

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON
PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-6835

JOANNE S. REED,

Plaintiff

vs.

CHRISTINA SALTERS, WESLEY SALTERS,
LULA SALTERS, DOROTHY SALTERS,
JOSEPHINE SALTERS, HAROLD SALTERS,
JOHNNIE SALTERS, LILLIAN SANDERS,
LUCHRIA SANDERS, MARY NELSON, MARTHA
SANDERS, RUTHIE MAE SANDERS BUTLER,
ELIZABETH SANDERS, GEORGE GRANT,
OLIVIA HEYWARD, LISA CANADY, SYLVIA
GRANT HEYWARD, JANICE JONES. ABRAHAM
GRANT III, SAMETTA HEYWARD, JUDY
HEYWARD, GEORGIANA S. STONE, SANDRA
S. BROWN, CAROLYN S. HISSING, GEORGE
SANDERS, WILLIAM SANDERS, PEGGY ANN
WRIGHT, BARBARA S. GRAMPUS, EVALINA
MIDDLETON, JOHN SHERMAN, GERTRUDE
TOWNSEND, HELEN B. TOWNSEND, VERTA
LEE TOWNSEND, VILMA TOWNSEND, AL
TOWNSEND. HERCULES TOWNSEND,
CHRISTINA TOWNSEND, SHEREL TOWNSEND
DEAN TOWNSEND, LINSEY TOWNSEND,
BARBARA TOWNSEND, DARLENE TOWNSEND
ANN TOWNSEND, RONNIE TOWNSEND,
ELIZABETH TOWNSEND, JEROME TOWNSEND
MOSE MIDDLETON, JR., BENJAMIN
MIDDLETON, SR., LEROY MIDDLETON,
SAMUEL MIDDLETON, HERMAN MIDDLETON,
RAYMOND MIDDLETON, RODELL MIDDLETON
FLORENCE MIDDLETON, ELIZA ANN M.
JAMISON, SADIE THORNBERG, MADLYN M.
LASLEY, HENRY MIDDLETON, MAYBELLE M.
WHITE, CATHERINE MIDDLETON, EDIE
MIDDLETON, JESSE JAMES MIDDLETON, JR.,
SAM SMALLS, ELLA M. SMALLS, RELESS
BRYANT, VIOLA TOWNSEND, CLARA GRANT,
LONNIE MAE BRYANT, MARION SMALLS,

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JULIE J. ARISTROTT
CLERK OF COURT

ORDER

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SC Court of Appeals

met the necessary requirements for a valid adverse possession claim as to certain parts of the Property, specifically as to the entire front portion of the Property up to and abutting the wetlands area.

Upon a review of the record in the matter, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This action was initially brought to determine the heirs of John Salters. Originally, this action included additional family chains from John Salters. In an amendment to the pleadings, the Plaintiff claimed that only the heirs of John J. Salters (a son of John Salters) were entitled to claim an interest in the Property. This Court entered its interim Order on January 6, 2016, and found that there were two men named John Salters, one the father Johns Salters and the other the son John J. Salters. The Court determined that the John J. Salters who purchased the subject Property shall be known as Grandfather Salters, as he is the grandfather of the Plaintiff JoAnn Reed.
2. Although Mr. Jesse Townsend is related to Mrs. Reed through their great-grandfather John Salters, he does not have the same grandfather as Mrs. Reed - as indicated by Mr. Townsend's and Mrs. Reed's testimony provided at a hearing before this Court on January 11, 2016. By virtue of this family tree and the fact that Defendant Jesse Townsend, Jr. is not a co-tenant on the Property, the legal claim of Ouster is inapplicable, and the Defendant need only show adverse possession to assert title to his tract of land. *See Tr. Trans. P. 11, L. 16 – 18.*
3. As to the geographic features of the subject Property, similar to the property in *Knox v. Bogan*, the front portion is separated from the remainder by a wetland (rather than a



fence). At one point, trees were planted and harvested from the rear portion of the Property. Ernest Townsend testified that his brother, Arthur, planted trees on the back end of the property and that his Great-Uncle Moses used to plant rice in the wetland area. *Tr. Trans.* P. 118, L. 15 – P. 119, L. 3. This testimony was corroborated by Arthur Townsend who indicated that several people used to plant the back portion of the Property and that at one point he planted 2,500 trees there. *Tr. Trans.* P. 126, L. 2 – 24. A portion of the funds generated from the sale of the harvested timber were used to pay property taxes and the remainder was divided between the various families, including the Plaintiff's family and Defendant's family herein. *Tr. Trans.* P. 127, L. 3 – 24. Testimony showed that until the access bridge through the wetlands was washed out, other family members farmed both the front and rear portions of the Property. *Tr. Trans.* P. 93, L. 6 – P. 94, L. 4. The rear portion seems to have been left largely unused since the bridge washout.

4. Mr. Jesse Townsend has possessed Lot C as depicted on Defendant's Exhibit 1 since approximately 1981 when it was created by an unrecorded plat and survey conducted on October 20, 1981. Def. Ex. 1. Lot B was originally created for Ernest Jerome Townsend, who did not file an Answer in this matter. These lots, as shown on Defendant's Exhibit 1, have been identified as separate parcels for more than thirty (30) years.
5. Although Jesse Townsend, by his own admission, entered the land with permission from other heirs, South Carolina law provides that a party may enter land with permission of the owner and then claim adverse possession at a later point. *McDaniel v. Kendrick*, 386 S.C. 437 (2009) citing *Davis v. Monteith*, 289 S.C. 176 (1986) (finding occupation of Property with the owner's tacit permission was not hostile although such possession may



have become hostile when claimant remained on Property after being told to vacate).

6. As part of the Answer and Counterclaim filed in this matter by Jesse Townsend, Jr., adverse possession and equitable relief were raised both in the pleadings and at the hearing held on May 2, 2016. *See Answer & Counterclaim filed Dec. 8, 2014; Tr. Trans.* P. 10, L. 5.
7. The only elements of adverse possession that are at issue in this case are hostility and exclusivity, and the burden of proving adverse possession is solely on the claimant by clear and convincing evidence. *Getsinger v. Midlands Orthopaedic Profit Sharing Plan, et al.*, 327 S.C. 424, 428 (Ct. App. 1998) *citing Weston v. Morgan*, 162 S.C. 177, 192 (1931). I find that all other elements of adverse possession clearly met.

Hostility Element

8. Our Court of Appeals shed light on the hostility requirement in *Knox v. Bogan*, 322 S.C. 64 (S.C. Ct. App. 1996). In that case, the Knox family claimed ownership of certain property designated as the southern tract through adverse possession. An old fence separated the southern tract from Bogan's Property. *Id.* at 69. Testimony showed the Knox family had occupied the southern tract up to the fence line for more than seventy years under the belief the fence line was the boundary between their land and Bogan's.

Id. at 69. The Supreme Court, addressing the hostility requirement, stated:

The only issue is whether the Knoxes' possession was sufficiently hostile. As we read *Perry v. Heirs at Law* [316 S.C. 224, 449 S.E.2d 250 (1994)] and *Wigfall v. Fobbs* [295 S.C. 59, 367 S.E.2d 156 (1988)] either there is no longer a hostility requirement where the claim is to an entire tract, or South Carolina does in fact follow the majority view that the mental attitude of the possessor of land is *immaterial*. Under the majority view an actual, exclusive, open and notorious possession without the consent of the title owner is both wrongful and adverse and will ripen into perfect title in the usual way when the statute of limitations has run. The majority



view represents the most practical approach to the hostility requirement of adverse possession and is in keeping with the national trend of authority.

Id. at 70-71 (emphasis added) (citations omitted).

9. The Court of Appeals, in construing the *Knox* decision, stated as follows:

The supreme court did not . . . eliminate the hostility requirement when a party claims adverse possession of an entire tract of land. The court simply explained the hostility requirement is not necessarily predicated upon the claimant's conscience intention to possess the property against the true owner's wishes. A claimant may establish adverse possession if he occupies the property under the mistaken belief that it belongs to him.

McDaniel, 386 S.C. at 442-43.

10. South Carolina courts have also held that a purported adverse possessor may adversely possess a portion of a large tract of land. *See Dawkins v. Mozie*, 399 S.C. 290 (Ct. App. 2012) (affirming the trial court's finding of adverse possession of a ".75 acre tract of land that is a portion of a larger 3.5 acre tract of land").
11. The testimony of the Plaintiff and others showed that for more than twenty (20) years Jessie Townsend, Sr. lived on the Property and operated a junkyard thereon until his death in 2005. *Tr. Trans.* P. 28, L. 11 – P. 29, L. 12. For more than ten (10) years thereafter, Defendant Jesse Townsend, Jr. has maintained a fence and gate to the property and, on multiple occasions, Defendant Jesse Townsend, Jr. has denied others, including Plaintiffs on multiple occasions, access to the Property. *Tr. Trans.* P. 63, L. 9-15; P. 84, L.10-15; P. 46 – L. 2 – 24. After the death of Jessie Townsend, Sr., Jessie Townsend, Jr. took over operation of the junkyard and an auto repair business on the front portion of the Property. Vehicles, parts and other salvage materials were stored in various locations on the Property which precluded other persons claiming an ownership interest in the



Property to its use and enjoyment. *Tr. Trans.* P. 68, L. 22 – P. 69, L. 15; P. 75, L. 2-5; P. 75, L. 17 – P.77, L. 8. The business and storage was also done without the permission of others. *Tr. Trans.* P. 77, L.12 – 19; P. 86, L. 17-19; P. 44, L. 23 – P. 45, L.5.

12. Accordingly, the Court finds that Defendant Jesse Townsend, Jr. has met the hostility element required by clear and convincing evidence to establish his adverse possession claim to the front portion of this tract of land.

Exclusive Element

13. As to exclusivity, “[a]n adverse claimant must occupy the land by exclusive possession, which means that adverse possession must be such as to indicate his or her exclusive ownership of the property, and not only must his possession be without subservience to or recognition of the title of the true owner but it must be hostile thereto as to the whole world.” *Curtis v. DesChamps*, 290 S.C. 315, 324-25 (Ct. App. 1986) *citing Mullis v. Winchester*, 237 S.C. 487 (1961). “The exclusive possession necessary to acquire title by adverse possession is not satisfied if occupancy is shared with the owner or with agents of the owner.” *Butler v. Lindsey*, 293 S.C. 466, 472 (Ct. App. 1987) *citing Farella v. Rumney*, 649 P.2d 185 (Wyo. 1982); 3 Am.Jur.2d, *Adverse Possession*, Section 78 (1986). The exclusivity element must also run for the entire statutory period. *Butler*, 293 S.C. at 470.

14. Based upon the testimony of the witnesses at the hearing, the Court finds that clear and convincing evidence exists to show that Defendant Jesse Townsend, Jr. has also met the exclusive element of adverse possession as to the front portion of the Property as described above. Furthermore, Jesse Townsend, Jr. placed a mobile home on this portion of the Property and has lived there and operated his business thereon exclusively



and continuously ever since for well in excess of the statutory period both for himself and, if tacking is considered, by his father's possession as well for over thirty years.

15. Accordingly, the property shall be surveyed and the Court will issue its deed to Jesse Townsend, Jr., as the owner of the front portion of the Property up to and abutting the wetlands, upon the presentation of a plat submitted for approval by Charleston County to this Court.

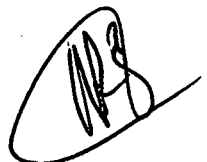
a. Wetlands and Back Portion Residuary

16. The Court finds that clear and convincing evidence of adverse possession has not been shown as to the remaining and larger part of the subject Property; therefore, ownership of the residuary shall be vested in the surviving heirs of Grandfather Salters. The plat to be submitted shall delineate a 20' ingress egress easement appurtenant that benefits the residual tract to the rear so that the heirs of Grandfather Salters (their heirs and assigns) may maintain access and enjoyment to the remaining tract of land.

Based upon the foregoing, it is hereby

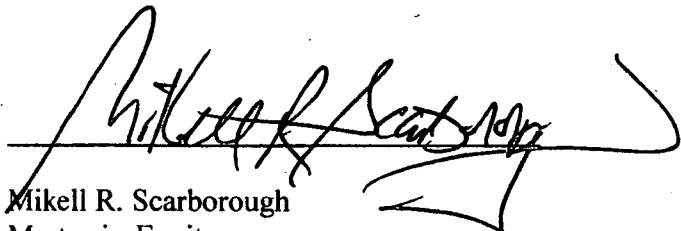
ORDERED, ADJUDGED, AND DECREED that Defendant Jesse Townsend, Jr. has presented clear and convincing evidence that he has adversely possessed the front portion of the subject Property (TMS # 188-00-00-169) up to and abutting the wetlands that he has operated to the exclusion of others for over ten (10) years and this will be further depicted by plat. It is further,

ORDERD, ADJUDGED, AND DECREED that the remaining property shall be vested in the heirs of Grandfather Salters. It is further,



ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to further
Orders of this Court as may become necessary.

AND IT IS SO ORDERED!



Mikell R. Scarborough
Master-in-Equity

This 14 day of July, 2016.
Charleston County, South Carolina