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**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM COLLETON COUNTY  
Court of Common Pleas

Benjamin C. P. Sapp, Special Referee

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Appellate Case No: 2025-002580

Common Pleas Case No: 2021-CP-15-00210

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/Wa 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/WaLeroy 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/Wa Delores Williams, Johnny Washington a/Wa 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 Donna Mitchell and Curtis Mitchell are the Respondents.

vs.

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,

of whom 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.

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**INITIAL BRIEF OF RESPONDENTS**

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**OBERMAN & OBERMAN, LLC**

s/Harold A. Oberman  
SC Bar No. 15254  
60 Markfield Drive, Suite 2  
Charleston, SC 29407  
(843)577-7010  
Obermanlaw@bellsouth.net

**BRUSH LAW FIRM**

s/Thomas H. Brush  
SC Bar No. 974  
s/J. Christopher Lanning  
SC Bar No. 73957  
12 Carriage Lane  
Charleston, SC 29407  
(843)766-5576  
Tommy@Brushlawfirm.com  
Clanning@brushlawfirm.com

June 1, 2026

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## STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN FINDING THAT THE MITCHELLS ACQUIRED THEIR ONE ACRE TRACT BY ADVERSE POSSESSION WHERE THERE IS AMPLE EVIDENCE IN THE RECORD TO SUPPORT THE FACTUAL FINDING THAT THEIR POSSESSION WAS NOT PERMISSIVE?
- II. DID THE TRIAL COURT ERR IN FINDING THAT THE MITCHELLS ACQUIRED THEIR ONE ACRE TRACT BY ACQUIESCENCE WHERE THERE IS AMPLE EVIDENCE IN THE RECORD TO SUPPORT THIS THEORY?

## STATEMENT OF THE CASE

A concise history of these proceedings, necessary for an understanding of this appeal, is set forth below.

A complaint was originally filed on April 12, 2021, and an Amended Complaint filed on June 15, 2022, which in part of a larger action, sought a partition of a one acre parcel for the benefit of Donna Mitchell and Curtis Mitchell. Appellants denied that the Mitchells were entitled to this one acre parcel.

Thereafter, Donna and Curtis Mitchell, on December 16, 2022, cross-claimed against the Appellants on, among other things, the theories of adverse possession and acquiescence. Appellants again denied the Mitchells were entitled to the one acre parcel by an answer filed January 16, 2023. A hearing was held before a special referee on this issue on May 25, 2023.

On August 22, 2025, the Special Referee issued an Order finding the Respondents were entitled to the one (1) acre tract of land under theories of acquiescence and adverse possession. On August 29, 2025, Appellants filed a Motion for Reconsideration. On December 2, 2025, the Special Referee entered an Order denying Appellants' Motion for Reconsideration.

On December 22, 2025, the Appellants served their Notice of Appeal, appealing the Orders

of August 22, 2025, and December 2, 2025.

### STANDARD OF REVIEW

An adverse possession claim is an action at law. Miller v. Leaird, 307 S.C. 56, 61, 413 S.E.2d 841, 843 (1992). In an action at law tried without a jury, this court will not disturb the trial court's findings unless they are wholly unsupported by the record or controlled by an error of law. Coakley v. Horace Mann Ins. Co., 376 S.C. 2, 6, 656 S.E.2d 17, 19 (2007).

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 & Envtl. 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)).

### FACTS

The Respondents Donna Mitchell and Curtis Mitchell (The Mitchells) have lived on a one acre tract of land (Mitchells' Exhibit 1 to hearing of 5/25/23) their entire lives. Donna Mitchell was born in 1964 and Curtis Mitchell was born in 1955 (Transcript of May 25, 2023, Hearing, p.20 line 6 - p.23 line 11).

In 1953, Millie Washington built the original house on that tract and raised the Mitchells' mother in that house. The Mitchells' mother raised Donna and Curtis in that house. Upon the death of their mother in 1996, the Mitchells have continued to reside and occupy the property as their residence (Transcript p.20 line 6-p.23 line 11). Noone else has resided on that tract.

The Mitchells have paid the property taxes on the one acre tract every year (Transcript p.24 lines 8-10). They have maintained and remodeled the original residence (Transcript p.25 lines 16-25,

p.31 line 22 - p.32 line 23). They have added an additional structure for Curtis Mitchell to live (Transcript p.20 line 6-p.21 line 13).

The Mitchells have lived on the property for over 60 years and as adults for over 50 years. Since 1953, nobody took any action to stop or remove the Mitchells from the property. This evidence was uncontested and overwhelming. The Mitchells cultivated and maintained this one acre tract (Transcript p.34 line 22-p.35 line 5).

There is overwhelming evidence that the Mitchells' possession was not permissive. Donna Mitchell states directly and succinctly "It wasn't permission." (Transcript p. 27, line 8) Other heirs upon seeing her keeping the property clean and trees cut would attack her and tell her this was not her property (Transcript p.34, line 19; p. 35, line 5). She continued to clean the property her entire life (Transcript p. 35, lines 2-5).

Felicia Cox, Appellants' own witness, doesn't know of anyone who gave the Mitchells permission (Transcript p. 63, lines 8-15) and she doesn't know if they had permission (Transcript p. 63, lines 14-18). She states directly, in reference to the Mitchells improving the one acre tract, "They never had permission for it." (Transcript p. 64, lines 4-6)

Appellants' other witness, Gwendolyn Bright testifies similarly. She didn't give the Mitchells permission to be there (Transcript page 68, lines 5-6). There is no evidence of anyone granting the Mitchells or their predecessors a permissive use.

## **ARGUMENTS**

- I. THE TRIAL COURT DID NOT ERR IN FINDING THAT THE MITCHELLS ACQUIRED THEIR ONE ACRE TRACT BY ADVERSE POSSESSION AS THERE IS EVIDENCE IN THE RECORD THAT THEIR POSSESSION WAS NOT PERMISSIVE.**

Appellants' sole basis for urging the reversal of the lower court is its factual finding of hostile non-permissive use. Without contradiction, the trial court found:

The testimony does not show that any previous owner of the property gave them permission to be on the property. But upon the death of an heir of Charity Washington, the Mitchells' mother took possession of Plaintiffs' property without the consent of the other heirs and that she and Donna Mitchell and Curtis Mitchell have been in possession without permission since 1963. (8/22/25 Order, p.10)

The Appellants seem to have misread this portion of the trial judge's order (Appellants' Initial Brief pp. 6-7, last paragraph). For the Mitchells to demonstrate that their possession of the Plaintiffs' property was hostile, they must prove that they entered the property without the Plaintiffs' or the previous owners' permission. See Knox v. Bogan, 322 S.C. 64, 472 S.E.2d 43 (Ct. App. 1996), All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of S.C., 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004) and McDaniel v. Kendrick, 386 S.C. 437, 688 S.E.2d 852 (S.C. Ct. App. 2009). In order for the Mitchells' possession to be hostile, it must be without the consent of the title owner. See Knox.

As set forth in the facts above, there is clear and convincing evidence of hostile possession without permission. "It wasn't permission." (Transcript p. 27, line 8). Other heirs would attack Donna Mitchell for cutting the trees and cleaning the property (Transcript p. 34, line 19; p. 35, line 5). Any conclusory statement cited by Appellants in support of permissive use is then directly contradicted by their own witnesses. "They never had permission for it.", says Felicia Cox (Transcript p. 64, lines 4-6, emphasis added) She knows of no one who gave the Mitchells permission and doesn't know if they had permission (Transcript p. 63, lines 8-15; p. 63, lines 14-18). Gwendolyn Bright didn't give the Mitchells permission to be there (Transcript p. 68, lines 5-6).

There is no testimony that the Mitchells' possession originated as permissive or ever became permissive.

There is overwhelming clear and convincing evidence to support this factual finding by the trial judge. Therefore the trial judge must be affirmed.

**II. THE TRIAL JUDGE DID NOT ERR IN FINDING THAT THE MITCHELLS ACQUIRED THEIR ONE ACRE TRACT BY ACQUIESCENCE.**

Again, Appellants only rely on alleged permissive use to undermine the Mitchells' ownership of the property through acquiescence. Acquiescence, however, does not require hostility.

The South Carolina Court of Appeals recently restated acquiescence applies to non-boundary disputes in Griffin v. Giovino, 446 S.C. 553, 920 S.E. 2d 418 (Ct. App. 2025):

Acquiescence is a question of fact determined by the intent of the parties. Kirkland v. Gross 286 S.C. 193, 332 S.E.2d 546, 549 (Ct. App. 1985) receded from on other grounds by Boyd v. Hyatt, 294 S.C. 360, 364 S. E.2d 478 (Ct. App. 1988).

If a party stands by, and sees another dealing with the property in a manner inconsistent with his rights, and makes no objection, he cannot afterwards have relief. His silence permits and encourages others to part with their money or property, and he cannot complain that his interest(s) are affected. His silence is acquiescence and it estopps him.

Griffin at 569-570.

In Griffin, the fact that Griffon and his uncle were allowed to exclusively use a roof terrace for thirty-six years provided enough evidence for an acquiescence cause of action. Here, the facts mirror the facts in Griffin.

In order for the Mitchells to establish title by acquiescence they must prove that the other Defendants stood by, saw the Mitchells dealing with the property in a manner inconsistent with their rights, and made no objection. The evidence is clear from the testimony of Johnny Smalls, Felicia

Cox and Gwendolyn Bright that they allowed the Mitchells to live and maintain the property for more than fifty (50) years and took no action to stop the Mitchells or claim an interest until this litigation was filed. Their silence permitted and encouraged the Mitchells to part with their money and pay taxes (Transcript p. 24 lines 8-10) and improve the property (Transcript p. 25 lines 16-25, p.31 line 22-p.32 line 23). As a result, they cannot complain that their interests are affected because, over the last fifty (50) years, they acted as if they had no interest. The Defendants neglected for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Jones v. Leagan, 384 S.C. 1, 384 S.E.2d 6 (Ct. App. 2009) quoting Hallums v. Hallums, 296 S.C. 195, 378 S.E.2d 525 (1998). They have failed to assert a known right under circumstances indicating they abandoned or surrender the right. The Mitchells have gained title through the acquiescence of all of the Plaintiffs and Defendants in this case.

The issue of permissive use is discussed extensively elsewhere in this brief if applicable.

### **CONCLUSION**

Because there is ample evidence to support the factual finding that the Mitchells' occupancy of the property was not permissive, the trial court's order must be affirmed.

Respectfully submitted,

**OBERMAN & OBERMAN, LLC**

s/Harold A. Oberman  
SC Bar No. 15254  
60 Markfield Drive, Suite 2  
Charleston, SC 29407  
(843)577-7010  
Obermanlaw@bellsouth.net

**BRUSH LAW FIRM**

s/Thomas H. Brush  
SC Bar No. 974  
s/J. Christopher Lanning  
SC Bar No. 73957  
12 Carriage Lane  
Charleston, SC 29407  
(843)766-5576  
Tommy@Brushlawfirm.com  
Clanning@brushlawfirm.com

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