

Jul 23 2020

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 MARY L. AGNES SHELTON,)
)
 Plaintiff,)
)
 -vs-)
)
 JACK SHELTON AND)
 SHARON SHELTON,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CIVIL CASE NO.: 2019CP4005875

**ORDER GRANTING
PLAINTIFF’S MOTION FOR
SUMMARY JUDGEMENT**

DATE OF HEARING: June 23, 2020 at 9:30 a.m.
 PRESIDING JUDGE: The Honorable L. Casey Manning
 PLAINTIFF'S ATTORNEY: Joseph A. Catalano, Esquire
 DEFENDANTS’S ATTORNEY: Herbert E. Buhl, III, Esquire
 COURT REPORTER: Bethanie K. Creppon

THIS MATTER came before the South Carolina Court of Common Pleas for the Fifth Circuit pursuant to Plaintiff’s Motion for Summary Judgment, filed on or about April 27, 2020. The matter was heard via videoconference in accordance with South Carolina Supreme Court Order No.: 2020-000447. Present at the hearing were Plaintiff Mary Shelton with counsel Joseph Catalano. Counsel for Defendants Herbert E. Buhl, III was present on behalf of Defendants. All parties have been properly notified of today’s hearing.

The Court’s file reflects that Plaintiff initiated this action in the Richland County, State of South Carolina Magistrate’s Court with the filing of an Application for Ejectment on or about April 23, 2020. Defendants filed responsive pleadings on or about May 2, 2019, alleging a counterclaim for adverse possession, for breach of the landlord tenant act, and for compensation related to alleged home repairs. The case was transferred to the Circuit Court on or about January 3, 2020 pursuant to Defendants’ Motion to Transfer, heard on or about September 6, 2019.

Prior to today's hearing, Counsel for Plaintiff submitted a Memorandum in Support of Motion, Affidavit of Plaintiff Mary Shelton with supporting exhibits, and an Affidavit of Carl Shelton, Jr. Counsel for Defendant submitted a Memorandum in Opposition of Motion, an Affidavit of Defendant Jack Shelton with exhibits, and an Affidavit of Defendant Sharon Shelton with exhibits. All documents were timely filed and served in accordance with the South Carolina Rules of Civil Procedure.

The Court heard arguments from counsel and carefully reviewed the documents presented. After careful consideration, the Court finds that Plaintiff is entitled to judgment as a matter of law regarding the issue of ejectment and the issue of adverse possession.

LEGAL STANDARD

As a matter of law, a movant is entitled to summary judgment if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. Rule 56(c), SCRPC. On summary judgment, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Knight v. Austin* (S.C. 2012) 396 S.C. 518, 722 S.E.2d 802; *Sauner v. Pub. Serv. Auth. Of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). However, the existence of a mere scintilla of evidence in support of the non-movants' position is not sufficient to overcome a motion for summary judgment. *Bravis v. Dunbar*, 316 S.C. 263, 449 S.E.2d 495, 496 (Ct.App. 1994).

The purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact finder. *Singleton v. Sherer* (S.C. App. 2008) 377 S.C. 185, 659 S.E.2d 196. Rule 56 of the SCRPC requires that for a trial judge to grant summary judgment, it must be shown that further inquiry into the facts is not needed to clarify the application of the

law. *Charleston Lumber Co., Inc. v. Miller Housing Corp.* (S.C. App. 1995) 318 S.C. 471, 458 S.E.2d 431.

FACTUAL/PROCEDURAL BACKGROUND

Plaintiff Mary Shelton is the owner of record at 340 Lee Road, Columbia, South Carolina (referred to herein as “the property”). Defendant Jack Sharon is Plaintiff’s son, and is married to Defendant Sharon Shelton. The property sits on a 2.1 acre tract (referred to herein as “the Shelton tract”) of family land. Plaintiff and Plaintiff’s now deceased husband purchased the property over fifty (50) years ago. Plaintiff and Plaintiff’s eldest son Carl Shelton Jr. currently reside on adjacent to the property occupied by Defendants on the Shelton tract.. No lease was ever executed in regards to the property. Plaintiff and Defendants’ relationship soured in 2018.

Plaintiff notified Defendants in writing to vacate the property on or about February 25, 2019. When Defendants refused to vacate the property, Plaintiff applied to eject Defendants on or about April 24, 2019. Defendants counterclaimed for adverse possession and for repayment of alleged improvements to the property. The case was transferred from Magistrates Court to the Court of Common Pleas to allow the circuit court to address Defendants’ counterclaims.

LAW/ANALYSIS

A. EJECTMENT

A tenant may be ejected upon application of the landlord or her agent when the term of tenancy or occupancy has ended. S.C. Code Ann § 27-37-10(A)(2). All tenancies of real estate other than agricultural lands shall be deemed from month-to-month unless there be an agreement otherwise. S.C. Code Ann. § 27-35-30. A landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty days before the termination date specified in the notice. S.C. Code Ann § 27-40-770.

In the case at bar, Defendants did not dispute that they were timely given written notice of the termination of their tenancy. More than thirty (30) days have passed since the issuance of written notice to Defendants, and Defendants have not vacated the property. The Court holds that Plaintiff is entitled to judgment as a matter of law as to this issue, and is entitled to immediate ejectment of Defendants.

B. ADVERSE POSSESSION

Adverse possession is an affirmative defense in South Carolina. *See Jones v. Leagan*, 384 S.C. 1, 5, 681 S.E.2d 6, 10-11 (Ct. App. 2009); *Miller v. Leaird*, 307 S.C. 56, 62, 413 S.E.2d 841, 844 (1992). South Carolina law dictates that for a claimant to acquire property through adverse possession, the claimant must show by a standard of “clear and convincing” evidence that four elements are satisfied: (1) continuous use for the statutory period, (2) exclusive possession and occupation, (3) open and notorious use of the property, and (4) hostile or adverse use under claim of right. S.C. Code Ann. § 15-67-210, et. seq.; *Miller v. Leaird*, 307 S.C. 56, 62, 413 S.E.2d 841, 844 (1992), citing *Davis v. Monteith* 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986); *Mullis v. Winchester*, 237 S.C. 487, 491, 118 S.E.2d 61, 63 (1961). If Defendants fail to meet any element, then they are not entitled to a finding of adverse possession. *See Taylor v. Heirs of Taylor*, 419 S.C. 639, 651, 799 S.E.2d 919, 924-25 (Ct App. 2017); *See generally Jones v. Leagan*, 384 S.C. 1, 681 S.E.2d 6 (Ct. App. 2009); *Lusk v. Callaham*, 287 S.C. 459, 339 S.E.2d 156 (Ct. App. 1986).

The determination of whether possession is open and notorious is made from the viewpoint of the legal owner exercising ordinary diligence, not of the adverse possessor. *Jones v. Leagan*, 384 S.C. 1, 15, 681 S.E.2d 6, 13-14 (Ct. App. 2009). Through an exhibit to her Affidavit, Plaintiff presented correspondence from Defendant Jack Shelton to Plaintiff.

Defendant requested that Plaintiff perform repairs and maintenance at the home. Plaintiff also presented a Motion and Affidavit for Preliminary injunction, filed on or about October 2, 2018 (See 2018CV4012400957). The signature line stating "Signature of Tenant" was signed by Defendant Jack Shelton and notarized. Even when considered in a light most favorable to Defendants, these undisputed facts clearly show an understanding of tenancy, not ownership.

At argument, Defendants did not dispute that they have held themselves out as tenants. Defendants alleged that they held themselves out as tenants subsequent to the filing of the ejectment case. Defendants presented a landlord tenant complaint where Defendants, listed as "occupants," complained to The Richland County, South Carolina Community Planning and Development. Plaintiff is listed as "owner." The Court is not persuaded by Defendants' argument that a holding out as tenant subsequent to the filing of an adverse possession claim is relevant in the determination of open and notorious possession. The Court notes that the complaint's date of October 18, 2018 is prior to the filing of the case at bar.

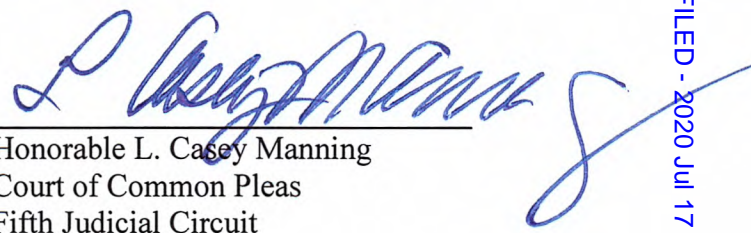
The undisputed facts at bar, even when considered in a light most favorable to Defendants, conclusively shows that Defendants have held themselves out as tenants of the property at issue. As a matter of law, this fails to meet the open, exclusive, notorious and hostile possession elements of Defendants adverse possession claim.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Summary judgment as to the issue of ejectment is GRANTED in favor of the Plaintiff. Defendants shall remove themselves from the premises. A detailed Writ of Ejection shall follow by separate Order.
2. Summary judgment as to the issue of adverse possession is GRANTED in favor of the Plaintiff. Defendants' adverse possession claim is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED!

Dated: July 17, 2020



Honorable L. Casey Manning
Court of Common Pleas
Fifth Judicial Circuit
1701 Main Street
Columbia, SC 29201



Richland Common Pleas

Case Caption: Mary L Agnes Shelton vs Jack Shelton , defendant, et al

Case Number: 2019CP4005875

Type: Order/Summary Judgment

So Ordered

s/L. Casey Manning, 2061