THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Mikell Scarborough

Case No. 2025-CP-10—01165

Joseph W. Keating — Appellant

v.

Harrison Wilder, Jr., Hope Wilder Brown And Estate of Harrison Wilder, Defendant/ Counterclaiming Plaintiffs, Third Party Plaintiffs. — Respondent

v.

Joseph W. Keating d/b/a Keating Tree Service and James Island Preservation Trustee, Joseph W. Keating, Trustee — Third Party Defandants/Appellants

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APPELLANTS (INITIAL) BRIEF

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The master-in-equity committed reversible error by misapprehending the evidence presented at a hearing for reconsideration. The undisputed evidence established that Appellant, Joseph W. Keating, proved each element of adverse possession by clear and convincing evidence as required under South Carolina law. Instead of evaluating the evidence under the proper legal standard, the court overlooked or misconstrued material facts demonstrating Appellant's actual, open, notorious, exclusive, hostile, and continuous possession of the disputed portion of TMS 331-05-00-001 in Charleston County, South Carolina law requires proof that possession was "(1) actual; (2) open and notorious; (3) hostile; (4) exclusive; and (5) continuous for the statutory ten-year period."

ISSUE PRESENTED

The Master-in-Equity missaprended the factual evidence as it corresponds to the elements of Adverse Possession.

STATEMENT OF CASE.

Plaintiff/Appellant(s) claimed property by Adverse Possession describe in the Complaint and described as follows:

> All that certain piece of property being a portion of land bearing tax Map Number 331-05-00-001, butting and bounded on the Northwest abutted by lands of Defendant's/Respondents property line running with and along Holland Island Creek on TMS:331-05-00-001 for a distance of 630 feet; on the Northeast abutted by lands of James Island Preservation Trust (Joseph W. Keating TrustorTrustee, for a distance of 830 feet; on the Southeast by landof Defendants/Respondent Wilder up to and abutting the diagonal ditch running and cutting through the middle of Defendants/Respondent Wilder for a distance of 305 feet – TMS,331-05-00-001; and on the west abutted by Jolland Island Creeks and lands of Lafayette and Cromwell for a distance of 415 feet (TMS:331-05-00-002) (i.e., a portion of TMS: 331-05-00-001 owed by Defendants/Respondent Wilder prior the vestment of adverse possession to Plaintiff/Appellant.

The Plaintiff/Appellant Joseph W. Keating, individually, (and as Trustor/Trustee of James Island Preservation Trust, and owner of Keating Tree Service LLC) at all times directing the actions of said entities, meets all the requirements entitling Appellants to make a claim for adverse possession delineated below. Suit to quiet title/Adverse Possession in 2025 to the subject property some 17 years after possession take the Plaintiff/Appellants. Defendant/Respondent admits the Keating possessed the property for well over 10 years without them giving him permission.

STANDARD OF REVIEW

Summary Judgment is proper when there is "no genuine issue of material fact." Kitchen Planners LLC v. Friedman, 440 S.C. 456 (2023). In the case at hand there are numerous questions of fact which require a full hearing where testimony is heard. Summary Judgment is proper only when viewing the evidence in the light most favorable to the non-moving party (Appellant). Appellant contends the evidence was not viewed in that light. Summary Judgment should not be granted where there is a dispute as to the conclusions that may be drawn from the evidentiary facts. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988).

In an appeal from a final order of the Master-in-Equity involving an action to quiet title and a claim of adverse possession, the appellate court may review the evidence in accordance with the standard applicable to actions in equity. Although the appellate court has jurisdiction to find facts in accordance with its own view of the evidence, it gives due deference to the Master-in-Equity's opportunity to observe the witnesses and assess their credibility. A finding of fact that is controlled by an error of law or is based upon a misapprehension or disregard of the material evidence warrants reversal. Accordingly, where the Record on Appeal demonstrates that the

Master-in-Equity overlooked or misapprehended evidence establishing the elements of adverse possession, the appellate court may reverse the order and grant appropriate equitable relief.

The Motion to Reconsider at issue regards an Order on Motion to Dismiss And/Or Summary Judgement in which Plaintiff's Complaint for Adverse Possession and quiet title to any portion of TMS 331-05-00-001 was dismissed and Striking Lis Pendens, 2025LP1000176 dated December 3, 2025 ("Order"). The Plaintifff/Appellant contends that ***there were*** genuine issues of material fact and that the evidence was not viewed in the light most favorable to the non-moving party. Summary judgment is proper when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. See Kitchen Planners, LLC v. Friedman, 440 S.C. 456 (2023). "Summary judgment is proper if, viewing the evidence and inferences to be drawn therefrom in a light most favorable to the nonmoving party, the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Woodson v. DLI Props., LLC, 406 S.C. 517, 753 S.E.2d 428 (S.C. 2014). Furthermore, summary judgement should not be granted if there is a dispute as to the conclusion that could be drawn from evidentiary facts. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (S.C.2000). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." Id citing Manning v. Quinn, 294 S.C. 383. A trial on this matter would have allowed Appellants to present live testimony of third party individuals, testifying in support of adverse possession and allowed Keating to clarify any misinterpretations of his statements or actions.

The essential elements are:

1. **Actual Possession**

- The claimant physically occupied and used the property as an owner would.
- Examples: building structures, maintaining the land, farming, fencing, or making improvements.

2. **Open and Notorious Possession**
   - The possession was visible and obvious so that the true owner had notice (or should have had notice).
   - Secret or hidden possession is insufficient.
3. **Exclusive Possession**
   - The claimant exercised control over the property to the exclusion of the true owner and the general public.
   - Shared possession with the owner generally defeats this element.
4. **Hostile Possession (Claim of Right)**
   - The possession was without the owner's permission and under a claim of ownership.
   - Hostility does not require ill will; it means the claimant possessed the property as if it were their own.
5. **Continuous and Uninterrupted Possession**
   - The possession continued without interruption for the statutory period.
   - In South Carolina, the statutory period is generally **10 years**.

The Master-in-Equity committed reversible error by misapprehending the evidence presented at hearing. The record demonstrates that Appellant, Joseph W. Keating, established each and every element of adverse possession by clear and convincing evidence. Rather than evaluating the evidence under the controlling legal standard, the Master overlooked or misconstrued material facts proving Appellant's actual, open and notorious, exclusive, hostile, and continuous possession of the disputed portion of TMS 331-05-00-001 for the statutory period. Most significantly, the Defendants admitted that Appellant had been in possession of the disputed property for more than ten years. This admission corroborated Appellant's evidence regarding the continuity of his possession and supported satisfaction of the statutory period required for adverse possession. Despite this testimony, the Master concluded that Appellant failed to prove the required elements. That conclusion is contrary to the evidence contained in the record. The evidence established that Appellant physically occupied, maintained, and exercised dominion and control over the disputed property in a manner consistent with ownership. Appellant's possession was open and notorious, visible to the Defendants and sufficient to place them on notice that Appellant claimed ownership. The evidence further established that Appellant's possession was exclusive, exercised under a claim of right, without permission from the Defendants, and continuous for more than the statutory ten-year period.Because the record contains evidence supporting every required element of adverse possession, including Defendants' admission that Appellant occupied the property for more than ten years, the Master's finding that Appellant failed to establish adverse possession is against the clear amount of evidence and constitutes reversible error. Accordingly, the Court should reverse the Order of the Master-in-Equity and remand with instructions to enter judgment declaring that Appellant Joseph W. Keating acquired title to the disputed portion of TMS 331-05-00-001 by adverse possession. Defendant/Respondent Marvin Tracey Johnson a heir to the Wilder property "admitted" the ten-year possession without pinpoint support, R. p. 161 lines 21-

25 and 162 lines 1-7. The disputed boundary is identified and described in the Record on Appeal at R. p. 12 and further described at R. p. 27 ¶ 12 and R.p. 28, ¶¶ 13 and 14. Trial testimony identifying the subject property, TMS 331-05-00-001, and Appellant's adjoining property, TMS 331-06-00-035, appears at R. pp. 157, line 25 through R.p. 158, line 10.

The Record on Appeal demonstrates that Appellant, Joseph W. Keating, affirmatively claimed ownership of the disputed portion of TMS 331-05-00-001. Appellant's claim to the disputed property is expressly identified at R. p. 20, where the pleadings identify the property that is the subject of this action. The disputed boundary is further identified at R. p. 12, with a more complete description appearing at R. p. 27 ¶12 and R.p. 28, ¶¶ 13 and 14. The testimony of Marvin Tracey Johnson (Wilder heir) at R. pp. 157, line 25 through R.p. 158, line 10 establishes that the disputed property is TMS 331-05-00-001 and that it adjoins Appellant's property, TMS 331-06-00-035. These record citations, considered together, establish that (1) Appellant identified and claimed the disputed property, (2) the location and boundary of the disputed tract were established, and (3) Respondent admitted Appellant's use of the property in 2009. The Master-in-Equity failed to properly consider this evidence when concluding that Appellant had not proven the elements of adverse possession.

The Master-in-Equity misapprehended the evidence identifying the property that is the subject of Appellant's adverse possession claim. Appellant, Joseph W. Keating, attached Exhibit A to the Complaint, which appears at R. p. 20. Exhibit A identifies the disputed property and defines the area over which Appellant asserted ownership by adverse possession. Thus, from the commencement of this action, Appellant clearly identified the property that is the subject of this appeal. The disputed boundary is further identified at R. p. 12, with additional property descriptions appearing at R. p. 27 ¶ 12 and R.p. 28, ¶¶ 13 and 14. Respondent Wilder

acknowledged in the Answer and Counterclaim (R. pp. 21–49) that Appellant had been using a portion of the subject property since 2009. R. p. 192 lines 15-18. Trial testimony likewise established that the subject property is TMS 331-05-00-001, adjoining Appellant's property, TMS 331-06-00-035. R. pp. 157, line 25–158, line 10. Appellant Keating directed that James Island Preservation Trust purchase the property bearing TMS 131-05-00-035. R.p. 50 ¶ 4. That TMS:131-06-00-035 was purchased on September 15, 2008 and that Keating began using the portion of Respondents land at that time. R.p. 58, ¶ 11.

When these portions of the Record on Appeal are considered together, they demonstrate that the disputed property was specifically identified, that Appellant consistently asserted his claim to that property, and that Respondent admitted Appellant's long-standing use of the disputed portion. The Master's conclusion that Appellant failed to prove his adverse possession claim overlooks these material portions of the record and therefore constitutes reversible error. The Master-in-Equity misapprehended the evidence establishing the duration of Appellant Joseph W. Keating's possession of the disputed portion of TMS 331-05-00-001. The Record reflects that Appellant directed the acquisition of the adjoining property and began claiming and using the disputed portion of Respondents' property in 2008. R. p. 58, ¶ 11. Respondent Wilder acknowledged that he observed Appellant using a portion of the disputed property beginning in 2009. R. p. 192 lines 15-18.

The Record further establishes that Respondents did not challenge Appellant's possession until November 13, 2023. R. p. 60, ¶ 15. Accordingly, under Appellant's evidence, Appellant's possession extended from 2008 until November 13, 2023, a period of approximately fifteen years before Respondents asserted any challenge. Even under Respondent Wilder's own timeline, Appellant's possession extended from 2009 until November 13, 2023, a period of approximately

eleven years before Respondents challenged Appellant's possession. R.p. 162 lines 3-25; 163 lines 1-4. Thus, under either version of the facts contained in the Record, the statutory ten-year period had elapsed before Respondents first challenged Appellant's possession. The Master's Order does not reconcile this undisputed chronology with the conclusion that Appellant failed to establish adverse possession. When this chronology is considered together with the evidence establishing Appellant's actual, open, notorious, exclusive, and hostile possession, the Record contains clear and convincing evidence supporting each element of adverse possession. The Master's contrary findings resulted from a misapprehension of the evidence.

The Master-in-Equity misapprehended the evidence establishing the commencement and duration of Appellant's possession of the disputed property. The Record reflects that Appellant, Joseph W. Keating, directed the James Island Preservation Trust to purchase the adjoining property identified as TMS 131-06-00-035. R.p. 132-135. The Record further establishes that the property was purchased on September 15, 2008. R. p. 58, ¶ 11. The same pleading alleges that Appellant began using the disputed portion of Respondents' property at that time, in 2008. R. p. 58, ¶ 11. This evidence establishes a continuous period of possession extending well beyond South Carolina's ten-year statutory period before this action was commenced. This evidence is further corroborated by Respondent Wilder's admission that Appellant had been using a portion of the subject property since 2009. Although Wilder discovered and acknowledged Appellant's use beginning in 2009, Appellant's pleadings allege that such use actually commenced in 2008, when the adjoining property was acquired. The Master-in-Equity failed to reconcile this evidence or explain why it was insufficient to establish the continuity element of adverse possession.

When considered together with the evidence identifying the disputed property (R. p. 12; R. p. 20; R. pp. 27–28, ¶¶ 13–14) and the trial testimony identifying the adjoining parcels (R. pp.

157, line 25–158, line 10), the Record contains evidence supporting each element of Appellant's adverse possession claim. The Master's contrary findings reflect a misapprehension of the material facts and require reversal. The Respondent failed to attempt to challenge Keating in any way until 2023 well after the statutory period necessary to claim the portion of the subject property had passed. According to Keating the period he started claiming the property began in 2008 and according to Respondent he stated he noticed Keating on the subject property in 2009. Either date you consider is well over the 10 year period required for adverse possession. Because the record contains clear and convincing evidence establishing Appellant's actual, open, notorious, exclusive, hostile, and continuous possession of the disputed portion of TMS 331-05-00-001 for the statutory period, the Order should be reversed.

Marvin Tracey Johnson's (Wilder heir) admission that Appellant had been using the disputed portion of the property since 2009 constitutes compelling evidence supporting the continuity element of adverse possession. R.p. 163 lines 1-4. When considered together with the evidence demonstrating that Appellant's possession was actual, open, notorious, exclusive, and hostile under a claim of right, the record establishes each element of adverse possession by clear and convincing evidence. The Master's conclusion that Appellant failed to prove adverse possession cannot be reconciled with Wilder's own admission or with the remaining evidence contained in the Record on Appeal. By overlooking or misapprehending this evidence, the Master committed reversible error. Accordingly, the Court should reverse the Order of the Master-in-Equity and remand with instructions to enter judgment declaring that Appellant Joseph W. Keating acquired title to the disputed portion of TMS 331-05-00-001 by adverse possession.

The criteria to prove continuous, hostile, open, actual, notorious, and exclusive possession supported by case law, are as follows:

1. Continuous and Actual Possession

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. Butler v. Lindsey, 293 S.C. 466, 471, 361 S.E.2d 621, 623 (Ct.App.1987). Jones v. Leagan, 384 S.C. 1, 12, 681 S.E.2d 6, 12 (Ct. App. 2009). This Court in the Order acknowledged that the Plaintiff claimed possession of the property "since 2008." The Rule of Repose applies to the case at hand, in which, the Plaintiff contends that the Defendant's claim is no longer valid since he possessed the land for more than 10 years. S.C. Ann § 15-67-210. The accusation that the Plaintiff stopped his activities at the demand of public authorities occurred after the ten years had expired, therefore, his actions cannot be used against him regarding use of the land. The passage of ten years with open, notorious, continuous, hostile possession of said property is enough to state continuous and actual possession for a claim of adverse possession. In 2008, Plaintiff Keating as Trustee purchased a property on Battery Island Drive (TMS 331-06-00-035) under the name James Island Preservation Trust. Shortly thereafter, the Plaintiff took possession of the disputed property from Battery Island Drive to the drainage ditch on the disputed property. The Plaintiff described in detail the portion of the applicable property in his Complaint and it is shown on Exhibit A of said Complaint. Additionally, the Complaint denotes the abutting natural boundaries which include the ditch, dikes, and marsh in Exhibit A. The boundaries of the disputed property are easily identifiable. The Plaintiff/Appellant clearly knew where the boundaries were, but stated that a surveyor would be needed to confirm the measurements for a description to be written to place on the Master's Deed. He never had a question about the location of the boundaries, just did not know how to create a precise legal description. Entering land under color of title and possession of the property will be will be constructively extended to the boundaries defined by his color of title, excepting in so far as the land so included is in the adverse possession of another. Weston v.

Morgan, 162 S.C. 177, 160 S.E. 436 (S.C. 1931), "....Continuity of possession does not mean the person in possession must be actually on the land during the whole of the statutory period. Mullis, 237 S.C. at 495, 118 S.E.2d at 65 . "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 [does] some act which amounts to a voluntary abandonment of the possession." Id. In determining whether continuity of possession is broken, the nature and location of the land should be considered and whether the use to which the land has been put comports with the usual management of such property. Id. Jones v. Leagan, 681 S.E.2d 6, 384 S.C. 1 (S.C. App. 2009).The Court noted that "Occasional and temporary use or occupation does not constitute adverse possession. Taylor v. Heirs of William Taylor, 419 S.C. 639, 651–52, 799 S.E.2d 919, at 925 (Ct. App. 2017)." However, the Plaintiffs/Appellant's use was far more than occasional or temporary. The Plaintiff/Appellant claimed that he improved the land by bringing in fill dirt to build up the land that he used for storage, that he removed abandoned vehicles, numerous piles of construction debris such as lumbar, sheetrock, shingles, bags and piles of household garbage, furniture, drug paraphernalia, barrels of used oil and diesel fuel, stumps and landscape debris, among other items. Additionally, the Plaintiff/Appellant drastically improved the road, installed silt fencing, and put up a gate in which he locked out all other parties. R.p. 262 lines 1-25 and R.p. 263 lines 1-22. Plaintiff/Appellant further stated that he used the property for recreation, storage, parking, and bonfires.

2. Open, Notorious and Hostile

"For possession to be open and notorious, the legal owner need not have actual knowledge the claimant is claiming property adversely, [but] the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it. Acts of ownership of open land for purposes of adverse possession need not include actual residency or occupancy."

Moreover, activities that do not involve the creation of permanent structures on the land can be sufficiently open and notorious as to put the legal owner on notice that his land is being adversely possessed." Taylor, 799 S.E.2d at 651. Plaintiff/Appellant testified that shortly after 2008 he placed a chain and a locked gate on the property shortly after 2008 to prevent everyone in the world except him and those he gave permission to get on the property being claimed. This gate is visible from Battery Island Drive and would be obvious to anyone taking a remote interest in the property. Plaintiff testified that he cleared trees on the property from Battery Island Drive to the dike shortly after acquiring the neighboring property. This evidence is furthered by the Defendant's/Respndent's statement in ¶ 12 of their Verified Answer to Plaintiff's, Counterclaims and Third-Party Claims ("Counterclaims"), R.p. 42. that the Plaintiff was depositing "large stumps, trees and branches" on the property (although the date given by the Defendants for this activity is 2019). The Defendants/Respondents have not produced any evidence that the work was not being completed or completed prior to 2019. The Plaintiff testified to bringing in the dirt from the Construction of the bridges to Folly Beach until the bridges were complete, in 2014. Furthermore, the Plaintiff/Appellant Keating testified that he put several loads of wood on the newly graded road to be used later for campfires and to make sure that bikers and four wheelers who had not been there since 2011 would not return. R.p. 256 lines 3-9.

3. Exclusive possession

In the Order, this Court noted that "Claimant's possession must be such as to indicate his exclusive ownership of the property. Not only must his possession be without subserviency to, or recognition of, the title of the true owner, but it must be hostile thereto and to the whole world. Mullis v. Winchester, 237 SC 487, 118 SE2d 61 (1961); Gregg v Moore, 226 SC 366, 85 SE2d 279(1954); Lynch v. Lynch, 236 SC 612, 115 SE2d 301 (1960)." This Court determined that the Plaintiff did not meet the elements for exclusivity on the basis that other people intruded on the

property. The Plaintiff testified that he expelled anyone who would enter the property including campers, people dumping debris, dirt bikers, those riding four wheelers, etc.... R.p. 257 lines 7-25 Thus, the Plaintiff/Appellant was acting as the true owner of the property. The Plaintiff/Appellant Keating does not know of any trespassers since 2010 which is a testament of 15 years of exclusivity. R.p. 108. Furthermore, the Plaintiff/Appellant Keating stated that individuals would ask him for permission to use the property and he would decide if the individual was able to use the disputed property. The Plaintiff /Appellant Keating disclosed witnesses, other than his wife Macarena, who will corroborate these facts. The Defendants/Respondents did not trespass on the property in question until the Sheriff's Office told the Plaintiff/Appellant that the family had a right of way and advised the Defendants on the Civil Process (and presumably also telling them that they could not be restricted from the property if they had a right of way) around January 2025. R.p. 168 lines 1-5; R.pp-. 468-470. If the Defendants had not been given incorrect legal advice, they would not have been on that part of the property since the dike was built. On March 1, 2025, as listed in the Defendant's Counterclaim, the Plaintiff notified the Defendants/Respondents that there were not allowed to trespass on the property belonging to the James Island Trust. R.p. 471 . By the time the Defendants/Respondents entered the property, the Plaintiff/Appellant had already fulfilled the statutory requirements for adverse possession. The Plaintiff/Appellant possessed the property over 10 years exclusively before the Defendants/Respondents ever tried to dispute the Plaintiff's/Appellant's possession of the property. Further evidence of the lack of convenient physical access to a portion of the Defendants'/Respondents' property is their request from the Court for an "Easement by Necessity." Furthermore, in the Defendants'/Respondents' Counterclaim for an Easement by Necessity, the Plaintiffs/Appellaants note that they have not enjoyed the disputed portion of the property since the dike was built, which was years before the purchased the neighboring property and took possession of the subject property 17 years ago.

Under Section 15-67-210, in actions "for the recovery of real property or the possession thereof the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law. The occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title unless it appears that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action."

4. Hostility and Claim of Right

The Plaintiff admitted that he did not have permission to use the land and knew that the disputed property belonged to the Defendants/Respondents, and possessed and controlled it regardless. The Defendants/Respondents state that the Plaintiff/Appellant never had permission to use the land. Seventeen years after the Plaintiff took possession of the disputed portion of property, two officers of the law came to the Plaintiff and told him to remove what was on the property. The Plaintiff told the officers the same thing that he did to the Defendants/Respondents, that he would "rectify" the problem. Like the opposing attorney in the deposition, the officers misinterpreted what the Plaintiff said. R.p. 305 lines 1-25 R.p. 306 lines 1-9; R.p. 307 lines 1 – 17. The Plaintiff stated in his deposition that he meant that he would file for adverse possession. The Plaintiff has not removed anything from the property and has brought in more material for the road which is physical proof of what the Plaintiff meant and his hostile claim of right as well as his possession being open and notorious. The law enforcement officials need to be cross examined in the presence of the trier of fact for said trier of fact to get a full picture of what was said with examination and cross examination.

I. Actual Possession

The record demonstrates that Appellant exercised physical dominion and control over the disputed property consistent with ownership. Appellant maintained, occupied, and treated the disputed portion as his own for well in excess of ten years. These acts constitute actual possession under South Carolina law. The Master-in-Equity failed to assign proper weight to this evidence and instead focused upon the Defendants' record title rather than Appellant's physical possession.

II. Open and Notorious Possession

Appellant's possession was visible, obvious, and capable of being observed by the Defendants/Respondents, including Wilder. The possession was not secret or concealed.

The purpose of this requirement is to place the record owner on notice that another claims ownership. The evidence established that Defendants/Respondents either knew or should have known Appellant was exercising ownership over the disputed tract. The Master-in Equity's contrary finding ignores the undisputed physical evidence contained in the record.

III. Exclusive Possession

Plantiff/Appellant exercised exclusive dominion over the disputed property. The record contains no evidence that Defendants/Respondents exercised competing possession during the statutory period. Rather, Plaintiff/Appellant exclusively controlled and maintained the disputed portion while treating it as his own. Accordingly, the Master-in-Equity's finding that exclusivity was lacking is unsupported by the record.

ARGUMENT

The Record on Appeal contains substantial evidence demonstrating Plaintiff/Appellant Joseph W. Keating's actual use and possession of the disputed portion of TMS 331-05-00-001

Plaintiff/Appellant testified that he began claiming and using the disputed property in 2008 following the acquisition of the adjoining property (R.58 ¶11). Beginning in approximately 2009 or 2010, Appellant exercised continuous acts of dominion and control by chaining and locking the entrance gate; placing firewood on the property; depositing hundreds of loads of dirt; and completely blocking access (R216 lines 7-25; R217 lines 1-15). Respondents' witness Marvin Tracey Johnson (Wilder heir) testified that the road was blocked in 2009 (R192 lines 13-18). Wilder further presented testimony admitting Plaintiff/Appellant had been using a portion of the disputed property since 2009. Defendants/Respondents did not challenge Plaintiff/Appellant's possession until November 13, 2023 (R60 ¶15). Plaintiff/Appellant also relies on (boundary description); R20 (Exhibit A to Complaint); R27-28 ¶¶13-14; R50 ¶4; R157:25-R158:10 identifying the parcels.

I. Actual Possession

The record demonstrates that Plaintiff/Appellant exercised physical dominion and control over the disputed property consistent with ownership. Plaintiff/Appellant maintained, occupied, and treated the disputed portion as his own for well in excess of ten years. These acts constitute actual possession under South Carolina law. The Master-in-Equity failed to assign proper weight to this evidence and instead focused upon the Defendants'/Respondents' record title rather than Plaintiff/Appellant's physical possession.

II. Open and Notorious Possession

Appellant's possession was visible, obvious, and capable of being observed by the Defendants, including Wilder. The possession was not secret or concealed. The purpose of this requirement is to place the record owner on notice that another claims ownership. The evidence established that Defendants either knew or should have known Appellant was exercising ownership over the

disputed tract. The Master-in-Equity contrary finding ignores the undisputed physical evidence contained in the record.

III. Exclusive Possession

PlaintiffAppellant exercised exclusive dominion over the disputed property. The record contains no evidence that Defendants/Respondents exercised competing possession during the statutory period. Rather, PlaintiffAppellant exclusively controlled and maintained the disputed portion while treating it as his own. Accordingly, the Master-in-Equity finding that exclusivity was lacking is unsupported by the record.

The South Carolina has recognized that reversal is appropriate when the fact-finder overlooks or misapprehends material evidence. Here, the Master-in-Euity failed to consider the cumulative effect of Appellant's evidence establishing every required element of adverse possession. Instead, the court isolated individual facts while disregarding the overwhelming proof demonstrating continuous ownership-type possession. Like the successful appellants in Taylor, Id., of William Taylor, Appellant presented clear and convincing evidence of each element, and the court's contrary findings are unsupported by the record and refusal to hear all the facts.

The Master-in-Equity, the Honorable Mikell R. Scarborough, erred in concluding that Plaintiff/Appellant Joseph W. Keating failed to establish title by adverse possession to the disputed portion of TMS 331-05-00-001. The evidence presented at trial established, by clear and convincing evidence, every element required under South Carolina law: actual, open and notorious, exclusive, hostile, and continuous possession for the statutory period. Rather than considering the evidence as a whole, the Master-in-Equity misapprehended material facts demonstrating Appellant's continuous exercise of dominion and control over the disputed property. The Order overlooks or misconstrues evidence establishing that Plaintiff/Appellant openly

maintained, occupied, and claimed the disputed tract as his own for more than ten years without permission from the Defendants/Respondents. The evidence further established that Plaintiff/Appellants' possession was visible and notorious, placing the Defendants/Respondents on notice of his claim of ownership. There was no evidence that Plaintiff/Appellant's possession was permissive, nor was there evidence that the Defendants/Respondents exercised possession inconsistent with Plaintiff/Appellant's exclusive control during the statutory period. R.p.21- 49. More precisely see R.31 lines 30, which Defendant's Responts allege "....*Third Party Defenadnt (Keating) Joseph W. Keating individually and doing Business as Keating Tree Service did not- and never had permission to dump on the Subject Property*". In Defendants/Respondents in the verified Answer. Counterclaim and Third Party Complaint accused Keating of Trespassing. In the Answer by Third Party Defendant (i.e., Plaintiff/Appellant) admitted to the allegation alleged by the Wilders in line 30. R.p. 50 line 2. Also, reference R.51 ¶ 7, that Appellant/Respondent admitted to do more than mere Trespass, in response to Respondent's allegation of Trespass. Because Appellant proved each element of adverse possession by clear and convincing evidence, the Master's findings are against the clear preponderance of the evidence. The Master-in—Equity therefore committed reversible error by concluding that Appellant failed to acquire title by adverse possession.

The Master-in-Equity also misapprehended Respondent William Wilder's testimony concerning the chronology of Appellant's possession of the disputed property. At the hearing, Respondent William Wilder testified that the blockage of the road located on the disputed property occurred in 2009. R. p. 192, lines 13–18. This testimony is consistent with Appellant's evidence that he began exercising dominion and control over the disputed portion of TMS 331-05-00-001 shortly after acquiring the adjoining property in 2008. R. p. 50, ¶ 4; R. p. 58, ¶ 11. Respondent Wilder further acknowledged that he observed Appellant using the disputed property beginning in

2009. R. p. 192 lines 15-18. The Record also establishes that Respondents did not challenge Appellant's possession until November 13, 2023. R. p. 60, ¶ 15. Taken together, the evidence establishes a consistent chronology: Appellant began using and claiming the disputed property in 2008, the road blockage existed by 2009, Respondent acknowledged Appellant's use beginning in 2009, and Respondents did not contest Appellant's possession until November 13, 2023. This chronology supports the Master's finding that the possession extended over many years; however, it also supports Appellant's contention that the statutory period for adverse possession had elapsed before Respondents first asserted an adverse claim. The Master's failure to properly consider this corroborating evidence contributed to the erroneous conclusion that Appellant failed to prove adverse possession by clear and convincing evidence. Respondent William Wilder testified that the blockage of the road on the disputed property occurred in 2009. R. p. 192, lines 13–18. The existence of the road blockage was a visible and obvious condition affecting the disputed property and was sufficient to draw attention to Appellant's use and occupation of the property. This testimony supports Appellant's position that Respondents had notice, or at a minimum should have had notice, that Appellant was openly exercising dominion and control over the disputed portion of TMS 331-05-00-001. Rather than being concealed or secret, Appellant's possession was visible and apparent to neighboring landowners.This evidence is consistent with Appellant's evidence that he began claiming and using the disputed property in 2008 (R. p. 58, ¶ 11), Respondent Wilder's acknowledgment that Appellant was using the property beginning in 2009; Respondent fHarrison William Wilder testified that the blockage of the road on the disputed property occurred in 2009. R. p. 192, lines 13–18. and the fact that Defendanst/Respondents did not challenge Appellant's possession until November 13, 2023 (R. p. 28, ¶ 15). When considered together, this evidence supports the conclusion that Appellant's possession was actual, open, notorious, continuous, and of

sufficient duration to satisfy the statutory requirements for adverse possession. The Master's failure to properly consider the significance of this evidence constitutes reversible error.

Keating chained a gate to the property and put a lock on the chain. Keating testified at the hearing that around 2009 or 10 he put fire wood , hundreds of loads of dirt which completely blocked the subject property ever since. R 216 lines 7 - 25; R 217 lines 1 -15. The Master-in-Equity failed to properly consider Appellant's unrebutted testimony regarding the acts of dominion and control he exercised over the disputed portion of TMS 331-05-00-001. Appellant testified that, in approximately 2008, he secured the entrance to the disputed property by chaining the gate and placing a lock on the chain. Appellant also testified that he placed firewood and hundreds of loads of dirt on the disputed property, completely blocking access to the property from approximately 2009 or 2010 onward to block the dike. R. pp. 216, lines 7–25; 217, lines 1–15.. These were substantial, visible, and continuous acts of dominion over the disputed property consistent with a claim of ownership. These actions were neither secret nor sporadic. To the contrary, locking the gate, and placing firewood and hundreds of loads of dirt on the property were open, notorious, and unequivocal acts that could place a reasonable record owner on notice that Appellant was asserting possession and control over the disputed property. This testimony is consistent with the remaining evidence in the Record establishing that Appellant began claiming the property in 2008 (R. p. 58, ¶ 11), that Respondent Wilder acknowledged Appellant's use of the property beginning in 2009 and that Respondents did not challenge Appellant's possession until November 13, 2023 (R. p. 28, ¶ 15). Around December 21, 2023 the Respondent Wilder placed a no Trespassing sign on the subject property, which Respondent avers that the signs were immediately "ripped out" of the ground. R.p. 28 ¶ 17. The Record on Appeal contains substantial evidence demonstrating Plaintiff/Appellant Joseph W. Keating's actual use and possession of the disputed portion of TMS 331-05-00-001. Plaintiff/Appellant testified that he began claiming and

using the disputed property in 2008 following the acquisition of the adjoining property. R. p. 58, ¶ 11. Beginning in approximately 2009 Plaintiff/Appellant exercised continuous acts of dominion and control over the disputed property by:

- chaining and locking the entrance gate;
- placing firewood on the property;
- depositing hundreds of loads of dirt on the disputed property; and
- completely blocking access to the disputed area from approximately 2009 or 2010 forward.

R. pp. 216, lines 7–25; 217, lines 1–15.

Marvin Tracie Johnson (Wilder heir) also testified that he discovered the road was blocked since Plaintiff/Appellant possessed the portion of the subject property, corroborating Plaintiffs/Appellant's evidence that the condition of the property visibly reflected Appellant's exercise of dominion and control. R. p. 192, lines 13–18. Defendant/Respondent Wilder further admitted that Appellant had been using a portion of the disputed property since 2012. Defendant/Respondent Harrison Wilder testified that the blockage of the road on the disputed property occurred in 2009. R. p. 192, lines 13–18. R. p. 42. The Record further establishes that Defendant/Respondents did not challenge Plaintiff/Appellant's possession until November 13, 2023. R. p. 60, ¶ 15. Taken together, this evidence demonstrates continuous and visible acts of possession consistent with ownership. The Master's conclusion that Plaintiff/Appellant failed to establish adverse possession overlooks or misapprehends this evidence of Plaintiff/Appellant's use, possession, and dominion over the disputed property throughout the statutory period. The Master's Order does not adequately address these substantial acts of possession or explain why they were insufficient to establish the elements of actual, open, notorious, exclusive, and hostile possession. By overlooking or misapprehending this evidence, the Master committed reversible

error. Accordingly, Plaintiff/Appellant respectfully requests that the Court reverse the Order of the Master-in-Equity, declare that Plaintiff/Appellant Joseph W. Keating acquired title to the disputed portion of TMS 331-05-00-001 by adverse possession, remand with instructions to enter judgment quieting title in Appellant, and grant such other relief as the Court deems just and proper.

CONCLUSION

For the foregoing reasons, the Plaintiff/Appellant respectfully requests this South Carolina Court of Appeals to reverse the to was dismissed and Striking Lis Pendens, 2025LP1000176 dated December 3, 2025 ("Order").the Order on Motion to Dismiss And/Or Summary Judgement in which Plaintiff's/Appellants' Complaint for Adverse Possession and quiet title to any portion of TMS 331-05-00-001 was dismissed, and remand the case for a full trial and/or completely rule in favor of Appellant and find that adverse possession was proved by Appellant and grant him the relief requested in the Complaint.

In other words, Plaintiff/Appellant respectfully requests that this Court reverse the order of the Circuit Court, hold that Plaintiff/Appellant established title to the disputed portion of TMS 331-05-00-001 by adverse possession, remand with instructions to enter judgment quieting title in favor of Plaintiff/Appellant Joseph W. Keating, and grant such further relief as the Court deems just and proper.

Joseph W. Keating, Pro Se
Appellants

July 1, 2026