

STATE OF SOUTH CAROLINA )  
COUNTY OF COLLETON )

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL  
CIRCUIT

CASE NO. 2021-CP-15-00210

CHRISTOPHER HAMILTON, CLEO HAMILTON, )  
JANIE NELSON A/K/A JANNIE NELSON, )  
JUANITA WILLIAMS, ELVIRA MEMMINGER, )  
CLARENCE WASHINGTON, DELINDA W. )  
DAWSON, DAVID WASHINGTON, JR., )  
ELIZABETH ANN LEE A/K/A ELIZABETH ANN )  
CHERRI, ARTHUR LEE, MIRANDA CLARK )  
A/K/A ARANDA CLARK, CATHERINE DENT, )  
JOSEPH HOLMES, GWENDOLYN MILLER, JAN )  
ELIZABETH BURTON, BRENDA BROWN, and )  
GUY ACKERMAN, )

Plaintiffs, )

v. )

REHABILITATION CONSULTANTS OF )  
CHARLESTON, LLC., WILLIAM ARNOLD )  
KELLMAN, PRISCILLA JUDGE, RHONDA B. )  
WINFIELD, SAMUEL COX, JR., JIMMY COX, )  
LAVORGE COX, DESHAWN RAMBERT-COX, )  
VANESSA COX a/k/a VANESSA COX- )  
RICKENBACKER, TONI COX a/k/a TONYA )  
PIERCY, FELICIA COX, ANDREW WALKER, )  
SELENA WALKER, individually and as Personal )  
Representative of the Estate of Earl Walker, SONYA )  
TERESA WHITE, RAYMOND WALKER, )  
ARDELIA STOKES a/k/a DELIA STOKES, )  
LEROY SMALLS, JR. a/k/a LEROY H. SMALLS, )  
GWENDOLYN BRIGHT, ELIZABETH SAWYER, )  
JOHNNY J. SMALLS, DONALD R. SMALLS, )  
RALPH B. SMALLS, MICAH FRASIER, )  
ZELEMENIA WALKER a/k/a SELLEMENA )  
WALKER, TERRANCE WALKER, GEORGE )  
WALKER, JR., CHERISE WALKER TURNER, )  
NAOMI WALKER, RICHARD COX, RICHARD )  
WILTON WASHINGTON a/k/a WELDON )  
WASHINGTON, DONNA MITCHELL and )  
CURTIS MITCHELL, if they be alive, and JOHN )  
DOE AND JANE DOE, whose true names are )  
unknown and fictitious names designating the )

**ORDER AS TO INTEREST  
OF DONNA MITCHELL AND  
CURTIS MITCHELL**

**RECEIVED**

**Dec 23 2025**

**SC Court of Appeals**

unknown heirs, devisees, distributees, issue, )  
 executors, administrators, successors, or assigns of )  
 the above-named Defendants, if they or any of them )  
 be dead, and of CHARITY WASHINGTON, )  
 CENTRILLA WASHINGTON, ANDREW )  
 WASHINGTON, PRISCILLA WASHINGTON a/k/a )  
 PERSELLA WASHINGTON, OSCAR )  
 WASHINGTON, GERTIE WASHINGTON, )  
 MARGARET KELLMAN, HORACE HEYWARD, )  
 DELORES WASHINGTON a/k/a DELORES )  
 WILLIAMS, JOHNNY WASHINGTON a/k/a )  
 JOHNNIE WASHINGTON, RUTHIE MAE )  
 WASHINGTON, EUGENE WASHINGTON a/k/a )  
 SAM WASHINGTON, GENEVA WASHINGTON, )  
 MAYBEL WALKER a/k/a MAYBELLE )  
 WASHINGTON, LILLA MAE SMALLS a/k/a )  
 LUCILLE COX SMALLS, LEROY SMALLS, )  
 STANLEY SMALLS a/k/a RONNIE SMALLS, )  
 WILLIE HAYDEN SMALLS, GEORGE WALKER, )  
 SAMUEL COX, LUCILLE CHISOLM a/k/a )  
 LOUCILE CHISOLM, EARL WALKER, PEARL )  
 HAMILTON, JAMES HAMILTON, JOSEPH )  
 HAMILTON, ELISE SIMMONS, JAMES )  
 WASHINGTON, VICTORIA JOHNSON GREEN, )  
 DAVID WASHINGTON, SR., CARRIE )  
 WASHINGTON a/k/a CARRIE WASHINGTON )  
 WILLIAMS, CARRIE WASHINGTON LEE, )  
 JOSEPH LEE, NORRIS LEE, ISRAEL )  
 WASHINGTON, DAVID WASHINGTON, )  
 GOLDEN WASHINGTON, MINNIE BRANTLEY )  
 JOHNSON a/k/a MINNIE BRANTLEY, MABEL )  
 SIMMONS, WILLIAM WASHINGTON a/k/a )  
 BILLY WASHINGTON, MILLIE WASHINGTON, )  
 PHOEBE ANN WASHINGTON, and MARGARET )  
 ROVENA KELLMAN, all deceased; and MARY )  
 ROE AND RICHARD ROE, whose true names are )  
 unknown and fictitious names designating infants, )  
 persons under disability, incompetents, imprisoned, )  
 or those person in the military, if any; SOUTH )  
 CAROLINA DEPARTMENT OF REVENUE, and )  
 also all other persons, known or whose true names )  
 are unknown, claiming any right, title, interest in, or )  
 lien upon the real estate described in the Complaint )  
 herein, )  
 )  
 Defendants. )

The matter was before the Court pursuant to Plaintiff's Summons, Complaint and Lis Pendens, filed on April 12, 2021, and Amended Summons, Amended Complaint and Amended Lis Pendens, filed on June 15, 2021.

A hearing to quiet title was held before me on February 17, 2023 at 10:00 a.m. on May 25, 2023. Present and appearing at the reconvened hearing was Barry I. Baker Esq., attorney for the Plaintiffs together with Co-Plaintiffs Christopher Hamilton, Gwendolyn Miller, Jan Elizabeth Burton and Brenda Brown appeared in person. Co-Plaintiffs Juanita Williams and Elizabeth Ann Lee a/k/a Elizabeth Ann Cherri appeared by Zoom. Charles S. Altman, Esq., appeared on behalf of his clients together with Co-Defendants Felicia Cox, Gwendolyn Bright, Leroy Smalls Jr., and Johnny J. Smalls appearing in person. Defendant Richard Wilton Washington a/k/a Weldon Washington appeared by Zoom on a pro se basis. Brandon Gaskins, Esq., attorney for Co-Plaintiff Guy Ackerman appeared by Zoom.

Also, appearing was Thomas H. Brush, Esq. with his clients the Defendants Donna Mitchell and Curtis Mitchell who filed an Answer and Cross Complaint on behalf of his clients on March 7, 2022 claiming title to a one (1) acre tract that is a portion of the subject property. Charles S. Altman, Esq., appeared on behalf of his clients Felicia Cox, Gwendolyn Bright, Micah Frasier, Donald R. Smalls, Ralph B. Smalls and Cherese Walker Turner, Leroy Smalls Jr., and Johnny J. Smalls filed an Answer to the Mitchell's Answer and Crossclaim on January 16, 2023.

At the conclusion of the Suit to Quiet Title Action I held a separate hearing on the of the Mitchell's claims and the purpose of this Order is to address their claims.

### FINDINGS OF FACT

All parties presented testimony and evidence and this Court dully considered all the testimony and evidence presented. This Court assessed the credibility of the witnesses' testimony and evidence presented. This Court compared all conflicting or non-conforming elements of such testimony and evidence, choosing certain elements to the exclusion of others. The Court makes the following finding of facts.

The Amended Summons and Amended Complaint filed in this action by the Plaintiff's agreed that the Defendants, Donna Mitchell and Curtis Mitchell, were the owners of the one acre tract.

The Answer to the Mitchell's Answer and Crossclaim filed on January 16, 2023 by the Defendants, Felicia Cox, Gwendolyn Bright, Micah Frasier, Donald R. Smalls, Ralph B. Smalls and Cherese Walker Turner, Leroy Smalls Jr., and Johnny J. Smalls, challenged the interest of Donna and Curtis Mitchell in the one acre tract.

That the Interim Decree filed on June 9, 2023 held that the Mitchells were not heirs of Charity Washington and the Defendants Felicia Cox, Gwendolyn Bright, Micah Frasier, Donald R. Smalls, Ralph B. Smalls and, Leroy Smalls Jr., and Johnny J. Smalls, have a 0.132% interest each in the said property tht is the subject of the Mitchells' claims. The Decree also set for that Cherese Walker Turner had a 0.116% interest in said property.

The Plaintiffs were determined to own 84% and the remaining Defendants did not contest the interest of the Mitchells.

The property which is claimed by the Mitchells is approximately a one-acre tract that is clearly shown on an unrecorded boundary survey prepared by Forsberg Engineering & Surveying, Inc. dated March 7, 2022 as containing 27.772 acres and having such size, shape, dimensions, buttings and boundings as will appear by reference to said survey.

The original home on the aforementioned tract was built by Millie Washington in 1953 and that Millie Washington raised the Mitchells' mother, Daisy Bell Mitchell, in said home.

Upon the death of Millie Washington in 1963, Daisy Bell Mitchell remained in the home raising her nine children, including Donna Mitchell, born 1964, and Curtis Mitchell, born 1955, until her death in 1996.

Since , the Mitchells have continued to reside and occupy the property as their residences.

The Mitchells have paid the property taxes on their portion on the property every year and have maintained and remodeled the original residence and added an additional structure for Curtis Mitchell to reside. The property has a current value of \$397,927.00.

The Mitchells have been on the property in excess of sixty (60) years and as emancipated adults more than fifty (50) years. The testimony from all witnesses was overwhelming that since 1953 none of the other Defendants or their predecessors took any action to stop or remove the Mitchells from the property and testified they had no reason to ask them to leave.

The Mitchells received a dollar amount each year from the other owners for their portion of the property taxes and the evidence shows that they cultivated and maintained the one acre tract. Their possession of the one-acre tract has been continuous, hostile, actual and exclusive for more than fifty (50) years.

### **REVIEW OF APPLICABLE LAW**

#### A. Acquiescence

The South Carolina Court of Appeals recently restated acquiescence in *Griffin v. Giovino*, Opinion No. 6117, July 16, 2025 as, "Acquiescence is a question of fact determined by the intent of the parties", *Kirkland v. Gross* 286 S.C. 193, 332 S.E. 2<sup>nd</sup> 546,549 (Ct. App1985) recede from on other grounds by *Boyd v. Hyatt*, 294S.C. 360, 364 S. E. 2<sup>nd</sup> 478 (ct. App. 1988),

“If a party stands by, and sees another dealing with the property in a manner inconsistent with his rights, and makes no objection, he cannot afterwards have relief. His silence permits and encourages others to part with their money or property, and he cannot complain that his interest(s) are affected. His salience is acquiescence and it estopps him.”

#### B. Adverse Possession

In order to establish a claim for adverse possession, the possession must be continuous, hostile, open, actual, notorious, exclusive, for the ten year the statutory period and the twenty-year common-law presumption. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986)

The nature and location of the land, and the appropriate uses for which it is suited should be considered in determining whether adverse possession has been established. *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961).

In *Graniteville Co. v. Williams*, 209 S.C. 112, 120-121, 39 S.E.2d 202, 206 (1946) the court held it is sufficient that possession is open, visible and notorious that the party against whom adverse possession is asserted should, in the exercise of ordinary diligence, have had knowledge of the adverse character of the claim.

The exclusive possession necessary to acquire title by adverse possession, possession must be such as to indicate his exclusive ownership of the property. *Butler v. Lindsey*, 293 S.C. 466, 361 S.E.2d 621 (Ct. App. 1987).

In *McDaniel v. Kendrick*, 386 S.C. 437, 688 S.E.2d 852 (S.C. Ct. App. 2009), the court addressed the requirement of hostility in an adverse possession claim. The court cited *All Saints Parish, Waccamaw* and *Knox v. Bogan* regarding what must be proven to claim adverse possession and specifically, hostility. A party may begin to satisfy the requirement of hostility upon a clear disclaimer of the owner's title. As a general rule, the law presumes

that the exclusive possession of land by one who is a stranger to the holder of the legal title is adverse. *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961).

#### C. Laches

“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. *Jones v. Leagan*, 384 S.C. 1, 384 S.E. 2<sup>nd</sup> 6, (Ct. App. 2009) quoting *Hallums v. Hallums*, 296 S.C. 195, 378 S. E. 2<sup>nd</sup> 525 (1998). Laches arises upon the failure to assert a known right under circumstances indicating the lached party has abandoned or surrender the rights. The party seeking to establish laches must show (1) delay, (2) that was unreasonable under the circumstances and (3) prejudiced. *Englet, Inc. v LeafGuard USA, Inc.*, 377 S. C. 129,659 S. E. 2<sup>nd</sup> 496 (2008).

### CONCLUSIONS OF LAW

#### ACQUIESCENCE

In Order for the Mitchells to establish title by acquiescence they must prove that the other Defendants stood by, and saw the Mitchells dealing with the property in a manner inconsistent with their rights, and made no objection. The evidence is clear from the testimony of Johnny Smalls, Felicia Cox and Gwendolyn Bright that they allowed the Mitchells to live and maintain the property for more than fifty (50) years and took no action to stop the Mitchells or claim an interest until this litigation was filed. Their silence permitted and encouraged the Mitchells to part with their money and pay taxes and improve the property. As a result, they cannot complain that their interest are affected because over the last fifty (50) years their past actions were as if they had no interest. The Defendants, Felicia Cox, Gwendolyn Bright, Micah Frasier, Donald R. Smalls, Ralph B. Smalls and Cherese Walker Turner, Leroy Smalls Jr., and Johnny J. Smalls neglected for an unreasonable and unexplained length of time, under circumstances affording

opportunity for diligence, to do what in law should have been done. *Jones v. Leagan*, 384 S.C. 1, 384 S.E. 2<sup>nd</sup> 6, (Ct. App. 2009) quoting *Hallums v. Hallums*, 296 S.C. 195, 378 S. E. 2<sup>nd</sup> 525 (1998). They have failed to assert a known right under circumstances indicating they abandoned or surrender the rights. I therefore conclude that the Mitchells have gained title through the Acquiescence all of the Plaintiff's and Defendant's in this case.

### ADVERSE POSSESSION

In order for Mitchells to establish a claim for adverse possession, they must prove by clear and convincing evidence that their possession of Plaintiff's property was actual, open, notorious, exclusive, continuous and hostile for the statutory period. *All Saints Parish, Waccamaw v. Protestant Episcopal Church In the Diocese of S.C.*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004). The possession must be continuous, hostile, open, actual, notorious, exclusive, for the ten-year statutory period and the twenty-year common-law presumption. *Davis v. Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986)

#### A. Actual Possession

For the Mitchells to prove actual possession of the property they must show they have performed acts of ownership in ways consistent with the use to which the land may be put. *Getsinger v. Midlands Orthopaedic*, 327 S.C. 424, 489 S.E.2d 223 (1997). The Mitchells testified there was originally one residence on the land that was remodeled in the 1990's and an additional structure was erected by Curtis Mitchell. The also testified that they and their mother have resided on the land as their home for more than fifty (50) years. The Defendants, Johnny Smalls, Felicia Cox and Gwendolyn Bright, confirmed the Mitchells' possession of the property with their testimony. These actions by Mitchells and their mother occurred from 1953 until present. I therefore conclude that the Mitchells were in actual possession of the property for more than fifty (50) years.

#### B. Open and Notorious Possession

For Defendant's Mitchell to prove that their possession of Plaintiff's property was open and notorious they must prove that their possession should be so notorious that the legal owner by ordinary diligence should have known of it. *Graniteville Co. v. Williams*, 209 S.C. 112, 120-121, 39 S.E.2d 202, 206 (1946). The testimony was overwhelming by all parties that by the exercise of ordinary diligence the Defendants Felicia Cox, Gwendolyn Bright, Micah Frasier, Donald R. Smalls, Ralph B. Smalls and Cherese Walker Turner, Leroy Smalls Jr., and Johnny J. Smalls should have or were aware of the Mitchells open and notorious possession. I therefore conclude that the Mitchells possession of the property was open and notorious.

#### C. Exclusive Possession

For Defendant Mitchells to prove that their possession was exclusive they must demonstrate that their occupancy was not shared with the owner. *Butler v. Lindsey*, 293 S.C. 466, 361 S.E.2d 621 (Ct. App. 1987). All parties testified that the Mitchells lived on the property with their mother for more than fifty (50) years testified that the previous owners never shared ownership of the property with them. All of the structures and the property were maintained and improved by the Mitchells. I therefore conclude that the Mitchells' possession of Plaintiffs' property was exclusive.

#### D. Continuous Possession

For the Mitchells to prove that their possession was continuous they must show that they personally held adverse possession of Plaintiffs' property for twenty years. *Getsinger v. Midlands Orthopaedic*, 327 S.C. 424, 489 S.E.2d 223 (1997). Once again, the testimony is overwhelming that they have held continuous possession of this property for more than fifty (50) years because no one has disseized them of their possession and they have not voluntarily abandoned their possession. The Mitchells have had continuous possession of the one acre tract

of Plaintiffs and Defendants property since 1953. See *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961). I therefore conclude that the Mitchells' possession of Plaintiffs' property has been continuous for fifty (50) years.

#### E. Hostile Possession

For the Mitchells to demonstrate that their possession of the Plaintiffs' property was hostile they must prove that they entered the property without the Plaintiffs' or the previous owners' permission. See *Knox v. Bogan*, 322 S.C. 64, 472 S.E.2d 43 (Ct. App. 1996), *All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C.*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004) and *McDaniel v. Kendrick*, 386 S.C. 437, 688 S.E.2d 852 (S.C. Ct. App. 2009). In order for the Mitchells' possession to be hostile, it must be *without the consent* of the title owner. See *Knox*.

The testimony does not show that any previous owner of the property gave them permission to be on the property. But upon the death of an heir of Charity Washington, the Mitchells' mother took possession of Plaintiffs' property without the consent of the other heirs and that she and Donna Mitchell and Curtis Mitchell have been in possession without permission since 1963.

The actions and exclusive possession of the property from 1963 to present by the Mitchells is adverse to the previous owners' ownership of the property and is adverse to Plaintiffs' and the other Defendants ownership of the property. Since the Mitchells exclusive possession of the one acre tract was adverse and without the consent of the owners, I therefore conclude their possession was hostile. See *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961).

In this instance, the Mitchells have proven by clear and convincing evidence that their possession of Plaintiffs' property has been actual, open, notorious, exclusive, continuous and

hostile for fifty (50) years. The Mitchells have proven that they asserted ownership over Plaintiffs' and Defendants' property. In addition, the Mitchells have demonstrated that they have exercised the requisite continuous adverse dominion over the property to claim it by adverse possession well beyond the statutorily requirement of twenty (20) years. I therefore conclude that Donna Mitchell and Curtis Mitchell have acquired ownership of this one-acre tract of land by Adverse Possession.

Plaintiffs' and all Defendants' interest in this one-acre tract has been extinguished and Defendants, Donna Mitchell and Curtis Mitchell, are vested with a perfect title. The Mitchells' title is independent and is a good, actual, absolute, complete, and perfect legal title in fee simple. See *Clark v. Hargrave*, 473 S.C. 474, 323 S.E.2d 84 (C. App. 1996).

Having decided that the Defendants, Donna Mitchell and Curtis Mitchell, are the fee simple owners of the one-acre tract its not necessary to decide on their request under the South Carolina Betterments Statute and Case Law.

#### **DEFENDANTS CAUSES OF ACTIONS**

All of Defendants', Felicia Cox, Gwendolyn Bright, Micah Frasier, Donald R. Smalls, Ralph B. Smalls and Chereese Walker Turner, Leroy Smalls Jr., and Johnny J. Smalls, causes of action, Estoppel, Laches and Waiver, require them to have an interest in the property. Since Defendants, Donna Mitchell and Curtis Mitchell, have established ownership of the property by acquiescence and adverse possession, they no longer have an ownership interest in the property. Therefore, all of Plaintiff's causes of actions are moot.

#### **CONCLUSION**

After considering the totality of the evidence, I find that Defendants, Donna Mitchell and Curtis Mitchell, have obtained title to the one acre tract through Acquiescence of all of the Defendants including Felicia Cox, Gwendolyn Bright, Micah Frasier, Donald R. Smalls, Ralph

B. Smalls and Chereese Walker Turner, Leroy Smalls Jr., and Johnny J. Smalls. I also find that the Mitchells have had possession of the one acre and that their possession has been actual, open, notorious, exclusive, continuous and hostile for fifty (50) years. I also find that the Mitchells have acquired Plaintiffs' and Defendants' interest in said property by adverse possession. I further find Donna Mitchell and Curtis Mitchell are the fee simple owners of the one acre tract. I also find that Defendants' causes of actions are now moot.

ORDERS


IT IS THEREFORE ORDERED, that Defendants, Donna Mitchell and Curtis Mitchell, claim of title through Acquiescence of the property described as above is granted; and

IT IS FURTHER ORDERED, that Defendants, Donna Mitchell and Curtis Mitchell, adverse possession claim of the property described above is granted and they are the fee simple owners of Plaintiff's property described above; and

IT IS FURTHER ORDERED, that Defendants, Donna Mitchell and Curtis Mitchell, will have the one acre tract surveyed and submitted the Court for approval; and

IT IS FURTHER ORDERED, that a Master's Deed will be executed conveying the one acre tract described above to Defendants, Donna Mitchell and Curtis Mitchell; and

AND IT IS SO ORDERED!



Benajmin C.P. Sapp, Special Referee

August 14, 2025  
Walterboro, SC