

MAR 16 1967

5469

THE STATE OF ALABAMA - - - - JUDICIAL DEPARTMENT

SUPREME COURT OF ALABAMA

OCTOBER TERM 1966-67

J. C. Miller

1 Div. 228

v.

Joseph B. Jones, et al.

Appeal from Baldwin Circuit Court

LIVINGSTON, CHIEF JUSTICE.

This is a statutory ejectment suit commenced by the appellant on February 13, 1963 to recover a tract of land containing approximately 5.6 acres of land in Baldwin County, Alabama. The amended complaint described the property as follows:

"Beginning at the Southwest corner of
Fractional Section 31, Township 3 South,

2.

Range 2 East and run thence West 5030 feet; run thence North 220 Feet to a live oak tree which is the point of beginning; which tree is 1425.6 feet (21.6 chains) West and 75 feet South of the Southwest corner of the John Roberts land in the Foster Grant; thence West 393 feet to an 8 inch petrified wood post; thence South along an old fence line 561 feet to an iron post; thence East 393 feet to an iron post; thence North 561 feet to the live oak tree which is the point of beginning, containing 5.6 acres and being in Section 44, (amended by interlineation to 'Section 43') Township 3 South, Range 2 East."

The appellee pleaded the general issue. The appellant took a nonsuit by reason of the adverse ruling of the court, and appealed.

The trial was held in 1964. A registered surveyor, witness for appellant, testified that he surveyed the property involved in this suit about 1957. A map admitted in evidence in connection with the testimony of the surveyor shows that the tract is actually located in Section 43, Township 3 South, Range 1 East. This witness had known the property for about 50 years. An old Negro woman had lived in a house on this land from the time she could remember until she died in 1937. Her surviving husband lived there until the house burned in 1941.

While this witness was testifying, the court admitted in evidence, at the instance of appellee, a certified copy of a

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final decree of the Circuit Court of Baldwin County, Alabama, in Equity, dated May 28, 1941, quieting title in personam and in rem to the land in question as well as other land in J. Willard Newman.

Louis Clovis Williams testified that he was sixty-two years of age and that he was raised on the property which was the subject of the suit. His grandmother, Candice Richardson, lived on the property from the time that he first knew it until she died in 1937. Her husband, William Richardson, lived there until he died when the house burned in November, 1941. Candice Richardson had three children, Frank, Austin and Lily. Frank Williams was the father of Louis Clovis Williams.

The appellant offered in evidence, first as muniment of title, and then as color of title, a warranty deed executed by Frank Williams and his wife, Mary Williams, to Louis Clovis Williams, dated January 9, 1957, and filed for record on January 21, 1957. The appellee objected to its introduction on the ground that the land sued for is not described in the deed. The objection was sustained and the plaintiff duly excepted.

The appellant then offered in evidence a warranty deed from Louis Clovis Williams and his wife to the appellant, dated April 28, 1962, and filed for record on May 25, 1962. The appellee objected on the ground, among others, that the deed describes the land as being in Section 44 and in Range 2 East. The objection was sustained and the plaintiff duly excepted.

Thereupon, the plaintiff took a nonsuit with leave to appeal. He states that the only question on appeal is whether

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the description in the two deeds is sufficient, and insists that the court erred in not admitting the deeds in evidence.

Each of the deeds described the property by metes and bounds as in the amended complaint but concluded the description by stating that the land was in Section 44, Township 3 South, Range 2 East.

The repugnancy in the deed between the description as to metes and bounds and the description as to the Section and Range appears from the evidence.

The rule is that where a general and particular description are both used in the same deed with reference to the same land, and the two are repugnant to each other, the particular description will control and the general will be rejected as false. Sikes v. Shows, 74 Ala. 382; Carter v. Chevalier, 108 Ala. 563, 19 So. 798; Klepac v. Fendley, 222 Ala. 417, 132 So. 619.

It is also well understood that in ejectment, the plaintiff must recover on the strength of his own title, and not on the weakness of his adversary's title. 8 Ala. Dig., Ejectment, Key No. 9(3).

But appellee insists that any error in rejecting the deed was without injury to the appellant. By taking the nonsuit because of the adverse rulings rejecting the two deeds, the appellant tacitly admits that he had become satisfied by reason of the adverse ruling that he could not recover and therefore took a nonsuit to avoid a verdict against him. Title 7, Sec. 819, Code of Alabama 1940; Bush v. Russell, 180 Ala. 590, 61 So.

373. Therefore, for the purpose of this appeal, the determinable question is whether the plaintiff could have made out a case of statutory ejectment if the two deeds had been admitted in evidence in connection with the evidence already before the court.

The evidence does not show that Candice Richardson had any muniment of title to this property. The only evidence of possession on the part of Candice Richardson is that she lived in a house on the land and was claiming to own it.

Possession in order to ripen into title after the required length of time must be more than a mere claim of ownership. In order for the possession to be adverse it must be hostile and under claim of right, actual, open and notorious, exclusive and continuous. Moorer v. Malone, 248 Ala. 76, 26 So. 2d 558; Chastang v. Chastang, 141 Ala. 451, 37 So. 799. Acts of possession and other evidence to make possession adverse and ripen it into title must be sufficient to prove the existence of all these elements for the required length of time. McCreary v. Jackson Lumber Co., 148 Ala. 247, 41 So. 822; Millican v. Mintz, 255 Ala. 569, 52 So. 2d 207.

There was no evidence as to the extent of the area or quantity of land that was in the possession of Candice Richardson. Acquisition of title to land by adverse possession without bona fide claim under color of title, inheritance or purchase, is restricted to the definite area that was in the actual, continuous, and hostile possession of claimant. Marsh v. Gragg, 228 Ala. 269, 153 So. 219; Chastang v. Chastang, supra. It is essential in such cases that the evidence show the possession of a definite and

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particular area. It cannot be left to speculation or conjecture. Bowles v. Lowery, 181 Ala. 603, 62 So. 107; Turnipseed v. Moseley, 248 Ala. 340, 27 So. 2d 483. Candice Richardson had not acquired title by adverse possession in the 5.6 acre tract at the time of her death in 1937.

Moreover, there was no evidence of the assessment of the land by the appellant or by those under whom he claims for ten years. The two deeds in question were recorded within six years prior to the filing of the suit. Title 7, Sec. 828, Code of Alabama 1940, requires color of title or assessment of the land for taxes for ten years in connection with adverse possession. Morris v. Merchants National Bank of Mobile, 267 Ala. 542, 103 So. 2d 310.

There is no reversible error in the case and it is due to be affirmed.

AFFIRMED.

Simpson, Merrill and Harwood, JJ., concur.

I, Richard W. Neal, Deputy Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said Court.

Witness my hand this 16 day of May 1967

Richard W. Neal
Deputy Clerk, Supreme Court of Alabama

THE STATE OF ALABAMA--JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

October Term, 19.66-67

To the Clerk of the Circuit Court,
Baldwin County—Greeting:

Whereas, the Record and Proceedings of the Circuit Court
of said county, in a certain cause lately pending in said Court between
J. C. Miller, Appellant,

and
Joseph B. Jones, et al, Appellee,

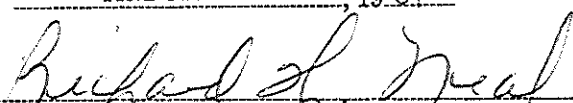
wherein by said Court it was considered adversely to said appellant, were brought before our
Supreme Court, by appeal taken, pursuant to law, on behalf of said appellant:

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, and adjudged by
our Supreme Court, on the 16th day of March, 1967, that said
Judgment of said Circuit Court be in all things

affirmed, and that it was further considered, ordered, and adjudged that the appellant, ~~and~~
J. C. Miller, and James R. Owen, surety on the appeal bond, pay

the costs accruing on said appeal in this Court and in the Court below, for which costs let execution
issue.

Richard W. Neal, Deputy
Witness, ~~J. R. Thomas~~, Clerk of the Supreme
Court of Alabama, at the Judicial Department
Building, this the 16th day of
March, 1967


Deputy Clerk of the Supreme Court of Alabama.

THE SUPREME COURT OF ALABAMA

October Term, 19 66-67

1 Div., No. 228

J. C. Miller

Appellant,

vs.

Joseph B. Jones, et al.

Appellee.

From Baldwin Circuit Court.

CERTIFICATE OF
AFFIRMANCE

The State of Alabama,

County.

} Filed

MAR 20 1967

this day of 19

STATE OF ALABAMA)
 *
BALDWIN COUNTY)

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon J. F. Kelley and Mallie E. Kelley to appear within thirty days from the service of this writ in the Circuit Court, to be held for said County at the place of holding the same, then and there to answer the complaint of J. C. Miller.

WITNESS MY HAND this 12 day of February, 1963.

Alice J. Alcock
Clerk

The defendants may be served
at 2317 St. Stephens Road,
Mobile, Alabama.

* * * * *

J. C. MILLER,)	
Plaintiff,)	IN THE CIRCUIT COURT OF
VS.)	BALDWIN COUNTY, ALABAMA
J. F. KELLEY and MALLIE E. KELLEY,)	AT LAW
Defendants.)	

COMPLAINT


The plaintiff sues to recover possession of the following tract of land situated in Baldwin County, Alabama, to-wit:

Beginning at the Southwest corner of Fractional Section 31, Township 3 South, Range 2 East and run thence West 5030 feet; run thence North 220 feet to a live oak tree which is the point of beginning; which tree is 1425.6 feet (21.6 chains) West and 75 feet South of the Southwest corner of the John Roberts land in the Foster Grant; thence West 393 feet to an 8 inch petrified wood post; thence South along an old fence line 561 feet to an iron post; thence East 393 feet to an iron post; thence North 561 feet to the live oak tree which is the point of beginning, containing 5.6 acres and being in Section ~~43~~, Township 3 South, Range 2 East.


Amended by *John Roberts*
to "Section 43"

of which he was in possession, and upon which pending such possession, and before the commencement of this suit, the defendant entered and unlawfully withholds, together with Five Hundred Dollars (\$500.00)

for the detention thereof.


~~Attorney~~ for Plaintiff

Plaintiff demands a trial of said
cause by jury.


~~Attorney~~ for Plaintiff

FILED

FEB 13 63

ALICE L. DICK, CLERK
REGISTERED

Received 13 day of Feb 1963
and on 20 day of Feb 1963
served a copy of the within 20 c
on J. F. Kelley and
Mallie E. Kelley
By service on Ray L. Bridges
TAYLOR WICKINS, Sheriff
By H. L. Halley D. S.

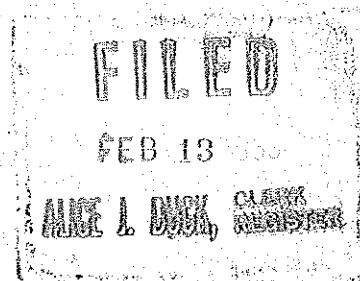
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FEB 15 1963

SHERIFF'S OFFICE

He COMPLAINT *5469*
350
J. C. MILLER,
Plaintiff,
VS.
20 c *20 c*
J. F. KELLEY and MALLIE E. KELLEY,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW *20*



JAMES R. OWEN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

J. C. MILLER,

Plaintiff,

vs.

J. F. KELLEY and
MALLIE E. KELLEY,

Defendants.

X

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

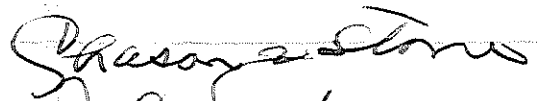

BALDWIN COUNTY, ALABAMA

AT LAW

TO: J. C. MILLER OR JAMES R. OWEN, HIS ATTORNEY OF RECORD:

The defendants, in the above style cause, acting by and through John Chason as one of their attorneys of record, hereby make a demand that the plaintiff shall furnish them an abstract in writing, of the title or titles on which he will rely for recovery of the lands sued for in his complaint.

By:



Attorney for Defendants

5469

J. C. MILLER,
Plaintiff,

vs.

J. F. KELLEY and
MALLIE E. KELLEY,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

Same Copy of James R. Owens

Received 5 day of March 1963
and on 6 day of March 1963
I served a copy of the within Notice
on James R. Owens
By service on J. B. Blackburn

TAYLOR WILKINS, Sheriff
By W. A. Zerbe D. S.
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ALICE J. DUCK, CLERK
RECEIVED

JURY LIST - MARCH 9, 1964.

710. 5469
Miller
V2
Kelly

1. Beck, Charles C., Businessman, Lillian
2. Blalock, Greene C., Carpenter, Fairhope
3. Bloch, Herman, Farmer, Elberta
4. Malone, T.E., Merchant, Fairhope
5. Mason, Jimmy, Salesman, Fairhope
6. Mosley, Rufus, Farmer, Stapleton
7. Eslava, Clarence, Farmer, Mag. Spgs.
8. Haden, James T., Salesman, Robertsdale
9. Quinley, Wilburn, Farmer, Bay Minette
10. Rhodes, Charles R., Farmer, Foley
11. Rhodes, Larkin T., Jr., Farmer, Bay Minette
12. Rieben, Ray, Paper Mill, Bay Minette
13. Roberson, Mutt, Laborer, Robertsdale
14. Lazzari, Anglo, Farmer, Belforest
15. Lazzari, Joe, Jr., Farmer, Belforest
16. Lazzari, John, Farmer, Belforest
17. Lager, J.E., Salesman, Foley
18. Little, W.F., Mgr. Bell Tele. Commercial, Spanish Fort 44
19. Robinson, Dale L., Ins. Agt., Foley
20. Sanders, E. Frank, Banker, Foley
21. Andress, Herbert E., Farmer, Foley
22. Dickey, O.L., Butcher, Robertsdale
23. Crosby, James W., Bookkeeper, Foley
24. Arnould, M.L., Floor Finisher, Robertsdale
25. Barton, John, Jr., Newport, Bay Minette
26. Thompson, Albert M., Merchant, Bay Minette
27. Wenzel, Emmett O., Merchant, Gulf Shores 106
28. Woodward, C.H., Merchant, Fairhope
29. Wright, Justice D., Forester, Stapleton
30. Boan, Jessie Forest, Farmer, Stapleton
31. Bung, Floyd, Merchant, Fairhope
32. Oblak, John, Jr., Farmer, Silverhill
33. Leiterman, Nick, Civil Service, Elberta 74
34. Smith, Clinton, Defense Worker, Bay Minette
35. Suddith, Jack, Officer Manager, Bay Minette
36. Bosby, Eugene, Construction Worker, Fairhope
37. Bryant, Nathan, Clerk, Fairhope
38. Denton, Alphonse, Carpenter, Fairhope
39. Lamar, Reuben, Laborer, Foley
40. McReynolds, Leon, Labor Worker, Bay Minette
41. Moore, Jessie, Court House, Bay Minette
42. Wilson, Frank E., Brookley Field, Daphne
43. Tullos, Abe, Brookley Field, Fairhope
44. Nix, C. Herbert, Reserve Fleet, Bay Minette

43
12
34
12
19
11

P XXXXX Y
D XXXXX Y

J. C. MILLER,

Plaintiff,

vs.

J. F. KELLEY and
MALLIE E. KELLEY,

Defendants,

X

X

X

X

X

X

X

PLEA:

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

Come the defendants in the above style cause and for
plea to the complaint filed in said cause, say:

1. Not guilty.

By:



Attorneys for Defendants

J. C. MILLER,

Plaintiff,

vs.

J. F. KELLEY and
MALLIE E. KELLEY,

Defendants.

* * * * *

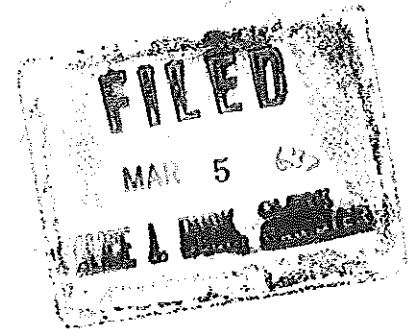
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA

AT LAW

* * * * *

PLEA

* * * * *



J. C. MILLER,

Plaintiff,

VS.

J. F. KELLEY, and MALLIE E.
KELLEY,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

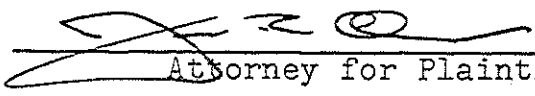
AT LAW

NO. 5469

AMENDMENT TO COMPLAINT

Now comes the plaintiff in open court, with the consent of the attorney for the defendants, and strikes J. F. Kelley and Mallie E. Kelley, as parties defendant in this cause, and substitutes therefor, with the consent of their attorney, the following, as parties defendants: Joseph B. Jones, Lila K. Jones, Gerald Calvin Coggin, Myrtis K. Coggin, George McCord, Hazel K. McCord, Thomas B. Mobley, Ouida K. Mobley, Marion L. Coleman and Joyce K. Coleman.

DATED this 10th day of March, 1964.


Attorney for Plaintiff

FILED

6-4 64

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the _____

10th day of March, 1964

~~Monday~~

~~1964~~

, in a certain cause in said Court wherein J.C. Miller

Plaintiff, and JOSEPH B. JONES, ET al,

Defendant, a judgement was rendered against said

Plaintiff,

to reverse which Judgment, the said J.C. Miller

applied for and obtained from this office an APPEAL, returnable to the next

Term of our Supreme Court of the State of Alabama, to be held at Montgomery, on

the _____ day of _____, 1964 next, and the necessary bond

having been given by the said James R. Owen, Attorney for Plaintiff,

~~with~~

sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Chason, Stone & Chason

~~or~~

_____, attorney, to appear at the next

Term of our

said Supreme Court, to defend against the said Appeal, if they think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 3rd

day of June, A. D., 1964

Attest:

Alice J. Duck, Clerk.

720,5469

CIRCUIT COURT
Baldwin County, Alabama

J. C. Miller

Vs. { Citation in Appeal

J. C. Kelly & Mollie E. Kelly

Issued.....day of, 196.....

Received..... day of June 1964
on 16 day of June 1964
received a copy of the within Citation

service on John Chacon

TAYLOR WILKINS, Sheriff
By W. D. Colbert, S.
on 1

J. C. MILLER,

Plaintiff,

VS.

JOSEPH B. JONES, ET AL,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

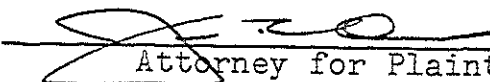
AT LAW

NO. 5469

APPEAL BY PLAINTIFF

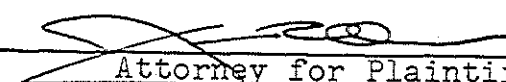
Now comes the plaintiff and appeals to the Supreme Court of Alabama from the final judgment rendered in this cause in and by the Circuit Court of Baldwin County, Alabama, Law Side, on to-wit, March 10, 1964.

DATED this 3rd day of June, 1964.

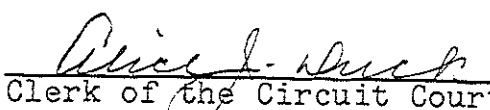

Attorney for Plaintiff

SECURITY FOR COSTS

I, the undersigned, do hereby acknowledge myself as security for the costs of the appeal taken by the plaintiff in this cause.


Attorney for Plaintiff

Taken and approved on this the
3 day of June, 1964.


Clerk of the Circuit Court of Baldwin County,
Alabama.

DIV. NO.

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 5469

THE STATE OF ALABAMA

Baldwin County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein J.C. Miller

was plaintiff, and JOSEPH B. JONES, ET AL

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said J.C. Miller did on the 3rd day of June, 1964, pray for and obtain an appeal from the judgment of said Court to the Supreme Court, of the State of Alabama to reverse said judgment of said Court upon entering into bond with James R. Owen, Attorney for Plaintiff as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Baldwin County is hereto affixed, this the 3rd day of June, 1964

Alice J. Duck
Clerk of the Circuit Court of
Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)

DIV. NO. _____

CERTIFICATE OF APPEAL. (Civil Cases.)

No. 5469

THE STATE OF ALABAMA

Baldwin County.

I, Alice J. Duck, Clerk of the Circuit Court of Baldwin County, in and for said State and County, hereby certify that the foregoing pages numbered from one to _____, both inclusive, contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately therein pending wherein J.C. Miller

was plaintiff, and JOSEPH B. JONES, ET AL

was Defendant, as fully and completely as the same appears of record in said Court.

And I further certify that the said J.C. Miller did on the 3rd day of June, 1964, pray for and obtain an appeal from the judgment of said Court to the Supreme Court, of the State of Alabama to reverse said judgment of said Court upon entering into bond with James R. Owen, Attorney for Plaintiff as surety thereon, which said bond has been approved by me.

Witness my hand and the seal of said Circuit Court of Scri Baldwin County is hereto affixed, this the 3rd day of June, 1964

Alice J. Duck
Clerk of the Circuit Court of
Baldwin County, Alabama.

(Code 1940, Title 7, Sec. 767)