

RECEIVED

Oct 11 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No.: 20-001019

Mary L. Agnes Shelton,

Respondent,

v.

Jack Shelton and Sharon Shelton,

Appellants.

FINAL BRIEF OF RESPONDENT

William James LaLima
1635 Sunset Blvd.
Columbia, SC 29169
(803) 807-6292
Bill@LawLima.com
S.C. Bar No.: 15276

ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities.....	i
Statement of Issues on Appeal.....	ii
Statement of The Case.....	1
Standard of Review.....	3
Argument.....	4
Conclusion.....	6

TABLE OF AUTHORITIES

CASES

Bravis v. Dunbar, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994).....4

Charleston Lumber Co., Inc. v. Miller Housing Corp., 318 S.C. 471, 478, 458 S.E.2d 431, 436
(Ct. App. 1995).....3

Creech v. South Carolina Wildlife and Marine Resources Dep't, 328 S.C. 24, 34, 491 S.E.2d 571,
576 (1997).....6

David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).....3

Davis v. Monteith, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986).....4

Graniteville Co. v. Williams, 209 S.C. 112, 120-21, 39 S.E.2d 202, 206 (1946).....5

Jones v. Leagan, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009).....5

Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).....4

Lusk v. Callaham, 287 S.C. 459, 459-60, 339 S.E.2d 156, 156-57 (Ct. App. 1986).....5

Miller v. Leaird, 307 S.C. 56, 62, 413 S.E.2d 841, 844 (1992).....3, 4

Mullis v. Winchester, 237 S.C. 487, 491, 118 S.E.2d 61, 63 (1961).....4

Singleton v. Sherer, 377 S.C. 185, 198, 659 S.E.2d 196, 202 (Ct. App. 2008).....4

Taylor v. Heirs of Taylor, 419 S.C. 639, 651, 799 S.E.2d 919, 924-25 (Ct App. 2017).....4

STATUTES

S.C. Code Ann. § 15-67-210, *et. seq* (1976).....4, 5

OTHER AUTHORITIES

Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4024, 134 Stat. 281
(2020).....6

I. STATEMENT OF THE ISSUES ON APPEAL

1. Should the Fifth Circuit Court's finding that the Plaintiff is entitled to summary judgment as a matter of law be affirmed?
2. Should the Appellate Court consider an argument not made in the Lower Court?

II. STATEMENT OF THE CASE

A. STATEMENT OF MATERIAL FACTS

Respondent Mary Shelton is the owner of record at 340 Lee Road, Columbia, South Carolina (referred to herein as "the property"). Appellant Jack Shelton is Respondent's son and is married to Appellant Sharon Shelton. The property sits on a 2.1 acre tract (referred to herein as "the Shelton tract") of family land. Respondent and her now deceased husband purchased the property over fifty (50) years ago. Respondent and her eldest son, Carl Shelton Jr., currently reside in homes adjacent to the property occupied by Appellants on the Shelton tract. No lease was ever executed in regards to the property. The relationship soured in 2018. During this time, Respondent cut Appellants' access to a family well situated outside of the Shelton tract. Appellant Jack Shelton filed an action as a tenant under the South Carolina Landlord Tenant Act (SCLTA). R. at 40-43. Thereafter, Respondent initiated an action to remove Appellants' from the property. R. at 7. Appellants took no action to prosecute the adverse possession claim and asserted defenses under the SCRLTA. Appellants had a full opportunity to litigate the adverse possession claim and any other claims associated with the property. The Magistrate Court dismissed the case.

Respondent again notified Appellants in writing to vacate the property on or about February 25, 2019. When Appellants refused to vacate the property, Respondent applied to eject Appellants on or about April 24, 2019. R. at 8-10. Appellants again counterclaimed for adverse possession and for repayment of alleged improvements to the property. R. at 12-14. The case was transferred from Magistrates Court to the Court of Common Pleas to allow the circuit court to address Appellants' counterclaims.

In addition to filing a case under the SCRLTA, Appellants made complaints to law enforcement and to various administrative agencies. In these complaints, Appellant Jack Shelton identified himself as a tenant. On or about October 29, 2018, Appellants made a complaint to the Richland County Community Planning & Development board alleging that Respondent had violated the SCLTA. R. at 44. Furthermore, Appellants made a multitude of maintenance requests to respondent, including a request on or around June 9, 2019 to repair the driveway and a request on or around May 20, 2020 to repair a wall in the bedroom and the driveway. R. at 38-39. On or about January 27, 2020, Appellant Jack Shelton, acting as a tenant, made a complaint regarding the property's septic tank. The South Carolina Department of Health and Environment Control (DHEC) investigated the incident. DHEC alleges that a sewage leak on the property poses a health hazard and that the hazard will be eliminated by vacating the property. R. at 28-33. Appellant Jack Shelton has alleged violations of the SCLTA in both his previous pleadings and in his communications to state and local government.

B. PROCEDURAL HISTORY

When Appellants refused to vacate the property, Respondent initiated the present action in the Magistrate Court for Richland County, South Carolina by filing an Application for Ejectment on or about April 23, 2019. R. at 8-9. Appellants filed a Return to Notice to Quit Premises and Answer and Counterclaim on or about May 2, 2019, alleging a counterclaim for adverse possession, for breach of the SCLTA, and for compensation related to alleged improvements to the property. R. at 11-14. 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. R. at 16. The case was transferred to the Circuit Court on or about January 3, 2020

pursuant to Appellants' Motion to Transfer, heard on or about September 6, 2019. R. at 20. Respondent then filed a Motion for Summary Judgment on April 24, 2020. R. at 21-22. Respondent filed the Affidavit of Plaintiff with supporting exhibits, R. at 23-24, and the Affidavit of Carl Shelton, Jr. on June 17, 2020. R. at 25-26. Appellants filed a Memorandum in Opposition to Plaintiff's Motion for Summary Judgment. Appellants filed the Affidavits of Defendant Jack Shelton, R. at 48-49, Sharon Shelton, R. at 71-72, Johellen Lee, R. at 79-80, Agnes M. Dial, R. at 76-77, and Samuel Calvin, R. at 82, along with exhibits. The Circuit Court hearing was held on June 23, 2020. The Court heard arguments from counsel and carefully reviewed the documents. After careful consideration, the Court found that Plaintiff, herein Respondent, was entitled to judgement as a matter of law regarding the issue of ejectment and the issue of adverse possession. The Circuit Court filed the Order Granting Plaintiff's Motion for Summary Judgment on July 17, 2020. R. at 1-5. Appellants filed their Notice of Appeal on July 24, 2020. R. at 84.

III. 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). As a matter of law, summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact. Rule 56(c), SCRPC. Rule 56 of the SCRPC requires that for a trial judge to grant summary judgment, it must be shown that further inquiry into the facts is not needed to clarify the application of the law. *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 478, 458 S.E.2d 431, 436 (Ct. App. 1995). In

determining whether any triable issues of fact exist, the evidence and all inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). However, the existence of a mere scintilla of evidence in support of the non-movants' position is not sufficient to overcome a motion for summary judgment. *Bravis v. Dunbar*, 316 S.C. 263, 265, 449 S.E.2d 495, 496 (Ct. App. 1994). The overarching purpose of summary judgment is to expedite the disposition of cases that do not require the services of a fact finder. *Singleton v. Sherer*, 377 S.C. 185, 198, 659 S.E.2d 196, 202 (Ct. App. 2008).

IV. ARGUMENT

A. THE LOWER COURT CORRECTLY DISMISSED DEFENDANTS' ADVERSE POSSESSION CLAIM FOR FAILURE TO MEET THE ELEMENTS OF THE CLAIM.

The lower court was correct in dismissing Appellants' adverse possession claim as a matter of law. Appellants have no other legal or factual claim that justifies their continued occupancy of the property and would estop immediate ejectment from the property. Appellants cannot produce even a scintilla of evidence that would clearly and convincingly persuade a jury that they are entitled to ownership by way of adverse possession.

For a claimant to acquire property through adverse possession, the claimant must show by a standard of "clear and convincing" evidence that four elements are satisfied: (1) continuous use for the statutory period, (2) exclusive possession and occupation, (3) open and notorious use of the property, and (4) hostile or adverse use under claim of right. S.C. Code Ann. § 15-67-210, et. seq. (1976); *Miller v. Leaird*, 307 S.C. 56, 62, 413 S.E.2d 841, 844 (1992), *See, e.g., Davis v. Monteith*, 289 S.C. 176, 180, 345 S.E.2d 724, 726 (1986); *See, e.g., Mullis v. Winchester*, 237 S.C. 487, 491, 118 S.E.2d 61, 63 (1961). If defendants fail to meet *any* element, then they are not

entitled to a finding of adverse possession. *Taylor v. Heirs of Taylor*, 419 S.C. 639, 651, 799 S.E.2d 919, 924-25 (Ct App. 2017); *see generally Jones v. Leagan*, 384 S.C. 1, 10, 681 S.E.2d 6, 11 (Ct. App. 2009); *See also Lusk v. Callaham*, 287 S.C. 459, 460-61, 339 S.E.2d 156, 156-57 (Ct. App. 1986).

Appellants cannot produce even a scintilla of evidence of exclusive ownership and possession. In South Carolina, land is deemed possessed and occupied under claim of title that is not under written instrument when it has been “usually cultivated or improved,” and when it has been “protected by substantial enclosure.” S.C. Code Ann. § 15-67-250 (1976). Appellants have failed to protect the property with a substantial enclosure and rely on Respondent to provide water service. Further, Appellants have only provided basic repairs and maintenance to the property, relying on Carl Shelton for such repairs and maintenance. R. at 25. Appellants contact Respondent whenever substantial repairs or maintenance are needed. R. at 38-39. Appellants’ complaints to DHEC, R. at 28-33, and Richland County Community Planning & Development Board, R. at 44, clearly evidence Appellants’ lack of responsibility for substantial repairs and property upkeep. No reasonable juror can find that Appellants’ possession and occupation of the property is exclusive.

The determination of whether possession is open and notorious is made from the viewpoint of the legal owner exercising ordinary diligence, not of the adverse possessor. *Jones v. Leagan*, 384 S.C. 1, 15, 681 S.E.2d 6, 13-14 (Ct. App. 2009). Respondent has consistently and openly expressed ownership of this property. While the legal owner need not have actual knowledge the claimant is claiming property adversely, the hostile possession should be so notorious that the legal owner by ordinary diligence should have known of it. *Graniteville Co. v. Williams*, 209 S.C. 112, 120-21, 39 S.E.2d 202, 206 (1946). Further, Appellants’ actions and

conduct evidence mere tenancy, not ownership. Appellants have made a multitude of maintenance requests to Respondent. R. at 38-39. In addition, Respondent presented a Motion and Affidavit for Preliminary Injunction with the signature line stating “Signature of Tenant” signed by Appellant Jack Shelton. R. at 40. Further, at argument, Appellants did not dispute that they have held themselves out as tenants. Instead, Appellants alleged that they held themselves out as tenants subsequent to the filing of the ejectment case. R. at 95:7-10.

Even when considered in a light most favorable to Appellants, the undisputed facts presented clearly show that Appellants held themselves out as tenants of the property at issue and, as a matter of law, this fails to meet the open, exclusive, notorious, and hostile possession elements of Appellants’ adverse possession claim.

B. SHOULD THE COURT CONSIDER AN ARGUMENT NOT RAISED IN THE LOWER COURT.

Appellants raise in their Initial Brief, for the first time in the case, that the COVID Pandemic prevented their eviction under federal law. The issue is not yet ripe since the trial court has not yet issued a “Writ of Ejectment”; regardless, had the issue been raised in the lower court, Respondent could easily comply and affirm that the dwelling in question is not a “covered dwelling” as defined by Section 4024(a)(1) of the Coronavirus Aid, Relief, and Economic Security Act. Moreover, the exhibits from DHEC, R. at 28-32, show there was a health and sanitation emergency caused by the Appellant’s residency.

As none of the issues were raised by the Appellant in the lower court, this court should not consider them. 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 judge to be preserved for appellate review.

Creech v. South Carolina Wildlife and Marine Resources Dep’t, 328 S.C. 24, 34, 491 S.E.2d 571,

576 (1997). To the extent the Appellate Court considers the issues, the appeal should still be denied as the issue is not yet ripe for consideration.

V. CONCLUSION

Appellants cannot produce a scintilla of evidence that would clearly and convincingly persuade a jury that they are entitled to ownership by way of adverse possession. The undisputed facts at bar, even when viewed in the light most favorable to the Appellants, conclusively shows that Appellants have held themselves out as tenants of the property at issue and, as a matter of law, this fails to meet essential elements of Appellants' adverse possession claim. The overwhelming evidence is that Appellants filed governmental complaints and initiated court proceedings as tenants, not as property owners. Therefore, the lower court was correct in finding that no genuine issue as to any material fact exists and Respondent is entitled to summary judgment as a matter of law.

The Appellants raise for the first time on appeal the issues related to the moratorium on evictions given the COVID Pandemic. The issue is not ripe since a Writ of Ejectment has not been issued.

June 17, 2021

Respectfully Submitted,

/S William J. LaLima

William James LaLima
1635 Sunset Blvd.
Columbia, SC 29169
(803) 807-6292
Bill@LawLima.com
S.C. Bar No.: 15276

ATTORNEY FOR RESPONDENT