

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Chester County
Court of Common Pleas
Brooks P. Goldsmith, Circuit Court Judge

Case Number 2011-CP-12-0323

71066

Mell Woods Appellant,

v.

John D. Hinson; Christine Jones; John C. Hinson; William L. Hinson; Lois Hinson; Robert Breakfield, as Personal Representative of the Estate of Reba P. Hinson; Elaine H. Hensley; Robert H. Hinson; George Standford, as Personal Representative of the Estate of Linda H. Standford; William C. Hinson, Jr.; Darrell W. Hinson; Mary Roe and John Doe, fictitious names used to designate all other parties, whose names are unknown, and any and all other persons claiming any right, title, estate, interest or lien upon the real estate described in the complaint,

. Respondents.

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SC Court of Appeals

PETITION FOR REHEARING

UNDER RULE 221(a) SCACR

Court of Appeals Internal Tracking Number 2012-212330

1. Appellant/Petitioner Mell Woods hereby incorporates by reference the entire Record in this case and in particular the Appellant Briefs filed, and now referenced.

2. Petitioner respectfully asks that the Court of Appeals re-address the following points ruled on, or not ruled on.

3. Throughout the litigation below, and in this appeal it has been the position of petitioner, and plaintiff below that Mrs. Reba Hinson acquired full title to her land after holding the land in an actual, hostile, and exclusive manner *with continuous possession for twenty years.*

4. And that, "actual, hostile, exclusive, and continuous possession" is a jury question especially where the issue of paramount title is raised:

"When an allegation of paramount title is raised in the answer, the case should be sent to the jury.

(issue of title to real estate can be raised by complaint or by answer and if it is so raised,

it must go to the jury)." footnote 1 in the
Dissent, Cummings v. Varn, 307 S.C. 37, 413 S.E.2d 829
(1992), citing: *Van Every v. Chinquapin Hollow, Inc.*,
265 S.C. 474, 219 S.E.2d 909 (1975).

5. The Record shows that Mrs. Reba Hinson lived for
twenty years after her husband Mr. Hinson, died
on August 01, 1986, R.p. 551, in fact Mrs. Hinson lasted
20 1/2 more years, and then passed January 03, 2007, R.p. 393.

6. The Record further shows Mrs. Hinson's ownership
by the properly recorded plats R.pp. 601-603 and the wills
of Mrs. Hinson R.pp. 159-163 which Mrs. Hinson
made on her own after hiring a lawyer to draw a first will
which she revoked after the discovery of language in a
prepared will which suggested that she had only a "life"
estate, R.pp. 387-390 [showing the marks of obliteration
placed on the purported will drawn for Mrs. Hinson as
evidence that Mrs. Hinson claimed a fee simple estate
instead of any other lesser right.]

7. Petitioner cited Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992) during the summary judgment hearing, R.pp. 690-691;

The following three paragraphs are directly from Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992):

It is well established that adverse possession does not run against a remainderman until the death of the life tenant. Phipps v. Hardwick, 273 S.C. 17, 253 S.E.2d 506 (1979). Similarly, presumption of grant will not be acquired against a remainderman who is unable to assert his rights until an intervening life estate is extinguished and the remainderman is entitled to possession. See Phipps v. Hardwick, supra; 10 S.C.L.Q. 292, 302 (1958) (citing Bolt v. Sullivan, 173 S.C. 24, 174 S.E. 491 (1934)). *However, once the statute of limitations has commenced to run, no subsequent disability will arrest it. Milton v. Pace, 85 S.C. 373, 67 S.E. 458 (1910); Sutton v. Clark, 59 S.C. 440, 38 S.E. 150 (1901)*

In Kubiszyn v. Bradley, 292 Ala. 570, 298 So.2d 9 (1974), the Alabama Supreme Court held that once the statutory period for adverse possession commences to run against a landowner, the running of the statutory period is not suspended by the subsequent creation of a life estate and remainders in the property. In accord with the Bradley Court is the Restatement of the Law of Property, ~~which states in pertinent part:~~

[Restatement part left out]

Then, the South Carolina Supreme Court held:

Accordingly, we hold that once the statutory period for adverse possession is activated, the subsequent creation of a life estate will not suspend the running of such period. The findings of the special referee are affirmed. Appellants' remaining exceptions are disposed of pursuant to Supreme Court Rule 23.

[Italics added, strike-through added]

8. So, it is respectfully shown that where the Court of Appeals decision in this case failed to address Miller, but instead discussed only Phipps v. Hardwick, as above, and Ruled: ("[A]dverse possession . . . cannot run against remaindermen until the death of the life tenant."); that such a Ruling is in error because the same does not square with Miller, as above.

9. Since this is a law case and not an equity case, the fact finders, a jury in this case, could easily find that Mrs. Hinson truly believed that she was the fee owner of the property in question, since that is what the Will said to start with, and all of the other wording about "during her life" was merely an inept choice of words by a layman instead of a skilled wordsmith, an ordinary lawyer.

10. It is petitioner's position that the 10 years, or even the 20 years needed for the presumption of a grant started running the minute Mr. Hinson died and left a will with the wording in fee simple inserted in the will before

anything was mentioned about anyone's life. The law, (not equity) always favors the *earliest* vesting of an estate and a condition subsequent which undermines an already granted fee is repugnant to the fee and as a general rule, void, please see Moore v. Sanders, 15 S.C. 440 (1881), and the Record in this case, R.pp. 713-717.

11. The Court of Appeals decision in this case also held: ("A person claiming adverse possession must have personally held the property for ten years, and tacking is *allowed only between ancestor and heir.*" (emphasis added)); -- this ruling is mere surplusage; there was no need to tack as Mrs. Hinson had already held the property for at least 10 years when petitioner started dealing with Mrs. Hinson in a formal way, R.pp. 362-366.

12. The Court of Appeals decision also rules that South Carolina Code Section 15-67-100 was never raised to the trial court; this is not true, the Record shows that it was raised, and raised in more than one place, R.p. 646, R.p. 692 (bottom of the page), R.p. 710, R.p. 712, and

raised prior to the summary judgment hearing, R.p. 646 (statutory right to a jury trial), placed just above the signature line of the pleading; in any event a jury trial is just what a litigant gets where an allegation of paramount title is raised based on the case law cited above, Cummings, and Van Every v. Chinquapin Hollow and the statute itself SC § 15-67-100.

Conclusion

Petitioner does not agree with the trial court finding, or the Ruling of the Court of Appeals that no genuine issue as to any material fact exists, and continues to appeal this point. This case is about a fully matured land title by prescription to the land described in the complaint and as such petitioner is entitled to at least a jury trial under the statutory and case law cited herein, and in the Record.

Respectfully submitted,

This 23 day of January, 2014.



Mell Woods

P.O. Box 2603
Lancaster, SC 29721

COURT OF APPEALS OF SOUTH CAROLINA

Case Number 2012-212330

Woods v. Hinson

CERTIFICATE OF SERVICE

I hereby certify that I have served the respondent with a true copy of the within and foregoing *Petition for Rehearing* by method of placing the document in the U.S. Mail with sufficient postage addressed to the counsel of record for respondent to wit:

Moses Koon & Brackett
C/O B. Michael Brackett
P.O. Box 100261
Columbia, SC 29202

This 23 day of January, 2014.



Mell Woods

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