

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

Case Number 2018-CP07-2163

WELDON E. WALL, SR.....Appellant.

v.

HAROLD H. WALL, SR.....Respondent.

AMENDED INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. THE EVIDENCE ESTABLISHES THAT WELDON WALL OWNED, AND ACQUIRED BY ADVERSE POSSESSION, THE TEN-ACRE PARCEL ON WHICH SAT "WELDON'S OLD HOUSE" BY A CLEAR AND CONVINCING STANDARD.**

STATEMENT OF THE CASE

This action involves a dispute between two brothers over ownership of land acquired by them many years ago. Plaintiff/Appellant, Weldon E. Wall, Jr. (Appellant), filed his Summons, Complaint and Lis Pendens on May 12, 2017. Appellant alleged causes of action for adverse possession, partition and accounting. (ROA Document 1) Defendant/Appellee, Harold H. Wall, Sr. (Appellee), filed his original Answer on July 27, 2017. In addition to a general denial, Appellee raised the defenses of Statute of Frauds, Statute of Limitations, Waiver/Estoppel/Laches and Permissive Use. (ROA Exhibit 1, 2, 3, 5) Appellee filed an Amended Answer and Counterclaim on August 23, 2017. In addition to the earlier defenses, Appellee sought to collect on an old \$66,000 alleged debt. (ROA Document 3) Appellant filed a Reply to the Counterclaim on September 6, 2017. (ROA Document 4) Appellee again amended his answer and counterclaim to ask for more money on the alleged note and to ask for specific performance on a handwritten land contract. The Second Amended Answer and Counterclaim was filed on August 27, 2018, and it included the alleged handwritten agreement as an exhibit. (ROA Document 5) Appellant filed a Reply to the same on August 28, 2018 along with an Exhibit. (ROA Document 6) The case was next referred to the Honorable Marvin H. Dukes, III, by Order of Reference. The case was heavily litigated with several failed attempts at mediation and settlement, but the case finally came before Judge Dukes for a two-day trial on April 30, 2019. Judge Dukes issued his Final Order Ending Case on May 31, 2019. (ROA Document 7) Appellant next filed his Rule 59 Motion on June 11, 2019. (ROA Document 8) The Court held a hearing on July 11, 2019, and issued an Order denying the motion on August 7, 2019. (ROA Document 9) Appellant filed his Notice of Appeal on August 30, 2019.

STATEMENT OF FACTS

This action is a land dispute between two brothers over land in Jasper County that they acquired many decades ago and have owned and occupied ever since. The Wall brothers, Weldon and Harold, acquired from Edward Huguenin some 700 acres known as Roseland Plantation. (ROA

Exhibit 5, 7, 9) In the year 1973, the Wall brothers had surveyed off two, 10-acre parcels located on a salt water river. (ROA Exhibit 9, 10 and 81) Weldon thereafter built a 2000 square foot home out of his pocket, with labor from his family and help from friends. Harold had to borrow funds to build his house, so Weldon thereafter deeded to Harold is ½ undivided interest in the 10 acre parcel which Harold mortgaged from which he built his house. Weldon and his family lived there until 1977 at which time he and his wife divorced and he moved to Hilton Head Island. She and the children thereafter resided there until 1980. Thereafter, Weldon rented the house to attorney Danny Henderson and the rent went to his ex-wife Sharon as spousal support. After several years, Mr. Henderson moved and for the next 15 years the home was rented to his former father-in-law, Judge Luke Brown, Jr. and his wife Hazel. All during that period, rent was paid to Sharon Wall as spousal support. After Judge Brown and his wife left the premises, it was then occupied by Weldon E. Wall, Jr., known as “Dondi Wall” who testified without contradiction, that for the 9 years he was there he paid his mother rent every month at the behest of his father. Thus for a period in excess of 20 years, Weldon Wall and his tenants had exclusive occupation and use of the ten-acre parcel, including the waterfront land.

Numerous discussions took place off and on over a period of years about Harold giving Weldon a deed to the premises but none was ever received. Only before the suit was filed (in 2015) did Harold make it clear to Weldon that he was not going to give him a deed to the house property and was keeping it. This litigation thereafter ensued.

ARGUMENT AND CITATION OF AUTHORITY

a. STANDARD OF REVIEW

To constitute adverse possession, possession must be continuous, hostile, open, actual, notorious, and exclusive for the entire ten year statutory period. Davis v. Monteith, 345 SE2d 724; 289 SC 176.

Requirements necessary to establish right by prescription are continued and uninterrupted use of enjoyment of right for a period of twenty years, identity being enjoyed and use adverse under claim of right. *Darlington County v. Perkins*, 239 SE2d 69, 269 SC 572.

Party claiming legal title to property by operation of doctrine of adverse possession has the burden of proving adverse possession by clear and convincing evidence. *Davis v. Monteith*, 345 SE2d 724; 289 SC 176.

A later suit by Huguenin against the Walls of the \$233,000.00 total sales price, the jury determined that \$100,000.00 was still owed. As Harold Wall (ROA 131) by his own testimony, admitted putting in less than \$5,000.00 and a used pick-up truck (ROA 132) the rest of the funds came from Weldon. In the year 1974, the Plaintiff Weldon Wall (along with a whole lot of other folks) suffered bad financial setbacks. In 1977, he (ROA Exhibit 12, JW Depo Page 22) deeded his ½ interest in the property to his older brother J. W. Wall who in turn got the payments caught up and the property out of foreclosure. Thereafter by a series of transactions, J. W. Wall transferred the property to Harold who would borrow large sums of money to finance his farming operation and then deed the property back to J. W. This went on for many years leaving the property severely mortgaged. (ROA Exhibit 31 - 35).

From 1974 until approximately 2009, the Plaintiff Weldon Wall or his tenants or family, exclusively occupied the premises and used it for residential purposes. (ROA 1st Hearing Pages 199 - 206). Additionally, Dondi Wall stored numerous pieces of his equipment from his bicycle rental business until the time of trial. (ROA Page 206). The well, which supplies water to all the Wall families, was located on the ten acres and the electric bills has been paid exclusively by Weldon Wall or the tenants or family. This was admitted by Harold Wall (ROA 2nd Hearing Page 76). The oldest brother, J. W. Wall, by deposition, testified without contradiction nor impeachment, that the hunting lease has always paid all the taxes on all the Wall properties. (ROA JW Depo, Page 24 and 25). The Huguenin property, including the two 10 acre parcels was not leased for hunting until 1989. (ROA 176)

The Court has held that the division of the Huguenin property whereby Harold and

Weldon each surveyed off a ten-acre parcel for their home sites is barred by the Statute of Frauds. In this case, Weldon, by giving a deed to Harold not only partly performed his part of the contract, he actually fully performed his part of the contract. Sufficient part performance of an oral contract for the conveyance of land will remove the contract from the Statute of Frauds, Settlemyer v. McCluney, 596 SE2d 514 (S.E. App 2004). During this same time period, Harold paid attorney Luke Brown to prepare a deed for the other 10 acre parcel to Sharon Wall, Weldon's wife.

The Plaintiff would further object to the Court's holding as to the Statute of Limitations as it has been established by Weldon having given Harold a deed to his ten acres because of Harold's need to finance the property. The testimony was that Weldon used outside means and help from friends to build his home and therefore did not need a deed nor did he have to have a mortgage to build the home. The Statute is further inapplicable in that the evidence overwhelmingly establishes that the title and ownership of "Weldon's old home house site" was never in real dispute until this litigation and suit. It had always been under the ownership and control of Weldon Wall and his nominees.

The Court's ruling on Laches flies in the face of the facts of the case. There is no harm that has been done to Harold Wall by Weldon maintaining an action for his own home. It is uncontroverted that Harold never put five cents into the erection of the home, never controlled the use and occupancy of the home and suffers no prejudice by Weldon being allowed to keep the home he built 40 years ago. It is clear from the testimony that there was always a distinction between the Huguenin property and Weldon's and Harold's home sites. (ROA 51) All of the Court's findings to buttress Weldon having rested on his laurels deal with the Huguenin property itself and not with the home site.

The Court further raised the issue of unclean hands. Without even making a pretense of showing any detriment to Harold by Weldon retaining his home, the Court has raised unclean hands, sleeping on their rights, and doing equity. The only sin that the evidence shows Weldon Wall guilty of is trusting his brother. (ROA 140) The evidence overwhelmingly shows this was a very close family. They attended church together, had large family gatherings together and had never had a cross word amongst them. As to the Court's finding as to collateral estoppel, again, the Plaintiff is not quarrelling with the Court's ruling on Roseland or the Huguenin property. It is only as to the ten-acre home site which had always been treated by the parties as different from the Huguenin property. As an example, while Harold cut timber off the Huguenin property numerous times over the years, there was no testimony that he ever cut any timber off the ten-acre home site. The estoppel claims in the Order are further negated by the fact that the ten-acre home site never was treated as part of Roseland Plantation or the Huguenin property whether for the quiet title action, the proposed sale of a property to a developer, nor in any other aspect of his testimony does it show that the ten-acre parcel was considered to be part of Roseland that Harold could sell, or do with as he pleased.

While many issues were raised between the parties on this matter, the only issue in front of this court is the ownership of the 10 acre parcel on which lies "Weldon's old house". On Page 13, Paragraph 8, the learned trial judge found that the 1994 Chapter 7 no assets bankruptcy which did not list the home as an asset is a compelling finding against the Appellant Weldon Wall. In it he raises 4 subsections which were not really discussed: A. The Doctrine of Unclean Hands. The court has gone to great lengths to rule that Weldon NEVER OWNED (emphasis added) any interest in the 10 acres of land. It is also uncontradicted that the premises were mortgaged to the hilt. In a bit of circular reasoning, the Judge has now buttressed his ruling that Weldon never owned any interest in the land by saying "and he didn't claim any either". While

not practicing much bankruptcy, this writer would submit that any trustee looking at the ownership of the title having been in Harold Wall's name for over 20 years prior to filing, and being mortgaged to the hilt, would not have considered it as an asset at all. He further raised the principal of "he who seeks equity must do equity". Again, this is premised on the failure to list an asset which the court has ruled he never owned. He has further raised the issue of judicial estoppel and collateral estoppel. It is clear that neither of these apply to the facts of this case. In Paragraph 9 the Judge further held that Weldon had never proven adverse possession and that Harold in fact owned the 10 acres on which sits "Weldon's old house". In contradiction to Paragraph 32 of the Order, the unchallenged and uncontradicted testimony by J. W. Wall, the oldest Wall brother, was that the hunting leases always paid all the taxes on all the Wall's holdings. There is no differentiation between taxes on the Huguenin property and hunting leases on the Huguenin property paying for Huguenin taxes. This finding is also contradicted from testimony that there is a difference, at least in the mind of Weldon Wall, between the 10 acre home site and the rest of the Roseland property. (ROA 51, 100, 101) There is no claim to any other property now in this case. The opinion waivers between Weldon's claim to Roseland (which is not involved here) and Weldon's claim to his homesite. Under Paragraph 8, 36C, he found that the Statute of Frauds barred the claim. Its axiomatic that part performance removes the case out from under the Statute of Frauds. Not only did Weldon deed to Harold the 10 acre home site Harold was going to use for his homesite (Harold had to get a mortgage and borrow the money to build his home – Weldon built his out of his pocket and therefor needed no deed). In Exhibit 88 Harold actually paid the late Judge Luke Brown (Weldon's father-in-law) to prepare the deed whereby he and Weldon were going to deed the 10 acre Weldon home spot to Sharon Wall (the then wife of Weldon). Weldon's 10 acre parcel was surveyed off (Exhibit 81) and the corners are still there today. (ROA Exhibit 81). Weldon and his family occupied the

house from its construction in the early 1970s for about 5 years. He and his wife got divorced and he moved to Hilton Head. After some time they moved to Ridgeland. The house was thereafter rented by Danny Henderson (ROA 1st Hearing Page 200). Thereafter, for some 15 years, by the late Judge Luke Brown and his wife Hazel. (ROA 1st Hearing Pages 200 – 201). Thereafter for some 9 years the home was occupied by Weldon's son, Dondie Wall (ROA 1st Hearing Pages 201- 202). It is uncontradicted by the Respondent that each and every one of those persons paid rent to Sharon Wall as part of her spousal support. This went on for a period of some 25 years. Harold maintained that everybody asked him for permission to stay in the house, it is kind of hard to imagine that when he admitted that Danny Henderson sued him for access across Harold Wall's yard to get to the property that Henderson owned.

It is also shown that all the Walls drew their water from a well located solely on the 10 acres claimed by Weldon, the electricity bill for which was always paid by him or his tenants. (ROA 1st Hearing Pages 204, 244 and 245) It was further ruled under Section D that the claim is barred by the Statute of Limitations.

Appellant's claim was timely brought within the statute of limitations, because the Complaint was filed within two years after Appellee claimed full title to the real property subject to this case.

The Trial Court erred in finding Appellant's claims were barred by the statute of limitations. It is axiomatic that a statute of limitations does not begin to run until the injury giving rise to the cause of action is either discovered or should have been discovered by the exercise of due diligence. *See eg. Cline vs. J. E. Faulkner Homes, Inc.*, 359 S.C. 367, 597 S.E.2d 27 (S.C. App. 2004); *Dixon v Dixon* 362 SC 388, 608 SE 2d 849 (2005). The parties had deeded the subject property back and forth within the family, and Appellant had no reason to doubt that Appellee would refuse to do so, until Appellee unequivocally refused to do so between

Thanksgiving and Christmas two years before the filing of this suit. (ROA 211, 212) Cline vs. J. E. Faulkner Homes, Inc., 359 S.C. 367, 597 S.E.2d 27 (S.C. App. 2004), Dixon v Dixon, 362 SC 388, 608 SE 2d 849 (2005)

It was further ruled under Section E that both Laches and Waiver are involved in this. The Respondent can show no detriment to Weldon controlling the property to the exclusion of everybody including Harold, and any delay in bringing the suit was certainly not unreasonable under the circumstances. It was only right before suit was brought that Harold Wall made it clear he was going to keep Weldon's house (even though the testimony is overwhelming that Harold didn't put five cents into) and thereafter suit was promptly brought. Detriment: the Respondent Harold Wall is hard to show that because this appeal only involves Weldon's house which even Harold called "Weldon's old house".

Harold has sold \$700,000.00 worth of timber off the main Roseland tract, sold two parcels to the Huguenin children for some \$823,000.00 and put the whole thing in his pocket. The Laches and Waiver holding and the reason they are applicable is primarily to the overall Roseland property to itself and not the 10 acres.

He further found the Doctrine of Unclean Hands. It was Weldon Wall's testimony, "the only thing I did wrong was trust my brother". (ROA 82 - 83) There is nothing unclean about his making this into an action to recover a house which he and his family built with their own hands. (ROA 1st Hearing, Pages 215 - 216). He has controlled the tenancy and rents were derived for a period in excess of 25 years.

He further finds that equity aids the vigilant, not those that sleep on their rights. Again, the testimony shows this was an extremely close family who all went to church together, had a large family camp ground on the adjoining property and had all been raised right there. The

testimony was that Weldon always expected his brother to give him a deed and that Harold only made it clear right before the litigation ensued, that he was not going to give such a deed.

The Judge further found “he who seeks equity must do equity”. The Judge’s holding brings back up the bankruptcy (which involves the title to land that he has found Weldon never had) and again the Judge is harping on Weldon’s claim to an interest in Roseland as opposed to the 10 acre house spot. Under subsection G, he finds Collateral Estoppel is applicable here. The collateral estoppel rose in the 1986 litigation with the Huguenin family though Weldon Wall was not a party to the action. He testified that Harold Wall owned the property. He specifically denied that he had ever deeded the property to Harold Wall. It is clear that he was always differentiating between the Roseland property and the 10 acre house spot. He has again put in that collateral estoppel is applicable because of the no asset bankruptcy. Again, he has specifically found that Weldon NEVER (emphasis added) had any claim to the 10 acre parcel. So again, in circular reasoning he is buttressing the finding that he should have listed it and since he didn’t I’m going to hold it against him.

Under Paragraph H he has also raised Judicial Estoppel. It is pretty obvious that the positions between the 1994 bankruptcy and the 2014 suit to show title by adverse possession are not in the same or related proceedings and do not involve the same parties as in Harold Wall was not involved in the bankruptcy. Again, the court having determined that Weldon Wall never had any interest in the 10 acre parcel, has again held it to be detrimental for him to not list that as an asset.

The court has further dealt specifically on the 10 acre home site by ruling against Weldon on the following grounds:

1. Suit barred by the applicable Statute of Limitations.
2. The entire premises, including the 10 acre piece was always Harold’s.

It is ruled that there is no adverse possession based on the following:

1. Lack of continuous occupation for the statutory period of time. It has been clearly established that for over 25 years Weldon Wall controlled the property with tenants and the rental proceeds from the tenants. This was more than what is required by the statute. Again, the finding that Harold Wall would let various parties (including an attorney that sued him) occupy the waterfront home for no rent (not even pay the taxes) is frankly ludicrous.

2. It has been established by all the testimony that for over 25 years various tenants of Weldon Wall rented the property and paid the rent at Weldon's direction. Harold lived right next door. What could be more hostile than renting "Harold's" house to other people and keeping the money?

In contradiction to the Judge's findings of Dondi Wall and his wife, Teresa's occupation of the home does not count as part of the period of the 10 year statute involved, the uncontradicted testimony is that they paid rent to Dondi's mother, Sharon, every month and they were talking to Harold Wall about a deed because they needed to get a mortgage to put improvements on the house.

3. Open and notorious. The two houses adjoin each other. They get water off of a common well (the bill has always been paid by Weldon or his tenants). To say that Harold Wall has not known that his brother was renting out the house to other people and keeping the money is just difficult to believe. This is especially so if he is getting his own water off that well courtesy of a light bill he does not pay.

4. Adverse possession claim: The court again, after finding there is almost no evidence of any claim by Weldon Wall to the 10 acre parcel, he is going to hold it against him because his non-existent claim was not listed in his bankruptcy.

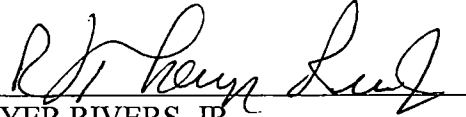
The Appellant would resubmit and incorporate by reference, all of the arguments as to Laches, Waiver, Unclean Hands, Equity, Due Diligence, Collateral Estoppel, Judicial Estoppel as outlined above apply equally and actually more so to the 10 acre home site.

CONCLUSION

For the reasons set forth above, the Appellant submits that it is shown by clear evidence that the title to the 10 acre home site is in Weldon Wall.

Respectfully submitted,

Law Office of R. Thayer Rivers, Jr.

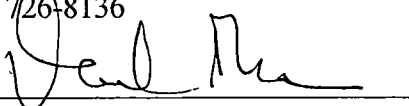


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March 6, 2020.

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v.

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PROOF OF SERVICE

I certify that I have served the Amended Initial Brief on the Respondent Harold H. Wall, Sr., by depositing a copy of same in the United States Mail, postage prepaid, on January 21, 2020, addressed to his attorneys of record, Russell P. Patterson, Esquire, 107 Watersedge, Hilton Head Island, SC, 29928, and James B. Richardson, Jr., 1229 Lincoln Street, Columbia, South Carolina, 29201.

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APPELLATE CASE NUMBER: 2019-001448**

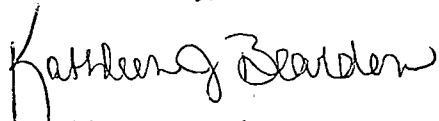
Dear Ms. Allen:

In response, and by way of return to the Respondent's Motion to Require References to Record, enclosed please find the original and one copy of our Amended Initial Brief which includes the references requested by the Respondent's attorney, James B. Richardson, Jr. Mr. Richardson has reviewed the included references and it is our understanding that he is satisfied with same.

By copy of this letter, I am serving Russell P. Patterson and James B. Richardson, Jr., attorneys for the Respondent, a copy of the aforementioned Amended Initial Brief.

Thank you and kindest regards.

Most sincerely,



Kathleen J. Bearden
Paralegal to R. Thayer Rivers, Jr.

:kjb
Enclosures

cc: Russell P. Patterson, Esquire (w/encl.)
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Darrell Thomas Johnson, Jr., Esquire (w/encl.)



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