THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley D. Price, Circuit Court Judge
Trial Court Case No. 2018-CP-10-04284

Appellate Case No.: 2020-01104

Bonita Steed and Bernard Steed ..... Respondents,

vs.

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, ... Appellants.

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court err in granting summary judgment to Respondents on their adverse possession claim?

II. Does the doctrine of laches bar Appellants' quiet title counterclaim and provide an additional sustaining ground for the Trial Court's summary judgment order?

III. Did the Trial Court err in granting Respondents' Motion for Sanctions?

COUNTER-STATEMENT OF THE CASE

Respondents initiated this action by filing a Summons and Complaint on August 29, 2018, seeking title to the property located at 516 Bank Street, Mt. Pleasant, South Carolina, TMS# 532-05-00-113 (the "Property"), by adverse possession. Appellants filed an Answer and Counterclaim seeking title to the Property by virtue of a deed executed in 1999 by Louise Brown Heyward, Appellant Antoine Heyward's[1] grandmother and Respondents' great-grandmother, to her son and Antoine's father, Robert Heyward.

After discovery, Respondents filed a Motion for Summary Judgment in accordance with SCRCP, Rule 56. Due to the pandemic, the Court requested if the parties to numerous pending actions would consent to a hearing on the briefs and evidence submitted by the parties, and both parties consented. On July 1, 2020, the Honorable Bentley Price, presiding Circuit Court Judge, filed a Form 4 Order granting Respondents' Motion for Summary Judgment and Motion for Sanctions. On July 13, 2020, Judge Price filed a Final Order Granting Summary Judgment to Respondents.

On August 10, 2020, Appellants filed a Notice of Appeal.

STATEMENT OF FACTS[2]

Louise Brown Heyward owned the Property until her death in 2000, shortly after putting her mark on a deed to her son, Robert Heyward, who lived in Chicago with Appellants. Robert Heyward died in 2014, and Appellants inherited his assets. Neither Robert Heyward nor either of

[1] Appellant Antoine Heyward will be referred to as Antoine throughout the brief in order to avoid confusion.

[2] On a motion for summary judgment, the Court must take the facts in the light most favorable to the non-moving party, so most facts are taken from Appellant Antoine Heyward's deposition testimony. The other Appellant, Ruby Heyward, is incapacitated according to Antoine Heyward.

the Appellants ever lived at the Property, and instead resided at their home in Chicago, Illinois. Antoine Heyward ("AH") Deposition Transcript, p. 5.

Respondents began living at the Property with their mother after the death of their father in 1966, over 50 years ago, and have continuously lived there. AH, p. 10. Antoine met Respondents, who are his cousins, when he was younger and began visiting them at "their home," the Property. AH, pp. 5-7. The last time that Antoine visited the Property was for his father's funeral in 2014. Respondents had allowed the repass for the service of Respondents' great uncle, Robert Heyward, to be held at the Property. Antoine did not have a key to the Property, and Respondents allowed him to be there for his father's funeral. AH, pp. 8-9.

In 2015, after Robert Heyward had died, Antoine hired an attorney who sent a letter to Respondents requesting that they pay rent to Antoine for 516 Bank Street. Antoine's father had never requested rent from Respondents. Respondents refused to pay rent and, in a conversation with Antoine, Respondents got heated up. Id. at pp. 15-16. Antoine's father had never told the Respondents of his claim to ownership. Id. at pp. 17-18; Affidavits of Bonita Steed, Bernard Steed, Ernest Steed and Robert Steed. Antoine's father lived in Chicago at the time of his mother's death in 2000 until his death in 2014. Prior to his mother's death in 2000, Robert Heyward only visited the Property once a year in the summers to see his mother. After her death in 2000, Robert Heyward went to the Property less frequently. He always contacted the Respondents 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 structure on the Property consists of two rectangles attached to each other. Louise Heyward lived in one rectangle and Respondents lived in the other until Mrs. Heyward's death in 2000. After 2000, the Respondents have lived in both rectangles. Proceeds from Respondents'

father's death was used to build the rectangle in which Respondents originally resided. In addition, Respondents made substantial improvements to the property including the purchase and installation of a central air unit, washer/dryer, refrigerator; installation of a fence, gutting, insulation, hardwood floors, cabinets, tile flooring; and 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 his father had anything to do with constructing the structures or maintaining the structures or the Property. AH pp. 21-23;57-58. Antoine never paid for insurance on the Property. He tried but the insurance company cancelled it. Id. at p. 26. To Antoine's knowledge, no one from his family ever told the Respondents that Respondents did not own the property until he talked to Respondent Bonita Steed in 2015 or 2016. Id. at pp. 30-31. Antoine 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.

Prior to his father's death, Antoine has no knowledge of who paid the taxes. After the death, Appellants received the tax bill and asked the Respondents pay half of it, which they did. Id. at pp. 31-32.

Respondents have a plat, dated September 18, 1998, showing that Alethia Steed, Respondents' mother, owned the property. Antoine has no knowledge of the plat or who created it. Antoine does not know when his father claimed to have taken ownership of the property. AH, pp. 34-36. Antoine acknowledged that Respondents 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 has never visited the Property without the consent of the Respondents. Id. at p. 38. No one has lived at the property since 2000 other than the Respondents. Id. at p. 42. Respondents 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.

STANDARD OF REVIEW

When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP. Turner v. Milliman, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011). Summary judgment should be affirmed if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Companion Prop. & Cas. Ins. Co. v. Airborne Exp., Inc., 369 S.C. 388, 390, 631 S.E.2d 915, 916 (Ct. App. 2006). Where the record is devoid of any allegation or evidence tending to show there is a material fact in issue, the moving party is entitled to summary judgment as a matter of law. Milligan v. Liberty Life Ins. Co., 313 S.C. 478, 481, 443 S.E.2d 381, 382 (1994); Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 117, 410 S.E.2d 537, 546 (1991) ("[B]ald allegations are insufficient to create a genuine issue of fact."); George v. Empire Fire & Marine Ins. Co., 344 S.C. 582, 593, 545 S.E.2d 500, 505 (2001) ("The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings."). Thus, the appellant cannot rely upon the mere allegations of her complaint, but instead, she must offer proof of the existence of a genuine issue of fact. Dyer v. Moss, 284 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985).

Appellate courts may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal. See Rule 220, SCACR; see also I'On, L.L.C. v. Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) (explaining that a respondent may raise additional reasons to affirm the lower court's ruling because it would "be inefficient and pointless to require a respondent to return to the judge and ask for a ruling on other arguments to preserve them for appellate review").

ARGUMENTS

I. THERE ARE NO GENUINE ISSUES AS TO MATERIAL FACTS REGARDING RESPONDENTS' ADVERSE POSSESSION CLAIM, AND THE TRIAL COURT RULED CORRECTLY IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENTS.

Respondents have proved all of the elements for an adverse possession claim for the statutory period of ten years for 516 Bank Street, Mt. Pleasant, SC, the Property. "The party asserting adverse possession must show continuous, hostile, open, actual, notorious, and exclusive possession for a certain period of time." Jones v. Leagan, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009); cited in Taylor v. Heirs of William Taylor, 419 S.C. 639, 650, 799 S.E.2d 919, 924 (Ct. App. 2017). Since the claim for adverse possession is for the entire tract of land, Respondents are not required to prove that their possession was hostile. Knox v. Bogan, 322 S.C. 64, 70, 472 S.E.2d 43, 47 (Ct. App. 1996); see also Perry v. Heirs at Law and Distributees of Gadsden, 316 S.C. 224, 449 S.E.2d 250 (1994) (explaining that the requirement of hostility is applicable to "cases involving boundary disputes *only*") (emphasis added). The statutory period for adverse possession is ten years in South Carolina. S.C. Code Ann. § 15-67-210 (2005). The party asserting adverse possession must show that they have met the elements by clear and convincing evidence. Jones, 384 S.C. at 10-11, 681 S.E.2d at 11; Taylor, 419 S.C. at 651, 799 S.E.2d at 924-25.

As the Court of Appeals stated in Taylor:

> To claim title by adverse possession, a party must show the extent of his possession even when entering under color of title. … 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." … However, color of title is evidence of the extent of the claim and should be considered with the other facts in the case…. Color of title need not be a deed; "[i]t is anything which shows the extent of [the] occupant's claim." … "It is by no means necessary that the paper should be in the form of a deed. A bond or receipt would be sufficient." … "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."

Taylor, 419 S.C. at 651, 799 S.E.2d at 925 (internal citations omitted).

The Respondents have a plat that showed that their mother Alethia Steed was the owner of the property, and it set forth the boundaries, being all of the Property located at 516 Bank Street, Mt. Pleasant, SC. They claim ownership of the Property under color of title even though they have no deed to the Property.

As the Jones and Taylor Courts further held with regards to the elements of open and notorious:

> 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 noticed that his land is being adversely possessed." Id.

Taylor, 419 S.C. at 651, 799 S.E.2d at 925.

Respondents have been in actual residency and occupancy of the property since 1966. They have been responsible for all improvements made to the property during that time period. Their activities have always been open and notorious.

The Jones and Taylor Courts also addressed the element of continuous possession:

> 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).

Taylor, 419 S.C. at 651-52, 799 S.E.2d at 925.

As set forth above, there is no question that the Respondents haven been in continuous possession of the Property for greater than ten years.

The Taylor Court also addressed the last element, "hostile possession:"

> 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…. 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…. 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….

Taylor, 419 S.C. at 652, 799 S.E.2d at 925.

Respondents have stated in sworn affidavits that neither Robert Heyward, Antoine Heyward nor Ruby Heyward ever gave them consent to live at 516 Bank Street. They lived there because it was "their home," which even Antoine testified to in his deposition. The first time that Antoine made his claim of ownership to Respondents, they responded that they owned the property, not him. The only issue of consent was when the Appellants wanted to stay at, or use, the Property for a family funeral, and the Respondents gave consent to the Appellants. See Affidavits of Steeds.

Although Antoine testified that he "consented" to the Respondents living on the Property, when asked what he meant by "consent," he testified that he was aware that they were living there. AH, p. 72. He further testified that the Respondents never asked him if they could live there, and he has no knowledge whether they asked his father if they could live there or not. He has no evidence that the Respondents possessed the Property with the title owner's consent. He only had knowledge that they lived there and his family claimed ownership. Id. That is not evidence that the Respondents lived there with consent. The Respondents lived there because they believed that

they owned the property. The occupancy was clearly hostile, because, as Antoine admitted, when Appellants claimed ownership, the Respondents got hostile. Id., p. 33.

Antoine clearly stated that he never saw his father act like an owner or do anything on the Property that an owner would do: "Everything was already up and – it's not his…" AH, p. 57. Appellants always knew that the Property was always Respondents' property, and Respondents have presented clear and convincing evidence that they have met all of the requirements to establish their ownership of the Property by adverse possession. They are entitled to have the Trial Court's Order affirmed.

II. THE DOCTRINE OF LACHES CLEARLY BARRED APPELLANTS' QUIET TITLE COUNTERCLAIM, AND THE TRIAL COURT RULED CORRECTLY IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS ON THIS ADDITIONAL GROUND.

Appellants filed counterclaims against Respondents seeking to quiet title to 516 Bank Street in the names of the Appellants. Respondents asserted numerous affirmative defenses, including the equitable doctrine of laches.

The South Carolina Court of Appeals in Jones v. Leagan, was asked to apply the equitable doctrine of laches in that case involving a claim to quiet title and a counterclaim seeking title by adverse possession. Again, that Court held the party asserting adverse possession had established the defense of laches and stated:

> Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible…. The equitable doctrine of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence to do what in law should have been done…. The party seeking to establish laches must show (1) delay, (2) that was unreasonable under the circumstances, and (3) prejudice…. To establish laches as a defense, the defendant must show the complaining party unreasonably delayed its assertion of a right, thereby prejudicing the defendant…. "[T]he determination of whether laches has been established is largely within the discretion of the trial court."… Additionally, for the defense of laches to be sustained, "the

> circumstances must have been such as to import that the complainant had abandoned or surrendered the claim or right which he now asserts."…

As in Jones, the Respondents have invested a substantial amount of time and money during the twenty (20) years that Appellants or their predecessor, Robert Heyward, purportedly held a deed to the property. During that time, none of the Heywards ever told Respondents that they held a deed to the property, and the Respondents continued to pay taxes on, purchase insurance to cover, make substantial improvements to, and maintain the Property. Respondents have been prejudiced by this twenty (20) year delay in taking any steps to claim title to the Property. See Affidavits of Steeds.

Because the Heywards could have protected themselves by informing the Steeds of Mrs. Heyward's deeding the property to Robert Heyward in 2000, the equities favor the Steeds, and the Trial Court's Order awarding summary judgment to Respondents should be affirmed.

III. RESPONDENTS CONSENT TO APPELLANTS' REQUEST TO REMAND THE MOTION FOR SANCTIONS TO THE TRIAL JUDGE FOR CONSIDERATION BASED ON THE ARGUMENTS AND EVIDENCE SUBMITTED BY EACH PARTY.

CONCLUSION

For all the above reasons, Respondents respectfully requests that this Court affirm the circuit court's grant of summary judgment to Respondents.

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By: *s/ Bijan Ghom*

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PROOF OF SERVICE

I do hereby certify that on November 10, 2020, I have served all counsel in this action with a copy of the documents herein below specified by email to the following:

Documents: **Initial Brief of Respondents**

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