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Apr 30 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable M. Anderson Griffith, Master in Equity

App. Case No. 2024-000545

Melanie Hozey,

Appellant,

v.

Alan Rutherford and Susan
Rutherford,

Respondents.

RETURN TO MOTION FOR COSTS

COMES NOW THE APPELLANT, pursuant to Rules 222(d) and 240(e), SCACR, and respectfully submits this Return in Opposition to the Respondent's Motion for Costs.

The Appellate Court Rules dictate the recovery of costs in appellate matters. Specifically, Rule 222(d), SCACR states that "[a] party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule."

The remittitur for this matter was issued on or about April 8, 2026 (Exhibit A). The Respondent's motion for costs was filed and served on April 23, 2026—16 days later. Therefore, the Appellant respectfully asserts that the Respondent's motion was not timely.

Furthermore, and despite the mandatory language of Rule 222(a), the Rule does allow discretion when determining whether to award costs: "[u]nless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed." (emphasis added). Should this Court determine that the Respondent's motion is

timely, the Appellant respectfully submits that the Motion should still be denied. The Appellant had a good faith basis for the appeal and respectfully asserts that awarding costs and fees in this matter would potentially discourage future appellants from pursuing otherwise meritorious appeals.

Conclusion

For the foregoing reasons, the Appellant respectfully requests that the Respondent's Motion for Costs be denied.

Respectfully submitted,

McCANTS & McCANTS

s/ Clarke W. McCants, IV

Clarke W. McCants, IV

S.C. Bar No. 103228

Clarke W. McCants, III

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Attorneys for Appellant

Dated: April 30, 2026

EXHIBIT A



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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
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April 8, 2026

The Honorable Robert J. Harte
PO Box 583
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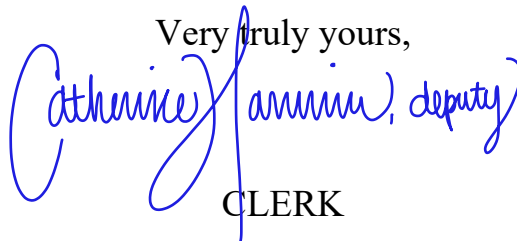
REMITTITUR

Re: Melanie P. Hozey v. Alan L. Rutherford
Lower Court Case No. 2021CP0200766
Appellate Case No. 2024-000545

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,


CLERK

Enclosure

cc: Clarke W. McCants, III, Esquire
Clarke Wardlaw McCants, IV, Esquire
Dione Cherie Carroll, Esquire



**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

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SC Court of Appeals

Melanie P. Hozey, Appellant,

v.

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

Appellate Case No. 2024-000545

Appeal From Aiken County
M. Anderson Griffith, Master-in-Equity

Unpublished Opinion No. 2026-UP-121
Submitted February 3, 2026 – Filed March 18, 2026

AFFIRMED

Clarke Wardlaw McCants, III, and Clarke Wardlaw
McCants, IV, both of Nance & McCants, of Aiken, for
Appellant.

Dione Cherie Carroll, of Carroll Law Offices, PA, of
Aiken, for Respondents.

PER CURIAM: Melanie P. Hozey appeals the master-in-equity's order denying her claim of adverse possession to a portion of land that Alan Rutherford and Susan Rutherford (collectively, the Rutherfurd) used as a privacy buffer between

the parties' properties. On appeal, Hozey argues the master erred in determining that (1) her possession and use of the disputed land was not notorious, hostile, and exclusive and (2) she trespassed upon the Rutherfurds' property. We affirm pursuant to Rule 220(b), SCACR.

1. We hold the master did not err in concluding that Hozey failed to establish adverse possession of the disputed land because her possession was not hostile for the required ten-year period.¹ See *Jones v. Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009) ("[A]n adverse possession claim is an action at law."); *Frazier v. Smallseed*, 384 S.C. 56, 61, 682 S.E.2d 8, 11 (Ct. App. 2009) ("In an action at law tried by a judge without a jury, the appellate court will correct any error of law, but it must affirm the [circuit] court's factual findings unless no evidence reasonably supports those findings."); *Jones*, 384 S.C. 10, 681 S.E.2d at 11 ("The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time."); *id.* at 10-11, 681 S.E.2d at 11 ("To meet this burden of proof, the party asserting the claim must show by 'clear and convincing' evidence he has met the requirements for adverse possession."); *id.* at 10, 681 S.E.2d at 11 ("In South Carolina, adverse possession may be established if the elements of the claim are shown to exist for at least ten years."); *Davis*, 289 S.C. at 180, 345 S.E.2d at 726 ("To invoke adverse possession, the possession must be adverse and not permissive."); *McDaniel v. Kendrick*, 386 S.C. 437, 444, 688 S.E.2d 852, 856 (Ct. App. 2009) (explaining that "a party cannot adversely possess property used with permission" and may begin to satisfy the requirement of hostility "upon a clear disclaimer of the owner's title"); *Clark v. Hargrave*, 323 S.C. 84, 90, 473 S.E.2d 474, 478 (Ct. App. 1996) (affirming the master's conclusion that the claimant's possession was open, notorious, hostile, and exclusive because he exercised exclusive dominion over the property by blocking access with cables and locks, posting "No Trespassing" signs, and granting or denying entry to others solely at his discretion, all undermining the record owner's interests); *Brevard v. Fortune*, 221 S.C. 117, 130-31, 69 S.E.2d 355, 361 (1952) (acknowledging the payment of taxes does not confer title, but recognizing our case law states that the failure to do so may weaken a claim of ownership).

¹ We do not address the master's findings concerning the remaining elements of adverse possession because our analysis on the hostility element conclusively resolves this issue. See *Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986) ("[A party's] claim of adverse possession fails because an essential element of adverse possession is lacking.").

2. We hold the master did not err in determining Hozey trespassed on the Rutherfurds' land because Hozey intentionally entered and remained on the Rutherfurds' land after the Rutherfurds revoked their tacit permission for her to utilize the area by issuing multiple notices of the revocation, including sending certified letters and posting "No Trespassing" signs. See *Cedar Cove Homeowners Ass'n v. DiPietro*, 368 S.C. 254, 258, 628 S.E.2d 284, 286 (Ct. App. 2006) ("[A] trespass action is one at law . . ."); *Frazier*, 384 S.C. at 61, 682 S.E.2d at 11 ("In an action at law tried by a judge without a jury, the appellate court will correct any error of law, but it must affirm the [circuit] court's factual findings unless no evidence reasonably supports those findings."); *Snow v. City of Columbia*, 305 S.C. 544, 552, 409 S.E.2d 797, 802 (Ct. App. 1991) ("The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means by which the enclosure is broken, or the extent of the damage inflicted."); *id.* at 553, 409 S.E.2d at 802 ("To constitute an actionable trespass, however, there must be an affirmative act, the invasion of the land must be intentional, and the harm caused must be the direct result of that invasion."); *id.* ("Trespass is an intentional tort; and while the trespasser, to be liable, need not intend or expect the damaging consequence of his entry, he must intend the act which constitutes the unwarranted entry on another's land.").

AFFIRMED.²

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

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PROOF OF SERVICE

I certify I have served the Appellant's Return to the Respondent's Motion for Costs and Attorney Fees on counsel for the Respondents, Dione Carroll, Esquire on April 30, 2026, by electronic mail via the email address on record with AIS, at dione@carroll-law-offices.com.

McCANTS & McCANTS

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Dated: April 30, 2026