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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Anderson M. Griffith, Master-in-Equity

Appellate Case No. 2024-000545

Melanie P. Hozey, Appellant,

v.

Alan L. Rutherfurd and Susan M. Rutherfurd, Respondents.

INITIAL REPLY BRIEF OF APPELLANT

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I. THE TRIAL COURT ERRED BY FINDING THAT THE APPELLANT'S POSSESSION AND USE OF THE DISPUTED AREA WAS NOT NOTORIOUS, HOSTILE AND EXCLUSIVE AND THUS CONCLUDING THAT SHE DID NOT ACQUIRE THE DISPUTED AREA BY ADVERSE POSSESSION.

In his Order for this case Judge Griffith concluded that Ms. Hozey's use of the Disputed Area was continuous, actual and open for a period of at least ten years. (Order dated February 28, 2024). In their Brief for this matter Mr. and Mrs. Rutherfurd challenge these conclusions. (Respondents' Brief, P. 4). They did not, however, appeal Judge Griffith's Order and such conclusions, therefore, are the law of this case.

The issues on appeal in this case pertain to Judge Griffith's conclusions that Ms. Hozey's use of the Disputed Area was not hostile, notorious or exclusive for the requisite period of time. She relies upon the arguments presented in her Brief for this matter to support her position that Judge Griffith, respectfully, erred in his findings and conclusions with respect to these three elements of proof. Ms. Hozey offers this Reply Brief to address the Respondents' arguments that Judge Griffith correctly ruled as to the remaining three elements of proof, that is, hostility, notorious and exclusivity.

Hostility

Mr. and Mrs. Rutherfurd misapprehend the concept of hostility as it bears on the law of adverse possession in South Carolina. They contend that this element of proof may not be sustained by Ms. Hozey because for "the majority of time relevant to this matter, [Ms. Hozey] believed that she was sharing the land pursuant to a utility easement and failed to understand her exact boundary." (Respondents' Brief, P. 17).

First, there is no evidence in the record for this case whatsoever which shows that Ms. Hozey did not know where the boundary lines of her property were located or that she believes she was "sharing" the disputed area with the Rutherfurds. Had she believed that, she would not have brought this civil action to establish sole title to the Disputed Area in her name.

In fact, it was Mr. and Mrs. Rutherfurd who did not known where the boundaries of their property were located until the entirety of their property was professionally surveyed in 2020 - not only over eighteen years after they purchased their property, but also over the course of period of time during which Ms. Hozey used the Disputed Area without any objection whatsoever expressed by the Rutherfurds.

The element of "hostility" in South Carolina focuses on the intention of the adverse possessor, and how they view or respects the legal title to property held by another. See Ouzts v. McKnight, 114 S.C. 303, 103 S.E. 561 (1920); Knight v. Hilton, 224 S.C. 452, 79 S.E.2d 871 (1954); Croft v. Sanders, 283 S.C. 507, 323 S.E.2d 791 (Ct.App.1984) (In South Carolina, unlike in most other jurisdictions, possession under a mistaken belief that property is one's own and with no intent to claim against the property's true owner cannot constitute hostile possession); Lusk v. Callaham, 287 S.C. 459, 339 S.E.2d 156 (S.C. App. 1986); Greg v. Moore, 226 S.C. 366, 85 S.E.2d 279 (1954); All Saints Parish v. Protestant Episcopal Church, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004)(The element of "hostility" requires that possession of property must be without subserviency to, or recognition of, the true owner's title, and must be hostile to it and the whole world.

Ms. Hozey has sustained her burden of proof with respect to this issue. She testified at trial that she knew the Disputed Area was not within the legal boundaries of her property as established by her deed, and she knew it did not belong to her. (Transcript of Trial, Part I, P. 83,

L. 11 to P. 86, L. 1). She had no mistaken belief in these regards. (Transcript of Trial, Part I, P. 83, L. 11 to P. 86, L. 1). She stated further that it was her intent to acquire lawful title to that area, and to the exclusion of her neighbors' legal interest. (Transcript of Trial, Part I, P. 83, L. 11 to P. 86, L. 1).

Notorious

Judge Griffith found that Ms. Hozey's use of the Disputed Area was "open" for at least ten years, but not "notorious". (Order of Judge Griffith, P. 15, Paragraph 4). Despite his finding that Ms. Hozey's use did rise to a level of being "Open" the Rutherfurds attempt to argue that Ms. Hozey's use of the Disputed Area was neither "open" or "notorious", and because she never attempted to exclude them from that area.

As stated in her Brief, Ms. Hozey contends that there is no such requirement, under South Carolina law, that one seeking title to real property by adverse possession attempt to exclude or bar another from that property. Rather, this element is established if that person's acts are so open, visible and notorious a reasonable person should, in the exercise ordinary diligence, know of those acts. Graniteville Co. v. Williams, 209 S.C. 112, 39 S.E.2d 202 (S.C. 1946). This element is satisfied.

Judge Griffith specifically found that the Rutherfurds knew or should have known of Ms. Hozey's use of the Disputed Area. (Order of Judge Griffith, P. 15, Paragraph 4). The evidence which supports this conclusion is outlined in her Brief for this case.

Exclusive

Mr. and. Mrs. Rutherfurd contend that Ms. Hozey's use of the Disputed Area could not have been exclusive because they, in addition to Ms. Hozey, performed work in the Disputed Area.

As stated in her Brief, Ms. Hozey does not challenge the general rule in South

Carolina that "where an owner of property and an occupier are both in possession, the possession of the legal owner prevails to the exclusion of the other. Butler v. Lindsey, 361 S.E.2d 621, 293 S.C. 466 (S.C. App. 1987).

However, and as noted above, South Carolina law does provide that the requirement of exclusive possession and continuity be examined within the context of the nature of the real property involved in an adverse possession case. Mullis, Id. In that case the Supreme Court also reviewed the actions of the party who sought to obtain title by adverse possession and noted that "occasional entries on land to cut a small amount of timber do not constitute a sufficiently continuous use to establish adverse possession." Mullis, Id.

The evidence in this case clearly shows that the Rutherfurds themselves never acted to "possess" or "occupy" the Disputed Area - Mr. Rutherfurd only infrequently walked through the area and picked up fallen tree branches. (Transcript of Trial, Part II, P. 55, L. 18 to P. 107, L. 12; P. 113, L. 3 to P. 151, L. 5). Though disputed, there is evidence that he and his wife occasionally hired individuals to clear debris from their yard, and they picked up some amount of debris from across the chain link fence in the Disputed Area. (Transcript of Trial, Part II, P. 8, L. 2 to P. 56, L. 12; P. 108, L. 10 to P. 112, L. 24). They did not, however, erect any structures in the Disputed Area, never stored or placed any personal property in the area, never used the area for any family or similar activities or did anything else which might reasonably be viewed as an actual possession or occupation of the land. (Transcript of Trial, Part II, P. 55, L. 18 to P. 107, L. 12; P. 113, L. 3 to P. 151, L. 5).

The location of the chain link fence, to which reference is made in the testimony for this case is also a critical factor to consider when analyzing whether or not the Rutherfurds acted to actually possess or occupy the Disputed Area. They also never took any affirmative action

to challenge Ms. Hozey's occupation, possession and use of the Disputed Area until early 2021 when, upon the advice of their attorney, they posted a "No Trespassing" sign near the Disputed Area. Had the Rutherfurds believed that they "shared" Disputed Area with Ms. Hozey, there would be no reason for them to post a such a sign.

Moreover, and as outlined in the Appellant's Brief for this matter, the Rutherfurds simply did not know the true location of the boundaries of the entirety of their property, and in particular with regard as to the Disputed Area, until Mr. Coleman, their own surveyor, disclosed those boundaries to them in 2020. The extensive evidence establishing this fact is outlined in Ms. Hozey's brief for this case. Ms. Hozey submits that it is impossible for Mr. and Mrs. Rutherfurd to have shared the Disputed Area with her, over the course of almost nineteen years, without knowing where their property was actually located.

II. THE TRIAL COURT ERRED IN FINDING THAT MS. HOZEY TRESPASSED UPON THE RUTHERFURD'S PROPERTY AND BY GRANTING JUDGMENT IN THEIR FAVOR.

With respect to this argument Ms. Hozey respectfully relies upon her Appellant's Brief to support her position that Judge Griffith erred by finding that she trespassed upon Mr. and Mrs. Rutherfurds property at any point in time.

CONCLUSION

For the reasons stated above Ms. Hozey respectfully submits that Judge Griffith's Order and decision for this matter should be reversed, and judgment should be entered in this matter in her favor as requested in her Complaint.

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Dated: March 5, 2025

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PROOF OF SERVICE

I certify I have served the Appellant's Initial Reply Brief on counsel for the Respondents, Dione Carroll, Esquire on March 5, 2025, by electronic mail via the email address on record with AIS, at dione@carroll-law-offices.com.

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