STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
Melanie P. Hozey

Plaintiff

vs.

Alan L. Rutherfurd and Susan M. Rutherfurd

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
Docket No.: 2021-CP-02-00766

ORDER

PROCEDURE

1. The Summons, Complaint, and Lis Pendens were filed on April 15, 2021. The first cause of action is a claim of adverse possession, the second cause of action is for quieting the title in the plaintiff's favor, and the third cause of action was for damages resulting from the Plaintiff being placed on a notice of criminal trespass.
2. The Defendant filed an Answer and Counterclaim on July 7, 2021 and the Plaintiff filed a Reply on August 6, 2021. The Answer and Counterclaim contained a general denial and eleven affirmative defenses concerning the adverse possession claim. The first counterclaim was for civil trespass, the second counterclaim was a declaratory judgment action requesting injunctive relief, and the third counterclaim was for Slander of Title.
3. This matter was referred to the Aiken County Master in Equity through an Order of Reference filed on February 20, 2023.
4. The hearing was held on November 1, 2023 and December 11, 2023. The parties submitted the written closing arguments on January 11, 2024.

STATEMENT OF FACTS

Melanie R. Hozey lives on Laurel Drive in the Aiken County, South Carolina. The Defendant also live on Laurel Drive and the lots are adjacent to each other. Plaintiff's Exhibit 1 is a large overview of the area. The disputed area is enclosed with a red border on the exhibit. The

dimensions of each side are noted in the area is approximately 0.16 acre. The Plaintiff believes she has a claim to the disputed area by adverse possession. The Defendants have a chain-link fence, with no gate between the properties, just outside of the disputed area. The Plaintiff is not claiming the disputed area is included in the legal description of her deed. There is no claim of adverse possession under the theory of color of title. The Plaintiff introduced numerous photographs showing different views of the area. In 2001, when the Plaintiff first moved on to the property, the disputed area was heavily wooded. In the photographs introduced, some of the white flags used to mark an underground fence for the Plaintiff's pets are seen but does do not mark a current boundary line. The Plaintiff testified these flags were used to mark the area in dispute.

In 2001 – 2003, the Plaintiff's father took her children on hikes in the area, built teepees or forts and the children played in that area. In 2003 she cleared an area on the disputed property and parked her camper on the property. She also began maintaining portions of the disputed property and her deeded property in 2003. In 2005, she installed the invisible fence. The white flags marking the location of the fence were maintained for a minimum of three months according to her testimony. She also planted azaleas and camellias along with an irrigation system on part of the disputed property. In 2008, the Plaintiff purchased a boat and stored it in front of the camper in the disputed area. The boat was chained to a tree. She purchased a second camper in 2011 and installed 2 – 3 inches crush and run for a parking pad in the disputed area for the camper and the boat. She also purchased the truck in 2011 and parked it in front of the camper. The Plaintiff has worked in the disputed area doing yard work and has cut down dead trees. She blows debris off of the parking pad. The Defendant's never told her to stop until no trespassing signs were posted in 2021. Before that, Mr. Rutherford saw her working in the area but did not say anything. Mrs. Hozey hired Cold Creek Nursery in 2012 to help clean up her yard and portions of the disputed area. In 2013, she purchased another truck and parked it on the parking pad.

In February, 2014, her property and the disputed area suffered tree damage due to an ice storm. A large tree on the disputed property was uprooted and damaged other trees down the slope. The portion of the disputed area near Laurel Drive appears to be the high point and the property slopes down towards the southern boundary. Trees were cut down or cut up and removed. The

Plaintiff made an insurance claim for the damage including the trees on the disputed property. She testified that an adjuster inspected the area and the claim was paid. In 2016, the Defendant's contacted the Plaintiff about injuries to their dog. The parties met and resolved the issue. The Defendants did not question her use of the disputed property. In 2020, the Plaintiff hired Cold Creek Nursery on three different occasions to help clear up and maintain the area.

From 2001 – 2020, the Plaintiff never saw the Defendants or anyone else working in area. She testified that her home provides a view of the entire area. In January, 2021, the Defendant's posted no trespassing signs, sent her a letter and the police contacted her about a trespassing claim on the property. Plaintiff then filed the current lawsuit. Mrs. Hozey feels her use of the property since 2001 was treating the property as her own, in an open, continuous, exclusive, hostile possession for a period exceeding 10 years and she believes she is entitled to an Order requiring a survey to identify the boundary lines and to quiet the title in her name through the adverse possession claim.

On cross examination, Mrs. Hozey admitted the Defendant's never denied her permission to use the disputed property. She spoke with Mr. Rutherford before 2020 and he never denied her use of the property. The Plaintiff's children were four and eight years old when she moved into her home. The Defendant's do have a swimming pool inside the chain-link fence. The Plaintiff agreed the 2020 survey discussed was accurate. On Plaintiff's Exhibits five and six, she agreed the white flags show the deeded property line. The white flags no longer mark the invisible fence, but do mark where the plaintiff wants the court to award her of the property.

Kaitlan Hozey is the Plaintiff's daughter and she was 25 years old at the time of the hearing. She testified that she was three to four years old when the family moved to the home on 714 Laurel Drive SW, Aiken SC . She remembers working and playing in the yard, including the disputed area. They would build teepees and structures in the disputed area. After the ice storm in 2014, she helped clean the yard, including the wooded area now referred to as the disputed area in this action.

She remembers Camellias being planted in the disputed area. She does not remember any hostility between her mother and the Defendants.

Thomas Colby Hozey is the Plaintiff's son and was seven to eight years old when the family moved to the current home of his mother. He remembers working in the yard which included the disputed area. The Defendant's never told him not to play in the area. After the ice storm, he helped cut and remove dead trees on the deeded property and the disputed area. His interaction with the Defendants was pleasant and he was not aware that the disputed property was not his mother's property.

After the Plaintiff rested her case, the Plaintiff made a motion for a directed verdict concerning the adverse possession claim. The Defendants relied on the Plaintiff's failing to establish the claim by clear and convincing evidence, argued the use was not continuous, relied on work performed in the area by Mr. Rutherford among other arguments. The Plaintiff's motion was denied.

On the second day of testimony, which was December 11, 2023, the Defendants presented the testimony of Susan Rutherford. The Defendants have lived at 714 Laurel Dr. SW, in Aiken since 2001. The property is located on two lots and has a swimming pool on the property. A portion of the property is heavily wooded and serves as a buffer. On the overview photograph (Plaintiff Exhibit 1), the Defendant's lots are lots 23 and 24. The Plaintiff's lot is 25 and the plaintiff also moved into her home in 2001.

Mrs. Rutherford worked in real estate for approximately fifteen years. The disputed area serves as a privacy buffer and she believes it adds value to the property. She cannot see the disputed area from her home but can see the area near the street. The Defendants have considered downsizing but cannot sell the property while this litigation is pending.

She described the relationship with Melanie Hozey to be friendly as neighbors. There was no hostility between the parties until 2020 when Mr. Rutherford encountered a contractor planning to construct a building in the disputed area.

The Defendant then reviewed various exhibits for work performed on their deeded property, including work in the disputed area. These included the exhibits for work done in 2001, 2002, a canceled check for a tree service in 2010 that Mrs. Rutherford testified included work in the disputed area, work performed by Bills Tree Service in 2013 (payment being made in 2014 which included work in the disputed area). A survey was completed in 2020 by Mr. Coleman to confirm the boundary lines. She testified the Defendants knew they owned property outside of the fence but did not know the exact line. The Defendants also introduced letters from their attorneys to the Plaintiff and a police report to place the Plaintiff on notice of trespass. Ms. Hozey remove the boat and truck after that but the camper remained in the disputed area. Prior to 2020 no signs were placed on the property. The Defendants did post no trespassing signs sometime during 2020. The signs had to be reposted as some were removed without their permission. A thumb drive was also introduced (Defendant's Exhibit 14) that reflects activity in March 2021. The clip was shown of the Plaintiff spraying the camper on the crush and run area. There were two videos of this activity and another clip showing Mr. Rutherford clipping some limbs.

Mrs. Rutherford believes any use before 2020 was with the Defendant's permission. There was never a 10-year period where the Defendants did not maintain the property in the disputed area. The Defendant's never abandoned the property and were never prevented from accessing the property. She also testified about a three-year period where no vehicles were parked in the area of the pad. If the Plaintiff is awarded the property in this action, the value of the Defendant's real estate will be diminished. Since the Plaintiff filed the lawsuit, Mrs. Rutherford has suffered from increased stress, sleeping issues and has noticed that her husband has lost weight due to stress.

Alan Rutherford testified he would remove debris, including branches, straw, and finds about every five years from the disputed property. He also agreed that businesses were paid to

work on the property including the disputed area outside of the fence. He has walked the property since the last survey was completed. He described the disputed area as a natural privacy barrier. Prior to the most recent survey, he had a general idea of his property line. The Plaintiff never attempted to exclude the Defendants or people they hired from entering and working in the disputed area.

On cross examination, Mr. Rutherford admitted that in his deposition, he only referenced one invoice from the 2014 ice storm. He saw a camper parked in the disputed area in 2005 but did not confront the Plaintiff. He stated he wanted a friendly relationship with his neighbor. He also admitted that in his deposition he testified that he was not sure of his property line and that he did not point out the property lines to any workers following the ice storm in 2014 because he was not sure of the location of the property lines.

Curtis Coleman, III, also known as Rhett, is a professional land surveyor, licensed in South Carolina and performs 200 – 300 surveys on an annual basis. He was admitted as an expert in the field of land surveying and provided testimony about Defendant's Exhibits 15 – 18. He was familiar with the 2001 survey prepared by Ben Christiansen which includes the disputed area shown as part of the Defendant's property. He also provided testimony about the Plaintiff survey prepared by Todd and Haas. Mr. Coleman visited the property three times and researched the recorded documents as he prepared the plat. He provided testimony about the series of deeds in the chain of title. He found no ambiguity between the property records and what is found on the physical site. The disputed area is part of the survey. The fence bordering the disputed area does not run the length of the property. He did not note any improvements in the disputed area but did note that the property drops off sharply the further you travel from the paved public road. The northern half of the area near the road is also more open. He observed the crush and run and a camper parked on that portion of the property. After the survey was completed, he walked the boundary lines with Mr. Rutherford. He also spoke with the Plaintiff about the survey process and she asked him about an easement between lots 24 and 25. Mr. Coleman advised her his research did not reveal any easements.

On cross examination, Mr. Coleman agreed the Defendants told him to mark the lines so the Defendants would know where the property lines were actually located.

Ms. Hozey offered rebuttal testimony and stated that from her two-story home, she could see all of her property. She never saw the Defendants or any workers/contractors hired by the Defendant's in the disputed area. She admitted that she had produced no invoices at the trial for any work performed in that area.

At the conclusion of the trial, the Plaintiff made a motion for directed verdict and the court denied that motion after hearing the arguments. The parties also agreed the Defendant's third cause of action for Slander of Title was withdrawn.

PLAINTIFF'S EXHIBIT LIST

Plaintiff Exhibit 1: overview at both lots and the disputed area.

Plaintiff Exhibit 2: pictures of the Defendant's fence in the disputed area with a portion of a camper in the picture.

Plaintiff Exhibit 3: pictures of the gravel pad Ms. Hozey testified about on the disputed property. There appears to be a clear edge to the pad leaving some open area between the pad and the fence.

Plaintiff Exhibit 4: picture from the public road with "no trespassing" sign, camper in a debris container.

Plaintiff Exhibit 5: picture of fence with white flags running along the fence. (This does not mean the invisible fence is installed at that location)

Plaintiff Exhibit 6: pictures showing some white flags, the disputed property and the Defendant's fence.

Plaintiff Exhibit 7: picture showing slope of property in the disputed area and some of the white flags.

Plaintiff Exhibit 8: picture of the disputed property towards the public road.

Plaintiff Exhibit 9: pictures showing slope of the property in the disputed area and some of the white flags.

Plaintiff Exhibit 10: pictures showing slope of the property in the disputed area and some of the white flags.

Plaintiff Exhibit 11: picture of Defendant's fence in disputed area with a portion of a camper in the picture.

Plaintiff Exhibit 12: picture of no trespassing sign and white flags in the disputed area.

Plaintiff Exhibit 13: picture of fallen tree near the fence line (six pictures). Some of the pictures are out of focus.

DEFENDANT'S EXHIBIT LIST

Defendant Exhibit 1: job proposal dated November 19, 2001

Defendant Exhibit 2: Copy of a check to Chavous Tree Service dated January 2001 paid by the Rutherford defendants.

Defendant Exhibit 3: Copy of a check dated February 5, 2002 from the defendants to Cold Creek.

Defendant Exhibit 4: handwritten invoice for two checks from the Rutherford's to Garcia Tree Service. (June 23, 2010)

Defendant Exhibit 5: receipt to Bills Tree Service for check number 1089 dated February 21, 2013 for $7300.00.

Defendant Exhibit 7: invoice for land surveyor dated September 29, 2020. (Survey are was Curtis E. Coleman, III (Rhett).

Defendant Exhibit 8: Copy of a check to Coleman Land Surveying, LLC.

Defendant Exhibit 9: Copy of two checks from the defendants dated September 28, 2020 and October 5, 2022 Coleman Land Surveying.

Defendant Exhibit 10: Copy of letter from attorney Charles Rudnick on behalf of the Defendant's to the Plaintiff dated September 16, 2020.

Defendant Exhibit 11: Copy of letter from attorney Charles Rudnick on behalf of the Defendant's to the Plaintiff dated October 28 2020.

Defendant Exhibit 12: letter to the Plaintiff from Carroll Law Offices, P.A., to the Plaintiff, dated February 26, 2021

Defendant Exhibit 13: Incident/Investigation Report dated March 8, 2021 in reference to trespass notice being provided to the Plaintiff.

Defendant Exhibit 14: thumb drive introduced that has three short video clips

Defendant Exhibit 15: Plat prepared by Benjamin B. Christensen showing lots 23 and 24 with improvements.

Defendant Exhibit 16: Plat of the subdivision

Defendant Exhibit 17: blown up portion of the subdivision plat for lots 23, 24, and 25.

Defendant Exhibit 18: plat of lots owned by the Plaintiff (Lot 25).

Defendant Exhibit 19: deed into Alan L Rutherford and Susan M Rutherford for lots 23 and 24 in Maggie C. SUBDIVISION.

Defendant Exhibit 20: deed into Dr. James C. Blalock and JoAnne R. Blalock for lots 23 and 24 recorded on June 6, 1997.

Defendant Exhibit 21: deed whereby Farmers and Merchants Bank, as Trustee of Mattie C. Hall deeded lots 22, 23, and 24 to Willis B. Bible, Jr. and Janis G. Bible.

Defendant Exhibit 22: deed from Richard W. Kane to Melanie Poe Hozey for Lot 25 in in Maggie C. Hall subdivision.

Defendant Exhibit 23: copy of deed from Farmers and Merchants Bank, as Trustee of Mattie C. Hall Fred C. Smith for Lot 25, recorded on July 17, 1967.

Defendant Exhibit 24: surveyor's diagram of lots 22, 23, 24, and 25 showing a portion of the disputed area.

Defendant Exhibit 25: recorded plat of survey for Alan L Rutherford and Susan M Rutherford.

CONCLUSIONS OF LAW

This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

ADVERSE POSSESSION/BURDEN OF PROOF

To meet the burden of proof, the party asserting the adverse possession claim must show by "clear and convincing" evidence he has met the requirements for adverse possession. *South Carolina Code Ann., § 15–67–210. Jones v. Leagan, 384 S.C.1 681 S.E.2d 6 (S.C. Ct. App. 2009).* 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. *All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 358 S.C. 209, 229, 595 S.E.2d 253, 265 (Ct.App.2004)."*Clear and convincing evidence is that 'degree of proof which will produce in the [fact finder] a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal.'" *Satcher v. Satcher, 351 S.C. 477, 483, 570 S.E.2d 535, 538 (Ct. App. 2002) (quoting Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 374 n.2, 496 S.E.2d 17, 18 n.2 (1998)).* In South Carolina, the statutory period for adverse possession is ten years. *S.C. Code Ann. § 15-67-210 (2005); Jones, 384 S.C. at 10, 681 S.E.2d at 11.* The parties agreed the Plaintiff's claim was not under color of title.

OPEN AND NOTORIOUS

For possession to be open and notorious, "the legal owner need not have actual knowledge the claimant is claiming property adversely, [but] the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it." *Jones v. Leagan 384 S.C. 1, 681 S.E. 2d 6, 384 S.C. at 13–14, 681 S.E.2d at 13.* "[A]cts of ownership of open land for purposes of adverse possession need not include actual residency or occupancy." Id. at 14, 681 S.E.2d at 13. "Moreover, activities that do not involve the creation of permanent structures on the land can be sufficiently open and notorious as to put the legal owner on notice that his land is being adversely possessed." Id.

The disputed area is an open area and actual residency or creating permanent structures is not required. In the area of the parking pad, the Plaintiff's activities of parking vehicles, campers, and boats were sufficient to place the Defendants, by ordinary diligence, to have known of the use by the Plaintiff. The remaining portion of the disputed area is a sloping wooded area. Although the Plaintiff installed an invisible fence and a portion of the sprinkler system in the disputed area, these activities are not always visible. It is not the same as an enclosure or structure being built. The use of the white flags in the photographs introduced by the Plaintiff marks the area the Plaintiff wants the court to award her with the adverse possession claim. The Plaintiff and Mr. Rutherford both agree he saw her on the disputed property. Mr. Rutherford did not question her use of the property and said he believed he was being a good neighbor. The Plaintiff did not confront Mr. Rutherford about his appearance on the property.

CONTINUOUS

For possession to be continuous, a party "claiming adverse possession must have personally held the property for ten years." *Jones v. Leagan, S.C. 384 S.C. 1 681 S.E.2d 6 (S.C. Ct. App. 2009).* "Occasional and temporary use or occupation does not constitute adverse possession. However, the rule requiring continuity of possession does not mean the person in possession must be actually be on the land during the whole of the statutory period." Id. at 16, 681 S.E.2d at 14 (citation omitted)

Based on the Plaintiff's testimony, she began using portions of the disputed area in 2003 and continued the use until the Defendant's posted the property and made a report with the police.

Even after this change, the camper remained in the disputed area. Ms. Hozey also introduced photographs and provided testimony of work she performed in the disputed area and the commercial workers she hired to work in that area. Based on the nature of the disputed property, the Plaintiff's use was continuous for at least ten years.

HOSTILE

To show the possession was hostile, the adverse claimant is required to show only that his possession was actual, exclusive, open, notorious, and without the consent of the title owner. *Knox v. Bogan, 322 S.C. 64, 70, 472 S.E.2d 43, 47 (Ct. App. 1996).* "To be successful, and adverse possession claimant's possession must be such as to indicate is exclusive ownership of the property. *Curtis v DesChamps , 290 S.C. 315, 350 S.E. 2d 201 (Ct App. 1986). "*Not only must his possession be without subserviency to or recognition of the title of the true owner, but it must be hostile to the owner and to the whole world." *Jones v. Leagan, 384 S.C. 1 681 S.E.2d 6 (S.C. Ct. App. 2009), Gregg v Moore, 226 S.C. 366, 85 S.E.2d 279 (1954), Mullis v Winchester, 237 S.C. 487, 118 S.E. 2d 61 (1961).* The Plaintiff did not offer any testimony of any direct conflict with the Defendants where she claimed ownership of the disputed property. She did not make any attempts to pay the annual property taxes for the disputed property. "A person in order to prove title by adverse possession does not have to show the payment of taxes on the land that he claims. However, the failure to pay taxes may be regarded as a circumstance that the weakens a claim of ownership, or as evidence that no claim was made." *Harrelson v Reaves, 219 S.C. 394, 65 S.E. 2d 478 (1951), Terwilliger v White, 222 S.C. 176, 72 SE 2d 169 (1952).* "The payment of taxes does not confer title, but it may be an important factor with reference to adverse possession, and also asked her by a cotenant, for it shows that the claimant from the beginning claimed title to the land in severability, having returned it in his own name, and having paid the taxes thereon." *Brevard v Fortune, 221 S.C. 117, 69 S.E. 2d 355 (S.C 1952).*

"To defeat a claim of adverse possession, acts of ownership by the holder of the legal title need only be exercised in a way consistent with the use to which the land may be put in which the situation of the property permits without actual residency or occupancy." *Butler v Lindsey, 293*

S.C. 466, 361 S.E. 2d 621 (Ct. App. 1987). While the Plaintiff's actions may establish hostility, the Defendant's provided testimony and exhibits of their use of the disputed property during the same timeframe. Mr. Rutherford testified that he did walk on the disputed area and remove some debris. Mrs. Rutherford also supported this testimony. Finally, the Defendant's introduced invoices from 2001, 2002, 2010, 2013, 2020, and 2022, to show what work was done on their property, which included work done in the disputed area according to the testimony provided. Further, the Defendants testified that this was a buffer area that is wooded and this use seems to be consistent with the use for property considered a buffer area.

EXCLUSIVE USE

The Plaintiff provided detailed testimony of her use of portions of the disputed property and the maintenance work she performed in that area (2003-2020) including commercial business hired during this period. The Defendant's also provided testimony of their use of the disputed property as a buffer zone used for privacy on their lot. The Plaintiff, through photographs and testimony, and the Defendants, through copies of invoices and testimony, both described hiring commercial businesses to assist in the upkeep of their lots, including the disputed property. "where an owner of property and the occupier are both in possession, the possession of the legal owner prevails to the exclusion of the other. The exclusive possession necessary to acquire title by adverse possession is not satisfied if occupancy is shared with the owner or with agents of the owner. *Butler v Lindsey, 293 S.C. 466, 361 S.E. 2d 621 (Ct. App. 1987); Middleton v Depuis, II S.C.L. (2Nott & McC) 310 (1820); Farella v. Rumney, 649 P.2d 185 (Wyo.1982) I 3 Am. Jur.2d Adverse Possession Section 78 (1986)*

DEFENDANT'S COUNTERCLAIMS

The Defendants withdrew their third counterclaim for slander of title during the second day of the trial. The remaining counterclaims are for trespass and injunctive relief.

Trespass is any interference with "ones right to the exclusive, peaceable possession of his property." Ravan V Greenville County, 315 S.C. 447, 434 S.E. 2d 296 (Ct. App. 1993); *Babb v Lee County Landfill SC, LLC,* 405 S.C. 129, 747 S.E. 2d 468 (2013). A cause of action for trespass requires proof of the following elements:

1. Legal possession by the owner of the property;

2. A voluntary entry on the property by the Defendant; and

3. Entry by the Defendant without the owner's permission. Ralph King Anderson, Jr., *South Carolina Requests to Charge, Civil,* 4 – 41 (2009).

The Defendant's argue the Plaintiff continued to enter their property after she received notice in 2020. Prior to that time, the Defendant's testified they believe the Plaintiff's use was with permission. The Defendants introduced two short video clips showing the activity of the Plaintiff and the camper was still on the Defendants property. If the adverse possession claim fails, Defendants own the property in the disputed area and the Plaintiff entered the property after 2020 without the Defendant's permission. At this time, the adverse possession litigation may have been pending and, as stated above, the Defendants do not dispute that the use of the property from 2003 permissive use until the trespass notice in 2020.

"If the plaintiff proved the defendant trespassed on his property, he is entitled to recover at least nominal damages, even if no proof of injury or damage to the property exist. Entry alone entitles the possessor to at least nominal damages. Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil,* 2009, 4 – 42. Nominal damages is defined as, "A trifling sum awarded when a legal injury is suffered but there is no substantial loss or injury to be compensated. *Black's Law Dictionary,* 490 (11th ed. 2019). "Nominal damages are awarded if the plaintiff establishes a breach of contract or a tort of the kind that is said to be 'actionable per se' but fails to establish a loss caused by the wrong." S.M Waddams, *The Law of Damages*, 477 – 78 (3d ed. 1997).

CONCLUSION

1. This court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.
2. Plaintiff has the burden of proving all elements of adverse possession by clear and convincing evidence.
3. The Plaintiff used the disputed area continuously for over ten years.
4. While the use was open, including the use where the Defendant's knew or should have known of the use, the Plaintiff never prevented or attempted to prevent the use of the disputed area by the Defendant's or the businesses they hired for performing work in the area. Under the clear and convincing standard, the court finds the use was open, but not notorious.
5. For the reasons stated above, the Plaintiff's use was without consent of the Defendant's. Although Defendant's believed the use was permissive, there is no testimony or exhibits introduced that they conveyed that permission to the Plaintiff or that the Plaintiff sought any permission in similar fashion. The Plaintiff failed to confront Mr. Rutherford or any other parties to prevent them from entering or using the disputed area. She never paid or sought to pay any property taxes on the area. The Defendants used and maintained the property as would be expected for a buffer area Under the clear and convincing standard, the court does not find the Plaintiff's use was hostile when considering the entire area of the disputed area.
6. Based on the testimony, the exhibits, and the case law, the Plaintiff has failed to establish the exclusive use required for adverse possession by clear and convincing evidence. While the Plaintiff used the parking pad area and did maintenance on the rest of the area, the Defendant's worked in the same area and hired commercial parties to work in the disputed area along with the Plaintiff. Therefore, the legal owner prevails to the exclusion of the other.

7. In regards to the counterclaims filed by the Defendants, based on the facts presented and the case law, the court makes an award of $300.00 in regards to the claim of trespass. In addition, the Plaintiff is to remove all of her property from the Defendant's property within forty-five (45) days from the date of this Order. The Plaintiff has sixty (60) days, to remove or reach an agreement with the Defendant's concerning the invisible fence and the irrigation system that is on the Plaintiff's property and the Defendant's property.
8. Each party is responsible for their own cost and fees.

IT IS SO ORDERED

_____

M. Anderson Griffith/Master in Equity Aiken County

FORM 4

STATE OF SOUTH CAROLINA **JUDGMENT IN A CIVIL CASE**
COUNTY OFAIKEN
IN THE COURT OF COMMON PLEAS **CASE NO. 2021-CP-02-00766**

Melanie P. Hozey **vs** **Alan L. Rutherford and Susan M. Rutherford**
PLAINTIFF(S) DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐.

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:xx ☐ See attached order (formal order to follow) ☐ Statement of Judgment by

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.**		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
SEE ORDER	SEE ORDER	$SEE ORDER
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Master in Equity/M. Anderson Griffith 3076 **Judge Code** **Date**

Aiken Common Pleas

Case Caption: Melanie Hozey VS Alan Rutherfurd , defendant, et al

Case Number: 2021CP0200766

Type: Master/Order/Form 4

AND IT IS SO ORDERED

s/M Anderson Griffith-3076