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Aug 10 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Benjamin C.P. Sapp, Special Referee

Civil Action No. 2021-CP-15-00210
Appellate Case No. 2025-002580

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,

v.

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/k/a 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/k/a Leroy 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/k/a Delores Williams, Johnny Washington a/k/a 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 Rovenka 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 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,

and

Donna Mitchell and Curtis Mitchell are the Respondents.

APPELLANTS' FINAL REPLY BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. THE TRIAL COURT ERRED IN FINDING THAT THE RESPONDENTS ACQUIRED OWNERSHIP BY ADVERSE POSSESSION BECAUSE THEIR POSSESSION WAS PERMISSIVE, NOT HOSTILE.
- II. THE TRIAL COURT ERRED IN FINDING THAT RESPONDENTS ACQUIRED OWNERSHIP OF THE PARCEL UNDER A THEORY OF ACQUIESCENCE.

ARGUMENTS IN RESPONSE TO RESPONDENTS' INITIAL BRIEF

This matter is subject to the Clementa C. Pinckney Uniform Partition of Heirs Property Act, S.C. Code § 15-61-310 *et seq.* ("Act"), involving the partition and potential sale of the subject heirs' property.

- I. **THE TRIAL COURT ERRED IN FINDING THAT THE RESPONDENTS WERE ENTITLED TO THE ONE (1) ACRE TRACT OF LAND BY ADVERSE POSSESSION BECAUSE THEIR POSSESSION WAS PERMISSIVE, NOT HOSTILE.**

Respondents lose sight of the strict requirements of adverse possession. As discussed in Appellants' Initial Brief, "[t]he party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time," and must establish those elements by clear and convincing evidence. Taylor v. Heirs of William Taylor, 419 S.C. 639, 649, 651, 799 S.E.2d 919, 924–25 (Ct. App. 2017). The dispositive issue here is hostility.

As the record reflects, Donna Mitchell and Curtis Mitchell are not Heirs of Charity Washington, also admitted by Donna Mitchell, when she testified at the May 25, 2023 hearing ("Hearing") that **Respondents are not blood relatives of Charity Washington.** (R. p. 150, lines 9-10, emphasis added).

Additionally, during the Hearing, Donna Mitchell testified that Respondents' mother, Daisy Bell Mitchell was taken in by Millie Washington, an Heir of Charity Washington (R. p. 139, lines

4-7). Daisy Bell Mitchell then had two children, Donna Mitchell and Curtis Mitchell, and continued to live with Mille Washington. When Daisy Bell Mitchell passed away, and as Appellants testified, they permitted Respondents to continue to live on the property (R. p. 179, lines 24-25; R. p. 180, lines 1- 2). Because the Mitchells' mother entered and remained with permission, and because the Heirs of Charity Washington continued that permission, Respondents cannot establish hostile possession. See Knox v. Bogan, 322 S.C. 64, 472 S.E.2d 43 (Ct. App.1996) (recognizing that hostile possession requires occupancy without the owner's permission).

Moreover, possession that begins permissively is presumed to remain permissive absent a clear and communicated repudiation of the owner's title. McDaniel v. Kendrick, 386 S.C. 437, 444, 688 S.E.2d 852, 856 (2010); Young v. Young, 286 S.C. 134, 136, 332 S.E.2d 773, 774 (Ct. App. 1985). The record contains no evidence of any such repudiation.

Respondents rely heavily on Donna Mitchell's statement that "it wasn't permission," but that phrase is taken out of context. During the Hearing, Donna Mitchell was asked and answered the following:

Q: You've lived there with permission from Aunt Millie, the person you referred to as Aunt Millie and your mother all lived there with permission, didn't you?

A: I don't think it was permission. I was born into that. It wasn't permission. At the time, when my mom was raised by Millie, it was like handshakes and thank you, because back in those days, those people could not read nor write. So I was born into that. (R. p. 144, lines 8–11).

When read in its entirety, the testimony describes an informal arrangement based on "handshakes and thank you" – evidence of permission, not hostility. Respondents cannot establish adverse possession by isolating a single phrase while disregarding the remainder of the testimony.

Respondents likewise mischaracterize Appellant Felicia Cox's (an Heir of Charity Washington) testimony. Although they contend she did not know of anyone who gave the Mitchells permission, Felicia Cox was asked and answered the following:

Q: ...But to your knowledge, they were living there with permission of the family?

A: To my knowledge, yes. (R. p. 182, lines 11–14).

Similarly, Appellant Gwendolyn Bright, an Heir of Charity Washington, acknowledged that the family allowed Respondents to remain on the property, and was asked and answered the following:

Q: So they have been there all their lives, and you just **let them** stay?

A: Yes. (R. p. 185, lines 10-12, emphasis added).

This testimony directly contradicts the trial court's finding that Respondents and their mother had been in possession "without permission since 1963." (R. p. 10). As Gwendolyn Bright testified that she "let" the Respondents stay, further indicating that the Respondents were living on the one-acre tract with her permission.

The Heirs of Charity Washington, who have now sold their interest in the land, are the title owners, and the **Respondents, as they admitted, are not heirs.** (R. p. 150, lines 9-10, emphasis added). The record reflects that Respondents' mother resided on the property with permission and that Respondents continued residing there pursuant to that same generational permission. Appellants and the additional Heirs of Charity Washington, were aware of Respondents' occupancy, observed them living on the property, allowed them to remain, and never asked them to leave. (R. p. 179, lines 16-25; R. p. 180, lines 1-2; R. p. 182, lines 11-14).

Respondents also rely on testimony that "[t]hey never had permission for it." Again, the statement is taken out of context. Appellant, Felicia Cox was asked and answered the following:

Q: Did you go over and tell them to quit improving the property?

A: They never had permission for it.

Thus, the testimony addresses improvements to the property only. Appellants have consistently stated that they have continued the generational permission for Respondents to live on the one-acre tract.

Accordingly, Respondents failed to prove hostility by clear and convincing evidence. The evidence shows that Respondents' occupancy originated with permission, and the record contains no evidence that permission was ever repudiated. Because Respondents failed to establish the hostility element, the record does not support a finding of adverse possession.

II. THE TRIAL COURT ERRED IN FINDING THAT THE RESPONDENTS ACQUIRED THE ONE ACRE TRACT OF LAND BY ACQUIESCENCE.

Respondents contend that Appellants rely on permissive use to defeat ownership by acquiescence and argue that acquiescence does not require hostility. (R. p. 293). This misstates Appellants' position. Appellants do not argue that acquiescence fails for lack of hostility; rather, the longstanding permission granted by the Heirs of Charity Washington demonstrates that Appellants never acquiesced in Respondents' ownership of the one-acre tract but simply allowed Respondents to reside on the one-acre tract.

Nor does the record establish acquiescence. See Kirkland v. Gross, 286 S.C. 193, 197, 332 S.E.2d 546, 548–49 (Ct. App. 1985). Respondents admitted that **no one has ever told them they owned the property**, (R. p. 152, lines 11-14, emphasis added) and Appellants testified that Respondents were permitted to remain on the property but were not owners. *Id.*; (R. p. 152, lines 11–14).

Likewise, Respondents' payment of a portion of the taxes does not establish ownership where an heir brought them the amount to pay, making the arrangement more akin to rent than

ownership. (R. p. 141, lines 8-17; R. p. 146, lines 3-15). The record reflects that Respondents, like their mother, Daisy Bell Mithcell, lived on the one-acre tract with permission – no facts state otherwise.

Accordingly, the record contains no evidence that Appellants relinquished ownership or mutually recognized Respondents as owners. Instead, the evidence shows only permissive occupancy. Therefore, Respondents failed to prove acquiescence.

CONCLUSION

Accordingly, the record supports neither adverse possession nor acquiescence. The evidence shows only that Respondents occupied the property pursuant to generational permission. Because Respondents failed to establish the required elements of either claim, the trial court's Order should be reversed.

Respectfully submitted,

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August 10, 2026