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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Mikell R. Scarborough, Master-in-Equity

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 above-named 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 are the ..... Appellants.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL[1]

1. Did the Master in Equity correctly find that Katie and Micah Mallace are the owners of Charleston County TMS# 999-00-00-366, formerly TMS# 514-09-00-047, by virtue of a chain of title following a 2004 tax deed?

2. Did the Master in Equity correctly find in the alternative that Katie and Micah Mallace are the owners of Charleston County TMS# 999-00-00-366, formerly TMS# 514-09-00-047, as a result of adverse possession?

3. Did the Master in Equity correctly find that the Appellants failed to make any timely arguments relating to an implied easement?

[1] Appellants did not include a statement of issues on appeal in their brief as required by Rule 208, SCACR. "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B), SCACR. South Carolina appellate courts have not been shy about declining to address issues not fairly subsumed within the stated issues on appeal. Jean H. Toal *et al., Appellate Practice in South Carolina* 429 (3d ed. 2016) (listing cases where courts have declined to reach the merits of arguments not presented in the statement of issues). As such, this appeal should be dismissed for failure to present any issues for this Court's review.

STATEMENT OF THE CASE

This action was initiated on January 12, 2023 by Katie Lynn Mallace and Micah James Mallace (collectively, the "Mallaces") seeking to confirm tax title to Charleston County TMS# 999-00-00-366, formerly TMS# 514-09-00-047 (the "Backyard" or the "Property"). (R. at 37-45). Alternatively, the Mallaces sought to be declared the owners of the Backyard through adverse possession. (*Id.*). As a last alternative, the Mallaces sought to recover amounts due in the event the underlying tax sale was set aside. (*Id.*). EM Family Trust and its beneficiaries, David M. Bolach, and Terri Davis (collectively, the "Trust"), answered on March 30, 2023, asserting a general denial, failure to state a claim, implied easement, non-exclusive use, and lack of standing. (R. at 47-50). The Trust did not assert a counterclaim to set aside the underlying tax sale.

The case was referred to the Master in Equity for Charleston County. (R. at 499-504). Following a bench trial on March 25 and March 27, 2025, the Master entered an order on April 23, 2025, finding that the Mallaces owned the Backyard as a matter of record through a 2004 tax deed, that the Trust had not raised any challenge to the tax sale, and that any claim asserted by the Trust was not timely and was barred by the equitable doctrine of laches. (R. at 1-30). Alternatively, the Master found that the Mallaces owned the Backyard as a matter of adverse possession pursuant to S.C. Code Ann. §§ 15–3–340, 15–67–210 to -270 and under the common law presumption of grant as discussed in *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 430, 489 S.E.2d 223, 225–26 (Ct. App. 1997). (*Id.*). With respect to the adverse possession finding, the Master included a lengthy discussion of the evidence supporting each of the required elements. (R. at 18-24).

The Trust moved to reconsider pursuant to Rule 59(e), SCRCP on May 5, 2025, arguing (1) that the tax sale was void; (2) that the Master erred in finding that it was too late to challenge the tax sale by operation of S.C. Code Ann. § 12-51-160; (3) that the Master erred in confirming

the tax sale based on the legal description in the deed; (4) that the Master erred in failing to treat the Trust's implied easement defense; and (5) that the Master erred in finding adverse possession due to "lack of continuous and visible use." (R. at 51-60). The Master denied the motion in a Form 4 order, specifically noting that the implied easement defense was never argued. (R. at 30-32). This appeal followed.

FACTS

The Backyard is a 1.15-acre parcel of mostly marshland located immediately behind the Mallaces' residence, more particularly described as:

> ALL THAT CERTAIN PIECE, parcel or lot of land, together with the buildings and improvements thereon, if any, situate, lying and being in Scanlonville in Mount Pleasant Tax District 2-1, in the County of Charleston, State of South Carolina, and being shown as a portion of Third Street on a plat recorded in the Office of the RMC for Charleston County in Plat Book D at Page 180; said parcel measuring and containing one and fifteen-hundredths (1.15) of an acre, more or less.
>
> This being the same property conveyed to Katie Lynn Mallace and Micah James Mallace by quitclaim deed of Rex Guignard, LLC dated November 12, 2021, and recorded November 18, 2021, in the Office of the Register of Deeds for Charleston County in Deed Book 1053 at Page 825.
>
> TMS# 514-09-00-047.

(R. at 3). The parcel is in the Scanlonville community within Mount Pleasant, an area known for title complexities. (R. at 142:18-143:19, 344:18-23).[2]

The Mallaces purchased the Backyard for $20,000 on November 12, 2021, concurrent with the purchase of their residence. (R. at 380-83, 407-08). As testified at trial, the only high ground on the Property is at the rear of the Mallaces' yard. (R. at 146:5-17, 147:19-22). For the most

[2] Edward Lee, a lifelong Scanlonville resident and community leader, testified that there are numerous issues surrounding property ownership within the community. (R. at 142:18-143:19). These complexities of Scanlonville real estate were well known to the Master. (R. at 344:18-23 ("Let me tell you, everything in Scanlonville is complicated.").

part, this is not dry land, and it does not appear to be a road or street of any kind. (R. at 406). In the GIS image below, the Mallace residence is TMS# 514-10-00-049 and the Backyard is TMS# 999-00-00-366:

(*Id.*).

I. The Mallaces' Chain of Title

At trial, the Mallaces presented the full chain of title as well as the Charleston County Tax Collector's file. (R. at 348-83, 505-62). Due to the nonpayment of taxes for 2001, Charleston County sold the Property at the tax sale held on December 2, 2002 (the "Tax Sale"). (R. at 96:8-9). According to Charleston County's records, Southeastern Capital Corporation ("Southeastern") was the defaulting taxpayer and owner of the Backyard prior to the Tax Sale. (R. at 88:1-7).

Jerome N. Grant purchased the Property for $5,000 at the Tax Sale. (R. at 96:10-14, 380-83). The testimony showed that Grant purchased the Property as part of a larger plan to preserve the historic culture of Scanlonville by purchasing properties as opportunities arose. (R. at 96:10-14, 143:12-19). After the redemption period expired, Charleston County conveyed the Property

to Grant by tax deed dated March 31, 2004, and recorded in the ROD on April 2, 2004, in Book K489, page 432 (the "Tax Deed"). (R. at 103:21-105:7, 559-60).

As more fully described in the Master's order, testimony from the Charleston County Tax Collector and a County GIS technician confirmed County records identified Southeastern as the defaulting taxpayer and owner of the Property for purposes of the Tax Sale; confirmed that statutory notices were properly mailed to Southeastern (including restricted-delivery re-mailing), published for three consecutive weeks in a newspaper of general circulation, and redemption notices were sent and received after which time exclusive possession vested and the Tax Deed was issued and recorded. (R. at 1-30, 505-62, 85:3-106:13).

Grant died on May 15, 2019, and his estate released the Property to his widow, Annette E. Grant, through a Deed of Distribution dated February 28, 2020 and recorded on March 16, 2020 in Book 866, page 998 (the "Grant Deed"). (R. at 358-60). She then conveyed the Property to Edward S. Lee through a general warranty deed dated April 16, 2020 and recorded on May 1, 2020 in Book 879, page 76 (the "Lee Deed"). (R. at 362-64). Lee testified that Jerome Grant wished him to have the Property in furtherance of the work Lee and Grant had done together through the years to help address property issues in Scanlonville. (R. at 151:16-151:1, 158:1-9). Lee further testified that he was contacted by a representative of the Ayers family about acquiring the Property. (R. at 162:24-165:9, 176:24-137:10). Lee also testified that throughout the period the Property was owned by the Grants and himself, they exercised exclusive ownership and control over the Property and there was no challenge to their ownership. (R. at 152:2-162:23).

Lee conveyed the Property to Rex Guignard LLC through a limited warranty deed dated September 8, 2021 and recorded on September 10, 2021, in Book 1031, page 203 (the "Rex Guignard Deed"). (R. at 389-90). Rex Guignard LLC then conveyed the Property to the Mallaces

through a quitclaim deed dated November 12, 2021 and recorded on November 18, 2021, in Book 1053, page 825 (the "Mallace Deed"). (R. at 393-95). Micah Mallace testified about his family's use of the Property as a backyard, including landscaping and keeping a swing set and other personal property there. (R. at 210:14-215:2, 242:7-243:21).

The evidence at trial showed that the Mallaces and their predecessors in title (the Grants, Lee, and Rex Guignard LLC) continuously exercised actual, open, notorious, hostile, and exclusive possession of the Backyard for more than twenty years, by paying taxes, maintaining and using the parcel as a backyard, and placing improvements on the Property such as a bench, bird bath, and playset. (R. at 1-30).

II. The Trust's Claim

The Trust did not present a chain of title, nor did it present a witness capable of testifying to a chain of title. Nor did the Trust assert a claim to set aside the Tax Sale. Instead, the Trust's sole witness was Richard Beasley, a GIS technician for Charleston County.

The Trust's claimed title arises out of two quitclaim deeds executed in 2021 (the "Ayers Deeds"). The first quitclaim deed is from Leslie L. Adams Ayers, Personal Representative of the Estate of Charles Rausch Ayers, which conveyed the Property to the Trustee in consideration of $5.00. (R. at 371-72). This deed is dated July 29, 2021, but was not recorded until October 18, 2021. The second quitclaim deed is from Christa M. Yantis CPA fka Christa Dunn, Personal Representative of the Estate of Dorothy R. Ayers, and conveyed the Property to the Trustee also in consideration of $5.00. (R. at 376-77). This deed is dated August 3, 2021, but was not recorded until October 18, 2021. The Ayers Deeds note on the first page, "Title not examined or certified by Reeves Law, PA."

The Trust did not present any evidence that the grantor in either of the Ayers Deeds ever had any interest in the Property. (*See* R. at 333:4-11). The Trust's sole witness, a GIS technician

that did not perform a title search, provided testimony as to deeds purporting to convey interests in the Property, but he did not testify as to any deeds conveying the Property to the Trustee's purported grantors. Instead, his testimony rested on an assumption, without any predicate in the chain of title, that Dorothy Ayers owned the Property. (*Id.*) ("Q: But have we seen any evidence to support she owned the property that is in dispute today? : The only evidence we have on that is line item 8 on the property record card that Dorothy Ayers was being indicated as the owner before Southeastern. Q: But we don't have any deeds to support that? A: Right. It was understood that she owned everything.").

In addition, there was testimony and argument showing that the Ayers Deeds did not appear in the chain of title for the Backyard. (R. at 77:5-18, 241:17-242:6, 259:13-24). Further evidence showed that the Ayers family recognized and was aware of Grant's and Lee's ownership of the Property and that they made efforts to purchase the Property from Lee, all of which severely undermines the Trust's claims. (R. at 162:24-165:9, 176:24-177:10)

STANDARD OF REVIEW

This case presents a split standard of review. "When a suit involves both legal and equitable issues, each cause of action retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal." *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 180, 708 S.E.2d 787, 792 (Ct. App. 2011).

An action to quiet tax title sounds in equity. *Fox v. Moultrie*, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008) ("An action to quiet title is one in equity."); *Johnson v. Arbabi*, 355 S.C. 64, 68, 584 S.E.2d 113, 115 (2003) ("Initially, we note this is an action in equity."). "In an action in equity tried by a judge alone, the appellate court may find facts in accordance with its view of the preponderance of the evidence." *Goldman v. RBC, Inc.*, 369 S.C. 462, 465, 632 S.E.2d 850, 851 (2006). "However, this broad scope of review does not require the appellate court to disregard the

findings made below." *Id.* "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599–600, 675 S.E.2d 414, 415 (2009). "Therefore, the trial court's findings will not be disturbed unless they are found to be without evidence that reasonably supports those findings." *Walterboro Cmty. Hosp. v. Meacher*, 392 S.C. 479, 484, 709 S.E.2d 71, 74 (Ct. App. 2011).

On the other hand, "[a] claim of ownership based on adverse possession is an action at law." *Dawkins v. Mozie*, 399 S.C. 290, 293, 731 S.E.2d 342, 344 (Ct. App. 2012); *Miller v. Leaird*, 307 S.C. 56, 61, 413 S.E.2d 841, 843 (1992). "In an action at law, the appellate court will correct any error of law, but it must affirm the [trial court's] factual findings unless there is no evidence that reasonably supports those findings." *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997).

ARGUMENTS

I. The tax sale was valid and was not contested, and any challenge would be time-barred.

As a starting point for this analysis, there is a presumption of validity for tax deeds. S.C. Code Ann. § 12-51-160 ("In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with."). As will be shown below, the Master correctly found that the Tax Deed is valid and that title to the Property is currently held by the Mallaces.

Edrian J. Trakas, the Charleston County Tax Collector ("Tax Collector"), presented testimony regarding the Tax Sale and Tax Deed. (R. at 85:3-106:13). Based on the County's records, Southeastern was the defaulting taxpayer and owner of TMS# 514-09-00-047 at the time of the Tax Sale. (R. at 88:1-3).

Given the evidence presented at trial, there is no basis for finding that the Tax Deed is invalid based on the property description. The Tax Deed identifies "1.15 acres in Scanlonville" as an unopened portion of Third Street, south of 5th Avenue, being part of Third Street, with TMS# 514-09-00-047, locating the parcel between 5th and 7th Avenues. (R. at 380-83). County staff verified this legal description at the time the Tax Deed was issued in 2004. (R. at 291:10-11, 297:10-298:14). The Master credited this verification and the statutory presumption of validity set forth in S.C. Code Ann. § 12-51-160 in finding that the Tax Deed was valid. (R. at 1-30).

Similarly, the evidence shows that the Tax Collector strictly complied with the provisions of S.C. Code Ann. § 12-51-40 throughout the tax sale process. The Tax Collector's file was entered into evidence, and the Tax Collector testified to the notice that was given to Southeastern, the process that was followed, and the issuance of the Tax Deed in 2004 following the redemption period. (R. at 85:3-106:13, 505-62). The Master found this evidence reflected the requisite compliance with the tax sale statutes. (R. at 1-30).

The Trust offered no title examination connecting the Ayers Deeds to the Property. The Trust's only witness admitted that he could not tie the Ayers Deeds to the Property. (R. at 333:4-11). The Trust presented no evidence linking any Ayers' interest to this chain. Thus, there is no evidence to rebut the presumption of validity in this case, and the Master correctly found the Tax Sale and Tax Deed to be valid and consistent with the applicable statutes.

Moreover, the Trust did not challenge the validity of the Tax Sale by filing a counterclaim. The statutory vehicle for contesting tax title is by way of an action for the recovery of land. S.C. Code Ann. § 12-51-160. In this case, such an action would be a mandatory counterclaim. Rule 13(a), SCRCP ("A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or

occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction."). As such, the Master correctly found that the Trust had not presented a basis for voiding the Tax Sale. (R. at 1-30). The Trust has not appealed this finding, which serves as an independent basis for the Master's decision in favor of the Mallaces. As such, it is the law of the case requiring affirmance by operation of the two-issue rule. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case."), *abrogated on other grounds by Repko v. Cnty. of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018).

Lastly, even if the Trust had counterclaimed to set aside the Tax Sale, any such claims are time-barred because there is a two-year statute of limitations for tax sale challenges. By statute, "[a]n action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C)." S.C. Code Ann. § 12-51-160. The legislature further demonstrated its intent to prohibit challenges to tax sales more than two years after the sales date by enacting S.C. Code Ann. § 12-51-90(C), which provides that after 24 months from the tax sale date, "the tax deed issued is incontestable on procedural or other grounds." S.C. Code Ann. § 12-51-90(C).

South Carolina "courts interpreted previous versions of section 12–51–160 as saying even if the notice is defective, the statute of limitations still applies, but only begins to run when the purchaser comes into possession." *King v. James*, 388 S.C. 16, 26–27, 694 S.E.2d 35, 40–41 (Ct. App. 2010) (citing *Dibble v. Bryant*, 274 S.C. 481, 487, 265 S.E.2d 673, 677 (1980)) (holding

previous version of S.C. Code Ann. § 12–51–160 "was intended to bar a defaulting and ousted taxpayer from maintaining an action to defeat the title of the tax sale purchaser and recover the land if brought more than two years from the date the purchaser came into possession").

Grant's possession of the Property began no later than April 2, 2004, which is when the Tax Deed was recorded. *See* S.C. Code Ann. § 12-51-130 ("Delivery of the tax title to the clerk of court or register of deeds is considered 'putting the purchaser, or assignee, in possession.'"). Lee's testimony demonstrated that Grant took actual possession of the Property around the time of the Tax Sale. (R. at 153:6-13). Thus, the statutory window for challenging the Tax Sale of the Property expired in 2006 at the very latest.

II. The Master's finding that the Trust's claims were barred by the doctrine of laches is supported by the record and has not been appealed.

The Master also found that the Trust's claims were barred under the doctrine of laches. *See Myers v. Town of Calhoun Falls*, 441 S.C. 146, 155, 892 S.E.2d 514, 518 (Ct. App. 2023) (defining laches "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." (quotation omitted)). As shown above, the property was sold at the Tax Sale nearly twenty years before the Ayers Deeds. Moreover, there is no evidence that the Ayers took any actions consistent with ownership over the property and themselves recognized Grant's and Lee's ownership of the Property as shown by their efforts to purchase the Property from Lee. As such, there is evidence supporting the Master's ruling on this point. In addition, the Trust has not appealed this ruling, rendering it the law of the case requiring affirmance. *Jones*, 387 S.C. at 346, 692 S.E.2d at 903.

III. Alternatively, the Master's findings with respect to adverse possession are supported by the evidence in the record.

The Master also found that the Mallaces proved adverse possession under both the ten-year statutes, S.C. Code Ann. §§ 15-3-340, 15-67-210 to -270, and through the common law

presumption of a grant. (R. at 1-30). The Trust's appeal is limited to the ten-year statute. As such, the Master's findings as to adverse possession through presumption of a grant are the law of the case and may be affirmed without further discussion of the ten-year statute. *Jones*, 387 S.C. at 346, 692 S.E.2d at 903; *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

As a general matter, acquiring "title by adverse possession requires proof of actual, open, notorious, hostile, continuous, and exclusive possession by the claimant, or by one or more persons through whom he claimed, for the full statutory period." *Miller*, 307 S.C. at 61, 413 S.E.2d at 844. "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." *Jones v. Leagan*, 384 S.C. 1, 10–11, 681 S.E.2d 6, 11 (Ct. App. 2009) (quotation omitted). The Trust argues only that the Master erred in its factual finding that Mallaces presented evidence showing continuous and hostile use. It does not contend the Master made an error of law or that the Master erred in its factual findings as to the other elements of adverse possession.

The Trust argues that the testimony relating to the past occasional use of the Property as a short cut and Mallace's testimony that he is most concerned about the high ground on the Property defeats the adverse possession finding. It does not. The Master's rulings as to adverse possession are supported by evidence and must be affirmed under the standard of review.

A. The Mallaces have satisfied all time requirements for adverse possession.

Actual possession, once taken, will continue until disseisin or abandonment. *Jones v. Leagan*, 384 S.C. 1, 16, 681 S.E.2d 6, 14 (Ct. App. 2009). Lee's testimony was that Grant took possession "as soon as he bought it at auction" in 2002. (R. at 153:6-13). In addition, "[d]elivery of the tax title to the clerk of court or register of deeds is considered putting the purchaser, or

assignee, in possession." S.C. Code Ann. § 12-51-130. Consequently, Grant took possession on April 2, 2004 at the very latest.

By statute, adverse possession may be established after ten years. S.C. Code Ann. §§ 15–3–340, 15–67–210 to -270. Under these statutes, a claimant of adverse possession must have held the property for the entire ten years, and tacking is allowed only between an ancestor and an heir. *Terwilliger v. White*, 222 S.C. 176, 72 S.E.2d 169 (1952); *Terwilliger v. Marion*, 222 S.C. 185, 72 S.E.2d 165 (1952). The evidence supports the Master's finding that Grant exercised actual, open, notorious, hostile, continuous, and exclusive possession of the Property for more than ten years between the issuance of the Tax Deed in 2004 and Grant's death in 2019. (R. at 152:2-162:23).

In addition to the statutory 10-year period, South Carolina common law recognizes adverse possession through a presumption of a grant after twenty years. *Getsinger*, 327 S.C. at 430, 489 S.E.2d at 225–26 (Ct. App. 1997). "Under the presumption of a grant, the time of possession may be tacked not only by ancestors and heirs, but also between parties in privity in order to establish the 20–year period." *Id.* Again, the Mallaces presented evidence that each of the owners in the chain since the Tax Deed in 2004 exercised actual, open, notorious, hostile, continuous, and exclusive possession of the Property for more than twenty years as of the time of trial.

B. The Mallaces and their predecessors have had continuous, actual possession of the Property.

"Actual possession, once taken, will continue, though the party taking such possession should not continue to rest with his foot upon the soil, until he be disseised, or until he do some act which amounts to a voluntary abandonment of the possession." *Mullis v. Winchester*, 237 S.C. 487, 495, 118 S.E.2d 61, 65 (1961). Actual possession does not necessarily mean continuous physical presence but rather use that is sufficient to apprise the community and the true owner of the claimant's exclusive use and enjoyment of the property. *See Jones*, 384 S.C. at 12, 681 S.E.2d

at 12 (Ct. App. 2009) ("Acts of ownership of open land need only be exercised in a way consistent with the possible uses of the land and as the situation of the property permits, without actual residency or occupancy.").

The only testimony in the record as to the possession and use of the Property comes from Lee and Mallace. Lee testified to the Grants' and his own use of the Property from the time of the Tax Sale in 2002 and the absence of any challenges to their ownership. (R. at 152:2-162:23). Incidental occasional use by third parties as a short cut does not amount to an abandonment of that use and possession, nor does it destroy continuity. The testimony unequivocally shows that Grant and his successors have continuously possessed the Property.

C. The Mallaces and their predecessors occupied the Property with hostility.

To demonstrate hostile possession, the adverse claimant must possess the property in an actual, exclusive, open, notorious manner, and without the title owner's consent. *Knox v. Bogan*, 322 S.C. 64, 70, 472 S.E.2d 43, 47 (Ct. App. 1996)).

Again, the testimony of Lee and Mallace supports the Master's finding that Grant and his successors have all used the Property freely and with hostility towards anyone else having or claiming any interest in the Property. Each engaged in activities such as walking the Property, storing personal items, and maintaining the grass and brush. Lee testified that he, the Grants, and Rex Guignard always acted as owners of the Property and never considered asking for permission to use the Property. Mallace testified similarly for the period he and his wife have owned the Property. To reinforce their ownership claim, each respective owner has paid all taxes owed on the Property. (R. at 155:22-156:1, 212:22-213:2). In addition, a representative of the Ayers family sought to purchase the Property from Lee, further reflecting the public knowledge that Grant and then Lee owned the Property. (*See* R. at 163:6-21).

For these reasons, the Master's alternative finding of adverse possession should be affirmed.

IV. The issue of implied easement was abandoned and is not preserved for this Court's review.

As noted by the Master in the order denying the motion to reconsider, the Trust did not make any arguments regarding an implied easement at the trial of this matter.[3] (R. at 1-30). As such, this issue was not timely raised and should not be considered by this Court. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998) (holding that an argument must have been raised to and ruled on by the circuit court to be preserved for appellate review); *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990) (holding that Rule 59(e), SCRCP is not a proper mechanism for advancing new arguments). Contrary to the Trust's arguments, there is no testimony or evidence in the record relating to an easement for ingress and egress for the benefit of Lot 114. Nothing in the plats shows an easement. Instead, there is only very general testimony that in the past the area had served as an "escape path" and that it was sometimes used as a "short cut." (R. at 147:7-15, 156:2-9).

CONCLUSION

The Master's rulings are supported by the record and applicable law and should be affirmed in full.

[3] A search of the trial transcript shows that the word "implied" was never used. The word "easement" appears exactly once as a reference in the Trust's opening to pleading "an affirmative defense about the easement by necessity," but there is no argument or further reference to the subject. (R. at 83:21-84:3).

Respectfully submitted,

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