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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

SC Court of Appeals

Patrick R. Watts, Special Referee

Case No. 2013-000608

Irving T. Geddis, Jr., Harry M. Carroll, Barbara C. Stancil, & Joanne C. Wade.....Respondents,

v.

Rebecca Geddis, Patricia Ann Geddis, Cleveland Geddis, John Henry Geddis, Herman Geddis, George Geddis, Patrice Geddis, Joenatham Geddis, Yvonne Geddis Bowens, Gwendolyn P. Spell, Harry P. Geddis, Catherine Goodwine a/k/a Catharine Goodwine, Jessie Goodwine, and any individual who may be claiming an interest in this action as an heir of these individuals, and MWV Community Development and Land Management, LLC, and John Doe and Jane Doe, fictitious names designating the unknown heirs, devisees, distributees, issue, executors, administrators, successors or assigns of the Defendants named above, and Richard Roe and Mary Roe, fictitious names designating infants and persons under any disability or incompetent, including those persons who might be in the Military Services within the meaning of The Soldier's and Sailor's Civil Relief Act of 1941, Title 50, United States Code, and any other person or legal entity who or which has or claims to have any right title, interest or lien in or to the real property described in this Complaint, Defendants,

Of whom Patrice Geddis is the.....Appellant.

FINAL BRIEF OF APPELLANT PATRICE GEDDIS

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S.C. Code Ann. § 15-67-2308

STATEMENT OF THE ISSUES ON APPEAL

1. DID THE SPECIAL REFEREE ERR IN CONCLUDING THAT THE SUBJECT PROPERTY CONSISTS OF 53.08 ACRES INSTEAD OF THE 35 1/3 ACRES ORIGINALLY CONVEYED?
2. DID THE SPECIAL REFEREE ERR IN FINDING THAT THE PLAINTIFFS HAD PROVEN THE ELEMENTS OF ADVERSE POSSESSION BY CLEAR AND CONVINCING EVIDENCE?

STATEMENT OF THE CASE

The real property that is the subject of this suit is situated in Dorchester County, South Carolina and is described in the Plaintiffs' Complaint as follows:

All that certain, piece, lot or tract of land containing 54 .03 acres, more or less, all as more fully shown on a plat entitled "Boundary survey of 54.03 acres owned by Irving T. Geddis and Irma Caroll, Geddisville area Dorchester County, South Carolina", by Robert J Sample, P.E, RLS, dated September 12, 2006, said plat being recorded in Dorchester County RMC's Office at plat Cabinet L, slide 32, on or about October 11, 2006.

Being the same premises conveyed to Irving T. Geddis, Sr., by deed of Adam E. Geddis, Katie Geddis, George E. Geddis, Maggie L. Thompson, Erma Geddis, Albert E. Geddis, Lilla Geddis, Harry Glenn, Joshua Glenn, Joseph Glenn, Robert W. Geddis, Constance Geddis, Angie S. Miniffee and Ornisha A. Geddis dated August 31, 1954 and recorded in the RMC Office for Dorchester County in Deed Book 109, at Page 73.

The legal description that appears on the 1954 deed, recorded in the RMC Office for Dorchester County at Book 109, Page 85:

All that certain piece, lot or tract of land, containing thirty five and one third (35 1/3) acres, more or less, situate, lying and being in the County of Colleton and State aforesaid, situated near the Edisto River and having the following boundaries to-wit: North by lands of James Perry; South by lands of Richard Geddis; East by lands of Mrs. Regina Yonahan, and West by lands of Isaac Singleton.

Being the same premises conveyed to Irving T. Geddis, Sr., by deed of Adam E. Geddis, Katie Geddis, George E. Geddis, Maggie L. Thompson, Erma Geddis, Albert E. Geddis, Lilla Geddis, Harry Glenn, Joshua Glenn, Joseph Glenn, Robert W. Geddis, Constance Geddis, Angie S. Miniffee and Ornisha A. Geddis dated August 31,

1954 and recorded in the RMC Office for Dorchester County in Deed Book 109, at Page 73.

On November 14, 2007, Plaintiffs initiated suit to quiet title against Defendants by the filing of Summons, Complaint and Lis Pendens with the Dorchester County Clerk of Court. (R. p. 2) An Amended Summons and Complaint were filed on December 6, 2007. (R. p. 10) A previous suit had been commenced in April of 2002 to quiet title to the subject property. The order from the Dorchester County Master-in-Equity at that time found that the Plaintiffs had fee simple title to the subject property, which was then thought to consist of 35 1/3 acres based upon the last previously recorded plat dated September 24, 1918. The Plaintiffs claimed in the new case, however, that after the Master-in-Equity's order from the 2002 case was issued, the property had been surveyed and the new survey prepared by Robert J. Sample and dated September 12, 2006 ("Sample Survey") revealed that the Plaintiffs' property actually consisted of 54.03 acres instead of 35 1/3 acres. The Plaintiffs alleged that, due to the new survey that showed the subject property consisting of substantially more acreage, the Plaintiffs owned the additional acreage under "color of title," and the legal doctrine of adverse possession. (R. p. 16, paragraphs 12, 13, 14)

The record indicates that all named Defendants were served with the Complaint and Amended Complaint. Defendant MWV Community Development and Land Management, LLC, and Defendant Patrice Geddis ("Appellant Patrice Geddis") timely filed Answers. (R. p. 19) Appellant Patrice Geddis's *pro se* Answer consisted of a general denial and did not raise any affirmative defense or counterclaim. (R. p. 19, 20) The remaining named Defendants did not file responsive pleadings and were subsequently held to be in default.

On August 1, 2011, the Court issued its Order referring this action to the Special Referee for the determination of all outstanding issues.

A hearing was held on November 17, 2011 after proper notice was given to all Defendants. It does not appear that Plaintiff Irving Geddis was present at this hearing. The only testimony that appears in the record is a document entitled "Transcript of Testimony" that was drawn in affidavit form, and signed by Plaintiffs Harry M. Carroll, Barbara C. Sencil, and Joanne C. Wade. This document was apparently submitted in lieu of hearing testimony, as there appears to be no record that any of the Plaintiffs were physically present at the November 17, 2011 hearing. (R. p. 25) Appellant Patrice Geddis was present at this hearing.

On January 18, 2012, the Special Referee issued a "Special Referee's Report and Final Order" ("Final Order"). In the Final Order, the Special Referee ruled that the Sample Survey accurately depicts the boundaries of the subject property, and that Plaintiffs' tract consists of 53.08 acres. The Special Referee also ruled as follows:

"Defendants Patrice Geddis and Cleveland Geddis have 30 days in which to file any motion for reconsideration of this order. That 30 day period begins on the day Ms. Geddis is served pursuant to Rule 5(b)(1), SCRCP, with a copy of this order as filed with the Clerk of Court." (R. p. 31-56)

Appellant Patrice Geddis retained counsel¹ who, on February 21, 2012, filed a document entitled "Motion to Reconsider, Alter, and Amend Decree, and for a New Trial." Attached to the motion was a survey of the subject property and adjoining property which was commissioned by Appellant Patrice Geddis following the hearing on November 17, 2011. This survey resulted in a plat prepared by Ashley Surveying Company which was completed on December 14, 2011 ("Ashley Survey"). (R. p. 57-60)

On August 14, 2012, a hearing was conducted on Appellant Patrice Geddis's motion.

¹ Appellant Patrice Geddis initially retained Ashley Andrews, Esq., as appellate counsel. Ms. Andrews subsequently withdrew as counsel with substitution by W. Scott Palmer, Esq.

Cleveland Geddis and Appellant Patrice Geddis and her legal counsel were present. Plaintiffs Irving T. Geddis and Harry M. Carroll also appeared with their legal counsel. Although there is no record of testimony being taken, it is apparent that the Special Referee considered statements from parties and gave consideration to the Ashley Survey. The Special Referee ruled “from the bench” that the Final Order would be vacated and the case set for trial. There exists no record of this hearing, either by recording or transcript.

Despite previously granting the motion and ordering a new trial, on February 13, 2013, the Special Referee issued an Order Denying Motion without further hearing. This Order was a “reversal” of the Special Referee's bench ruling at the August 14, 2012 hearing. This appeal follows from the Special Referee’s Order Denying Motion, dated February 13, 2013 and filed with the Clerk of Court February 14, 2013.

The Order Denying Motion was received by counsel for Appellant Patrice Geddis on February 14, 2013. On March 15, 2013, Appellant Patrice Geddis, through counsel, filed a Notice of Appeal.

ARGUMENTS

- I. THE SPECIAL REFEREE ERRED IN CONCLUDING THAT THE SUBJECT PROPERTY CONSISTS OF 53.08 ACRES INSTEAD OF THE 35 1/3 ACRES ORIGINALLY CONVEYED.

Normally, an action to quiet title to property is an action in equity. Clark v. Hargrave, 323 S.C. 84, 473 S.E.2d 474 (Ct.App.1996). However, the character, as legal or equitable, of an action is determined by the complaint in its main purpose, the nature of the issues as raised by the pleadings or the pleadings and proof, and the character of the relief sought under them. Here, the Plaintiffs claimed title to property based upon the information provided on the Sample Survey. The

determination of title to real property is legal in nature. Id. at 87, 473 S.E.2d at 476. Moreover, an adverse possession claim is an action at law. Id. Thus, an action to quiet title to real property, primarily involving the determination of title to real property based on adverse possession, should be characterized as an action at law. Id. Because an adverse possession claim is an action at law, the character of the possession is a question for the fact finder. Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992). Therefore, appellate review is limited to a determination of whether any evidence reasonably tends to support the trier of fact's findings.

In paragraph 9 of the January 18, 2012 Report and Final Order, the Special Referee found the Plaintiffs had met the burden of proving they are entitled to fee simple title to 53.08 acres, based upon a 2006 survey showing the same, despite the fact that the 1954 deed conveying title to Irvine T. Geddis, Sr. clearly cited a 35 1/3 acre conveyance in its legal description. The Court's rationale for the discrepancy in the deed and 2006 survey is as follows:

“The discrepancy between 35 1/3 acres and 54 acres *may* be attributable to no survey of the subject property contemporaneous with the conveyances in the first half of the 20th century, and none until 2006.” [emphasis added]. (R. p. 36)

Moreover, the Special Referee, in the same January 18, 2012 order, provided the Appellant time to retain counsel and procure her own survey, which she did. In a subsequent Order Denying Motion, the Special Referee discounted the Appellant's survey as unreliable, finding that it was “based upon comparisons of other plats and little field work, (R. p. 63), although there was no specific finding or indication otherwise in the record that the survey retained by the appellant had been examined by the court. Neither order issued by the Special Referee in this case provides a plausible explanation of why the Plaintiffs’ survey was given superior weight over that of the one offered by Appellant.

II. THE SPECIAL REFEREE ERRED IN FINDING THAT THE EVIDENCE PRESENTED BY THE PLAINTIFFS WAS SUFFICIENT TO PROVE THE ELEMENTS OF ADVERSE POSSESSION.

The burden of proof of adverse possession is on the one relying thereon. To constitute adverse possession, the possession must be actual, open, notorious, hostile, continuous, and exclusive for the entire statutory period. Mullis v. Winchester, 237 S.C. 487, 118 S.E.2d 61 (1961); Gregg v. Moore, 226 S.C. 366, 85 S.E.2d 279 (1954); Croft v. Sanders, 283 S.C. 507, 323 S.E.2d 791 (Ct.App.1984). The party asserting adverse possession must establish the claim by clear and convincing evidence. Davis v. Montieth, 289 S.C. 176, 345 S.E.2d 274 (1986).

The Plaintiffs failed to make a proper showing of clear and convincing evidence. The only evidence that appears in the record to have been offered as proof of the elements of adverse possession is the statement from the Transcript of Testimony filed by the Plaintiffs. (R. p. 27) However, this document offers only *general* assertions identical to those set forth in the Complaint. In this document, several of the Plaintiffs state that they “are informed and believe that their predecessors in interest have used all 54.03 acres of the Property,” and proceed to recite the six elements of adverse possession. There is no record of any of the Plaintiffs testifying in court to this effect, nor does it appear that any documentary evidence or exhibits were offered at the hearing. As such, Appellant Patrice Geddis had no opportunity to cross-examine the Plaintiffs as to their assertions set forth in the Transcript of Testimony.

The Plaintiffs alleged that they have “possessed” the subject property, that they contend consists of nearly 54 acres, under color of title. A party claiming title by adverse possession under color of title must show the extent of his possession. Weston v. Morgan, 162 S.C. 177, 160 S.E. 436 (1931). While color of title draws the constructive possession of the whole premises to the

actual possession of a part only, and is evidence of the extent of the possession claimed, 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. The only purpose 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 instrument. Butler v. Lindsey, 293 S.C. 466, 361 S.E.2d 621 (Ct.App.1987).

Here, the deed upon which the original Order in 2002 was based, describes a tract consisting of 35 1/3 acres. Again, no evidence is present in the record to support the Special Referee's finding that the essential elements of adverse possession, especially "possession" itself, has taken place other than the 1954 deed that conveyed title to the Plaintiff, and a vague, self-serving allegation in the Transcript of Testimony offered to support the Complaint and Amended Complaint.

The Special Referee also relies upon the finding of the Master-in-Equity, in case number 2002-CP-18-593 that the Plaintiffs, or their predecessors, harvested timber on part of the property. It should be noted, however, that the 2002 order made reference to the subject property as consisting of only 35 1/3 acres. There is no finding as to how frequently the timber was harvested, by whom it was harvested, on what part of the subject property it was harvested, or how often it was harvested. The mere occasional harvesting of timber, without other evidence of possession, does not necessarily prove the elements of adverse possession. Occasional and temporary use or occupation does not constitute adverse possession. Atlantic Coast Line v. Searson, 137 S.C. 468, 135 S.E. 567 (1926).

Section 15-67-230, South Carolina Code of Laws, provides as follows:

What constitutes adverse possession under written instrument or court decree or judgment:

For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

- (1) When it has been usually cultivated or improved;
- (2) When it has been protected by a substantial enclosure;
- (3) When, although not enclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry or for the ordinary use of the occupant; and
- (4) When a known farm or a single lot has been partly improved the portion of such farm or lot that may have been left not cleared or not enclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Arguably, the harvesting of timber could fall under the definition of “usually cultivated”.

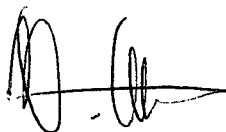
Appellant nonetheless asserts that a simple finding that timber was harvested, without more specific evidence of the frequency of the harvesting, is insufficient to provide “clear and convincing” support for the elements of adverse possession.

The Special Referee also made a finding in the February 13, 2013 Order Denying Motion, that the Appellant’s family had used “those 19 acres” for deer hunting. (R. p. 63) This finding alone would serve to defeat the “exclusive” element of adverse possession claimed by the Plaintiffs. The Order provides no specific finding as to why the Plaintiff’s assertion of timber harvesting was given precedence over the Defendants claim that her family had used the property for hunting deer.

CONCLUSION

In light of the foregoing, the factual findings made by the Special Referee are not supported by evidence of record.

Respectfully submitted,



March 14, 2014

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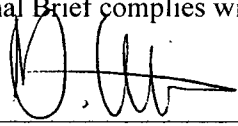
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Of whom Patrice Geddis is the.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



March 14, 2014

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Of whom Patrice Geddis is the.....Appellant.

PROOF OF SERVICE

I certify that I have served the Final Brief of Appellant Patrice Geddis on the attorneys as indicated below by depositing a copy of the same in the United States Mail, postage prepaid, on March 14, 2014, addressed as set forth herein.

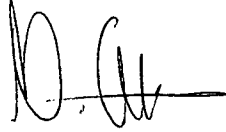
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