THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

The Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge

---

Court of Appeals Case No. 2012-213578/
Beaufort Case No. 09-CP-07-2608

Lucille Patricia Smith, Respondent
v.
The Heirs at Law of Benjamin Days a/k/a Ben Deas a/k/a Daise, etc., et al,
of whom Howard Chaplin and Harriet Chaplin are Appellants

RESPONDENT'S FINAL BRIEF

EVERSOLE LAW FIRM, P.C.
BY: ALYSOUN M. EVERSOLE,
Attorney for Respondent Lucille Patricia Smith
1509 King Street
Beaufort, SC 29902
(843) 379-3333

Other Counsel of Record:

Bruce R. Hoffman
LAW OFFICE OF BRUCE R. HOFFMAN, LLC
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843)838-5290
Attorney for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

The Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge

---

Court of Appeals Case No. 2012-213578/
Beaufort Case No. 09-CP-07-2608

Lucille Patricia Smith, Respondent

v.

The Heirs at Law of Benjamin Days a/k/a Ben Deas a/k/a Daise, etc., et al,
of whom Howard Chaplin and Harriet Chaplin are Appellants

RESPONDENT'S FINAL BRIEF

EVERSOLE LAW FIRM, P.C.
BY: ALYSOUN M. EVERSOLE,
Attorney for Respondent Lucille Patricia Smith
1509 King Street
Beaufort, SC 29902
(843) 379-3333

Other Counsel of Record:

Bruce R. Hoffman
LAW OFFICE OF BRUCE R. HOFFMAN, LLC
574 Sea Island Parkway
Saint Helena Island, SC 29920
(843)838-5290
Attorney for Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

STATEMENT O F ISSUES ON APPEAL

I. THE RESPONDENT DID NOT LACK STANDING TO BRING HER SUIT TO QUIET TITLE NOR WAS SHE REQUIRED TO PROVE THE STRENGTH OF HER TITLE AGAINST THE WEAKNESS OF APPELLANTS' CLAIM OF TITLE BY ADVERSE POSSESSION.

II. THE TRIAL COURT PROPERLY DENIED APPELLANTS' MOTION FOR A DIRECTED VERDICT AS THE APPELLANT LACKED STANDING TO CHALLENGE THE ADOPTIVE NATURE OF MR. SMITH'S RELATIONSHIP WITH THE LEGAL OWNER OF THE LAND AND MR. SMITH'S RIGHTS TO INHEREIT UNDER THE LAW.

III. THE TRIAL COURT PROPERLY FOUND THAT APPELLANTS HAD NOT PROVED THEY ACQUIRED TITLE TO THE PROPERTY BY ADVERSE POSSESSION OR ADVERSE POSSESSION UNDER COLOR OF TITLE.

1V. THE TRIAL COURT PROPERLY QUIETED AND CONFIRMED TITLE TO THE PROPERTY INTO RESPONDENT ACCORDING TO THE PLAT OF SURVEY PREPARED BY DAVID E. GASQUE, RLS ENTERED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 2.

STATEMENT OF THE CASE

The Plaintiff, Respondent Lucille Patricia Smith, brought her cause of action to quiet title to eight (8) acres of property she acquired from her father, James D. Smith, by deed dated December 3, 1999. The adjoining land owners were personally served with the Summons and Complaint. The unknown heirs at law were served by publication. An Order appointing William M. Bowen as Guardian ad Litem Nisi was entered and he filed his Answer and Affidavit confirming that no unknown persons applied through him for the appointment of a Guardian ad Litem.

Bernice D. Davis, an the Heir at law of W.H. Deas, adjoining landowners filed an Affidavit/Answer admitting the allegations in the Complaint. Ms. Davis was served with a notice of final hearing but did not make an appearance at trial.

The Defendants, Appellants Howard Chaplin, Jr. and Harriet Chaplin, adjoining landowners, filed their Answer denying the allegations in the Complaint generally and raising the defenses of Stale Demand, Waiver and Laches, and they counterclaimed on the grounds of Adverse Possession and Adverse Possession under Color of Title.

An Order of Default was entered against all the remaining Defendants.

An Order of Reference to the Master was filed on July 16, 2010 and trial was held on August 30, 2011.

At close of the Plaintiff's case and at the conclusion of the trial, the Appellants moved for a directed verdict on the grounds that the Respondent's father, James D. Smith, did not prove that he was the adopted son of Samuel Daise and therefore could not prove ownership of the property in question to deed it to the Respondent.[1] The Respondent argued that the Defendant lacked standing to challenge whether or not Mr. Smith was adopted.[2]

On November 5, 2012 the Honorable Marvin H. Dukes, III issued a Judgment, Decree and Final Order[3] : 1) concluding that Appellant does not have standing to challenge Mr. Smith's adoptive status as it is irrelevant to Appellant's claim to the property by adverse possession; 2) concluding that James D. Smith is the only living heir of Samuel Daise (the son of Benjamin Daise); 3) concluding Mr. Smith has been in possession of the Property for over forty (40) years therefore it is presumed that any other heirs of Benjamin Daise have been ousted; and 4) ordering that property described in the Complaint and depicted on a plat prepared by David E. Gasque, RLS is quieted and confirmed into the Respondent, Lucille Patricia Smith.

This appeal followed.

---

[1] *Trial Transcript* p. 81 lines 5-15 (R.p.142)
[2] *Trial Transcript* p. 81 lines 16 – p. 82 line 4 (R.p.142 & 143)
[3] *Order of Marvin H. Dukes, III dated November 5, 2012* (R.p. 9)

STATEMENT OF FACTS

The Plaintiff's (Respondent's) case consisted of the testimony of the Respondent Lucile Patricia Smith, Respondent's father James D. Smith, a land surveyor, David E. Gasque, RLS., the affidavit of a title abstractor and various documents entered into evidence without objection.

From the Affidavit of Donna Reardon, title abstractor[4], Plaintiff's Exhibit 1, (which was entered into evidence without objection) the public records show the property being quieted consists of eight (8) acres and is known as Lot 2, Ed Capers Plantation, Tax Map No. R300-021-000-0018-0000 (hereinafter referred to interchangeably as "the Property" or "Lot 2"). There are two deeds in the chain of title for this property, those being: 1) a deed of James D. Smith to Lucille P. Smith dated December 3, 1999[5] wherein the preamble recites that James D. Smith is the sole heir at law of Benjamin Days, and 2) a deed from Daniel F. Appleton to Benjamin Days dated January 14, 1892.[6] There was no probate administration for Benjamin Days, Deas or Daise. There are no recorded plats for Ed Capers Plantation as a whole, nor are there any recorded plats for Lot 2.[7]

David Gasque, Registered Land Surveyor, testified that he was employed by the Plaintiff to do a survey of Lot 2, Ed Capers Plantation, and Plaintiff's Exhibit 2.[8] He testified that there is no subdivision plat for Ed Capers Plantation that can be found in the public records or otherwise.[9] He prepared his survey on oral information given to him on the ground, fieldwork, notes of other surveyors, tax maps and the public records of the adjoining landowners.[10] He determined the

---

[4] *Affidavit of Donna Reardon , Plaintiff's Exhibit 1* (R.pp. 225)
[5] *Affidavit of Donna Reardon, Plaintiff's Exhibit 1, Exhibit A* (R.p. 228)
[6] *Affidavit of Donna Reardon, Plaintiff's Exhibit 1, Exhibit A* (R.p. 228)
[7] *Affidavit of Donna Reardon, Plaintiff's Exhibit 1* (R.p. 227)
[8] *Trial Transcript* p. 18 lines 3 – p. 19 line 23, (R.p. 79);
Plat prepared by David E. Gasque, RLS, Plaintiff's Exhibit 2 (R.pp 251)
[9] *Trial Transcript* p. 20 lines 7-24 (R.p. 81)
[10] *Trial Transcript* p. 20 lines 7 – p. 29 line 12 (R.p.81)

northern boundary line of Lot 2 from a deed and plat for Lots 3 and 4.[11] He determined the southern boundary line of Lot 2 from the deeds in the chain for Lot 1 (Defendant Chaplin's property) upon recognized and customary principles of surveying.[12]

James D. Smith testified he is the Plaintiff's father and 74 years old.[13] He grew up on Lot 2 having been raised by Samuel Daise, his uncle, and Samuel's wife, Anna Daise.[14] James was born on the Property and left by his mother to be raised by Samuel and Anna when he was eight or nine years old.[15] There were two houses on the Property and they lived in one of them, the other being the Benjamin's old house.[16] Benjamin was Samuel's father.[17] Samuel had three other children, Manny Daise, Marie Daise and Georgie Daise who were much older than him.[18] The only one that married was Marie who had two children.[19] None of these heirs are living.[20] James testified that he does not know of any other children of Benjamin Daise other than Samuel.[21] Growing up he was known as Bobby Daise but had to use his birth name "James Smith" when he joined the army because that was the name on his birth certificate.[22] He uses "D" in his name, James D. Smith; it stands for Daise.[23] He always believed he was adopted by Samuel and Anna.[24] He and Marie paid the taxes on the property after Anna died and took down the house in 1964 but continued to plant on the property for some years.[25] The last crop he planted was corn

[11] *Trial Transcript* p. 20 lines 7 – p. 29 line 12 (R.p. 81)
[12] *Trial Transcript* p. 20 lines 7 – p. 29 line 12 (R.p. 81)
[13] *Trial Transcript* p. 41 lines 12 – p. 42 line 4 (R.p. 102)
[14] *Trial Transcript* p. 41 lines 12 – p. 42 line 4 (R.p. 102)
[15] *Trial Transcript* p. 44 lines 11 – p. 45 line 14 (R.p. 105)
[16] *Trial Transcript* p. 46 lines 15-23 (R.p. 107)
[17] *Trial Transcript* p. 45 lines 25 – p. 46 line 1 (R.p. 106)
[18] *Trial Transcript* p. 47 lines 3-8 (R.p. 108)
[19] *Trial Transcript* p. 47 lines 3-25 (R.p. 108)
[20] *Trial Transcript* p. 47 lines 3 – p. 48 line 18 (R.p. 108)
[21] *Trial Transcript* p. 48 lines 18-22 (R.p. 109)
[22] *Trial Transcript* p. 41 lines 12-23 (R.p. 102)
[23] *Trial Transcript* p. 64 lines 6-9 (R.p. 125)
[24] *Trial Transcript* p. 45 lines 22-25 (R.p. 106)
[25] *Trial Transcript* p. 49 lines 18 – p. 51 line 6 (R.p. 110)

in 2001.[26] James testified that Marie and he went to the courthouse in the 1970's and had the tax records changed to show him as the sole owner of the Property.[27] He has paid all the taxes on the property ever since.[28] He wanted his daughter, the Plaintiff, to have the property so he deeded it to her.[29] James lives about a half mile down the road from the Property and sees it on a regular basis.[30] In 2009 the Chaplin's brother started to clear a part of his Property.[31] James inquired and was told that Mr. Chaplin's brother bought the property[32]. James testified he told Mr. Chaplin that "he couldn't have bought Samuel's land because it belongs to me".[33]

The Plaintiff, Lucille Patricia Smith testified she recalled staying on the Property for a while when she was young.[34] She described some memories about the property and the old house, and her relationship with Marie, who she always called "Aunt Marie".[35] The Plaintiff identified the location of the Property on the tax assessor aerials that were entered into evidence with the Affidavit of Donna Reardon, Plaintiff's Exhibit 1.[36]

At the end of the Plaintiff's case the Defendant Howard Chaplin moved for a directed verdict on the grounds of the Court overruling his objection to a statement made that Mr. Smith was told he was adopted and therefore James Smith did not and could not prove he was adopted.[37] Plaintiff argued Defendant Chaplin lacked standing to object to the issue of adoption.[38] After argument the Court reserved ruling on the motion.[39]

---

[26] *Trial Transcript* p. 60 lines 16-22 (R.p. 121)
[27] *Trial Transcript* p. 49 lines 18 – p. 50 line 13 (R.p. 110)
[28] *Trial Transcript* p. 49 lines 18 – p. 50 line 13 (R.p. 110)
[29] *Trial Transcript* p. 51 lines 14 – p. 52 line 1 (R.p. 112)
[30] *Trial Transcript* p. 52 lines 3-20 (R.p. 113)
[31] *Trial Transcript* p. 53 lines 25 – p. 54 line 9 (R.p. 114)
[32] *Trial Transcript* p. 54 lines 10-25 (R.p. 115)
[33] *Trial Transcript* p. 54 lines 10-25 (R.p. 115)
[34] *Trial Transcript* p. 71 lines 7-14 (R.p. 132)
[35] *Trial Transcript* p. 71 lines 15-24 (R.p. 132); p. 72 lines 14-24 (R.p. 133)
[36] *Trial Transcript* p. 74 lines 15 – p. 75 line 3 (R.p. 135); Affidavit of Donna Reardon, Exhibit L (R.p. 250)
[37] *Trial Transcript* p. 81 lines 5-15 (R.p. 142)
[38] *Trial Transcript* p. 81 lines 16 – p. 82 line 4 (R.p. 142)
[39] *Trial Transcript* p. 82 lines 4 – p. 90 line 2 (R.p. 143)

The Defendant's (Appellant's) case consisted of the testimony of the Defendant Howard Chaplin, Jr., David S. Youmans', RLS, a title abstractor and various documents entered into evidence without objection.

The Defendant Howard Chaplin testified he purchased some property from Mr. Cuthbert after Mr. Cuthbert "laid out" the property to him.[40] Mr. Cuthbert told him it was "eight acres or more".[41] He said his property went from Sander's property up to the ditch.[42] He testified that he started clearing in 1997 and came back in 1998.[43] Beyond that Mr. Chaplin was unclear and inconsistent and vague about any years that he did anything on the property except in 2009 when his son-in-law began to clear it to put a building on it but then changed his mind.[44] The Chaplins never lived on the property, never put up a fence or raised any animals on the property.[45]

David Youmans, RLS, testified he was hired to prepare a survey and determined from the records that there is a Lot 1 and a Lot 2, both consisting of approximately eight acres each.[46] He compared his survey with Mr. Gasque's plats and the unrecorded plats prepared for Mr. Chaplin in 1997 by Mr. Pennington. (Defendant's Exhibits 5, 6 and 9.)[47] Mr. Youmans testified that he positioned the boundary line between Lot 1 and Lot 2 where he did because it gave equal water frontage which is the most valuable part of the property.[48] He conceded on cross examination that that he did not use recognized principles of surveying to make this determination.[49]

---

[40] *Trial Transcript* p. 91 lines 1-14 (R.p. 152)
[41] *Trial Transcript* p. 107 lines 15-22 (R.p. 168)
[42] *Trial Transcript* p. 92 lines 14-23 (R.p. 92)
[43] *Trial Transcript* p. 95 lines 1-17 (R.p. 156)
[44] *Trial Transcript* p. 95 lines 1 – p. 116 line 16 (R.p. 156)
[45] *Trial Transcript* p. 110 lines 19 – p. 111 line 19 (R.p. 171)
[46] *Trial Transcript* p. 123 lines 16 – p. 124 line 6 (R.p. 184)
[47] *Trial Transcript* p. 124 lines 18 – p. 126 line 23; p. 128 lines 15-24 (R.p. 185); *Defendants Exhibits 5,6 and 9* (R.p. 252, 255, 256)
[48] *Trial Transcript* p. 130 lines 21 – p. 131 line 3 (R.p. 192)
[49] *Trial Transcript* p. 131 lines 4 – p. 133 line 15 (R.p. 192)

The Defendant's next witness was Maria Earnestine, title abstractor. Through her the Defendant entered into evidence documents concerning other lots in Ed Capers Plantation, one of them being a deed dated February 12, 1918, Defendant's Exhibit 13.[50] She testified that the two acres conveyed in this deed was a part of Lot 5 Ed Capers Plantation which was also owned by Benjamin Days.[51] The grantors in the conveyance are recited as "the Heirs of the Estate of Ben Deas that is to say Sam Deas, Nancy Johnson, John Deas, Celia Smith and Mary Deas".

David Gasque was recalled to the stand as a rebuttal witness. He testified that he was aware of the Pennington plats prepared for Mr. Chaplin because Mr. Chaplin had approached him to prepare a plat for him based on the Pennington plat, Plaintiff's Exhibit 8, that showed he owned 16 acres.[52] Mr. Gasque informed Mr. Chaplin that, in his opinion, the Pennington survey was incorrect and he did not do the survey for Mr. Chaplin. Mr. Gasque further testified that he believes the work Mr. Pennington did misled Mr. Chaplin.[53]

The Plaintiff's father, James D. Smith, returned to the stand. He testified that he did not know of any other heirs of Benjamin Days other than Samuel or recognize the names in Defendant's Exhibit 13.[54] The Plaintiff also returned to the stand and stated she did not know the names in Defendant's Exhibit 13.[55]

STANDARD OF REVIEW

An action to quiet title to property is an action in equity. *Jones v. Leagan*, 384 S.C. 1, 10, 681, S.E.2d 6, 11 (Ct. App. 2009) "However, the character, as legal or equitable, of an action is determined by the complaint in its main purpose the nature of the issues as raised by the pleadings

[50] *Defendant's Exhibit 13, Deed to Lot 5* (R.p. 261)
[51] *Trial Transcript* p. 143 lines 9 – p. 144 line 7 (R.p. 204)
[52] *Trial Transcript* p. 148 lines 1 – p. 149 line 24 (R.p. 209); *Plaintiff's Exhibit 8, Pennington Plat* (R.p. 252)
[53] *Trial Transcript* p. 149 lines 25 – p. 150 line 1 (R.p. 210)
[54] *Trial Transcript* p. 153 lines 24 – p. 156 line 15 (R.p. 214)
[55] *Trial Transcript* p. 150 lines 22 – p. 151 line 4 (R.p. 211)

or the pleadings and proof, and the character of the relief sought under them." *Id.* The determination of title to real property is legal in nature and an adverse possession claim is an action at law. *Id.* "Thus, an action to quiet title to real property primarily involving the determination of title to real property based on adverse possession should be characterized as an action at law" and the character of the possession is a question for the jury or fact finder. *Id.* Likewise, a boundary dispute is an action at law and the location of a disputed boundary line is a question of fact. *Bodiford v. Spanish Oak Farms, Inc.,* 317 S.C. 539, 544, 455 S.E.2d 194, 197 (Ct. App. 1995) "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed unless found to be without evidence which reasonably supports the judge's findings. *Id.* citing *Townes Assocs. Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976), see also Church, and Jones, supra. In reviewing an action tried at law, it is not the place of this Court to substitute its own view as to the facts. *Jones, supra.*

ARGUMENT

I. THE RESPONDENT DID NOT LACK STANDING TO BRING HER SUIT TO QUIET TITLE NOR WAS SHE REQUIRED TO PROVE THE STRENGTH OF HER TITLE AGAINST THE WEAKNESS OF APPELLANTS' CLAIM OF TITLE BY ADVERSE POSSESSION.

Appellant raises the issue of Respondent's standing to bring suit on page 6 of his Initial Brief. It is an issue not raised at trial but, relying on *Davis v. Federal Election Commission*, 128 S. Ct. 2759, 171 L.Ed.2d 737, 76 USLW 4675, 554 U.S. 724 (2008), he asserts that the issue of standing can be raised at any time. Appellant essentially argues, erroneously, that the Respondent lacked standing because she had the burden to prove she owned the Property before she could challenge Appellants Adverse Possession claim and that she did not prove ownership of the

Property, thus she lacked standing. This argument is akin to saying "you didn't prove your case so you didn't have standing to file suit." Sustaining this argument would undermine our entire judicial system.

"The standing inquiry focuses on whether the party invoking jurisdiction had the requisite stake in the outcome when the suit was filed." *Id.* When this suit was filed Respondent possessed a deed to the Property from her father.[56] This deed raises the presumption that she is the owner of the property. Consequently, when challenged with an adverse possession claim she undoubtedly had a stake in the outcome of the case.

The burden of establishing title is on the party who brings a quiet title action. *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 433 S.E.2d 875 (S.C. App. 1992). However, on pages 6 & 7 of Appellants' Brief, Appellant appears to argue that Respondent must prevail in this case on the strength of her own title, not on the weakness of Appellants' adverse possession claim. This argument is akin to saying "you have to prove your title is so strong that I didn't adversely possess your property" and is misplaced. The burden to prove adverse possession is upon the claimant by clear and convincing evidence. *McDaniel v. Kendrick*, 386 S.C. 437, 442, 688 S.E.2d 852, 855 (Ct. App. 2009), *All Saints Parish v. Protestant Epis. Church*, 358 S.C. 209, 595 S.E.2d 253 (Ct. App. 2004). Appellants are the claimants in the adverse possession claim and failed to carry their burden of proof. The trial Court found factually that Appellants did not establish the necessary elements of adverse possession and the Judge's finding should not be disturbed on appeal. *See King v. Hawkins*, 319 S.E.2d 361 (1984).

[56] *Trial Transcript* (R.p. 228)

II. THE TRIAL COURT PROPERLY DENIED APPELLANTS' MOTION FOR A DIRECTED VERDICT AS THE APPELLANT LACKED STANDING TO CHALLENGE THE ADOPTIVE NATURE OF MR. SMITH'S RELATIONSHIP WITH THE LEGAL OWNER OF THE LAND AND MR. SMITH'S RIGHTS TO INHEREIT UNDER THE LAW.

"'To have standing, one must have a personal stake in the subject matter of the lawsuit, i.e. one must be a real party in interest.' *Glaze v. Grooms*, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996); *Townsend v. Townsend*, 323 S.C. 309, 474 S.E.2d 424 (1996). 'A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action.' *Anchor Point Inc. v. Shoals Sewer Co.*, 308 S.C. 422, 428, 418 S.E.2d 546, 549 (1992)."

Appellants also challenged Respondent's title to her property on the claims of Adverse Possession and Adverse Possession under color of title. Neither in their pleadings nor in Mr. Chaplin's testimony did the Chaplins make any claim to have an interest in the Respondent's property under any other theory. He does not claim to be an heir of anyone named or identified in the Complaint to quiet the title to Lot 2.

> In a claim of title by adverse possession, the identity of the true owner is only of consequence to divest the true owner of title at the time adverse possession is proved. Consequently, the Chaplins have nothing more than a technical interest in the adoption question. The heirs of Benjamin Days are the only parties that would have standing to challenge Mr. Smith's adoptive status because it would affect the percentage of their ownership interests in the property. This does not apply to the Chaplins for if they prove adverse possession Mr. Smith is, regardless of his adoptive status, divested of any interest he may have had in the property, as would the Plaintiff. If Mr. Chaplin cannot prove adverse possession he has no legal interest in title to the property whatsoever. Therefore, Mr. Chaplin does not have standing to challenge Mr. Smith's adoptive status because it is irrelevant to his claim to the property by adverse possession. The Chaplins are not real parties in interest in the Plaintiff's action to quiet title other than as adjoining landowners.[57]

[57] *Order of Judge Dukes*, p. 6 (R.p. 14)

Appellants' reliance on the public policy argument expressed in *Warren* and *Lalli* that paternity must be established by an order of affiliation entered during the putative father's lifetime for an illegitimate child to inherit is misplaced. Illegitimacy is not an issue in this case. Mr. Smith may have been an illegitimate child but, according to the testimony, he was an heir through his mother's lineage, not his father's.[58]

As to the Dead Man's Statute, there is nothing in the lower Court's order finding that Mr. Smith was adopted or that the court relied upon any statements to make a decision about whether or not Mr. Smith was adopted. Therefore, the Court did not commit reversible error in denying Appellant's motion for a directed verdict.

III. THE TRIAL COURT PROPERLY FOUND THAT APPELLANTS HAD NOT PROVED THEY ACQUIRED TITLE TO THE PROPERTY BY ADVERSE POSSESSION OR ADVERSE POSSESSION UNDER COLOR OF TITLE.

Appellants assert that the evidence they presented constituted adverse possession and/or adverse possession under color of title. Respondent disagrees.

In order to constitute adverse possession, the Chaplin's possession must be actual, open, notorious, hostile, continuous and exclusive for the whole statutory period. *Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 1 (1961). The record shows that Appellants acquired title to Lot 1, Ed Capers Plantation, by deed of Jonathan Cuthbert in 1997 and that the conveyance consisted of eight (8) acres of land.[59] Appellant Howard Chaplin was the only witness who testified about the nature of his alleged occupation and possession of Respondent's property. His testimony is uncorroborated. Mr. Chaplin testified that he cleared the property when he bought it and went

[58] *Trial Transcript* p. 106 lines 4-21 (R.p. 45)
[59] *Trial Transcript* (R.p. 253)

back a year later.[60] He says he planted potatoes for a couple of years but quit doing that because someone was digging them up. [61] He never built on the property, he didn't live on the property, he didn't fence the property, he didn't raise animals on the property or otherwise make any improvements to the property.[62] Other than the time Appellant went to the property in 2009 because his son-in-law ran out of fuel for the equipment,[63] the record is devoid of any credible evidence that the activities he spoke of, including the planting of pine trees in 1998,[64] took place on Lot 2 as opposed to his Lot 1. In contrast to Appellant's embellishment of the facts in his Brief, the trial transcript of Mr. Chaplin's testimony shows that Appellant's lack proof of actual, open, notorious, hostile, exclusive and continuous occupation of Respondent's property as is required by law to establish adverse possession.

With respect to Appellants' claim of adverse possession under color of title, "[a]cts of ownership of open land need only be exercised in a way consistent with the use to which the land may be put and which the situation of the property permits without actual residency or occupancy. *Butler v. Lindsey*, 293 S.C. 466, 471, 361 S.E.2d 621, 623 (Ct. App. 1987) *citing Mullis v. Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961). The aerials entered into evidence by Respondent clearly show the property has been open land for the relevant period of time but it is situate in a rural residential area being surrounded by homes.[65] Thus, Appellant's activities on the property of simply planting are not consistent with the use to which the property may be put. "When one claims title by adverse possession and his occupancy is not under claim of title, he must show either fencing or other improvements covering most of the subject land or some other continuous use and exercise of dominion." *King, supra, citing Walker v. Oswald, et*

[60] *Trial Transcript* p. 95 lines 1-17 (R.p. 156)
[61] *Trial Transcript* p. 98 lines 2-6 (R.p. 159)
[62] *Trial Transcript* p. 110 lines 19 – p. 111 line 19 (R.p. 171)
[63] *Trial Transcript* p. 112 lines 1-19 (R.p. 112)
[64] *Trial Transcript* p. 102 lines 13 – p. 103 line 6 (R.p. 102)
[65] *Affidavit of Donna Reardon,* (Plaintiff's Exhibit 1), Exhibits J, K & L (R.p. 248, 249, 250)

al, 156 S.C. 424, 153 S.E. 286 (1930). "It may be stated as a general rule that a claimant's possession must be such as to indicate his exclusive ownership of the property. *Mullis, supra.* There is no evidence that any of these criteria have been met by Appellants and the trial Court properly found that Appellants have not proved that they acquired title to Lot 2 by adverse possession under color of title.

As to Appellants defenses of Stale Demand, Laches and Waiver of Rights, the Appellants have presented no facts in the record nor made no arguments to support that these defenses should be addressed by this Court. The trial court properly disposed of these defenses for failure of Appellant to set forth any facts to prove the necessary elements of Stale Demand, Laches and Waiver of Rights in this case.[66]

1V. THE TRIAL COURT PROPERLY QUIETED AND CONFIRMED TITLE TO THE PROPERTY INTO RESPONDENT ACCORDING TO THE PLAT OF SURVEY PREPARED BY DAVID E. GASQUE, RLS ENTERED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT 2.

The Master did not commit reversible error in his handling of the boundary line between Lot 1 and Lot 2. Appellants' contention that the testimony of David Youmans is the only evidence that should have been considered because at trial "no witness, including two registered land surveyors and two experienced title researchers, could produce a survey of the entirety of Ed Caper Plantation nor of either Lots 1 or Lot 2 before 1998...nor could any of them testify as to the sizes or shapes of either lot..."[67] is completely contrary to the testimony in the record. Respondent reiterates the findings of the Master:

> The resolution of this boundary disputes rests in the testimony of the two surveyors who testified in this case. The Plaintiff's expert witness, David Gasque,

[66] *Order of Judge Dukes* pp. 6, 7, 8 (R.p. 14)
[67] *Appellants' Initial Brief* p. 15

> outlined the method he used in determining the boundaries of Lot 2. The Defendant's expert, David Youmans, outlined his methods for determining the boundaries for Lot 1. Both used the Christensen plat of record for Lots 3 and 4 and the known boundaries for the Sander's farm as reference points. The only dispute is the placement of the boundary between Lot 1 and Lot 2.
>
> Mr. Youmans testified that he placed the boundary line between Lot 1 and Lot 2 where he did on his survey because, in his opinion, it was where it was fair and equitable. Mr. Youmans conceded on cross examination that his decision was not based upon recognized and customary standards in the surveying industry. He also stated he did not consider the tax maps at all in preparing his survey.
>
> Although not normally done, David Gasque chose to rely on the Beaufort County tax assessor's maps to determine the boundary line between Lot 1 and Lot 2. He testified that tax maps show that Ed Capers Plantation had to have been subdivided into lots at some point in time. If there was a subdivision plat, it no longer exists. Mr. Gasque's theory is that the tax maps must have been based on some survey so his rendition of the boundary between Lot 1 and Lot 2 reflects the configuration of the tax maps. The tax maps entered into evidence in the Affidavit of Donna Reardon date back to the 1954 Hunnicutt map and show a lot line consistent with that on the Gasque plat, Plaintiff's Exhibit 2. Mr. Gasque's decision to show the boundary line where it is on his plat was well thought out and was based upon recognized and accepted principles of surveying.[68]

The trial Court properly found and ordered that the Lot 2 be quieted and confirmed in the Respondent according to the survey prepared by David E. Gasque, RLS dated January 23, 2009 and entered into evidence as Plaintiff's Exhibit 2.

CONCLUSION

The Respondent Lucille Patricia Smith brought her cause of action to quiet title to eight (8) acres of real property she acquired from her father in 1999 by a deed duly dated and recorded in the public records. The Appellants, Howard and Harriet Chaplin, adjoining landowners, counterclaimed that they possessed the property by Adverse Possession and Adverse Possession under Color of Title. During Respondent's case Appellants objected to a statement made at trial that Respondent's father was adopted on the grounds of the Dead Man's Statute and moved for a directed verdict. Respondent argued that Appellants lacked standing to object to the testimony or contest the issue of adoption.

[68] *Order of Marvin H. Dukes, III* p. 9 (R.p 17)

The Appellants lack standing to object to the statement or contest the issue of adoption because they only had a nominal or technical interest in the issue as they claimed ownership to the property by adverse possession, not as an heir of the original owner of the property. The trial court properly denied Appellants motion for a directed verdict. The trial court thereafter found from the facts elicited at trial that Appellants lacked sufficient evidence to prove they acquired title to Respondent's land by adverse possession or adverse possession under color of title. This claim of adverse possession is an action at law and on appeal in a case tried without a jury, which this was; the findings of fact by the Judge should not be disturbed because the evidence presented in this case supports his findings.

The judgment of the Trial Court should be affirmed.

EVERSOLE LAW FIRM, P.C.

Alysoun Eversole
1509 King Street
Beaufort, SC 29902
(843) 575-5555
(843) 575-5558 Fax
Attorney for Respondent

Beaufort, South Carolina
9th day of December, 2013

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

The Honorable Marvin H. Dukes, III, Master in Equity and Special Circuit Court Judge

---

Court of Appeals Case No. 2012-213578/
Beaufort Case No. 09-CP-07-2608

Lucille Patricia Smith, Respondent

v.

The Heirs of Law of Benjamin Days a/k/a Ben Deas a/k/a Daise, etc., et al,

Of whom Howard Chaplin and Harriet Chaplin are the Appellants

---

CERTIFICATE OF SERVICE BY MAIL OF RESPONDENT'S FINAL BRIEF

The undersigned attorney for the Respondent hereby certifies that on the 11th day of December, 2013, she served by first class mail, postage prepaid, three (3) true and correct copies of Respondent's Final Brief to Bruce R. Hoffman, Esquire, Law Office of Bruce R. Hoffman, LLC, 574 Sea Island Parkway, St. Helena Island, SC 29920, attorney for Appellant.

Alysoun M. Eversole
EVERSOLE LAW FIRM, P.C.
1509 King Street
Beaufort, SC 29902
(843) 379-3333

Beaufort, SC
11 day of December, 2013