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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2026-001628

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Ann Louise Gibbs-Hunter and Raymond D. Gibbs, Jr., Appellants / Plaintiffs,

v.

Rilion Gracie Greenville, LLC and TNB Financial Services, as Trustee  
of Gene Mark Brown's Trust B-2 under The Doris P. Brown Revocable Trust  
Agreement Dated February 9, 2006, as Amended, Respondents / Defendants,

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APPELLANTS' BRIEF

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## **APPELLANT'S STATEMENT OF ISSUE ON APPEAL**

The Circuit Court abused its discretion when it denied Plaintiffs' Motion to Amend its Complaint pursuant to SCRCP, Rule 15(a) because the requested amendment was supported by evidence developed in discovery, and the party opposing Plaintiffs' motion produced no evidence of prejudice.

## STATEMENT OF THE CASE

This is a simple appeal primarily focused on the Circuit Court's ruling as it pertains to Plaintiffs' Motion to Amend their Complaint filed October 29, 2025.

The underlying matter, CA No. 2024-CP-23-05724, was initiated on September 20, 2024 wherein Plaintiffs Ann Louise Gibbs-Hunter and Raymond D. Gibbs, Jr., [hereinafter "Gibbs"] filed an action to quiet title to a certain real property located in the City of Greer, State of South Carolina on the theories of adverse possession and presumptive grant against defendants Rilion Gracie Greenville, LLC and TNB Financial Services, as Trustee of Gene Mark Brown's Trust B-2 under The Doris P. Brown Revocable Trust Agreement.

As the discovery phase of the matter matured, substantial evidence was developed to show Gibbs, and specifically Ann Loise Gibbs-Hunter, had adverse, continued, and uninterrupted use or enjoyment of an identifiable section of the parcel in an open, notorious, continuous, uninterrupted manner contrary to the true property owner's rights for a period greatly exceeding twenty years, but it began to appear unlikely Gibbs would be able to prove the elements of exclusivity and hostility required to establish adverse possession and/or presumptive grant.

In response to these developments, Defendant Rilion Gracie Greenville, LLC [hereinafter "Rilion"] filed a Motion for Summary Judgment on October 21, 2025. (ROA pp. 245-246). Rilion's Summary Judgment Motion and its subsequent Memorandum in Support argued Rilion should be dismissed as a defendant on the assertion Gibbs could not prove exclusive and hostile use of the property. (ROA at p. 246 and pp. 76-90).

Also in response to these developments, Gibbs filed a Motion to Amend their Complaint on October 29, 2025 seeking to add claims for prescriptive easement and easement by necessity because those causes of action do not require proof of exclusivity and hostility. (ROA pp. 233-

244; p. 242-243; p. 270, lines 2-7; p. 278, line 23 - p. 280, line 6).

In its Order on these two motions dated June 4, 2026, the Circuit Court:

- A. Denied Gibbs' Motion to Amend, stating, "As previously discussed in the analysis of Adverse Possession and Presumptive Grant, it is clear to the Court that the Gibbs cannot show (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; or (3) use or enjoyment which is either adverse or under claim of right." (ROA at p. 44); and
- B. Granted Rilion's Motion for Summary Judgment due to the lack of evidence on record of Gibbs' exclusive and hostile occupation of the subject property. (ROA at pp. 36-39).

On June 12, 2026, Gibbs filed a Motion to Reconsider with the Circuit Court that: (a) highlighted specific evidence in the Court's possession underpinning claims for prescriptive easement and easement by necessity; (b) demonstrated that a prescriptive easement claim omits the elements of hostility and exclusivity; (c) stated the standard required to grant a Motion to Amend; and (d) expressed the severity of granting a Motion for Summary Judgment. (ROA at pages 14-29).

Defendant Rilion filed a Memorandum in Opposition to Gibbs' Motion to Reconsider on June 25, 2025 and the Circuit Court issued a Form 4 Order denying Gibbs' Motion the same day.

Gibbs, now Appellants, filed their Notice of Appeal to the South Carolina Court of Appeals on July 24, 2026. (ROA p. 1).

## **ARGUMENT**

### **I. Standard of Review.**

"[T]he decision to allow an amendment [pursuant to Rule 15] is within the sound discretion of the trial court and will rarely be disturbed on appeal. The trial judge's finding will not be overturned without an abuse of discretion or unless manifest injustice has occurred." Berry v.

McLeod, 328 S.C. 435, 492 S.E.2d 794 (S.C. App. 1997) citing Anders v. Nash, 256 S.C. 102, 180 S.E.2d 878 (1971); Mylin v. Allen-White Pontiac, Inc., 281 S.C. 174, 314 S.E.2d 354 (Ct. App. 1984).

South Carolina Appellate Courts “have consistently held that a circuit court’s ruling on a Rule 15 motion to amend is within its discretion [but] a court’s failure to exercise its discretion is itself an abuse of discretion. Angela Patton, Alexia L. v. Gregory A. Miller, M.D., Rock Hill Gynecological & Obstetrical Assocs., P.A., 804 S.E.2d 252, 420 S.C. 471 (S.C. 2017) citing State v. Hawes, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015); Samples v. Mitchell, 329 S.C. 105, 114, 495 S.E.2d 213, 218 (Ct. App. 1997).

## **II. Argument.**

**The Circuit Court abused its discretion when it denied Plaintiffs’ Motion to Amend its Complaint pursuant to SCRCP, Rule 15(a) because the requested amendment was supported by the evidence developed in discovery, and the party opposing Plaintiffs’ motion produced no evidence of prejudice.**

In this case, the Plaintiffs’ “proposed amendment is governed by S.C.R.Civ.P. Rule 15(a). The pertinent section of the rule states ‘a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.’” Forrester v. Smith & Steele Builders, Inc., 369 S.E.2d 156, 295 S.C. 504 (S.C. App. 1988); quoting S.C.R.C.P., Rule 15(a) (2026).

Rule 15(a) “strongly favors amendments and the court is encouraged to freely grant leave to amend.” Patton v. Miller, 420 S.C. 471, 489-90, 804 S.E.2d 252, 261 (2017) (quoting Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005)). “The circuit court erred by failing even to consider allowing [Plaintiff] to amend its complaint.” See Patton, 420 S.C. at 490, 804 S.E.2d at 262 (holding the trial court’s failure to exercise its discretion under Rule 15(a) is itself an abuse of discretion).

“Under Rule 15(a), the circuit court should have considered whether the defendants were prejudiced by the amendment, or whether there was some other substantial reason to deny it.” See Patton, 420 S.C. at 490, 804 S.E.2d at 262.

“Rule 15(a) is substantially the same as the Federal Rule” Rule 15(a), SCRPC Notes. The *Patton* Court states that “the Supreme Court of the United States has referred to the Rule’s ‘freely given’ provision as a ‘mandate’ that ‘is to be heeded,’” See Patton, 420 S.C. at 490, 804 S.E.2d at 262.

Here, the Circuit Court explains its decision to deny Gibbs’ Motion to Amend by stating, “As previously discussed in the analysis of Adverse Possession and Presumptive Grant, it is clear to the Court that the Gibbs cannot show (1) continued and uninterrupted use or enjoyment of the right for a period of twenty years; (2) the identity of the thing enjoyed; or (3) use or enjoyment which is either adverse or under claim of right. For the foregoing reasons, the Gibbs’ Motion to Amend is DENIED.” (ROA at p. 44).

Critically, the elements of a prescriptive easement claim listed here by the Circuit Court do not include exclusivity or hostility, and it was those two elements upon which Rilion’s Summary Judgment Motion solely relied. In fact, it was the lack of evidence supporting those two elements that underpins the Court’s ruling on Rilion’s Motion for Summary Judgment.

The use of the word “adverse” in the elements for a prescriptive easement claim may have created confusion. However, “When it appears the claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another’s rights, for the full period of 20 years, the use will be presumed to have been adverse.” Simmons v. Berkeley Elec. Coop. Inc., 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016).

The record before the Circuit Court contained the deposition transcript of Annie Gibbs-

Hunter (ROA pp. 94-111) in which Ms. Gibbs Hunter testified as follows:

16 BY MR. MARCHBANKS:  
17 Q. Ms. Annie, how old were you when you got your driver's  
18 license?  
19 A. I think I was 16.  
20 Q. How old were you when you first got your first car?  
21 A. I think I may have been 17.  
22 Q. Okay. And you were born when?  
23 A. Huh?  
24 Q. When were you born, what year?  
25 A. 1961.  
1 Q. So 1961, 17 years, 1978? Sometime in there, you think,  
2 '79?  
3 A. Maybe. Sometime in there. '77, '78.  
4 Q. Where'd you park your car when you got it?  
5 A. On the gravel right in front of 207.  
6 Q. The gravel area in front of 207?  
7 A. Yes.  
8 Q. Did your mom and dad drive?  
9 A. My dad did, but my mom didn't.  
10 Q. Did your dad have a car?  
11 A. He did.  
12 Q. Where did he park his car?  
13 A. He would pull it up in the little driveway and park to  
14 the left, up under a tree.  
15 Q. Was that close to the where the gravel driveway is now?  
16 A. Yes.  
17 Q. Do you know if it was on 203 property or do you know  
18 where the property line was at that point in time?  
19 A. No idea.  
20 Q. Did your uncle drive?  
21 A. He did.  
22 Q. And he had a car?  
23 A. Yes.  
24 Q. Where did he park?  
25 A. In the front right -- gravel area. If my dad wasn't  
1 parked under the tree, he would park there.  
2 Q. And your brother and sister, when they lived there, did  
3 they have cars? Any brothers or sisters?  
4 A. Yes.  
5 Q. Where did they park?  
6 A. They would park over on the other side of the yard, but

7 at the time, it wasn't a carport there.  
8 Q. More kind of towards 203?  
9 A. Yes.  
10 Q. Is that because they didn't have a spot on the gravel  
11 driveway?  
12 A. Yes.  
13 Q. Why would they not have a spot on the gravel driveway to  
14 park?  
15 A. Because other cars have taken it -- have taken the  
16 spots.  
17 Q. Cars driven by Gibbs?  
18 A. Yes.  
19 Q. And would you say that that was consistent from the  
20 time -- how old were you when that started happening,  
21 consistent use of that little gravel piece of driveway  
22 by Gibbs family members?  
23 A. I was -- I was in elementary school, 10, 11.  
24 Q. All right. So if you were about ten years old, and  
25 you're 64 now. So would you say -- when did that stop?  
1 When did you stop parking on that little gravel piece of  
2 driveway?  
3 A. When did I stop parking on it?  
4 Q. Or just, when did y'all stop using that piece of gravel  
5 driveway to park cars?  
6 A. We didn't. I didn't stop parking on it until 203 was  
7 built.  
8 Q. Was it continued to be used until that property sold to  
9 the brothers?  
10 A. It was.  
11 Q. And that happened last year, in 2024? You would have  
12 been 63, so that is roughly 53 years of continuous use  
13 by the Gibbs family; is that an accurate statement?  
14 A. Yes. Yes.

(ROA at pages 106-107).

Deponents Mary Morrison and Alice Jasper substantiated Ms. Gibbs-Hunter's testimony. Their deposition transcripts were also included in the materials before the Circuit Court.

In other words, there was substantial evidence before the Court that Annie Gibbs-Hunter and her relatives: knew the identity of the property enjoyed; had continued and uninterrupted use

or enjoyment of the property for a period greatly exceeding twenty years; and enjoyed their use of the property openly, notoriously, and in derogation of the rights of Rilion Gracie Greenville, LLC and TNB Financial Services, as Trustee of Gene Mark Brown's Trust B-2 under The Doris P. Brown Revocable Trust Agreement.

Finally, while S.C.R.C.P., Rule 15(a) is clear that leave to amend may not be granted if it causes prejudice to any other party, nothing in the record addresses this point. Neither Respondent raised the issue.

### **CONCLUSION**

Again, this appeal is not complex. The Circuit Court in this case abused its discretion by denying a well-founded and timely-filed Motion to Amend in favor of the extreme remedy of Summary Judgement for Respondent Rilion Gracie absent any showing of prejudice. The grant of Summary Judgment creates a manifest injustice for Appellants, who clearly deserve this matter be remanded and tried.

For these reasons, Appellants pray this Court overturn the Circuit Court's decision to grant Rilion Gracie Summary Judgment, direct the Court enter an order granting Gibbs' Motion to Amend their pleadings, and remand the case for trial.

Respectfully Submitted,

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