

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

) THE COURT OF COMMON PLEAS
) EIGHTH JUDICIAL CIRCUIT

Darlington Briggs,

Plaintiff,

) CASE NO. 2016-CP-30-0878
)

v.

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Shirley Briggs, et al.;

Defendant(s)

) JAN 07 2021

FINAL ORDER

) **SC Court of Appeals**
)

This matter came before me for trial on November 12, 2020. Present were Gary L. Williams, Jr., the guardian ad litem appointed to represent the interests of any unknown defendants, including minors, incompetent persons, persons under other disability, or persons in military service; Leroy Milam, the personal representative for the Estate of Sula Mae Briggs; and the Estate's attorney Mark Fessler. The plaintiff was not present nor were any other defendants. The Court held a roster meeting on Monday, November 9, 2020, at which time this case was selected for trial. Counsel for the Estate mailed notice of the hearing from Greenville to Laurens on Monday to a post office box that the plaintiff had provided to the Magistrate's Court in an eviction action he filed against Leroy Milam on September 2, 2020 (case #2020CV3010101650). The Clerk of Court contacted the plaintiff's former attorney to inquire about the plaintiff's address and was given the address of 208 Walker Ave. in Laurens. According to that Affidavit of Service filed November 11, 2020, a sheriff's deputy went to that location on November 10th and was instructed by the occupant to place the hearing notice in the mailbox. The Court also takes note of the fact that the plaintiff's counsel was relieved on March 18, 2019, and that the plaintiff has not updated his address with the Clerk of Court. After considering the circumstances surrounding whether the plaintiff was provided notice of this trial, I allowed the trial to proceed. Upon

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consideration of the testimony and exhibits presented to me and the arguments made, I make the following findings of fact and law:

FINDINGS OF FACT

1. Plaintiff sued to partition real estate in Laurens County. Defendant Sula Mae Briggs asserted a counterclaim and crossclaim seeking to quiet title to the real estate through adverse possession. The plaintiff was served through his then attorney. All cross-claim defendants were properly served as shown by those affidavits of service filed May 23, 2018 and the affidavit of publication filed on December 28, 2017 (see order for publication filed Sept. 20, 2017). The plaintiff, through counsel, filed a reply to the counterclaim, however none of the cross-claim defendants filed responsive pleadings. Sula Mae Briggs later amended her pleading on January 9, 2019, to which the plaintiff, through counsel, also replied.
2. The following named defendants are in default for failure to file or serve an answer either to the plaintiff's summons and complaint or to the cross-complaint: Shirley Briggs, Willie Briggs, Annie Pearl Briggs, Geraldine Price Briggs, Leroy Briggs, Roberta Briggs, and Rosa Briggs.
3. None of the named defendants are minors, incompetent, or in military service. No additional defendants, unknown at the time the complaint was filed, have appeared to claim any interest in the property.
4. The real estate at issue in this lawsuit is described as:

ALL that piece, parcel or lot of land with improvements thereon, situate, lying and being in the City of Laurens, County of Laurens and State of South Carolina, and known and designated as Lot 55, as shown on Plat of Survey entitled "Hunter's Court" property of M.H. Hunter, Jr., surveyed by Joe E. Mitchell, RLS, January 12, 1977. A copy of the plat is recorded in Plat Book 35 at Page 130 in the Office of the Clerk of Court for Laurens County, South Carolina. Reference hereto is made to said plat for exact courses, distances, metes and bounds. Said lot bounded: North by a dead end drive surviving Lot 55 and Lot

54 and Lot 52 of said survey; South by other property now or formerly of M.H. Hunter, Jr. herein for 60 feet; East by property now or formerly of Lee V. Faircloth Estate for 75.2 feet; West by an open drive for 73.1 feet; the Northern boundary being 88.9 feet, more or less.

Tax map no.: 906-12-04-054. Address: 202 Hunters Court f/k/a 16 Hunters Court, Laurens, SC 29360 (the "Hunters Court" house).

This being the same property conveyed to Mable C. Briggs from M.H. Hunter, Jr. by deed dated April 3, 1978 and recorded on April 7, 1978 in Deed Book 216 at Page 99 with the Clerk of Court for Laurens County.

5. Sula Mae Briggs married Neal Briggs in 1967. Leroy Milam, the personal representative for the Estate of Sula Mae Briggs, is Sula's son and Neal's step-son.
6. In 1983, Sula moved into the Hunters Court house. At that time, she and Neal Briggs had been traveling around for Neal's work as a truck driver. Sula had a car accident, and decided to move back to Laurens, SC. She and Neal purchased a house located at 208 Walker Ave. f/k/a 3 Walker Ave., Laurens, SC (the "Walker Ave." house), on August 1, 1983, but never moved into this house.
7. Sula Mae moved into the Hunters Court house after her mother-in-law Mable Briggs passed on August 17, 1983. She lived there as her only residence until she passed away on December 15, 2019. Leroy Milam moved into the Hunters Court house to live with his mother in 1984, and he continues to reside there today.
8. After Mable Briggs passed away Neal Briggs paid off the mortgage on the Hunters Court house and probated her estate. (See Laurens County Probate Court Drawer E, Card B-378). She was survived by 5 children, Neal Briggs, Shirley Briggs, Virginia Briggs, Darlington Briggs, and Leroy Briggs.
9. Virginia Briggs passed away on March 10, 2014 and was survived by Roberta Briggs, Annie Pearl Briggs, Willie Roy Briggs, and Rosa Briggs.

10. After Sula Mae had lived at the Hunters Court house for some time, she and Darlington Briggs, the plaintiff, had a conversation about whether she was going to remain there or move to her Walker Ave. house. She elected to remain at the Hunters Court house since she was already settled there. Darlington then placed his daughter in residence at Sula and Neal's Walker Ave. house. Darlington also owned the house next door now located at 206 Walker Ave., (formerly known as 5 Walker Ave.) in Laurens.
11. In 1991, Sula Mae and Neal conveyed the Walker Ave. house to Darlington and Patricia Briggs. This deed was dated December 2, 1991 and recorded the same day with the Clerk of Court in Deed Book 260 at Page 159. Darlington Briggs still owns that house today.
12. After Sula moved into the Hunters Court house, Neal would stay there when he was not on the road. He and Sula became estranged, and sometime in or about the mid-1990s Neal permanently moved away. He passed away in 2003 in Illinois. His death certificate notes a residence in Pine Bluff, Arkansas and a different wife, Geraldine P. Briggs. However, Neal and Sula were never divorced.
13. Sula Mae resided in the Hunters Court house for the remainder of her life. She paid the property taxes for well over twenty years and controlled who came and went on the property. The house was known by neighbors as Sula Mae's house, and only she and Leroy Milam had keys to it. She also maintained the yard, creating flower beds and planting a tree.
14. She made repairs and improvements to the house such as by putting on a new roof and remodeling the kitchen. To fund these, she obtained a grant from the Laurens Community Development Office. In exchange for the grant funds of \$20,980, she signed a Rehabilitation Grant Agreement. In that agreement, she attests that she is the sole owner

of the Hunters Court house although she did not, at that time, have any legal title to the real estate. Sula Mae signed grant agreement was signed on October 28, 1996. It was recorded on December 10, 1996 in Office of the Clerk of Court for Laurens County in Book 557 at Page 221.

CONCLUSIONS OF LAW

15. Persons who have adversely possessed real estate for at least ten years may ask a court to quiet title under the legal theory of adverse possession. S.C. Code Ann. § 15-67-210. Adverse possession arises by possession of real estate that is “continuous, hostile, open, actual, notorious, and exclusive for the requisite period.” *Getsinger v. Midlands Orthopaedic Profit Sharing Plan*, 327 S.C. 424, 430, 489 S.E.2d 223, 226 (Ct. App. 1997).
16. Adverse possession of real property for at least twenty years raises a presumption that the possessor has been granted the property and has ousted all others. *May v. Jeter*, 245 S.C. 529, 538-539, 141 S.E.2d 655, 660 (1965) (noting the well-established rule in this jurisdiction that “adverse possession for a period of twenty years raises a presumption of a grant[]” and that “twenty years adverse possession presumes ouster.”). “Failure to make a claim or to seek an accounting for a period of more than twenty years is a significant factor in barring the rights of the owner, under the twenty-year presumption of grant and presumption of ouster.” *Woods v. Bivens*, 292 S.C. 76, 81, 354 S.E.2d 909, 912 (1987).
17. As stated in *Powers v. Smith*, 80 S.C. 110, 114, 61 S.E. 222, 223 (1908)

Inaction by tenants in common or any others, claimants to land, for twenty years in the face of notorious and exclusive possession, with the use and exercise of authority incident to exclusive and adverse ownership, is sufficient to rebut the presumption that possession is in subordination to the legal title, and to establish the presumption of a grant or deed, and almost any other presumption necessary to the protection of the possession.

18. When the twenty-year presumption of grant applies, it runs from the beginning of the possession. *Id.* 80 S.C. at 112, 61 S.E. at 223.
19. Sula Mae Briggs's possession of the Hunters Court house has been open, actual, notorious, exclusive, continuous and hostile for ten years and for twenty years.
20. She moved into the Hunters Court shortly after her mother in law's death on August 17, 1983. She has been in complete possession of the property ever since without any gaps in possession. She had possessed the property for 33 years at the time the plaintiff filed suit. All parties were aware of her possession, and no one disputed the right she claimed to enter onto and occupy the property exclusively as her home. In fact, she and her in-law Darlington Briggs, the plaintiff herein, discussed whether she would remain at Hunters Court or move to her Walker Ave. house, and she said she would remain.
21. Sula Mae's local community have recognized the Hunters Court house as hers. *Cf. Woods v. Bivens*, 292 S.C. 76, 80, 354 S.E.2d 909, 912 (1987) (noting the community's recognition of the "Parker Limehouse place.>"). No evidence has been submitted to contradict the the conclusion that Sula Mae's possession was continuous, open, actual, notorious, and exclusive.
22. She also possessed the land in such a way as to be hostile to the true owners in the legal sense. She exercised sole dominion over the property by dictating who came and went on the property. She and her son alone had keys. She made improvements to the house and paid the property taxes, seeking reimbursement from no one, which indicates that she claimed the property to be exclusively hers. *Langston v. Cothran*, 78 S.C. 23, 31, 58 S.E. 956, 959 (1907) (tax receipts are admissible to show a claim to land).

23. Sula Mae also deeded her house to Darlington and Patricia Briggs on December 2, 1991. The Court finds it improbable that Sula Mae would have given away her house, leaving her at risk of homelessness, unless she believed that the Hunters Court house was in fact hers. At that time, she had no legal claim to another house. Thus, the Court finds that Sula Mae's hostility can be documented at least as far back as December of 1991, or approximately 25 prior to this lawsuit.
24. On October 28, 1996 she entered into an agreement with the Community Development Office to receive a grant for repairs and improvements. The agreement, recorded December 10, 1996, placed a lien on the Hunters Court house. And in the agreement she claimed to be sole owner of the Hunters Court house. However, at that time she was a stranger to the legal title.
25. The grant agreement clearly is hostile to the true owners. In *McGee v. Hall* the Supreme Court noted that one co-tenant giving a mortgage over the whole property could demonstrate the necessary ouster required in cases of co-tenants. 26 S.C. 179, 186, 1 S.E. 711, 716-717 (1887) (finding, however, that the minority of some co-tenants protected others and prevented the statute of limitations from running). Ouster of a co-tenant requires a higher level of proof than that required of a stranger to the legal title. This is so because, as between co-tenants, the possession of one is presumed to be the possession of all until ouster is shown. *Weston v. Morgan*, 162 S.C. 177, 201-202, 160 S.E. 436, 444 (1931). Here, no such presumption exists because Sula Mae was not a co-tenant with any of the other parties when she signed the grant agreement. The Court sees no material difference between the grant agreement and the mortgage referred to in *McGee* and finds that the grant

agreement constitutes express, public notice of Sula Mae's hostility to the true legal owners.

26. Because Sula Mae's possession was adverse to the true owners for more than twenty years, she has raised the presumption that she was granted the Hunters Court property. *May v. Jeter*, 245 S.C. 529, 538-539, 141 S.E.2d 655, 660 (1965). The presumption may be rebutted, but it must be rebutted with evidence. *Massey v. Adams*, 3 S.C. 254, 263 (1872) (noting the presumption "may be rebutted by evidence."). As explained in *Trustees v. Jennings*, the presumption of grant after twenty years is an "artificial rule[], which [has] a legal effect independent of any belief, and stand[s] in the place of proof until the contrary be shown." 40 S.C. 168, 180-181, 18 S.E. 257, 262 (1893) (quoting *Smith v. Asbell*, 33 S.C. L. 141, 2 Strob. 141).
27. In this case no evidence has been offered by any other party to contradict the legal presumption raised by the duration of Sula Mae's adverse possession.
28. Due to the nature of Sula Mae Briggs' possession of the Hunters Court house over more than twenty years, the presumptions of a grant and an ouster have been raised and not rebutted. She has held the Hunters Court house actually, continuously, with hostility, openly, notoriously, and exclusively for the time required to obtain full ownership of it under both the ten-year statute of limitations and the twenty-year common law presumptions of grant and ouster. Accordingly, title should be quieted in Sula Mae Briggs.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED:

1. That Sula Mae Briggs acquired complete title to the real estate located at 202 Hunters Court f/k/a 16 Hunters Court, Laurens SC, SC 29360, bearing tax map number 906-12-04-054, and described as follows:
ALL that piece, parcel or lot of land with improvements thereon, situate, lying and being in the City of Laurens, County of Laurens and State of South Carolina, and known and

designated as Lot 55, as shown on Plat of Survey entitled "Hunter's Court" property of M.H. Hunter, Jr., surveyed by Joe E. Mitchell, RLS, January 12, 1977. A copy of the plat is recorded in Plat Book 35 at Page 130 in the Office of the Clerk of Court for Laurens County, South Carolina. Reference hereto is made to said plat for exact courses, distances, metes and bounds. Said lot bounded: North by a dead end drive surviving Lot 55 and Lot 54 and Lot 52 of said survey; South by other property now or formerly of M.H. Hunter, Jr. herein for 60 feet; East by property now or formerly of Lee V. Faircloth Estate for 75.2 feet; West by an open drive for 73.1 feet; the Northern boundary being 88.9 feet, more or less.

Sula Mae Briggs acquired title in fee simple, solely and to the exclusion of all others. Any legal interest or ownership right claimed by the other heirs of Mable C. Briggs, anyone claiming through those heirs, or any other persons unknown claiming any right, title, interest or lien upon the property described above is hereby extinguished.

2. The plaintiff's complaint is dismissed with prejudice.
3. This order may be recorded in the appropriate recording office in Laurens County.

IT IS SO ORDERED!

JUDICIAL SIGNATURE PAGE TO FOLLOW



Laurens Common Pleas

Case Caption: Darlington Briggs VS Shirley Briggs , defendant, et al
Case Number: 2016CP3000878
Type: Order/Civil Judgment

IT IS SO ORDERED!

s/J. Derham Cole 2053