STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2018-CP-10-04284
	)	
BONITA STEED AND BERNARD STEED,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	**ORDER GRANTING SUMMARY JUDGMENT TO PLAINTIFFS**
ANTOINE HEYWARD, RUBY HEYWARD and ALSO ALL OTHER PERSONS UNKNOWN, Claiming any right, title, estate, interest in or lien upon the real estate described in the amended complaint herein,	)	
	)	
Defendants.	)	
	)	

The Plaintiffs' Motion for Summary Judgment came before the Court for a hearing during the week of June 22, 2020. Plaintiffs and Defendants agreed to have the Court rule on the briefs and evidence submitted without a hearing. Having reviewed the evidence presented as well as the briefs submitted by both parties, I have determined that there is no genuine issue of material fact, and that Plaintiffs are entitled to summary judgment as a matter of law in accordance with SCRCP 56.

BACKGROUND

Plaintiffs brought this action to claim title of the property located at 516 Bank Street, Mt. Pleasant, SC, based on adverse possession. Defendants counterclaimed asserting ownership of the property through a series of deeds to and from Louise Brown Heyward, Plaintiffs' great-grandmother and Defendant Antoine Heyward's grandmother. There is no question that Mrs. Louise Heyward owned the property prior to her death in

2000. This action concerns the ownership after that time and whether Plaintiffs have met the requirements to establish title by adverse possession. Based on the undisputed facts and the law, I have concluded the Plaintiff have met the required burden and are entitled to title of the property.

In 1999, Mrs. Louise Heyward signed a deed to her son Robert Heyward (father and husband of the Defendants). Mr. Heyward died in 2014 without disclosing to the Plaintiffs, who have resided on the property in question from 1966 to the present, that he had been deeded the property by Mrs. Heyward. In 2015, Antoine Heyward contacted the Plaintiffs and demanded that they start paying rent to him, and they refused. Plaintiffs commenced this action in 2018 seeking to have title vested in them by adverse possession. The evidence show that Plaintiffs have continuously and exclusively under right of title occupied the property from 2000 to the present day, and that Defendants have never occupied, improved, or maintained the property occupied by the Plaintiffs during this 20 year period.

FINDINGS OF FACTS[1]

The subject real property, located at 516 Bank Street, Mt. Pleasant, South Carolina (hereinafter "Property") is more fully described as follows:

> All that piece, parcel or lot of land, situate, lying and being in Christ Church Parish, Town of Mount Pleasant, County of Charleston, and State of South Carolina, known and designated at Lot No. 7 on a plat of the Town of Mount Pleasant made by J.B. Weston, Registered Surveyor, dated August 18, 1953.
>
> MEASURING AND CONTAINING Fifty (50') feet in width and One Hundred Sixty-Eight and 04/10 (168.4') feet in depth.

[1] The Court is required to take the facts in the light most favorable to the non-moving party, so I have relied primarily on Defendant Antoine Heyward's deposition testimony.

BUTTING AND BOUNDING as follows: North on Lots Nos. 5 and 6, northeast on Lot 6 and Bank Streeet, southeast and west on Lot 13 and 14 as shown on said plat.

BEING the same property conveyed to Louise Brown Heyward by deed of P.A. Foster and J.M. Graham dated July 27, 1960, and recorded in the RMC Office for Charleston County in Deed Book A72, at page 175 on August 2, 1960.

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Defendant Antoine Heyward has lived his entire life in Chicago, Illinois, with his mother, Defendant Ruby Heyward. Neither Defendant has ever occupied, or resided at, the Property. Antoine Heyward Deposition, p. 5. The Plaintiffs are cousins of Antoine Heyward. He testified that he met them when he was younger and came to visit them at "their home," the Property. The Plaintiffs have always lived at the Property to Antoine's knowledge. *Id.* at pp. 6-7. Antoine Heyward last visited the Property in 2014 when Plaintiffs allowed the repass for the funeral service of his father to be held there. *Id.* at p. 9. Antoine testified that he does not have, and has never had, a key to the Property. *Id.* at pp. 9-10.

In 2015, after his father died, Antoine hired an attorney who sent a letter to Plaintiffs requesting that they pay rent to Antoine for 516 Bank Street. Robert Heyward had never requested rent from Plaintiffs, and Antoine decided that things were going to change when he inherited the Property. Plaintiffs refused to pay rent, and the conversation did not go well. *Id.* at pp. 15-16. Robert Heyward, who received the property from his mother just prior to her death, had never told the Plaintiffs of his claim to ownership of the Property, and Plaintiffs believed that they owned the Property. *Id.* at pp. 17-18; Affidavits of Bonita Steed, Bernard Steed, Ernest Steed and Robert Steed. Robert Heyward lived in Chicago at the time of his mother's death in 2000 until his death in 2014, and he would only go to the

Property approximately once a year in the summers while his mother was still alive. After her death in 2000, Robert Heyward went to the Property less frequently. He always contacted the Plaintiffs prior to coming and asked them if he could stay on the property. *Id.* at pp.19-20. Affidavits of Bonita Steed, Bernard Steed, Ernest Steed and Robert Steed.

The residential structure on the Property is made up of two rectangles attached to each other. The Plaintiffs lived in both rectangles. Plaintiffs' mother built one of the rectangles after the death of her husband, Plaintiffs' father. In addition to their family building one-half of the structure, Plaintiffs made substantial improvements to the property over the years, including the purchase and installation of a central air unit and appliances; installation of a fence, gutters, insulation, hardwood floors, cabinets, and tile flooring; and the construction of a new roof and a room to house the new washer and driver. Affidavits of Bonita Steed, Bernard Steed, Ernest Steed and Robert Steed. Neither Antoine nor Robert Heyward had anything to do with constructing, improving or maintaining the structures or the Property. Heyward Deposition, pp. 21-23; 57-58. Antoine Heyward never paid for insurance on the Property. He tried but the insurance company cancelled it. *Id.* at p. 26. To Antoine Heyward's knowledge, no one from his family ever told the Plaintiffs that Plaintiffs did not own the Property until he talked to Plaintiff Bonita Steed in 2015 or 2016. *Id.* at pp. 30-31. Antoine Heyward acknowledged that during the last 20 years, the Steeds had no reason to believe that they did not own the Property—where they had lived for over 50 years. *Id.*

Antoine Heyward had no knowledge of who paid the taxes on the Property while his father was alive. After his father's death, Defendants received the tax bill and had the Plaintiffs pay half of it. *Id.* at pp. 31-32.

Plaintiffs have a plat, dated September 18, 1998, showing that Alethia Steed, Plaintiffs' mother, owned the Property. Antoine Heyward has no knowledge of the plat or who created it. Antoine Heyward does not know when his father claimed to have taken ownership of the Property. *Id.* at pp. 34-36. Antoine Heyward acknowledged that Plaintiffs had built the structure on the Property and stated that he would not build a structure on property that he did not own. *Id.* at pp. 37-38.

Antoine Heyward has never visited the Property without the consent of the Plaintiffs. *Id.* at p. 38. No one has lived at the property since 1999 or 2000 after Mrs. Heyward died other than the Plaintiffs. *Id.* at p. 42. Plaintiffs have always taken the position that they own the Property based on their living there for 54 continuous years with exclusive possession since the death of Louise Brown Heyward in 2000.

The Plaintiffs and their two brothers gave affidavits in which they all said neither Antoine, Ruby, nor Robert Heyward ever gave them permission to live on the property, and, instead, it was Robert who would seek permission from Plaintiffs to stay there when he was alive. Antoine Heyward testified that he "consented" to Plaintiff living there but, when asked what he meant by "consent," he testified that he was aware that they were living there. He stated that the Plaintiffs had never asked his permission to live there and he had no knowledge or evidence of them asking Robert Heyward if they could live there. In other words, Antoine failed to present any evidence that Plaintiffs possessed the property with the title owner's consent, because his family never told Plaintiffs of their ownership claim. Heyward Deposition, p. 72. When Antoine told the Plaintiffs that he owned the Property, Plaintiffs expressly opposed the claim. *Id.*, p. 33. Antoine testified that he never

saw his father do anything on the Property that an owner would do: "Everything was already up and – it's not his..." *Id.*, p. 57.

CONCLUSIONS OF LAW

This Court has jurisdiction over the subject matter of this action and of the parties hereto. In Taylor v. Heirs of Taylor, 419 S.C. 639, 799 S.E.2d 919 (S.C. Ct. App. 2017), the Court of Appeals handled a case similar to the one before the Court and reversed the trial court's decision that adverse possession had not been proved and set forth a thorough discussion of the evidence required:

> The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time." *Id* . In South Carolina, the statutory period for adverse possession is ten years. S.C. Code Ann. § 15-67-210 (2005) ; *Jones* , 384 S.C. at 10, 681 S.E.2d at 11. A party asserting ownership by adverse possession must show he has met the elements by clear and convincing evidence. *Jones* , 384 S.C. at 10–11, 681 S.E.2d at 11.
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> To claim title by adverse possession, a party must show the extent of his possession even when entering under color of title. *Clark v. Hargrave* , 323 S.C. 84, 87, 473 S.E.2d 474, 476 (Ct. App. 1996) (per curiam). Color of title alone is not evidence of adverse possession, and "it does not follow that adverse possession can be proved by less evidence when the entry is under color of title than when it is not." *Id* . at 87, 473 S.E.2d at 477 (quoting *Butler v. Lindsey* , 293 S.C. 466, 470, 361 S.E.2d 621, 623 (Ct. App. 1987)). However, color of title is evidence of the extent of the claim and should be considered with the other facts in the case. *Woodle v. Tilghman* , 252 S.C. 138, 144–45, 165 S.E.2d 702, 705 (1969) (internal quotation omitted). Color of title need not be a deed; "[i]t is anything which shows the extent of [the] occupant's claim." *Id* . at 145, 165 S.E.2d at 705. "It is by no means necessary that the paper should be in the form of a deed. A bond or even a receipt would be sufficient." *Id* ."The principle purpose of color of title in adverse possession proceedings is not to show actual grant of land or interest therein, but to designate [the] boundary of possessor's claim." *Id* .
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> For possession to be open and notorious, "the legal owner need not have actual knowledge the claimant is claiming property adversely, [but] the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it." *Jones* , 384 S.C. at 13–14, 681 S.E.2d

> at 13. "[A]cts of ownership of open land for purposes of adverse possession need not include actual residency or occupancy." *Id*. at 14, 681 S.E.2d at 13. "Moreover, activities that do not involve the creation of permanent structures on the land can be sufficiently open and notorious as to put the legal owner on notice that his land is being adversely possessed." *Id*.
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> For possession to be continuous, a party "claiming adverse possession must have personally held the property for ten years." *Id*. at 15, 681 S.E.2d at 14. "Occasional and temporary use or occupation does not constitute adverse possession. However, the rule requiring continuity of possession does not mean the person in possession must be actually on the land during the whole of the statutory period." *Id*. at 16, 681 S.E.2d at 14 (citation omitted).
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> To show the possession was hostile, the adverse claimant is required to show only that his possession was actual, exclusive, open, notorious, and without the consent of the title owner. *Knox v. Bogan*, 322 S.C. 64, 70, 472 S.E.2d 43, 47 (Ct. App. 1996). The mistaken belief rule, which requires the possessor to be aware he does not have title and intend to dispossess the true owner, is not applicable in disputes over entire tracts of land. *Id*. ; *see also Perry v. Heirs at Law & Distributees of Gadsden*, 316 S.C. 224, 226, 449 S.E.2d 250, 251 (1994) (per curiam) (finding the mistaken belief rule does not apply in a dispute over an entire tract of land, rather it applies in a boundary line dispute). Thus, for the possession to be hostile when an entire tract of land is at issue, the adverse claimant need not show a conscious intent to dispossess the true owner. *McDaniel v. Kendrick*, 386 S.C. 437, 442–43, 688 S.E.2d 852, 855 (Ct. App. 2009). The claimant may establish hostile possession by showing he occupied the property without the title owner's consent even if he occupied the property under the mistaken belief that it belonged to him. *Id*.

419 S.C. at 650-652, 799 S.E.2d 924-925.

Plaintiffs presented clear and convincing evidence to this Court that their possession of this property was actual, open, notorious, hostile, exclusive and continuous between 2000 when Louise Heyward died and today. Defendants argued in their brief only that Plaintiffs did not prove that their occupation was hostile. However, as set forth above, the Plaintiffs "may establish hostile possession by showing [they] occupied the property without the title owner's consent even if [they] occupied the property under the mistaken belief that it belonged to [them]." *Id.* In Taylor, the Court held that "there was no evidence

in the record indicating [claimants] possessed [the property with title owner's] permission or consent."

As the Plaintiffs have all stated in their affidavits, neither Defendants nor Robert Heyward ever gave them permission to live on the property and, instead, Plaintiffs gave Robert Heyward permission to stay there when he was alive. See Bernard Steed Affidavit, para. 8. Defendants have not put forth any evidence that the Plaintiffs possessed the Property with the title owner's consent. As set forth in Taylor, Defendants' awareness that Plaintiffs lived on the Property is not sufficient to show that Plaintiffs lived there with consent. The evidence before the Court is that Plaintiffs lived there under the belief that they owned the Property.

Defendant Antoine Heyward's testimony that he never saw his father do anything on the Property that an owner would do unequivocally shows that Plaintiffs treated this property as their own for the statutory period: "Everything was already up and –**it's not his**..." Id., p. 57. Clearly, Defendants either knew, or should have known, that Plaintiffs claimed ownership, and Defendants' actions towards Plaintiffs (at least until 2015) acknowledged Plaintiffs' ownership of the Property. Because Plaintiffs have presented clear and convincing evidence that they have met all the requirements to own the Property by adverse possession, Plaintiffs are entitled to summary judgment as a matter of law.

As an additional sustaining ground, I find that Defendants' claim to the Property is barred by the equitable doctrine of laches. A party asserting adverse possession in a quiet title action can establish the defense of laches. See Jones v. Leagan, 384 S.C. 1, 20, 681 S.E.2d 6, 16 (Ct. App. 2009) ("The party seeking to establish laches must show (1) delay, (2) that was unreasonable under the circumstances, and (3) prejudice."). As in Jones, the

Plaintiffs here have invested a significant amount of time and money improving the Property during the twenty year period that Defendants claim they have owned the Property. At no point during that period did any of the Defendants or Robert Heyward tell Plaintiffs that they had a deed to the Property, nor did they make any improvements to the Property. It would be inequitable to permit the Defendants to make an ownership claim to the Property after twenty years of inaction and failing to inform Plaintiffs of their claim, despite knowing the substantial time and money that Plaintiffs had and were investing in the Property. I find that because the Defendants had twenty years to take steps to protect their rights in the Property, yet failed to do so, the doctrine of laches bars Defendants from claiming ownership to the property.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that the following property is quieted and confirmed onto Plaintiffs Bernard Steed and Bonita Steed and that Bernard Steed and Bonita Steed are vested with fee simple title, free and clear of the claims of all others, to the following described real property:

> All that piece, parcel or lot of land, situate, lying and being in Christ Church Parish, Town of Mount Pleasant, County of Charleston, and State of South Carolina, known and designated at Lot No. 7 on a plat of the Town of Mount Pleasant made by J.B. Weston, Registered Surveyor, dated August 18, 1953.
>
> MEASURING AND CONTAINING Fifty (50') feet in width and One Hundred Sixty-Eight and 04/10 (168.4') feet in depth.
> BUTTING AND BOUNDING as follows: North on Lots Nos. 5 and 6, northeast on Lot 6 and Bank Street, southeast and west on Lot 13 and 14 as shown on said plat.
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> BEING the same property conveyed to Louise Brown Heyward by deed of P.A. Foster and J.M. Graham dated July 27, 1960, and recorded in the RMC Office for Charleston County in Deed Book A72, at page 175 on August 2, 1960.
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> TMS # 532-05-00-113

Upon request by Plaintiffs, and upon payment of the applicable fee, this Court shall issue a Master's Deed consistent with the terms of this Order.

AND IT IS ORDERED this ___ day of July, 2020, at Charleston, South Carolina

Bentley Price
Circuit Court Judge

Charleston Common Pleas

Case Caption: Bonita Steed , plaintiff, et al VS Antoine Heyward , defendant, et al

Case Number: 2018CP1004284

Type: Order/Summary Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766