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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Appellate Case No.: 2024-000776

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.

FINAL BRIEF OF APPELLANTS

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November 12, 2024

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STATEMENT OF ISSUES ON APPEAL

- I. **Did the Trial Court err in granting judgment to Respondents on Appellants' adverse possession claim?**

- II. **Did the Trial Court err in granting judgment to Respondents by finding that the doctrine of laches did not bar their quiet title counterclaim?**

STATEMENT OF THE CASE

Respondents initiated this action by filing a Summons and Complaint on August 29, 2018, seeking title to the property located at 516 Bank Street, Mt. Pleasant, South Carolina, TMS# 532-05-00-113 (the “Property”), by adverse possession. Appellants filed an Answer and Counterclaim seeking title to the Property by virtue of a deed executed in 1999 by Louise Brown Heyward, Appellant Antoine Heyward’s¹ grandmother and Respondents’ great-grandmother, to her son and Antoine’s father, Robert Heyward.

After discovery, Respondents filed a Motion for Summary Judgment in accordance with SCRPC, Rule 56. Due to the pandemic, the Court requested if the parties to numerous pending actions would consent to a hearing on the briefs and evidence submitted by the parties, and both parties consented. On July 1, 2020, the Honorable Bentley Price, presiding Circuit Court Judge, filed a Form 4 Order granting Respondents’ Motion for Summary Judgment and Motion for Sanctions. On July 13, 2020, Judge Price filed a Final Order Granting Summary Judgment to Respondents.

On August 10, 2020, Respondents filed a Notice of Appeal. The Court of Appeals entered its Order, dated December 7, 2022, finding certain issues of material fact remained to be determined by the Trial Court and remanded to the trial court.

The Honorable Mikell Scarborough, Master in Equity, heard this matter nonjury on September 14, 2023, to address the issues raised by the Court of Appeals. Judge Scarborough issued his Order on February 6, 2024, finding that Appellants had not proved the exclusivity or hostility elements of their adverse possession claim and that the doctrine of laches did not apply to bar Respondents’ claim to quiet title. Appellants filed a Motion for Reconsideration on February

¹ Appellant Antoine Heyward will be referred to as Antoine throughout the brief in order to avoid confusion.

8, 2024. Judge Scarborough issued his Order, dated April 10, 2024. Appellants filed a Notice of Appeal on May 9, 2024.

In summary, Louise Brown Heyward owned the real property located at 516 Bank Street, Mt. Pleasant, SC (“the Property”), until just before her death in 2000, when she put her mark on a deed to her son, Robert Heyward, who lived in Chicago with Respondents. Robert Heyward died in 2014, and Respondents inherited his assets. Neither Robert Heyward nor either of the Appellants ever lived at the Property, and instead resided at their home in Chicago, Illinois.

Appellants have resided on the property from 1966 to the present and believe that they own the Property. Robert Heyward died in 2014 without disclosing to the Appellants that Louise Heyward had deeded the property to him. Appellants’ claim to ownership is based on their continued occupancy over a 58-year period, as well as a 1998 plat their mother gave to Appellant Bonita Steed showing that Appellants’ mother, Alethia Steed, owned the property. Alethia Steed died in 1999. Robert Heyward visited the Property during the summers but never exhibited any acts of ownership. He did not visit the Property after 2008.

In 2015, Antoine Heyward contacted the Appellants and demanded that they start paying rent to him, and they refused. Appellants commenced this action in 2018 seeking to have title vested in them by adverse possession. Appellants have continuously occupied, improved and maintained the property from 1966 to the present, and Robert Heyward, through whom the Respondents claim title, only had occasional visits to the property during that time and none documented during the ten (10) year statutory period for adverse possession (2008 to 2018). The questions that the Court of Appeals sent back to the Trial Court for determination were:²

² The Court of Appeals held that these were the remaining questions of material fact on Defendants’ appeal from summary judgment granted to Plaintiffs. *See Steed v. Heyward, R.* pp. 41-44.

1. Has the occupation of 516 Bank Street by Plaintiffs from 2008 until this action was brought in 2018 been exclusive and hostile?

Or, if the Court does not find such exclusivity and hostility:

2. Does the doctrine of laches bar Defendants' claims of ownership of 516 Bank Street?

STANDARD OF REVIEW

An action to quiet title to real property, primarily involving the determination of title to real property based on adverse possession, should be characterized as an action at law. Jones v. Leagan, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009). In an action at law, tried without a jury, the judge's findings will not be disturbed unless they are without evidentiary support. Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 296, 468 S.E.2d 292, 295 (1996). A judge's findings are equivalent to those of a jury in an action at law. Id. On appeal, the Court is free to decide questions of law with no particular deference. Bluffton Towne Center, LLC v. Gilleland-Prince, 772 S.E.2d 882 (S.C. Ct. App. 2015).

ARGUMENT³

I. APPELLANTS PROVED ALL OF THE ELEMENTS OF AN ADVERSE POSSESSION CLAIM, AND THE TRIAL COURT ERRED IN RULING THAT THEY HAD NOT PROVED EXCLUSIVITY OR HOSTILITY.

Appellants proved all of the elements for an adverse possession claim for the statutory period of ten years for 516 Bank Street, Mt. Pleasant, SC—the Property. “The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time.” Jones v. Leagan, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009); cited in Taylor v. Heirs of William Taylor, 419 S.C. 639, 650, 799 S.E.2d 919, 924 (Ct. App. 2017).

In Taylor, 419 S.C. at 650-652, 799 S.E.2d 924-925, the Court of Appeals reversed the trial court’s decision that adverse possession had not been proved and set forth a thorough discussion of the evidence required:

³ Appellants adopt the Trial Court’s Findings of Fact in full.

The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time." *Id.* 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. A party asserting ownership by adverse possession must show he has met the elements by clear and convincing evidence. *Jones*, 384 S.C. at 10–11, 681 S.E.2d at 11.

To claim title by adverse possession, a party must show the extent of his possession even when entering under color of title. *Clark v. Hargrave*, 323 S.C. 84, 87, 473 S.E.2d 474, 476 (Ct. App. 1996) (per curiam). Color of title alone is not evidence of adverse possession, and "it does not follow that adverse possession can be proved by less evidence when the entry is under color of title than when it is not." *Id.* at 87, 473 S.E.2d at 477 (quoting *Butler v. Lindsey*, 293 S.C. 466, 470, 361 S.E.2d 621, 623 (Ct. App. 1987)). However, color of title is evidence of the extent of the claim and should be considered with the other facts in the case. *Woodle v. Tilghman*, 252 S.C. 138, 144–45, 165 S.E.2d 702, 705 (1969) (internal quotation omitted). Color of title need not be a deed; "[i]t is anything which shows the extent of [the] occupant's claim." *Id.* at 145, 165 S.E.2d at 705. "It is by no means necessary that the paper should be in the form of a deed. A bond or even a receipt would be sufficient." *Id.* "The principle purpose of color of title in adverse possession proceedings is not to show actual grant of land or interest therein, but to designate [the] boundary of possessor's claim." *Id.*

Appellants introduced a plat showing the extent of their claim to the Property, so that element was clearly proved. R. pp. 195; 2. The Taylor Court continued:

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*, 384 S.C. at 13–14, 681 S.E.2d at 13. ...

Appellants proved that their ownership claim was notorious. When Robert Heyward died, his niece asked Appellants if the Heyward family could rent the Property to use for Mr. Heyward's funeral repass. R. pp. 128-129; 6. Clearly, Heyward's own family believed that Appellants owned the property.

For possession to be continuous, a party "claiming adverse possession must have personally held the property for ten years." *Id.* at 15, 681 S.E.2d at 14. "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 on the land during the whole of the statutory period." *Id.* at 16, 681 S.E.2d at 14 (citation omitted).

No one contests the fact that Appellants have occupied the Property since 1966, so their possession has been well in excess of the statutory 10-year period. Taylor continued:

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). The mistaken belief rule, which requires the possessor to be aware he does not have title and intend to dispossess the true owner, is not applicable in disputes over entire tracts of land. *Id.*; see also *Perry v. Heirs at Law & Distributees of Gadsden*, 316 S.C. 224, 226, 449 S.E.2d 250, 251 (1994) (per curiam) (finding the mistaken belief rule does not apply in a dispute over an entire tract of land, rather it applies in a boundary line dispute). Thus, for the possession to be hostile when an entire tract of land is at issue, the adverse claimant need not show a conscious intent to dispossess the true owner. *McDaniel v. Kendrick*, 386 S.C. 437, 442–43, 688 S.E.2d 852, 855 (Ct. App. 2009). The claimant may establish hostile possession by showing he occupied the property without the title owner's consent even if he occupied the property under the mistaken belief that it belonged to him. *Id.*

Appellants testified that Robert Heyward never gave them consent to occupy the Property and, instead, that, when he wanted to visit the property, he asked for Appellants' permission. R. pp. 84-85; 3. Appellants occupied the Property under the mistaken belief that it belonged to them, but the Heywards never claimed ownership prior to 2015. R. p. 3. The Trial Court specifically found that Mr. Heyward "visited the property yearly after 2000 and until 2008 ..." (R. p. 7.) and that "[t]here was no evidence that [he] visited the property after 2008." Thus, there is no question as the exclusivity of Appellants' occupation for the ten-year period from 2008 to 2018, and the Trial Court erred in finding that Appellants had not proved "exclusivity."

As to hostility, Appellants have been in actual residency and occupancy of the property since 1966. They have been responsible for all improvements made to the property during that time period. As found in the Court Order, Appellants built a second house on the Property in 1966 and lived there the entire period and also lived in Louise Heyward's house on the Property after her death in 2000. Appellants maintained the Property, including the purchase and installation of

central air, appliance, fence, gutters, insulation, hardwood floors, cabinets, tile flooring, a new roof and a new room to house the washer and dryer. R. pp. 292-294; 5. Appellant Bernard Steed paid for insurance on the Property. R. pp. 294-295; 300. These activities have always been open and notorious such that the legal owner was on notice that Appellants were holding themselves out as owners of the Property. Neither Robert Heyward nor his heirs ever did anything to maintain the property. Appellants did everything an owner would do with regard to maintenance and improvement. Respondent Antoine Heyward acknowledged that during the last 20 years, the Appellants had no reason to believe that they did not own the Property where they had lived for over 50 years. R. pp. 86-87.

The Trial Judge found that Appellant Bernard Steed's testimony regarding his paying of taxes was not credible. However, the testimony and evidence presented showed that Appellants paid the majority of the taxes from 2000 to the present and that at some point, Appellant Steed did begin paying all of them. Appellants acknowledge that the tax bills went to Robert Heyward in Chicago but that was originally set up at the request of Louise Heyward. R. pp. 302-304. Although Appellants made payments of taxes to Respondents and Robert Heyward over the years, there is no evidence of rental agreement between Appellants and Respondents (including Robert Heyward) and no evidence of any money paid from Appellants to Respondents for "rent." This lack of evidence illustrates that Appellants were not merely tenants on the Property. Further illustrating Appellants' ownership is the payment of property taxes, something wholly inconsistent with merely being a tenant. Additionally, a mere tenant would not build a new structure on the Property and make the many improvements that were made. Rather, these facts speak to Appellant's hostile ownership of the Property.

The Trial Court found a lack of adverse possession because the Appellants began living on the Property with the permission of the then owner, Louise Heyward. The Order cites Young v. Nix, 286 S.C. 134, 332 S.E.2d 773 (1985), for the proposition that “[o]ne who enters with permission does not establish Adverse Possession without a ‘clear and positive disclaimer of the title under which entry was made is brought home to the other party.’” The Court cites to Bradley v. Calhoun, 125 S.C. 70, 117 S.E.2d 811 (1923), as the precedent for this statement.

However, in Bradley, the appellate court ruled that a stepmother who initially received title to her husband’s property from him could assert adverse possession against his children, who also claimed title from their father. This ruling was based on the fact that the stepmother claimed ownership of color of title separate and apart from her husband’s ownership of the property. The Supreme Court affirmed the jury verdict citing the low court’s statement that “[i]f [the mother/stepmother] did not buy anything from the Probate Court, if she got a deed to the land in question, she got what we call a color of title – that is anything that is color of title may be a letter or plat – and she went in and held it adversely, while it might not have been a good title at first, yet I think I ought to submit this case to the jury.” The Supreme Court affirmed the jury verdict because the jury could have found that the stepmother claimed ownership outside of her husband’s estate even though she did not actually have ownership. That is the fact situation that is presented in this case. Although Appellants entered into occupancy of the Property at the behest of Louise Heyward, when Ms. Heyward died, they kept possession based on the plat that their mother had given to them. They were not claiming title, because Mrs. Heyward allowed them to live there from 1966 until 2000 when she died. They were claiming title through the plat that they had received. Under these circumstances,

Appellants have a hostile claim, because their claim is through that plat rather than through Mrs. Heyward. The Trial Court erred when it ruled that they could never gain title through adverse possession when they entered the property with permission. Rather, the Court had a duty to weigh all relevant facts, including (1) the 1998 plat purporting to place title in Appellants' mother; (2) the structure built by Appellants on the Property; (2) Appellants' payment of insurance and taxes on the Property; (3) Respondents' requests for Appellants' consent before visiting the Property; (4) Respondents never asking for Appellants to pay rent until 2015 when Appellants responded that they owned the Property; and (5) Appellants' general treatment of the Property as an owner. The evidence was clear that Appellants' claim to the Property was hostile to any claim that Respondents might have.

II. THE DOCTRINE OF LACHES SHOULD HAVE BARRED RESPONDENTS' QUIET TITLE COUNTERCLAIM.

Respondents filed counterclaims against Appellants seeking to quiet title to 516 Bank Street in the names of Respondents. Appellants asserted numerous affirmative defenses, including the equitable doctrine of laches.

In Jones v. Leagan, 384 S.C. 1, 20, 681 S.E.2d 6 (Ct. App. 2009), the Court of Appeals held that the party asserting adverse possession had established the defense of laches, the South Carolina Court of Appeals applied the equitable doctrine of laches. Again, the Court of Appeals held the party asserting adverse possession had established the defense of laches and stated:

Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.... The equitable doctrine of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence to do what in law should have been done.... The party seeking to establish laches must show (1) delay, (2) that was unreasonable under the circumstances, and (3) prejudice.... To establish laches as a

defense, the defendant must show the complaining party unreasonably delayed its assertion of a right, thereby prejudicing the defendant.

As in Jones, the Appellants invested a substantial amount of time and money during the twenty-four (24) years that Respondents or their predecessor, Robert Heyward, held a deed to the property. During that time, Respondents never told Appellants that Respondents owned the property until 2015. While Respondents failed to inform Appellants of their claim of ownership, Appellants continued to do everything that an owner does, including paying taxes, purchasing insurance, making substantial improvements, and maintaining the Property. These circumstances show that Respondents abandoned or surrendered any claim to the Property. See Ex parte Stokes, 256 S.C. 260, 267, 182 S.E.2d 306, 309 (1971) (explaining that laches is an equitable doctrine which “arises upon the failure to assert a known right”); Byars v. Cherokee Cnty., 237 S.C. 548, 559, 118 S.E.2d 324, 330 (1961). Appellants have been severely prejudiced by Respondents failure to assert their claims as the Trial Court found in its Order, ruling that Appellants are entitled to betterment.

Because the Heywards could have protected themselves by informing the Steeds that they did not own the property in 2000, the equities clearly favor the Steeds who are entitled to judgment in their favor on the defense of laches.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the Trial Court’s Order.

[SIGNATURE ON FOLLOWING PAGE]

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that Appellants' Final Brief complies with Rule 211(b),
SCACR.

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