THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

The Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge

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Court of Appeals Case No. 2012-213578/
Beaufort Case No. 09-CP-07-2608

Lucille Patricia Smith, Respondent

v.

The Heirs at Law of Benjamin Days a/k/a Ben Deas a/k/a Daise, etc., et al,
of whom Howard Chaplin and Harriet Chaplin are Appellants

APPELLANTS' REPLY BRIEF

LAW OFFICE OF BRUCE R. HOFFMAN, LLC,
BY: BRUCE R. HOFFMAN,
Attorney for Appellants Howard Chaplin and
Harriet Chaplin
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843) 838-5290

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Harriet Chaplin
574 Sea Island Parkway
Saint Helena Island, SC 29920
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ARGUMENT

In her brief, Respondent implies that because Appellants' lost on their adverse possession counterclaim, that relieved her of any obligation to have standing to bring her case, or to prove her case. Sustaining THIS argument would undermine our entire judicial system.

Respondent contends that when this suit was filed Respondent possessed a deed to the Property from her father, that this deed raises the presumption that she is the owner of the property and thus she had standing (R. p.24). But as noted in Town of Kingstree v Chapman, SCCA Opinion 5162 (July 24, 2013), citing Belue v Fetner, 251 S.C. 600, 164 S.E.2d 753 (1968), ***a deed cannot convey an interest the grantor does not have.*** At trial, Respondent was unable to prove that her father was the adopted son of Samuel Daise, and thus ultimately the sole surviving heir of Benjamin Days a/k/a Ben Deas a/k/a Ben Daise (R. p.40, 118, 137, 207). Neither Respondent, nor her father James D. Smith, who testified at trial, offered into evidence a Decree of Adoption issued by a Court nor any other document proving that James D. Smith was in fact legally adopted. (R. p.207, 218). Thus, Plaintiff failed to prove her father owned Lot 2 when he deeded it to her in 1999, a deed cannot convey an interest the grantor does not have, and Respondent, having failed to prove she owned the property, by the required documentary evidence, had no standing to pursue this quiet title case and/or the lower Court should not have allowed her case to proceed and/or the lower Court should have denied her claims and/or should not have allowed her to challenge any of the title claims made by Defendants.

Particularly in a quiet title action, an action in equity where the appellate court can correct errors of law and may find facts in accordance with its own view of the preponderance of the evidence (Church v. McGee, 391 S.C. 334, 342, 705 S.E.2d 481, 485 (Ct. App. 2011), if the foundation of Respondent's case, as she asserts in her brief, was the 1999 deed from her father, but she could not prove at trial, by the required documentary evidence, that her father owned the

property he purported to be deeding to her, then the judgment in her favor must be reversed and with her having no standing to challenge Appellants' title claims, title to the subject property must be awarded to Appellants instead, based on the boundaries they proposed.

Further, even if Respondent had standing, she had the burden to prove her case, including that the deed into her was valid, and she didn't. Even if all Defendants had been defaulted, Respondent/Plaintiff still had a burden to prove her quiet title claim, and she couldn't and didn't. But this was not a default case, here Appellants had generally denied all Respondent's claims, and stated affirmative defenses and a counterclaim thereto (R. p.28), so Respondent, who brought the quiet title action, had the burden of establishing the validity of her claim to title. Hammond v Halsey, 287 S.C. 46, 336 S.E.2d 495 (Ct. App. 1985). Whatever presumption of title that may have been created, by Respondent having a deed from her father, if any, Appellants, as Defendants who had generally denied her claims, rebutted, and Respondent did not and could not show that her father owned the property he deeded to her, and therefore that she owned the property. The point is that if, as here, a Defendants' counterclaim is denied, the Plaintiff doesn't just win automatically, the Plaintiff still has to prove her case, her entitlement to the relief she is requesting, especially where Defendants' have generally denied her claims, and the Plaintiff here did not do that, could not and did not prove that she was an owner, let alone prove that title should be quieted in her name only. If Plaintiff's automatically won, without having to prove their case first, when all Defendant's had been defaulted or a Defendant did not prevail on their counterclaim, then all Plaintiff's would win, and that is just not the way the system works, though Respondent clearly wishes it was. At the bare minimum, the quiet title judgment and confirmation of boundaries in favor of Respondent must be reversed. At the maximum, as Respondent was unable to even show she was a proper Plaintiff, she had no standing to challenge Defendants' counterclaim, and Appellants should win on both the issue of title and on the issue of boundaries.

And having no standing in the suit, Respondent had and has no standing to challenge Appellants' adverse possession claims of ownership for Lot 2 (under color/presumption of title as Appellants had a deed that they testified included Lot 2, and no one had standing to rebut, or rebutted, this testimony (R. p.154), or to contest the boundary between Lot 1 and Lot 2 established by their surveyor, David Youmans (R. p.179, 195, 256). But even if Respondent did have standing to challenge their adverse possession or boundary claims, Appellants should have prevailed on their claims. Respondent did not, and could not rebut Appellants' testimony regarding adverse possession. Respondent claims in her brief that Mr. Chaplin's testimony on these issues was not credible, but provided no evidence to contradict any of Mr. Chaplin's testimony at trial (R.p. 156). Having introduced no contradicting evidence at trial, Respondent's admission that Mr. Chaplin did testify and therefore provide evidence on these issues is sufficient for him and his wife to prevail (R. p.175). The Appellants met their burden at trial on these issues, and Respondent did not then meet her burden to disprove what they had proved.

Most notably, Respondents imply in their brief that for adverse possession to be continuous, foot must be on the soil at all times, but this is not the law. Once possession has been taken, which Respondent admits in her brief occurred by continued clearing, planting, cultivation and harvesting (R. p.156), then the law clearly states that unless disseised of possession in some way, or possession is abandoned in some way, then possession continues. Respondent admits that there was activity by Appellants on the land throughout the statutory period (R. p.175), and introduced no evidence that Appellants were either disseised of possession or abandoned, after they initially took possession. At trial, there was no evidence that Respondent or her father did anything on or to the subject property, but substantial evidence that Appellants took action on or to the subject property throughout the statutory period, in plain view of Respondent's father, who lived across the street from the Lot 2 at issue, on the same road on which Lot 2 borders. (R. p.

131, 162). As such Appellants possession of Lot 2 was not only actual and continuous, but also open, notorious, hostile and exclusive for the entire statutory period. Appellants occupied the land continuously from 1997 to 2009, not until 2009 did Respondent or her father ever take any action regarding this Lot 2, and that was to sue to claim that they owned it – and she could not even prove that (R. p.22).

As to adverse possession under color of title, Respondent claims in her brief that the continued planting on the property, instead of building a house on the property, is not consistent with the normal use to which the property is put, because Saint Helena Island is zoned rural residential (R. p.175). That is not correct. Saint Helena Island is, and was at the time of trial, zoned rural, not rural residential, and planting is most certainly a normal use to which a substantial part of Saint Helena Island is put and has always been put (see Beaufort County Building & Land Development Ordinances, Ordinance 2010/26). Therefore Appellants continued, exclusive planting (clearing, planting, cultivation, harvesting) does support their adverse possession claim, under color of title or otherwise, as a normal improvement/use to which property in this area is devoted.

The facts elicited at trial to support the Stale Demand, Laches and Waiver of Rights defenses were stated in Appellants' initial brief, and thus these defenses can and should be addressed by this Court, for the most part they are the same arguments that support the adverse possession claims, it is untrue for Respondent to say that no facts whatsoever to support these defenses were cited.

As to the boundary dispute, any evidence that Respondent put on in this regard must be disregarded, as she could not and did not prove ownership and thus had no standing to put on evidence on this boundary issue or any other issue in the case. The testimony at trial of Appellants' surveyor, David Youmans, being credible and in accordance with sound surveying principles (R. p.179, 185), the boundary issue should have been resolved in favor of Appellants.

CONCLUSION

For all the foregoing reasons as well as those stated in Appellants' initial brief, the judgment in favor of Respondent as to title and boundaries must be reversed, and either a new trial ordered, or judgment entered in favor of Appellants' instead on the issues of title and boundaries.

Respectfully submitted,

Dated: November 22, 2013

LAW OFFICE OF BRUCE R. HOFFMAN, LLC,
BY: BRUCE R. HOFFMAN,
Attorney for Appellants Howard Chaplin and Harriet Chaplin
574 Sea Island Parkway
Saint Helena Island, SC 29920
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CERTIFICATE OF SERVICE BY HAND DELIVERY OF APPELLANTS' INITIAL BRIEF, REPLY BRIEF AND RECORD ON APPEAL

The undersigned attorney for the Appellants hereby certifies that on the 22nd day of November, 2013, he had served by hand delivery, a true and accurate copy of Appellants' Initial Brief, Appellants' Reply Brief and Record on Appeal, to Alysoun M. Eversole, Esquire, Eversole Law Firm, PC, 1509 King Street, Beaufort, SC 29902, attorney for Respondent.

Dated: November 22, 2013

LAW OFFICE OF BRUCE R. HOFFMAN, LLC
BRUCE R. HOFFMAN, Attorney for Appellants
574 Sea Island Parkway
Saint Helena Island, SC 29920-4205
(843) 838-5290

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