

No. 21-CV-240<sup>1</sup>



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DISTRICT OF COLUMBIA COURT OF APPEALS

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RITA L. YATES

Plaintiff-Appellant,

v.

EUGENE KENNETH ALLEN, JR., ET AL.,

Defendants-Appellees.

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On Appeal from the  
Superior Court of the District of Columbia – Probate Division

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**BRIEF OF APPELLANT**

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ORAL ARGUMENT REQUESTED

*/s/ Emily P. Grim*

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<sup>1</sup> Lead case consolidated with appeal case numbers 21-CV-0419, 21-CV-0570, and 21-PR-0251.

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**LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT**  
**PURSUANT TO RULE 28(a)(2)**

Upon Appellant's information and belief, the following parties appeared in the below proceedings and/or in these consolidated proceedings:

Rita L. Yates (formerly represented by Kellee G. Baker, Esq.)

Brian R. Gormley, Esq. as Personal Representative for the Estate of Lydia Yates

Brian R. Gormley, Esq. as Personal Representative for the Estate of Frank Yates, Jr.

Delores Yates (represented by Brian R. Gormley, Esq.)

Angelo Yates (represented by Deidra McEachern, Esq.)

Eugene Kenneth Allen

Natasha Poteat

Shaunteka Sally

Shaunice Yates

Estate of Sharon Yates Allen

Estate of Deandre Yates

Carol Brown

James Brown

Keith Brown

Lorraine Brown

Estate of Charles Brown

Estate of Gloria Brown

Marlene Barner

Eldridge Carlton Jenkins, Jr.

David M. Jenkins

Warren A. Jenkins

Tracey Jones

Kettisha McKoy

Rick Owens

Morney Owens

Bernie Owens

Ray Owens

Lawrence H. Yates, III

Karen Yates

Wanda Yates

Kimberly E. Owens Bailey

Gayle Yates

Estate of Valerie Brock

Estate of Gwendolyn Reid

Estate of Doris Jenkins

Roland Yates

Ronald Yates (formerly represented by Claude W. Roxborough, Esq.)

Estate of Frank G. Yates (formerly represented by Claude W. Roxborough, Esq.  
and William Danise, Esq.)

Estate of Sandra Jenkins

Reginald Brown

Gloria Lewis

Kenneth Yates

Robin Owens Shaw

Estate of Carrie Jenkins

The Appellant, by and through her counsel, affirms that she is an individual person, not a corporation, and she has no parent companies, subsidiaries, or affiliates that have any outstanding securities in the hands of the public.

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## QUESTIONS PRESENTED

1. Is a court permitted to effectively add a required element to adverse possession claims that would change ownership of property that precludes claimants from filing a claim if a court has previously made any ownership determination, regardless of any other circumstances? As a corollary, are claimants precluded, as a matter of law, from ever raising an adverse possession claim merely because a court has previously determined legal ownership of the property, where no court has ever considered a claim of adverse possession of that same property?
2. Does res judicata bar the court from considering Ms. Rita L. Yates's ("Ms. Yates" or "Appellant") adverse possession claim of the real property located at 1528 A Street NE, Washington, DC 20002 (the "Property"), where the record does not reflect that the lower court reviewed any facts concerning Ms. Yates's claim for Adverse Possession?
3. Did Ms. Yates adversely possess the Property in question where her mother, Ms. Rita E. Yates, lived at the Property for decades as her primary residence with no other putative owners asserting any claim to the Property, solely paying the mortgage, taxes, and for upkeep and significant remodeling of the Property, with any Property rental proceeds going to her alone, and then passed the interest solely to her daughter, Ms. Yates, in fee simple absolute,

with Ms. Yates living there continuously in the years since and continuing to have the financial responsibility to maintain the Property?

4. Did the Superior Court err in ordering the sale of the Property where Ms. Yates's adverse possession claim was improperly dismissed and where, if successful, such claim would preclude any court-ordered sale?

### **STATEMENT OF FACTS**

Without this Court's relief, Ms. Yates faces the imminent sale and resulting loss of the home she has lived in for decades, and her mother and grandmother before her. This appeal reaches the Court after more than a decade of litigation over the Yates family home that crosses several separate cases in different sections of the D.C. Superior Court between, on the one hand, Ms. Rita E. Yates and Ms. Yates and, on the other, Brian Gormley as Personal Representative of the Estate of Lydia Yates, and Delores Yates as Personal Representative of the Estate of Frank Yates (collectively, "Appellees," and together with Ms. Yates, the "Parties").<sup>2</sup> Despite the tortured history of the dispute over the ownership of this Property, to resolve the issues on appeal, this Court need only focus on the lower court's 2016 determination of ownership rights in the Property; the most recent proceedings in

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<sup>2</sup> In addition to the cases consolidated on appeal, the Parties are involved in a tax foreclosure case involving the Property. *See Estafinos v. Yates*, No. 2018-CA-005991 L(RP) (D.C. Super. Ct.).

the Superior Court; and a limited set of facts and other legal decisions related to the possession of the Property by Ms. Rita E. Yates and Ms. Yates.<sup>3</sup>

Collectively, Ms. Yates and her mother, Ms. Rita E. Yates, have lived in the Property, without interruption, since 1955. *See* Verified Claim for Adverse Possession at Appx.021–Appx.022, *Yates v. Allen, Jr.*, No. 2020 CA 00738 R(RP) (D.C. Super. Jan. 31, 2020) (the “**Original Adverse Possession Complaint**”). Ms. Rita E. Yates lived in the Property from 1955 until her death in 2013. *See id.* at Appx.021–Appx.024. On September 14, 1955, Ms. Rita E. Yates was deeded one half interest in the Property as a tenant in common with her brother, Frank Yates, Jr., and his wife at the time, Anabelle Yates, while they all lived in the Property along with the co-owners of the other one-half interest that would eventually be transferred to the Estate of Lydia Yates. *Id.*; 2016 Ownership Order at Appx.002.<sup>4</sup> Mr. Yates, Jr. and Ms. Anabelle Yates moved from the Property on or about October 27, 1969. Original Adverse Possession Complaint at Appx.022. When

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<sup>3</sup> For detailed accounts of the history of the ownership of the Property and additional procedural history, *see* Order, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Apr. 21, 2016) (“**2016 Ownership Order**”) (Appx.001); Order Granting Petitioner’s Motion to Dismiss, *Yates v. Allen*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. Mar. 15, 2021) (“**Order Dismissing the Adverse Possession Claim**”) (Appx.214).

<sup>4</sup> In her Original Adverse Possession Complaint, Ms. Yates asserted that she held one-half interest in the Property as a tenant in common with her brother, Mr. Yates, Jr., but did not mention any ownership rights of Ms. Anabelle Yates, his wife. On information and belief, Ms. Yates does not contest that Ms. Anabelle Yates was also a tenant in common in 1955.

Ms. Lydia Yates died intestate on June 20, 1982, Ms. Rita E. Yates, as her daughter and title holder of her estate, claimed the Property to be 100 percent hers. *Id.*; *see also id.* at Appx.026 (After Ms. Lydia Yates’s death, “Rita E. Yates, who lived in the [Property] proclaimed the house to be exclusively hers through statements and actions.”). No member of the family, including Mr. Yates, Jr. or any other heir of Ms. Lydia Yates, had ever made any claim to the Property prior to the initiation of the probate action in 2009—one of the matters underlying this appeal.<sup>5</sup>

Moreover, since at least 1982, Ms. Rita E. Yates and Ms. Yates have been the sole payors of all costs associated with the home, and the collector of all rents received. *See* Original Adverse Possession Complaint at Appx.022, Appx.023, Appx.025, Appx.027. The Property was subject to a mortgage from 1955 until May 16, 2007, which included additional financing added to the mortgage in 1964 and the final refinance mortgage in 1972. *Id.* at Appx.023. Ms. Yates had understood that one of these refinances was used to buy out Mr. Yates, Jr.’s interest in the Property. *Id.* Regardless of the reason for the refinance, after 1982 when Ms. Rita E. Yates claimed full ownership of the Property, she and Ms. Yates

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<sup>5</sup> Mr. Yates, Jr. also filed a Complaint for Real Property on October 14, 2008 that appears to have also been a partition action of the Property. *See* Docket, *Yates v. Yates*, No. 2008 CA 007271 R(RP) (D.C. Super. Ct.). That matter was dismissed on November 25, 2008 for failure to join necessary parties. *Id.*; *see also* Adverse Possession Complaint at Appx.024.

exclusively paid the mortgage payments, property taxes, and utility bills. *Id.* at Appx.022–Appx.023. In addition, Ms. Rita E. Yates made significant improvements to the Property, including roof repairs and plaster repairs. *Id.* She also modified her home to be wheelchair accessible for her daughter Ms. Sheila Yates, to provide for her disability, including building a wheelchair ramp and an accessible bathroom, and lowering cabinets and faucets. *Id.* Ms. Rita E. Yates also collected the full amount of rent from her sister during the time she was permitted to rent a room. *Id.* at Appx.023.

Ms. Yates lived in this home as a child, and moved back in 1997 with her son. She has remained there ever since. *Id.* at Appx.022–Appx.023. Ms. Yates returned to help her aging mother care for her sister Ms. Sheila Yates, who had a serious disability. *Id.* at Appx.023. After Ms. Sheila Yates died in 2007, Ms. Yates remained to take care of her mother, Ms. Rita E. Yates, whose health was declining. *Id.* In 2007, Ms. Rita E. Yates also executed her Last Will and Testament, which stated “I give and devise my interest in 1528 A Street, N.E., Washington, D.C. 20002, to my daughter, Rita Lydia Yates, in fee simple absolute. . . . I have chosen to leave my interest to her so that she may continue residing at [the Property].” *Id.* at Appx.023–Appx.024.

Despite Ms. Rita E. Yates’s assertions that she held 100 percent ownership in the Property since 1982, within a year of paying off the mortgage on the

Property and devising it to Ms. Yates in her Will, Mr. Frank Yates, Jr. resurfaced and filed a partition action in the court pursuant to D.C. Code § 16-2901 (providing that “[t]he Superior Court . . . may decree a partition of lands, tenements, or hereditaments on the complaint of a tenant in common”). *Id.* at Appx.024; *see also* D.C. Code § 16-2901(a) (When a “property can not be divided without loss or injury to the parties interested, the court may decree a sale thereof and a division of the money arising from the sale among the parties, according to their respective rights.”). Notably, Mr. Yates, Jr.’s initial claims were based on an interest he believed he had through the Estate of Lydia Yates (his mother), who owned one-half interest in the Property prior to her death; he did *not* assert that his own previous interest in the Property remained. *See* Original Adverse Possession Complaint at Appx.024. Indeed, had the refinancing been used to buy out his interest, as Ms. Yates has understood, he had no legal claim to the one-half interest he initially shared as a tenant-in-common with Ms. Rita E. Yates and Ms. Anabelle Yates. *Id.* at Appx.021, Appx.023; 2016 Ownership Order at Appx.002. When Mr. Yates, Jr. discovered that his name was still on the legal title to the Property, he asserted his own interests in the Property. Original Adverse Possession Complaint at Appx.024.

On August 24, 2013, during the pendency of the litigation over the probate matters and related ownership questions of the Property, Ms. Rita E. Yates died,



and her 2007 Will went through probate court. *Id.* Ms. Yates was named the Personal Representative of her Estate, and on February 5, 2014, she deeded the Property to herself. *Id.* at Appx.025. Since that time, Ms. Yates has continued to live in and pay for all matters involving her home. *Id.*

Since Mr. Yates, Jr. first filed a complaint regarding the Property in 2008, and especially since Ms. Rita E. Yates died in 2013, Ms. Yates has been facing continuous legal battles regarding ownership of a home that she thought her mother and now her have exclusively owned since 1982. Ms. Yates is not a lawyer, and despite many attempts to find appropriate legal representation, Ms. Yates has often appeared in court to maintain her housing without any assistance or any knowledge of the relevant law. She retained undersigned counsel in May, and has consolidated all claims involving ownership of the Property into this appeal, so that the Court may consider all claims together properly.

### **PROCEDURAL HISTORY**

1. On May 14, 2009, Mr. Yates, Jr., as Personal Representative for the Estate of Lydia L. Yates, sought partition of the Property. 2016 Ownership Order at Appx.003 (citing Answer and Counterclaim, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. May 14, 2009)); Original Adverse Possession Complaint at Appx.024. On August 13, 2010, this Counterclaim was dismissed for failure to join necessary parties. 2016 Ownership Order at Appx.003.

2. On August 24, 2013, Rita E. Yates died and the court appointed Ms. Yates as Personal Representative of the Estate of Rita E. Yates. *In re Estate of Rita E. Yates*, No. 2013 ADM 001223. On February 5, 2014, Ms. Yates, acting as Personal Representative for the Estate of Rita E. Yates, deeded the Property to herself. Original Adverse Possession Complaint at Appx.025.

3. On September 16, 2014, the Superior Court granted Mr. Yates, Jr.'s Motion to Reopen the Counterclaim. *See* 2016 Ownership Order at Appx.003.

4. On April 21, 2016, after a two-day trial and unsuccessful mediation, the Superior Court issued an Order ruling that during her lifetime, Decedent Rita E. Yates held an ownership interest in the Property as tenants in common with Frank Yates, Jr. (her brother), Anabelle Yates (Frank Yates, Jr.'s wife until 1992), and the Estate of Lydia Yates. 2016 Ownership Order at Appx.011. The court determined that the Estate of Lydia Yates owns a 50 percent interest in the Property, and that Frank G. Yates, Jr., Anabelle Yates, and the Estate of Rita E. Yates share the remaining 50 percent as tenants in common. *Id.*

5. On October 18, 2016, Mr. Yates, Jr. Renewed a Motion to sell the Property, and asserted that all parties had conceded to the sale. Docket, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct.).

6. On December 18, 2016, during a hearing, the Superior Court granted Mr. Yates, Jr.'s Renewed Motion to sell the Property. Attorney Kellee G. Baker

entered an appearance representing Ms. Yates in this probate matter the same day. *Id.* Despite the Superior Court's Order, Ms. Yates remained in possession of the Property and it was not sold. Order Granting Petitioner's Motion to Dismiss at Appx.216, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. Mar. 15, 2021) ("**Order Dismissing Adverse Possession Claim**").

7. On July 3, 2018, Mr. Yates, Jr. died, and Ms. Delores Yates was appointed as the Personal Representative of his estate. *Id.*

8. On January 31, 2020, Ms. Yates filed a *pro se* Complaint for Adverse Possession, asserting that her mother, Ms. Rita E. Yates, obtained a 100 percent ownership interest in the Property under the doctrine of adverse possession, which Ms. Yates has maintained as the successor in interest to the Property. Original Adverse Possession Complaint at Appx.016.

9. On June 17, 2020, the court approved Ms. Delores Yates's petition to appoint Mr. Gormley as the Personal Representative of the Estate of Lydia Yates. Motion for Reconsideration of Court's Order Dated October 21, 2020 Denying Motions to (I) Surcharge Property Interest of Rita L. Yates and (II) Appoint Trustee and Compel Sale for Possession of Real Property and for Contempt of Court at Appx.090, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Oct. 27, 2020) ("**2020 Motion for Reconsideration of Sale of Property**").

10. On July 20, 2020, Mr. Gormley and Ms. Delores Yates (as Personal Representatives of the Estate of Lydia Yates and the Estate of Frank Yates, Jr., respectively) filed an Emergency Motion to Compel the Sale of the Property, which the Superior Court denied on October 21, 2020. Emergency Motion to Appoint Trustee and Compel Sale, For Possession of Real Property and For Contempt of Court, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. July 20, 2020) (Appx.069); Order, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Oct. 21, 2020) (Appx.081). On October 27, 2020, Mr. Gormley and Ms. Delores Yates filed a Motion for Reconsideration of that denial. Motion for Reconsideration of Court's Order Dated October 21, 2020 Denying Motions to (I) Surcharge Property Interest of Rita L. Yates and (II) Appoint Trustee and Compel Sale for Possession of Real Property and for Contempt of Court, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Oct. 27, 2020) (Appx.089).

11. On November 19, 2020, Ms. Yates filed an Emergency Motion to Stay Sale of Property Pending her January 2020 Adverse Possession Claim. Emergency Motion to Stay Sale of Property Pending Adverse Possession Claim, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Nov. 19, 2020) (“**2020 Emergency Motion to Stay Sale of the Property**”) (Appx.106).

12. On December 2, 2020, Mr. Yates, Jr. and Ms. Delores Yates filed an Opposition to the 2020 Emergency Motion to Stay Sale of the Property.

Opposition to Emergency Motion to Stay Sale of Property Pending Adverse Possession Claim, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Dec. 2, 2020) (“**Opposition to 2020 Emergency Motion to Stay Sale**”) (Appx.130).

13. On January 11, 2021, the Superior Court Denied a Motion to Dismiss the Original Adverse Possession Complaint on the basis that the Motion was incorrectly filed under the probate matter, rather than under the civil matter, where the Original Adverse Possession Complaint was pending, and instructed the movants to re-file the Motion to Dismiss in the civil matter. Order Denying Motion to Consolidate and Dismiss Complaint For Adverse Possession as Moot, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Jan. 11, 2021) (Appx.148).

14. On January 12, 2021, Mr. Gormley and Ms. Delores Yates filed a Motion to Dismiss the Original Adverse Possession Complaint. Motion to Dismiss Complaint for Adverse Possession, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. Jan. 12, 2021) (“**Motion to Dismiss the Original Adverse Possession Complaint**”) (Appx.153).

15. On January 29, 2021, the Superior Court held a scheduling conference, at which Ms. Baker appeared on behalf of Ms. Yates, without having entered an appearance. Because the Estate of Lydia Yates had recently entered probate, which had the effect of replacing many named defendants with the Estate

of Lydia Yates, the Superior Court directed Ms. Yates to file an Amended Complaint for Adverse Possession naming the correct Defendants. Mr. Gormley withdrew the Motion to Dismiss the Original Adverse Possession Complaint. Order Directing Plaintiff to File an Amended Complaint and Setting a Status Hearing at Appx.181–Appx.182, *Yates v. Allen*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. Feb. 1, 2021).

16. On February 5, 2021, Ms. Yates filed an Amended Complaint for Adverse Possession. First Amended Claim for Adverse Possession, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. Feb. 5, 2021) (“**Adverse Possession Complaint**”) (Appx.189).

17. On February 11, 2021, Mr. Gormley and Ms. Delores Yates filed a Motion to Dismiss the Adverse Possession Complaint. Motion to Dismiss Complaint for Adverse Possession, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. Feb. 11, 2021) (“**Motion to Dismiss Adverse Possession Complaint**”) (Appx.199).

18. On March 15, 2021, the D.C. Superior Court granted the Motion to Dismiss Ms. Yates’s Complaint for Adverse Possession and dismissed the case. The Superior Court dismissed on procedural grounds, ruling that Ms. Yates’s “filing . . . is procedurally deficient” and that “Plaintiff’s claim is barred by res

judicata.” Order Dismissing the Adverse Possession Claim at Appx.217; Appx.223.

19. Four days later, on March 19, 2021, the Court issued an Order of Sale which, *inter alia*, dismissed Ms. Yates’s 2020 Emergency Motion to Stay Sale of the Property as moot on the basis of its dismissal of the adverse possession claim, and ordered the Property be listed for sale within two weeks. Omnibus Order at Appx.237–Appx.238, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Mar. 19, 2021) (“**2021 Order of Sale of the Property**”).

20. On April 7, 2021, Mr. Gormley and Ms. Delores Yates filed a Motion to Appoint a Trustee to execute the 2021 Order of Sale of the Property. Motion to Appoint Trustee for Possession of Real Property, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Apr. 7, 2021) (“**Motion to Appoint a Trustee**”) (Appx.243).

21. On April 12, 2021, Ms. Yates filed a Motion asking the Superior Court to reconsider its dismissal of the Adverse Possession Complaint. Motion to Alter or Amend Judgment, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. Apr. 12, 2021) (“**Motion for Reconsideration of the Adverse Possession Claim**”) (Appx.252); *see also* Motion to Extend Time to File Notice of Appeal at Appx.352, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super.

Ct. June 21, 2021) (“**Motion to Extend Time to File Notice of Appeal of Denial of Reconsideration of Adverse Possession Claim**”).

22. On April 13, 2021, amidst the confusion and concern created when Ms. Yates’s Motion for Reconsideration of Adverse Possession Claim was rejected, and before the Superior Court accepted the re-submission of the Motion, Ms. Yates filed a Notice of Appeal of the Superior Court’s Order Granting Appellee’s Motion to Dismiss. Notice of Appeal, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. Apr. 13, 2021) (“**Adverse Possession Appeal**”) (Appx.264). In effect, Ms. Yates simultaneously sought review of the Superior Court’s Order Dismissing the Adverse Possession Claim in both the Superior Court and this Court.

23. On April 18, 2021, Ms. Yates appealed the Superior Court’s March 19, 2021 Order of Sale. Notice of Appeal, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Apr. 18, 2021) (“**2021 Order of Sale of the Property Appeal**”) (Appx.266).

24. On April 21, 2021, Ms. Yates filed an Opposition to the Motion to Appoint a Trustee. Opposition to Motion for Appointment of Trustee and Opposition to Motion for Immediate Possession, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. Apr. 21, 2021) (“**Opposition to Motion to Appoint Trustee**”) (Appx.268).



25. On April 28, 2021, the Superior Court denied Ms. Yates’s Motion for Reconsideration of Adverse Possession Claim. Order Denying Motion to Alter or Amend Judgment, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(P) (D.C. Super. Ct. Apr. 28, 2021) (“**Denial of the Motion for Reconsideration of the Adverse Possession Claim**”) (Appx.274).

26. On May 3, 2021, the Superior Court issued an Order Appointing a Trustee to sell the Property, and prescribed a limited set of requirements for the sale process. Order Appointing Trustee, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. May 3, 2021) (“**Order Appointing Trustee**”) (Appx.279).

27. On May 21, 2021, the D.C. Court of Appeals *sua sponte* issued an Order holding the Adverse Possession Appeal in abeyance pursuant to D.C. App. R. 4(a)(4)(iv), stating that it “appear[ed] that one or more timely post-trial tolling motions are pending in Superior Court,” presumably referring to the Motion for Reconsideration of the Adverse Possession Claim. Order at Appx.286, *Yates v. Allen, Jr.*, No. 21-CV-240 (D.C. May 21, 2021) (“**Order Staying Appeal of 2021 Order of Sale of Property**”).

28. The Trustee held open houses for the Property on May 22 and 23, 2021, and closed bidding on the Property on May 25, 2021. Counsel’s understanding is that the Trustee has deferred accepting a bid, although the Trustee

is currently under no court order to do so and may, in theory, contract with a bidding party for the sale of the Property at any time.

29. On or about May 24, 2021, Ms. Yates retained undersigned counsel to represent her in filing a Motion to Stay the 2021 Order of Sale of the Property. *See* Rita L. Yates’s Motion to Stay the Sale of Property Pending Appeals, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. June 1, 2021) (“**2021 Motion to Stay the Sale of the Property Pending Appeals**”) (Appx.292).

30. On June 1, 2021, Ms. Yates filed the 2021 Motion to Stay the Sale of the Property Pending Appeals. *Id.*

31. On or about June 9, 2021, Ms. Yates expanded undersigned counsel’s representation of her to include pursuit of the Adverse Possession Appeal and the 2021 Motion to Stay the Sale of the Property Pending Appeals.

32. On June 16, 2021, Mr. Gormley and Ms. Delores Yates filed an Opposition to the 2021 Motion to Stay the Sale of the Property Pending Appeals. Opposition to Motion to Stay the Sale of the Property Pending Appeals, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. June 16, 2021) (“**Opposition to 2021 Motion to Stay Sale of Property Pending Appeals**”) (Appx.321).

33. On June 21, 2021, Ms. Yates filed a Status Update with this Court informing it of the Superior Court’s Denial of the Motion for Reconsideration of the Adverse Possession Claim and that she would be appealing the denial to this

Court. In addition, the Status Update noted that Ms. Yates would request that this Court consolidate the Adverse Possession Appeal with the appeal of the Denial of the Motion for Reconsideration of the Adverse Possession Claim. Status Update, *Yates v. Yates, Jr.*, No. 21-CV-0240 (D.C. June 21, 2021) (“**Status Update to Court re Denial of Motion for Reconsideration of Adverse Possession Claim**”) (Appx.358).

34. On June 21, 2021, Ms. Yates filed a Motion to Extend Time to File a Notice of Appeal regarding the denial of the Motion for Reconsideration of the Adverse Possession Claim pursuant to D.C. App. R. 4(a)(5)(A), which permits a party to file a notice of appeal no later than 30 days after the time prescribed by Rule 4(a) expires (here, June 28, 2021) due to excusable neglect or good cause. Motion to Extend Time to File Notice of Appeal at Appx.352, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. June 21, 2021) (“**Motion to Extend Time to File Notice of Appeal of Denial of Reconsideration of Adverse Possession Claim**”).

35. Appellant simultaneously filed a Notice of Appeal of the Superior Court’s denial of the Motion for Reconsideration of the Adverse Possession Claim. Notice of Appeal, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. June 21, 2021) (“**Reconsideration of Adverse Possession Appeal**”) (Appx.364).

36. On June 28, 2021, Ms. Yates filed a Reply to the Opposition to the 2021 Motion to Stay Sale of Property Pending Appeal. Rita L. Yates’s Reply to Opposition to Motion to Stay the Sale of the Property Pending Appeals, *Yates v. Yates, Jr.*, No. 2009 LIT 000001 (D.C. Super. Ct. June 28, 2021) (“**Reply to Opposition to 2021 Motion to Stay Sale of Property Pending Appeals**”) (Appx.384).

37. On July 15, 2021, this Court *sua sponte* issued an Order vacating the May 21, 2021 Order Staying Appeal of 2021 Order of Sale of Property and consolidating the Adverse Possession Appeal (No. 21-CV-240) with the Reconsideration of Adverse Possession Claim Appeal (No. 21-CV-419), (consolidating cases as CAR738-20). Order, *Yates v. Allen, Jr.*, Nos. 21-CV-240 & 21-CV-419 (D.C. July 15, 2021) (“**Consolidation and Stay of Adverse Possession Appeal and Reconsideration of Adverse Possession Appeal**”) (Appx.396). In addition, this Court held these consolidated appeals in abeyance pursuant to D.C. App. R. 4(a)(4)(iv), stating that it “appear[ed] that a timely post-trial tolling motions . . . remains pending in [Superior Court.]” *Id.*

38. On July 16, 2021, Ms. Yates filed a Motion requesting that this Court further consolidate the Stay of Adverse Possession Appeal and Reconsideration of Adverse Possession Appeal with the 2021 Order of Sale of the Property Appeal (No. 21-PR-251) because both appeals arose from the same action and relied on

the same underlying record, and resolution of either appeal would directly impact any outcome in the other. Rita L. Yates’s Motion to Consolidate Related Appeals, *Yates v. Yates, Jr.*, No. 21-PR-0251 (D.C. July 16, 2021) (“**Ms. Yates’s Motion to Consolidate Appeals**”) (Appx.400).

39. On July 20, 2021, the Superior Court denied Ms. Yates’s Motion to Extend Time to File Notice of Appeal of Denial of Motion for Reconsideration of Adverse Possession Claim after concluding there was no excusable neglect or good cause. Order at Appx.409, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(P) (D.C. Super. Ct. July 20, 2021) (“**Denial of the Motion to Extend Time to Appeal Denial of Reconsideration of the Adverse Possession Claim**”).

40. On July 22, 2021, this Court issued an Order further consolidating and staying the 2021 Order of Sale of the Property Appeal, the Adverse Possession Appeal, and the Reconsideration of Adverse Possession Appeal. Order, *Yates v. Allen, Jr.*, Nos. 21-CV-0240, 21-CV-0419, & 21-PR-0251 (D.C. July 22, 2021) (Appx.411).

41. On August 6, 2021, Ms. Yates provided this Court with a Status Update regarding the Superior Court’s Denial of the Motion to Extend Time to File Notice of Appeal of Denial of Motion for Reconsideration of the Adverse Possession Claim. Status Update, *Yates v. Allen, Jr.*, Nos. 21-CV-240, 21-CV-419, & 21-PR-251 (D.C. Aug. 6, 2021) (“**Status Update to Court re Order Denying**”).

**Motion to Extend Time to File Notice of Appeal of Denial of Motion for Reconsideration of the Adverse Possession Claim”**) (Appx.415).

42. On August 18, 2021, Ms. Yates filed a Notice of Appeal of the Court’s denial of the Motion to Extend Time to file Notice of Appeal. Notice of Appeal, *Yates v. Allen, Jr.*, No. 2020 CA 000738 R(RP) (D.C. Super. Ct. Aug. 18, 2021) (“**Motion to Extend Time to Appeal the Reconsideration of Adverse Possession Claim Appeal**”) (Appx.427).

43. On September 16, 2021, with all motions having been resolved, this Court vacated its Consolidation and Stay of Adverse Possession Appeal and Reconsideration of Adverse Possession Appeal and further consolidated these related appeals, this time adding the Motion to Extend Time to Appeal the Reconsideration of Adverse Possession Claim Appeal with the previously consolidated 2021 Order of Sale of the Property Appeal, the Adverse Possession Appeal, and the Reconsideration of Adverse Possession Appeal, and issued a briefing schedule for this appeal. Order, *Yates v. Allen, Jr.*, Nos. 21-CV-240, 21-CV-419, 21-CV-570, & 21-PR-251 (D.C. Sept. 16, 2021) (“**Final Consolidation and Briefing Order**”) (Appx.436).

**ORDERS OF THE SUPERIOR COURT FOR WHICH RELIEF IS SOUGHT**

Ms. Yates seeks this Court’s relief from two primary orders issued in March 2021:

- (i) the Order Dismissing the Adverse Possession Claim (*i.e.*, the Superior Court’s March 15, 2021 Order Granting Mr. Gormley and Ms. Delores Yates’s Motion to Dismiss the Complaint for Adverse Possession); and
- (ii) the 2021 Order of Sale of the Property (*i.e.*, the Superior Court’s March 19, 2021 Omnibus Order that (a) dismissed as moot Ms. Yates’s Emergency Motion to Stay the Sale of the Property Pending the Adverse Possession Claim, and (b) ordered the listing of the Property for sale within two weeks).

Ms. Yates also seeks relief from two orders that stemmed from her appeals of the March 15, 2021 Order Dismissing the Adverse Possession Claim.

Specifically, she seeks relief from:

- (iii) the Denial of the Motion for Reconsideration of the Adverse Possession Claim (*i.e.*, the Superior Court’s Order denying Ms. Yates’s Motion seeking reconsideration of the March 15 Order Dismissing the Adverse Possession Claim); and
- (iv) the Denial of the Motion to Extend Time to Appeal Denial of Reconsideration of the Adverse Possession Claim.

### **STATEMENT OF JURISDICTION**

This Court has jurisdiction over this matter pursuant to D.C. Code § 11-721(a)(1), permitting jurisdiction over all “final orders and judgments” of the

Superior Court. *See also McAteer v. Lauterbach*, 908 A.2d 1168, 1169 n.1 (D.C. 2006).

### **STANDARD OF REVIEW**

The trial court's legal conclusions are reviewed *de novo*, and factual findings are reviewed under a clearly erroneous standard. *See Ballard v. Dornic*, 140 A.3d 1147, 1150 (D.C. 2016). This Court reviews *de novo* the dismissal of a claim pursuant to a motion to dismiss for failure to state a claim upon which relief can be granted, presuming the complaint's factual allegations to be true and construing them in the light most favorable to the plaintiff. *Calomiris v. Calomiris*, 3 A.3d 1186, 1190 (D.C. 2010). This Court reviews *de novo* the application of the doctrine of res judicata. *Id.*; *Elwell v. Elwell*, 947 A.2d 1136, 1139 (D.C. 2008).

This Court reviews the trial court's denial of an extension of time to file an appeal for abuse of discretion. *See In re Ak. V.*, 747 A.2d 570, 574 (D.C. 2000). In determining whether a trial court abused its discretion, the D.C. Appellate Court evaluates each case in light of its individual facts. *See Admasu v. 7-11 Food Store # 11731G/21926D*, 108 A.3d 357 (D.C. 2015). The Court must examine whether the trial court's determination was "based upon and drawn from a firm factual foundation." *In re Est. of Yates*, 988 A.2d 466, 468 (D.C. 2010). "In conducting this review, 'the appellate court makes two distinct classes of inquiries[;] it must determine, first, whether the exercise of discretion was in error, and, if so, whether



the impact of that error requires reversal.” *In re L.L.*, 974 A.2d 859, 862 (D.C. 2009).

## **SUMMARY OF ARGUMENT**

### **I. DENIAL OF NOTICE OF APPEAL OF MOTION FOR RECONSIDERATION: THE SUPERIOR COURT ERRED IN DENYING MS. YATES’S MOTION TO EXTEND TIME TO FILE NOTICE OF APPEAL OF ITS DENIAL OF MS. YATES’S MOTION FOR RECONSIDERATION OF THE COMPLAINT FOR ADVERSE POSSESSION.**

Ms. Yates satisfied the requirements of D.C. App. R. 4(a)(5) because she filed within 30 days of May 21, 2021 and showed “excusable neglect or good cause” for filing her Notice of Appeal late. In an already-complicated series of cases, Ms. Yates sought and eventually obtained new counsel during the 30-day period to file her Notice. Appellee would have suffered no prejudice from the extension. Given the “flexible” standard utilized by courts in deciding whether to grant relief under the Rule, the D.C. Superior Court abused its discretion in denying the Motion.

### **II. DISMISSAL OF ADVERSE POSSESSION COMPLAINT: THE SUPERIOR COURT ERRED IN DISMISSING MS. YATES’S COMPLAINT FOR ADVERSE POSSESSION.**

The Superior Court erred in dismissing Ms. Yates’s complaint for adverse possession on grounds of res judicata. Appellee did not demonstrate, and the record does not reflect, that res judicata applies. The issues raised by Ms. Yates’s adverse possession claim are distinct from those decided in the 2016 Ownership

Order cited by the Superior Court as grounds for applying res judicata, and the doctrine thus does not apply because the issue was not “actually litigated.”

Ms. Yates properly alleged each of the elements of adverse possession. Therefore, because res judicata did not apply, the Adverse Possession Complaint should not have been dismissed.

**III. ORDER OF SALE VACATUR: MS. YATES IS THE SOLE OWNER OF THE PROPERTY, AND THUS THE ORDER FOR SALE OF THE PROPERTY MUST BE VACATED.**

The Superior Court issued the Order of Sale on the basis that it had dismissed Ms. Yates’s adverse possession complaint. Because the dismissal of that complaint was in error, the Order of Sale likewise should be reversed.

**ARGUMENT**

**IV. THE SUPERIOR COURT ERRED IN DENYING MS. YATES’S MOTION TO EXTEND TIME TO FILE NOTICE OF APPEAL OF ITS DENIAL OF MS. YATES’S MOTION FOR RECONSIDERATION OF THE ADVERSE POSSESSION CLAIM.**

This Court should reverse the Superior Court’s Denial of the Motion to Extend Time to File Notice of Appeal of Denial of Reconsideration of the Adverse Possession Claim because Ms. Yates satisfied the requirements prescribed in D.C. App. R. 4(a)(5)(A) for permitting a 30-day extension of time to file a notice of appeal, and the Superior Court abused its discretion in concluding otherwise. *See In re Ak. V.*, 747 A.2d at 574.

D.C. App. R. 4(a)(5)(A) permits the Superior Court to extend the statutory period for filing a notice of appeal if (i) the notice is filed no later than 30 days after the time prescribed by Rule 4(a), and (ii) the party seeking the extension shows “excusable neglect or good cause.” D.C. App. R. 4; *see generally Wash. Metro. Area Transit Auth. v. Brown*, 619 A.2d 1188, 1191 (D.C. 1993). As the Superior Court concluded in its Denial of the Motion to Extend Time to Appeal Denial of Reconsideration of the Adverse Possession Claim, Ms. Yates satisfied the first required element by filing on June 21, 2021, which was within the time period permitted under Rule 4(a)(5)(A). *See Denial of the Motion to Extend Time to Appeal Denial of Reconsideration of the Adverse Possession Claim at Appx.407; Motion to Extend Time to File Notice of Appeal of Denial of Reconsideration of Adverse Possession Claim at Appx.352.*

Ms. Yates demonstrated the required excusable neglect and good cause to satisfy the second required element of extending time to file a notice of appeal. “The determination of what sorts of neglect will be considered ‘excusable’ is an equitable one, taking account of all relevant circumstances.” *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 381 (1993). “[M]ere fault does not alone defeat a claim of excusable neglect.” *Burt v. Nat’l Republican Club of Capitol Hill*, 828 F. Supp. 2d 115, 128 (D.D.C. 2011). Instead, in determining whether excusable neglect or good cause exists, D.C. courts consider factors

including: (1) the reason for delay, including whether it was in the movant's reasonable control; (2) whether the movant acted in good faith; (3) the length of delay and its potential impact on the proceedings; and (4) danger of prejudice to the opposing party. *See Admasu v. 7-11 Food Store # 11731G/21926D*, 108 A.3d 357, 361 (D.C. 2015) (citing *Pioneer Inv. Servs. Co.*, 507 U.S. at 395). In undertaking the excusable neglect analysis, while each factor must be considered, the moving party's reason for delay is the most important factor. *See id.* at 363. Good cause is to be determined "in the light of the circumstances of each case," and is therefore a case-specific inquiry. *Leiken v. Wilson*, 445 A.2d 993, 1000 (D.C. 1982) (citation omitted) (upholding a finding of "good cause" in the context of setting aside a default judgment); *see also Night & Day Mgmt, LLC v. Butler*, 101 A.3d 1033, 1038 n.2 (D.C. 2014) (finding the factors met given the unique complexities of the case, including a "pending motion for reconsideration.>").

Here, Ms. Yates demonstrated to the Superior Court that she met the standard for excusable neglect or good cause, assertions supported by the Superior Court in certain respects. The Superior Court acknowledged that it appeared Ms. Yates was seeking a change in counsel during the period including this deadline, and that undersigned counsel had only made an appearance in the probate matter (*i.e.*, the 2021 Order of Sale of the Property), not the civil matter where this adverse possession claim and its related appeals were pending. *See Denial of the*

Motion to Extend Time to Appeal Denial of Reconsideration of the Adverse Possession Claim at Appx.408–Appx.409. The Superior Court further noted that that appearance in the probate matter was made just one day prior to the deadline for filing the Notice of Appeal. *Id.* It acknowledged that Ms. Yates had two appeals pending simultaneously regarding the same underlying adverse possession claim. *Id.* Additional facts in Ms. Yates’s Motion to Extend Time further evince a finding of excusable neglect. Most notably, Ms. Yates points to the record of appeals and filings in this matter that demonstrate very clearly her good faith effort to “clearly demonstrate[] her intent to appeal the dismissal of her Complaint for Adverse Possession.” Motion to Extend Time to File Notice of Appeal of Denial of Reconsideration of Adverse Possession Claim at Appx.352. Furthermore, opposing party was not prejudiced by the slight delay in filing the Notice, further showing that the Extension should have been granted. *See Savage-Bey v. La Petite Acad.*, 50 A.3d 1055 (D.C. 2012) (in an analogous situation examining the *Pioneer* factors, holding that the opposing party was not prejudiced or hindered from presenting its case even where the notice of appeal was filed more than two months after the mailing date indicated, well past the 15-day deadline).

The Superior Court abused its discretion by failing to analyze whether Ms. Yates’s untimely filing was the result of “excusable neglect or good cause” (therefore failing to apply the proper legal standard) and ignoring well-established

legal principles concerning similar issues. First, although the Superior Court recounted Ms. Yates’s explanation of her perception that the Adverse Possession Appeal negated the need to file an additional appeal stemming from the same adverse possession claim (*i.e.*, the Denial of the Motion for Reconsideration of the Adverse Possession Claim), the Superior Court stated that it “disagrees with that interpretation of events,” and then quoted several rules insisting that Ms. Yates was required to file separate notices of appeal in response to its Dismissal of the Adverse Possession Claim and the Denial of the Motion for Reconsideration of that Claim. *See* Denial of the Motion to Extend Time to Appeal Denial of Reconsideration of the Adverse Possession Claim at Appx.408. Whether Ms. Yates was required to file an additional Notice of Appeal is not properly the subject of this inquiry.

Moreover, the Superior Court based its decision, at least in part, on its assertion that “[a] change in counsel, alone, is insufficient to show excusable neglect or good cause.” Denial of the Motion to Extend Time to Appeal Denial of Reconsideration of the Adverse Possession Claim at Appx.409. Yet Ms. Yates’s “excusable neglect or good cause” here is a result not only of a change of counsel, but also the unique complexities of this case and related cases. *See Griffin v. George B. Buck Consulting Actuaries, Inc.*, 573 F. Supp. 1134 (S.D.N.Y. 1983) (granting plaintiff’s motion for extension of time to file a notice of appeal where

plaintiff's counsel withdrew following an entry of judgment and plaintiff's unfamiliarity with appellate procedure was good cause for permitting an extension); *Ecoban Capital Ltd. v. Ratkowsky*, No. 88-cv-5848 (RWS), 1990 WL 3929 (S.D.N.Y. Jan. 16, 1990) (granting an extension of time to file a notice of appeal where defendants' counsel withdrew after entry of judgment and defendants were unable to find new representation until after the filing deadline).<sup>6</sup>

The Superior Court inappropriately applied a rigid test, rather than a flexible one. When properly treating excusable neglect and good cause as flexible concepts, and using the factor analysis as a guide, the Superior Court's Denial of the Motion to Extend Time is not supported. *See Pioneer Inv. Servs. Co.*, 507 U.S. at 392. The Superior Court's conclusion that Ms. Yates lacks excusable neglect and good cause, and Denial of the Motion to Extend Time to Appeal Denial of Reconsideration of the Adverse Possession Claim on that basis should be reversed.

**V. THE SUPERIOR COURT ERRED IN DISMISSING THE ADVERSE POSSESSION COMPLAINT.**

The Superior Court erroneously dismissed Ms. Yates's Adverse Possession Complaint on the basis of *res judicata*, rather than considering the merits of the

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<sup>6</sup> The Superior Court's further implication that any contribution by counsel to an untimely filing should result in a malpractice case against the counsel rather than a finding of excusable neglect or good cause for the movant is unsupported by law and contradictory to the question presented under Rule 4(a)(5)(A). *See Denial of the Motion to Extend Time to Appeal Denial of Reconsideration of the Adverse Possession Claim at Appx.409.*

claim, after it incorrectly concluded that the Adverse Possession Complaint would be an inappropriate relitigation of the 2016 Ownership Order that determined Ms. Yates's ownership interest in the Property. *See* Order Dismissing the Adverse Possession Claim at Appx.221. The questions raised in Ms. Yates's Adverse Possession Complaint are sufficiently distinct from the questions actually decided in the 2016 Ownership Order, such that res judicata is not applicable. Moreover, Ms. Yates met her burden to survive a motion to dismiss by pleading all required elements of the Adverse Possession Claim that would entitle her to relief. This Court should vacate and remand the Superior Court's dismissal of this claim.<sup>7</sup>

**A. Ms. Yates's Claim for Adverse Possession Is Not Barred By Res Judicata**

The Superior Court erred when it found that res judicata barred Ms. Yates's claim for adverse possession because the Adverse Possession Complaint has not been fully decided on its merits. *See Patton v. Klein*, 746 A.2d 866, 869 (D.C. 1999) (res judicata only applies to bar claims that have been fully decided on the merits). The trial court's legal conclusions, are reviewed *de novo*, and factual findings are reviewed under a clearly erroneous standard. *See Ballard v. Dornic*,

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<sup>7</sup> Ms. Yates submits that review of the Order Dismissing the Adverse Possession Claim is proper through both the Adverse Possession Appeal and the Reconsideration of Adverse Possession Appeal.



140 A.3d 1147, 1150 (D.C. 2016); *see also Elwell*, 947 A.2d at 1139 (D.C. 2008) (res judicata context).

To determine if res judicata applies to preclude consideration of a claim, courts must consider: “(1) whether the claim was adjudicated finally in the first action; (2) whether the present claim is the same as the claim which was raised or which might have been raised in the prior proceeding; and (3) whether the party against whom the plea is asserted was a party or in privity with a party in the prior case.” *Patton*, 746 A.2d. at 870. Every element must be satisfied in order for res judicata to apply. *Id.* (stating that even one missing element where the other two elements are satisfied will destroy application of res judicata). Here, at least one of the elements is missing: the two claims are not the same, and thus res judicata does not apply. *See id*; *see also Molla v. Sanders*, 981 A.2d 1197, 1201 (D.C. 2009) (holding that a subsequent claim was not barred by res judicata where the elements of the prior and subsequent claim differed and had not been decided). Consequently, res judicata is inapplicable to Ms. Yates’s Adverse Possession Claim, and she is entitled to a ruling on the merits of her claim.

There is no question here that adverse possession was not actually litigated in the 2016 Ownership Order. No party made a claim of adverse possession of the Property, and thus this claim was not before the court. Moreover, the findings and conclusions underlying the 2016 Ownership Order are not dispositive in ruling on

the Adverse Possession Complaint; the required elements of each claim are distinct, and therefore the claims are also, by necessity, distinct such that res judicata is inapplicable.

To prevail on a claim establishing title through adverse possession, a claimant must show that, for the duration of a prescribed statutory period, possession of the property at issue was: (i) “actual,” (ii) “open and notorious,” (iii) “exclusive,” (iv) “continuous” and (v) “hostile.” *Gan v. Van Buren Street Methodist Church*, 224 A.3d 1205, 1206 (D.C. 2020) (citation omitted). The statutory period in D.C. is 15 years. *See* D.C. Code § 16-1113. The statutory period can be satisfied by one party maintaining consecutive ownership, or by multiple parties collectively maintaining consecutive ownership, so long as those parties are in privity with each other. Here, Ms. Yates is in privity to Ms. Rita E. Yates as successor in interest to the Property. *See* Original Adverse Possession Complaint at Appx.023. Thus, any fifteen-year period where either party consecutively possessed the Property would validly establish adverse possession.

The Superior Court did not make dispositive rulings on these elements in its 2016 Ownership Order.<sup>8</sup> Indeed, the Order did not even examine a single element

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<sup>8</sup> Similarly, *Gurga v. Roth*, 964 N.E.2d 134 (Ill. App. 2011), an Illinois appellate case, is on point in certain respects, as the court specifically considered the issue of res judicata in the probate and real property context. *See id.* at 140. In that case, the Illinois court determined that a party’s subsequent claim for adverse possession was not barred by res judicata where the opposing party had failed to file an action

of adverse possession. Likewise, in its April 21, 2016 order, the court did not make any finding as to what party maintained physical possession of the Property or if that person, Ms. Rita E. Yates, had a superior claim of title. *See* 2016 Ownership Order at Appx.001. In fact, there were no findings whatsoever of who actually dwelled in the home, even though Ms. Rita E. Yates did so for far longer than the prescribed statutory period to establish adverse possession. Rather, the court's findings were purely concerned with the execution of various deeds of the Property, and with respect to title, the court merely found that Ms. Rita E. Yates had an "ownership interest"<sup>9</sup> in the Property. *See id.* at Appx.011. There is no indication in the record that the court considered that Ms. Rita E. Yates's physical possession of the property entitled her to a superior claim of title. These factual

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for possession of a home in an earlier probate proceeding regarding the estate that owned the home. *Id.* The court ultimately decided that as a matter of fairness and equity, the subsequent claim was not barred by res judicata because one party had failed to bring a claim to quiet title in the proceeding and the opposing party had failed to raise the issue of title in that same proceeding. *Id.* at 141. Here, Mr. Yates Jr. did not raise the issue of title in his counterclaim for the sale of the Property and Ms. Yates could not raise her claim for adverse possession as personal representative of the estate.

<sup>9</sup> In various filings, Appellees wrongfully assert that the probate court determined ownership as "50% to the Estate of Lydia Yates, 25% each to the Estates of Rita E. Yates and Frank Yates, Jr." Motion to Dismiss Adverse Possession Complaint at Appx.203. This is simply not true. Regarding ownership determination in the probate proceeding, the court ordered that "judgment is entered in favor of Rita Eunice Yates (deceased) and against Frank Yates, Jr., granting to the Estate of Rita Eunice Yates an ownership interest in [the Property] as a tenancy in common." 2016 Ownership Order at Appx.011.

findings and legal conclusions make it clear that the issue of adverse possession was simply never litigated in the proceedings leading to the 2016 Ownership Order.

**B. Ms. Yates’s Complaint Stated a Cognizable Claim for Adverse Possession.**

Notwithstanding the Superior Court’s erroneous application of a res judicata bar, Ms. Yates alleged all elements necessary to state a cognizable claim for adverse possession; the Superior Court’s Grant of the Motion to Dismiss the Adverse Possession Claim should be reversed, or at the very least, vacated and remanded for proper consideration on the merits. *See Calomiris*, 3 A.3d at 1190 (review of a motion to dismiss should be reviewed *de novo*, presuming the complaint’s factual allegations to be true and construing them in the light most favorable to the plaintiff).

To prevail on a claim establishing title through adverse possession, a claimant must show that possession of the property at issue was (i) actual, (ii) open and notorious, (iii) exclusive, (iv), continuous, and (v) hostile, for a period of 15 consecutive years. *See Gan*, 224 A.3d at 1206; D.C. Code § 16-1113. A person claiming adverse possession is entitled to a presumption that possession is adverse when there is “open and continuous use of another’s land for the statutory period”; this presumption establishes title in the absence of evidence to the contrary. *Smith v. Tippett*, 569 A.2d 1186, 1190 (D.C. 1990). If successful, the person claiming

adverse possession gains “perfect title” to the property. *See Asnake v. Deutsche Bank Nat’l Trust Co.*, 313 F. Supp. 3d 84, 87 (D.D.C. 2018).

The allegations in the Adverse Possession Complaint are sufficient to demonstrate that, if those allegations are proven, Ms. Yates’s possession of the Property, when tacked with her mother and predecessor in interest of the Property Ms. Rita E. Yates’s possession of the Property, satisfies each required element of the claim. Ms. Yates thus should have been able to perfect title through adverse possession and should be deemed the present sole owner of the Property, had her Complaint not been prematurely and erroneously dismissed.<sup>10</sup>

**1. Ms. Yates Sufficiently Alleged that Her Possession of the Property was “Actual” for the Requisite Period.**

“Actual” possession merely means that a person actually lived at or used the Property at issue. *See generally Tippett*, 569 A.2d at 1190. It is undisputed that Ms. Yates meets this prong.

As alleged in the Complaint for Adverse Possession, Ms. Rita E. Yates, Ms. Yates’s mother, as well as Ms. Yates, lived at the Property for far greater than 15 years. Both maintained the Property and treated it as their own, and Ms. Yates to

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<sup>10</sup> As noted, the lower court claimed to never substantively rule on the merits of the adverse possession claim. However, to the extent that the court addressed the merits, it merely addressed the “hostility” prong; it is unclear if Appellee disputes any of the other prongs. Without waiving any arguments, for the sake of comprehensiveness appellant addresses each of the five factors in turn.

this day continues to do so and continues to use the Property as her primary and only residence. In addition, she paid taxes on the property and was viewed by all parties as having the sole responsibility to keep taxes current, an obligation previously acknowledged by Appellant in lower court briefing. *See* Opposition to 2021 Motion to Stay Sale of Property Pending Appeals at Appx.323–Appx.324 (“[S]he has not kept the property taxes current, as the Property is now in the very last stages of tax sale foreclosure. . . .”); *Est. of Wells v. Est. of Smith*, 576 A.2d 707, 711-12 (D.C. 1990) (noting that, while payment of taxes is not by itself sufficient to establish adverse possession, they “tend[] to support a claim of possession”). She thus sufficiently alleged that her use of the Property was thus “actual,” sufficient to meet this factor. *See Gary v. Dane*, 411 F.2d 711, 713-14 (D.C. Cir. 1969) (finding adverse possession based on facts such as “maintain[ing] the drain,” “repair[ing a] . . . wooden fence” to show “intentional use” of the “disputed property as their own,” noting that “[p]ayment of taxes, is, of course, strong evidence of a claim of title when paid by someone other than the record owner.”).

**2. Ms. Yates Sufficiently Alleged that Her Possession Was “Open and Notorious” for the Requisite Period.**

A plaintiff seeking to show “open and notorious” possession must demonstrate “that its possession was open and demonstrated to the extent that it was enough to be known actually or constructively by the title holder of the

property who despite this fact failed to take any steps to terminate [her] possession and who in effect accedes to it.” *United States v. Herbert Bryant, Inc.*, 740 F. Supp. 863, 871 (D.D.C. 1990) (applying analogous Virginia law); *Welch v. Unknown Heirs*, 226 F.2d 776, 779 (D.C. Cir. 1955) (“[T]he true owner must, or should, have known of it.”). A “use is open and notorious if knowledge of it is had by those who are or may be affected by it even though the use is not a matter of common knowledge in the community.” *Zere v. District of Columbia*, 209 A.3d 94, 101 (D.C. 2019) (citation omitted). “[O]pen’ means without attempted concealment.” *Striefel v. Charles-Keyt-Leaman P’ship*, 733 A.2d 984, 990 (Me. 1999). Ms. Yates provided sufficient evidence to show that she and Ms. Rita E. Yates meet this standard.

As alleged in the Original Adverse Possession Complaint, Ms. Rita E. Yates openly lived at the Property for decades, solely deeding possession to her daughter, who continued living there, as her mother did, without any attempt to conceal the use of the property. She paid no rent to any other alleged co-owners (instead, Ms. Rita E. Yates actually collected rent from her sister who rented a room for a time at the Property), and even made substantial improvements to the Property, including to its roof and plaster, to raise its value, also outfitting the Property to be wheelchair accessible. Original Adverse Possession Complaint at Appx.022–Appx.025. Any putative titleholders were aware of this possession, and were

given, at the very least, “constructive notice,” which need not be actual. *See Welch*, 226 F.2d at 779. To be clear, no claim has been made – at any point throughout any proceedings or otherwise – that other alleged owners of the Property did not know that Ms. Rita E. Yates or Ms. Yates were living there. Because her open use of the property occurred for longer than the statutory period, her possession is “open and notorious.”

**3. Ms. Yates Sufficiently Alleged that She Maintained “Exclusive” Possession over the Property for the Requisite Period.**

“Exclusive possession, for the purpose of establishing adversity, means that the claimant holds possession of the property for himself as his own and not for another.” *Tippett*, 569 A.2d at 1190 (citation omitted) “[W]here one enters into overt possession of the whole [property] claiming in entirety and several and not as a co-tenant, [their] entry will amount to a disseisen or ouster of the other co-tenants.” *Welch*, 226 F.2d at 778. “In adverse-possession doctrine, the exclusivity requirement describes the behavior of an ordinary possessor and serves to give notice to the owner.” Restatement (Third) of Property (Servitudes) § 2.17 (Am. L. Ins. 2000).

Here, the Complaint alleged that Ms. Rita E. Yates took possession of the Property by and for herself, without presumption that others maintained any right to possess the Property. When she died, she deeded the Property to Ms. Yates



alone, “so that she may continue to reside at [the property],” Original Adverse Possession Complaint at Appx.023–Appx.024, with no presumption that any others maintained or had any possession. Both paid taxes alone, paid the mortgage alone (with Ms. Rita E. Yates paying the mortgage herself beginning in 1982 until it was fully paid off in 2007), and even paid for renovations on the Property, with no expectation that others would pay. *See, e.g., id.* at Appx.022–Appx.024. And no other individuals with a claim to the Property lived at the Property or asserted any ownership claims at any point during the fifteen-year statutory period necessary to establish adverse possession. Only decades after the statutory period expired – and Ms. Rita E. Yates had paid off the mortgage on the property in its entirety, *see id.* at Appx.021, – did any putative property owners make an effort to terminate possession. Ms. Yates thus did not take possession as a co-tenant but “under claim of full ownership,” *id.* and she alleged possession sufficiently “exclusive” to meet the adverse possession standard.

**4. Ms. Yates Sufficiently Alleged that Her Possession was “Continuous” for the Requisite Period.**

To qualify as “continuous” possession, the possessor must have exercised control over the land at issue for an uninterrupted period. *See Faulks v. Schrider*, 114 F.2d 587, 593 (D.C. Cir. 1940) (finding the continuous prong met and thus adverse possession over vacant land shown, looking at the “continuous assessment to and payment of taxes by the claimant for fifteen years,” even if other action on

the property by the adverse possessor was not continuous). This possession may be “tacked,” which consists of “successive, uninterrupted possessions by persons between whom privity exists.” *Bonds v. Smith*, 143 F.2d 369, 370–71 (D.C. Cir. 1944).<sup>11</sup>

Ms. Yates alleged facts sufficient to meet this prong. When Lydia Yates, Ms. Yates’s grandmother who previously owned 50% of the Property, died in 1982, her daughter, Ms. Rita E. Yates, continued living at the Property without interruption, making extensive repairs to the Property and exclusively maintaining the Property; appellant Yates lived at the Property for much of this time and continued living there once her mother passed away in August 2013. *See, e.g.*, Original Adverse Possession Complaint at Appx.022–Appx.025. This possession was uninterrupted and thus was “continuous” for over three decades: far longer than the statutorily-prescribed period.

**5. Ms. Yates Sufficiently Alleged that Her Possession of the Property Was “Hostile” for the Requisite Period.**

To show hostility, possession must be “opposed and antagonistic to all other claims, and which conveys the clear message that the possessor intends to possess the land as his own . . . it is the intent to possess, and not the intent to take irrespective of his right, which governs.” *Tippett*, 569 A.2d at 1190 (citations

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<sup>11</sup> “Tacking” does not require explicit conveyance of the adverse possession interest. *See, e.g.*, *Gan*, 224 A.3d at 1208.

omitted)); *see also Wood v. Taylor*, 479 P.3d 560, 567 (Or. Ct. App. (“[T]he claimant possessed the property intending to be its owner and not in subordination to the true owner”) (citation omitted).

Ms. Yates has alleged that both her possession and her mother’s possession of the Property were hostile to any other persons with claims to the Property. For far longer than the requisite period, they used and maintained the Property as their own, permitting no others to claim even partial ownership to the Property. When Ms. Rita E. Yates’s sister lived at the Property for a temporary period, she paid rent to one person: Ms. Rita E. Yates, and no other putative owners. And Ms. Rita E. Yates’s last will and testament, dated 2007, devised her interest in the Property solely and exclusively to Ms. Yates in fee simple absolute, stating, “I give and devise my interest in 1528 A Street, N.E., Washington, D.C. 20002, to my daughter, Rita Lydia Yates, in fee simple absolute. . . . I have chosen to leave my interest to her so that she may continue residing at [the Property].” Original Adverse Possession Complaint at Appx.023–Appx.024. No other possible owners, heirs, or occupants were even contemplated. No evidence has been offered – and Ms. Yates is aware of no evidence – suggesting any consent by any putative Property owners.

**VI. THE ORDER FOR SALE OF THE PROPERTY MUST BE VACATED BECAUSE MS. YATES IS THE SOLE OWNER OF THE PROPERTY**

**A. Ms. Yates adversely possessed the Property.**

The Order for Sale of the Property was based on the purported dismissal of Ms. Yates's Complaint for Adverse Possession. As shown above, that dismissal was in error, as adverse possession was sufficiently alleged by Ms. Yates. The Order of Sale was thus based upon a legally incorrect decision and should be vitiated.

**CONCLUSION**

For the foregoing reasons, Ms. Yates respectfully requests that this Court vacate the Superior's Court 2021 Order of Sale of the Property, vacate the Order dismissing the Complaint for Adverse Possession and subsequent denial of the Motion for Reconsideration, and reverse the Denial of the Motion to Extend Time to File the Appeal of the Denial of the Adverse Possession Motion for Reconsideration. This matter should be remanded to the Superior Court for further proceedings consistent with the rulings of this Court.

*/s/ Emily P. Grim*

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# District of Columbia Court of Appeals

## REDACTION CERTIFICATE DISCLOSURE FORM

**Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a “CV” docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.**

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:
  - An individual’s social-security number
  - Taxpayer-identification number
  - Driver’s license or non-driver’s’ license identification card number
  - Birth date
  - The name of an individual known to be a minor
  - Financial account numbers, except that a party or nonparty making the filing may include the following:
    - (1) the acronym “SS#” where the individual’s social-security number would have been included;
    - (2) the acronym “TID#” where the individual’s taxpayer-identification number would have been included;
    - (3) the acronym “DL#” or “NDL#” where the individual’s driver’s license or non-driver’s license identification card number would have been included;
    - (4) the year of the individual’s birth;
    - (5) the minor’s initials; and
    - (6) the last four digits of the financial-account number.

2. Any information revealing the identity of an individual receiving mental-health services.
3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.
4. Information about protection orders, restraining orders, and injunctions that “would be likely to publicly reveal the identity or location of the protected party,” 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining “protection order” to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).
5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.
6. Any other information required by law to be kept confidential or protected from public disclosure.

/s/ Emily P. Grim  
Signature

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21-CV-0240 (lead) (with 21-CV-0419,  
21-CV-0570, and 21-PR-0251)  
Case Number(s)

10/27/2021  
Date

**CERTIFICATE OF SERVICE**

I, Emily P. Grim, hereby certify that on October 27, 2021, I electronically filed a copy of the foregoing via the Appellate E-Filing System. Copies will be served via the Appellate E-Filing System and via regular mail on October 27, 2021 as follows:

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