

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER
Edward Mays and Corrine Mays,

Plaintiff,

v.

Irene L. Myers,

Defendant.

IN THE COURT OF COMMON PLEAS
Case No.: 2015-CP-43-1981

ORDER
RECEIVED
FEB 26 2021
SC Court of Appeals

HEARING DATE: January 8, 2020
PRESIDING JUDGE: Michael M. Jordan
ATTORNEY FOR PLAINTIFFS: Patrick M. Killen, Esq.
ATTORNEY FOR DEFENDANT: Pro Se
COURT REPORTER: Kathleen Owens-Hays

This matter came before me regularly for trial in Sumter County on January 8, 2020. The Plaintiffs, Edward and Corine Mays, were present and represented by Patrick M. Killen of the Sumter County Bar. The Defendant, Irene Myers, was not present, and has, to date, represented herself in this matter.

PROCEDURAL HISTORY

On August 21, 2015, Plaintiff filed the Summons and Complaint with the Sumter County Court of Common Pleas. Service of the Summons and Complaint on the Defendant was made August 25, 2015 by U.S. First Class mail, certified, return-receipt, restricted Delivery and the Certificate of Service was filed with the Court on September 10, 2015. Defendant filed an Answer on September 18, 2015.

On December 16, 2015, Defendant filed a Notice to Amend Answer, Motion to Dismiss and Notice for Summary Judgment. Plaintiffs filed their response to Defendant's Motions on January 8, 2016.

On October 17, 2016, Plaintiffs filed a Motion to Refer to Master-in-Equity and the Defendant filed a Motion for Summary Judgment (on November 7, 2016) in response. On November 18, 2016, Plaintiffs filed a Memorandum to Support Reference to Master-in-Equity ("Master"). The Plaintiffs filed their affidavit on November 23, 2016 in advance of the hearing on November 28, 2016 which was held to determine the issues in the Plaintiffs Motion for Reference to Master and Defendant's Motion for Summary Judgment. The Presiding Circuit Judge, the Honorable G. Thomas Cooper, Jr. ruled that equitable actions are properly and typically tried before the Master and granted Plaintiffs' Motion for Reference. On Defendant's Motion for Summary Judgment, Judge Cooper determined that disputed issues of fact regarding Defendant's claim existed and denied said Motion.

On April 12, 2017, Plaintiffs filed a Motion to Amend Pleadings. Plaintiffs further filed a Motion for Restraining Order to enjoin Defendant from harassing Plaintiffs on May 30, 2017. On June 19, 2017, Defendant filed a Motion for Summary Judgment and Dismissal with Prejudice along with a Motion opposing Plaintiffs' Motion to Amend Pleadings. Hearing for Plaintiffs' Motions to Amend Pleadings and Restraining Order was held June 27, 2017. The Honorable Richard L. Booth, then the Sumter County Master, denied Plaintiffs' Motion to Amend Pleadings and Motion for Restraining Order. Judge Booth, however, instructed that Plaintiffs could move to amend their Complaint at trial to conform with evidence presented and that the Court would, at the appropriate

time, liberally consider the motion. The Court did not hear issues related to Defendant's Motions as the requisite time had not passed for a hearing (based on the date of filing). Defendant thereafter did not set a hearing date with the Masters' office to hear the motion.

On August 17, 2017, Defendant filed a Motion for Summary Judgment and Dismissal with Prejudice which was scheduled to be heard on November 30, 2017. Plaintiffs' filed a Motion for Continuance based on the Plaintiffs being out of town and Defendant not contacting Plaintiffs to schedule said hearing. An Order continuing this matter was entered by Judge Booth on November 21, 2017. Again, Defendant thereafter did not set a hearing date with the Master's office hear the Motion.

Due to inactivity with regard to this matter, the Honorable Howard P. King, acting Sumter County Master-in-Equity, dismissed this action on October 1, 2018. Plaintiffs, in response, filed a Motion to Reconsider and Restore On October 5, 2018. A hearing to restore the case was held on October 2, 2019. Defendant was provided due and proper notice of said hearing but did not attend. The undersigned restored this matter to the active docket by Order dated October 29, 2019.

A trial was scheduled for January 8, 2020. Notice of said trial was served upon Defendant by first class mail on November 14, 2019 at the address Defendant had on file with the Court. Plaintiff e-filed an Affidavit of Service which serves to demonstrate that Plaintiffs served the requisite hearing notice. On November 20, 2019, subsequent to Plaintiffs mailing the Hearing Notice for the final hearing, Defendant filed a change of address with the Court. The Plaintiffs demonstrated to the satisfaction of the Court that

the Defendant received due, proper and timely notice of the January 8, 2020 trial. Despite said notice, the Defendant did not appear on January 8, 2020.

FACTS AND CONCLUSIONS

Based on testimony and evidence presented I find and conclude the following:

The Plaintiffs purchased a 5.25-acre parcel of land at 3160 Spencer Rd, TMN: 138-00-03-044 from Mark Myers, the Defendant's brother, in May, 1993. The deed for said transfer is recorded in the Sumter County ROD at Book 572 at Page 469. At the time of purchase, Mr. Myers advised Ms. Mays that the property line extended from the "mailbox straight back." Ms. Mays reasonably took this to mean in a perpendicular direction from the road and to the rear boundary.

Adjoining this property to the northeast was another 5.25-acre parcel owned by Defendant. This property is addressed 3150 Spencer Road. According to Ms. Mays, Mr. Meyers and Ms. Meyers were given this land through family members. Ms. Mays also owns an additional 8.36-acre parcel of land in the area to the east, but said parcel does not adjoin the property at issue herein.

The Mays' deed references a survey as the basis for the legal description. The survey was prepared by H.S. Wilson RLS in May 1993 and is recorded in the Sumter County ROD at Plat Book PB93 at Page 816. This survey depicts both the Mays' property and Ms. Myers' property as tracts 3B (3160 Spencer Rd.) and 3A (3150 Spencer Rd.), respectively. The survey reflects that the property was being subdivided and transferred to Ms. Meyers and Mr. Meyers. The subdivision and survey were completed around the same time as the Mays' purchase from Mr. Myers.

Following the purchase of tract 3B in 1993, the Mays took possession of same

and removed brush trees, cut grass, pulled weeds and generally maintained the property. The Mays' activities on the property were never protested as being beyond the property boundary line. Viewing the aerial photo entered into evidence by the Mays, a majority of the land for both tract 3B and 3A appears to be treed with an opening in the middle between the two tracts.

In 2000, the Mays purchased a mobile home and placed same on the property. This home was used as a residence by the Mays and has been expanded through addition and improved upon over time.

Sometime in 2014, more than 21 years after they purchased the land, the Mays' first learned that there was a problem regarding the home which they occupied and the property boundary separating tracts 3B and 3A. An aerial photograph and tax map overlay admitted into evidence demonstrated the encroachment by the Mays' mobile home onto tract 3A.

Thereafter, in the same year, the Mays contacted Mr. Myers about the issue as they had no contact information for Irene Myers. The Mays inquired of Mr. Myers about possibly purchasing tract 3A, or some portion of same, to resolve the apparent encroachment caused by the placement of their mobile home. According to the testimony, no response was ever received to the Mays' offer to purchase any of the property from Ms. Myers.

On June 11, 2014, the Mays had Black River Land Surveying examine their tract and determine boundaries and property lines and to identify any potential encroachment issues. This survey confirmed the encroachment by the mobile home. Testimony established that there was a driveway situated upon tract 3A that allowed access to 3B,

thereby providing an easement. This driveway was open and utilized by the Mays from 1993 until 2015, when the Defendant closed same by physically blocking it and erecting signs.

The testimony also established that conduct and actions on the part of Ms. Myers and her family member caused concern by the Mays. Examples of same are: placing a doll's head on a mound of black dirt; making orange paint lines in the grass; and erecting a rudimentary tent and log structure. These activities were documented in photographs admitted into evidence. This conduct by Ms. Myers made the Mays uneasy to the point that they contacted law enforcement on several occasions to document the behavior.

Testimony further established that Plaintiffs would not be able to relocate their mobile home without significant cost, expense and potential damage to the mobile home. Plaintiffs wished to either swap compensatory land with Defendant or compensate her for the fair market value for any portion of property lost or removed from tract 3A and added to 3B.

Based on the evidence presented, I find that the Plaintiffs have established both clearly and convincingly that they have had continuous, hostile, open, actual, notorious and exclusive possession of a portion of the property of Tract 3A for at least 10 years. Jones vs. Leagan, 681 S.E.2d 6 (Ct. App. 2009). A claim of adverse possession is an action at law and the character of the possession is a question for the fact finder. Miller vs. Leaird, 413 S.E.2d 841 (1992).

Further, I find that the Plaintiffs have demonstrated actual possession of the property by placement of the mobile home and activities occurring in and around same.

I find that these activities were open and notorious and would be visible to an adjoining landowner exercising ordinary diligence in ownership of his/her property. Plaintiffs' possession and occupancy of property was not only open and notorious, it was also continuous for the requisite 10-year period. I find that Plaintiff's occupancy and possession was also exclusive and hostile to the rights of the Defendant. In summary, the Court concludes that the Plaintiffs' have adversely possessed that portion of the Defendant's property on which their, the Plaintiffs' home is situated,

To effect this order, and to determine the extent and boundaries of Plaintiffs' adverse possession, I direct the Plaintiffs to secure a survey from Black River Land Surveying, or other registered or professional land surveyor, depicting a new boundary line between tracts 3A and 3B, beginning at Spencer Road located at the mailbox and traveling in a southeastern direction, as parallel to existing property lines as possible, going past the plaintiffs' mobile home to the extent of the clearing in the trees and then making a right angle turn inside the tree line to the southwest and continuing until intersecting with the existing property line. This new line should be consistent with the opening in the trees and grassed area which was cut and maintained by the Mays' over the years.

Further, the amount of property removed from tract 3A shall be calculated and determined. The value of same will be agreed upon based upon the per acre value of property in the area, or if not agreed upon, established using a licensed real estate appraiser, if necessary. Plaintiffs will then compensate the Defendant for that value, or if the parties can agree on an in-kind exchange of property from tract 3B then no monetary compensation will have to occur. The law does not require compensation to

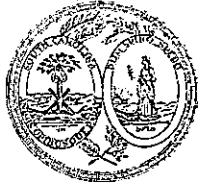
be paid in this fashion for adverse possession, however, the Plaintiffs have offered same and I find it appropriate to balance the equities in this matter.

If the Plaintiffs have, prior to the issuance of this Order, secured the aforementioned survey and appraisal, documentation reflecting same shall be submitted to the office of the undersigned immediately and, upon review of the Court, shall be incorporated herein and made a part of the Order.

IT IS SO ORDERED!

Michael M. Jordan
Master-in-Equity, Sumter County

Sumter, South Carolina
January ____, 2021



Sumter Common Pleas

Case Caption: Edward Mays , plaintiff, et al VS Irene L Myers
Case Number: 2015CP4301981
Type: Master/Order/Other

And It Is So Ordered

S/ Michael M. Jordan - 3085