THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Master in Equity

The Honorable Marvin H. Dukes III, Master in Equity

Case No. 2015-000342

Maxine Taylor, Respondent

v.

Heirs of William Taylor, Heirs of E. Washington, Heirs of Phoebe Taylor, Heirs of Albertha Goodwine, and all persons unknown designated as a class; Richard Roe, and Beaufort County, SC, a body politic, Defendants.

Of whom Heirs of William Taylor, Heirs of E. Washington, Heirs of Phoebe Taylor, And Heirs of Albertha Goodwine are the Appellants.

Stanley Taylor, Joe A. Taylor and Martha T. Brown, Respondents,

v.

Heirs of William Taylor, Heirs of E. Washington, Heirs of Phoebe Taylor, Heirs of James Joseph Taylor, Heirs of Josephine Taylor and Georgia Champion, Appellants.

AMENDED FINAL BRIEF OF RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES AND FACTS 1

ARGUMENTS 3

I. The Master erred in concluding that the Respondents were the sole owners of Lot 9 when the Appellants, the Heirs of William Taylor, presented sufficient evidence to show that they were the true owners of a portion of Lot 9 3

A. The evidence proved that the Heirs of William Taylor were the rightful owners of the northern and southwestern portion of Lot 9 4

B. Respondents did not prove that they had complete title to the northern and southwestern portion of Lot 9 4

II. Alternatively, the Heirs of William Taylor established title to the property through adverse possession and the master erred in awarding all of Lot 9 to Respondents 6

A. The Heirs of William Taylor actually possession (sic) the subject Property in Lot 9 7

B. The Heirs of William Taylor's possession of the subject property in Lot 9 was open and notorious 8

C. The Heirs of William Taylor's possession of the subject property in Lot 9 was hostile 9

D. The Heirs of William Taylor's possession of the subject property in Lot 9 was continuous and exclusive for the statutory period of ten (10) years 10

III. Appellants, the Heirs of William Taylor, adversely possessed the northern and southwestern portion of Lot 9 for generations and for a period greater than twenty (20) years, entitling them to the presumption of a grant 11

IV. Alternative, the boundary line was mutually recognized and acquiesced For the prescribed statute of limitations of ten (10 years 12

V. The master failed to set forth specific findings of fact to support his Conclusions of law as required under Rule 52(a) of the South Carolina Rules of Civil Procedure 12

CONCLUSION 13

STATEMENT REGARDING ORAL ARGUMENT 13

TABLE OF AUTHORITIES

CASES

Lake View Development Co. v. Tindale,
412 S.E. 2d 457, 306 S.C. 477 (1991)

Klapman v. Hook,
32 S.E. 2d 882, 206 S.C. 51 (1945)

Auto Owners Insurance Co. v. Langford,
506 S.E. 2d 496, 330 S.C. 576 (1998)

Brown v. Allstate Insurance Co.,
523 S.E. 2d 807, 337 S.C. 499 (1999)

Cook v. Eller,
380 S.E. 2d 853, 298 S.C. 395 (1989)

Rexhani v. Stone Creek Cove,
Condominium II, HPR, 494 S.E. 2d 465, 329 S.C. 206 (1997)

Clark v. Hargrove,
473 S.E. 2d 474, 323 S.C. 84 (1996)

Graniteville Co. v. Williams,
395 S.E. 2d 202, 209 S.C. 112 (1946)

Butler v. Lindsey,
363 S.E. 2d 621, 293 S.C. 466 (1987)

Lynch v. Lynch,
115 S.E. 2d 301, 236 S.C. 612 (1980)

Getsinger v. Midlands Orthopedic Profit Sharing Plan,
489 S.E. 2d 223, 327 S.C. 424 (1997)

Brown v. Clemens,
338 S.E. 2d 338, 287 S.C. 328 (1985)

Lusk v. Callahan,
339 S.E. 2d 156, 287 S.C. 459 (1986)

Wigfall v. Fobbs,
367 S.E. 2d 156, 295 S.C. 59 (1988)

May v. Jeter,
141 S.E. 2d 655, 245 S.C. 529 (1965)

DeLaine v. DeLaine,
44 S.E. 2d 422, 211 S.C. 223 (1947)

STATUTES

S. C. Code Ann. Sec. 12-51-90

S.C. Code Ann. Sec. 12-51-160

STATEMENT OF ISSUES AND FACTS

The Respondents reply to the Appellants' statement to add and correct what is felt as either not included or was not correctly stated.

Respondents assert, and did prove that Lot 9 on Warsaw Island, (the subject real estate) was owned by Phoebe Taylor. She received a deed in 1937. Prior to that deed the title is confused and no deeds were found. No deeds were found into appellants or their ancestors.

James Taylor received a deed from his sibling to the southern part of Lot 9 (transcript page 157, Lines 1-11). He also obtained two tax deeds as stated in Appellant's brief (page 5).

What is not set forth in Appellants brief is the two deeds of distribution from the Estate of James Taylor. Maxine was the grantee for the southern part of Lot 9 (transcript, page 87). Martha Brown, Stanley Taylor and Joe A. Taylor received such a deed from the estate to the northern portion of Lot 9 (Ex. 18, page 89).

Respondents introduced a quiet title decree (transcript page 32, Ex. 12) filed in 1997. That action was concerning Appellants' property in Lot 7, immediately to the west of the subject properties. The Plaintiffs in that action joined James Taylor and Phoebe Taylor. A plat included shows "Phoebe Taylor" as owner to property east of Lot 7 (which is Lot 9). The ancestor was Rufus Taylor. (The same person Appellants now claim owned some of the subject property). Judge Dukes addressed this fully in his order of February, 9, 2015. (Respondents' Ex. 1)

Additionally, to further show what is Appellants' property, deeds were given to Christopher Champion and Georgia Champion (Judge Duke's Order , Ex. 1). Both conveyed were Lot 7 properties.

Appellants also advanced an adverse possession claim or claims, but Judge Dukes indicated there was no evidence of such presented (Order, Ex. 1).

There was testimony from at least one surveyor and a title abstractor that the titles on Warsaw Island were often confusing and mixed up. It is quite conceivable and possible that Appellants' forebearer and his house on the wrong land. Descriptions could also be vague (Appellants' Brief, page 4) and Post-Trial Brief of Respondent. (Respondents' Post-Trial Brief)

Respondents emphasis that Appellants could provide no deeds and when they undertook to quiet title it was to Lot 7 and not Lot 9.

ARGUMENTS

I. The master erred in concluding that the Respondents were the sole owners of Lot 9 when the Appellants, the Heirs of William Taylor, presented sufficient evidence to show that they were the true owners of a portion of Lot 9.

Respondents disagree with Appellant's assertions. The Respondents (Plaintiffs) met the burden of proof in establishing their titles. As stated, Appellants could produce no deeds showing any interest in Lot 9; whereas, Appellants established deeds back to 1937. Ex 3. The trial judge's order sets forth the chains of title. Appellants asserted claim via adverse possession failed for lack of any evidence.

Appellants advance the idea that the tax deeds into James Taylor were erroneous. The deed obtained in 1996 (Plaintiff's Ex. 9) (Respondents' Ex. 3) described land bound on the north by the marsh, east by the remainder of Phoebe Taylor's land and south by the highway. The real way it is nailed down as being Respondent's is that it states it is bound on the west by land of Geneva and Rufus Taylor. This, again, confirms the so-called Rufus Taylor land is in Lot 7.

The next tax deed, done in 1998, (Plaintiff's Ex. 10), (Respondents' Ex. 4) describes the other part of the north section of Lot 9. This description states it is bound on the west by land of James Taylor. Clearly, this is the northeast part of Lot 9. The trial judge correctly saw this and ruled accordingly.

The evidence submitted showed that the old house claimed to be owned by the heirs of William Taylor was on the wrong parcel. And, even if the Appellants may have had some claim to a part of Lot 9, that claim vanished based on Section 12-51-90, of the Code of Laws for South

Carolina. A defaulting taxpayer has a year to redeem the property. Also, Section 12-51-160 applies. In cases of a deed of conveyance from a tax sale, an action for recovery must be brought within two years from the date of sale. This was not done.

And, as stated in the Statement of the Case, the quiet title action brought by Appellants' family pertained to Lot 7, which is immediately west of Lot 9. This coupled with the testimony about the lines offered by Cindy Spencer (Transcript of July 9, 2013, pages 76-100). That testimony was the clearest evidence of the titles and Respondents are shown as owners of Lot 9. Georgia Champion received a deed to the property in the northern part of Lot 7. (Respondents' Ex. 5)

A. The evidence proved that the Heirs of William Taylor were the rightful owners of the northern and southwestern portion of Lot 9.

Respondents established at trial that the parcel numbers on the tax records were mixed up and questionable as to Warsaw Island. Appellants rely on a 1954 record or property tax card. Appellants admit to parcels "switch" by the County. Beaufort County was made a party to this action. The order of the trial court instructs the County to make the necessary adjustments to the parcel numbers.

The tax sales in the 1990s were not attacked and not set aside. Even if Appellants' ancestors had a claim which Respondents deny, it vanished after due process via the tax sales. More will be argued hereinafter on these points.

B. Respondents did not prove that they had complete title to the northern and southwestern portion of Lot 9.

Respondents assert that the Appellants' witness verified that description could be vague. Indeed in locating boundaries, resort is first made to natural landmarks, then artificial marks, then adjacent boundaries and last to courses and distances. *Lake View Development Co. v. Tindale*, 412 S.E. 2d 457, 306 S.C. 477 (1991). Also, the quantity of land set out in a deed is one of the lowest in the scale of importance. *Klapman v. Hook*, 32 S.E. 2d 882, 206 S.C. 51 (1945). These two cases certainly apply in the present action and are in sync with Respondents' contentions.

We must remember that the north-south lines were always agreed upon by everyone. The boundary between lots 7 and 9 never was changed.

Appellants argue Respondents never proved ownership to all of Lot 9. But, a review of the deeds shows Respondents have ownership back to 1937 and five deeds since convey the property within Respondents family. (Respondents' Exs. 6, 7, 8 and 9)

While Appellants argue we have a duty to set forth a complete title, they have set forth no title documents for Lot 9. We once again reference the 1998 quiet title Appellants family did for the land next door. (Respondents' Ex. 10)

Appellants say the ruling by the trial judge was vague and incomplete. On appeal of an action at law by judge alone, the review will extend to errors of law, but the trial judge's finding of fact will not be disturbed if there is evidence to support the findings. *Brown v. Allstate*

Insurance Co., 523 S.E. 2d 807, 337 S.C. 499 (1999). Only a finding that the findings are wholly unsupported by the evidence will warrant a reversal, *Auto Owners Insurance Co. v. Langford*, 506 S.E 2d 496, 330 SC 578 (1998).

And, in a title to real estate case, a legal issue is involved. In a law case tried by a judge only the , only the standard of reviews is limited to a correction of errors of law and a determination if there is any evidence to support the factual findings. *Cook v. Eller*, 380 S.E. 2d 853, 298 S.C. 395 (1989).

An interpretation of deeds is an equitable matter. An appellant court reviews evidence to determine first in accordance with its view of the preponderance of the evidence. *Reyhani v. Stone Creek Cove Condominium II H.P.R.* 494 S.E. 2d 465, 329 S.C. 206 (1997).

Clearly the trial judge set forth finding of first in a complete and straight forward narrative that was based on all the evidence. His order should stand.

II. Alternatively, the Heirs of William Taylor established title to the property through adverse possession and the master erred in awarding all of Lot 9 to Respondents.

Appellants asserted in their amended answer a claim of adverse possession. At trial they offered no convincing evidence of any such possession.

In particular, as to the southern portion of Lot 9, to the west of Maxine Taylor's land, Christopher Champion received a deed to the southern part of Lot 7. (Respondents' Ex. 11)

No evidence was presented at trial to show adverse possession in any way by Christopher Champion, or anyone else.

As to the northern portion, Appellants rely on the fact that a house once existed on this part of Lot 9. However, it was destroyed and abandoned for many years, probably before 1972. No evidence was offered that Appellants continued with any occupancy of Lot 9. And when a deed was issued, it was for the northern part of Lot 7.

Appellants failed to show they met the elements of an adverse possession claim. Such a claim must be by clear and convincing evidence. Proof must establish all the elements (Actual, open, notorious, hostile, continuous and exclusive). *Clark v. Hargrove* 473 S.E. 2d 474, 323 S.C. 84 (1996).

Appellants could show no deeds, estates or other evidence of a claim of title to any part of Lot 9.

A. The Heirs of William Taylor actually possessed the subject property in Lot 9.

This argument must fail. The Appellants state color of title is to define the extend of the claim, citing *Graniteville Co. v. Williams*, 39 S.E. 2d 202, 207, 209 SC 112 (1946). Nowhere at trial was the "extent of the claim" set out. Appellants point to the ruins of a house, but gave no distances, acreage, etc. They cite *Butler v. Lindsey* 363 S.E. 2d 621, 623, 293 S.C. 466, 470 (1987) in saying "constructive possession applies. But they never identified the premises.

There was no fencing, continuous use or exercise of dominion.

Appellants go on to say their ancestor possessed the northern and southwestern parts of Lot 9. This is not so. At best, they showed that someone may have lived on the southwest part of the portion of Lot 9 to the north of the road before 1972.

The Appellants rely on occupancy, but is was clear that this was a matter of an encroachment and such does not form the basis of adverse possession. *Lynch v. Lynch*_115 S.E 2d 301, 236 S.C. 612 (1960). Mistaken belief that someone is actually on their land, when they are not, does not amount to adverse possession. *Clark v. Hargrove, supra*.

Possession by mistake is insufficient to establish the hostile element of adverse possession. *Cook v. Eller*_380 S. E.2d 853, 298 S.C. 395 (1989).

Said another way, no intent to make a claim does not become adverse possession. *Cook v. Eller, supra.*

Again, as to a claim of color of title, the claimant has to show the extent of such possession. *Clark v. Hargrove, supra*. This was not done.

And, the tax titles in the 1990s extinguish any possible ownership in Appellants.

B. The Heirs of William Taylor's possession of the subject property in Lot 9 was open and notorious.

We have previously discussed the elements required to prove adverse possession. All of the elements must be present.

The errors Respondents point out is when Appellants reference the 1937 deed and indicate the western boundary is by "lands now or formerly of the Estate of William Taylor".

The 1937 deed into Phoebe Taylor describes Lot 9, which puts William Taylor next door in Lot 7.

Next, Appellants describe the 1960 deed to James Taylor. However, Appellants are wrong as to the placement of this land. James Taylor's deed is for the southern part of Lot 9. The description states it runs from a point on a public road where it joins lands of Gardner. The rest of the description clearly is for the parcel in the southern part of Lot 9. Where it joins land of William Taylor is the boundary that separates Maxine Taylor's parcel from Christopher Champion.

Again, no adverse possession claim can carry the day. Absolutely no evidence was given to claim any of the southern part of Lot 9. And no clean and convincing evidence has overcome the weight of evidence advanced by Respondents.

C. The Heirs of William Taylor's possession of the subject property in Lot 9 was hostile.

Hostile possession is one element of adverse possession. The Brief of Appellants, states the Heirs of William Taylor believed they owned the property. Occupation does not equate to hostility or adverse possession. Use is not adverse possession, *Getsinger v. Midlands Orthopedia Profit Sharing Plan,*, 489 S.E.2nd 223, 327 S.C. 424 (1997).

As stated previously, mistake is not a way to get property by adverse possession. *Clark v. Hargrove, supra; Brown v. Clemens*, 338 S.E. 2d 338, 287 S.C. 328 (1985).

The elements have been mentioned previously, and hostile nature of a claim is essential. Mere possession does not show hostility. *Butler v. Lindsey*, supra.

There has to be an intent to dispossess the owner. *Lusk v. Callahan, supra.*

There are numerous cases that require hostility in the form of notice of design and mistaken belief is not going to make it. *Wigfall v. Fobbs*, 367 S.E.2d 156, 295 S.C. 59 (1988).

Only when Martha Brown put her home on the land did someone say she was on their property. But this was over 30 years after the house was abandoned and about 10 years after the tax sale. Again, no issue was made about the tax sale over the statutory period allowed.

D. The Heirs of William Taylor's possession of the subject property in Lot 9 was continuous and exclusive for the statutory period of ten (10) years.

No one in the William Taylor family has been in possession of the property for over forty years. The Appellants argue the same things that have been submitted heretofore. By their own admission, their family members have not been in continuous and exclusive possession. The home burned sometime after 1972. Mr. Champion returned to Warsaw Island about 1997, which is a gap of 25 years.

Also, the tax sales conducted for 1994 taxes and 1996 taxes (two parcels sold). Reference is to the two tax deeds to James Taylor. (Ex. 4 & 5)

The sales were for lands of Phoebe Taylor. Plats acknowledge that the northern portion of Lot 9 was "N/F Phoebe Taylor". Reference is to the 1996 plat made by David S. Youmans RLS, (Ex#) which references this. We note that plat was for Rufus and Geneva Taylor and divided Lot 7 into Parcel "C", "D" and "F". No exception was known to be taken in 1996 or after about the ownership of Lot 9.

Also, Mr. Youmans testified, (pages 22-70 of the transcript of July 29, 2013) and that plat was then introduced. He stated that was done for their quiet title action. He further testified that the conversed with Georgia Champion and she was told her driveway curled onto the neighbor's property (transcript pages 30 and 41). He also said that part of her drain field went across the line "a little bit". (Transcript page 43).

Still, Appellants did nothing to assert the claim they now advance.

III. Appellants, the Heirs of William Taylor, adversely possessed the northern and southwestern portion of Lot 9 for generations and for a period greater than twenty (20) years, entitling them to the presumption of a grant.

The law cited by Appellants does not square with the facts. Appellants have failed to establish the elements of adverse possession. So, ouster, tacking and continuous possession cannot be in play.

Adverse possession for 20 years raises presumption of a grant. *May v. Jeter*, 141 S.E.2d 655, 245 S.C. 529 (1965). But if the possession is permissive, the argument of presumption of a grant fails. *DeLaine v. DeLaine*, 44 S.E.2d 422, 211 S.C. 273 (1947).

Also, the Appellants never established any boundary or extent of the alleged claim. They had no deed, no survey and no exactness of the claim. Such a claim cannot be nebulous. If someone is going to take the land of another, the extent of such must be identified.

The trial court found that the tax deeds prevailed and that the Rufus Taylor property was in Lot 7. The evidence was clear that the Appellants could not and did not establish any

title in Lot 9.

Adverse possession must be strictly construed in favor of the owner of land. And possession must be uninterrupted, along with all of the required elements. *King v. Hawkins* 319 S.E. 2d 361, 282 S.C. 508 (1984).

IV. Alternatively, the boundary line was mutually recognized and acquiesced for the prescribed statute of limitations of ten (10) years.

Appellants assert the master erred in failing to award them the property. Again, Respondents ask: Where is the property they claim? They produced no survey, no deed, no boundary description. The only evidence we can state that shows as on Lot 9 was the abandoned and ruined house. We must once again go to the two tax deeds, the early deed to Phoebe Taylor and the fact that Appellants predecessors cleared the title to the William and Rufus Taylor lands in Lot 7. Phoebe obtained the northern part of Lot 9 vice the 1937 deed. The tax levies were against her. James Taylor bought the properties at the tax sale. The Master in Equity found there was not enough to attack or set aside the Respondents' title to Lot 9.

V. The master failed to set forth specific findings of fact to support its conclusion of law as required under Rule 52(a) of the South Carolina Rules of Civil Procedure.

Respondents disagree. The Master in Equity made 19 separate findings of fact and conclusions of law. He ruled with specificity and his findings provide a step by step analysis of the case.

Appellants do not provide any real basis to support this argument. Their only example is to say the court did not address the adverse possession claims. In finding Number 7, the court stated no evidence was presented as to adverse possession on Maxine Taylor's land (the southern part of Lot 9). Findings Number 8 through 19 specifically address the issues regarding the northern part of Lot 9.

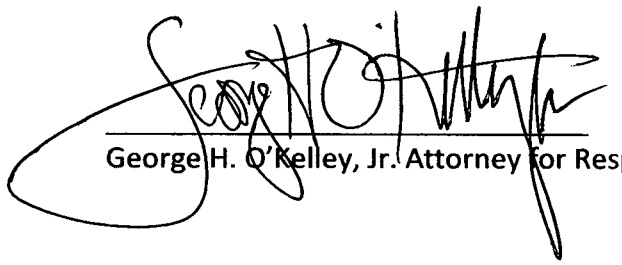
CONCLUSION

Respondents have answered all of Appellant's arguments and have shown by the applicable law and the facts of the case that this appeal should be dismissed.

STATEMENT REGARDING ORAL ARGUMENT

The Respondents do not believe oral argument is necessary as all of the matters are fully presented.

Respectfully submitted,



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