

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Patrick R. Watts, Special Referee

Case No. 2013-000608

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MAR 17 2014

SC Court of Appeals

Irving T. Geddis, Jr., Harry M. Carroll, Barbara C. Stancil, and Joanne C. Wade,
.....Respondents,

v.

Rebecca Geddis, Patricia Ann Geddis, Cleveland Geddis, John Henry Geddis, Herman Geddis, George Geddis, Patrice Geddis, Joenatham Geddis, Yvonne Geddis Bowens, Gwendolyn P. Spell, Harry P. Geddis, Catherine Goodwine a/k/a Catharine Goodwine, Jessie Goodwine, and any individual who may be claiming an interest in this action as an heir of these individuals, and MWV Community Development and Land Management, LLC, and John Doe and Jane Doe, fictitious names designating the unknown heirs, devisees, distributees, issue, executors, administrators, successors or assigns of the Defendants named above, and Richard Roe and Mary Roe, fictitious names designating infants and persons under any disability or incompetent, including those persons who might be in the Military Services within the meaning of The Soldiers' and Sailors' Civil Relief Act of 1941, Title 50, United States Code, and any other person or legal entity who or which has or claims any right, title, interest or lien in or to the real property described, in this Complaint, Defendants,

Of whom Patrice Geddis is the.....Appellant.

FINAL BRIEF OF RESPONDENTS

Dated March 17, 2014

William E. McIntosh (S.C. Bar No. 0015591)
KNIGHT & WHITTINGTON, LLC
Post Office Box 280
Summerville, South Carolina 29484
(843) 821-9700
(843) 285-2042 facsimile
bmcintosh@knightlawfirm.com
ATTORNEYS FOR RESPONDENTS

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN CONCLUDING THAT THE REVISED SAMPLE PLAT CORRECTLY DEPICTS THE SUBJECT PROPERTY AS CONTAINING 53.8 ACRES?
- II. DID THE TRIAL COURT ERR IN ADDITIONALLY CONCLUDING THAT RESPONDENTS' POSSESSION OF THE SUBJECT PROPERTY UNDER COLOR OF TITLE SINCE 1954 SATISFIED THE ELEMENTS OF ADVERSE POSSESSION?
- III. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION TO RECONSIDER?

STATEMENT OF THE CASE

The real property that is subject of this suit is situated in Dorchester County, South Carolina, and is described in the Amended Complaint as follows:

ALL that certain piece, lot or tract of land containing 54.03 acres, more or less, all is more fully shown on a plat entitled "Boundary Survey of 54.03 acres owned by Irving T. Geddis and Irma Carroll, Geddisville area Dorchester County, South Carolina," by Robert J. Sample, P.E. R.L.S., dated September 12, 2006, said plat being recorded in Dorchester County RMC's Office at Plat Cabinet L, Slide 32, on or about October 11, 2006.

BEING the same property conveyed to Irving T. Geddis, Sr., by deed of Adam E. Geddis, Katie Geddis, George E. Geddis, Maggie L. Thompson, Erma Geddis, Albert E. Geddis, Lilla Geddis, Harry Glenn, Thelma Glenn, Joshua Glenn, Joseph Glenn, Robert W. Geddis, Constance Geddis, Angie S. Minfee and Ornisha A Geddis dated August 31, 1954 and recorded in the RMC Office for Dorchester County in Deed Book 109, at page 73.

TMS No.: 174-00-00-007

("the Subject Property"), (R. p. 3, lines 3-19)

On November 14, 2007, Plaintiffs initiated this quiet title action as to the Subject Property by filing a Summons, Complaint and Lis Pendens with the Dorchester County Clerk of Court ("the present suit"). An Amended Summons, Amended Complaint, and Amended Lis Pendens were filed on December 6, 2007.

A previous suit had been commenced in April of 2002 to quiet title to the Subject Property. The court issued its Master's Report and Order in the previous case on January 12, 2004 ("the previous case Order") confirming fee simple title to the Subject Property in Irving T. Geddis, Jr., and his sister Irma Carroll. (R., p. 45, lines 5-20).

At the issuance of the previous case Order in 2004, the most recent recorded plat of the Subject Property was recorded in 1954 as it was being conveyed to Irving T. Geddis, Sr. This previous plat represents the Subject Property as 35 1/3 acres. Although this previous plat was apparently never recorded until 1954, it was prepared in 1888 by F.C. Schulz ("the Schulz Plat of 1888").

Two months after the issuance of the previous case Order, Irma Carroll died. In 2006, Irving T. Geddis, Jr., hired Robert J. Sample, P.E., R.L.S., to survey the Subject Property. The result was a plat showing the Subject Property with a size of 54.03 acres, which was recorded in the Dorchester County RMC's Office in October of 2006 ("the Sample Plat"). (R. p. 50). As a result of the discrepancies between the Schulz Plat of 1888 and the Sample Plat of 2006, Irving T. Geddis, Jr. and the devisees of Irma Carroll filed the present suit to confirm the acreage of the Subject Property. All of the Defendants were so named because they were believed to claim an ownership interest in one of the parcels adjoining the Subject Property. Fee simple title to the Subject Property had already been confirmed in Irving T. Geddis, Jr. and Irma Carroll by the previous case Order.

The record indicates that all named Defendants were served with the Amended Complaint. Defendant MWV Community Development and Land Management, LLC ("MWV CDLM"), and Defendant Patrice Geddis ("the Appellant") filed timely Answers.

The Appellant's *pro se* Answer consisted of a general denial and did not raise any affirmative defenses or counterclaims. The remaining named Defendants did not file responsive pleadings and were subsequently held to be in default.

On August 1, 2011, the court issued an order referring this action to the Special Referee for the determination of all outstanding issues. A hearing was held on November 17, 2011, after proper notice was given to all Defendants. Present at the hearing were counsel for Plaintiffs, counsel for MWV CDLM, the appointed Guardian ad Litem, and the Appellant who appeared *pro se*. Without objection, the Plaintiffs entered sworn transcripts of their testimony. Counsel for Plaintiffs and for MWV CDLM submitted a revised Sample Plat reflecting a mutual boundary line agreement between these parties. As a result of this agreement, the revised Sample Plat reduced the size of the Subject Property from 54.03 acres to 53.8 acres. (R. p. 54)

On January 18, 2012, the trial court issued its Special Referee's Report and Final Order ("the Final Order"). In the Final Order, the trial court found that the Sample Plat as revised by the mutual boundary agreement accurately depicts the boundaries of the Subject Property, and that Plaintiffs' tract consists of 53.8 acres.

Appellant then retained counsel who, on February 21, 2012, filed a Motion to Reconsider, Alter, and Amend Decree, and for a New Trial ("Motion to Reconsider"). Attached to the Motion to Reconsider was a "forensic survey" produced by Ashley Land Surveying, Inc., which overlaid a 35 1/3 acre parcel over the Subject Property ("the Forensic Survey"). (R. p.58)

On August 14, 2012, a hearing was held on Appellant's Motion to Reconsider. Appellant did not procure a court reporter to produce a transcript of the hearing on her

motion. Initially, the trial court orally ruled that the Forensic Survey was sufficient to order a new trial notwithstanding consideration of Dorchester County GIS Online Property Reports in rebuttal of the Forensic Survey. In its Order Denying Motion dated February 13, 2013 and filed February 14, 2013, however, the trial court ruled that after “[f]urther, lengthy deliberation,” Appellant’s Motion to Reconsider “should be denied entirely.” (R., p.64, lines 14-16).

On March 15, 2013, Appellant, through counsel, filed her Notice of Appeal.

ARGUMENTS

I. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT THE REVISED SAMPLE PLAT CORRECTLY DEPICTS THE SUBJECT PROPERTY AS CONTAINING 53.8 ACRES.

Normally, an action to quiet title to property is an action in equity. Clark v. Hargrave, 323 S.C. 84, 473 S.E.2d 474 (Ct.App.1996). However, the character, as legal or equitable, of an action is determined by the Complaint in its main purpose, the nature of the issues raised by the pleadings or the pleadings and proof, and the character of the relief sought under them. Here, the Respondents claim title to 53.8 acres based upon the information provided to them by the Sample Plat. The determination of title to real property is legal in nature. Id. at 87, 473 S.E.2d at 476. Therefore, appellate review as to this claim is limited to a determination of whether any evidence reasonably tends to support the trier of fact’s findings.

In the Final Order, the Special Referee - sitting as the trier of fact – found that Respondents had met their burden that the 1954 deed conveying title to Irving T. Geddis, Sr., had conveyed fee simple title to 53.8 acres. In reaching this determination, the trier of fact relied on the findings of a 2006 survey prepared by a professional engineer and

registered land surveyor, which had been approved and recorded in the public records of Dorchester County – the Sample Plat. Additionally, the Special Referee accepted and incorporated into the Final Order a revised Sample Plat reflecting a boundary line agreement between Respondents and MWV CDLM that changed slightly their mutual boundary but that in no manner affected the mutual boundary with Appellant. The Sample Plat as revised constitutes competent evidence that reasonably tends to support the trier of fact's findings and, as such, should remain undisturbed.

The Special Referee acknowledges the existence of the Schulz Plat of 1888 in Paragraph 9 of the Final Order when he finds that “[t]he discrepancy between 35 1/3 acres and 54 acres may be attributable to no survey of the subject Property contemporaneous with the conveyances in the first half of the twentieth century, and none until 2006.” (R., p. 34, lines 22-24). Appellant would seize upon the trier of fact's use of the term *may* as opposed to the clear meaning of this finding - that surveying technology and techniques have improved dramatically in the more than one hundred years between the Schulz Plat of 1888 and the Sample Plat.

II. THE TRIAL COURT DID NOT ERR IN ADDITIONALLY CONCLUDING THAT RESPONDENTS' POSSESSION OF THE SUBJECT PROPERTY UNDER COLOR OF TITLE SINCE 1954 SATISFIED THE ELEMENTS OF ADVERSE POSSESSION.

As an additional ground for confirming fee simple title of the 53.8 acres in Respondents, the trial court also concluded that their possession of the Subject Property under color of title since the 1954 deed into Irving T. Geddis, Sr., satisfies the elements of adverse possession.

To constitute adverse possession, the possession must be actual, open, notorious, hostile, continuous, and exclusive for the entire statutory period. Mullis v. Winchester,

237 S.C. 487, 118 S.E.2d 61 (1961). The party asserting adverse possession must establish the claim by clear and convincing evidence. Davis v. Monteith, 289 S.C. 176, 345 S.E.2d 274 (1986). Because an adverse possession is an action at law, the character of the possession is a question for the fact finder. Miller v. Leaird, 307 S.C. 56, 413 S.E.2d 841 (1992). Therefore, appellate review is limited to a determination of whether any evidence reasonably tends to support the trier of fact's findings.

Respondents are the heirs of Irving T. Geddis, Sr., who obtained title to the Subject Property in 1954. Respondent Irving T. Geddis, Jr., obtained title to the Subject Property by Deed of Distribution from his father's estate. The remaining Respondents obtained title to the Subject Property by Deed of Distribution from their mother Irma Carroll's estate in 2004. Irma Carroll also obtained title to the Subject Property by Deed of Distribution from her father Irving T. Geddis, Sr.'s estate. In order to claim adverse possession using Irving T. Geddis, Sr.'s possession of the Subject Property beginning in 1954, they do so through color of his title.

In the previous case Order filed January 12, 2004, the court held that "Irving T. Geddis, Sr., and his heirs and parties in interest ...occupied and used the Subject Property as their own under color of title for a period spanning over twenty consecutive years and more specifically, they used the land for harvesting timber." (R., p. 44, lines 13-17). In addition to the court's previously adjudicated finding in the previous case Order, the trier of fact in the present case relied upon testimony from all Respondents of possession and use of the Subject Property through the present that satisfies all of the elements of adverse possession.

The findings of fact and conclusions of law in the previous case Order holding that adverse possession under color of title from 1954 until 2004 and the transcripts of Respondents' testimony received without objection at the trial of the present case constitute competent evidence that reasonably tends to support the trier of fact's findings as to adverse possession and, as such, should remain undisturbed.

III. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION TO RECONSIDER.

The Final Order provided Appellant with thirty days in which to file any motion for reconsideration with the thirty day period beginning on the day she was served pursuant to Rule 5(b)(1), SCRCP, with a filed copy of the Final Order. On February 21, 2012, she timely filed her Motion to Reconsider with an attached document entitled "Forensic Survey Detailing Area Claimed by the Owners of TMS 174-00-00-007 & 008."

The purpose of Rule 59(e), SCRCP - to alter or amend - is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." Pye v. Estate of Fox, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006) (quoting Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes the court to reconsider or rule on it." Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Upon reviewing the Motion to Reconsider with the attached Forensic Survey along with the Dorchester County GIS Property Reports for the two parcels, the Special Referee initially ruled orally that he would order a new trial. Upon further, lengthy

deliberation, the Special Referee reversed himself and entered his written Order Denying Motion.

On its face, the Forensic Survey is just what it purports to be – an attempt to match up historical surveys of the area in question. As the Special Referee concludes from the face of the Forensic Survey, it is “based upon comparisons of other plats with little field work.” At its core, the Forensic Survey is an attempt to overlay the Schulz Plat of 1888 upon the Sample Plat. (R., p. 63, lines 5-8). The trial court had already found the Sample Plat to be superior to the 19th Century technology and techniques of the Schulz Plat in its Final Order, and found nothing in the Forensic Survey to reconsider its ruling. To the contrary, the trial court found that the Forensic Survey showed substantial projections of the 35 acres as depicted in the Schulz Plat of 1888 across Respondents’ common boundary lines with MWV CDLM. (R., p. 63, lines 7-9) . Further, when comparing the Appellant’s parcel as depicted in Dorchester County GIS Property Report, the trial court concluded that the Forensic Survey “fails to account for a huge segment of their property to the north.” The Forensic Survey’s depiction of the shape and size of the Appellant’s property “does not comport at all with the GIS Property Report’s depiction.” As a result, the trial court discounted the Forensic Survey in its entirety. (R.p. 64, lines 1-15).

The trial court also concludes that in ruling in Respondents’ favor, the Appellant “loses nothing.” The Dorchester County GIS Property Report shows Appellant’s property was still 76 acres, right alongside Respondents’ 54 acres. According to the public records of Dorchester County, there is no overlap. (R., p. 63, lines 26-29). Ironically, the Forensic Survey includes on its face a “Proposed Settlement Line” which -

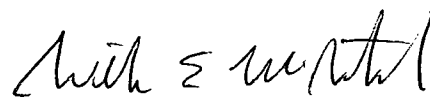
had it been adopted by the trial court - would have significantly reduced Appellant's acreage to 66.638 acres. (R., p. 58). Not only was the trial court's denial of the Motion to Reconsider not in error, doing so apparently may have preserved ten acres of Appellant's land.

CONCLUSION

In light of the foregoing, competent evidence in the record exists which reasonably tends to support the factual findings of the trial court sitting as trier as fact. As such, this appeal must be denied.

Respectfully submitted,

March 17, 2014



William E. McIntosh (S.C. Bar No. 15591)
KNIGHT & WHITTINGTON, LLC
Post Office Box 280
Summerville, South Carolina 29484
(843) 821-9700
(843) 285-2042 facsimile
bmcintosh@knightlawfirm.com

ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA

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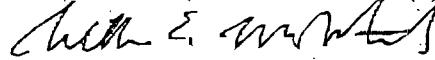
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Of whom Patrice Geddis is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

March 17, 2014



William E. McIntosh (S.C. Bar No. 0015591)
KNIGHT & WHITTINGTON, LLC
Post Office Box 280
Summerville, South Carolina 29484
(843) 821-9700
(843) 285-2042 facsimile
bmcintosh@knightlawfirm.com
ATTORNEYS FOR RESPONDENTS