

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2012-CP-10-6835

Joanne S. Reed,..... Appellant,

v.

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, John Bailey, Blanche Murphy Field, Charles Tyler, Margarete Brown, Banny Tyler, Joseph Tyler, Calvin Tyler, Willie Washington and John Doe and Mary Roe fictitious names representing unknown minors, incompetents, persons in the military service within the meaning of Title 50 United States Code, commonly referred to as The Service Members Civil Relief Act of 2003, persons imprisoned, and persons under any other legal disability and Richard Roe and Jane Doe, fictitious names representing unknown heirs, devisees, distributes, or personal representatives of the following deceased persons John Salters, Sarah S. Berin, John J. Salters, Viola Salters, James Salters, Eveline Sanders, Eddie Sanders, Henrietta Sanders Grant, Abraham Grant, Jr., Dorothy S. Heyward, Sam Heyward, George Leroy Sanders, Janie Sanders, Eliza S. Middleton, Victoria Taylor, Lou Bertha Ford, Eva M. Wheeling, William Middleton, Jr., Rebecca Sherman, Elizabeth Townsend Frazier, Leon Townsend, Jessie Townsend, Nathaniel Townsend, Moses Middleton, Jesse James Middleton, Clara S. Smalls, Robert Smalls, Charles Smalls, Joseph Smalls, Alfred Smalls, Sue Smalls, Mary Smalls Bryant, Sylvia Bryant, Richard Bryant, Albertha Anderson, Julia Bailey, Alonso Brown, Jr., Julia (Julia) Brown Carter, Edward Brown, Janie Brown, Cippio Bailey, Laura Baily, Florence Bailey, Elizabeth Murphy, James Murphy, Mary Salters and Helen Tyler, Defendants,

of Whom

Jesse Townsend, Jr. a/k/a Jessie M. Townsend, Jr. is the .....Respondent.

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RESPONDENT'S INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT INCORRECTLY FIND THAT THE DEFENDANT, JESSIE TOWNSEND, JR., MET ALL OF THE NECESSARY REQUIREMENT FOR A FINDING OF ADVERSE POSSESSION WERE PROVED BY CLEAR AND CONVINCING EVIDENCE.
  - A. DID THE DEFENDANT, JESSIE TOWNSEND, JR., PROVE BY CLEAR AND CONVINCING EVIDENCE HIS CLAIM OF ADVERSE POSSESSION.
    - 1. DID THE DEFENDANT SATISFY THE HOSTILITY ELEMENT OF ADVERSE POSSESSION BY CLEAR AND CONVINCING EVIDENCE?
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*Jones v Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App 2009) (*per curiam*)

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*Taylor v. Heirs of Taylor* (S.C. App., 2017)

#### South Carolina Law

S.C. Code Ann. § 15-67-210 Adverse possession is 10 years

## STATEMENT OF ISSUES ON APPEAL

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    2. DID THE DEFENDANT SATISFY THE EXCLUSIVITY ELEMENT OF ADVERSE POSSESSION BY CLEAR AND CONVINCING EVIDENCE?

## STATEMENT OF THE CASE

The Statement of the Case prepared by Appellant is adopted by the Respondent.

## STANDARD OF REVIEW

The Standard of Review prepared by Appellant is adopted by Respondent

## ARGUMENT

- I. DID THE TRIAL COURT INCORRECTLY FIND THAT THE DEFENDANT, JESSIE TOWNSEND, JR., MET ALL OF THE NECESSARY REQUIREMENT FOR A FINDING OF ADVERSE POSSESSION WERE PROVED BY CLEAR AND CONVINCING EVIDENCE.

The trial court properly found that the Defendant, Jessie Townsend, had adversely possessed a portion of the real property that is the subject of the underlying lawsuit. The Master-in-Equity properly found that the elements of adverse possession met the clear and convincing evidentiary standard applied to adverse possession. The Court could have found that the entire tract had been adversely possessed, but, found that only the front portion of the property had, in fact, been adversely possessed. The standard for review is not contested from that set forth in the

brief of the appellant. The difference is that a clear reading of the transcript would support the finding of the trial court. The plaintiff has admitted that the defendant and his father have been on the property since at least 1980.

A. DID THE DEFENDANT, JESSIE TOWNSEND, JR., PROVE BY CLEAR AND CONVINCING EVIDENCE HIS CLAIM OF ADVERSE POSSESSION?

The Defendant, Jessie Townsend, Jr., proved his affirmative defense of adverse possession by clear and convincing evidence. In fact, the testimony of the plaintiff and her son both strengthened the claim of adverse possession. The defendant and his predecessor originally began occupying the property with the approval of the family members. As time went on, a fence and gate were installed and then a lock was placed on the gate. No one had a key other than Jessie Townsend Sr. originally and then the key was solely in the possession of Jessie Townsend, Jr.. The plaintiff, at page 44, lines 8-12 of the transcript, Ms. Reed testified that her mother was told not to walk on the property by one of the Townsends. On pages 44, lines 23-25 and page 45, lines 1-4, Ms. Reed testified she had no knowledge of permission being given by anyone to live or use the property.

Ms. Reed testified page 46 lines 24-25 that she and her family were being kept off the property by the Townsends. Ms. Reed further testified that we tried to get on the property, but, we can't see the whole property because they have the fence up.... Page 47 lines 11-14. Ms. Reed further testified that even after she had a key, she was not allowed to go over all of the property.; Page 47, lines 21-22.

Ms. Reed further testified that she has been trying to get onto the property for at least 10 years and has been denied by the Townsends. Page 55, lines 16-21. Ms. Reed testified that she

has been kept from coming on the property since the 80s. Page 56, lines 6-12. Mr. Reed further testified that neither he nor his family had been able to get on the property until a key was shared. Page 88, lines 18-21 in 2016. *Knox v Bogan* 472 S.E.2d 43, 322 S.C. 64 (S.C. App., 1990)

The Townsend began the use of the property with permission. However, at a later point, the use of the property became hostile or adverse to all others. *McDaniel v Kendric*, 688 S.E. 2d 8562, 386 S.C. 437(S.C. App. 2009).

South Carolina Courts have held that a purported adverse possessor may adversely possess a portion of a larger tract of land. *Dawkins v. Mozie* 399 S.C. 290, 731 S.E. 2d 342 (S.C. App. 2012). The Trial Judge ruled that this is exactly what has happened in this case

The appellant claims that the testimony of Mr. Townsend was not clear. Actions always speak louder than words. Mr. Townsend and his father both kept Ms. Reed and her family off the property, particularly the part they used as a garage and junkyard. The testimony of the plaintiff was that she has been denied access to the property for more than 10 years. This testimony was confirmed by her son, Mr. Reed. The Court should go no further than when the plaintiff clearly testified that she was denied access to the property and that the period of the denial was more than 10 years. The son, Andy Reed, then testified that no one was allowed on the property by Jessie Townsend or Jessie Townsend, Jr.

The mother of Ms. Reed died in 1987. Mr. Reed testified that her Mother had been told to not go on the property before the death of the mother of Ms. Reed. Ms. Reed admitted that she and her family have been denied access since at least 1987. The actions of Mr. Townsend are only consistent with one claiming dominion and control of the front portion of the property to the exclusion of all others.

The placing of the fence and gate with a lock on it denied all persons access to the property. Occupancy was not shared as to the front portion of the property as required by to defeat the adverse possession claim. *Curtis v DesChamps* 350 S.E. 2d, 290 S.C. 315 (S.C. App. 1986).

The plaintiff confirmed that the denial of access to the property was in excess of ten years and that it was a continuous occupation of the property. *Butler v Lindsay* 361 S.E.2d, 621, 293 S.C.466 (S.C. App. 1987).

2. DID THE DEFENDANT SATISFY THE EXCLUSIVITY ELEMENT OF ADVERSE POSSESSION BY CLEAR AND CONVINCING EVIDENCE?

The Defendant proved that he had the exclusive control of the front portion of the property. In fact, the testimony is clear that the vehicles and other scrap materials on the property were his or under his control. No one came onto the area of the property where the cars and other materials were stored. The plaintiff even testified that she was afraid of being shot if she came onto the property. A key to the gate was only made available to the plaintiff in January of 2016. Even after the key was made available, it was clear that no one other than Mr. Townsend or persons he authorized to be on the property were able to go the property where the vehicles and other materials were stored without permission from Mr. Townsend.

Mr. Townsend was not confused when he testified about the property. Mr. Townsend never stopped any family member from going into the wetland area or the area behind the wetland area. However, no one had wanted to go on the property in many years.

On the other hand, Mr. Townsend was protective of the area where the cars were stored and everyone including the plaintiff was aware of this fact. Mr. Reed. The storage of vehicles

and other items precluded the use of the property by Ms. Reed and anyone else according to Mr. Reed's, son of Ms. Reed. Transcript page 85, lines 18-24. Further, access to the wetlands and the rear portion of the property was not possible without going over the area controlled by Mr. Townsend.

### CONCLUSION

The respondent, Mr. Jessie Townsend, Jr., did not receive all that he asked for in his pleadings. The Order of the Trial Judge awarded him only the approximately front 1/3 of the property where he both lived and operated the junk yard and auto repair shop. The trial judge also awarded to the parties who are found to be the owners of the remaining approximate 2/3 of the property an easement across the property for access to the property.

The Trial Judge heard the testimony of the witnesses. Confusion may still exist as to who the owners of the remaining 2/3rds of the property are, their portions of ownership etc. There is no similar mistake as to the ownership of the portion of the property awarded to Mr. Townsend. Since 1980, Mr. Townsend has resided on the property and no one has tried to claim that he did not have the right to be there. In the early 80's, a fence, gate and other impediments were installed to deny all but Mr. Townsend access to the property. Mr. Reed testified that she had not been able to go onto the property for more than 10 years and confirmed that she had not been able to go on the property since before the death of her mother in 1987 due to the fence and gate.

Ms. Reed's son testified that the fence, gate and other obstructions were present when he graduated from high school in 1987. The junk yard, upon which no one but a Townsend was allowed to go on had already been fenced and gated at this time. The case was filed in 2012 and

the complaint later amended to change the relief requested to oust all persons on the property who were not a part of the Salters lineage.

From at least 1987 forward, only persons with permission were allowed on the front 1/3 of the property. The Jessie Townsend Sr and then Jr. exercised control of the property to the exclusion of all other persons who claimed any ownership interest in the property. The fact that their property blocked access to the remaining portion of the property was insufficient to give ownership to the Townsend father and son.

Case can be cited which have not been cited by Respondent because they would not actually aid this Court in reviewing this Order. However, the determination of both exclusivity and hostility are both fact specific and can only be determined after the taking of testimony. A review of all of the testimony will confirm that the plaintiff and her family were denied access to the front portion of the property and that the actions of Townsend father and son were only consistent with someone believing that they owned the property.

This Court has ruled in *Taylor v. Heirs of Taylor* (S.C. App., 2017) that the character of the possession is a question for the jury or fact finder. Appellate review is limited to a determination of whether any evidence reasonably tends to support the trier of fact's findings. *Jones v Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App 2009) (per curiam).

May 8, 2017



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of Whom

Jesse Townsend, Jr. a/k/a Jessie M. Townsend, Jr. is the .....Respondent.


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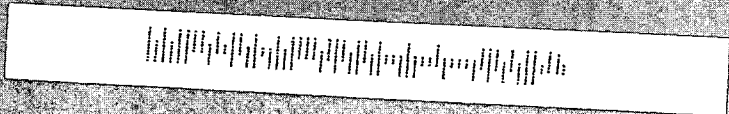
The undersigned hereby certifies that a true copy of Respondent' Initial Brief and Designation of Record has been served upon Maria Kiehling Brees, 105 Wappoo Creek Drive, Suite 1-B, Charleston, SC 29412 and upon Kelvin M. Huger, Esq. 27 Gamecock Avenue, #200, Charleston, SC 29407, by United States Mail, first class, postage prepaid on the 8th day of May, 2017.

May 8, 2017

  
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