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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM CHARLESTON COUNTY

Master-in-Equity

The Honorable Mikell R. Scarborough

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Common Pleas Case No.: 2023-CP-10-00192

Appellate Case No.: 2025-001402

Katie Lynn Mallace and Micah James Mallace,..... Respondents,

v.

Southeastern Capital Corporation; Krista Brown-Penney, Co-Trustee, EM Family Trust; and John Doe and Mary Roe, representing all unknown persons having or claiming to have any right, title, or interest in or to, or lien upon, the real estate described as a portion of Third Street shown on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180, Charleston County, South Carolina, TMS# 999-00 00-366 formerly known as TMS# 514-09-00-047, their heirs and assigns, and all other persons, firms, or corporations entitled to the claim under, by or through the abovenamed Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as a portion of Third Street shown on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180, Charleston County, South Carolina, TMS# 999-00-00-366 formerly known as TMS# 514-09-00-047, Defendants, of which EM Family Trust, David M. Bolach, and Terri Davis,..... Appellants.

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**APPELLANT’S FINAL REPLY TO RESPONDENT’S BRIEF**

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This appeal arises from a tax sale conducted without notice to the true owner of the property. As South Carolina law requires strict compliance with statutory notice requirements before property may be sold for delinquent taxes, the failure to provide such notice renders the sale void. Respondents' alternative theory of adverse possession likewise fails because the evidence did not establish exclusive possession of the entire parcel. For these reasons, the order quieting title in Respondents' favor should be reversed.

Respondents' brief advances several arguments that misstate both the record and the governing law. First, Respondents contend that Appellants failed to challenge the tax sale during the proceedings below. The record demonstrates that the validity of the tax sale was raised at trial and again in Appellants' Rule 59(e) motion. Second, Respondents assert that any challenge to the tax sale is barred by the statute of limitations governing tax titles. That argument fails because the statutory limitation period does not apply where the tax sale is void for lack of notice. Finally, Respondents attempt to rely on adverse possession despite failing to prove exclusive possession of the entire parcel.

Because this action involves quiet title and adverse possession, both equitable claims, this Court reviews the matter *de novo* and may make its own findings of fact according to the preponderance of the evidence. See *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). Accordingly, this Court is not bound by the trial court's factual conclusions regarding ownership of the property or the elements of adverse possession.

### **ARGUMENT**

This case does not involve a mere procedural irregularity in the tax sale process. Rather, the evidence demonstrated that the County failed to provide notice to the true property owner. A

tax sale conducted without notice to the owner is void and cannot serve as the foundation for a valid chain of title.

Respondents contend that Appellants did not challenge the validity of the tax sale during the proceedings below. The record demonstrates otherwise. Appellants contested the validity of the tax sale during trial and specifically raised the issue again in their Rule 59(e) motion following entry of judgment. A Rule 59(e) motion is an appropriate vehicle for raising errors of law committed by the trial court. Accordingly, the issue of whether the tax sale was conducted without notice to the true owner was properly presented to the trial court and is preserved for appellate review.

**I. The tax sale is void because Charleston County sent all four statutory notices only to Southeastern Capital Corporation even though Dorothy R. Ayers was the true owner.**

South Carolina courts consistently hold that tax sales must strictly comply with statutory requirements because such sales divest property owners of their rights. *Dibble v. Bryant*, 274 S.C. 481, 487, 265 S.E.2d 673, 676 (1980). Because tax sales are in derogation of the common law, statutory procedures governing them must be followed precisely. *Id.*; *Donohue v. Ward*, 298 S.C. 75, 82, 378 S.E.2d 261, 265 (Ct. App. 1989); *Smith v. Barr*, 375 S.C. 157, 651 S.E.2d 28 (2007). When the statutory notice requirements are not satisfied, the resulting tax sale is void. *Aldridge v. Rutledge*, 269 S.C. 475, 477–78, 238 S.E.2d 165, 166–67 (1977); *Rives v. Balsa*, 325 S.C. 287, 291, 478 S.E.2d 878, 880 (Ct. App. 1996). The record reflects that Appellants contested the validity of the tax sale during trial and specifically raised the issue again in their Rule 59(e) motion following entry of judgment.

The statutory scheme governing tax sales requires the county to provide notice to the delinquent taxpayer and property owner before the property may be sold. See S.C. Code Ann. § 12-51-40. The purpose of these notice provisions is to ensure that the property owner receives a

meaningful opportunity to redeem the property prior to the sale. *Tanner v. Florence Cnty. Treasurer*, 336 S.C. 552, 563, 521 S.E.2d 153, 159 (1999). Courts therefore set aside tax sales when the statutory conditions designed to protect the property owner are not satisfied. *Id.*

The evidence in this case establishes that Charleston County sent all statutory tax sale notices only to Southeastern Capital Corporation. (R. at 85–103). Trial testimony demonstrated, however, that Southeastern Capital Corporation had previously conveyed any interest it held in the property. (R. at 266–268). The Charleston County tax official further confirmed that notice of the tax sale was sent only to Southeastern Capital Corporation and not to Dorothy R. Ayers. (R. at 95). The true owner of the parcel at the time of the 2002 tax sale was Dorothy R. Ayers. (R. at 437). The deeds and property records introduced at trial demonstrated that the Ayers family held title to the disputed portion of Third Street. (R. at 282). Despite this evidence, Charleston County directed all statutory notices to Southeastern Capital Corporation, an entity that had previously conveyed any interest it may have held in the property. Ms. Ayers never received notice of the tax sale. (R. at 129-135). Because the statutory notices were sent only to a party that no longer owned the property, the true owner was deprived of the opportunity to redeem the property before the sale occurred.

The record further clarifies that Southeastern Capital Corporation did not own the portion of the property at issue at the time of the tax sale. (R. at 437). The only recorded owner of the disputed portion of Third Street between 5th Avenue and 7th Avenue was Dorothy R. Ayers, and no deed exists transferring that portion to Southeastern Capital. (R. at 282). Thus, Charleston County directed all statutory notices to an entity that neither owned nor held record title to the property actually sold, while the true owner received no notice whatsoever. The County's reliance on internal tax mapping or GIS records does not excuse its failure to provide notice to the record title owner.

Notice to the wrong party is legally insufficient to satisfy the statutory notice requirements. When the true owner receives no notice of the tax sale, the defect is jurisdictional and renders the sale void. *Dibble*, 274 S.C. at 487, 265 S.E.2d at 676; *Donohue*, 298 S.C. at 82, 378 S.E.2d at 265. The trial court therefore erred in confirming the validity of the tax deed where the undisputed evidence showed that the true owner was never notified of the impending sale.

Respondents contend that any challenge to the tax sale is barred by the statute of limitations governing tax titles. That argument misstates the law. Although S.C. Code Ann. § 12-51-160 creates a presumption of validity for tax deeds and imposes a limitations period on certain challenges, that protection applies only where the tax sale was conducted in compliance with the statutory requirements. That argument fails at the threshold because the limitations period does not apply where the tax sale itself is *void ab initio* for lack of notice. Where a tax sale is void because the owner was not provided notice, the statute of limitations does not apply. See *King v. James*, 388 S.C. 16, 24–25, 694 S.E.2d 35, 39 (Ct. App. 2010); *Reeping v. Jebbco, LLC*, 402 S.C. 195, 201–02, 740 S.E.2d 504, 507–08 (Ct. App. 2013); *Dibble*, 274 S.C. at 487, 265 S.E.2d at 676.

South Carolina courts distinguish between tax sales that are merely voidable due to procedural irregularities and those that are void due to jurisdictional defects such as failure of notice. Only the former are subject to the statutory limitations period governing challenges to tax titles. Where the true owner receives no notice of the tax sale, the sale is void ab initio and the statute of limitations does not apply.

This rule reflects the fundamental principle that a void tax deed conveys no title. A statute of limitations cannot cure a sale that was invalid from the outset. See *Leysath v. Leysath*, 209 S.C. 342, 349–50, 40 S.E.2d 233, 236 (1946). Because the County failed to provide the required notice

to the true owner, the tax sale in this case was void and conveyed no valid title to Respondents' predecessor in interest.

Furthermore, the absence of notice also raises constitutional concerns. The United States Supreme Court has made clear that due process requires notice reasonably calculated to inform property owners before the government takes action that will affect their property interests. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795 (1983). A tax sale conducted without notice to the true owner fails to satisfy that constitutional requirement.

Respondents' claim of title derives entirely from the 2002 tax sale. If that sale was void, every subsequent conveyance stemming from it necessarily fails as well. A void tax deed cannot serve as the root of title. Because the County failed to provide notice to the true owner, the tax sale conveyed no valid title to Respondents' predecessor, and the trial court erred in quieting title in Respondents' favor on that basis.

Because the statutory notice requirements were not satisfied, the tax sale was void and conveyed no title to Respondents' predecessor in interest.

**II. Respondents failed to prove exclusive possession of the entire 1.15-acre parcel where their testimony established that they used only a small portion of high ground while the remainder of the property remains marshland and an unopened street.**

Even if the tax deed were valid, the judgment cannot stand because Respondents failed to prove the elements of adverse possession. To establish title by adverse possession in South Carolina, the claimant must demonstrate possession that is actual, open, notorious, hostile, continuous, and exclusive for the statutory period. *Jones v. Leagan*, 384 S.C. 1, 6, 681 S.E.2d 6, 9 (Ct. App. 2009); *Ware Shoals Mfg. Co. v. Jones*, 78 S.C. 211, 215, 58 S.E. 811, 812 (1907). Because adverse possession results in the forfeiture of the true owner's title, the doctrine is strictly applied. *Id.*

The evidence presented at trial did not establish exclusive possession of the entire 1.15-acre parcel at issue. (R. at 241–244). The parcel consists largely of marshland and includes an unopened platted roadway historically known as Third Street. (R. at 224). Respondents’ own testimony acknowledged that they primarily used a small portion of higher ground adjacent to their residence. (R. at 241–243). Respondents admitted that their use did not extend across the marshland or the platted roadway comprising the remainder of the parcel. (R. at 244). The remainder of the parcel was not continuously occupied or controlled by Respondents.

South Carolina courts require possession that clearly demonstrates dominion over the property sufficient to place the true owner on notice that the entire tract is being claimed adversely. *Ware Shoals*, 78 S.C. at 215, 58 S.E. at 812. Possession of a small portion of a larger parcel does not establish adverse possession of the entire tract. See *id.* Adverse possession requires conduct sufficient to place the true owner on notice that the claimant is asserting dominion over the entire tract, not merely a limited portion of the property.

The record further undermines the trial court’s finding of exclusive possession. Evidence presented at trial indicated that the property had historically functioned as a passageway and had been accessed by members of the public. (R. at 319–320). Such continued access by others is inconsistent with the exclusive possession required to establish title by adverse possession. *Id.* Exclusive possession requires that the claimant exercise dominion over the property to the exclusion of others. Where others continue to use the property, the element of exclusivity is not satisfied.

Additionally, Respondents acknowledged that they sought title primarily to a small portion of high ground located near their backyard rather than to the entire parcel described in the tax deed. (R. at 241–244). Such limited use cannot support a claim of adverse possession over the entire 1.15-acre tract at issue in this action.

Because Respondents did not establish continuous and exclusive possession of the entire parcel for the statutory period, the elements of adverse possession were not satisfied. Accordingly, the trial court's finding that Respondents acquired title through adverse possession cannot stand. Under this Court's de novo review of equitable actions, the evidence does not support a finding of exclusive possession of the entire parcel.

Accordingly, the evidence does not support the trial court's finding that Respondents established adverse possession of the entire parcel.

### CONCLUSION

For the foregoing reasons, the tax sale at issue was void because the County failed to provide notice to the true owner of the property. Respondents likewise failed to establish the elements of adverse possession of the entire parcel. Accordingly, the Order quieting title in Respondents' favor should be reversed. In the alternative, this Court should vacate the judgment and remand the matter for further proceedings consistent with this Court's opinion.

Respectfully submitted,

April 22, 2026

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by or through the abovenamed Defendant(s), and all other persons or entities unknown claiming any right, title, interest, estate in, or lien upon, the real estate described as a portion of Third Street shown on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180, Charleston County, South Carolina, TMS# 999-00-00-366 formerly known as TMS# 514-09-00-047, Defendants, of which EM Family Trust, David M. Bolach, and Terri Davis,.....Appellants.

**CERTIFICATION BY COUNSEL**

I, the undersigned counsel, do hereby certify that the Appellant’s Final Reply Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

*( Signature on the page to follow )*

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**CERTIFICATION OF SERVICE**

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I hereby certify that on this 22<sup>nd</sup> day of April, 2026, I served a true and correct copy of the foregoing Appellant's Brief and Appellant's Reply Brief upon Sarah Spruill via email by sending a copy to [sspruill@hsblawfirm.com](mailto:sspruill@hsblawfirm.com).

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