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May 01 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Case No. 2021-CP-02-00766
App Case No. 2024-000545

Melanie Hozey,

Appellant,

v.

Alan Rutherford and Susan Rutherford

Respondents.

REPLY TO RETURN TO MOTION FOR COSTS

Come now the Respondents and respectfully reply to Appellant's Return to Motion for Costs ("Return"). Appellant alleges in the Return that the Respondents' Motion for Award of Attorney's Fees and Costs on Behalf of Respondents/Appellees ("Motion") is out of time. This allegation is incorrect.

It is true that the remittitur is dated on its face April 8, 2026, and the Respondents filed and served their Motion for Costs on April 23, 2026. However, even if the remittitur had been issued to Respondents on April 8, 2024, which it was not, the Motion for Costs is timely. Appellant misapplies the rule when calculating the time Appellant alleges elapsed prior to filing. Appellant alleges 16 days elapsed, when in fact the time elapsed is 15 days.

According to Rule 263, SCRAP, “in computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included.” (emphasis supplied). Pursuant to the rule, a filer begins to count the day after the issuance, “the day of the act . . . is not to be included.” Therefore, the day count begins on April 9, not April 8. April 23 is 15 days later when applying the correct methodology.

However, the timeliness of the Motion should not turn on the calculation of time from the date stamped on the remittitur as it was not issued to Respondents on that date. According to correspondence from the Clerk’s office dated April 22, 2026, attached as Exhibit 1, and issued in response to an inquiry from the undersigned as to when the remittitur would be issued, “[i]t appears that this remittitur was inadvertently not sent to appellant's [actually respondents'] counsel. We are resending it to all parties. Please find the remittitur attached.” (emphasis supplied). In short, the remittitur was not issued to Respondents until April 22, 2026, the running time was re-set, and the Motion is not be due until May 7, 2026. In an abundance of caution, Appellants nevertheless, filed within 15 days of the date on indicated on the remittitur.

Although the Rule does allow this Court discretion in awarding the requested costs, this is exactly the sort of case where costs should be awarded. There was no meaningful basis for appeal of the matter, and the case was one where Appellant aggressively sought to “take” land of Respondents, her next door neighbors. The result was a costly legal battle that Appellant lost. This Court affirmed. Litigants like Appellant should be deterred from bringing baseless suits followed by baseless appeals and baseless oppositions to costs. Appellant does not appear to contest the amount of the fees and costs.

Conclusion

This honorable Court should award Respondents' requested costs, including fees, in the amount of \$3,581.41.

Respectfully submitted,

/s/ Dionè Carroll

Dionè C. Carroll, Esq.

S.C. Bar 78185

ATTORNEY FOR RESPONDENTS

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May 1, 2026
Aiken, South Carolina

Other Counsel:

Clarke W. McCants, III

Clarke W. McCants, IV

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PO Box 103228

Aiken, South Carolina 29802

EXHIBIT 1



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

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April 22, 2026

Mr. Clarke W. McCants, III, Esquire
PO Box 2881
Aiken SC 29802-2881

Mr. Clarke Wardlaw McCants, IV, Esquire
218 Newberry Street SW
Aiken SC 29801

Ms. Dione Cherie Carroll, Esquire
107 Pendleton St. N.W.
Aiken SC 29801

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

Dear Counsel:

It appears that this remittitur was inadvertently not sent to appellant's counsel. We are resending it to all parties. Please find the remittitur attached.

Very truly yours,

Handwritten signature of Jenny A. Kitchings in cursive script.
CLERK



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

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April 8, 2026

The Honorable Robert J. Harte
PO Box 583
Aiken SC 29802

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,

Catherine Harrison, deputy
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.**

**THE STATE OF SOUTH CAROLINA
In The 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 Rutherfurds) 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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Melanie Hozey,

Appellant,

v.

Alan Rutherford and Susan Rutherford

Respondents.

PROOF OF SERVICE

I certify I have served the Respondents' Reply to Return to Motion for Costs on counsel for the Appellant, Clarke W. McCants, IV and Clarke W. McCants, III on May 1, 2026, by electronic mail via the email address on records with AIS, at Clarkemccants4@gmail.com and Mccants3rd@aol.com.

Respectfully submitted,

/s/ Dionè Carroll

Dionè C. Carroll, Esq.
S.C. Bar 78185

ATTORNEY FOR RESPONDENTS
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May 1, 2026
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