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

---

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' INITIAL 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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Attorney for Appellants Howard Chaplin and
Harriet Chaplin
574 Sea Island Parkway
Saint Helena Island, SC 29920
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Appellants' Initial Brief

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in quieting and confirming title to the subject Lot 2 for Respondent rather than Appellants?
2. Did the trial court err in finding for Respondent rather than for Appellants on the boundary dispute involving the subject Lot 2?
3. Did the trial court err in failing to sustain the objection to Respondent's testimony and that of her father, James D. Smith, based on the Dead Man's Statute?
4. Did the trial court err in failing to grant Appellants' motion for directed verdict, because Respondent had not and could not prove that her father was the adopted son of Samuel Daise, nor the sole surviving heir of Benjamin Daise, and thus Respondent had not and could not prove that she had any ownership interest in the subject Lot 2 to allow her to prosecute her case, or defend against Appellants' counterclaims.
5. Did the trial court err in failing to quiet and confirm title in the name of Appellants based adverse possession or otherwise?

STATEMENT OF THE CASE

Respondent Lucille Patricia Smith filed her complaint in this case on June 2, 2009 to quiet and confirm title to the following property in her name:

> All that certain piece, parcel or tract of land situate, lying and being on St. Helena Island, Beaufort County, South Carolina, known as Lot 2, consisting of eight (8) acres, more or less, Tax Map #R300-021-000-0018-0000 (commonly known as Lot 2, Ed Capers Plantation).

This property had been deeded to her by her father, James D. Smith, by deed dated and recorded December 3, 1999, at the Office of the Register of Deeds for Beaufort County in Book 1238, at

Page 1793 (R. p.24).

Initially, Benjamin Days (also known as Ben Deas and Ben Daise) had acquired title to the property by deed of Daniel F. Appleton, dated January 14, 1892, recorded at the Office of the Register of Deeds for Beaufort County, in Book 22, at Page 80. Benjamin Days a/k/a Ben Deas a/k/a Ben Daise died intestate (with no probate administration) still owning the subject property and survived by only one son, Samuel Daise (though a deed introduced into evidence at trial for an adjacent lot owned by Benjamin Deas, evidenced other children of Benjamin, who Plaintiff could not identify or account for (R. p.205)).

James D. Smith, Respondent's father, claimed in this case to have been the adopted son of Samuel Daise, and on this basis, ultimately the sole surviving heir of Benjamin Days a/k/a Ben Deas a/k/a Ben Daise (R. p.24).

But neither Respondent, nor 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 by Samuel Daise. The only evidence submitted on this issue was the self-serving testimony of James D. Smith himself, who tellingly (see 1999 deed), uses the name James D. Smith, not Daise, and his daughter, Respondent, uses the name Lucille Patricia Smith, not Daise (R. p.228).

The only Defendants who appeared in the action, and at trial, were Appellants Howard Chaplin and Harriet Chaplin, who filed their Answer and Counterclaims on November 20, 2009, generally denying Plaintiff's claim, also alleging as defenses, Stale Demand, alleging use of what is now known as Lot 2 by the Chaplins since 1997, without objection, until Plaintiff sued in 1999; Waiver of Rights, and Laches, again as what is now known as Lot 2 had been used by the Chaplins from 1997 to 2009; and alleging Counterclaims of Adverse Possession, claiming

continuous, hostile, open, adverse, notorious and exclusive use of what is now known as Lot 2 from April 1997 until this suit began in June, 2009; and Adverse Possession by Color of Title, pursuant to SC Code section 15-67-220, and a deed from Jonathan Cuthbert to Howard Chaplin and Harriet Chaplin dated April 16, 1997, and recorded January 9, 1998, at the Office of the Register of Deeds for Beaufort County in Book 1004, at Page 2385, that was represented to the Chaplins by the grantor to include all of the acreage of what was then known as Lot 1, which ultimately included what became Lot 2, after the boundary surveys were completed and Lot 1 was split into a Lot 1 and Lot 2 by the decision in this case (R. p.28). Plaintiff filed her reply generally denying these defenses and counterclaims on December 21, 2009 (R. p.34).

The trial of this matter was held on August 30, 2011 before the Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge for Beaufort County, South Carolina, pursuant to an Order of Reference to the Master filed on July 16, 2010 (R. p.3).

Plaintiff's case at trial was primarily based on an Affidavit of (her father) James D. Smith, and the testimony of (her father) James D. Smith, wherein he claimed to be the sole surviving heir of Benjamin Days a/k/a Ben Deas a/k/a Ben Daise, who had acquired title by the 1892 deed referenced above (R. p.23), by virtue of, he also claimed, being the adopted son and sole surviving heir of Samuel Daise, who himself was alleged to be the sole surviving heir of Benjamin Days a/k/a Ben Deas a/k/a Ben Daise (R. p.24). Defendants Howard Chaplin and Harriet Chaplin objected at trial to the Affidavit and testimony of James D. Smith on the basis of the Dead Man's Statute, S.C. Code 19-11-20, as Mr. Smith and his daughter would benefit from his testimony, so his testimony should not be allowed (R. p.103-104).

Further, Defendants Howard Chaplin and Harriet Chaplin moved for a directed verdict that Plaintiff had failed to prove her entitlement to the relief she was seeking, as no documentary

proof had been submitted that her father James D. Smith was in fact the adopted son of Samuel Daise. Mr. Smith actually testified at trial that Samuel Daise was his uncle, not his father (R. p.142-151). His birth certificate listed no father, and listed a mother named Adel Smith, not Daise, or any derivation of Daise, who was never shown to have married a Daise, or any derivation thereof (R. p.41, 119-120), and thus Plaintiff failed to prove her father was ultimately the sole surviving heir of Benjamin Days a/k/a Ben Deas a/k/a Ben Daise, through Samuel Daise. Thus, Plaintiff failed to prove her father owned Lot 2 when he deeded it to her in 1999, and thus failed to prove that she owned it (R. p.55-56), meaning she had no standing, was not a proper Plaintiff, and the lower Court should not have allowed her case to proceed, or allowed her to challenge any of the claims made by the Defendants.

The Court took this objection, and this motion for directed verdict, under submission, but in its Judgment, Decree and Final Order, filed December 5, 2012, by implication ruled against Defendants on this objection, and the motion for directed verdict, by finding that Defendants had no standing, on their counterclaims, to raise these issues (though as named Defendants they certainly did), and ordered title quieted, as if the matter had been uncontested, in the name of Plaintiff and a boundary dispute as to this new Lot 2, also resolved in favor of the testimony from Plaintiff's surveyor, and thus Plaintiff (R. p.9). This appeal followed on December 4, 2012 (R. p.263).

STANDARD OF REVIEW

An action to quiet title to property is an action in equity. Jones v. Leagan, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App.2009), with Stale Demand, Laches and Waiver of Rights equitable defenses thereto. "In an equitable action tried without a jury, 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). Conversely, an adverse possession claim is an action at law, see, e.g., Frazier v. Smallseed, 384 S.C. 56, 61, 682 S.E.2d 8, 11 (Ct. App. 2009), and a boundary dispute is also an action at law, and the location of a disputed boundary line is a question of fact. "Bodiford v. Spanish Oak Farms, Inc., 317 S.C. 539, 544, 455 S.E.2d 194, 197 (Ct. App.1995). In actions at law tried by a judge without a jury, the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports them. Townes Assocs. Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E. 2D 773 (1976).

ARGUMENT

Plaintiff Did Not Prove Ownership, So Plaintiff has No Standing

The standing of Plaintiff is a jurisdictional prerequisite to any suit going forward, that is supposed to be analyzed and confirmed by the Court first. Plaintiff's standing can be challenged at any time, even at or after trial, or on appeal, and the Plaintiff likewise has the burden on this issue throughout the litigation (see, e.g., Davis v Federal Election Commission, 554 U.S. 724 (2008). The lower Court found, erroneously, that Appellants failed to prove their counterclaims they owned the subject Lot 2 by adverse possession or otherwise, so they had no standing to challenge Plaintiff's ownership or standing. But as named Defendants, who had generally denied Plaintiff's claims, they certainly had standing to challenge Plaintiff's standing and claim of ownership, and unless Plaintiff met her burden on this issue ab initio and throughout the litigation, her case could not and should not have proceeded. The trial judge was so focused on the counterclaim for adverse possession, that he failed to consider that, at the outset and thereafter, Plaintiff had not and could not prove she owned the property, so Plaintiff had no standing to bring the case, nor standing to challenge Defendants' counterclaims. The burden was

on Plaintiff at the outset to prove she had an ownership interest in the property, not on Defendants to disprove it, and she did not carry that burden, and thus she could not proceed with her case, nor challenge Defendants' counterclaims.

In Responses to Request to Produce Documents, James Smith answered "None" to the request to prove he was adopted and "None" to the request to produce a court order that confirms his adoption by Samuel Daise (R. p.39-40), on this basis the trial judge should have dismissed Plaintiff's case or directed a verdict against Plaintiff. Without Plaintiff having standing, the trial court did not have jurisdiction to hear her case. Plaintiff here did not allege ownership by adverse possession, she claimed to own the property by virtue of a deed from her father, and did not prove her father owned the property when he deeded it to her, so she did not prove she owned the property when she instituted this suit. *See* Hoogenboom v. City of Beaufort, 315 S.C. 306, 313, 433 S.E.2d 875, 880 (Ct. App. 1992) (stating the burden of establishing title is on the party who brings a quiet title action); *id.* at 213, 433 S.E.2d at 881 **("In an action to quiet title, the plaintiff must recover on the strength of her own title, not on the alleged weakness of the defendant's title.").**

A party must have a personal stake or interest in the subject matter of the lawsuit to have standing. Anchor Point v. Shoals Sewer, 308 S.C. 422, 428, 418 S.E. 2D 546, 549 (1992) (holding a party has standing to sue if the party has "a real, material, or substantial interest in the subject matter of the action, as opposed to ... only a nominal or technical interest in the action"); Duke Power v. South Carolina Pub. Serv. Comm'n, 284 S.C. 81, 96, 326 S.E. 2D 395, 404 (1985) ("[T]o have standing to present a case before the courts of this State, a party must have a personal stake in the subject matter of the lawsuit."); *see* Town of Sullivan's Island v. Felger, 318 S.C. 340, 346, 457 S.E. 2D 626, 629 (Ct. App.1995) (holding the town has standing in a

declaratory action to determine whether Felger owns fee simple title to the property, even though the town does not have a direct interest in ownership of the property). As the Plaintiff here did not and could not prove she owned the property at issue (did not and could not prove that her father was either an heir of Ben Daise or an heir of Samuel Daise), she had no personal stake in the subject matter of the lawsuit, and could neither proceed on her claims nor defend against Appellants' claims.

In Pinckney v. Warren, 544 SE2d 620 (2001), the S.C. Supreme Court reiterated that paternity must be conclusively established by either a court order issued prior to the father's death or by an instrument signed by the father acknowledging paternity, that party or other testimony alone was insufficient to prove paternity. In this regard, the *Pinckney* court noted that "public policy demands the ***strict*** adherence to the *Mitchell* requirements. Fraudulent assertions of paternity will be much less likely to succeed, or even to arise, where proof of paternity must be established by either a court order issued prior to the father's death or by an instrument signed by the father." *See* Lalli v. Lalli, 439 U.S. 259, 99 S.Ct. 518, 58 L.Ed.2d 503 (1978) "Holding public policy supports a rule where paternity must be established by an order of filiation issued during the putative father's lifetime for an illegitimate child to recover as an heir at law. Furthermore, if we adopted the rule D & S advocates, we would create a great uncertainty for title abstractors because an action seeking to add heirs could be brought at any time. A purchaser would have to bring a quiet title action every time he purchases property in order to ensure good title. Likewise in the instant case, testimony about who lived where and who said what is insufficient, public policy and certainty in the title process strictly requires documentary proof of adoption." Plaintiff never produced any such proof, and thus Plaintiff's father never owned the property, nor does the Plaintiff, and under these circumstances the Court clearly committed reversible error in

quieting title in her name.

Further, the objection made by Appellants at trial based on the Dead Man's Statute to the testimony of James D. Smith, and Respondent, should have been sustained, it was reversible error for the trial judge to have failed to sustain this objection to bar all testimony regarding adoption and heirship, without any documentary proof of same.

The South Carolina Dead Man's Statute, Section 19-11-20 of the South Carolina Code (1985), provides in pertinent part:

"[N]o party to an action or proceeding, no person who *has a legal or equitable interest which may be affected by the event of the action or proceeding*, no person who, previous to such examination, has had such an interest, however the same may have been transferred or come to the party to the action or proceeding, and *no assignor of anything in controversy in the action shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased*, insane or lunatic as a witness against a party then prosecuting or defending the action as executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee or survivor of such deceased person or as assignee or committee of such insane person or lunatic, when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness or the interest previously owned or represented by him . . . ."

The statute "prohibits any interested person from testifying concerning conversations or transactions with deceased individuals if the testimony could affect his or her interest. "Hanahan v. Simpson, 326 S.C. 140, 151, 485 S.E. 2D 903, 909 (1997). The testimony of both James D. Smith and his daughter, the Respondent, as to adoption and heirship and otherwise, based on their interactions with deceased individuals, so that the Court would quiet title in Respondent's

name, violated this statute. The objection to this effect should have been sustained, all the testimony excluded, and title to the subject property never quieted in Respondent's name, it was reversible error for the Master in Equity to have quieted Lot 2 in Respondent's name under these circumstances.

Appellants Proved Ownership by Adverse Possession

"In order to establish a claim of adverse possession, the claimant must prove by clear and convincing evidence his possession of the subject property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period, ten years. "McDaniel v. Kendrick, 386 S.C. 437, 442, 688 S.E.2d 852, 855 (Ct. App.2009). However, the rule requiring continuity of possession does not mean the person in possession must be actually on the land during the whole of the statutory period. Mullis v Winchester, 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. Hostile possession is "possession asserted against the claims of all others. "Black's Law Dictionary 1184 (7th ed.1999). While the legal owner need not have actual knowledge the claimant is claiming property adversely, the hostile possession should be so notorious that the legal owner by ordinary [384 S.C. 14] diligence should have known of it. Graniteville Co. v. Williams, 209 S.C. 112, 120-21, 39 S.E.2d 202, 206 (1946). 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). For the purpose of constituting adverse possession by a person claiming title founded upon a written instrument, land shall be deemed to have been possessed and occupied when it has been " usually cultivated or improved," and when it has been " protected by substantial enclosure." S.C. Code Ann. § 15-67-230 (Supp.2008).

"If a claimant asserts title by adverse possession and his or her occupancy is not under color of title, the claimant must show either fencing or other improvements covering most of the subject land or some other continuous use and exercise of dominion. "Frazier v. Smallseed, 384 S.C. 56, 63, 682 S.E.2d 8, 12 (Ct. App. 2009). "While the legal owner need not have actual knowledge the claimant is claiming property adversely, the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it. "Jones v. Leagan, 384 S.C. 1, 13-14, 681 S.E.2d 6, 13 (Ct. App. 2009). We also note 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. See Miller v. Leaird, 307 S.C. 56, 62, 413 S.E.2d 841, 844 (1992).

Mr. Chaplin testified that from 1997 until 2009, when Respondent filed her quiet title case, his family regularly used tractors to clear several areas of the property (now known as Lot 2), that he thought was deeded to him by Jonathan Cuthbert, planted pine trees on a portion of the unoccupied and unused land, and on another portion of the land, planted farm crops, for the first five or six years, such as sweet potatoes, which they sold in the small grocery store they own just a few miles away. This clearing and planting of the farm crops took place daily for several months each year as first planting and then harvesting took place. During that time the Chaplin family continued to go to the subject lot several times a year, to clear the farm crop portion, and to trim and take care of the pine trees they had planted. During these frequent entries to the Lot

from 1997 to 2009 they (and their helpers) used pickup trucks, farm tractors, and other pieces of farm equipment which they drove up and down David Green Road, to the subject lot, right in front of the house of James D. Smith (R. p.156-163). All this certainly constitutes the improvements covering most of the subject land or the continuous use of and exercise of dominion over the land requiring for adverse possession not under color of title. See, e.g., King v Hawkins, 319 SE2d 361 (1984).

Neither James D. Smith, who lives near enough to Lot 2 that he can see the Lot from his front yard, and from his house could see all the Chaplin cars, tractors and other vehicles driving up and down David Green Road, claimed, disingenuously, to have seen nor observed any the farming and other activities by the Chaplin family on Lot 2 from 1997 to 2009, nor supposedly did the Plaintiff, on her visits to her father from her home in Columbia, SC, see the Chaplins' planting on Lot 2 or using tractors and other vehicles on Lot 2 from 1997 to 2009 (R. p.131, 137, 156, 175).

Despite all this adverse possession regularly occurring, not once in over ten years did James D. Smith or his daughter, the Respondent, ever take any action or object to the Chaplin use of what by the decision of the lower court became Lot 2, nor did James D. Smith or his daughter, or anyone related to or associated with them, ever use or occupy in anyway the subject Lot. The first notice the Chaplins had that the Plaintiff and her father claimed to own the Lot was when they were served with Plaintiff's lawsuit in 2009, 12 years after they had commenced their regular, recurring activities on the land. Thus Appellants' defenses of Stale Demand, Laches and Waiver of Rights should have also been sufficient for Plaintiff's quiet title case to fail, and the

Master erred in failing to find as such, based on the authority below:

Plaintiff's Stale Demand

A stale demand is "one that has for a long time remained unasserted; one that is first asserted after an unexplained delay of such great length as to render it difficult or impossible for the court to ascertain the truth of the matters in controversy and to do justice between the parties, or as to create a presumption against the existence or validity of the claim, or a presumption that it has been abandoned or satisfied." Presbyterian Church v. Pendarvis, 227 S.C. at 59, 86 S.E.2d at 744 (quoting Bell v. Mackey, 191 S.C. 105, 123, 3 S.E. 2d 816, 824 (1939)).

Plaintiff's Laches

Laches is an equitable doctrine, which "arises upon the failure to assert a known right." Ex parte Stokes, 256 S.C. 260, 267, 182 S.E.2d 306, 309 (1971); see Byars v. Cherokee County, 237 S.C. 548, 559, 118 S.E.2d 324, 330 (1961) "Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done, or neglecting or omitting to do what in law should have been done for an unreasonable and unexplained length of time and in circumstances which afforded opportunity for diligence."

To prove laches, a party must establish: "(1) delay, (2) unreasonable delay, [and] (3) prejudice." Hallums v. Hallums, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988); see Arceneaux v. Arrington, 284 S.C. 500, 503, 327 S.E.2d 357, 358 (Ct. App.1985) "(Whether ... [a claim] is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party.)"

In addition, "the circumstances must ... [be] such as to import that the complainant had abandoned or surrendered the claim or right which he now asserts. "Byars v. Cherokee County,

237 S.C. at 559, 118 S.E.2d at 330; see Presbyterian Church v. Pendarvis, 227 S.C. at 58, 86 S.E.2d at 744 (holding a party seeking to enforce a trust "may become barred by laches if he fails to proceed with reasonable diligence)".

Plaintiff's Waiver of Rights

Waiver is defined as "a voluntary and intentional abandonment or relinquishment of a known right. Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended. "Janasik v. Fairway Oaks, 307 S.C. at 344, 415 S.E.2d at 387-88. "The doctrine of waiver does not necessarily imply that the party asserting waiver has been misled to his prejudice or into an altered position." Id at 344, 415 S.E.2d at 388.

Based on the foregoing, and possession by the Appellants having been continuous, hostile, actual, open, notorious, and exclusive for the statutory period, ten years, the Master also committed reversible error in failing to find that Appellants were the owners of the subject Lot 2 by adverse possession (and/or adverse possession under color of title, per S.C. Code 15-16-210).

Appellants Proved Ownership by Adverse Possession Under Color of Title

Here, Appellants claim of adverse possession was also under the color of title, the 1997 deed from Jonathan Cuthbert (R. p.253) that Howard Chaplin testified including all the acreage that in this case was later split into Lot 1 and Lot 2 (R. p.152-153). Color of title means any semblance of title by which the extent of a man's possession can be ascertained. It is anything which shows the extent of occupant's claim. The object of color of title is not to pass title. In that case it would be title, not color of title. The only office of color of title is to define the extent of the claim and to extend the possession beyond the actual occupancy to the whole property described in the paper. Hence, when one enters upon land, under color of title, his actual

possession of a portion of the property will be constructively extended to the boundaries defined by his color of title. Mullis v. Winchester, 118 SE2d 61 (1961) The principal purpose of color of title in adverse possession proceedings is not to show an actual grant of land or interest therein, but to designate boundary of possessor's claim. It constructively extends possession to the boundaries described in the instrument under which color of title is claimed. In this instance, based on the only competent evidence at trial (R. p.152-153, 263), the entirety of what became Lot 1 and Lot 2 by the lower Court's decision, should have been found to be owned by the Appellants by adverse possession under color of title, and the Master committed reversible error in finding to the contrary.

If There Was a Boundary Dispute, Appellants Should Have Prevailed

Finally, the Master committed reversible error in his handling of the boundary "dispute". As Plaintiff did not prove she owned the property she claimed she owned, and thus did not have standing, she should have had no input in the effort to establish the boundaries between Lot 1 and Lot 2. Appellants' position as detailed at trial by their surveyor, David Youmans, should have been the only evidence considered, if any evidence on the issue was going to be considered (R. p.177-196). At trial, no witness, including two registered land surveyors and two experienced title researchers, could produce a survey of the entirety of Ed Capers Plantation nor of either Lots 1 or 2 before 1998 (the Pennington plat), nor could any of them testify as to the sizes or shapes of either Lot (the width, the length, etc.) other than both lots are to contain 8 acres, more or less.

When there is a question of location of a parcel of land that cannot be reduced to any definite or fixed rule, our Courts have adopted these rules of factors to be considered:

1. First, natural boundaries. In this case, there is only one natural boundary common to both

Lots 1 and 2 – the marsh.

2. Second, artificial marks. In this case, there is only one artificial mark common to both lots – David Green Road.
3. Third, adjacent boundaries. In this case, the adjacent owner on the south of Lot 1 is fixed, the Sanders farm. On the north of Lot 2 we have Lot 3 but it also is marked by the situation of there not being a subdivision survey of Ed Capers Plantation.
4. Fourth, courses and distances. In this case, such matters do not exist prior to the Pennington survey in 1998.

See Holden v Cantrell, 84 SE 826 (1915), cited as still controlling by Coker v. Cummings, 671 SE2d 383 (2008). And as noted in the seminal case of Connor v Johnson, 37 SE 240 (1900), while it is true that a question of location is largely a question of evidence, and cannot therefore be reduced to any definite or fixed rule (Coats v. Mathews, 2 Nott. & McCord, 99), yet there are certain general rules of location which, from a very early period in our judicial history (Bradford v. Pitts, 2 Mill,Const. 115), have been recognized by our courts, where these rules are thus stated:

"In locating lands the following rules are resorted to, and generally in the order stated: 'First, natural boundaries; second, artificial marks; third, adjacent boundaries; and, fourth, courses and distances.' But in every one of the cases recognizing these general rules, which we have consulted, the Courts have invariably also recognized the doctrine that these general rules are not inflexible, but may be modified by the circumstances of the case."

Likewise in this case (particularly with Plaintiff's evidence being disregarded because she did not prove she was an owner and thus did not have standing), the two surveys prepared by David S. Youmans, SCRLS, for Appellants on November 30, 2009 (R. p.256), based as they were on the 1998 Pennington plat (R. p.255), and the sound surveying principles detailed above otherwise,

should have been found by the Master to have stated the correct boundaries for Lots 1 and 2 (with both of which also being ordered owned by Appellants, not Plaintiff), and the Master should have ordered the Registrar of Deeds for Beaufort County to record the survey showing the overlay by David S. Youmans of the Pennington plat introduced as evidence at trial (R. p.186-195), so that all parties to this action and future owners of these Lots 1 and 2 will have the descriptions and thus certainty, in the public records, a public policy goal in such matters.

CONCLUSION

At the least, the decision quieting title and resolving the boundary dispute in favor of Respondent must be reversed (and a new trial ordered). At the most, not only must the decision quieting title and resolving the boundary dispute in favor of Respondent be reversed, but a decision entered instead that title should be quieted and boundary dispute resolved in favor of Appellants, who should be found to own, in fee simple, both Lot 1 and what is now Lot 2, with boundaries of same being based on the expert testimony/documentation submitted by their surveyor, David S. Youmans.

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
(843) 838-5290

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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 the Appellants

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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