THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Gordon G. Cooper, Master-in-Equity

Case No.: 2020-CP-42-02447
Appellate Case No: 2021-000516

Larry Bright .....Appellant

v.

Heather D. Davis and Midfirst Bank .....Respondents

RESPONDENT HEATHER D. DAVIS'S FINAL BRIEF

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the Master-in-Equity properly granted Respondent's Motion for Judgment on the Pleadings.

RESPONDENT'S STATEMENT OF THE CASE

On December 6, 2001, Appellant and Respondent Heather Davis (Respondent) participated in a closing for the property located at 125 Pine Ridge Road in Greer (the Property). (R. p. 43, ¶ 5; R. p. 46, ¶ 7–p. 49). The deed conveying the property was recorded in the Spartanburg County Register of Deeds Office on December 11, 2001, in Book 74-X at page 343 (the Deed). (R. p. 16, 49). The Deed conveyed the entirety of the Property. (R. pp. 48–49). On March 7, 2005, a survey—dated September 28, 2001—was recorded in the Office of the Register of Deeds for Spartanburg County in Plat Book 157 at page 582. (R. p. 43, ¶ 3; R. p. 46, ¶ 5–p. 48).

On July 22, 2020, Appellant filed a petition requesting the Deed be reformed to comply with the survey. (R. pp. 43–45). Appellant asserted the survey divided the Property for Appellant to retain a portion and a clerical error caused the entire lot to be conveyed. (R. p. 43, ¶¶ 3, 5). On September 29, 2020, Appellant amended the petition to include Midfirst Bank. (R. p. 46, ¶¶ 3–4). On November 9, 2020, Appellant filed a Motion for Declaratory Judgment that was essentially identical to his original and amended petition. (R. pp. 14–15). On November 19, 2020, Respondent filed an amended answer denying most of Appellant's allegations and asserting as defenses, *inter alia*, the statute of limitations and the doctrine of laches. (R. p. 50, ¶ 1–p. 52, ¶ 14). On December 11, 2020, Respondent filed a Motion for Judgement on the Pleadings under Rule 12(c), SCRCP, or in the alternative, a Motion to Dismiss under Rule 12(b)(6), SCRCP (Respondent's Motion). (R. pp. 16–17). On January 20, 2021, the Circuit Court referred the action to the Spartanburg County Master-in-Equity (Master). (R. pp. 9–10). On April 12, 2021, the

Master issued an order (Order) granting Respondent's Motion, finding that the statute of limitations provided in section 15-3-340 of the South Carolina Code (2005) and the doctrine of laches barred Appellant's action. (R. pp. 4–8). Appellant filed a Motion to Alter or Amend Judgment under Rule 59(e), SCRCP on April 21, 2021, which the Master denied on April 27, 2021. (R. pp. 1–3, 20). On May 17, 2021, Appellant filed a Notice of Appeal. (R. p. 53).

COUNTERSTATEMENT ON STANDARD OF REVIEW

An action to reform a deed is an action at equity. *See Timms v. Timms*, 290 S.C. 133, 135–37, 348 S.E.2d 386, 387–88 (Ct. App. 1986). In equitable actions, appellate courts "review the evidence to determine the facts in accordance with [its] view of the preponderance of the evidence." *Heritage Fed. Sav. & Loan v. Eagle Lake & Golf Condos.*, 318 S.C. 535, 539, 458 S.E.2d 561, 564 (Ct. App. 1995).

As an initial matter, Appellant incorrectly characterizes Respondent's Motion and the Master's Order as requesting and granting summary judgment. (App. Br. pp. i, iii, 4, 6–7). Respondent's Motion was one for judgment on the pleadings under Rule 12(c), or in the alternative, for dismissal under Rule 12(b)(6) (R. p. 16). Similarly, the Master's Order is titled "Order Granting Respondent, Heather D. Davis, Motion for Judgment on the Pleadings." (R. p. 4). Appellant does not assert that the Master considered any facts outside of the pleadings. (App. Br. pp. 6–11). Rather, Appellant contends the Master "did not have any evidence on which to base its ruling. The only documents before the court were the pleadings." (App. Br. p 6). *See* Rule 12(c) (stating a motion for judgment on the pleadings is treated as one for summary judgment under Rule 56, SCRCP, if "matters outside the pleadings are presented to and not excluded by the Court"). Accordingly, this Court should review the Order as one for judgment on the pleadings under Rule 12(c) rather than one for summary judgment under Rule 56.

"After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Rule 12(c). "When considering such motion, the court must regard all properly pleaded factual allegations as admitted." *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000); *see also Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (stating pleadings should be construed liberally). "When a fact is well pleaded, any inference of law or conclusions of fact that may properly arise therefrom are to be regarded as embraced in the averment." *Falk*, 341 S.C. at 286-87, 533 S.E.2d at 353 (quoting *Russell*, 305 S.C. at 89, 406 S.E.2d at 339). "A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009).

On review of a motion to dismiss on the pleadings under Rule 12(c), the appellate court applies the same standard of review that was implemented by the trial court. *Cf. Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001) (stating the appellate court applies the same standard when reviewing the pleadings on review of a dismissal under Rule 12(b)(6)). "On review of the motion, the court may not consider matters outside the pleadings." *Falk*, 341 S.C. at 286, 533 S.E.2d at 353.

ARGUMENT

In its order, the Master granted Respondent's motion for judgment on the pleadings on two grounds: the statute of limitations found in section 15-3-340 and the doctrine of laches. (R. p. 5–7). Because the Master relied on two grounds, this Court must affirm the Order if it is supported by either ground. *See Anderson v. West,* 270 S.C. 184, 188, 241 S.E.2d 551, 553 (1978) ("[W]he[n] a jury returns a general verdict involving two or more issues and its verdict is supported as to at least one issue, the verdict will not be reversed."); *Anderson v. S.C. Dep't of Highways & Pub.*

Transp., 322 S.C. 417, 420 n.1, 472 S.E.2d 253, 255 n.1 (1996) ("It should be noted that although cases generally have discussed the 'two[-]issue' rule in the context of the appellate treatment of general jury verdicts, the rule is applicable under other circumstances on appeal, including affirmance of orders of trial courts."). Moreover, if a party fails to appeal all grounds, the lower court must be affirmed. *See Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996) ("[W]he[n] a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case.").

Respondent asks this Court to affirm the Master based on the doctrines of the two-issue rule and the law of the case because the Appellant failed to appeal both grounds. In the statement of issues on appeal, the Appellant lists nine separate issues and does not list the Master's reliance on the doctrine of laches as error. (App. Br. p. iii). "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B), SCACR; *see also Brown v. Odom*, 425 S.C. 420, 436 n.5, 823 S.E.2d 183, 191 n.5 (Ct. App. 2019) (finding an issue was unpreserved because the appellant failed to include the issue in his statement of issues on appeal). Appellant also does not list the doctrine of laches in the heading or subheadings of his argument section. (App. Br. pp. 5–11). Moreover, Appellant did not argue in his 59(e) motion that the Master erred in applying laches. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000) ("An appellate court may not, of course, *reverse* for any reason appearing in the record. The losing party must first try to convince the lower court it . . . has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred."). Accordingly, this Court should affirm the Master because a ground the Master relied upon was not properly appealed. *See Short*, 323 S.C. at 525, 476 S.E.2d at 477 (affirming the lower court's decision because the appellant did not appeal all grounds upon which the decision

was based and the unappealed grounds were the law of the case). Should this Court find the appeal is properly preserved, Respondent addresses the merits below.

A. APPELLANT'S ARGUMENT THAT THE MASTER OVERRULED THE CIRCUIT COURT IS UNPRESERVED

In Part A.3, Appellant argues the Master erred in granting Appellant's Motion because it amounts to one judge overruling another. (App. Br. pp. 7–8). *See generally Charleston Cnty. Dep't of Soc. Servs. v. Father, Stepmother, & Mother*, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995) ("There is a long-standing rule in this State that one judge of the same court cannot overrule another."). This Court should find this issue is unpreserved because the Appellant did not raise it to the Master.

"Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [trial] court." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779–80 (2004); *see also Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."). When a court's order creates an issue, the appellant must file a motion to alter or amend the judgment in order to allow the court to rule on or correct the alleged error. *See Brown*, 425 S.C. at 429, 823 S.E.2d at 187 ("Post[]trial motions are . . . utilized to raise issues that could not have been raised at trial." (omission in original) (quoting Jean Toal et al., *Appellate Practice in South Carolina* 189 (3d ed. 2016))); *id.* at 430, 823 S.E2d at 187–88 (noting issues created by an order are preserved when raised in a posttrial motion); *see also Sweeney v. Sweeney*, 420 S.C. 69, 82, 800 S.E.2d 148, 154 (Ct. App. 2017) ("Because the [trial] court did not have the opportunity to rule upon this issue or correct any alleged mistakes in its final order, we find it is unpreserved for our review.").

In his 59(e) motion, Appellant did not argue to the Master that it erred in ruling on Respondent's Motion. (R. p. 20). Instead, Appellant's arguments related to the action's nature, the affidavits attached to the motion, and the Master's reliance on section 15-3-340. (R. p. 20). Because Appellant did not argue the Master erred because the circuit court had already ruled on Respondent's Motion, this Court should find the issue is unpreserved. *Sweeney*, 420 S.C. at 82, 800 S.E.2d at 154 (finding the issue unpreserved because the appellant did not give the trial court the opportunity to rule on the issue or correct the alleged mistake). Accordingly, Respondent asks this Court to affirm the Master on this issue.

Should the Court find this issue is preserved, the Court should affirm based on the merits. Rule 53, SCRCP, provides that all or part of actions can be referred to a master-in-equity or a special referee. "When a case is referred to a master, Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers." *Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 75, 773 S.E.2d 607, 616 (Ct. App. 2015) (quoting *Smith Cos. of Greenville, Inc. v. Hayes*, 311 S.C. 358, 360, 428 S.E.2d 900, 902 (Ct. App. 1993)). If the circuit court refers the entire action to the master, the circuit court no longer has jurisdiction over the action. *Cf.* Rule 53(b) (providing that the matter is returned to the circuit court if an issue triable by a jury exists and a party files a jury demand); Rule 53(e) (providing that appeals of a matter referred to a master are reviewed by the Supreme Court or the Court of Appeals).

In this case, the circuit court referred the entire matter to the Master and directed it to "make final decisions with respect to all matters in this action" on January 20, 2021. (R. p. 9). At this point, the Master had the authority to rule on all matters pertaining to the action. *See* Rule 53. Accordingly, the Master did not err in ruling on Respondent's Motion. Moreover, the alleged prior

order Appellant refers to was issued by the circuit court on February 1, 2021—twelve days after the case was referred in full to the Master, and there is no indication in the Record on appeal that the matter was referred back to the circuit court. *See id.* Therefore, should the Court reach the merits of this issue, Respondent asks the Court to affirm the Master.

B. THE MASTER DID NOT ERR IN FINDING SECTION 15-3-340 APPLIED

In Part A.4, Appellant argues the Master erred in relying on section 15-3-340 in dismissing this case because (1) Respondent did not specifically allege that particular statute and (2) the statute is inapplicable. (App. Br. pp. 8–11). As to the first argument, Respondent asserted in her Amended Answer that Appellant's "action is untimely pursuant to the applicable statute of limitations." (R. p. 50, ¶ 9). Appellant admits as much in his brief. (App. Br. p. 8). Because, as discussed below, section 15-3-340 is the applicable statute of limitations, the Master did not err in relying on it. Additionally, Appellant provides no authority for the point that it would be error for the Master to subsequently "inject" section 15-3-340. *Cf. Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 573, 772 S.E.2d 882, 893 (Ct. App. 2015) (finding an issue abandoned and unpreserved when the appellant cited no legal authority and "merely provided a recitation of the trial transcript and made a conclusory argument"). Therefore, this Court should reject this argument.

As to the second argument, Appellant asserts because he continued to use the Property he has remained in possession of the Property and the statute is inapplicable pursuant to *Butler v. Lindsey*, 293 S.C. 466, 361 S.E.2d 621, (Ct. App. 1987). (App. Br. p. 9–10). This Court should find the Master applied the proper statute of limitations based on the rules of statutory interpretation.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *DIRECTV, Inc. & Subsidiaries v. S.C. Dep't of Revenue*, 421 S.C. 59, 70, 804 S.E.2d 633, 638 (Ct. App. 2017) (quoting *Sloan v. Hardee*, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007)). "What the General Assembly says in the text of the statute is the best evidence of its intent, and [appellate c]ourt[s are] bound to give effect to the legislature's expressed intent." *Aiken v. S.C. Dep't of Revenue*, 429 S.C. 414, 419, 839 S.E.2d 96, 99 (2020). "Whe[n] the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *DIRECTV*, 421 S.C. at 70, 804 S.E.2d at 638 (alteration in original) (quoting *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010)). "Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." *Id.* at 70, 633 S.E.2d at 639 (quoting *Sloan*, 371 S.C. at 499, 640 S.E.2d at 459).

Section 15-3-340 provides as follows:

> No action for the recovery of real property *or* for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor, was seized or possessed of the premises in question within ten years before the commencement of the action.

(emphasis added).

Accepting Appellant's allegation that he has continuously farmed a small part of the Property as true, under *Butler*, Appellant has "possessed" the property over the past nineteen

years.[1] (R. p. 44, ¶ 7). *See Falk*, 341 S.C. at 286, 533 S.E.2d at 353 ("When considering [a Rule 12(c)] motion, the court must regard all properly pleaded factual allegations as admitted."); *Butler*, 293 S.C. 466 at 473, 361 S.E.2d at 624 (rejecting the argument that occasional use of a property does not constitute possession). However, the statute says "[n]o action for the recovery of real property *or* for the recovery of the possession of real property." § 15-3-340. (emphasis added). When used in a statute, the word "or" "is a disjunctive particle that marks an alternative" and "imports [a] choice between two alternatives and as ordinarily used, means one or the other of two, but not both." *State v. Middleton*, 407 S.C. 312, 316, 755 S.E.2d 432, 435 (2014) (quoting *Brewer v. Brewer*, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963)). The legislature's use of the word "or" means the statute applies to actions other than for the recovery of possession of property, specifically "for the *recovery* of real property." § 15-3-340 (emphasis added). "Recovery" is defined as "[t]he regaining or restoration of something lost or taken away." *Recovery*, *Black's Law Dictionary* (11th ed. 2019). Appellant's action to reform the Deed is one for the "recovery of real property" because he desires to "regain" proper title to the Property that he claims he "lost" due to a clerical mistake. (R. p. 46–47, ¶ 7). Accordingly, the fact that Appellant maintained possession of a portion of the Property does not render section 15-3-340 inapplicable. Accepting Appellant's pleadings as facts, Appellant executed the Deed in 2001 and nineteen years passed before he filed the present action. (R. p. 43, ¶ 5–p. 44 ¶ 7; R. p. 46, ¶ 7–p. 49). No other facts are alleged that

[1] However, Respondents asserts that because she held title to the entirety of the Property, she was in constructive possession of the property. *See Butler*, 293 S.C. 466 at 473, 361 S.E.2d at 624–25 ("[I]t has been noted as a universal truth that the law considers the title to the *locus in quo* draws with it constructive possession thereof.").

would allow the Master to conclude—even construing the pleadings liberally—that Appellant has owned the property within the last ten years as required by section 15-3-340. *See Russell*, 305 S.C. at 89, 406 S.E.2d at 339 (stating pleadings should be construed liberally). Accordingly, the Master did not err in applying the ten-year statute of limitations in section 15-3-340.[2] Therefore, this Court should affirm the Master on this ground.

C. APPELLANT'S ARGUMENTS IN PARTS A.1 AND A.2 ARE NONRESPONSIVE TO THE MASTER'S ORDER

Appellant asserts in Part A.1 that the Master erred in granting summary judgment because there were no facts before the court. (App. Br. p. 6). In Part A.2, Appellant argues the Master erred by granting summary judgment after failing to view the facts and pleadings in the light most

[2] Respondent recognizes that section 15-3-340 contains a second "or" when it states the plaintiff or his predecessor "was seized or possessed" the property within ten years. However, this second "or" should not be interpreted as providing alternative methods to precluding the statute of limitations when he brings an action to recover real property. Rather, it should be interpreted as continuing the distinction established at the beginning of the statute between an action to recover ownership of real property and an action to recovery possession of real property. *See also Seize*, *Black's Law Dictionary* (11th ed. 2019) (cross-referencing the definition of "seisin"); *Seisin*, *Black's Law Dictionary* (11th ed. 2019) (defining "seisin" as "[p]ossession of a freehold estate in land; ownership"); *id.* ("Originally, seisin meant simply possession . . . . Gradually, seisin and possession became distinct concepts. . . . [A]lthough the word 'seisin' appears in modern statutes with a fair degree of frequency, it is usually treated as synonymous with ownership." (quoting Cornelius J. Moynihan, *Introduction to the Law of Real Property* 98–99 (2d ed. 1988)).

favorable to Appellant. (App. Br. pp. 6–7). These arguments misconstrue the Order. As noted above, Respondent's Motion and the Master's Order were for judgment on the pleadings. Accordingly, Appellant's arguments that the Master erred because (1) there were no facts before it or (2) it failed to consider the facts in the light most favorable to Appellant misconstrue the Master's Order, and this Court should view the arguments as without merit. *See Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 271–72, 705 S.E.2d 73, 76 (Ct. App. 2010) (finding the appellant's argument was without merit because the argument misconstrued the appealed order). Additionally, these arguments relate to the Master's application of laches, which as noted above, is not properly preserved. To reverse on these grounds would amount to reversing for any reason in the record. *See I'On*, 338 S.C. at 421–22, 526 S.E.2d at 724 ("An appellate court may not, of course, *reverse* for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred."). Moreover, as also discussed above, the statute of limitations applied by the Master supports affirmance. *See West*, 270 S.C. at 188, 241 S.E.2d at 553 ("[W]he[n] a jury returns a general verdict involving two or more issues and its verdict is supported as to at least one issue, the verdict will not be reversed."); *S.C. Dep't of Highways*, 322 S.C. at 420 n.1, 472 S.E.2d at 255 n.1 (stating the two-issue rule applies to trial court orders). Based on the foregoing, this Court should affirm the Master on these grounds.[3]

[3] Should this Court reach the merits of these arguments, contrary to Appellant's argument, there were facts before the Master because the pleadings are admitted as facts on a Rule 12(c) motion. *See Falk*, 341 S.C. at 286, 533 S.E.2d at 353 ("When considering [a Rule 12(c)] motion, the court must regard all properly pleaded factual allegations as admitted."). The pleadings establish

that Appellant sold the entirety of the Property to Respondent in 2001 and did not file this action until nineteen years later. (R. p. 43–47). Even when considered liberally, the pleadings establish that Appellant waited over nineteen years after conveying the Property to file this action. *See Russell*, 305 S.C. at 89, 406 S.E.2d at 339 (stating pleadings should be construed liberally). The fact that Appellant continued to use the Property as a small farm has no bearing on whether or not the Master erred in applying laches as an additional ground for dismissing the case. *See generally Hallums v. Hallums*, 296 S.C. 195, 199, 371 S.E.2d 525, 528 (1988) (stating the elements of laches are delay, unreasonable delay, and prejudice). Should this Court conclude the Master converted Respondent's motion into one for summary judgment by considering facts outside of the pleadings, there were no facts before the Master when it issued the Order that would indicate laches should not apply. Appellant did not provide the Master with any facts beyond the pleadings until he filed affidavits attached to his 59(e) motion after the Master issued the Order. These affidavits should be considered untimely because they could have been presented prior to the Order but were not. *See Michael P. v. Greenville Cnty. Dep't of Soc. Servs.*, 385 S.C. 407, 413 n.4, 684 S.E.2d 211, 214 n.4 (Ct. App. 2009) (per curiam) (noting that arguments and theories raised for the first time in a posttrial motion were not properly preserved for appellate review). Furthermore, the affidavits, even if considered, do not allege any facts showing that Appellant did not delay nineteen years in bringing the action, that the delay was reasonable, and that Respondent was not prejudiced by the delay. *See Hallums*, 296 S.C. at 199, 371 S.E.2d at 528 (providing the elements for laches). Therefore, should this Court address the merits, Respondent asks this Court to affirm the Master on these grounds.

D. THE MASTER PROPERLY DENIED APPELLANT'S 59(E) MOTION

This Court should also affirm the Master's denial of Appellant's 59(e) Motion. As discussed above, the Master did not err in granting Respondent's Motion for Judgment on the Pleadings and therefore there is no reason to alter or amend the Order. Accordingly, Respondent asks this Court to affirm on this ground.

CONCLUSION

Based on the foregoing, Respondent Heather Davis asks this Court to affirm the Master.

Respectfully submitted,

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RESPONDENT HEATHER D. DAVIS'S CERTIFICATE OF COUNSEL

The undersigned certified that Respondent Heather D. Davis's Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

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