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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Benjamin C.P. Sapp, Special Referee

Civil Action No. 2021-CP-15-00210
Appellate Case No. 2025-002580

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 Della Stokes, Leroy Smalls, Jr. a/k/a Leroy H. Smalls, Gwendolyn Bright, Elizabeth Sawyer, Johnny J. Smalls, Micah Frasier, Zelemania 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 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 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 Loucille Chisolm, Earl Walker, Pearl Hamilton, James Hamilton, Joseph Hamilton, Elise Simmons, James Washington, Victoria Johnson Green, David Washington, Sr., Carrier 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 designation infants, persons under disability, incompetents, imprisoned, or those persons 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.

of which Gwendolyn Bright, Felicia Cox, Micah Frasier, Elizabeth Sawyer, Donald R. Smalls, Johnny J. Smalls, Leroy Smalls, Ralph B. Smalls, Cherise Walker Turner are the Appellants,

and

Donna Mitchell and Curtis Mitchell are the Respondents.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT ERRED IN FINDING THAT THE RESPONDENTS ACQUIRED OWNERSHIP BY ADVERSE POSSESSION BECAUSE THEIR POSSESSION WAS PERMISSIVE, NOT HOSTILE.
- II. THE TRIAL COURT ERRED IN FINDING THAT RESPONDENTS ACQUIRED OWNERSHIP OF THE PARCEL UNDER A THEORY OF ACQUIESCENCE.

STANDARD OF REVIEW

In an action at law tried before a master [special referee], the appellate court "will affirm the master's factual findings if there is any evidence in the record which reasonably supports them." Estate of Tenney v. S.C. Dep't of Health & Env'tl. Control, 393 S.C. 100, 105, 712 S.E.2d 395, 397 (2011) (quoting Query v. Burgess, 371 S.C. 407, 410, 639 S.E.2d 455, 456 (Ct. App. 2006)). However, "[a]n appellate court may determine questions of law with no particular deference to the trial court." Id. (quoting Verenes v. Alvanos, 387 S.C. 11, 14, 690 S.E.2d 771, 772-73 (2010)).

STATEMENT OF CASE

This matter arises from a case filed in Colleton County, South Carolina, subject to the Clementia C. Pinckney Uniform Partition of Heirs Property Act, Section 15-61-310, *et seq.* of the S.C. Code ("Act"), concerning the partition and possible sale of the subject Heirs' property. The Plaintiffs and Defendants in the matter are all Heirs of Charity Washington ("Heirs"), except for Guy Ackerman, Rehabilitation Consultants of Charleston, LLC, Donna Mitchell, and Curtis Mitchell. (emphasis added).

On April 12, 2021, Plaintiff, Christopher Hamilton ("Hamilton"), filed a Complaint (C/A No. 2021-CP-18-00210) which included a cause of action for the partition of a one (1) acre tract of land. (Complaint of Hamilton, ¶57-62, April 21, 2021). The Complaint stated that Millie

Washington (“Washington”)¹, an heir of Charity Washington, raised Isabel Mitchell², but never “legally adopted” her. (Complaint of Hamilton, ¶58, April 21, 2021). The Complaint further stated that Isabel Mitchell’s children, Donna Mitchell and Curtis Mitchell (“Respondents”) were entitled to the one (1) acre tract of land under “principles of equity” (emphasis added), based on the Mitchells living at the property for about sixty-four (64) years. (Complaint of Hamilton, ¶61, April 21, 2021).

Appellants filed an Answer denying that Respondents were entitled to the one (1) acre parcel. (Answer of Appellants ¶11, Aug. 17, 2021). Thereafter, an Amended Complaint was filed in which certain Defendants, identified as Heirs, were realigned as Plaintiffs; however, the second cause of action—seeking the partition of the one (1) acre tract of land under principles of equity (emphasis added) for the benefit of the Mitchells—remained unchanged. (Amended Complaint of Plaintiffs ¶55–60, June 15, 2022). Appellants denied that Respondents were entitled to ownership of any portion of the property under “any theory” (emphasis added). (Answer of Appellants ¶9, July 22, 2022).

On December 16, 2022, Respondents filed a cross-claim against the Appellants, asserting entitlement to the one (1) acre tract under theories of adverse possession, acquiescence and recognition and the South Carolina Marketable Title Act³. (Cross-Claim of Respondents, ¶7-16, December 16, 2022). Appellants answered the cross-claims and again denied that Respondents were entitled to the one (1) acre parcel under any theory. (Answer of Appellants, ¶3-12, January

¹ Millie Washington is an heir of Charity Washington.

² Isabel [Daisy Bell] Mitchell is the mother of Respondents Donna Mitchell and Curtis Mitchell, all of whom are not heirs of Charity Washington.

³ While the Mitchells made a claim under what they referred to as the South Carolina Marketable Title Act, no such statute exists in South Carolina.

16, 2023). Additionally, Appellants asserted affirmative defenses of failure to state a claim, estoppel, laches, and waiver, and set off within their Answer. (Answer of Appellants, ¶13-19, January 16, 2023).

On August 22, 2025, the Special Referee issued an Order finding the Respondents were entitled to the one (1) acre tract of land⁴ under theories of acquiescence and adverse possession. (Order, P.7-12, August 22, 2025). Additionally, the Order referenced laches⁵.

On August 29, 2025, Appellants filed a Motion for Reconsideration. (Motion of Appellants, August 29, 2025). On October 22, 2025, Appellants filed a Memorandum in Support for Reconsideration in which they stated that Appellants did not acquiesce to Respondents' purported ownership of the property and had simply allowed Respondents to occupy their property honoring the longstanding generational permission granted by Washington and the additional heirs of Charity Washington. (Memorandum in Support of Appellants' Motion, October 22, 2025). Additionally, the Appellants stated that the Respondents, whose occupancy was permissible, did not have a claim for adverse possession as the hostility element was not satisfied. On December 2, 2025, the Special Referee entered an Order denying Appellants' Motion for Reconsideration.

⁴ In the Order issued by the Special Referee, the only description of the property being given to the Mitchells is the reference to an unapproved and unrecorded plat. There is no other description.

⁵ The Order referenced laches but only in reciting general principles of law (Order, P.7, August 22, 2025), laches was neither plead by Respondents nor relied upon as a basis for the ruling. Laches is an affirmative defense under Rule 8 (c), SCRCP, and must be specifically plead. In the event the Special Referee relied on Laches in concluding the Mitchells are entitled to any property that reliance is misplaced as Laches is only a defense and cannot be relied on to obtain affirmative relief.

FACTS

Appellants and other heirs allowed Respondents to reside on the at issue one (1) acre parcel. The parties were satisfied with the status quo for decades until Hamilton filed the Complaint asserting, among other claims, that the Respondents were equitably entitled ownership to a one (1) acre tract (emphasis added). Appellants expressly denied that the Mitchells are entitled to ownership under any theory (Appellants' Answer, ¶9, July 22, 2022). The Complaint and Amended Complaint did not allege any basis for relief other than "principals of equity" (emphasis added).

Because the Respondents' occupancy has always been permissive, ownership cannot be established under theories of adverse possession or acquiescence. Respondents lived on the property with Appellants' and the additional Heirs' knowledge and consent, which is fatal to any claim of adverse possession or acquiescence. (Tr. p. 62, l. 24–25; p. 63, l. 1–2; p. 65, l. 11–14).

Notably, Respondents asserted their claims only against Appellants. No claims were brought against any other heirs of Charity Washington. Because title to heirs' property is held collectively by the heirs of Charity Washington, any claim seeking to divest ownership must necessarily be asserted against all Heirs, not selectively against only some.

ARGUMENTS

I. THE TRIAL COURT ERRED IN FINDING THAT THE RESPONDENTS WERE ENTITLED TO THE ONE (1) ACRE TRACT OF LAND BY ADVERSE POSSESSION BECAUSE THEIR POSSESSION WAS PERMISSIVE, NOT HOSTILE.

"The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time." Taylor v. Heirs of William

Taylor, 419 S.C. 639, 649, 799 S.E.2d 919, 924 (Ct. App. 2017). “Because an adverse possession claim is an action at law, the character of the possession is a question for the jury or fact finder...” Butler v. Lindsay, 293 S.C. 466, 471, 361 S.E.2d 621, 624 (Ct. App. 1987).

“A party asserting ownership by adverse possession must show he [they] has [have] met the elements by clear and convincing evidence.” Taylor, 419 S.C. at 651, 799 S.E.2d at 924–25. “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.” (emphasis added) Id.; Knox v. Bogan, 322 S.C. 64, 70, 472 S.E.2d 43, 47 (Ct. App. 1996). “Where one enters the land under permission from the title holder, the possession can never ripen into an adverse title unless a clear and positive disclaimer of the title under which entry was made is brought home to the other party.” Young v. Nix, 286 S.C. 134, 136, 332 S.E.2d 773, 774 (Ct. App. 1985) (emphasis added).

Hamilton asserted that, under “principles of equity” (emphasis added), Respondents were entitled to the one-acre tract. (Complaint of Hamilton, ¶61, April 21, 2021). However, adverse possession, claimed by the Respondents, is not an equitable remedy—it is an action at law governed by strict legal elements that must be proven by clear and convincing evidence. Butler, 293 S.C. at 471, 361 S.E.2d at 624; Taylor, 419 S.C. at 651, 799 S.E.2d at 924–25. Title through adverse possession, a legal claim, cannot be awarded based upon equitable considerations, long occupancy, or perceived fairness. Instead, Respondents’ claim must rise or fall on whether they satisfy each required element of adverse possession as a matter of law.

The dispositive issue in this analysis is hostility. The record establishes that Respondents’ possession originated as permissive and always remained consensual (emphasis added). (Tr. P. 27,

L. 21–25; P. 28, L. 1–12; P. 35, L. 11–14). Under South Carolina law, such possession is presumed to remain permissive absent a clear and communicated repudiation of title. McDaniel v. Kendrick, 386 S.C. 437, 444, 688 S.E.2d 852, 856; Young, 286 S.C. at 136, 332 S.E.2d at 774. The record contains no evidence of any disclaimer.

The Order, without support in the record, incorrectly states, “...the [Respondents] mother took possession of Plaintiff’s property without the consent of the other heirs and that she [Respondents’ mother] and [Respondents] have been in possession without permission since 1963.” (Order, P.10, August 22, 2025). In fact, Respondents’ mother resided with permission on the Heirs’ property—not the Plaintiff’s property—and Respondents have continued to reside there pursuant to that same generational permission. Appellants, as some of the heirs of Charity Washington, were aware that Respondents were living on the property, observed their occupancy, and at no time objected or requested that they vacate, thereby continuing and affirming the generational permission. (Tr. P. 62, L. 16–25; P. 63, L. 1–2; P. 65, L. 11–14).

Possession cannot be hostile where it is exercised with the owner’s consent and without a claim of right contrary to the title holder. Knox, 322 S.C. at 70, 472 S.E.2d at 47. While Appellants knew that Respondents were residing on the property, that alone does not constitute notice of an adverse claim. Id.; (Tr. P. 34, L. 19).

The Special Referee’s Order correctly stated that hostility requires proof that Respondents entered without permission. (Order, P.10, August 22, 2025); Knox, 322 S.C. at 70, 472 S.E.2d at 47. While the Special Referee found that Respondents had been in possession “with permission since 1963,” he also found fifty years of hostile possession. (Order, P.10, August 22, 2025). These

findings are contradictory. Because Respondents' occupancy was always permissive, the Court erred in finding that the element of hostility was met.

II. THE TRIAL COURT ERRED IN FINDING THAT RESPONDENTS WERE ENTITLED TO THE ONE (1) ACRE TRACT UNDER A THEORY OF ACQUIESCENCE.

Nothing in the record reflects any intent by Respondents or their predecessors to divest the heirs of their ownership. Likewise, the record includes no evidence of acquiescence. Kirkland v. Gross, 286 S.C. 193, 197, 332 S.E.2d 546, 548-49 (Ct. App. 1985). The record establishes that the parties consistently treated Respondents' occupancy as permissive.

Respondents admitted that no one ever told them they owned the property. Appellants testified that Respondents were permitted to remain on the property, and may continuously remain, but were not owners. (Tr. P. 35, L. 11-14). These facts are inconsistent with any finding that Appellants relinquished ownership or that both parties recognized Respondents as owners. Id. Accordingly, the record does not establish acquiescence under South Carolina law. Any finding based on acquiescence was contrary to the record.

CONCLUSION

Because the record establishes that Respondents' occupancy of the property was permissive, the Court's prior order should be reversed.

Respectfully submitted,

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