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SC Court of Appeals

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.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES

The Appellants submit their final brief on the following issue(s):

1. Whether the master erred in awarding the northern and southwestern portion of Lot 9, originally identified on the 1965 tax map as Parcel 5, to Respondents when Respondents could not show a chain of title to the subject property and Appellants established ownership to the property.
2. Whether the master erred in awarding the northern and southwestern portion of Lot 9, originally identified on the 1965 tax map as Parcel 5, to Respondents when Appellants established title to the property through adverse possession by residing on the property for generations, farming and cultivating the land, paying taxes on the property and being recognized as the owners of the property by Respondents and Respondents' ancestors.
3. Whether the master erred in awarding the northern and southwestern portion of Lot 9, originally identified on the 1965 tax map as Parcel 5, to Respondents when Appellants established title to the property through a presumption of grant.
4. Whether the master erred in awarding the northern and southwestern portion of Lot 9, originally identified on the 1965 tax map as Parcel 5, to Respondents when the boundary line was recognized and acquiesced by the parties for the statutory period as shown by the Respondents' deeds and the conduct of the parties through the decades.
5. Whether the master abided by the requirements of Rule 52(a) of the South Carolina Rules of Civil Procedure when he failed to set forth specific findings of fact to support his ruling in the Final Order.

STATEMENT OF THE CASE

Appellants were the defendants in the Court of Common Pleas for the Fourteenth Judicial Circuit in Beaufort County, South Carolina and will be referred collectively as the Heirs of William Taylor or as the Appellants. The Respondents, Maxine Taylor, Stanley Taylor, Joe A. Taylor and Martha T. Brown, will be referred to as the Respondents.

Respondent, Maxine Taylor, filed a Complaint on June 14, 2011 against the Appellants seeking to quiet title for 3.82 acres of property on Warsaw Island designated in Lot 9 with TMP number R300-9-5. (R. pp. 10-12.) Appellants filed their Answer on November 17, 2011. (R. pp. 13-14.) An Amended Answer was filed on June 20, 2013 alleging adverse possession. (R. pp. 21-24.) Respondents, Stanley Taylor, Joe A. Taylor and Martha T. Brown, filed a Complaint on June 19, 2012 against the Appellants seeking to quiet title for land in Lot 9 recorded in Plat Book 97, page 173 at the Office of the Register of Deeds for Beaufort County, South Carolina. (R. pp. 15-18.) Appellants filed an Answer on July 20, 2012. (R. pp. 19-20.) An Amended Answer was filed on June 20, 2013 alleging adverse possession and trespass. (R. pp. 25-28.) Both cases were subsequently consolidated.

A trial was held before Marvin H. Dukes III, Master in Equity on July 29, 2013. (R. p. 29.) The case was continued and the record left open at the request of the master to allow the parties to acquire more information. The second day of trial was held on April 8, 2014. (R. p. 302.) The Court requested post-trial briefs be submitted. Both parties submitted post-trial briefs to the master. (R. pp. 510-521.) Judgment was entered in favor of the Respondents on February 9, 2015 and was mailed to the parties on February 16, 2015. (R. p. 2; R. p. 4.) The Appellants received the judgment on February 20, 2015. (Notice of Appeal 2.) Appellants filed a timely notice of appeal on February 26, 2015.

STATEMENT OF FACTS

Trial was held on this case on July 29, 2013 and April 8, 2014. Respondents filed a quiet title action for Lot 9 of Warsaw Island. (R. p. 10; R. p. 15.) Lot 9 totaled approximately 10 acres. (R. p. 77, lines 20-23.) In support of their claim, the Respondents submitted the following deeds:

- A 1937 deed from Josephine Taylor to Phoebe Taylor for four (4) acres instead of five (5) acres due to erosion;
- A deed from Phoebe Taylor to James Taylor for 1 1/6 acres; and
- Two tax sale deeds to James Taylor, each for 1.3 acres, originating from the 1937 deed for four (4) acres.

(R. p. 76, line 24-p. 77, line 17; R. pp. 424-435.) Phoebe Taylor is James Taylor's mother and James Taylor is the father of the Respondents, Maxine Taylor, Martha Brown and Stanley Taylor. (R. p. 145, lines 9-14.) No other deeds were made to James Taylor, Maxine Taylor, Martha Brown or Stanley Taylor other than the deeds mentioned above totaling approximately 4 acres. (R. p. 77, lines 24-p. 78, line 4.)

Lot 9 originated from the survey of H.G. Judd in the late 1880s. He subdivided the northern portion of Warsaw Island into lots. (R. p. 56, lines 5-12; R. p. 443.) Originally, according to the Judd Platt, Lot 9 was owned by E. Washington. (R. p. 443.) None of the parties knew E. Washington. (R. p. 93, lines 14-18.) Lot 9 was later separated into parcels. In 1965, it consisted of Parcel 5, Parcel 6 and Parcel 6A. Parcel 5 as indicated on the tax map contained approximately 6 acres. (R. p. 80, lines 3-5; R. p. 421.) It was being taxed to the Appellants, the Heirs of William Taylor. (R. p. 80, lines 12-16.) Billy Taylor, the father of William Taylor, purchased the land from the Union for one cent an acre and purchased a total of 6 acres. (R. p. 342, lines 3-20.) It encompasses land north of Warsaw Road and a portion south of Warsaw Road. (R. p. 344, lines 2-6.)

Cherise Chisolm, a title researcher who had been researching titles for 18 years, was able to analyze the Respondents' deeds to make a determination on their property location. The first deed she located was for four (4) acres from Josephine Taylor to Phoebe Taylor:

> [A]ll of that certain piece, parcel or lot of land, situate, lying and being on Wassa Island in the County and State aforesaid, being bounded on the north by lands now or formerly of Estate of Sam Mattis, on the east by lands now or formerly of George Taylor, on the south by lands now or formerly of Estate Ben Gardner, and on the west by lands now or formerly of Estate of William Taylor, the tract hereby being conveyed originally contained five (5) acres but, on account of constant erosions, is now considered to be four (4) acres, more or less, and is the same tract inherited from my first husband, Ben Taylor, deceased.

(R. p. 182, lines 16-23; R. p. 435.) While the description on the deed was vague, Ms. Chisolm was able to pinpoint a starting area at the southeast corner of Lot 9 shown on the H.G. Judd Plat. (R. p. 183, line 19-p. 184, line 4; R. p. 443.) Out of this deed, there were three conveyances. (R. p. 182, line 24-p. 183, line 5.)

The first noted conveyance was through deed to James Taylor for 1 1/6 acres included in Deed Book 102, page 152. (R. p. 182, line 25-p. 183, line 2.) Specifically, it stated:

> Beginning at a point where the lands of Gardner meet this tract on a public road, thence Northerly for a distance for 413 feet, more or less, thence due West for a distance of 146 feet to lands of the Estate of William Taylor, thence South along the lands of Taylor for a distance of 418 feet, more or less to the lands of Gardner, East for a distance of 149 feet, more or less to the public road and Point of Beginning.

(R. p. 424.) According to Ms. Chisolm, when looking at the H.G. Judd Plat, the lands designated as Lot 10, owned by Ben Gardner, intersects the property on the southeast point. She also saw from the 1954 tax map that there was a public road, thereby establishing a corner for the conveyance. (R. p. 184, lines 13-25.) She started from that point and followed the deed's

description, confirming that the general vicinity of the 1 1/6 acres conveyed to James Taylor would be the southeast portion of Lot 9. (R. p. 185, lines 1-11.)

The other two conveyances were both by tax deed for 1.3 acres in the 1990s. (R. p. 183, lines 3-5; R. pp. 474-477; R. pp. 501-504.) According to Ms. Chisolm, approximately four (4) acres were in James Taylor or his family for Lot 9. (R. p. 183, lines 6-12.) She found nothing to indicate that James Taylor or his family owned all of Lot 9. (R. p. 183, lines 6-12.) However, because the tax sales occurred after the parcels were switched, the tracts described in the tax sales are of the wrong location. (R. p. 188, lines 1-5; R. pp. 472-509.) Prior to the parcel switch, Parcel 6 and Parcel 6A were south of Warsaw Road. (R. p. 80, lines 6-11; R. p. 454; R. pp. 460-461.) Parcel 6, consisting of three (3) acres was owned by Phoebe Taylor. (R. pp. 457-458.) Parcel 6A consisting of 1 1/6 acres was owned by James Taylor. (R. pp. 424-426.) The rectangle indicated on the 1964 tax map identified as Parcel 6A, and David Youmans, a land surveyor for the Respondents, agreed, encompasses where a brick house belonging to James Taylor was located. (R. p. 94, line 1-p. 95, line 6; R. p. 421; R. p. 443.) However, as indicated by Cindy Spencer, a real estate title abstractor with Paralegal Services, Inc., sometime in the 1970s or 1980s, the parcels were switched. Parcel 6 and Parcel 6A were shown in a 1986 tax map as north of Warsaw Road and Parcel 5 was shown as south of Warsaw Road. (R. p. 118, lines 1-2.) Debbie Standifer, a real property transfer clerk with the Beaufort County Assessor's Office, confirmed that the parcels had, in fact, been switched. (R. p. 316, line 16-p. 317, line 12.) Parcel 5 had been taxed to the Heirs of William Taylor since 1954, and they continued to be taxed even after the parcel switch. (R. p. 134, lines 1-2.) The Heirs of William Taylor had documentation illustrating they were consistently recognized as the owners of the six (6) acres in Lot 9:

- Property record card from 1954 stating that the Heirs of William Taylor own Parcel 5 which consisted of six (6) acres;

- Appraisal sheet from 1985 showing where a house was removed for tax purposes on the Heirs of William Taylor's property located at District 300, Map 9, Parcel 5 for six (6) acres; and

- Ariel photographs prepared by Barry Reas, an employee for the Beaufort County G.I.S. Department, showing how the land was occupied and utilized for farming.

(R. p. 319, line 19-p. 322, line 2; R. p. 330, line 25-p. 333, line 24; R. pp. 455-456; R. p. 459; R. pp. 462-465.)

Following the parcel switch, Phoebe Taylor, the Respondents' grandmother, failed to pay the taxes on Parcel 6. The delinquent tax notices were sent to Phoebe Taylor in care of James Taylor to Mr. Taylor's address on Gardner Lane. (R. p. 379, lines 2-25.) Appellants did not receive notice of the tax sale. The individual that purchased the properties at the 1995 and 1997 tax sale was James Taylor. (R. p. 380, line 10-p. 381, line 10.) Each purchase was for 1.3 acres, totaling 2.6 acres. (R. p. 381, line 11-p. 382, line 10.) According to Kimberly Chesney, a tax collector for the Treasurer's Office, when the Treasurer's Office is conducting a tax sale, they get the information to describe the property from the Assessor's Office. (R. p. 378, lines 1-8; R. p. 382, lines 13-24.) While reviewing the 1965 tax map of the subject properties, Ms. Chesney explained what would occur if the parcels were switched:

> Q. I'm going to show you Defendant's Exhibit Number 8. And that has been identified as 1954 tax map revised in 1965. And working in the treasurer's office you are familiar with the tax maps, right?
>
> A. Uh-huh.
>
> Q. All right. I'm going to draw your attention to what is depicted here as Parcel Number 5 consisting of six acres north of Wassaw Road, if I tell you this is Wassaw Road - -
>
> A. Uh-huh.

Q. - - tied into a piece south of Wassaw Road. All right? And then here is Parcel 6 all south of Wassaw Road. If these were flipped and then 6 went to tax sale, this would have been the property sold at tax sale renumbered from 5 to 6; is that correct?

A. If this was switched and described as Parcel 6 then, yes, that is what we took to the tax sale, if that is what you are asking me.

Q. That is exactly what I was asking you.

A. Yeah.

Q. So if 5 and 6 had not been switched, and Phoebe Taylor stopped paying the taxes on 6, as it's depicted in Defendant's Exhibit 8, then the parcel south of Wassaw Road depicted at 6 would have been the parcel that went up for tax sale? Is that question correct?

A. Yes, Parcel 6 did go up for tax sale. If it was here, then that is the parcel that would have went.

Q. Okay. By "here" you mean south of Wassaw Road?

A. Yes, sir.

Q. As depicted on the '94 - - the 1954 tax map revised in 1965?

A. That's correct.

(R. p. 384, line 13-p. 385, line 22; R. p. 454.) Adding Phoebe Taylor's four (4) acres and the Heirs of William Taylor's six (6) acres reflects the ten (10) acres originally allotted in Lot 9. (R. p. 138, lines 7-15; R. pp. 455-456.) While the parcel numbers were inadvertently switched, it did not change the ownership of the properties. (R. p. 324, lines 8-10.)

Georgia Champion and Willie Mae Stewart, Ms. Champion's younger sister, confirmed that they lived with their grandparents, Rufus and Mary Taylor, on Lot 9 until 1972 when their grandmother died. (R. p. 199, lines 10-16; R. p. 227, lines 1-25.) Ms. Champion currently lives on Lot 7. (R. p. 199, lines 6-7.) Her grandparents' house was above Warsaw Road and east of the house she lives in today. (R. p. 199, lines 17-24; [Def. Exh. 3 – *separately filed*].) Ms. Champion

and Ms. Stewart's grandparents owned a two-story house and farmed and raised livestock in the northern and southwestern portion of Lot 9. (R. p. 199, line 10-p. 202, line 12; R. p. 228, line 1-p. 229, line 23; R. p. 232, lines 3-12; R. p. 241, lines 13-20; R. p. 247, line 25-p. 248, line 24; R. p. 252, lines 20-23; [Def. Exh. 4. – *separately filed*].) They had a cow pasture and the stakes and wire are still visible in the marsh. (R. p. 229, lines 10-23.) The mobile home that Ms. Brown erected on the property is where the hog pen was located and there was a stable behind Ms. Champion's residence. (R. p. 201, lines 3-8; R. p. 229, lines 7-9; [Def. Exh. 3 – *separately filed*].) They grew cotton next to Maxine Taylor's brick house. It was next to a large oak tree that divided the properties. (R. p. 201, line 18-p. 202, line 10.) Her grandmother, Mary Taylor, died in 1972 so her mother and uncle rented out the house. The house caught fire and the last tenant, who Ms. Champion believed was named Willie, had to move out. (R. p. 203, lines 1-8.) A 1985 appraisal sheet shows that the house located on the Heirs of William Taylor's six (6) acre property, District 300, Map 9, Parcel 5, was removed for tax purposes that year. (R. p. 459.)

In 1997, Ms. Champion moved back to the area and asked Chief Ellis with Lady's Island Fire Department if he could do anything for the house because she was interested in placing her house there. (R. p. 203, lines 11-15.) Chief Ellis brought a team and they burnt the remainder of the house down for her. He told her they were not allowed to remove the rubble. Ms. Champion told him that was fine because she wanted it as a reminder of her childhood and upbringing. The rubble is still there. (R. p. 203, line 21-p. 204, line 5; R. p. 231, lines 7-13; R. p. 243, line 20-p. 244, line 24.) The Respondents' attorney, George O'Kelley, the Appellants' attorney, Marc Fisher, Georgia Champion and Constance Cooper, Rufus and Mary Taylor's niece, went to the site following the first hearing and located the rubble. They located the metal roof and chimney of the house, electrical wires and the water meter formerly used at the house that Ms. Champion now

uses on her property on Lot 7. (R. p. 346, lines 8-p. 348, line 25; R. pp. 466-471.) Ms. Champion has watched over the property for her family:

> Q. . . . Even though the property has become over grown, have you considered it your family duty to watch over the property - -
>
> A. Yes.
>
> Q. - - since you had that - - the house taken down.
>
> A. Yes.
>
> Q. And I think you indicated you wanted the house taken down because it became a danger because of an earlier fire?
>
> A. Right. They had an earlier fire there at the house. We was [sic] renting it out. My mom was renting it out. And the gentleman who she rented to, I guess he got - - he was drinking and he - - the house caught on fire.
>
> Q. But you - - so you don't feel in any way that you've abandoned this property?
>
> A. No.
>
> Q. Even though it's become overgrown?
>
> A. No. I still make sure that it's - - you know, even though it has rubble and, you know a lot of stuff there, and I left it there purposely, but so far as trash or anything, I make sure there is - - the area keeps clean and then in summer months I normally keep the grass around that side trimmed down pretty neat.

(R. p. 374, line 11-p. 375, line 12.)

Respondents Martha Brown and Maxine Taylor both admitted that they grew up in the brick house below Warsaw Road. (R. p. 147, lines 20-22; R. p. 155, lines 1-15; [Def. Exh. 3 – *separately filed*].) As children, they both played with Georgia Champion and Willie Mae Stewart who lived above Warsaw Road with their grandparents, Rufus and Mary Taylor, on Lot 9. (R. p. 148, lines 2-16; R. p. 150, lines 10-16; R. p. 165, lines 21-24; [Def. Exh. 3 – *separately filed*].)

Thomas Brown, who was a neighbor of both parties for 18 years, stated that Rufus and Mary Taylor's property was within Lot 9. (R. p. 284, line 23-p. 285, line 11.) He stated that Rufus and Mary Taylor farmed the land north and south of Warsaw Road. (R. p. 286, line 3-p. 287, line 1.) Mr. Brown testified that James Taylor farmed closer to his home. (R. p. 287, lines 7-8.) Maxine Taylor confirmed that her father, James Taylor, did not farm or utilize the property north of Warsaw Road. (R. 166, lines 11-12.)

Following her father, James Taylor's death, Martha Brown was clearing the northwestern portion of Lot 9 to erect a mobile home. Prior to its erection, Georgia Champion, Marjory Kemp and Albertha Goodwine, all relatives and heirs of William Taylor, went to Ms. Brown's home. At that time, she was living with her sister in the brick house on the southeastern portion of Lot 9. They informed Ms. Brown that she was clearing the wrong property. Ms. Brown slammed the door and refused to discuss the situation. (R. p. 206, 3-15; R. p. 253, lines 9-23.) They tried to talk to her on several other occasions about the issue, but Ms. Brown would not talk to them. (R. p. 206, line 17-p. 207, line 5.) Tommy Brown, Ms. Brown's son, verified that a complaint was made regarding the location of his mother's mobile home. (R. p. 394, lines 10-22; R. p. 397, line 22-p. 398, line 7.)

Following the hearings, the master requested post-trial briefs from the parties that set forth their positions. (R. pp. 510-521.) The master entered judgment on February 9, 2015 finding that Maxine Taylor was the sole owner of the southern portion of Lot 9, south of Warsaw Road and that Stanley Taylor, Joe A. Taylor, Thomas Brown, Jr. and Aries T. Brown were the owners of the northern portion of Lot 9, north of Warsaw Road. (R. p. 8.) The master concluded that the Appellants, the Heirs of William Taylor, had failed to show any proof of ownership. (R. p. 9.)

ARGUMENTS
(Standard of Review)

An action to quiet title is generally an action in equity. *Jones v. Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009). "In an equitable action tried without a jury, the appellate court can correct errors of law and may find facts in accordance with its own view of the preponderance of the evidence." *Church v. McGee*, 391 S.C. 334, 342, 705 S.E.2d 481, 485 (Ct. App. 2011). However, "when the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat the plaintiff's action, the issue of title is legal." *Dargan v. Tankersley*, 380 S.C. 480, 483, 671 S.E.2d 73, 74 (2008). "When a suit involves both legal and equitable issues, each cause of action retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal." *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 180, 708 S.E.2d 787, 792 (2011). "An appellate court may determine questions of law with no particular deference to the trial court." *Verenes v. Alvanos*, 387 S.C.11, 14, 690 S.E.2d 771, 772-73 (2010).

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.

The plaintiff must make out complete title unless the claim is from a common source in which case the superior title will prevail. *Griggs v. Griggs*, 199 S.C. 295, 295, 19 S.E.2d 477, 479 (1942). "In an action to quiet title, the plaintiff must recover on the strength of his own title, not on the alleged weakness of the defendant's title." *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 313, 433 S.E.2d 875, 880 (Ct. App. 1992).

As more thoroughly discussed below, besides the erroneous tax deeds, Respondents did not submit any evidence that they owned all of Lot 9. Appellants, the Heirs of William Taylor presented substantial evidence to indicate that they had been in possession of the northern and

southwestern portion of Lot 9 for generations. Therefore, the master erred in failing to award Appellants, the Heirs of William Taylor, sole ownership to the northern and southwestern portion of Lot 9.

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

The Heirs of William Taylor own six (6) acres of property on Lot 9 of Warsaw Island, identified on a 1954 and 1965 tax map as Parcel 5. (R. p. 421; R. p. 454; R. pp. 460-461.) It encompasses land north of Warsaw Road and a portion south of Warsaw Road. (R. p. 344, lines 2-6.) William Taylor's father, Billy Taylor, purchased the land from the Union for one cent an acre. (R. p. 342, lines 3-20.) Records indicate that the Appellants, the Heirs of William Taylor, were paying taxes on the property since at least 1954. (R. p. 133, line 24-p. 134, line 2.) There is also documentation illustrating that the Heirs of William Taylor were the rightful owners of the property:

(1) A 1954 property card stating that the Heirs of William Taylor own Parcel 5 which consists of six (6) acres;

(2) A 1985 appraisal sheet showing the removal of a house for tax purposes on the Heirs of William Taylor's property located at District 300, Map 9, Parcel 5 for six (6) acres;

(3) Ariel photographs prepared by Barry Reas, an employee for the Beaufort County G.I.S. Department, showing how the northern and southwestern portions of Lot 9 were utilized for farming.

(R. pp. 455-456; R. p. 459; R. p. 462-465.)

Georgia Champion and Willie Mae Stewart, Ms. Champion's younger sister, confirmed that they lived with their grandparents, Rufus and Mary Taylor, on Lot 9 throughout their childhood until their grandmother died in 1972. (R. p. 199, lines 10-16; R. p. 227, lines 1-25.) They lived in a two-story house on Parcel 5. (R. p. 200, lines 2-7; R. p. 228, lines 1-23; R. p. 232,

lines 3-12; R. p. 241, lines 13-20; R. p. 247, line 25-p. 248, line 25; R. p. 252, lines 20-23; [Def. Exh. 4 – *separately filed*].) Isaac Taylor, the son of Rufus and Mary Taylor, who was 80 years old at the time of the first hearing, grew up in the household and helped his father farm the land. (R. p. 268, line 23-p. 269, line 15.) His father, Rufus Taylor, grew up on the property as well. (R. p. 270, lines 13-19.) In other words, the Heirs of William Taylor resided on the property for generations. When Ms. Champion and Ms. Stewart's grandparents passed away, the house was rented out. While being rented, the house caught fire and due to the damage, remained unoccupied. (R. p. 203, lines 1-8.) Due to its dilapidated state as a result of the fire, the tax assessor's office was notified in 1985 to remove the house for tax purposes. (R. p. 459.) When Ms. Champion moved back to the area in 1997, she had the Lady's Island Fire Department burn the remainder of the house down in the hopes that she could erect her house there. (R. p. 203, lines 11-15.) When she was informed that the fire department would be unable to remove the rubble, she left it there as a reminder of her childhood. The rubble is still there, including a metal roof and chimney and electrical wires that were part of the home. (R. p. 203, line 21-p. 204, line 5; R. p. 231, line 7-13; R. p. 243, line 20-p. 244, line 24; R. p. 346, lines 8-p. 348, line 25; R. pp. 466-471.)

Respondents, Martha Brown and Maxine Taylor, daughters of James Taylor, were Rufus and Mary Taylor's neighbors and resided on the southeastern portion of Lot 9. (R. p. 147, lines 20-22; R. p. 155, lines 1-15; [Def. Exh. 3 – *separately filed*].) As children, Ms. Brown and Ms. Taylor both testified that they played with Ms. Champion and Ms. Stewart who lived above Warsaw Road at Rufus and Mary Taylor's home. (R. p. 148, lines 2-16; R. p. 150, lines 10-16; R. p. 165, lines 21-24; [Def. Exh. 3 – *separately filed*].) Furthermore, Maxine Taylor verified that her father never utilized the property north of Warsaw Road. (R. p. 166, lines 11-12.) Thomas Brown, who had lived near both parties for 18 years, testified that Rufus and Mary Taylor's

property was within Lot 9 and that they farmed the land north and south of Warsaw Road. (R. p. 286, line 3-p. 287, line 1.) Mr. Brown stated that James Taylor, on the other hand, farmed closer to his home. (R. p. 287, lines 7-8.)

The Respondents property, Parcels 6 and 6A, were also included in Lot 9. (R. p. 421.) They were both south of Warsaw Road. (R. p. 80, lines 6-11; R. p. 421.) Looking at the Judd Platt and deed conveying 1 1/6 acres to James Taylor, it encompasses a rectangle where the brick house belonging to James Taylor was constructed. (R. p. 443.) David Youmans, a land surveyor, agreed that this portion of the property was likely 6A referenced on the 1965 tax map. (R. p. 94, line 1-p. 95, line 6; R. p. 421.) According to Maxine Taylor, she stills owns the property where the brick house is located. (R. p. 154, line 24-p. 156, line 1; [Def. Exh. 3 – *separately filed*].)

At some point in the 1970s or 1980s, the parcels were switched on the tax map. Parcel 6 and Parcel 6A were shown in a 1986 tax map as north of the road and Parcel 5 was shown as south of the road. (R. p. 118, lines 1-2.) Despite the parcel switch, Parcel 5 continued to be taxed to the Heirs of William Taylor and, as a result, they were unaware of the issue. (R. p. 134, lines 1-2.) However, following the parcel switch, Phoebe Taylor, the Respondent's grandmother and great-grandmother, failed to pay the taxes on Parcel 6. The delinquent tax notices were sent to Phoebe Taylor in care of James Taylor to James Taylor's address on Gardner Lane. (R. p. 379, lines 2-25; R. pp. 472-509.) James Taylor purchased two portions of the property, both amounting to 1.3 acres, at a 1995 and 1997 tax sale. (R. p. 381, line 11-p. 382, line 10; R. pp. 472-509.) Because of the parcel switch, the property James Taylor purchased was described as the western portion of Lot 9 rather than the southeastern portion of Lot 9 that was originally deeded to Phoebe Taylor. (R. p. 384, line 13-p. 385, line 22; R. pp. 472-509.)

The inadvertent parcel switch was the only reason that the Heirs of William Taylor's ownership rights in the northern and southwestern portion of Lot 9 was even brought into question. As Cherise Chisolm, a title researcher, confirmed, the Treasurer's Office conducted a tax sale on the wrong piece of property because of the parcel switch. (R. p. 188, lines 1-5.) Kimberly Chesney, a tax collector for the Treasurer's Office, explained what happened as a result of the parcel switch:

> Q. I'm going to show you Defendant's Exhibit Number 8. And that has been identified as 1954 tax map revised in 1965. And working in the treasurer's office you are familiar with the tax maps, right?
>
> A. Uh-huh.
>
> Q. All right. I'm going to draw your attention to what is depicted here as Parcel Number 5 consisting of six acres north of Wassaw Road, if I tell you this is Wassaw Road - -
>
> A. Uh-huh.
>
> Q. - - tied into a piece south of Wassaw Road. All right? And then here is Parcel 6 all south of Wassaw Road. If these were flipped and then 6 went to tax sale, this would have been the property sold at tax sale renumbered from 5 to 6; is that correct?
>
> A. If this was switched and described as Parcel 6 then, yes, that is what we took to the tax sale, if that is what you are asking me.
>
> Q. That is exactly what I was asking you.
>
> A. Yeah.
>
> Q. So if 5 and 6 had not been switched, and Phoebe Taylor stopped paying the taxes on 6, as it's depicted in Defendant's Exhibit 8, then the parcel south of Wassaw Road depicted at 6 would have been the parcel that went up for tax sale? Is that question correct?
>
> A. Yes, Parcel 6 did go up for tax sale. If it was here, then that is the parcel that would have went.

Q. Okay. By "here" you mean south of Wassaw Road?

A. Yes, sir.

Q. As depicted on the '94 - - the 1954 tax map revised in 1965?

A. That's correct.

(R. p. 384, line 13-p. 385, line 22.) As Ms. Chesney makes clear, had the parcels stayed in their original positions, the property sold to James Taylor would have been the southeastern portion of Lot 9. Unfortunately, because of this mistake, the Heirs of William Taylor were stripped of their property and the property of their ancestors. While they were unable to locate a copy of a deed because the property had passed intestate for generations, they continually acted as the property's true owners. They resided on the land and cultivated and farmed the land for decades. Neither James Taylor or his heirs nor Phoebe Taylor or her heirs ever questioned their ownership of the property until erroneous tax deeds were issued to James Taylor.

While the master relied on S.C. Code Ann. § 12-51-160 and its two-year statute of limitations in his Final Order (R. pp. 7-8), this Court has made clear that the statute was only intended to "create a time limit during which one who lost title to property through a tax sale, after proper notice, may attempt to regain title." *Corbin v. Carlin*, 366 S.C. 187, 194, 620 S.E.2d 745, 749 (Ct. App. 2005). As in *Corbin*, the Appellants, the Heirs of William Taylor, never lost title to their property as the tax sale should never have occurred. *Id.* Appellants properly paid their taxes on Parcel 5 of Lot 9 and were unaware of the parcel switch. Had they been aware of the alteration, they would have immediately informed the tax assessor's office of the mistake. Appellants were never sent notice of the tax sale because their property was never meant to be sold at the tax sale because, unlike the heirs of Phoebe Taylor, they consistently paid their taxes as required under the law. Prior to the parcel switch, Appellants, the Heirs of William Taylor, were recognized as the

owner of record of the property sold at the tax sale, and therefore, were entitled to notice of the sale. *See* S.C. Code Ann. § 12-51-40 (requiring tax assessor's office to "mail a notice of delinquent property taxes, penalties, assessments, and costs *to the owner of record. . . .*"). "[E]nforcing agencies of government [are held] to strict compliance with all the legal requirements surrounding tax sales." *Rives v. Bulsa*, 325 S.C. 287, 292, 478 S.E.2d 878, 880 (Ct. App. 1996). As such, Appellants are not subject to the statute of limitations as found by the master. *See Corbin*, 366 S.C. at 194, 620 S.E.2d at 749 ("It would yield an absurd and unfair result to forbid Corbin to assert his right to ownership of his property when there is no indication he knew or should have known the county was improperly seeking to sell the property in a tax sale.").

Therefore, the master erred in failing to award the Appellants, the Heirs of William Taylor, title to Parcel 5 of Lot 9 encompassing the northern and southwestern portion of Lot 9.

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

While the Heirs of William Taylor were unable to locate a deed to the property, Respondent's never established that they owned the northern portion and southwestern portion of Lot 9. The deeds that are in Respondents' possession total only four (4) acres of property. Lot 9 consists of approximately ten (10) acres, substantially more than that prescribed in the Respondents' deeds.

Cherise Chisolm, a title researcher who had been researching titles for 18 years, was able to analyze the deeds to make a determination on the Respondent's property location. The first deed she located was a 1937 deed for four (4) acres from Josephine Taylor to Phoebe Taylor:

> [A]ll of that certain piece, parcel or lot of land, situate, lying and being on Wassa Island in the County and State aforesaid, being bounded on the north by lands now or formerly of Estate of Sam Mattis, on the east by lands now or formerly of George Taylor, on the south by lands now or formerly of Estate Ben Gardner, and on

> the west by lands now or formerly of Estate of William Taylor, the tract hereby being conveyed originally contained five (5) acres but, on account of constant erosions, is now considered to be four (4) acres, more or less, and is the same tract inherited from my first husband, Ben Taylor, deceased.

(R. p. 182, lines 16-23; R. p. 435.) While the description on the deed was vague, Ms. Chisolm was able to pinpoint a starting area to the southeast corner of Lot 9 shown on the H.G. Judd Plat. (R. p. 183, line 19-p. 184, line 4; R. p. 443.) Out of this deed, there were three conveyances. (R. p. 182, line 24-p. 183, line 5.)

The first noted conveyance was through a 1960 deed to James Taylor for 1 1/6 acres included in Deed Book 102, page 152. (R. p. 182, line 25-p. 183, line 2.) Specifically, it stated:

> Beginning at a point where the lands of Gardner meet this tract on a public road, thence Northerly for a distance for 413 feet, more or less, thence due West for a distance of 146 feet to lands of the Estate of William Taylor, thence South along the lands of Taylor for a distance of 418 feet, more or less to the lands of Gardner, East for a distance of 149 feet, more or less to the public road and Point of Beginning.

(R. p. 424.) According to Ms. Chisolm, when looking at the H.G. Judd Plat, the lands designated as Lot 10, owned by Ben Gardner, intersects the property on the southeast point. She also saw from the 1954 tax map that there was a public road, thereby establishing a corner for the conveyance. (R. p. 184, lines 13-25; R. pp. 424-426; R. pp. 460-461.) She started from that point and followed the deed's description, confirming that the general vicinity of the 1 1/6 acres conveyed to James Taylor would be the southeast portion of Lot 9. (R. p. 185, lines 1-11.) This was indicated as Parcel 6A on the 1965 tax map. (R. p. 421.) Notably, the deed recognizes the Estate of William Taylor is located to the west of the property. (R. p. 424.)

The other two conveyances were both by tax deed for 1.3 acres in the 1990s. (R. p. 183, lines 3-5; R. pp. 474-477; R. pp. 501-504.) As mentioned in Section I.A., because of the parcel

switch, the wrong property was described in the tax sale deed. (R. p. 188, lines 1-5; R. p. 384, line 13-p. 385, line 22; R. pp. 472-509.) Ms. Chisolm confirmed that approximately four (4) acres, plus or minus, were in James Taylor or his family for Lot 9. (R. p. 183, lines 6-12.) Respondents did not submit any evidence showing that they owned all of Lot 9 and Ms. Chisolm found nothing indicating they owned all of Lot 9. (R. p. 183, lines 13-18.) They had not been paying taxes on the six (6) acres that the Heirs of William Taylor owned. However, as described above, because the tax sales occurred after the parcels were switched, the tracts described in the tax sale are of the wrong location. (R. p. 188, lines 1-5.) Had the parcels not been switched, James Taylor would have simply acquired the southeast portion of Lot 9. (R. p. 384, line 13-p. 385, line 22.)

Furthermore, the Respondent failed to establish a chain of title to the property. In fact, in their Complaint, Respondents admit there was a break in the chain of title. (R. p. 11; R. p. 15.) Respondents had an obligation to set forth complete title. *See Griggs*, 199 S.C. at 295, 19 S.E.2d at 479. The first deed located was a 1937 deed from Josephine Taylor to Phoebe Taylor for four (4) acres. (R. p. 435.) There is no deed conveying the property to Josephine Taylor or her husband, Ben Taylor. Cindy Spencer, a real estate title abstractor with Paralegal Services, Inc., stated that there were several breaks in the chain of title for the property. (R. p. 108, lines 7-11.) In particular, she was unable to establish a deed into Ben Taylor for any portion of Lot 9. (R. p. 109, lines 16-24.) "One claiming title by deed has no greater title than the original grantor in the chain of title upon which he relies." *Hoogenboom*, 315 S.C. at 313, 433 S.E.2d at 880-81; *see Belue v. Fetner*, 251 S.C. 600, 606-07, 164 S.E.2d 753, 756 (1968) (a deed cannot convey an interest which the grantor does not have). The master did not even mention this in the Final Order.

The master's ruling against the Heirs of William Taylor was based on incomplete, vague and erroneous deeds of the Respondents. Such a ruling stripped the Appellants of the property

that they had owned and occupied for generations. Therefore, the master erred in awarding all of Lot 9 to the Respondents.

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.

"In order to establish a claim of adverse possession, the claimant must prove by clear and convincing evidence that possession of the property was continuous, hostile, actual, open, notorious, and exclusive for the statutory period." *McDaniel v. Kendrick*, 386 S.C. 437, 442, 688 S.E.2d 852, 855 (Ct. App. 2009). If these elements are shown to exist for at least ten years, adverse possession may be established. *Jones*, 384 S.C. at 10, 681 S.E.2d at 11 (citing S.C. Ann. § 15-67-210).

As indicated below, the Appellants, the Heirs of William Taylor, meet all the requirements required to establish title to the northern and southwestern portion of Lot 9 through adverse possession. Their possession of the property was actual, open and notorious, hostile and continuous and exclusive for the statutory period of ten (10) years. Furthermore, as noted in Section I.A., S.C. Code Ann. § 12-51-160 is inapplicable to the instant action. Therefore, the Appellants, the Heirs of William Taylor, are the rightful owners of the subject property.

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

> Color of title means any semblance of title by which the extent of man's possession can be ascertained. It is anything which shows the extent of occupant's claim. The object of color of title is not to pass title. In that case it would be title, not color of title. The only office of color of title is to define the extent of the claim and to extend possession beyond the actual occupancy to the whole property described in the paper. It is by no means necessary that the paper should be in the form of a deed. A bond or even a receipt would be sufficient.

Graniteville Co. v. Williams, 209 S.C. 112, 121-22, 39 S.E.2d 202, 207 (1946) (internal quotation marks and citations omitted). While color of title is not itself evidence of adverse possession, it

"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." *Butler v. Lindsey*, 293 S.C. 466, 470, 361 S.E.2d 621, 623 (Ct. App. 1987). However, if a claimant's assertion of adverse possession is not under color of title, the claimant must show "either fencing or other improvements covering most of the subject land or some other continuous use and exercise of dominion." *Frazier v. Smallseed*, 384 S.C. 56, 63, 682 S.E.2d 8, 12 (Ct. App. 2009).

Property records and tax documentation showed the Heirs of William Taylor's ownership in the property. (R. pp. 455-456; R. p. 459.) The Heirs of William Taylor had been paying taxes on the property since at least 1954. (R. p. 134, lines 1-2.) Martha Brown and Maxine Taylor, the Respondents in this action, admitted that they played with Georgia Champion and Willie Mae Stewart, the great-grandchildren of William Taylor, as children and that Ms. Champion and Ms. Stewart lived with their grandparents, Rufus and Mary Taylor, in the northwestern portion of Lot 9. (R. p. 148, line 2-p. 149, line 2; R. p. 150, lines 10-20; R. p. 165, lines 21-24.) Respondents, through a site visit by their counsel, verified that the house that Ms. Champion testified to was still there and recognizable. (R. p. 308, lines 13-20.) Photographs were introduced depicting the same. (R. pp. 466-471.)

Furthermore, Rufus and Mary Taylor made substantial improvements to the land during their occupancy. They cultivated the land, raised livestock and utilized all of the land for farming. This use was continuous and uninterrupted. Ariel photographs submitted by the Appellants verified that the land was cultivated and farmed for years. (R. p. 462-463; R. p. 465.) Thomas Brown, an unbiased party, who was a neighbor of both parties, testified that Rufus and Mary Taylor farmed the land on the northern and southwestern portion of Lot 9. (R. p. 286, line 3-p. 287, line 1.) This testimony was corroborated by several other individuals, including, Georgia Champion,

Willie Mae Stewart, Constance Cooper, Joan Hillyard, Isaac Taylor and Charles Gardner. (R. p. 199, line 10-p. 202, line 12; R. p. 228, line 1-p. 229, line 23; R. p. 232, lines 3-12; R. p. 241, lines 13-20; R. p. 248, lines 21-24; R. p. 269, line 14-p. 270, line 7; R. p. 277, lines 18-25.)

Therefore, the Appellants, the Heirs of William Taylor, established that they actually possessed the northern and southwestern portion of Lot 9.

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

The possession of real property should be so notorious that the legal owner, by exercising ordinary diligence, should have known of the possession. *Graniteville*, 209 S.C. at 120-21, 39 S.E.2d at 206. Acts of ownership are sufficient to establish this requirement. *See Jones*, 384 S.C. at 15, 681 S.E.2d at 14 ("[A]cts of ownership (e.g., the bush-hogging, brush burning, and the installation of the driveway) . . . [were sufficient] to put [the legal owner] on notice of the [adverse possessor's] possession had he exercised due diligence.).

Assuming that the Respondents and their ancestors are the true owners of the property, there is no doubt that the Heirs of William Taylor's possession of the subject property was open and notorious. Respondents own deeds make clear that they were aware of the Heirs of William Taylor's interest in Lot 9. In pertinent part, the 1937 deed for four (4) acres from Josephine Taylor to Phoebe Taylor states as follows:

> [A]ll of that certain piece, parcel or lot of land, situate, lying and being on Wassa Island in the County and State aforesaid, being bounded . . . *on the west by lands now or formerly of Estate of William Taylor*. . . .

(R. p. 435 (emphasis added).) The Estate of William Taylor is conspicuously referenced therein. Further proof of the Respondents awareness of the Heirs of William Taylor's interest in Lot 9 was found in the 1960 deed, conveying 1 1/6 acres of the four (4) acres, to James Taylor:

> Beginning at a point where the lands of Gardner meet this tract on a public road, thence Northerly for a distance for 413 feet, more or less, *thence due West for a distance of 146 feet to lands of the Estate of William Taylor*, thence South along the lands of Taylor for a distance of 418 feet, more or less to the lands of Gardner, East for a distance of 149 feet, more or less to the public road and Point of Beginning.

(R. p. 424 (emphasis added).) The description is more precise than the 1937 deed and again recognizes the ownership interest of the Estate of William Taylor to Lot 9.

The language of the deeds alone is enough to show the Respondents awareness of the Heirs of William Taylor's possession of the property. However, further proof is shown by the Respondents' own testimony. Maxine Taylor and Martha Brown both testified that they played as children at Rufus and Mary Taylor's home in the northwestern portion of Lot 9 with Georgia Champion and Willie Mae Stewart, Rufus and Mary Taylor's grandchildren. (R. p. 148, line 2-p. 149, line 2; R. p. 150, lines 10-16; R. p. 165, lines 21-24.) Furthermore, numerous witnesses testified that Rufus and Mary Taylor farmed the area and raised livestock. (R. p. 199, line 10-p. 202, line 12; R. p. 228, line 1-p. 229, line 23; R. p. 232, lines 3-12; R. p. 241, lines 13-20; R. p. 248, lines 21-24; R. p. 269, line 14-p. 270, line 7; R. p. 277, lines 18-25.)

Based on the above, Appellants were not concealing their possession of the property. They openly and notoriously asserted their claim to the property and through the practice of ordinary diligence, Respondents should have known of the possession. Therefore, the Heirs of William Taylor established that their possession of the northern and southwestern portion of Lot 9 was open and notorious.

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

The hostility requirement does not require a conscience intention to possess the property against the true owner's wishes. *McDaniel*, 386 S.C. at 442, 688 S.E.2d at 855. Rather, "[a]

claimant may establish adverse possession if he occupies the property under the mistaken belief that it belongs to him." *Id.* at 442-43, 688 S.E.2d at 855.

The Heirs of William Taylor believed they were the true owners of the property. As illustrated above, they occupied the property openly for generations without interruption. They farmed and cultivated the land and, as shown by the Respondents' own deeds, were recognized as the property's true owners. (R. p. 199, line 10-p. 202, line 12; R. p. 228, line 1-p. 229, line 23; R. p. 232, lines 3-12; R. p. 241, lines 13-20; R. p. 248, lines 21-24; R. p. 269, line 14-p. 270, line 7; R. p. 277, lines 18-25; Pl. Eh. 8, 11.) Property records show that they paid taxes on the property since at least 1954. (R. p. 134, lines 1-2.) While the payment of taxes does not confer title, it shows that the Appellants, the Heirs of William Taylor, claimed title to the land exclusively. *Brevard v. Fortune*, 221 S.C. 117, 130-31, 69 S.E.2d 355, 361 (1952).

In fact, prior to Martha Brown erecting her mobile home on the property a few years ago, no one used the property other than the Heirs of William Taylor. When Ms. Brown was in the process of clearing the land on the northwestern portion of Lot 9 for the mobile home, Georgia Champion and her family members, Marjory Kemp and Albertha Goodwine, confronted Ms. Brown regarding the location and informed her that she was on their land. Ms. Brown admitted that Ms. Champion informed her that she was not rightfully on the property and the property did not belong to her. (R. p. 150, line 21-p. 151, line 3.) Ms. Champion testified that Ms. Brown slammed the door and refused to discuss the situation. (R. p. 206, 3-15; R. p. 253, lines 9-23.) Ms. Champion and her family members tried to talk to her on several other occasions about the issue, but Ms. Brown would not talk to them. (R. p. 206, line 17-207, line 5; R. p. 253, lines 9-23.) Tommy Brown, Ms. Brown's son, verified that a complaint was made regarding the location of his mother's mobile home and that his mother refused to speak with them. (R. p. 394, lines 10-

22; R. p. 397, line 22-p. 398, line 7.) Ms. Brown refused to speak with them likely because she knew the property rightfully belonged to the Heirs of William Taylor. Ms. Champion was asserting her rights and attempting to resolve the situation. These are the actions that are consistent with that of an owner.

Therefore, the Appellants, the Heirs of William Taylor, proved that the possession of the northern and southwestern portion of Lot 9 was hostile.

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.

A person claiming adverse possession must have possessed the property for ten years. S.C. Ann. § 15-67-210) "'Tacking' is a doctrine that permits an adverse possessor to add his period of possession to that of a prior adverse possessor in order to establish continuous possession for the required period." *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 430 n.2, 489 S.E.2d 223, 225 n.2 (Ct. App. 1997). Use of tacking is allowed between an ancestor and an heir. *Id.* at 430, 489 S.E.2d at 225. Once actual possession has been taken, it will continue even if the adverse possessor does not continually utilize the property unless he or she be disseised or abandons the property. *Mullis v. Winchester*, 237 S.C. 487, 495, 118 S.E.2d 61, 65 (1961).

In this case, the Heirs of William Taylor continuously possessed the northern and southwestern portion of Lot 9 far beyond the statutory period. Rufus Taylor, William Taylor's son, and his wife, Mary Taylor, possessed the property for an extended period of time. They farmed and raised livestock on the property. (R. p. 199, line 10-p. 202, line 12; R. p. 228, line 1-p. 229, line 23; R. p. 232, lines 3-12; R. p. 241, lines 13-20; R. p. 248, lines 21-24; R. p. 269, line 18-p. 270, line 7; R. p. 277, lines 18-25.) Isaac Taylor, Rufus and Mary Taylor's son, who was 80 years old at the time of the hearing, grew up in the house located on the northern portion of Lot 9. (R. p. 268, line 18-p. 269, line 15.) His father was also raised on the property. (R. p. 270, lines

13-19.) Georgia Champion and Willie Mae Stewart, the grandchildren of Rufus and Mary Taylor, and the heirs of William Taylor, also grew up in that house. (R. p. 199, lines 10-24; R. p. 227, lines 1-25.)

When Rufus and Mary passed away, their children rented the property out until the home burned down sometime after 1972. (R. p. 203, lines 1-8.) Ms. Champion returned to Warsaw Island in 1997 and asked Chief Ellis with the Lady's Island Fire Department if he could burn the remainder of the house because she was interested in erecting her home there. (R. p. 203, lines 11-15.) Chief Ellis brought a team and they burnt the remainder of the house down for her. He told her they were not allowed to remove the rubble. Ms. Champion told him that was fine because she decided that she wanted it as a reminder of where she and her family were raised. The rubble is still there. (R. p. 203, line 21-p. 204, line 5; R. p. 231, lines 7-13; R. p. 243, line 20-p. 244, line 24.) In fact, this was verified by Respondents' attorney, George O'Kelley and the Appellants' attorney, Marc Fisher. They accompanied Georgia Champion and Constance Cooper to the site and located the metal roof, chimney, electrical wires and the water meter formerly used at the house. (R. p. 346, lines 8-p. 348, line 25; R. pp. 466-471.) Ms. Champion continues to use the old water meter at her current home on Lot 7. Furthermore, since her return, Ms. Champion has watched over the property for her family:

> Q. . . . Even though the property has become over grown, have you considered it you family duty to watch over the property - -
>
> A. Yes.
>
> Q. - - since you had that - - the house taken down.
>
> A. Yes.
>
> Q. And I think you indicated you wanted the house taken down because it became a danger because of an earlier fire?

A. Right. They had an earlier fire there at the house. We was [sic] renting it out. My mom was renting it out. And the gentleman who she rented to, I guess he got - - he was drinking and he - - the house caught on fire.

Q. But you - - so you don't feel in any way that you've abandoned this property?

A. No.

Q. Even though it's become overgrown?

A. No. I still make sure that it's - - you know, even though it has rubble and, you know a lot of stuff there, and I left it there purposely, but so far as trash or anything, I make sure there is - - the area keeps clean and then in summer months I normally keep the grass around that side trimmed down pretty neat.

(R. p. 374, line 11-p. 375, line 12.) No evidence was presented by Respondents that the Heirs of William Taylor were not the exclusive possessors of the property during the statutory period.

Therefore, the Appellants, the Heirs of William Taylor, showed that they were the continuous and exclusive possessors of the northern and southwestern portions of Lot 9.

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 presumption of grant "doctrine is based on the principle that, after a passage of time, anything necessary to quiet title is presumed done, even if the truth is otherwise, so that possession of land for a long period of time perfects title. *Gray v. South Carolina Public Service Authority*, 284 S.C. 397, 400, 325 S.E.2d 547, 550 (1985).

> [C]laimants to land, for 20 years in the face of notorious and exclusive possession, with the use and exercise of authority incident to exclusive and adverse ownership is sufficient to rebut the presumption that possession is in subordination to the legal title, and to establish the presumption of a grant or deed and almost any other presumption necessary for the protection of the possession.

Powers v. Smith, 80 S.C. 110, 114, 61 S.E. 222, 223 (1908). In other words, twenty (20) years of adverse possession creates the presumption of ouster. *May v. Jeter*, 245 S.C. 529, 539, 141 S.E.2d 655, 660 (1965). The time of possession may be tacked by ancestors and heirs and between parties in privity with one another. *Getsinger*, 327 S.C. at 430, 489 S.E.2d at 226.

Based on the arguments set forth in Section III., the Heirs of William Taylor were entitled to a presumption of grant. They resided on the property for well over twenty (20) years and utilized the land for farming during that period of time. (R. p. 199, line 10-p. 202, line 12; R. p. 228, line 1-p. 229, line 23; R. p. 232, lines 3-12; R. p. 241, lines 13-20; R. p. 248, lines 21-24; R. p. 269, line 14-p. 270, line 7; R. p. 277, lines 18-25.) Isaac Taylor, the son of Rufus and Mary Taylor, who was 80 years old at the time of the hearing, was raised on the property. (R. p. 268, line 18-p. 269, line 15.) His father was also raised on the property. (R. p. 270, lines 13-19.) Georgia Champion and Willie Mae Stewart, Rufus and Mary Taylor's grandchildren, lived with their grandparents until 1972 when their grandmother passed away. (R. p. 199, lines 10-16; R. p. 227, lines 1-25.) Furthermore, they paid taxes on the property since at least 1954. (R. p. 133, line 24-p. 134, line 2.)

Therefore, the Appellants, the Heirs of William Taylor, established a presumption of grant to the property and the master erred in failing to award the property to Appellants.

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

> It is well established that if adjoining landowners occupy their respective premises up to a certain line which they mutually recognize and acquiesce in for a long period of time—usually the time prescribed by the statute of limitations—they are precluded from claiming that the boundary line thus recognized and acquiesced in is not the true one. In other words, such recognition of, and acquiescence in, a line as the true boundary line, if continued for a sufficient length of time, will afford a conclusive presumption that the line thus acquiesced in is the true boundary line.

Klapman v. Hook, 206 S.C. 51, 57, 32 S.E.2d 882, 884 (1945) (internal quotation marks and citations omitted). There need not be an express agreement. *Knox v. Bogan*, 322 S.C. 64, 72, 472 S.E.2d 43, 48 (Ct. App. 1996). It may be implied by the conduct of the parties. *Id.*

For generations, the northern and southwestern portions of Lot 9 were recognized as the property of the Heirs of William Taylor. Respondents now attempt to dispute this boundary line. However, the Respondents own deed makes clear that their ancestors recognized the land of the Heirs of William Taylor as a definitive boundary. The conveyance of 1 1/6 acres from Phoebe Taylor to James Taylor states as follows:

> Beginning at a point where the lands of Gardner meet this tract on a public road, thence Northerly for a distance for 413 feet, more or less, *thence due West for a distance of 146 feet to lands of the Estate of William Taylor*, thence South along the lands of Taylor for a distance of 418 feet, more or less to the lands of Gardner, East for a distance of 149 feet, more or less to the public road and Point of Beginning.

(R. p. 424 (emphasis added).) Cherise Chisolm, a title researcher, verified from the deeds description that it encompassed the southeast portion of Lot 9. (R. p. 185, lines 1-11.) This was indicated as Parcel 6A on the 1965 tax map. (R. p. 421.) The deed blatantly states in its boundary description that the property proceeds for 146 feet west to the lands of the Estate of William Taylor. (R. p. 424.) This encompasses the land that Appellants were claiming ownership of throughout the trials.

Furthermore, it was undisputed that Rufus and Mary Taylor resided on Lot 9 for generations. Martha Brown and Maxine Taylor admitted that they played together as children with Rufus and Mary Taylor's grandchildren, Georgia Champion and Willie Mae Stewart. (R. p. 148, lines 2-16; R. p. 150, lines 10-16; R. p. 165, lines 21-24.) James Taylor did not farm on Rufus and Mary Taylor's land and it was understood that Rufus and Mary Taylor would farm on the northern

and southwestern portion of Lot 9. (R. p. 199, line 10-p. 202, line 12; R. p. 228, line 1-p. 229, line 23; R. p. 232, lines 3-12; R. p. 241, lines 13-20; R. p. 248, lines 21-24; R. p. 269, line 14-p. 270, line 7; R. p. 277, lines 18-25.) Ariel photographs over the decades show that the area was consistently farmed and cultivated. (R. pp. 462-463; R. p. 465.)

Based on the language of the deeds and the conduct of the parties, Appellants, the Heirs of William Taylor, established that the parties mutually agreed upon the boundary line, with the Appellants' land being the northern and southwestern portion of Lot 9.

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

"In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon. . . ." Rule 52(a), SCRCP. While the court is not required to "set out findings on all the myriad factual questions arising in a particular case[,] the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below." In re *Treatment and Care of Luckabaugh*, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002). Absent factual findings, the court order is impossible to review because the reasons for the decision are left to speculation. *Id.*

The master failed make specific factual findings to support its conclusions of law. In awarding Lot 9, it merely stated that there was not enough presented by Appellants to attack the Respondents' title. Additionally, the master completely failed to address Appellants' affirmative defense of adverse possession or any of the elements of that defense. Appellants established by undisputed testimony and evidence that they, at the very least, adversely possessed the subject property allowing this Court to find in Appellants' favor. However, should this Court disagree with the Appellants' position, the master's judgment should be vacated and remanded for a new hearing so that the master may issue an order that substantially complies with Rule 52(a).

CONCLUSION

Based upon the foregoing argument and citations of authority, the Appellants, the Heirs of William Taylor and Georgia Champion, respectfully request that this Court reverse the master's decision and award the subject property in Lot 9, the northern and southwestern portion, to the Appellants.

STATEMENT REGARDING ORAL ARGUMENT

The Appellants respectfully submit that oral argument is necessary to the just resolution of this appeal and will significantly enhance the decision making process.

Respectfully Submitted,

By: Amy Raffaldt
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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

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SC Court of Appeals

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.

CERTIFICATE OF COUNSEL

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

Amy K. Raffaldt, Esq.
Attorney for Appellants

September 28, 2015

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellants and the Final Reply Brief of Appellants in the above-referenced case has been served upon George H. O'Kelley, Jr., Esq. at P.O. Box 1072, Beaufort, SC 29901 on this 29th day of September, 2015.

Amy Raffaldt

Amy K. Raffaldt, Esq.
Attorney for Appellants