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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

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Appellate Case No. 2024-000776

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Bonita Steed and Bernard Steed, Robert Steed and Ernest Steed.....Appellants,

v.

Antoine Heyward, Ruby Heyward, and also All Other Persons Unknown, claiming any right, title, estate, interest in or lien upon the real estate described herein in the amended complaint herein.....Respondents.

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**RESPONDENTS' INITIAL BRIEF**

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September 25, 2024

**TABLE OF CONTENTS**

Table of Authorities..... ii

Counterstatement of Issues on Appeal..... 1

Statement of the Case..... 2

Standard of Review..... 5

Arguments

    I.    THE MASTER-IN-EQUITY PROPERLY DETERMINED THE  
          APPELLANTS DID NOT PROVE THE EXCLUSIVITY  
          OR HOSTILITY ELEMENTS OF ADVERSE  
          POSSESSION..... 5

    II.   THE MASTER-IN-EQUITY PROPERLY DETERMINED  
          THAT APPELLANTS DID NOT PROVE THAT THE  
          DOCTRINE OF LACHES BARRED RESPONDENTS’ QUIET  
          TITLE COUNTERCLAIM..... 9

Conclusion..... 10

## TABLE OF AUTHORITIES

### Cases

<i>Butler v. Lindsey</i> , 293 S.C. 466, 361 S.E.2d 621 (Ct.App.1987).....	2 5
<i>Davis v. Monteith</i> , 289 S.C. 176, 345 S.E.2d 724 (1986).....	2
<i>Jones v. Leagan</i> , 384 S.C. 1, 681 S.E.2d 6 (Ct.App. 2009).....	3,5,9
<i>Miller v. Leaird</i> , 307 S.C. 56, 413 S.E.2d 841 (1992).....	5
<i>Roberts v. Gaskins</i> , 327 S.C. 478, S.E.2d 771 (Ct.App.1997).....	5

<u>Statutes</u> - S.C. Code 15-67-210.....	9
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Other- N/A

**COUNTERSTATEMENTS OF ISSUES ON APPEAL**

- I. **SHOULD THE APPELLANTS BE FOUND TO HAVE ADVERSE POSSESSION WHEN THEY FAILED TO PROVE THEIR CASE BY CLEAR AND CONVINCING EVIDENCE?**
  
- II. **SHOULD THE APPELLANTS BE FOUND TO HAVE A VALID DOCTRINE OF LACHES DEFENSE WHEN THEY FAILED TO PROVE HOW IT WOULD BAR RESPONDENTS' QUIET TITLE COUNTERCLAIM?**

## STATEMENT OF THE CASE

In 2018, Appellants Bonita Steed, Bernard Steed, Ernest Steed and Robert Steed sought ownership of 516 Bank Street, Mount Pleasant, South Carolina, by way of an adverse possession cause of action, Case No. 2018-CP-10-04284. In response, Respondents Antoine Heyward and his mother, Ruby Heyward, filed a counterclaim for quiet title as they held the Deed to the property. After discovery, Appellants filed a Motion for Summary Judgment and on July 1, 2020, the Circuit Court granted Appellants' Motion for Summary Judgment on their adverse possession claim.

This decision was appealed by Respondents to the S.C. Court of Appeals, Appellate Case No. 2020-001104. On December 7, 2022, the S.C. Court of Appeals decided in favor of Respondents and reversed and remanded the case back to the Circuit Court. (Ct.App. Decision)

The S.C. Court of Appeals ruled that the Circuit Court had erred in granting the Appellants summary judgment on their claim for adverse possession of the Property because there were genuine issues as to:

- 1) "Whether the Appellants' possession of the property was exclusive because Robert Heyward, Respondents' predecessor in title, stayed on the property during the time of his ownership", citing *Butler v. Lindsey*, 293 S.C. 466, 472, 361 S.E.2d 621, 624 (Ct.App.1987). (Ct.App. Decision, P. 2);
- 2) "Whether the Appellants' possession of the property was hostile", citing *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) ("To invoke adverse possession, the possession must be adverse and not permissive." (Ct.App.Decision,

P.2)

The S.C. Court of Appeals also ruled that the Circuit Court erred in granting summary judgment to Appellants on Respondents' counterclaim to quiet title because there was a genuine issue of material fact as to:

- 3) Whether the "Respondents were aware of Appellants' ownership claim to the Property and further inquiry into the facts was necessary to determine if the Respondents' claim to quiet title is barred by the doctrine of laches". The Court cited *Jones v. Leagan*, 384 S.C. 1, 20, 681 S.E.2d 6, 16 (Ct.App. 2009) ("The party seeking to establish laches must show (1) delay, (2) that was unreasonable under the circumstances, and (3) prejudice"). (Ct.App.Decision, P. 3)

This matter was then transferred to the Charleston County Master-In-Equity who heard this matter on September 14, 2023, without a jury. Appellants Bernard Steed and Bonita Steed and Respondent Antoine Heyward testified at the trial.

The only written evidence that Appellant submitted to support their claim of adverse possession and their doctrine of laches defense was an unrecorded Plat.

The written evidence that Respondents submitted at the hearing, in support of their quiet title claim to the property, was substantial and detailed, to wit:

Respondents' Trial Exhibit 1- Recorded Specific Power of Attorney (POA)

Respondents' Trial Exhibit 2- 1960 Recorded Deed from Foster Graham to Louise Brown Heyward, recorded at the Charleston County ROD Office in Book A72, Page 175 (1960 Deed)

Respondents' Trial Exhibit 3- 1999 Recorded Deed from Louise Brown Heyward to Robert James Heyward, recorded at the Charleston County ROD Office in Book H318, P. 831 (1999 Deed)

Respondents' Trial Exhibit 4- 2015 Fiduciary Letters to Antoine Heyward re:

Estate of Robert Heyward (Letters)

Respondents' Trial Exhibit 5- 2016 Recorded Deed from Estate of Robert Heyward To Ruby and Antoine Heyward, recorded at the Charleston County ROD Office in Book 0556, Page 830. (2016 Deed)

Respondents' Trial Exhibit 6- 2013 Bernard Steed to Ruby Heyward Cashiers Check for Real Estate Taxes (2013 Check)

Respondents' Trial Exhibit 7- 1999 Robert Heyward Payment for Excess Portion to Heyward Family (1999 Payment)

Respondents' Trial Exhibit 8- 2000 to 2014 Real Estate Tax Payments by Robert and Ruby Heyward to Charleston County Tax Collector (2000-2014 Payments)

Respondents' Trial Exhibit 9- Real Estate Tax Bills to Robert Heyward from 2000 to 2013 from the Charleston County Tax Collector (2000 to 2013 Bills)

Respondents' Trial Exhibit 10- Real Estate Tax Receipts from 2000 to 2013 Paid by Robert Heyward from the Charleston County Treasurer' Office (2000 to 2013 Receipts)

Thereafter, on February 6, 2024, the Court filed an Order wherein the Court ruled that Appellants failed to prove their adverse possession claim by clear and convincing evidence and that Appellants' doctrine of laches defense was insufficient to establish their claim. The Court also held that Appellants would be allowed to file a Motion to amend their Complaint and plead for compensation for any improvements under the Betterment Statute. The Court ruled that the property was quieted and confirmed into Respondents Antoine Heyward and Ruby Heyward, who were vested with fee simple title to 516 Bank Street, Mount Pleasant, SC. (Order 2/6/2024)

Appellants filed a Motion for Reconsideration and on April 10, 2024, the Court denied Appellants' Motion for Reconsideration. On that date, the Court did grant Appellants' Motion to Amend the Complaint in order to allege a Betterment cause of action, despite Respondents' Opposition to the Motion to Amend the Complaint. (Order 4/10/2024)

On May 9, 2024, Appellants filed a Notice of Appeal.

### **STANDARD OF REVIEW**

A claim of adverse possession is an action at law. *Miller v. Leaird*, 307 S.C. 56, 61, 413 S.E.2d 841, 843 (1992). In an action at law, the appellate court will correct any error of law, but it must affirm the court's factual findings unless there is no evidence that reasonably supports those findings. *Jones v. Leagan*, 384 SC 1, 20, 681 S.E.2d 6, 11 (Ct.App. 2009), *Roberts v. Gaskins*, 327 S.C. 478, 486 S.E.2d 771, 773 (Ct.App.1997).

### **ARGUMENT**

The party asserting the adverse possession claim must show by clear and convincing evidence that he/she has met all of the requirements for adverse possession. *Butler v. Lindsey*, 293 SC 466, 472, 361 S.E.2d 621, 624 (Ct.App. 1987).

#### **I. THE MASTER-IN-EQUITY PROPERLY DETERMINED THE APPELLANTS DID NOT PROVE THE EXCLUSIVITY OR THE HOSTILITY REQUIREMENTS OF ADVERSE POSSESSION**

**A. Exclusivity.** With regard to the Exclusivity element to prove adverse possession, the Master-In-Equity held that Appellants' "occupation of the property was not exclusive nor proven by clear and convincing evidence as they regularly shared occupancy of the property with Mr. Robert Heyward during his lifetime." (Order 2/6/2024, P. 7-8).

To reach that conclusion, the Court found Respondent Antoine Heyward's testimony to be credible at the trial. Respondent Heyward testified that his grandmother, Louise Heyward, purchased the property by deed to 516 Bank Street, Mount Pleasant, SC in 1960; that his father,

Robert Heyward, became owner of the property by Deed from Louise Heyward, his mother, in 1999; and that Robert Heyward died in 2014. Respondent further testified that in 2016, he and his mother, Respondent Ruby Heyward then became owners of the property by Deed from the Estate of Robert Heyward. (Transcript 9/14/2023, P. 60, Line 20- P. 65, Line 5)(1960 Deed)(1999 Deed)(2016 Deed).

These documents showed a continuous chain of title where ownership of the property stayed within the Heyward family. Respondent Heyward testified that his father, Robert Heyward spent time at his mother's house after she purchased it in 1960, and that from 2000 to 2014, his retired father who lived with Respondents in Chicago, Illinois, would come down to stay at the house every year, a month at a time. Robert Heyward would stay during the spring and summer at 516 Bank Street. Respondent Heyward testified that his father was never refused entry into his own house. (Transcript 9/14/2023, P. 65, Line 13 – P. 67, Line 15).

Respondent Heyward testified that he too would stay at 516 Bank Street, during his grammar school years. When he was old enough, Respondent Heyward would go down there by himself without his father. (Transcript 9/14/2023, P. 68, Lines 3-19).

After Robert Heyward died in 2014, leaving Respondent Ruby Heyward, his wife, and Respondent Antoine Heyward, his son as his heirs, the property was deeded to them. Respondent Heyward, as owner of the property, tried to collect rent from Appellants. For the first time, Appellants claimed the property was theirs by filing an adverse possession lawsuit. (Transcript 9/14/2023, P. 71, Lines 6-21 and P. 72, Line 4-12). In fact, Respondent Heyward testified that the first time he was aware that Appellants even had a plat made for the property, was at his deposition after the lawsuit had been filed in 2018. (Transcript 9/14/2023, P. 71, Line 22 – P. 72, Line 3). Contrary to Appellants' statements in their Initial Brief, (Page 6, Lines 22-23) that "the

plat showed the extent of their claim”, Appellant Bernard Steed and Bonita Steed both acknowledged that the plat was unrecorded and they could give no reason why the plat was not recorded with the Charleston County of Deeds. (Transcript 9/14/2023, P. 26, Line 6-P. 27, Line 9 and P. 43, Lines 3-23) so as to put the Respondents on notice that Appellants were making a claim to the property. For the reasons above, there was no exclusivity.

**B. Hostility.** With regard to the Hostility element to prove adverse possession, the Court held that Appellants did not put forth sufficient evidence to prove that they made a claim of ownership to Respondents and that Appellants’ first disclaimer of the legal title sufficient to begin an adverse possession claim came when Appellants refused to pay the rent demanded by Respondents in 2015, and that Appellants did not meet the requisite 10 years required under the statute of adverse possession. (Order 2/06/2024).

The Court held that because Appellants would pay Respondents monies toward the real estate taxes over the years, that was evidence that there was an agreement between the parties. (Order 02/06/2024)(Order 4/10/2024). The Court also had an issue with Appellants’ credibility. (Transcript 04/10/2024, P. 32, Line 23- P. 34, Line 4). Therefore, there could be no hostility.

At the trial and in Appellants’ Initial Brief, Appellants argued that Appellants paid the real estate taxes from 2000 to present for the property and that Robert Heyward had nothing to do with the real estate taxes during those years. (App.Initial Brief, P. 8-9) (Transcript 9/14/2023, P. 43, Line 24-P. 47, Line 18 and P. 27, Line 19-P. 30, Line 13). However, no written evidence was ever submitted to Respondents, their counsel or the Court, from the 2018 date of filing through to and including trial held on September 14, 2023, to prove the truth of their allegations that they were solely paying the real estate taxes on the property. No tax bills, no tax receipts, no proof of payments were offered into evidence at the trial by Respondents. (Transcript 9/14/2023,

P. 47, Lines 5-9).

After Appellants Bernard Steed and Bonita Steed gave their testimony under oath, Respondent Antoine Heyward took the stand. It became readily apparent that the Appellants had been less than truthful to the Court about Appellants paying the real estate taxes on the property and that Robert Heyward had no involvement at all. Respondent Heyward testified that Robert Heyward, his father, paid the real estate taxes from 1999 until he died in 2014. (Transcript 9/14/2024, P. 69, Lines 10-13). The tax bills were sent to Robert Heyward in Chicago, Respondents sent their share of real estate tax payments each year to Robert Heyward and Robert Heyward paid the real estate taxes on the property. (Transcript 09/14/2023, P. 69, Line 10- P. 70, Line 8 and P. 82, Line 7- P. 85, Line 24). (Respondents' Trial Exhib. 6-10)(Order 2/6/2024, p. 4)(Order 4/10/2024).

Respondent Heyward also testified that Appellants contributed to the real estate taxes each year because they were living rent-free and so they could maintain the home. (Transcript 9/14/2023, P. 70, Line 9-P. 71, Line 3).

In Appellants' Initial Brief, Appellants argue that as to proving their hostility element of the adverse possession requirements, that Appellants had made improvements on the property, including the purchase and installation of central air, appliance, fence, gutters, insulation, hardwood floors, cabinets, tile flooring, a new roof, a new room, etc. (App.InitialBrief, p. 8).

No written evidence was ever submitted to Respondents, their counsel or the Court, from the 2018 date of filing through to and including trial held on September 14, 2023 to prove the truth of their allegations. No receipts, no proof of payments, or even photographs were offered into evidence at the trial by Appellants.

In addition, the Court found that the recorded Deeds gave constructive notice to

Appellants that Respondents had a legal ownership interest in the property. (Order 02/06/2024, P. 9)

**II. THE MASTER-IN-EQUITY PROPERLY DETERMINED THAT APPELLANTS DID NOT PROVE THAT THE DOCTRINE OF LACHES BARRED RESPONDENTS' QUIET TITLE COUNTERCLAIM**

The Court ruled that Appellants did not prevail on doctrine of laches defense to Respondents' Counterclaim as the time period of the running of the statute of limitations for adverse possession had only been three years. See S.C. Code 15-67-210 which requires "to support an adverse possession claim in South Carolina, the possession must be actual, exclusive, open, notorious, and continuous for ten years". See also *Jones*, 384 SC at 10, 681 S.E.2d at 11. Therefore, laches would not suffice to establish Respondents' claim. (Order 02/06/2024, P. 9) (Transcript 04/10/2024, P. 36, Line 7 to P. 37, Line 20).

Respondents' attorney at the hearing for the Motion for Reconsideration pointed out that Appellants had also not addressed the S.C. Court of Appeals' Decision of December 7, 2022 which required Appellants to prove their laches defense by showing (1) delay, (2) that is unreasonable under the circumstances, and (3) prejudice. (Ct.App. Decision)(Transcript 04/10/2024, P. 27, Line 23- P. 28, Line 23).

The Court did allow Appellants leave to amend their Complaint to add a Betterment Clause and in fact, granted Appellants' Motion to Amend Complaint to add a Betterment cause of action on April 10, 2024. (Order 4/10/2024)

For the aforesaid reasons, Appellants failed to prove that they have been harmed as required by the doctrine of laches. Appellants did not submit any evidence in support of their

allegations that they made improvements to the property and Appellants did not submit any evidence in support of their allegations that they had paid the real estate taxes from 2000 to 2023.

Finally, Robert Heyward permitted Appellants to live on the property until his death in 2014. In exchange, Appellants paid a portion of each year's real estate taxes. For that small payment each year, Appellants, consisting of four adults, resided on the property at 516 Bank Street, Mount Pleasant, SC. The Appellants have not been prejudiced.

### **CONCLUSION**

The Charleston County Master-In-Equity correctly found that Appellants did not prove their case by clear and convincing evidence and that the evidence that was submitted in this case reasonably supported the factual findings that Respondents are the fee simple owners of 516 Bank Street, Mount Pleasant, South Carolina. Respondents respectfully requests that this Court affirm the decision of the Charleston County Master-In-Equity.

September 25, 2024  
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