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SC Court of Appeals

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)
)
 James Ernest Young, Jr.)
)
 Plaintiff,)
)
 Vs.)
)
 Robbie T. Boone and Paula P. Boone,)
)
 Defendants.)
)
 _____)

2021-CP-24-00361

FINAL ORDER

This matter is before the Court on the Complaint of the above-captioned Plaintiff, seeking to quiet title to certain real property and clear tax title in the County of Greenwood, State of South Carolina (hereinafter "the Property") described hereinbelow.

The case was initiated by the filing of a Summons and Complaint on April 22, 2021. Plaintiff filed this action in the nature of a declaratory judgment action, alleging the right of use of a purported abandoned or unopened road traversing the Defendants' front yard to the Plaintiffs property. Defendants counter-alleged the abandonment of a never opened road by the predecessors in title of both Plaintiff and Defendants, non-use by Plaintiff, Defendants' paramount title to the strip of property in question by virtue of record title and adverse possession under color of title, and that Plaintiff was otherwise barred from arguing against Defendants' title by prescribed statutes of limitation and the equitable claim of laches.

This matter was referred to the Honorable W. Reid Cox, Jr., Esq., as Special Referee by Order of the Honorable Chastity Copeland, Greenwood County Clerk of court, filed on December 14, 2023. A hearing on this matter was held on March 12, 2024. Notice of the hearing was properly served upon all parties or otherwise waived. Present at the hearing were Plaintiff, James Ernest Young, Jr., represented by C. Rauch Wise, Esq., and Defendants Robbie T. Boone and Paula P. Boone, represented by Douglas L. Bell, Esq.. The Court heard testimony of Plaintiff and Defendants, and received into evidence exhibits from the chain of title of both Plaintiff and Defendants, as well as photographs, tax maps, and other records. Plaintiff additionally submitted

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testimony from Butch Moore. Defendants additionally submitted testimony of Sean White. After testimony, in lieu of legal argument, the parties submitted legal briefs for the Court's review.

Upon review of the pleadings, exhibits and legal briefs, and based upon the evidence testimony and argument presented by the parties, the Court hereby makes the following findings of fact and law:

FACTS

1. Plaintiff James Ernest Young, Jr., is the record titleholder to that certain parcel of real property identified by Greenwood Tax Parcel Identification Number 6856-020-515, as conveyed to Plaintiff by Deed of Benjamin McKellar Lawrence dated January 7, 2019, and recorded in the Office of the Clerk of Court for Greenwood County in Book 1609 at Page 1280 ("Young Property").
2. Defendants Robbie T. Boone and Paula P. Boone (collectively "Boone") are the record titleholders to that certain parcel of real property identified by Greenwood County Tax Parcel Identification Number 6856-013-500, being an unnamed lot together with Lots 11 and 12 of Block C of Green Acres Subdivision along with a strip of property designated as unopened street (All referred to herein as the "Boone Property") as shown on that certain Plat recorded in the Office of the Clerk of Court for Greenwood County in Book 66 at Page 69, as conveyed to Paula P. Boone by deed of Carl E. Patterson dated November 21, 2012, and recorded in the Office of the Clerk of Court for Greenwood County in Book 1337 at Page 174, and subsequently conveyed from Paula P. Boone to Paula P. Boone and Robbie T. Boone by deed dated November 6, 2018, and recorded in the Office of the Clerk of Court For Greenwood County in Deed Book 1606 at Page 2972.
3. A.S. Wilkinson acquired and sold certain parcels of real property that had been subdivided as a proposed residential subdivision known as Green Acres Subdivision, which subdivided lots had been shown on a certain plat of survey dated September 4, 1937, and recorded in the Office of the Clerk of Court for Greenwood County in Book 2 at Page 8 ("1937 Plat").
4. On or about March 31, 1954, A.S. Wilkinson, J. Ernest Young, Macy May George, Mike G. Miserlis and Sam Agnew, as the then owners of subdivided lots within Green Acres



- Subdivision, entered into an Agreement (“1954 Agreement”) subsequently recorded in Deed Book 105 at Page 367 in the Office of the Clerk of Court for Greenwood County.
5. The 1954 Agreement stated that a certain strip of property shown as an unopen and unnamed road on the 1937 Plat would never be opened and all parties to the 1954 Agreement agreed that A.S. Wilkinson would retain ownership of a portion of the strip as an outlet for the lot owners of lots 11 and 12 of Block C of Green Acres Subdivision to have access to East Henrietta Avenue.
 6. Subsequent to the 1954 Agreement, the parties thereto executed and delivered cross deeds of conveyance for the strip of property, so that the owners of lots within Blocks B and C of Green Acres Subdivision each obtained fee simple title to that portion of the strip of property immediately adjacent to their lots to the centerline of the strip.
 7. That A.S. Wilkinson conveyed Lot 12 of Block C of Green Acres Subdivision to Mike Miserlis by deed dated March 31, 1954 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 105 at Page 372.
 8. That Mike Miserlis conveyed Lot 12 of Block C of Green Acres Subdivision to Grace A. Martin by deed dated October 11, 1977 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 261 at Page 586.
 9. That A.S. Wilkinson conveyed the unnamed Lot within Block C of Green Acres Subdivision adjoining Lot 12 to Furman B. Coleman and Lovie F. Coleman by deed dated May 19, 1950 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 85 at Page 225.
 10. That Furman B. Coleman and Lovie F. Coleman conveyed the unnamed Lot within Block C of Green Acres Subdivision adjoining Lot 12 to Mike Miserlis by deed dated March 27, 1951, and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 86 at Page 120.
 11. That Mike Miserlis conveyed the unnamed Lot within Block C of Green Acres Subdivision adjoining Lot 12 to Mary Miserlis by deed dated September 24, 1959 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 142 at Page 101.



12. That Mary Miserlis conveyed the unnamed lot within Block C of Green Acres Subdivision adjoining Lot 12 to Grace A. Martin by deed dated October 20, 1967 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 205 at Page 535.
13. That A.S. Wilkinson conveyed Lot 11 of Block C of Green Acres Subdivision to J.H. Hulsey by deed dated October 11, 1939, and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 61 at Page 219.
14. That J.H. Hulsey died intestate on or about December 27, 1945, seized and possessed of Lot 11.
15. That the heirs at law of J.H. Hulsey conveyed Lot 11 of Block C of Green Acres Subdivision to Mike Miserlis by deed dated March 1, 1963 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 170 at Page 454.
16. That Mike Miserlis conveyed Lot 11 of Block C of Green Acres Subdivision to Mary Miserlis by deed dated March 11, 1963 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 170 at Page 466.
17. That Mary Miserlis conveyed Lot 11 of Block C of Green Acres Subdivision to Grace A. Martin by deed dated October 20, 1967 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 205 at Page 335.
18. That Grace A. Martin conveyed lots 11, 12 and the unnamed lot within Block C of Green Acres Subdivision to William N. Sperry and Marlene Sperry by deed dated October 25, 1977, and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 261 at Page 832.
19. That William N. Sperry and Marlene Sperry conveyed lots 11, 12, and the unnamed lot within Block C of Green Acres Subdivision to James S. Klauber by deed dated December 31, 1991, and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 366 at Page 853.
20. That Sara Catherine Wilkinson, as the sole surviving heir to A.S. Wilkinson, conveyed to James S. Klauber that certain parcel or strip of land ("Strip") previously retained by A.S. Wilkinson as an outlet for Lots 11 and 12 of Block C of Green Acres Subdivision as shown on that certain plat recorded in Book 66 at Page 69 in the Office of the Clerk of Court for Greenwood County by Deed dated December 30, 1991, and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 366 at Page 862.



21. That James S. Klauber conveyed Lots 11, 12 and unnamed Lot within Block C of Green Acres Subdivision (all combined as Lot A) together with the Strip to Karen Hughston Klauber by deed dated April 26, 1999, and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 568 at Page 346.
22. That Karen Hughston Klauber n/k/a Karen H. Nichols conveyed Lots 11, 12 and unnamed Lot within Block C of green Acres Subdivision (all combined as Lot A) together with the Strip to Martha Pitts Carey by deed dated May 17, 2000, and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 621 at Page 274.
23. That Martha Pitts Carey conveyed Lots 11, 12, and unnamed Lot within Block C of green Acres Subdivision (all combined as Lot A) together with the Strip to Carl E. Patterson by deed dated November 20, 2012 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 1337 at Page 169.
24. That Carl E. Patterson conveyed Lots 11, 12 and unnamed Lot within Block C of Green Acres Subdivision (all combined as Lot A) together with the Strip to Carl E. Patterson and Paula P. Boone as joint tenants with rights of survivorship by deed dated November 21, 2012, and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 1337 at Page 174.
25. That Carl E. Patterson died on or about December 16, 2017.
26. That Paula P. Boone conveyed Lots 11, 12 and unnamed Lot within Block C of green Acres Subdivision (all combined as Lot A) together with the Strip (all referred to herein as the "Boone Property") to Paula P. Boone and Robbie T. Boone as joint tenants with rights of survivorship by deed dated November 6, 2018 and recorded in the Office of the Clerk of Court for Greenwood County in Deed Book 1606 at Page 2972.
27. That Defendants Boone obtained title to the Boone Property by the aforesated deeds and under color of title through unbroken chains of title over an 80 year period originating from A.S. Wilkinson.
28. That the Strip to which Plaintiff has claimed a public interest was never opened as a public thoroughfare, as acknowledged by all parties to the 1954 Agreement, which specifically states in pertinent part "since the establishment of the said subdivision and the preparation of said Plat, it has been made to appear that it is impracticable and not feasible to open the proposed street. . ."



- 29. That the parties to the 1954 Agreement acknowledged that it was not feasible to open the proposed street after the original 1937 Plat was drawn, meaning the proposed street had not been used as a public thoroughfare at the time.
- 30. That Plaintiff's predecessor in title as to Lots 1,2,3 and a portion of 4 in Block B" at the time of the 1954 Agreement was J. Ernest Young, and as to Lot 10 of Block C at the time of the 1954 Agreement was A.S. Wilkinson.
- 31. That J. Ernest Young, for himself, and his heirs, successors and assigns as to Lots 1,2,3 and a portion of 4 of Block B of Green Acres Subdivision, consented to forever recognize the closure of the proposed street and abandonment of any interest therein as a thoroughfare.
- 32. That A.S. Wilkinson, for himself, his heirs successors and assigns as to Lot 10 of Block C of Green Acres Subdivision, consented to forever recognize the closure of the proposed street and abandonment of any interest therein as a thoroughfare.
- 33. That A.S. Wilkinson, as the owner of the Strip, through the 1954 Agreement, acknowledged that he would allow only the portion of the Strip between Lots 11 and 12 of Block C of Green Acres Subdivision and Henrietta Street to be used as an outlet for the benefit of the owners of Lots 11 and 12 of Block C, and no others.
- 34. That no owner of Lots 11 and 12 ever constructed a residence on either lot, and never used the Strip as an outlet.
- 35. That title to Lots 11 and 12 was first combined in common ownership in Grace A. Martin on or about October 11, 1977.
- 36. That title to the Strip was combined or merged with title to Lots 11 and 12 in the name of James S. Klauber on or about December 30, 1991 ("1991 Klauber Deed"), extinguishing the necessity of any access easement or outlet for the benefit of Lots 11 and 12.
- 37. That the 1954 Agreement constituted an express abandonment of any right of way or easement created by the 1937 Plat.
- 37. That all parties and members of the public had record notice of the 1954 Agreement and the 1991 Klauber Deed, and no party no party claimed any right in the Boone Property.
- 38. That at all time times Plaintiff has enjoyed access to his real property from abutting road frontage along Henrietta Street.



39. That Plaintiff did not establish actual use of the Strip during his ownership or his predecessor since the 1991 Klauber Deed.
40. That Plaintiff's witness Butch Moore was uncertain as to whether his access to the rear of Plaintiff's property was from Plaintiff's property or the Strip.
41. Defendants Boone have maintained continuous ownership of the Boone Property under color of title since November 21, 2012, with chains of title originating from A.S. Wilkinson and for the Strip since the 1991 Klauber Deed.
42. That Defendants Boone have made significant improvements to the Boone Property including the addition of soil, concrete and brick walkways, drives and parking pads, lighting, drainage, landscaping and fencing.
43. That Defendants Boone have been in continuous, uninterrupted possession of the Boone Property since November 21, 2012, and their predecessors in title were in continuous, uninterrupted possession of the Boone Property during their respective periods of ownership, as to the entirety of the Boone Property, inclusive of the Strip, since December 30, 1991.
44. That Defendants Boone's use of the Boone Property has been open and hostile to all others, securing buildings, parking vehicles and maintaining all parts thereof as a personal residence with surrounding drives, walkways, and residential yard.
45. That the Boone Property has been identified as a single tax parcel by the County of Greenwood, South Carolina, bearing number 6856-013-500 during the period of Defendants Boone's ownership, and prior thereto under Tax Map No. 098-12-15-018.
46. That Defendants Boone have paid all ad valorem taxes assessed against the Boone Property since November 21, 2012, and that their predecessors in title have paid all ad valorem taxes assessed against the Boone Property, including the Strip, since at least 1991.
47. That Defendants Boone are the owners of a One Hundred and 00/100 (100.00%) Percent undivided interest in the Boone Property as joint tenants with rights of survivorship and not as tenants in common.
48. That Defendants Boone have allowed no other person to occupy the Boone Property with the exception of guests, permittees and invitees since acquisition.



- 49. That Defendants Boone are entitled to an order of this Court confirming the vesting of legal title to the Boone Property in Defendants Boone to the exclusion of all others, including the named Plaintiff.
- 50. That Defendants Boone would suffer irreparable injury if any party was allowed to claim title to or interest in the use of the Boone Property, including the Strip, which runs through the front yard of Defendants Boone, and upon which are constructed landscaping, concrete and brick walkways, lighting irrigation, concrete drives and parking pads.
- 51. That Plaintiff is barred by the doctrine of laches to establish any claim to or right of use to the Boone Property, including without limitation the Strip.
- 52. That Plaintiff is not now nor has ever been an owner of Lots 11 or 12 of Block C of Green Acres Subdivision.
- 53. That Plaintiff's predecessor in title executed and delivered the 1954 Agreement to forever close and abandon the proposed street, specifically acknowledging that the Strip retained by A.S. Wilkinson would be used for the exclusive benefit as an outlet for the owners of lots 11 and 12.
- 54. That Plaintiff has permanent legal access to his real property as it fronts on a public street, known as Henrietta Avenue.
- 55. That the Strip was never opened as a public thoroughfare, and was never maintained by any public body, nor members of the public.
- 56. That there was no testimony or evidence presented that there was any private use of the Strip for and during the period from the abandonment by the 1954 Agreement.
- 57. That Plaintiff has no standing to raise any claim as to ownership of any portion of the Boone Property, nor right of use to any portion thereof, including the Strip.

LAW

Abandonment

Plaintiff's argument is that the Strip of land in question was an unopened road, and as a road was subject to Plaintiff's use. Plaintiff did not own any adjoining property to the Strip of land in question until 2018. Notwithstanding, Plaintiff testified to some intermittent use for landscaping purposes more than 50 years ago when his father owned adjoining property, and



offered Butch Moore's testimony for the proposition that Mr. Moore used the strip during the ownership of Plaintiff's sister for landscaping approximately ten to fifteen years ago. Mr. Moore testified under oath that he accessed the rear of the Plaintiff property from the Plaintiff property. He was asked to clarify that position by the Court and reaffirmed that testimony. The Plaintiff's attorney attempted to reform that testimony but it was unrefuted. There was no undisputed evidence of use by Plaintiff or predecessors in the past thirty years.

A review of pertinent case law reveals that "[i]t is generally held that where land is divided into lots according to a plat thereof, showing streets, and lots are sold and conveyed with reference to said plat, the owner thereby dedicates the street to the public. Ordinarily there must be an express or implied acceptance before the dedication is complete, and such acceptance must be made within a reasonable time." Outlaw v. Moise, 222 S.C. 24, 71 S.E. 2d. 509 (1952). However, "as between the owner, who has conveyed lots according to a plat, and his grantee or grantees, the dedication is complete when the conveyance is made, even though the street is not accepted by public authorities." Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E. 2d 922 (1965).

As to a public right of way, there must be dedication and acceptance. The original developer recorded a plat of record showing the strip of land as an unnamed street and did make conveyances based on said plat. Notwithstanding, the Strip was never opened as a street and there was no acceptance by the State or County for public use, nor was there public use. Therefore, the only possible right created by conveyances referencing the 1937 Plat would have been a private easement in any grantee of record that purchased a lot adjoining the Strip by reference to the 1937 Plat. "An easement may be lost by abandonment and in determining such question the intention of the owner to abandon is the primary inquiry. The intention to abandon need not be by express declaration, but may be inferred from all of the facts and circumstances of the case. It may be



inferred from the acts and conduct of the owner and the nature and situation of the property where there appears some clear and unmistakable affirmative act or series of acts clearly indicating, either a present intent to relinquish the easement, or purpose inconsistent with its further use.” Hodge v. Manning, 241 S.C. 142, 151, 127 S.E.2d 341, 345 (1962).

In 1954, A.S. Wilkinson entered into an agreement (the “Agreement”) with each grantee of lots adjoining the strip in question recognizing the strip was never opened as a road, declaring that it would be impractical to do so, and terminating any easement in the strip, with the exception of an easement for the benefit of the owners of Lots 11 and 12 across the limited portion of that strip fronting along Lots 11 and 12. The Agreement was recorded in the official real property records of Greenwood County. The Agreement was introduced at trial without objection. The Agreement is binding upon the parties to the agreement, and their heirs, successors and assigns. As Plaintiff points out in his brief, and with only limited exceptions that Defendants will address hereinbelow, it is a well settled principle that a grantee that derives title from a grantor “cannot stand in a more advantageous position than they did, nor can he claim any greater or superior rights than could be asserted by his grantors. . .” Mobley v. Cummings, 35 S.C. 101, 14 S.E. 721, 726 (1892). In this instance, Mr. Wilkinson released the private easement as the owner of Lot 10, and the Plaintiff’s father, James Ernest Young, released the private easement as the owner of Lots 1,2,3, and a portion of 4, which together comprise all of the Plaintiff’s current property. The Agreement was followed by cross deeds of conveyance among owners dividing the strip and combining it with the adjoining lots on either side of the centerline so as to completely extinguish any claim to use of the strip. The actions of these parties is a clear expression of intent of abandonment and must be recognized.



As to the issue of abandonment, the Agreement is clear and was an express act. Our courts have gone further, in the absence of an express act, and stated that in a determination of abandonment, “[i]t is proper to consider, and to give due weight to the nature of the property or right, and the conduct of the owner [in relation] to it, and also the fact, where it is a fact, that at the time the question comes up for determination such property or right is being adversely used by another, or others. Lapse of time, and nonuser, are likewise circumstances to be taken into consideration, even though neither of them is, in itself, an element or act of abandonment.” Hodge v. Manning, 241 S.C. 142, 152, 127 S.E.2d 341, 345 (1962). The issue of adverse use will be addressed in this brief below. The undisputed evidence submitted to the Court is that there was no public use of the strip post abandonment, except for Plaintiff’s testimony of intermittent use for traversing with equipment before he moved from his parent’s home prior to 1970. Even the owners of Lots 11 and 12, for whom a private easement was reserved, did not make use of the strip, until Lots 11 and 12 were combined with adjoining property within Defendants chain of title, thereby merging title and extinguishing the private easement for Lots 11 and 12.

The Supreme Court of the State of South Carolina addressed a case with substantially similar facts in Immanuel Baptist Church v. Barnes, 274 S.C. 125, 264 S.E. 2d 142 (1980). In that case, the parties were adjacent property owners whose respective chains of title shared a common grantor. The owner of a skating rink fronting along a public right of way, sought additional access for convenience of patrons by connecting a private driveway upon his property to a private driveway on the adjoining church’s land that was used by the church between its facilities. The connection of the private roadways would have in effect opened a shared roadway what was once planned as “Benson Drive” and was designated as such on a plat prepared in 1955 of a proposed residential subdivision to be known as Happy Acres. The Toole family had envisioned the



subdivision, but through the years sold property to the church both prior to and after the recording of the plat. The Toole family decided to abandon the residential project and close the proposed streets shown on the Plat. Much like the Agreement in the instant case, the Toole family executed an "Agreement for Closing Streets" which was signed by the family lots owners and the church. As in the instant case, the agreement reflected the intent of the parties to close Benson Drive, but that portion which divided the Church property was left open by the agreement for its use. The skating rink owner, like Plaintiff, argued that he took title by reference to the plat showing Benson Drive, and that there was a dedication of a private easement.

The Supreme Court in Immanuel noted the principle of creation of private easement outlined in Outlaw v. Moise, and then noted the equally well-settled principle that an easement may be relinquished by abandonment, express or implied, citing Hodge v. Manning. The Court held "if there appears a present intention to relinquish the easement, or if there is clear evidence of a purpose inconsistent with the existence of the easement, then a case for abandonment is presented." Immanuel Baptist Church v. Barnes, 274 S.C. 125, 131, 264 S.E. 2d. 142, 145 (1980). In the Immanuel case the Court held that the agreement reflected the intention of the owners and those with beneficial interests to abandon the easement and "[t]he Agreement for Closing Streets was of record and within appellant's chain of title at the time appellant originally purchased the property from the Toole children. This was sufficient to put him on notice of the agreement and impute to him the recitals contained therein." Immanuel at 132, 145.

In the instant case, the parties to the Agreement never sought to revive the rights abandoned by the Agreement, and there is no record evidence of any documents creating new rights. The strip was blocked by the original curbing of the public roadway for approximately seventy years. Even absent the express act of the Agreement, the Court must consider the nonuse by the general



public and even the owners of lots 11 and 12, and the adverse use by the Defendants and their predecessors in title since 1991, a span of more than 30 years, to make the strip in question a portion of the yard and curtilage of the home located at 406 East Henrietta Avenue. Plaintiff cannot avail himself of an easement that has been abandoned for seventy years.

Paramount Title

Defendants Boone are the current record titleholders of the Boone Property, including the Strip of property in question. One or both of Defendants have held record title since November 21, 2012. Until the filing of this action, that title remained undisturbed. The uncontradicted testimony revealed that Defendants' predecessor in title, James Klauber, obtained a quitclaim title to the strip from Katherine Wilkinson as the sole heir of A.S. Wilkinson in 1991. A.S. Wilkinson retained title to the Strip in question after the Agreement and cross conveyance deeds were complete to remain as an outlet for Lots 11 and 12, which merged in title with James S. Klauber. The testimony revealed that there was no conveyance of the Strip prior to 1991. From 1991 through the date of the hearing, record title to the Strip was conveyed from titleholder to titleholder ending with Defendants. The uncontradicted testimony revealed that neither party had knowledge of any title claims, objections to title, injunctions, or actions to enforce easement prior to the filing. Plaintiff, although not a titleholder at the time, testified that he and his sibling apparently had both record notice and actual notice that James Klauber obtained and claimed title to the strip in question in 1991.

The party establishing legal title is presumed to be in possession thereof and any other party's occupation of the property is subordinate unless adverse possession or easement by prescription is established by that other party by clear and convincing evidence. S.C. Code Ann. § 15-67-210 (2005); Taylor v. Heirs of William Taylor, 419 S.C. 639, 650-51, 799 S.E.2d 919, 924-



25 (Ct. App. 2017). Moreover, contradicting Plaintiff's argument that a quitclaim conveyance is of no force nor effect, *color of title can derive from a defective deed or a quitclaim deed even though the grantor was without interest in or title to the property conveyed*. See Graniteville Co. v. Williams, 209 S.C. 112, 39 S.E.2d 202 (1946) (emphasis added). Plaintiff submitted no evidence of adverse possession to overcome the statutory presumption of superiority of legal title to the subject property in Defendants. See S.C. Code Ann. § 15-67-210 ("In every action for the recovery of real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law. The occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title unless it appears that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action.").

The cardinal rule of an action to quiet title is that the moving party must establish its claim based upon the strength of its own claim, and not the weakness of the other party's claim. Hoogenboom v. City of Beaufort, 315 S.C. 306, 313, 433 S.E.2d 875, 880 (Ct. App. 1992) ("In an action to quiet title, the plaintiff must recover on the strength of his own title, not on the alleged weakness of the defendant's title."). The Plaintiff failed to introduce evidence of any kind on this issue, other than the contradictory testimony of Butch Moore.

Plaintiff again is arguing for the Court to ignore Defendants established legal title, to shift the burden of proof. Defendants legal title affords them a presumption of possession and a presumption of unencumbered title. It is Plaintiff's burden to bear to prove that Defendants' title is encumbered by an easement. It is Plaintiff's burden to overcome the Agreement, and the cross conveyances, the Wilkinson deed to Klauber, and the intervening title history. The only evidence presented on this basis was the testimony of Butch Moore, who testified under oath that he



accessed the back yard of the Plaintiff's predecessor's property through the side yard of that property, and not across the strip. Mr. Moore was questioned separately on cross examination and the Court asked for clarification and this was reaffirmed. After Mr. Moore testified, Plaintiff and Plaintiff's counsel attempted to reform this testimony.

Assuming for argument's sake that Plaintiff had successfully attacked Defendants' legal record title by clear and convincing evidence, Defendants in turn established legal title by adverse possession under color of title since 1991. Plaintiff recites the principle that no grantee can gain greater rights than their grantor. There are exceptions to that rule and adverse possession under color of title, where additional rights are created by the actions of the party and the passage of time, is one notable exception. That is precisely why the Court cannot look at a ninety year old plat and conveyance and apply law to the current parties, without considering the intervening history. As Defendants established through the chain of title, legal title under color of title originating from the Wilkinson Deed, the only requirement of actual possession necessary to establish adverse possession under color of title in favor of Defendants is a writing describing the entire area claimed; possession of any part of this area then operates as a possession of the whole. There was uncontradicted testimony that the Defendants maintained the strip as a part of the yard and curtilage of the home, made improvements thereon, and maintained the walkways, driveways, lawn, and curbing so as to prevent anyone's passage diagonally across the front yard of the Defendants. The Defendants and their predecessors in title have been assessed with the strip being included as a portion of their tax parcel since 1991, and they have paid all taxes assessed against the subject property.



Equitable Considerations/Laches

If Plaintiff had established a claim for a private easement by clear and convincing evidence, absent the seventy year abandonment, and overcoming the legal title claim that remained unbroken for more than thirty years, the Court would be required to determine the extent and allowable use of same versus equitable considerations. Plaintiff or his predecessors in title actively engaged in the creation, execution and delivery of documents which upon the face of same purported to abandon the very easement for which he argues entitlement. Although the strip was to be maintained for Lots 11 and 12, Plaintiff argues it should benefit Lots 10 and 1. If the Court were to allow that, what would prevent the owners of Lots 9 and 2 from making the same argument, and so on. Defendants' predecessors in title built a residence in 1948, with walkways encroaching into the alleged easement area. Public authorities constructed rectangular edge curbing along East Henrietta Avenue preventing the use of the alleged easement area based upon examination of tax maps for more than a fifty year period. Defendants testified that Lots 11 and 12 were landscaped and that area as well as the subject area fenced shortly after they acquired title to the property in approximately 2013. They testified that they caused curb cuts to allow access from East Henrietta in 2016, hiring a contractor to level the area, clear it, and add fill dirt in the alleged easement area and improving the same with fill dirt and gravel as early as 2016 at an expense of \$4,800.00. The Defendants also improved the area by installing electrical lines, exterior outlets, and exterior lighting in 2016 at an expense of approximately \$800.00. The Defendants continued to make improvements to the alleged easement area to include pouring a concrete pad in 2018 at an expense of \$7,000.00, and additional walkways at an expense of \$4,000.00, to allow for parking and facilities for the Defendants' motorcoach. The Defendants added additional landscaping in the



area in 2019 at an expense of \$5,000.00. Most of the improvements were completed prior to filing of this suit.

Plaintiff is barred from recovery based upon the equitable doctrine of laches. The 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. Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E. 2d 525, 527(1988). Under the doctrine, if a party knowing his rights does not seasonably assert them, and by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. See Robinson et al. v. Estate of Harris, 388 S.C. 630, 698 S.E. 2d 222 (2010). In the Robinson case, the court held that claimants of real property in an action to quiet title thirty nine years after a conveyance was barred by the doctrine of laches. The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. Hallums, 296 S.C. at 198, 371 S.E. 2d at 527.

Plaintiff testified that he was aware that James Klauber acquired title to the strip in 1991. Plaintiff again was not a titleholder but purported to represent the titleholder. No action was taken by Plaintiff in any capacity on his own behalf or on behalf of any predecessor in title until 2020. That delay is unreasonable. The delay caused prejudice to the Defendants and their predecessors in title by the construction of walkways, driveways, utility installations, landscaping, grading and fill dirt to improve the residence at 406 East Henrietta Avenue. Even if Plaintiff's legal arguments overcome the many burdens, Plaintiff and his heirs, successors and assigns should be constrained from using any easement in equity.

Compensation of Special Referee



Pursuant to SCRCP 53(d), it is incumbent on the Special Referee to specify the compensation due him for his services and the liability for payment of same.

In this case, the Special Referee has spent six hours in trial, legal research, viewing of the premises involved, consideration of the briefs of the parties, and communication with the attorneys of record. I find that a fee of \$1,800.00 would constitute reasonable compensation for such efforts. I also find that it is fair and equitable that this fee be shared equally by the parties.

THEREFORE, IT IS HEREBY ORDERED:

A. Defendants Boone own a 100% undivided interest in the Boone Property, including the Strip, in fee simple to the exclusion of the interest of all others, including Plaintiff.

B. That all other persons and/or entities named herein or derivative of those named herein have no right, title, interest in, or lien upon the Property, and are forever barred from claiming or asserting the same for matters occurring prior hereto, specifically including without limitation any claim to title, right of way, road, ingress/egress easement or otherwise;

C. That the Clerk of Court for Greenwood County is hereby authorized and directed to record a copy of this Order in the official records for real estate transactions to place all third parties on notice of the vested title in Defendants Boone.

D. The Plaintiff is ordered to pay the sum of \$900.00 to the undersigned and the Defendants jointly are ordered to pay the sum of \$900.00 to the undersigned.

AND IT IS SO ORDERED.

Nov. 7, 2024

BY:  _____

W. Reid Cox, Jr., Esq.

Special Referee for Greenwood County