THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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.

Appellant Case No. 2015-000342

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Opinion No. 5480
Submitted December 1, 2016 –Filed April 26, 2017

PETITION FOR REHEARING

The Respondents move pursuant to the Rules of Appellant Practice, Rule 221(a), for a rehearing and reconsideration of the decision in this matter as is set forth herein.

I.

Respondents contend that the Appellants did not meet the requirements of adverse possession and the court erred in its finding regarding this.

Lot 9 was deeded to Phoebe Taylor in 1937. Appellants showed no deed or chain of title to Lot 9. Their only claim is adverse possession. Respondents do have a chain of title.

An adverse possession claim must be clear and convincing. Clark v. Hargrove, 473 SE 2d 474; 323 SC 84 (1996). The extent of possession must be shown. Appellants only could identify the old ruins of the house. Other claims were general and not defined. Claimants must how the extent of possession. Miller v. Leaird, 413 SE 2d 841 (1942). For adverse possession the full extent of the property claimed has to be identified. Appellants, except for the home site, could only speak in generalities as to what went on there.

II

The Court erred in not considering the former quiet title of Appellants in 1997-98 and its findings that are adverse to their claim for any of Lot 9.

In the earlier quiet title, Appellant's family relied on a plat which shows Lot 9. Although they were not required to include Lot 9 in that earlier action, logic presumes they would clear all of their land, which was owned by Rufus, at one time. But notwithstanding that argument, the reference on their plat that it belonged "now or formerly to Phoebe Taylor" is the best evidence that Rufus and family occupied a part of Lot 9 by mistake.

Instructive also is the testimony of Georgia Champion regarding the quiet title done in

1997-98. She contacted an attorney to "take care of it" and "get it out of heirs property." (Transcript, page 207). She admits this was as to Lot 7, "and that came out of Rufus and Geneva Taylor." (Page 207)

Regardless of the tax parcel designation, Appellants clearly owned and claimed Lot 7 only. The Master in Equity weighed all of this and concluded there was no viable claim of adverse possession.

The case of Brown v. Clemens, 338 SE 2d 338 (1985) is relevant. Mr. Clemens built a chicken coop and later a garage on the Brown property. Clemens thought it was his, but he was mistaken. A mistaken belief as to boundaries with no intent to dispossess the actual owner will not ripen into adverse possession. Adverse possession is to be strictly construed in favor of the actual owner and possession and all of the elements must be there.

See also King v. Hawkins, 319 SE 2d 361 (1984). Other cases have also said possession under mistaken belief is not hostile possession. Cook v, Callahan, 339 SE 2d 156 (1986).

III

The Court erred in deciding Section 12-51-160 of the Code of Laws does not apply because the Appellants did not receive notice of the tax sales.

Respondents agree that the statutes regarding tax sales are to be strictly construed. However, Section 12-51-160 gives two years after the sale for any action to challenge such. Also, as stated in Respondents prior briefs, these two actions were commenced in 2011 and 2012. Appellants' first answer in the Maxine Taylor matter was filed on June 20, 2012. This was a general denial. No adverse claim, allegation of an adverse claim or allegation of a

defective tax sale was mentioned.

Appellants filed an amended answer in the Maxine Taylor case on June 20, 2013, exactly a year later. No claim as to a defective tax sale is asserted. Appellants filed an amended answer in the Stanley Taylor case on June 20, 2013. Also again, no challenge is made as regards the tax sale. They claimed trespass and adverse possession.

Once Appellants became aware of the complaint that outlines the tax sales and deeds to James Taylor, should not they have to challenge pursuant to Section 12-51-160? Appellants have never moved to set aside the tax deeds.

This Court ruled that failure to give notice in a defect and states the Master erred in ruling. Appellants could have challenged the tax deeds. They did not do so really until the appeal was filed, which is past the two year limit.

IV

That even if this Honorable Court rejects any of the arguments advanced by Respondents, the decision is still defective.

The Court's decision reversed the lower court. Yet, it only ruled in Appellants favor as to the northern portion of Lot 9 (also referred to as Parcel 5).

Maxine Taylor has clear ownership of the southern portion of Lot 9 (south of the road). Georgia Champion, one of the Appellants, testified she conveyed property south of the road (transcript page 366). She also testified as to where James Taylor's house is in Lot 9 (transcript pages 367 et. seq.).

Ms. Champion questioned the survey marks south of the road (that showed the line between lots 7 and 9). However, she agreed that a large live oak tree was near or along the line (transcript, page 214). She admitted Maxine was on the east side of this oak tree (transcript, page 215 and 216.)

Therefore, the lower court's order as to Maxine Taylor should have been affirmed.

CONCLUSION

The Respondents believe this Honorable Court should withdraw its decision of April 26, 2017, and affirm the lower court. The Master in Equity spent many hours on this case and it is Respondents' belief he ruled correctly.

Respectfully submitted,

May 3, 2017

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PROOF OF SERVICE

I certify that I have served this Motion for reconsideration by first class mail on May 3, 2017, addressed to the other Counsel of Record:

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May 3, 2017

Honorable Jenny Abbott Kitchings
S. C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Maxine Taylor vs.
Heirs of William Taylor, et al
Appellate Case No.: 2015-000342

Dear Ms. Kitchings:

Enclosed you will find six originals of respondents Petition for Rehearing in the above referenced matter. I also enclose my check for $20.00 representing the filing fee for the motion.

You will see by the Certificate of Service attached I have served the other counsel involved in this matter.

I trust you will let me know if you need anything else at this time. Thank you.

Sincerely yours,

George H. O'Kelley, Jr.

GHOK/slj