

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

WELDON E. WALL, SR.,)
)
Plaintiff,)
)
vs.)
)
HAROLD H. WALL, SR.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-07-2163

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION
PURSUANT TO RULE 59(e)**

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AUG 30 2019
SC Court of Appeals

This matter came before me pursuant to the June 10, 2019 Motion filed by the Plaintiff for Reconsideration, pursuant to Rule 59(e) SCRCPC ("Motion"), after this Court issued its Final Order Ending Case, dated May 31, 2019 ("Order"). A hearing was held before me on Friday, July 12, 2019 at 10:00 a.m. Appearing on behalf of the Plaintiff was R. Thayer Rivers, Jr., and Darrell Thomas Johnson, Jr. Appearing for the Defendant was Russell P. Patterson. After consideration of the arguments of counsel and the Plaintiff's Brief in Support of Motion to Reconsider, dated July 11, 2019, this Court denies said Motion.

1. Plaintiff's Motion involves only this Court's findings and conclusions that the Plaintiff holds no equitable or legal title claim to the 10-acre Weldon Roseland Homesite. This claim was based on an alleged oral promise to convey the property by Harold Wall or adverse possession. Plaintiff did not raise in its Motion any issue as to the findings and conclusions of the Order as to title or ownership to the remaining 520-acre Roseland tract found to be held by the Defendant.

A. 1972 Oral Agreement

2. I affirm my findings and conclusions Plaintiff's attempt to enforce the alleged 1972 oral agreement should be denied. In his Motion, Plaintiff asserts that the Statute of Frauds is not applicable due to partial performance through the Plaintiff's conveyance in 1973 of a ten (10) acre parcel to the Defendant (Ex. 9). This Court does not agree that the partial performance exception to the Statute of Frauds is met by this conveyance. In addition, as found in my Order, not only do I find the Statute of Frauds bars such a claim, but the claim is also barred by the 10- and 40-year statutes of limitations, waiver, laches, the three (3) equitable principles discussed on pages 19 and 20 of the Order, collateral estoppel and judicial estoppel.

3. I find that the Plaintiff's argument that there has been no prejudice to the Defendant due to the extremely long delay in asserting these claims, thus somehow preventing the application of various defenses asserted by the Defendant (i.e., laches, waiver, unclean hands, etc.) is not persuasive.

As the Court noted in *Robinson v. Estate of Harris*, 388 S.C. 616, 627, 698 S.E.2d 214, 220 (2010) dealing with a delay of thirty-nine (39) years, the delay of some 40+ years in this case significantly hampers the Defendant's ability to refute or challenge said claims. This Court also finds prejudice to the Defendant in that he has paid the real property taxes on the Weldon Roseland Homesite for decades (Ex. 87).

4. Plaintiff also asserts, incorrectly, that the ten (10) acre Weldon Roseland Homesite was not part of the 1986 Roseland quiet title action (Exs. 53 – 59). A review of the legal descriptions in said preceding claim show all of Roseland, including the Weldon Roseland Homesite, were in fact subject to said litigation.

B. Adverse Possession

5. As set forth in my Order, I again confirm I do not find at any time that the Plaintiff met the required elements for adverse possession. I understand that had he done so, under the case law, equitable interest would remain despite vacating the property, subject to the various defense positions raised by the Defendant. In this case however, I do not find that the requisite factors were ever met. This was permissive use and was not adverse or hostile at any time.

I further find and conclude that all use by the Plaintiff to the Weldon Roseland Homesite was either for too short a time to meet the required ten (10) year continuous occupation requirement, or was by permission of the record title holder, the Defendant. The credibility of the witnesses at trial was an important factor in this Court reaching these conclusions in its original Order and in this Order Denying the Motion.

For the reason set forth above, said Motion is denied.

Marvin H. Dukes, III, Master-In-Equity

Beaufort, South Carolina
July _____, 2019