STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COURT OF COMMON PLEAS
RICHLAND COUNTY

L. Casey Manning, Circuit Judge

Case No.: 20-001019

Mary L. Agnes Shelton,..... Respondent,

vs.

Jack Shelton and Sharon Shelton,.....
Appellants.

FINAL BRIEF OF APPELLANTS

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1. Did the Trial Court err in granting Plaintiff's Motion for Summary Judgment?

2. Whether the Circuit Court Order evicting the Defendants was in violation of the Orders of the Supreme Court of South Carolina of July 23, 2020 requiring Certification of Compliance with the Coronavirus Aid Relief and Economic Security Act in evictions and foreclosure forms.

STATEMENT OF THE CASE

Respondent commenced the instant action in the Magistrate Court for Richland County, South Carolina by filing an Application for Ejectment on or about April 23, 2019, seeking to evict her son, Jack Shelton and his wife, Sharon Shelton, from the premises at 340 Lee Road, Columbia, County of Richland South Carolina. The Appellants filed a Return to Notice to Quit Premises and Answer and Counterclaim, pro se, on May 2, 2019. The Appellants plead the affirmative defense of Adverse Possession by way of Counterclaim and also counterclaimed for the cost of improvements made to the property in the sum of $37,517.00, and for unjust enrichment.

The Magistrate Court issued a Modified Bond Order on May 16, 2019 establishing fair market rent at $300.00 per month and water services at $50.00 per month. The Appellants have faithfully paid this sum each month. The Appellants filed a Motion to Transfer on July 8, 2019 requesting that the matter be transferred to the Circuit Court. Following a hearing held on or about September 6, 2019, the case was transferred to the Circuit Court on or about January 3, 2020. Respondent filed a Motion for Summary Judgment on April 24, 2020. Respondent filed the Affidavit of Plaintiff, and the Affidavit of Carl Shelton, Jr., along with the exhibits on June 17, 2020. The Appellants filed a Memorandum in Opposition to Plaintiffs' Motion for Summary Judgment, the Affidavits of Jack Shelton, Sharon Shelton, Johleen Lee, Agnes M. Dial, and Samuel Coloitt along with exhibits. The Circuit Court hearing was held on June 23, 2020. The parties submitted Proposed Orders to the court on June 26, 2020. The Circuit Court filed the Order Granting Plaintiff's Motion for Summary Judgment on July 17, 2020. Appellants filed their Notice of Appeal on July 24, 2020.

STATEMENT OF THE FACTS

This controversy between mother and son, Jack Shelton, began before the filing of the Application for Ejectment in the Richland County Magistrate Court on April 25, 2019. On September 10, 2018, Mary Shelton directed her other son, Carl Shelton, Jr. to transport Jack Shelton's pet cow (R. p. 58) to the Chester Livestock Exchange for slaughter without the knowledge or consent of Appellants (R. p. 59). When Mr. Shelton protested, and filed an Incident Report with the Richland County Sheriff's Office (R. pp. 64-67), Mary Shelton then directed Carl Shelton, Jr. on September 27, 2018 to cut off the water supply to 340 Lee Road, Columbia, South Carolina, to the residence of Jack and Sharon Shelton. The well which supplied their water service was located on Mary Shelton's adjacent property occupied by Carl Shelton, Jr.

Jack Shelton sought injunctive relief from the Richland County Magistrate Court and filed a Motion and Affidavit for Preliminary Injunction and Complaint on October 2, 2018 requesting the restoration of water service to his residence (R. pp. 40-43).

Mary Shelton, thereafter, filed a Rule to Vacate or Show Cause (Eviction) against Jack and Sharon Shelton in the Richland County Magistrate Court, *Shelton v Shelton*, Civil Case Number 2018-CV-40-12401096 (R. p. 7) This eviction case was dismissed by the Magistrate Court on or about February 25, 2019.

On October 18, 2018, the Richland County, South Carolina, Property Maintenance Division issued an Investigation Report signed by Kecia Lara, Investigations Manager, confirming that Mary Shelton had terminated the water supply to 340 Lee Road, Columbia, South Carolina. On October 29, 2018, Ms. Lara sent Ms. Shelton a Notice of Violation and Order advising her that she was in violation of the International Property Maintenance Code and

Richland County Ordinance, and ordered her to reconnect water services to 340 Lee Road by November 9, 2018 (R. p. 68) (R. p. 43). Jack and Sharon Shelton were without water from September 27, 2018 until November 9, 2018 when Mary Shelton finally complied with the Order from Richland County, and restored water services.

Ms. Shelton filed the instant Rule to Vacate or show Cause (Ejectment). *Mary Shelton v Jack Shelton and Sharon Shelton*, 2019-CV-40-12400465, on April 25, 2019 (R. pp. 8-10). The Appellants timely filed a Return to Notice to Quit Premises and Answer and Counterclaim on May 2, 2019 (R. pp. 11-15). The Appellants affirmatively counterclaimed for adverse possession, for costs of improvements, and for unjust enrichment. The Magistrate Court issued a Modified Bond Order (R. p. 16) establishing fair market rent of $300.00 per month, and $50.00 per month for water service (R. p. 16). The Appellants have paid this amount faithfully since May 16, 2019 and have remained in possession of the property.

STANDARD OF REVIEW

"When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626, S.E.2d 1, 3 (2006). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." *Hurst v. E. Coast Hockey League, Inc.*, 371 S.C. 33, 36, 637, S.E.2d 560, 561-62 (2006). "Summary judgment is appropriate when '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 and that the moving party is entitled to a judgment as a matter of law.'" *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 354-55, 650 S.E.2d 68, 70 (2007) (quoting Rule 56(c), SCRCP). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." *Gecy v. S.C. Bank & Tr.*, 422 S.C. 509, 516, 812 S.E.2d 750, 754 (Ct. App. 2018) (quoting *M&M Grp., Inc. v. Holmes*, 379 S.C. 468, 473, 666 S.E.2d 262, 264 (Ct. App. 2008)). "When evidence is susceptible to more than one reasonable inference, the issue should be submitted to the jury." *Murphy v Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009). ("A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony . . . ." (quoting *M&M Grp., Inc. v. Holmes*, 379 S.C. 468, 473, 666 S.E.2d

262, 264)).

ARGUMENT

"The point of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder." *Prince v Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 281 (Ct. App. 2010). Summary judgment is only appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Carolina Chloride, Inc. v S.C. Dep't of Transp.*, 391 S.C. 429, 434, 706 S.E.2d 501, 504 (2011). "Summary judgment is not appropriate whe[n] further inquiry into the facts of the case is desirable to clarify the application of the law." *Id.* "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *McMaster v Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453-54 (Ct. App. 2014) (quoting *Town of Hollywood v Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013)). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Carolina Chloride*, 391 S.C. at 434, 706 S.E.2d at 504; *Gibson v Eping*, 827 S.E.2d 178 (Ct. App. 2019) However, a genuine issue of material fact exists--and summary judgment must be denied--if the non-moving party submits at least a scintilla of evidence supporting each element of its claim. *Hancock v Mid-S Mgmt, Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). "[A] scintilla is a perceptible amount." *Gibson*, 827 S.E.2d at 181. Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is a dispute as to the conclusion to be drawn from those facts. *Lyons v First National*, 781 S.E.2d 126 (Ct. App. 2015) A Court considering summary judgment neither makes factual determinations, nor considers the merits of competing testimony. *Mead v. Beaufort Co.*, 796 S.E.2d 165 (Ct. App. 2016).

Summary judgment is inappropriate in the instant case where further inquiry into the facts of the case is desirable to clarify the application of the law. *Smith v S.C. Dep't Highways*, 370 S.E.2d 101 (Ct. App. 1988); *Butts v AVA Corp.*, 359 S.E.2d 876 (Ct. App. 1987). The party seeking summary judgment has the burden of clearly establishing by the record properly before the Court the absence of a triable issue of fact. *Owens v Magill*, 419 S.E.2d 786 (1982). Respondent has not met her burden. Accordingly, summary judgment is inappropriate if the facts are conflicting, or the inferences drawn from the facts are doubtful. *Alston v Blue Ridge Transfer Co.*, 417 S.E.2d 631 (Ct. App. 1992).

Here, the Respondent alleges that the Appellants have not established ownership of the real property by adverse possession and should be immediately evicted from the property. The determination of title to real estate is legal in nature. *Wigfall v Fobbs*, 295 S.C. 59, 367 S.E.2d 156 (1988); *Clark v Hargrave*, 323 S.C. 84, 473 S.E.2d 474 (Ct. App. 1996). Likewise, an adverse possession claim is an action at law. *Miller v Leaird*, 307 S.C. 56, 413 S.E.2d 841 (1992). Ordinarily, the question of adverse possession is one of fact for the jury and only becomes one of law for the Court when the evidence is undisputed and susceptible of but one inference. (Emphasis supplied). *Mullis v Winchester*, 237 S.C. 487, 118 S.E.2d 61 (1961); *Lynch v Lynch*, 236 S.C. 612, 115 S.E.2d 301 (1960). Questions of open exclusive possession are questions for a jury to decide. *Bryce v Cayce*, 40 S.E. 948 (1902). Questions of the duration, character and continuity of possession are jury questions. *Terwillger v White*, 72 S.E.2d 169 (1952); *Lyles v Fellers*, 136 S.C. 31 (1926); *Harrington v Wilkens*, 2 McCord 289 (1822); *Cathcart v Matthews*, 89 S.E. 1021 (1916). Here, where the evidence is disputed and susceptible to more than one inference the issues must be decided by a jury.

In South Carolina, adverse possession may be established under a 10-year statute of limitation. See S.C. Code § 15-3-340 (Supp. 1996); S.C. Code § 15-67-210 (1976); S.C. Code § 15-67-220 (1976). The person claiming adverse possession under these statutes must have personally held the property for 10 years, *Terwilliger v White*, 72 S.E.2d 169 (1952).

"The burden of proof of adverse possession is on the one relying thereon." *Weston v Morgan*, 162 S.C. 177, 192, 160 S.E. 436, 441 (1931). "A [claimant's] title by adverse possession requires proof of actual, open, notorious hostile, [327 S.C. 429] continuous, and exclusive possession by the claimant, or by one or more persons through whom he claimed, for the [required] period.

[T]he burden of proof [of adverse possession] is upon the party relying thereon." Miller, 307 S.C. at 61, 413 S.E.2d at 844. See also *Forshur Timber Co. v Santee River Cypress Lumber Co.*, 203 S.C. 225, 178, S.E. 329 (1934) (party claiming adverse possession must prove open, notorious, exclusive, hostile, and continuous possession for the required period), cert. denied, 295 U.S. 743, 55 S.Ct. 655, 79 L.Ed. 1689 (1935); *Lyles v Fellers*, 138 S.C. 31, 42, 136 S.E. 13, 17 (1926) ("The burden of proof of adverse possession is on the one relying thereon.")

The party asserting adverse possession must establish the claim by clear and convincing evidence. *Davis v Monteith*, 289 S.C. 176, 345 S.E.2d 724 (1986; *Thomas v Dempsey*, 53 S.C, 216, 31 S.E. 231 (1989). See also *Zimmerman v Williams*, 211 S.C. 382, 386, 45 S.E.2d 597, 599 (1947) ("The Thomas-Dempsey case establishes the principle that a party, in order to acquire title to real estate by adverse possession, must show such possession by clear and convincing evidence."); *Lusk v Callaham*, 287 S.C. 459, 461, 339 S.E.2d 156, 157 (Ct. App. 1986) (The party making the claim "ha[s] the burden of proving adverse possession by clear and convincing evidence.")

It is clear that in this case that the facts and evidence create a jury question on the issue of adverse possession. The Affidavits and Exhibits presented create genuine issues of material fact and are susceptible of more than one inference. In ruling on a Motion for Summary Judgment, the Court is concerned only with the existence or non-existence of evidence, and the Court does not have the authority to decide credibility issues, or to resolve conflicts in the testimony.

The Appellants' claim of adverse possession meet the requirements of actual, open, notorious, hostile, continuous and exclusive possession. The Appellants have been in actual possession of the property for the full statutory period. Jack Shelton has resided on the property continuously since 1992, over twenty eight (28) years, and Sharon Shelton has resided on the property since 2008, over ten (10) years. (R. pp. 11-15) (R. pp. 71-72) (R. pp. 48-49). Their residence is within sight and sound of Mary Shelton's residence and adjacent to the residence of Carl Shelton, her other son. Their possession has been open, visible and notorious. The Appellants occupation of the property has been continuous and uninterrupted possession for the full statutory period. The Appellants have had exclusive use of the property. Where the dispute of title is over an entire tract of land, our Supreme Court has held that the hostility requirement for adverse possession is eliminated. The South Carolina Supreme Court concluded, along with the majority of jurisdictions, that the mental attitudes of the possessor of land is immaterial, *Perry v Heirs at Law and Distributees of Gadsden*, 449 S.E.2d 250 (1994); *Knox and Bogan*, 422 S.E.2d 43 (Ct. App. 1996). Under the majority view, an actual, exclusive, open and notorious possession without the consent of the title owner is both wrongful and adverse and will ripen into perfect title in the usual way when the statute of limitations has run. The Circuit Court erred in concluding that the Appellants must establish hostile possession in order to prevail.

The Appellants have paid the property taxes since 2008 and have paid the utilities since 2008. Mary Shelton paid the property taxes in 2019, only after being served with Appellants' Answer and Counterclaim for Adverse Possession, (R. pp. 11-15). Mary Shelton claimed that she paid the utilities yet Appellants had the utilities in the name of Jack Shelton (R p. 57). The Appellants have invested in excess of thirty seven thousand and ($37,000.00) dollars into the property making substantial improvements to and maintenance of the property with the knowledge, acquiescence and consent of the Respondent (R. pp. 11-15) (R. pp. 71-72) (R. pp. 48-49) (R. pp. 69-70) (R. pp. 73-75).

A reasonable inference deductible from the evidence is that regardless of the intent of the original possession in entering the tract, the Appellants have intended to possess the tract with the intention of owning it exclusively without the actual or implied permission of anyone.

Similarly, in *Miller v Leaird*, 413 S.E.2d 841 (1992) the S.C. Supreme Court held that Leaird had established adverse possession of fifteen (15) acres, and had satisfied the ten (10) year adverse possession statute where Leaird had been in possession of the tract for over forty (40) years, had established a boundary line, had paid mortgages, paid taxes on the property and sold timber from the property.

The Circuit Court erroneously found that Appellants held themselves out as tenants of the property at issue, and therefore failed to meet the prerequisite of adverse possession. The Court relied upon three (3) exhibits in reaching its decision to grant summary judgment. The Court first cited the Richland County, South Carolina, Property Maintenance Division, Investigation Report (R. p. 68). This report was completed by the County Investigations Manager, Kecia Lara. Appellants did not sign or approve the report. In completing the Investigation Report, Ms. Lara initiated, prepared, and made the designations on the county form, not the Appellants. On

October 29, 2018, Ms. Lara sent Mary Shelton a Notice of Violation and Order instructing her to restore water service by November 9, 2018. Again, Ms. Lara initiated, prepared, and completed the Order without input or direction from Appellants (R. p. 68) (R. p. 43). Ms Lara designated Ms. Mary Shelton as property owner because she was listed on the Deed. Ms. Lara designated the Appellants as occupants because they lived on the premises. Ms. Lara made no determinations on the legal issue of adverse possession. She simply filed a county form. Nothing on the document provides any information that Appellants considered themselves tenants.

The second exhibit cited by the Circuit Court was the Motion and Affidavit for Preliminary Injunction and Complaint filed by Jack Shelton in Magistrate's Court on October 2, 2018 attempting to have the Court issue an injunction and order to require Mary Shelton to restore his water services. This action was filed pro se (R. pp. 40-42) and Mr. Shelton brought the action as Plaintiff (R. pp. 40-42). The preprinted Magistrate Court form required him to sign the form to initiate the action. The Circuit Court found that the Motion Form which required him to sign above a printed signature line labeled "Signature of Tenant" was conclusive evidence that Mr. Shelton was a tenant. More significantly, the attached form Complaint signed by Jack Shelton required the "Signature of Plaintiff (or his attorney)" which he signed pro se (R. p. 41).

On neither of these two (2) exhibits did Jack Shelton express his intentions as tenant, nor did he waive his claims of adverse possession. If anything, the exhibits raise questions of material and disputed facts which need to be tried by a jury; and, these exhibits raise more than one inference. This requires a trial by jury.

The final exhibit relied upon by the Circuit Court was a note from Jack Shelton made on June 9, 2019, asking his mother to repair the driveway to the premises (R. p. 38). Since Mary Shelton had filed two (2) actions for eviction; the instant case for eviction, on April 23, 2019,

Mr. Shelton decided if she was attempting to treat him as a tenant, then she should be responsible for the property as a landlord, and make repairs, including providing water services and sewer services. Ms. Shelton never complied with any of those requests. The note merely pointed out that if Mary Shelton wanted to claim he was now a tenant after he had been living on the premises for twenty-eight (28) years, then she should fulfill her responsibilities as a landlord, which she never did.

And finally, the Circuit Court violated the terms of the Coronavirus Aid, Relief, and Economic Security Act P.L. 116-136, March 27, 2020, and the Order of The Supreme Court of South Carolina, Re: Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act in Evictions and Foreclosures, dated May 6, 2020, Number 2020-7-23-01.

The Circuit Court granted summary judgment as to the issue of ejectment and ordered that the Appellants to remove themselves from the premise stating that a detailed writ of ejectment shall follow by separate order. Both the CARES Act, and the Order of the Supreme Court, No. 2020-7-23-01, barred evictions. The Supreme Court of South Carolina Order provides in pertinent part:

> IT IS ORDERED that any party pursuing an eviction or foreclosure in a trial court of this State must submit to the court a signed, original Certification of Compliance with the Coronavirus Aid, Relief, and Economic Security Act. For evictions and foreclosures filed on or after the date of this Order, the Certification of Compliance must be submitted along with the initial filing. For evictions and foreclosures filed before the date of this Order, the Certification of Compliance must be filed with the court prior to proceeding with the eviction or foreclosure. If a party required to file a Certification of Compliance neglects to do so the eviction or foreclosure shall terminate without further action taken.

The Respondent did not file a Certification of Compliance with the trial court and the action for eviction should have been terminated forthwith.

CONCLUSION

Viewing the evidence in the light most favorable to the Appellants, there exist genuine issues of material fact, and more than one inference can be drawn from the evidence presented, therefore, this case should be reversed and remanded for trial by jury.

Respectfully Submitted,

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May 10, 2021

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CERTIFICATE OF COUNSEL

I, Herbert E. Buhl, III, attorney for Appellants, do certify that the Final Brief complies with Appellate Rule 211(b).

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