 457 S.E. 2d 21
(Ct. App. 1994) Here the trial court committed an error of law in
its interpretation of the hostility requirement under South Carolina
law. Under known adverse possession claim, a reasonable inference
deducible from the evidence is that regardless of the intent of

the original possessor in entering the tract, the knaves and their predecessor in title have intended to possess the tract with the intention of owning it exclusively and without the actual or implied permission of anyone. See 3 Am. Jur. 2d Adverse Possession, § 49.50 (1986) (The only requirement is that the one in possession claim the exclusive right thereto for the statutory period.) We therefore reverse the trial court's ruling that the knaves do not own the southern tract by adverse possession because they have not shown hostility, and remand to the trial court for reconsideration. An action at law tried without a jury; the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonable supports them. *Townes Assoc. LTD. v. City of Greenville*, 266 S.C. 81, 221 S.E. 2d 773 (1976)

7. THE LOWER COURT MASTER-IN-EQUITY ERRED IN SAYING IN HEARING AND IN FACTS OF ORDER THAT RESPONDENT CERCY PINCKNEY GAVE APPELLAT PERMISSION TO USE PROPERTY MULTI-PURPOSE BUILDING AT 271 ST. JULIAN DRIVE, CROSS S.C. FORMALLY RTE 2 BOX 700 AND RTE 2 BOX 985.

The master-in-equity was inconsistent in what he said at the hearing. There was ERAS. DE Respondent/ Respondent Cery Pinckney said clearly before the court and court reporter that he did not give me permission to use the building. There was only the letter of 22 Aug 28. from Respondent and his wife Peggy requesting that I locate the property and cut down the CEDAR Tree that causes a Blind SPOT to his Horse over 300 feet away and remove my property from the Building. I renovated the whole building in 1990 and planted trees and shrubs Cedar Tree. Thus the whole building is my property since 1990. To constitute adverse possession which results in obtaining title to the disputed property the possession must be continuous, hostile, open, actual, notorious and exclusive for the requisite period. *Mullis* 237 S.C. 487, 118 S.E. 2d. 61. South Carolina common law recognizes

The twenty years presumption of a grant of fraud upon the court
 is a narrow and invidious species of fraud that "subverts" the
 integrity of the court itself, or is fraud perpetrated by officers of
 the court so that the judicial machinery cannot perform in the
 usual manner its impartial task of adjudging cases that are pre-
 sented for adjudication." *Chewning v. Food Motor Co.*, 354 S.C.
 72, 78, 579 B.E.2d 605, 608, (2003). *Black's Law Dictionary*
 660 (6th ed. 1990) ("It distinguished from negligence; [fraud] is always
 intentional, positive. After life and liberty, we must have a right to
 property; clothes on our back, money, real estate. The state must have
 a compelling reason to deprive us of it and must compensate us
 for it, unless we are losing our property as a result of a crime
 Equal protection of the law. The equal protection clause in this
 section [former 55 of Article 1] means that no person or class
 of persons shall be denied the protection of the laws enjoyed
 by other persons or classes in the same place and under like
 circumstances. *Harrison v. Corde*, 141 S.C. 407, 135 S.E. 842 (1927);
State v. Brown, 178 S.C. 294, 182 S.E. 938 (1935); *Wood v. Doolington*,
 183 S.C. 263, 150 S.E. 826 (1937). Due process, notice and right
 to a fair hearing before a tribunal with the power to decide
 the case. Fourteenth amendment. The Bill of rights to the states
 by forbidding states from denying due process and equal pro-
 tection and from abridging the privileges and immunities
 of U.S. citizenship. *Black's Law Dictionary* 2nd ed.

8. - THE MASTER IN EQUITY ERRED IN HEARING AND TRANSFERRING
 THAT ONE (1) PROPERTY WAS TO GO TO RESPONDENT WILCOX PENCE-
 NEY, 20 YEARS ON PROPERTY AND APPELLATE ONE (1) PROPERTY,
 BECAUSE HE LIVED THERE EIGHTEEN YEARS ON THE PROPERTY.

up for the court of 1 Sep '20, it has been thirty years my Attorney
 Gregory Scott Weather stated no one said anything for thirty years.

And now they have something to say. Incredible!!! The master in Equity said "What did I get myself into in the full court being introduced by the Court Reporter, Melly Powell of 21 Court Cases Book to Book. The MASTER-IN-EQUITY ERRED By announcing his conscious opinion right there in court. WITH the nod of the head to change the case name to Respondent Cary Penley and Peggy Penley, to the Attorney's present. Attorney Jeffrey Scott Weather, and Attorney J. Curtis Lanning. To Announce right there in court full court how he ruled who was to get the property, then in order deny me the property he said I would get is cruel and unusual punishment. Abuse of Discretion is what the master in Equity ERRED in. Not allowing important witnesses to testify. Making improper comments and sneering on them in his order. This is in the transcript of Case 2020 CP 08 01945. 10:30 case of 8 Sep 22 This was an abuse of discretion. An act, action, or failure to exercise sound, reasonable, and legal decision-making. Abuse of process. The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. In *Black's Law*, "the appellate court's review is limited to the correction of any error of law; it must affirm the master's factual findings unless there is no evidence that reasonably supports these findings." (Code 323 S.C. at 87. 413 S.E. 2d at 476 (Citing *Peetries v. Phillips Const. Co.*, 316 S.C. 253, 461 S.E. 2d (Ct. App. 1994)). The MASTER-IN-EQUITY ERRED By doing fraud on the court. "Fraud upon the court; 'whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court.'"; *Black's Law Dictionary* 666 (6th ed. 1990). "Fraud upon the court is a narrow and inviolable species of fraud that subverts [5] the integrity of the court itself, or is fraud perpetrated by officers of the court so that the judicial machinery

cannot perform in the usual manner its impartial task of adjudicating cases that are presented for adjudication." *Coleman v. Ford Motor Company*, 354 S.C. 727, 579 S.E.2d 605, 608 (2003). Like all other types of fraud, proving fraud upon the court requires showing that the perpetrator acted with the intent to defraud, for there is no such thing as accidental fraud. The master-in-equity statement under oath in court and recorded by court reporter Melly Powell was at once reprehensible, callous and MIS leading to say the least. A violation of my due process rights under the 14th Amendment.

CONCLUSION

WHEREFORE, the Respondent seeks Justice from the numerous violations and errors of law from the Lower Court Master In Equity, who has been reported to The Office of Disciplinary Counsel He and four others, and one to the Chief Judge Roger Young. I request that the lower court case be vacated and docketed in my favor. This for Adverse Possession of Properties TMS # 2020 CP 03 01945 and TMS 2022 CP 03 05478. I request exclusive and sole right to possession and use of the properties. For actual, punitive, Compensatory, exemplary damages, for the cost of this action including reasonable attorney's fees, and for such other and further relief as this Appellate Court deems appropriate.

By Kenneth S. Sibelius

December 4, 2023

Respectfully Submitted
Kenneth S. Pinckney

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P/S

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Berkeley County
Court of Common Pleas

DAR EDWARD VAN SLAMBORG MASTER IN EQUITY

Case No. 2020 CP 08 01945

Kenneth S. Pinckney _____ Appellant

V.

Leroy Pinckney, John Dondy Pinckney
Heirs of John Dondy Pinckney, Esmerene
Pinckney Kinlow, Artman Pinckney,
Geneva Brown, Joe Louis Pinckney,
Therese Pinckney Richards, Peggy Pinckney
Franklin Rowenell and Willis Pinckney
And John Doe and Mary Doe, Heirs.

Names used to represent any and all other
Persons unknown who have or may claim
any rights, title, interest or estate in or claim
upon the real property herein after described
including any such as may be in debt,
incompetent or otherwise under any
disability and heirs of any deceased
Decedents named above _____ Respondents

Certificate of Appellant

The undersigned certifies that the Factual Brief of
Appellant complies with rule 208 of the South Carolina
Appellate Court Rules.

December 4, 2023

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Pro Se

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Cress, S.C. 29536

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SC Court of Appeals

South Carolina Court of Appeals
1221 Senate Street
Columbia S.C. 29201