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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough
Master in Equity

Appellate Case No. 2026-001033

Joseph W. Keating, Appellant,

v.

Harrison Wilder, Jr., Hope Wilder Brown, and Estate of Harrison Wilder, Respondents,

v.

Joseph W. Keating d/b/a Keating Tree Service, and James Island Preservation Trust, Joseph W. Keating, as Trustee, Third-Party Defendants.

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COUNTER STATEMENT OF ISSUES ON APPEAL

- I. MAY THIS COURT CONSIDER APPELLANT’S ARGUMENTS WHERE THEY REST ON TESTIMONY TAKEN TWELVE DAYS AFTER THE MASTER IN EQUITY GRANTED SUMMARY JUDGMENT, ON AN “ADMISSION” OF TEN YEARS OF POSSESSION THAT RESPONDENTS’ VERIFIED PLEADING DOES NOT CONTAIN, AND ON CONTENTIONS RAISED FOR THE FIRST TIME IN A MOTION FOR RECONSIDERATION?
- II. DID THE MASTER IN EQUITY CORRECTLY GRANT SUMMARY JUDGMENT ON APPELLANT’S ADVERSE POSSESSION CLAIM, WHICH FAILS IF ANY ONE ELEMENT IS UNMET, WHERE APPELLANT’S OWN SWORN TESTIMONY ESTABLISHES THAT OTHERS USED THE LAND DURING THE PERIOD HE CLAIMS, THAT MUCH OF WHAT HE RELIES ON ARRIVED WITHIN THE LAST FEW YEARS, THAT HE PROMISED THE OWNERS IN WRITING TO “RECTIFY THE PROBLEM,” AND THAT HIS USE OF THEIR LAND WAS UNLAWFUL DUMPING ON HEIRS PROPERTY, AND WHERE HE OFFERED NOTHING TO CONTRADICT THAT TESTIMONY?
- III. DO APPELLANT’S “RULE OF REPOSE,” COLOR OF TITLE, EASEMENT, AND CROSS-EXAMINATION ARGUMENTS, NONE OF WHICH WAS RAISED BEFORE SUMMARY JUDGMENT WAS GRANTED, PROVIDE ANY BASIS FOR REVERSAL?

PRELIMINARY STATEMENT

This is an appeal from an order of the Master in Equity granting summary judgment to Respondents on Appellant Joseph W. Keating's claim to a portion of Respondents' land by adverse possession, and from the order denying his motion to reconsider. Asked at his deposition whether he was trespassing on the Wilder property, Appellant answered, "Of course." (Keating Dep. 113:21-23, R.___). The possession he claims consists of unlawfully dumping tree debris, concrete, asphalt, boats, and shipping containers on heirs property that is not his, conduct that drew a circuit court injunction, two cease and desist letters from the State, and a visit from the Sheriff's deputies. (Order at 6, R.___; Order Granting Prelim. Inj. at 5, R.___; Am. Verified Answer ¶¶ 18, 23, 24, R.___). In the same deposition he testified that others used, camped on, and dumped on the land throughout the period in which he claims to have acquired ownership; that he "knew I was over" the boundary; that much of what is now on the land, including the shipping container, boats, trailers, excavator, and concrete, arrived within the last few years, and that the container, boats, and concrete came from his River Road property after Charleston County barred him from keeping them there; and that his written answer to the owners' cease and desist letter was a promise to "rectify the problem within 60 days." Based on the record before him, the Master found, element by element, that Appellant could not establish exclusivity, hostility, continuity for the statutory period, open and notorious possession, or actual possession consistent with ownership. (Order at 4-7, R.___).

Appellant's brief, filed pro se after his counsel was relieved, does not engage the record before the Master. Instead it (1) relies on testimony taken at a December 15, 2025 evidentiary hearing on Respondents' easement counterclaim, a hearing held twelve days after the summary judgment order and at which the Master expressly declined to take up the motion to reconsider;

(2) asserts that Respondents “admitted” ten years of possession when Respondents’ verified answer denies it and neither of the two heirs who testified said any such thing; (3) cites Appellant’s own unverified pleading and his former counsel’s motion as “evidence”; (4) advances contentions first raised in the Rule 59(e) motion; and (5) devotes entire sections to conclusory assertions without a single citation to the record or to authority. Appellant’s only stated issue is that the Master “missapprended the factual evidence as it corresponds to the elements of Adverse Possession.” (Appellant’s Br. at 1). That is a broad general statement, which this Court may disregard under Rule 208(b)(1)(B), SCACR.

Even if this Court reached the merits of every one of Appellant’s contentions, the outcome would be the same. Appellant’s own testimony leaves no genuine issue of material fact as to any element of adverse possession. The orders should be affirmed.

STATEMENT OF THE CASE

On March 3, 2025, Appellant, pro se, filed a Complaint in the Charleston County Court of Common Pleas seeking title by adverse possession to a portion of TMS No. 331-05-00-001 (the “Subject Property”), heirs property titled in the name of “Wilder Harrison Estate.” (Compl. ¶¶ Second, Fifth, Sixth, R. __; Am. Verified Answer ¶ 7, R. __). He named two of the heirs, Harrison Wilder, Jr. and Hope Wilder Brown, and the “Estate of Harrison Wilder.” He filed a lis pendens the same day. (R. __).

On March 11, 2025, Respondents Harrison Wilder, Jr. and Hope Wilder Brown served and filed an Amended Verified Answer. (Am. Verified Answer, R. __). They denied that Appellant had possessed any part of the Subject Property and alleged that the heirs have paid the taxes on it and used it for walking and hunting; that, based on archived satellite imagery, Appellant began dumping landscaping debris at the dike end of Old Sol Legare Road in mid-2019 and has

progressed up the road since; that the heirs did not learn who was dumping until November 2023; that the State posted cease and desist notices on the land in March 2024 and February 2025; that Appellant answered the heirs' October 2024 cease and desist letter with a promise to "rectify the problem within 60 days"; and that he told the Sheriff's deputies in January 2025 that he had agreed to remove the items. (*Id.* ¶¶ 2, 8, 12-15, 18-19, 21, 23-24, R.__). Paragraphs 7 through 23 were verified by both Respondents. (*Id.*, Verified Statement of Pleadings, R.__). Respondents asserted counterclaims and third-party claims for trespass, nuisance, negligence and negligence per se, and a declaratory judgment claim for an easement by necessity, and demanded a jury trial on the legal claims. (*Id.* ¶¶ 27-50 & Demand for Jury Trial, R.__).

On March 19, 2025, the circuit court heard Respondents' motion for a preliminary injunction. Appellant was personally served with notice and did not appear. On the verified pleading and the testimony of Hope Wilder Brown, Marvin Johnson, and Charleston County Sheriff's Officer Keith Jones, the court found that Respondents had made a prima facie showing that Appellant "ha[d] been trespassing and dumping on the Subject Property without permission, license, consent or permit," and that Respondents were likely to succeed on the merits "based upon Mr. Keating's email response and/or admission that he agreed to 'rectify the problem' after receiving the Cease and Desist letter." (Order Granting Prelim. Inj. at 2-4, R.__). By order filed March 20, 2025, the Honorable Jennifer B. McCoy enjoined Appellant, individually and d/b/a Keating Tree Service, from dumping any material on the Subject Property. (*Id.* at 1-2, 5, R.__).

On March 31, 2025, Appellant, pro se, served an unverified Answer to the counterclaims and third-party claims. (Pl.'s Answer to Countercls. (Mar. 31, 2025), R.__). On his motion, and with Respondents' consent as to the equitable claims only, the Honorable Maite Murphy referred Appellant's adverse possession claim and Respondents' declaratory judgment claim for an

easement to the Master in Equity by Order of Reference filed June 27, 2025. (Order of Reference at 2, R.__). Respondents' legal claims remained in the circuit court for jury trial. (*Id.*, R.__).

On September 17, 2025, Respondents moved to dismiss under Rule 12, SCRCp, and alternatively for summary judgment under Rule 56, SCRCp, on the ground that “[d]epositing debris and junk on lands of another, do not qualify as acts of adverse possession.” (Mot. to Dismiss and/or Summ. J. at 1-2, R.__). Appellant was deposed on October 1, 2025, with his counsel present. (Keating Dep. 1-2, R.__). On October 9, 2025, Appellant, through counsel, filed a three-page memorandum in opposition and a two-page affidavit. (Pl.’s Mem. in Opp’n, R.__; Keating Aff., R.__). On October 10, 2025, Respondents filed a memorandum in support of the motion arguing, on Appellant’s deposition testimony, that he could not establish any element of adverse possession, and filed the deposition transcript. (Defs.’ Mem. in Supp., R.__; Notice of Filing Dep. Tr., R.__). The Master heard the motion on October 13, 2025. (Hr’g Tr. (Oct. 13, 2025), R.__). Asked by the Master whether Appellant pays the taxes on the property, his counsel answered: “He’s not paid taxes on the property, Your Honor.” (*Id.* at 16:5-8, R.__).

By order filed December 3, 2025, the Master denied the Rule 12 motion and granted summary judgment. Having considered “the motion, the evidentiary submissions and testimony filed of record, the pleadings, and applicable law,” the Master found on Appellant’s deposition testimony that Appellant “has not met virtually any of the elements required to prove adverse possession,” dismissed the adverse possession and quiet title claim with prejudice, and cancelled the lis pendens. (Order on Mot. to Dismiss and/or Summ. J. (Dec. 3, 2025) (“Order”) at 1-2, 7, R.__).

On December 12, 2025, Appellant, through counsel, moved for reconsideration. (Pl.’s Mot. for Recons., R.__). On December 15, 2025, the Master held an evidentiary hearing on

Respondents' easement claim. At the outset, the Master noted the motion to reconsider had "just came in," declined to hear it that day, and stated: "Let's go ahead and hear your motion another day." (Hr'g Tr. (Dec. 15, 2025) 4:12-14, 5:10-25, 6:13-21, R.___). The hearing proceeded on the easement claim only, with testimony from Marvin Johnson, William Wilder, and Appellant. At its close the Master set the motion to reconsider for March 23, 2026. (*Id.* at 89:16-17, 90:6-16, R.___). Appellant's counsel was relieved by order filed February 6, 2026. (Order Relieving Counsel, R.___).

On March 23, 2026, the Master denied the motion to reconsider by Form 4 order. (Form 4 Order (Mar. 23, 2026) at 1, R.___). On April 21, 2026, Appellant served his Notice of Appeal. (Notice of Appeal, R.___). This appeal followed.

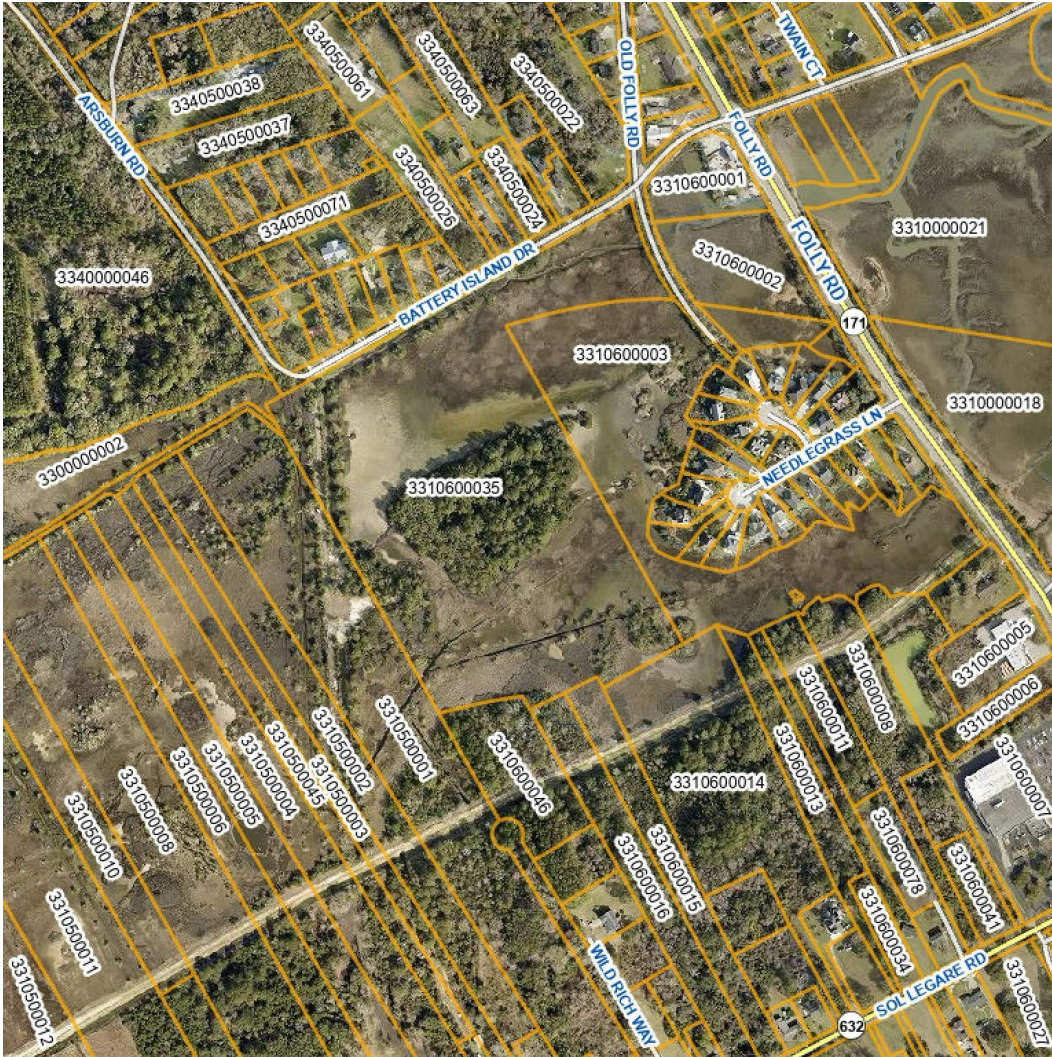
STATEMENT OF FACTS

A. Appellant Unlawfully Dumped on the Heirs' Land, Promised to Remove It, Then Sued for Title Instead

The Subject Property, TMS No. 331-05-00-001, is heirs property in the Sol Legare community of Charleston County, held in the record name of the Wilder Harrison Estate. Respondents Harrison Wilder, Jr. and Hope Wilder Brown are two of many heirs. (Am. Verified Answer ¶¶ 7, 10, R.___). The heirs have paid the property taxes on it year to year and have used it for walking and hunting for more than a century. (*Id.* ¶ 8, R.___). Appellant conceded he has never paid taxes on the property. (Hr'g Tr. (Oct. 13, 2025) 16:5-8, R.___; Order at 3, 6, R.___). He unlawfully dumped trees and debris from his tree service, Keating Tree Service, onto the heirs' land, and in 2024, when Charleston County's zoning enforcement made him stop operating that business at his River Road residence, he moved a shipping container, boats, and concrete from River Road onto the heirs' land as well. (Am. Verified Answer ¶¶ 12-15, R.___; Keating Dep. 8:9-15, 9:2-9, 12:1-2, 23:12-17, 50:18-24, 51:8-12, 52:12-14, 83:22-25, 84:6-16, 88:21-23, 104:12-14,

R. __; Order at 3, 6, R. __). By his own account, others were on the land during the claimed period: campers, a hunter, people who dumped, and, within months of his deposition, the Wilders themselves. (Keating Dep. 16:23-25, 17:1, 45:13-14, 70:12-15, 102:7-23, 110:14-23, R. __). When the heirs sent him a cease and desist letter, he answered that he would “rectify the problem within 60 days.” (Am. Verified Answer ¶ 21, R. __; Keating Dep. 64:2-5, R. __). When the Sheriff’s deputies came, he told them he still intended to remove the items. (Am. Verified Answer ¶ 23 & Ex. A, R. __). Five weeks later he sued the heirs for title to the land. (*Id.* ¶ 25, R. __).

In 2008 Appellant bought the adjoining parcel, TMS No. 331-06-00-035, which is titled in the James Island Preservation Trust. (Am. Verified Answer ¶ 11, R. __; Keating Dep. 25:20-24, R. __). Old Sol Legare Road runs from Battery Island Drive through the corner of Appellant’s parcel, then across the Subject Property and other parcels (TMS Nos. 331-05-00-002, -003, and -045) to a County drainage canal, as shown in the satellite image reproduced in Respondents’ verified pleading. (Am. Verified Answer ¶ 11, R. __; Keating Dep. 24:16-25, R. __). Appellant claims the Subject Property by adverse possession alone and asserts no deed or other paper title to any part of it. (Compl. ¶¶ Fifth, Sixth, R. __).



B. The Cease and Desist Letters, the Sheriff’s Visit, and This Suit

Respondents’ verified Answer alleges that, based on archived satellite imagery, landscaping debris began to appear at the dike end of Old Sol Legare Road in mid-2019 and spread year by year up the road and onto the Subject Property, and that the heirs did not know who was dumping until November 2023, when they saw an abandoned truck marked “Keating Tree Service” and complained to Charleston County, which told them “several tickets had been written and that a court date had been set.” (Am. Verified Answer ¶¶ 12-16, R.___). In December 2023 the heirs posted “No Trespassing” signs, which were pulled up. (*Id.* ¶ 17, R.___). In February 2024 an heir reported the dumping and trespassing to the Sheriff’s Office, DNR, and OCRM, and in March

2024 the State posted a cease and desist letter on the locked gate Appellant had erected on his own parcel, where Old Sol Legare Road meets Battery Island Drive. (*Id.* ¶¶ 11, 18, 50, R.___; Keating Dep. 68:3-8, R.___). A June 2024 State inspection found “significant damage to the marsh vegetation and substrate,” “significant amounts of fill material,” and “vehicles, trailers, vessels, and additional debris” stored on top of the fill. (Am. Verified Answer ¶ 20, R.___).

On or about October 28, 2024, Respondents sent Appellant a certified cease and desist letter notifying him that he and Keating Tree Service were trespassing and dumping on the Subject Property and demanding removal of the equipment and items. (*Id.* ¶ 19, R.___; Keating Dep. 63:5-15, R.___; Order at 3, R.___). On November 11, 2024, Appellant replied by email: “I have received your certified letter and will rectify the problem within 60 days. I hope that will be satisfactory.” (Am. Verified Answer ¶ 21, R.___; Keating Dep. 64:2-5, R.___).

On January 27, 2025, Charleston County Sheriff’s deputies responded to a report of trespass and illegal dumping. The deputy observed “large concrete blocks, Conex storage containers, and abandoned vehicles scattered across the land,” one of them bearing the name “Keating Tree Services.” (Am. Verified Answer ¶ 23 & Ex. A, R.___; Order at 3, R.___). The complainant, Marvin Johnson, reported that Appellant had “acknowledged placing the items on the property and committed to removing them within 60 days,” and that the items “remained on the property beyond this agreed period.” (Am. Verified Answer Ex. A, R.___). The deputies then interviewed Appellant, who “acknowledged that he had previously agreed to remove the items and stated that he still intended to do so, as he did not want any disputes,” “claimed uncertainty regarding the exact property boundaries,” and “asserted that the road leading to the property belonged to him.” (*Id.*, R.___). The deputies advised him that if the road served as a right of way for the Johnson family he could not restrict access, and he “assured” them “that he would begin

removing the items.” (*Id.*, R. ____). In February 2025 the State posted a second cease and desist letter, this one on Appellant’s excavator, after observing “additional unauthorized work within critical areas.” (Am. Verified Answer ¶ 24, R. ____).

Five weeks after the deputies’ visit, and three weeks after the State’s second letter, Appellant filed this action. (*Id.* ¶¶ 23-25, R. ____). Asked why he filed suit in March 2025, he agreed it had to do with “the police confronting you earlier in the year.” (Keating Dep. 74:21-25, 75:1-8, R. ____). Three days later the State directed the Estate itself to “restore the area to its original condition.” (Am. Verified Answer ¶ 26, R. ____).

C. Appellant’s Response to the Motion

Appellant’s response to the motion consisted of a three-page memorandum in opposition and a two-page affidavit. (Pl.’s Mem. in Opp’n, R. ____; Keating Aff., R. ____). The affidavit asserts, in general terms and without dates, that “I have been utilizing the property that is the subject of this action for more than 17 years for storage, recreation, improving the property, and other actions that constitute possession.” (Keating Aff. ¶ 1, R. ____). The memorandum devoted one paragraph to summary judgment, which cited no authority and no evidence beyond the affidavit, and asserted that Appellant “disputes storing any ‘junk’” and “has openly, notoriously, in a hostile manner, continuously, adversely possessed and used the disputed property for access and storage purposes.” (Pl.’s Mem. in Opp’n at 3, R. ____). Neither document addressed the cease and desist letter, the “rectify the problem” reply, the Sheriff’s report, or Respondents’ verified allegations that the heirs pay the taxes and use the land, and neither mentioned a “Rule of Repose,” color of title, or the easement counterclaim that Appellant now raises on appeal. (*Id.* at 1-3, R. ____; Keating Aff., R. ____; Appellant’s Br. at 10-14). At the hearing, asked by the Master whether Appellant had fenced the property and whether he pays the taxes, counsel pointed to a gate, which stands *on*

Appellant's own parcel where Old Sol Legare Road begins at Battery Island Drive, and conceded that “[h]e’s not paid taxes on the property.” (Hr’g Tr. (Oct. 13, 2025) 15:5-9, 15:21-25, 16:1-8, R.___; Am. Verified Answer ¶¶ 11, 18, 50, R.___; Keating Dep. 68:3-8, R.___).

D. The Master Found, on Appellant’s Own Testimony, That Every Element of Adverse Possession Failed

The Master’s order sets out eleven findings of fact drawn from the pleadings, the cease and desist correspondence, the Sheriff’s report, a July 1, 2025 soils engineering report documenting buried debris and fill, the circuit court’s injunction, and Appellant’s deposition. (Order at 3-4, R.___). He found, among other things, that Respondents had paid the property taxes on the land, “a fact which is not contested by the Plaintiff”; that Appellant answered the heirs’ cease and desist letter by writing that he “will rectify the problem in 60 days”; that he “told deputies he had agreed to remove the items and still intended to do so”; that “some significant additions, including asphalt and the container, occurred within the last two years,” after Charleston County’s 2024 zoning enforcement at River Road, when he transferred the materials from River Road to Old Sol Legare Road; that others dumped on the land, that “there were campers and hunters removed by police or DNR,” and that the Wilders themselves had been on the property within six months of his deposition; and that the soils report found “unnaturally placed fill” at multiple test locations. (*Id.* at 3-4, R.___). He concluded on Appellant’s own testimony that no element was met. (*Id.* at 1, 7, R.___). Appellant’s “own admissions demonstrate others’ use and intrusions on the property during the claimed period,” defeating exclusivity “as a matter of law.” (*Id.* at 4-5, R.___). The acts relied upon “occurred in the last two years” and were “too recent to satisfy the statutory period,” while his “contemporaneous commitment to remove items and uncertainty about boundaries” undermined “any uninterrupted, continuous adverse claim.” (*Id.* at 5, R.___). “[A] hostile claim must be established by conduct consistent with ownership, not intermittent dumping, access

obstruction, or equivocal acknowledgments,” and Respondents, not Appellant, have paid the taxes. (*Id.* at 5-6, R.__). The activities “were treated by owners and law enforcement as trespass and dumping, not open, notorious ownership.” (*Id.* at 6, R.__). “[S]uch unlawful dumping and intermittent obstruction of access do not constitute the type of actual, continuous, and exclusive possession consistent with ownership,” and “[s]imply dumping material fails to demonstrate the exclusive ownership and permanent character of possession required for adverse possession.” (*Id.* at 6, R.__).

STANDARD OF REVIEW

This Court reviews a grant of summary judgment under the same standard that governs the trial court under Rule 56(c), SCRCP. *S. Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 490, 732 S.E.2d 205, 208-09 (Ct. App. 2012). Summary judgment is proper when the record shows “that 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. The evidence is viewed in the light most favorable to the non-moving party, but “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 462-63, 892 S.E.2d 297, 301 (2023) (quoting *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). The “mere scintilla” standard does not apply; “the proper standard is the ‘genuine issue of material fact’ standard set forth in the text of the Rule.” *Id.* at 463, 892 S.E.2d at 301. A party opposing a properly supported motion “may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRCP.

Adverse possession requires possession that is “actual, open, notorious, hostile, continuous and exclusive for the whole statutory period” of ten years, *Mullis v. Winchester*, 237 S.C. 487, 491,

118 S.E.2d 61, 63 (1961); *Gregg v. Moore*, 226 S.C. 366, 370, 85 S.E.2d 279, 281 (1954); S.C. Code Ann. § 15-67-210, and the claimant must prove each element by clear and convincing evidence. *Taylor v. Heirs of William Taylor*, 419 S.C. 639, 651, 799 S.E.2d 919, 924-25 (Ct. App. 2017); *Butler v. Lindsey*, 293 S.C. 466, 470, 361 S.E.2d 621, 623 (Ct. App. 1987). The failure of any one element defeats the claim. The standard for review of a judgment entered after a trial in equity, which Appellant also invokes (Appellant’s Br. at 2-3), has no application here. No trial occurred; the order on appeal is a grant of summary judgment.

ARGUMENT

I. APPELLANT’S BRIEF RESTS ON TESTIMONY THAT WAS NOT BEFORE THE MASTER AND ON ARGUMENTS APPELLANT NEVER MADE TO HIM.

A. The Master Could Not Have Misapprehended Testimony Taken Twelve Days After He Ruled.

The centerpiece of Appellant’s brief is testimony given by Marvin Johnson, William “Cubby” Wilder, and Appellant himself at the December 15, 2025 hearing. Every record citation in the brief between pages 157 and 192, and at pages 216 and 217, is to that transcript. (Appellant’s Br. at 5-9, 13, 16, 18-21). Appellant contends the Master “misapprehended” this testimony in granting summary judgment. (*Id.* at 1, 5, 18).

The Master could not have misapprehended testimony that did not exist when he ruled. Summary judgment was granted December 3, 2025. The only claim before the Master on December 15, 2025 was Respondents’ easement counterclaim. (Hr’g Tr. (Dec. 15, 2025) 4:12-25, 5:1-4, 7:6-17, R.__). The Master began by noting the summary judgment order already entered and the motion to reconsider that “just came in,” and expressly declined to take the motion for reconsideration up at that time: “Let’s go ahead and hear your motion another day.” (*Id.* at 4:12-14, 5:22-23, 6:20-21, R.__). At the close of the hearing the Master set the motion to reconsider for

March 23, 2026. (*Id.* at 90:6-16, R.__). A summary judgment ruling is tested against “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” before the court on the motion. Rule 56(c), SCRCP. The appellate court reviews “the materials which were before the court on motion for summary judgment,” *Abrams v. Wright*, 262 S.C. 141, 144, 202 S.E.2d 859, 860 (1974), and testimony that was not in that record is properly disregarded. *See Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct. App. 1986) (hearing judge “properly disregarded” deposition testimony that was not in the record before him). Here, the December 15 testimony was taken twelve days after the order, on a different claim. It was not before the Master, and it cannot show that his ruling was error.

Nor was the December 15 testimony ever presented to the Master as a ground for reconsideration. The written motion to reconsider was filed December 12, 2025, three days before the easement hearing, and relies on Appellant’s deposition and pleadings. (Pl.’s Mot. for Recons. at 1-7, R.__). Nothing in the record shows that Appellant supplemented the motion. “The burden is on the appellant to provide a sufficient record such that this court can make an intelligent review,” *Price v. Pickens County*, 308 S.C. 64, 67, 416 S.E.2d 666, 668 (Ct. App. 1992), and “an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). An argument that the Master erred by failing to credit the December 15 testimony was never raised to or ruled upon by the Master and is not before this Court.

The December 15 transcript also contains no admission by anyone that Appellant possessed the land. Mr. Johnson testified that “[n]o one knew, you know, why it was blocked, who blocked it,” and that the heirs did not learn who was responsible until about 2020. (Hr’g Tr. (Dec. 15, 2025) 13:1-5, 15:4-10, R.__). The “2009” Appellant attributes to a Respondents’ witness is Mr. Wilder’s

reference, in answer to a question about when the road fell into disrepair, to the year Mr. Johnson retired from the military, not to anything Appellant did. (*Id.* at 43:10-18, 10:19-21, R.____).

B. Respondents Made No “Admission” of Ten Years of Possession.

Appellant repeatedly asserts that “Defendants admitted that Appellant had been in possession of the disputed property for more than ten years” and “acknowledged in the Answer and Counterclaim (R. pp. 21–49) that Appellant had been using a portion of the subject property since 2009.” (Appellant’s Br. at 2, 5-7, 19). The Amended Verified Answer says the opposite. Respondents denied paragraph Fifth of the Complaint, the only paragraph alleging possession “since 2008.” (Am. Verified Answer ¶ 2, R.____). They alleged under oath that, based on archived satellite imagery, the dumping began “sometime in mid 2019” and progressed year by year to February 2025 (*id.* ¶¶ 12-13, R.____), and that they “had no idea who was dumping on their property” until November 2023 (*id.* ¶ 15, R.____).

The record pages Appellant cites for the “admission” do not support it. Paragraph 11 of the Amended Verified Answer (“R. p. 58, ¶ 11”) alleges only that Appellant acquired the adjoining parcel on September 15, 2008; it says nothing about his use of the Subject Property. Paragraph 15 (“R. p. 60, ¶ 15”) alleges that Respondents first complained to the County on November 13, 2023, and did not know before then who was dumping; it is not an admission that Appellant possessed anything for ten years. “R. p. 50, ¶ 4” and “R.51 ¶ 7” are paragraphs of Appellant’s own unverified Answer to the counterclaims (Pl.’s Answer to Countercls. ¶¶ 4-7, R.____), and “R.p. 108,” cited for the proposition that Appellant “does not know of any trespassers since 2010,” is page five of his former counsel’s motion for reconsideration (Pl.’s Mot. for Recons. at 5, R.____). A party’s own pleadings and his lawyer’s arguments are not evidence. Rule 56(e), SCRCP (“an adverse party may not rest upon the mere allegations or denials of his pleading”); *Gilmore*, 290 S.C. at 58, 348

S.E.2d at 183 (“factual statements of counsel, whether made during oral argument or in written briefs or memoranda, ordinarily may not be so considered”). Appellant’s deposition, the only evidence on the point, establishes that trespassers, campers, dumpers, and the Wilders themselves were on the land during the claimed period. (*See* Statement of Facts, Part A, *supra*).

C. Appellant’s “Rule of Repose,” Color of Title, Easement, and Cross-Examination Arguments Were Raised for the First Time on Reconsideration and Are Not Preserved.

“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.” *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 733.

Neither Appellant’s memorandum in opposition to summary judgment nor his counsel’s argument at the October 13, 2025 hearing contended that a “Rule of Repose” bars Respondents’ “claim,” that Appellant entered “under color of title” so that his possession extends to the boundaries he described, that Respondents’ easement counterclaim is “evidence” of adverse possession, or that the deputies must be cross-examined before the Court can rule. (*See* Pl.’s Mem. in Opp’n at 1-3, R. __; Hr’g Tr. (Oct. 13, 2025) 11:25-16:9, R. __). Appellant raised each of those arguments for the first time in his motion for reconsideration, and his brief now repeats them. (*Compare* Pl.’s Mot. for Recons. at 2-6, R. __, *with* Appellant’s Br. at 10-14). An issue raised “for the first time in a Rule 59, SCRCP, motion” is “not preserved for review.” *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849 (2005); *see Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) (“An issue may not be raised for the first time in a motion to reconsider.”). Because Appellant raised these arguments for the first time in his motion for reconsideration, they are not preserved and are not properly before the Court. Each also fails on the merits, as shown in Part III below.

D. The Conclusory Portions of the Brief Are Abandoned.

Appellant's brief contains sections headed "Actual Possession," "Open and Notorious Possession," and "Exclusive Possession" that consist entirely of assertions such as "[t]he record demonstrates that Plaintiff/Appellant exercised physical dominion and control over the disputed property" and "[t]he record contains no evidence that Defendants/Respondents exercised competing possession." (Appellant's Br. at 16-17). Those sections cite no page of the record and no authority. "South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001); *see Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 327 n.1, 730 S.E.2d 282, 284 n.1 (2012) (finding an issue abandoned where the argument was "purely a recitation of facts, devoid of any citation to legal authority, with the summary conclusion" that the opposing party breached); *Equivest Fin., LLC v. Ravenel*, 422 S.C. 499, 506, 812 S.E.2d 438, 441 (Ct. App. 2018) ("When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue."); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485 (Ct. App. 2004) (issue that "is only a short conclusory statement" is abandoned); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (appellant who "fails to provide arguments or supporting authority for his assertion" is "deemed to have abandoned this issue"). Likewise, Appellant's single stated issue, that the Master "missapprehended the factual evidence as it corresponds to the elements of Adverse Possession" (Appellant's Br. at 1), is a broad general statement of the kind Rule 208(b)(1)(B), SCACR, addresses: "Broad general statements may be disregarded by the appellate court." Appellant's pro se status does not relax these requirements. "Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." *Goodson v. Am. Bankers*

Ins. Co. of Fla., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). The appellate rules “are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.” *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). To the extent the Court elects to address these sections, they fail for the reasons set forth in Part II below.

II. THE MASTER CORRECTLY GRANTED SUMMARY JUDGMENT BECAUSE APPELLANT’S OWN TESTIMONY FORECLOSES THE ELEMENTS OF ADVERSE POSSESSION AS A MATTER OF LAW.

A. Appellant’s Own Undisputed Testimony Fails the Elements of Adverse Possession Under Any Burden of Proof.

To acquire title by adverse possession, “the possession must be actual, open, notorious, hostile, continuous and exclusive for the whole statutory period,” *Mullis*, 237 S.C. at 491, 118 S.E.2d at 63; *Gregg*, 226 S.C. at 370, 85 S.E.2d at 281, which is ten years, S.C. Code Ann. § 15-67-210. The statute itself presumes that occupation of land by one without legal title is “under and in subordination to the legal title unless it appear that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action.” *Id.* “Occasional and temporary use or occupation does not constitute adverse possession.” *Weston v. Morgan*, 162 S.C. 177, 192, 160 S.E. 436, 441 (1931); *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 430, 489 S.E.2d 223, 226 (Ct. App. 1997). The 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*, 237 S.C. at 491, 118 S.E.2d at 63; *Gregg*, 226 S.C. at 370, 85 S.E.2d at 281. “The exclusive possession necessary to acquire title by adverse possession is not satisfied if occupancy is shared with the owner or with agents of the owner.” *Butler*, 293 S.C. at 472, 361 S.E.2d at 624. And “[w]hen one claims title by adverse possession and his occupancy is

not under claim of title, he must show either fencing or other improvements covering most of the subject land or some other continuous use and exercise of dominion.” *King v. Hawkins*, 282 S.C. 508, 511, 319 S.E.2d 361, 362 (Ct. App. 1984). The doctrine “must be strictly construed in favor of the owner of the title to land.” *Id.* at 511, 319 S.E.2d at 363.

Although the character of possession is ordinarily a question for the factfinder, the question “becomes one of law for the Court when the evidence is undisputed and susceptible of but one inference.” *Mullis*, 237 S.C. at 491, 118 S.E.2d at 63; *see Butler*, 293 S.C. at 471, 361 S.E.2d at 623; *Gregg*, 226 S.C. at 371, 85 S.E.2d at 281 (reversing a finding of adverse possession because “[t]he evidence is susceptible of only one conclusion”). Because every element must be proved, failure of any one defeats the claim.

The claimant must prove each element by clear and convincing evidence. *Taylor*, 419 S.C. at 651, 799 S.E.2d at 924-25; *Jones v. Leagan*, 384 S.C. 1, 10-11, 681 S.E.2d 6, 11 (Ct. App. 2009); *Millvale Plantation, LLC v. Carrison Family Ltd. P’ship*, 401 S.C. 166, 176, 736 S.E.2d 286, 291 (Ct. App. 2012); *Butler*, 293 S.C. at 470, 361 S.E.2d at 623. That burden does not permit a court to weigh evidence on summary judgment; it frames the question, which is whether the evidence, viewed in the claimant’s favor, would permit a reasonable factfinder to find each element by clear and convincing evidence. *See Stokes v. Oconee County*, 441 S.C. 566, 577, 895 S.E.2d 689 (Ct. App. 2023) (when an element must be proved by clear and convincing evidence, “the appropriate standard at the summary judgment phase on [that] issue ... is the clear and convincing standard” (quoting *George v. Fabri*, 345 S.C. 440, 454, 548 S.E.2d 868, 875 (2001))); *Savannah Bank, N.A. v. Stalliard*, 400 S.C. 246, 250, 734 S.E.2d 161, 163 (2012) (“In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence.”); *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009),

overruled on other grounds by *Kitchen Planners*, 440 S.C. at 464, 892 S.E.2d at 301. Rule 56(c) “mandates the entry of summary judgment ... against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case[] and on which that party will bear the burden of proof.” *Stokes*, 441 S.C. at 576 (quoting *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007)). The Court need not rest on the heightened burden here. The evidence is Appellant’s own testimony, and it is undisputed. Viewed entirely in his favor, it establishes that others were on the land during the claimed period, that he answered the owners’ cease and desist letter by writing that he would “rectify the problem within 60 days,” that he was trespassing, and that much of what he relies on arrived within the last few years. (Keating Dep. 16:23-25, 17:1, 45:13-14, 50:18-24, 53:4-13, 64:2-5, 70:12-15, 102:7-23, 110:14-23, 113:21-23, R.___). Under any burden of proof, that testimony permits only one inference. It fails every element, as the Master found. (Order at 4-7, R.___).

B. Appellant’s Own Testimony Establishes That Others Used the Land During the Claimed Period.

A 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*, 237 S.C. at 491, 118 S.E.2d at 63; *Gregg*, 226 S.C. at 370, 85 S.E.2d at 281. Exclusive possession “is not satisfied if occupancy is shared with the owner or with agents of the owner.” *Butler*, 293 S.C. at 472, 361 S.E.2d at 624. “Possession is presumed to follow the legal title to land,” *id.* at 470, 361 S.E.2d at 623, and an owner’s occasional recreational use of his own land “is consistent with the uses to which the property may be put.” *Id.* at 473, 361 S.E.2d at 624.

The owners never left. Respondents’ verified pleading states that the heirs have paid the taxes on the Subject Property year to year, a fact the Master found “not contested by the Plaintiff,”

and have used it for walking and hunting for more than a century. (Am. Verified Answer ¶ 8, R. __; Order at 3, R. __). Appellant conceded that he has never paid taxes on the property, and the Master found that Respondents have and he has not. (Hr’g Tr. (Oct. 13, 2025) 16:5-8, R. __; Order at 6, R. __). Appellant did not controvert the heirs’ use. His affidavit does not mention it, and at deposition he conceded he has no firsthand information whether the Wilder family was using the property. (Keating Aff., R. __; Keating Dep. 70:25, 71:1-13, R. __). What he does know is that the Wilders “cut the lock and go through,” and asked whether they may cross the very land he claims, he answered, “No, they can cross it.” (Keating Dep. 68:21-24, 69:1-3, 70:12-15, 92:4-18, 102:9-11, R. __). In Butler, the record owner used a one-acre peninsula “too low for residential building” only to hunt “several times a year,” while the claimant left boats there, let his children camp there, and built a dock, a landing, and a fence; because “the record reveal[ed] both parties used the property for recreational purposes throughout the ten year period,” the claimant’s “acts of possession cannot meet the necessary requirement of exclusive possession.” 293 S.C. at 468, 471-72, 361 S.E.2d at 622-24. The heirs’ walking and hunting on their own land, like Butler’s, is possession, and on this record it is uncontroverted.

The Master also found, on Appellant’s own admissions, “others’ use and intrusions on the property during the claimed period, including third parties cutting gates and dumping, campers and hunters requiring law enforcement or DNR intervention, and the Wilders accessing the property within months of his deposition.” (Order at 4-5, R. __). Each is Appellant’s testimony: others cut the gate and dumped, as recently as “[a] couple of years ago” (Keating Dep. 45:13-14, 102:7-23, R. __); people camped on the land “[a]t different times while we had the property,” and “[s]ometimes we had to call the police to move them off” (*id.* at 16:22-25, 17:1, R. __); and someone built a dock and hunted there until DNR intervened (*id.* at 110:14-23, R. __). The owners’

continued use of their own land is uncontroverted, and it alone defeats exclusivity. The Master correctly so found. (Order at 5, R.___).

C. Appellant's Own Testimony Shows No Continuous Possession for Ten Years, and Much of What He Relies On Arrived Within the Last Few Years.

Possession must be “continuous and exclusive for the whole statutory period” of ten years. *Mullis*, 237 S.C. at 491, 118 S.E.2d at 63; S.C. Code Ann. § 15-67-210. “[I]n order for adverse possession to ripen into title, it must be continuous and uninterrupted for the full statutory period. The moment the possession is broken it ceases to be effectual because the law immediately restores the constructive possession of the owner.” *Mullis*, 237 S.C. at 496, 118 S.E.2d at 65. “Occasional and temporary use or occupation does not constitute adverse possession.” *Getsinger*, 327 S.C. at 430, 489 S.E.2d at 226; *Weston*, 162 S.C. at 192, 160 S.E. at 441. A claimant without color of title “must show either fencing or other improvements covering most of the subject land or some other continuous use and exercise of dominion,” *King*, 282 S.C. at 511, 319 S.E.2d at 362, and he “cannot succeed in such claim by living on another tract and cultivating for a few years a small patch on the tract he claims, or by going on such tract and sometimes cutting wood or timber, and hauling it off for use on the tract on which he lives, but he must show that he has been doing that for 10 consecutive years.” *Weston*, 162 S.C. at 191, 160 S.E. at 441 (quoting *Lewis v. Pope*, 86 S.C. 285, 68 S.E. 680, 683).

Appellant alleges that he has possessed the described tract “for access and storage purposes since 2008.” (Compl. ¶ Fifth, R.___; Order at 3, R.___). His own testimony dates the acts he relies on. The Master found that the significant acts, “including placement of asphalt, concrete, and a shipping container,” occurred “in the last two years, after Charleston County initiated zoning enforcement actions at another location on River Road in 2024, too recent to satisfy the statutory period for the activities forming the basis of the claim.” (Order at 5, R.___). That finding rests on

Appellant's testimony. The shipping container came "[a]fter '24, when they started making me move," and once the County began enforcing against him at River Road, "I brought more stuff." (Keating Dep. 50:18-24, 51:8-12, R.__). The boats and trailers came "[i]n 2024." (*Id.* at 53:7-13, R.__). The concrete piers came "[a] few years ago," and he agreed the excavator was operated there within the last two years. (*Id.* at 45:19-24, 99:13-15, R.__). He explained why the material was there: "I had to get it off my property." (*Id.* at 52:12-14, R.__). None of this had been on the land for ten years when Appellant filed suit in March 2025.

What preceded it was work on a road. Appellant testified that the road "was already there" when he bought his parcel in 2008, and he did not dispute that a roadbed had existed there "for over a hundred years." (*Id.* at 12:3-6, 91:6-9, R.__). It runs across the Subject Property and three other parcels to the dike. (*Id.* at 24:16-25, R.__). Beginning in 2008 he cut back the trees in the roadbed and hauled off abandoned cars and drums, which took "a couple of years," and in 2011 or 2012 he spread dirt from a bridge project on the road. (*Id.* at 21:2-12, 85:14-19, 104:22-24, 106:4-9, R.__). Clearing and grading a pre-existing road that crosses four parcels is not "fencing or other improvements covering most of the subject land or some other continuous use and exercise of dominion." *King*, 282 S.C. at 511, 319 S.E.2d at 362. It is the occasional entry of one who "commits a petty trespass and disappears without scarcely leaving a mark behind." (Order at 5 (quoting *Mullis*, 237 S.C. at 496, 118 S.E.2d at 65 (quoting *Bailey v. Irby*, 11 S.C.L. (2 Nott & McC.) 343)), R.__).

Appellant answers with the passage of *Mullis* that precedes the one the Master quoted, which states that "[t]he rule requiring continuity of possession does not mean that the person in possession, his tenant or agent, must be actually on the land during the whole of the statutory period," and that "[a]ctual possession, once taken, will continue" until the possessor is disseised

or abandons it. *Mullis*, 237 S.C. at 495, 118 S.E.2d at 65 (quoting *Cathcart v. Matthews*, 105 S.C. 329, 89 S.E. 1021, 1025); (Appellant’s Br. at 11). The rule presupposes that actual possession of the tract was “once taken.” The *Mullis* claimant entered under a recorded deed describing the tract, cut all the merchantable timber to its boundaries, and paid the taxes in his own name from 1944 until the 1958 trial. *Mullis*, 237 S.C. at 489-91, 494-95, 118 S.E.2d at 62-65. Appellant did none of that, and he did the opposite. The Master also found that the Sheriff’s January 27, 2025 report “documents Plaintiff’s contemporaneous commitment to remove items and uncertainty about boundaries, further undermining any uninterrupted, continuous adverse claim.” (Order at 5, R. __). A claimant who writes the owners that he “will rectify the problem within 60 days” and tells deputies he still intends to remove his things (Keating Dep. 64:2-5, R. __; Am. Verified Answer ¶¶ 21, 23 & Ex. A, R. __) is not holding the land continuously and adversely; the law “immediately restores the constructive possession of the owner.” *Mullis*, 237 S.C. at 496, 118 S.E.2d at 65. See Part II.D below. The Master correctly found the elements of time and continuity not met. (Order at 5, R. __).

D. Appellant Recognized Respondents’ Title at Every Turn.

Hostile possession is possession “without the consent of the title owner,” *Taylor*, 419 S.C. at 652, 799 S.E.2d at 925, and “without subserviency to, or recognition of, the title of the true owner.” *Mullis*, 237 S.C. at 491, 118 S.E.2d at 63. The Master found that “[w]hile Plaintiff expressed an intent to ‘take the property,’ he also expressly acknowledged trespassing and uncertainty about boundaries; a hostile claim must be established by conduct consistent with ownership, not intermittent dumping, access obstruction, or equivocal acknowledgments.” (Order at 5, R. __). Appellant’s own words recognize Respondents’ title at every turn. When the owners wrote that he was trespassing and dumping, he answered in writing that he “will rectify the problem

within 60 days.” (Keating Dep. 64:2-5, R.___). When the Sheriff’s deputies came, the incident report records, he “acknowledged that he had previously agreed to remove the items and stated that he still intended to do so, as he did not want any disputes,” and “claimed uncertainty regarding the exact property boundaries.” (Am. Verified Answer ¶ 23 & Ex. A, R.___). Two days before he sued, he sent the heirs a “NOTICE OF TRESPASS,” signed as Trustee of the James Island Preservation Trust, stating that they “do not have the right to use the road of the property owned by JAMES ISLAND PRESERVATION TRUST to access *your property*.” (Am. Verified Answer ¶ 25 (emphasis added), R.___; Keating Dep. 68:1-12, R.___). Specifically, Appellant pleaded that he is “willing to grant access over, on and across” the land he claims so Respondents “can access their property,” and confirmed that they “can cross it.” (Compl. ¶ Eighth, R.___; Keating Dep. 92:4-18, R.___).

A claimant who writes the record owners that he will “rectify the problem,” tells the deputies he has agreed to remove the items and still intends to do so, and tells the owners in writing that the land is “your property” is not holding the land under a claim of right hostile to the owners. The statement that “[t]he goal was always to take the property” (Keating Dep. 27:11-13, R.___) describes an aspiration, not possession under a claim of ownership. The Master correctly found hostility not established. (Order at 5-6, R.___).

E. Appellant’s Possession Was Not Open and Notorious: The Road Cannot Be Seen from Battery Island Drive and His Only Response to the Owners Was a Promise to “Rectify the Problem.”

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.” *Taylor*, 419 S.C. at 651, 799 S.E.2d at 925 (quoting *Jones*, 384 S.C. at 13-14, 681 S.E.2d at 13). Appellant’s testimony is that

the land “[n]ow you can’t” see from Battery Island Drive, that one cannot see everything from there, and that whatever visibility once existed “has grown up since then.” (Keating Dep. 87:5-8, 89:3-12, 89:23-25, R.__). His evidence of notoriety is that “[t]he whole neighborhood knew I was doing it. I was making a lot of noise,” and that no one confronted him “[f]or years.” (*Id.* at 91:19-25, 92:1, R.__). Noise tells no one that the person making it claims to own the land. What the owners actually observed, when they finally discovered it, was dumping by an unknown party; they could not identify Appellant until a truck with his company’s name on it was abandoned there in 2023, and when they did they posted “No Trespassing” signs and sent a cease and desist letter. (Am. Verified Answer ¶¶ 15-19, R.__). Appellant’s response to the letter, a promise to “rectify the problem,” is the opposite of notice that he claimed title. The gate Appellant describes stands “where Old Sol Legare Road meets Battery Island Drive,” the end of the road that crosses the corner of Appellant’s own parcel before it reaches the Subject Property. (*Id.* ¶¶ 11, 18, R.__; Keating Dep. 27:6-8, R.__). A gate on one’s own land gives the neighboring owner no notice of a claim to the neighbor’s land. The Master correctly found this element unmet. (Order at 6, R.__).

F. Disposal and Storage of Debris Is Not Possession Consistent with Ownership.

“Acts of ownership of open land need only be exercised in a way consistent with the use to which the land may be put and which the situation of the property permits without actual residency or occupancy.” *Butler*, 293 S.C. at 471, 361 S.E.2d at 623. Appellant’s acts were not uses of the land as an owner would use it; they were, by his own account, the unlawful disposal and storage of tree debris, asphalt, concrete, boats, trailers, amusement park rides, an excavator, and a shipping container, much of it moved there because the County would not let him keep it at home, and without a permit. (Keating Dep. 50:18-24, 51:8-12, 52:12-14, 88:21-23, R.__). He testified that he brought trees “to block the road so no one could go up and down the road,” and

asked how that made the land his, answered, “By building it up, and then depositing material to block people from using it.” (*Id.* at 15:5-9, 25:12-19, R.___). Appellant agreed the land cannot be used or enjoyed in its present state, that the material “has to be removed,” and that “[e]verything will go away eventually.” (Keating Dep. 27:20-25, 58:3-7, R.___). The Master correctly held that “unlawful dumping and intermittent obstruction of access do not constitute the type of actual, continuous, and exclusive possession consistent with ownership.” (Order at 6, R.___). Appellant was required to establish each of these elements by clear and convincing evidence. On his own testimony he established none of them, and the failure of any one requires affirmance.

G. Appellant Offered Nothing That Creates a Genuine Issue of Material Fact.

Against this testimony Appellant offered a two-page affidavit stating in conclusory terms that he has used the property “for more than 17 years for storage, recreation, improving the property, and other actions that constitute possession.” (Keating Aff. ¶ 1, R.___). A conclusory recital of the elements does not “set forth specific facts showing that there is a genuine issue for trial.” Rule 56(e), SCRPC. “A conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” *Shupe v. Settle*, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994). The specific facts are in Appellant’s deposition, and they are the facts recited above. Appellant now says a trial would have allowed “third party individuals” to testify and allowed him “to clarify any misinterpretations of his statements.” (Appellant’s Br. at 3, 13). He identified those individuals at deposition (Keating Dep. 10:24-25, 11:1, 36:11-13, 83:4-7, R.___), yet submitted no affidavit from any of them and never asked the Master for time to obtain one. Rule 56(f) “requires the party opposing summary judgment to at least present affidavits explaining why he needs more time for discovery.” *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 321, 548 S.E.2d 854 (2001); *see Savannah Bank*, 400 S.C. at

253, 734 S.E.2d at 165 (affirming summary judgment where appellant “did not provide affidavits to support allegations he made in requesting a discovery extension or submit an affidavit stating why he was unable to obtain such affidavits”). He was represented by counsel at his deposition and had every opportunity to clarify his testimony. Nor is Appellant “[l]ike the successful appellants in Taylor.” (Appellant’s Br. at 17). The Taylor claimants paid taxes on the parcel beginning no later than 1954, lived in a house on it, and farmed it from 1956 through 1972. *Taylor*, 419 S.C. at 653-54, 799 S.E.2d at 926. Appellant’s counsel conceded that he has never paid taxes on the Subject Property and, asked whether he had fenced it, pointed to the gate on the corner of his own parcel. (Hr’g Tr. (Oct. 13, 2025) 15:21-25, 16:1-8, R. __; Am. Verified Answer ¶¶ 11, 18, R. __). Viewing the record in the light most favorable to Appellant does not permit the Court to disregard his admissions, and “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Kitchen Planners*, 440 S.C. at 462, 892 S.E.2d at 301 (quoting *Town of Hollywood*, 403 S.C. at 477, 744 S.E.2d at 166). No reasonable factfinder could find on this record, by clear and convincing evidence, that unlawful dumping on the Subject Property was exclusive, hostile, continuous, open, and notorious possession of it for ten years. Summary judgment was proper.

III. APPELLANT’S REMAINING UNPRESERVED ARGUMENTS LACK MERIT.

None of the arguments addressed in this Part was presented to the Master before he granted summary judgment. Each appeared for the first time in the December 12, 2025 motion for reconsideration, nine days after the order, and none is preserved for review. (*Compare* Pl.’s Mem. in Opp’n at 1-3, R. __, *and* Hr’g Tr. (Oct. 13, 2025) 11:25-16:9, R. __, *with* Pl.’s Mot. for Recons. at 2-6, R. __). *See* Part I.C above. Respondents address them only in the alternative.

A. Section 15-67-210 Presumes Subordination to the Legal Title; It Creates No “Rule of Repose.”

Appellant argues that a “Rule of Repose” under section 15-67-210 extinguished Respondents’ “claim” once he had been on the land ten years, so that later events “cannot be used against him.” (Appellant’s Br. at 10). The statute does the opposite of what Appellant suggests: it presumes that occupation by one without legal title is “under and in subordination to the legal title unless it appear that such premises have been held and possessed adversely to such legal title for ten years before the commencement of such action.” S.C. Code Ann. § 15-67-210. The statute does not relieve the claimant of proving every element for the full period; it supplies the period. And the “later” events Appellant would exclude, his 2024 promise to “rectify the problem,” his statements to deputies, and his admission of trespass, are evidence of the character of his possession throughout, not merely of its end.

B. Appellant Has No Color of Title, and the Weston Passage He Relies On Is the Dissent.

Appellant invokes *Weston v. Morgan* for the rule that a claimant entering “under color of title” is deemed to possess to the boundaries of his paper title. (Appellant’s Br. at 10-11). The passage he paraphrases is from the dissent. *Weston*, 162 S.C. at 210, 160 S.E. at 447 (Cothran, J., dissenting). The *Weston* majority affirmed a decree rejecting adverse possession, and the reported decree states the governing rules: the claimant “must show the extent of his possession,” bears the burden of proof, and “must show clearly, not only that his possession was adverse, but that it was for the full statutory period. If there be doubt on either of these points, the possessory claim must yield to the legal title.” *Id.* at 192-93, 160 S.E. at 441. Color of title is a written instrument whose office is to define the extent of the claim and extend possession to the boundaries the paper describes, *Mullis*, 237 S.C. at 492, 118 S.E.2d at 63, and even then it “is not of itself evidence of

adverse possession, and it does not follow that adverse possession can be proved by less evidence when the entry is under color of title than when it is not.” *Butler*, 293 S.C. at 470, 361 S.E.2d at 623. Appellant has no color of title to any part of the Subject Property. His deeds describe his own parcels; the “boundaries” of his claim are lines he dictated to his son-in-law for Exhibit A to the Complaint. (Am. Verified Answer ¶ 11, R. __; Compl. ¶¶ Fifth, Sixth, R. __; Keating Dep. 76:2-25, 77:1, R. __). A claimant whose occupancy is not under claim of title must show fencing, improvements covering most of the land, or other continuous use and exercise of dominion. *King*, 282 S.C. at 511, 319 S.E.2d at 362. The argument is unpreserved, and Appellant did none of this.

C. The Easement Counterclaim Asserts Respondents’ Ownership; It Does Not Support Appellant’s Claim.

Appellant argues that Respondents’ counterclaim for an easement by necessity across his parcel shows “lack of convenient physical access” and so supports his claim. (Appellant’s Br. at 13-14). Appellant never made this argument to the Master before summary judgment was granted. His memorandum in opposition does not mention the counterclaim, and neither did his counsel at the October 13, 2025 hearing; the argument first appears in his motion for reconsideration. (*See* Pl.’s Mem. in Opp’n at 1-3, R. __; Hr’g Tr. (Oct. 13, 2025) 11:25-16:9, R. __; Pl.’s Mot. for Recons. at 6, R. __). It is not preserved. *Dixon*, 362 S.C. at 399, 608 S.E.2d 849. It also fails. Respondents’ request for access across the corner of Appellant’s parcel, where he erected a gate, has nothing to do with whether Appellant exclusively possessed the Subject Property for ten years. The counterclaim is the heirs asserting their ownership of the Subject Property. Appellant reads the counterclaim as conceding that the heirs “have not enjoyed the disputed portion of the property since the dike was built.” (Appellant’s Br. at 13). Paragraph 50 says the opposite: the heirs “have enjoyed the Subject Property for recreational use since the Subject Property was severed by the County’s construction of the drainage easement,” and the easement they seek is “over a small

portion of James Island Preservation Trust, Joseph W. Keating as Trustee property,” not over the Subject Property. (Am. Verified Answer ¶ 50, R.___). Appellant’s own answer to the counterclaim denied that any necessity exists and asserted that the heirs “have access to the remainder of their property from the side opposite.” (Pl.’s Answer to Countercls. ¶ 9, R.___). An unpreserved argument raised for the first time after the ruling, and contradicted by the pleading it relies on, provides no basis for reversal.

D. The Admissions That Decide This Case Are Appellant’s Own, Not the Deputies’.

Appellant contends the deputies “need to be cross examined” before the Court can rely on the incident report. (Appellant’s Br. at 14). Appellant did not make this argument before the order; it first appears in his motion for reconsideration. (Pl.’s Mot. for Recons. at 6, R.___). It is not preserved, and it would not matter if it were. The admissions that decide this case are Appellant’s own: his email, his testimony that he was trespassing, his testimony that others used the land during the claimed period, and his testimony about when and why the materials were placed. Appellant does not dispute that he wrote the email (Keating Dep. 64:5, R.___), and he agreed the report is accurate that the deputies advised him he could not restrict the family’s access (*id.* at 67:1-4, R.___). Whether he also told the deputies he would remove the items is immaterial to the result.

CONCLUSION

This appeal fails for two independent reasons. First, the grounds Appellant’s brief relies on are not properly before the Court. Its centerpiece is testimony taken twelve days after the Master granted summary judgment, and its remaining new arguments were raised for the first time in his motion for reconsideration and are not preserved. Second, the Master was right. Adverse possession requires proof of every element, and the failure of a single one ends the claim. Appellant’s own sworn testimony fails every element: others used the land during the period he

claims; much of the material he relies on arrived within the last few years; he wrote the owners that he would “rectify the problem” when they told him to stop; and what he did on their land was unlawful dumping. Appellant offered nothing to contradict that testimony, and there is no genuine issue of material fact. The Master correctly entered summary judgment, and his December 3, 2025 Order on Motion to Dismiss and/or Summary Judgment and March 23, 2026 order denying reconsideration should be affirmed.

[Signature on following page]

Respectfully submitted,

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