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No. 21-CV-240[1]

DISTRICT OF COLUMBIA COURT OF APPEALS

RITA L. YATES

Plaintiff-Appellant,

v.

EUGENE KENNETH ALLEN, JR., ET AL.,

Defendants-Appellees.

On Appeal from the

Superior Court of the District of Columbia – Probate Division

REPLY BRIEF OF APPELLANT

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[1] Lead case consolidated with appeal case numbers 21-CV-0419, 21-CV-0570, and 21-PR-0251.

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In her Opening Brief, Appellant Rita L. Yates ("Ms. Yates") demonstrated that the Superior Court erred in dismissing her complaint for adverse possession on the basis of res judicata, and then made subsequent errors based on that initial erroneous decision, including ordering the sale of the home her and her family have lived in for generations (the "Property"),[2] denying her motion for reconsideration of her complaint, and then denying a motion to extend time to file notice of appeal of that denial. All four issues are now consolidated on appeal.

In response, Brian Gormley as Personal Representative of the Estate of Lydia Yates, Delores Yates as Personal Representative of the Estate of Frank Yates, and Angelo Yates ("A. Yates") (collectively, "Appellees," and together with Ms. Yates, the "Parties") argue that res judicata bars any claim of adverse possession—including Ms. Yates's—if there is any prior court determination of ownership, no matter how long it has been since that court decision and regardless of what was determined in that decision. They further argue that every other decision the Superior Court made was justified on the basis that Ms. Yates would not have been successful in her adverse possession claim if it were considered on the merits. In doing so, Appellees fundamentally mischaracterize the relevant issues on appeal and inappropriately attempt to hold Ms. Yates to a higher standard

[2] Real property located at 1528 A Street NE, Washington, DC 20002.

than this jurisdiction dictates. Neither Appellees nor the Superior Court are permitted to ignore the rules governing the analysis of each of these claims, and Ms. Yates thus asks this Court to remedy the errors made by the Superior Court.

ARGUMENT

I. THE SUPERIOR COURT ABUSED ITS DISCRETION 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

The Superior Court's denial of Ms. Yates's Motion to Extend Time to File Notice of Appeal of Denial of Reconsideration of Adverse Possession Claim was an abuse of discretion because Ms. Yates showed the "excusable neglect" required for an extension. *See Admasu v. 7-11 Food Store # 11731G/21926D*, 108 A.3d 357, 361 (D.C. 2015) (applying the factor test from *Pioneer Inv. Servs. Co. v. Brunswick Assocs., Ltd.*, 507 U.S. 380, 392 (1993), to determine whether a movant has shown excusable neglect, including (1) the reason for delay; (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); D.C. App. R. 4. As explained in the Opening Brief, Ms. Yates's Motion was rife with evidence of excusable neglect that included a change in counsel, the confusion created by the complexities of the case, and her good faith in filing promptly once securing undersigned counsel, all with no prejudice to Appellees. *See* Opening Brief at 24–

29. The Superior Court applied an incorrect legal standard,[3] ignored key evidence, and then, after incorrectly stating that Ms. Yates's only asserted rationale was a change in counsel, denied her claim on the erroneous belief 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.

Appellees argue that this Court need not even consider the Motion to Extend Time Appeal because the underlying merits of the Motion to Dismiss are already on appeal, making this appeal "ancillary." *See* Gormley Brief at 2, 10. Simultaneously, Appellees assert that "the facts support the Court's decision not to allow the extension" because the subject of the dismissal has been litigated for four years, Ms. Yates did not file a formal opposition to the Motion to Dismiss, and "there was no . . . excusable neglect claimed." A. Yates Brief at 19–20; *see also id.* at 10; Gormley Brief at 4. Appellees' arguments are unsupportable.

[3] *See, e.g., Pioneer Inv. Servs. Co.*, 507 U.S. at 392 (describing excusable neglect as a "flexible," "elastic," and "equitable" concept that Congress "plainly contemplated" applying to situations in which the failure to comply was "caused by inadvertence, mistake, or carelessness"); *Admasu*, 108 A.3d at 363–64 (explaining legislators' intent to allow persons who fail to meet procedural deadlines an opportunity to have their claims heard on appeal).

A. Ms. Yates's Motion to Extend Time Appeal is Significant to This Court's Review of Ms. Yates's Underlying Claims.

As an initial matter, Appellees assert that Ms. Yates's attempted appeal of the Superior Court's Denial of the Motion for Reconsideration of the Adverse Possession Claim (and thus her appeal of the Superior Court's denial of her Motion to Extend Time, which is currently pending before this Court), "do not add any substantive value to the underlying appeal of the Motion to Dismiss" because the underlying merits of the Motion to Dismiss are already on appeal. *See* Gormley Brief at 2, 10. Consequently, Appellees request that this Court "consider the merits of the appeal of the Order granting Appellees' Motion to Dismiss, rather than considering a reversal and remand of the Motion for Reconsideration or Motion to Extend Time for Appeal." Gormley at 2.

Appellees are correct that Ms. Yates's appeals of the Superior Court's rulings on the Motion for Reconsideration and Motion to Dismiss both deal with the merits of her adverse possession claim. However, the Motion for Reconsideration also raises the separate issue of whether the Superior Court improperly denied Ms. Yates the opportunity to file an opposition to the Motion to Dismiss.[4] Accordingly, to the extent this Court reverses the Superior Court's

[4] As Ms. Yates argued in her Motion for Reconsideration, she missed the alleged deadline to file an opposition to the Motion to Dismiss because she did not believe the clock had started to run due to procedural complications with the service of the amended Adverse Possession Complaint—specifically, the fact that not all

dismissal of the Adverse Possession Complaint and vacates the Order of Sale, *see infra* Section III, Ms. Yates agrees that the Superior Court's denial of her reconsideration motion (and any rejection of Ms. Yates's request for an extension to appeal that denial) would become moot, as Ms. Yates would not suffer prejudice from the Superior Court's refusal to allow her to file an opposition to the Motion to Dismiss. But to the extent this Court is not prepared to grant Ms. Yates such relief on the current record, or to the extent it determines that Ms. Yates's failure to file an opposition to the Motion to Dismiss is relevant in any way to the merits of her adverse possession claim or the appropriate standard of appellate review (as Appellees assert it is), Ms. Yates respectfully submits that she should be afforded an opportunity to appeal the Motion for Reconsideration.

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defendants had yet been served. *See* Motion for Reconsideration of the Adverse Possession Claim at Appx.252 (arguing that the Motion to Dismiss was erroneously filed prior to the issuance of the necessary summons for the amended Adverse Possession Complaint). Once realizing the Superior Court believed such deadline had passed, she filed a Motion to File Opposition to Motion to Dismiss Out of Time, Appx.211, which the Superior Court denied, Appx.217. Then the Superior Court issued its Order Dismissing the Adverse Possession Claim. Appx.214. Ms. Yates then filed the Motion for Reconsideration of the Adverse Possession Claim, arguing both that (i) dismissal was inappropriate because the Superior Court lacked jurisdiction over the case and the Motion to Dismiss was therefore not procedurally ripe, and (ii) dismissal was not warranted on the merits. Appx.252-Appx.261. The Superior Court then issued the Denial of the Motion for Reconsideration of the Adverse Possession Claim. Appx.274.

B. Appellees Fail to Provide Legal or Factual Justification for Denying the Motion to Extend Time.

Each of Appellees' arguments fails. First, Appellees' assertion that the underlying matter has been litigated for four years misses the point. *See* A. Yates Brief at 20. The length of a prior litigation is irrelevant to a determination of whether to grant an extension of time. Appellees cite no authority suggesting otherwise.

Second, Appellees' assertion that the underlying Adverse Possession Complaint has no merit[5] is both inaccurate (as discussed in Section II.B, *infra*) and, again, irrelevant to a determination of whether to grant an extension of time. *See Pioneer Inv. Servs. Co.*, 507 U.S. at 395 (listing factors); *Ford v. Chartone, Inc.*, 908 A.2d 72, 84 (D.C. 2006) (reliance upon an improper factor is an abuse of discretion). Appellees cite no authority suggesting otherwise.

Finally, Appellees' argument that "there was no . . . excusable neglect claimed" by Ms. Yates, A. Yates Brief at 19–20, is belied by the facts and the law cited in Ms. Yates's Opening Brief—none of which the Appellees address.[6]

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[5] *See* A. Yates Brief at 18–21; Gormley Brief at 10.

[6] *See* Opening Brief at 24–29 (citing multiple cases where courts found similar circumstances constituted excusable neglect and granted extensions of time, including, *e.g.*, *Admasu*, 108 A.3d at 361 (administrative law judge abused discretion by failing to consider all the *Pioneer* factors when it denied appellant's request for an extension of time to file a notice of appeal), and *Ecoban Capital Ltd. v. Ratkowsky*, No. 88-cv-5848 (RWS), 1990 WL 3929, at *2 (S.D.N.Y. Jan. 16, 1990) (finding excusable neglect in failing to retain counsel until after the filing

Indeed, additional examples abound where courts found excusable neglect under similar circumstances, including where a party changes counsel during the filing period; where the case is particularly complex when "all relevant circumstances surrounding the party's omission" are taken into account, as required, *Burt v. Nat'l Republican Club of Capital Hill*, 828 F. Supp. 2d 115, 128 (D.D.C. 2011); and where the party acted "in good faith," including by promptly filing once aware of the omission.[7] Courts also routinely conclude that prejudice to the opposing party is of "minimal relevance" in this inquiry since a Rule 4 motion only permits a 30-day delayed filing. *Id.*

Appellees simply ignore these arguments. Silence is not sufficient to overcome Ms. Yates's assertion that the Superior Court abused its discretion in denying her Motion to Extend Time.

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deadline had lapsed where previous counsel abruptly departed, many defendants were involved, and "most significantly," given "the complexity of the numerous proceedings" involved)).

[7] *See, e.g., Whiteru v. Wash. Metro. Area Transit Auth.*, No. 15-cv-0844 (KBJ), 2018 WL 6605427, at *2 (D.D.C. Dec. 17, 2018) (excusable neglect in filing supplemental motion for summary judgment two years after deadline where new counsel acted expeditiously after discovering prior counsel's omission, and related motions were pending); *Eckard Brandes, Inc. v. Dep't of Lab. & Indus. Rels.*, 463 P.3d 1011, 1012 (Haw. 2020), *as corrected* (Apr. 27, 2020) (excusable neglect where counsel was retained one day before the filing deadline); *Dunn v. Profitt*, 408 A.2d 991, 993 (D.C. 1979) (prompt action as evidence of good faith); *In re Estate of Yates*, 988 A.2d 466, 470 (D.C. 2010) ("[T]he court's failure to examine the length of appellant's delay and her good-faith explanation for such delay was an abuse of discretion.") (For the removal of any confusion, *In re Estate of Yates* does not involve the Parties.).

II. THE SUPERIOR COURT ERRED IN DISMISSING THE ADVERSE POSSESSION COMPLAINT

The Superior Court erred in dismissing Ms. Yates's Adverse Possession Complaint because her claim is not barred by res judicata, and she pled her claim sufficiently to survive a Motion to Dismiss. Appellees' efforts to broaden the scope of res judicata and increase the pleading requirements at this stage must be rejected, and this Court should reverse the Superior Court's dismissal of her claim.

A. Res Judicata Does Not Bar Ms. Yates's Adverse Possession Claim.

Appellees characterize the Adverse Possession Complaint as "a claim to determine in who ownership lies" and argue that such ownership already was determined by the 2016 Ownership Order. A. Yates Brief at 11–12; *see also* Gormley Brief at 6–8. On this basis, they argue that Ms. Yates was required to bring any adverse possession claim as a defense during that previous litigation, and that res judicata thus applies because "[a] common nucleus of facts, *i.e.*, title to the subject property and the various potential claimants thereto through the decades of common ownership, has existed in all cases." Gormley Brief at 7–8.

Appellees' arguments are wrong. A common nucleus of facts does not exist between the claims, and a previous determination of ownership is not a *per se* bar to a later claim of adverse possession. Appellees seek to add new requirements to the adverse possession doctrine unsanctioned by caselaw or statute.

1. Res Judicata Does Not Bar Ms. Yates's Claim Because the 2016 Ownership Order and the Adverse Possession Complaint Do Not Have the Same Nucleus of Facts.

Contrary to Appellees' assertions, the 2016 Ownership Order and its underlying litigation did not implicate the same nucleus of facts as those necessary to determine whether the adverse possession standard is met.

In making a "nucleus of facts" determination, courts look to "whether the facts are related in time space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectation or business understanding or usage." *Geter v. U.S. Gov't Publ'g Office*, 268 F. Supp. 3d 34, 41 (D.D.C. 2017) (citation omitted); *see also Patton v. Klein*, 746 A.2d 866 (D.C. 1999). Where two claims rely upon distinct factual predicates, res judicata does not apply. *See Goldkind v. Snider Bros, Inc*., 467 A.2d 468 (D.C. 1983) (concluding that neither res judicata nor collateral estoppel barred a cross-claim raising questions of agency law because "the causes of actions in the two suits are different"). It is not enough that the second claim would result in a similar ultimate conclusion, like "ownership." *See Patton*, 746 A.2d at 870.

As detailed in the Opening Brief, the 2016 Ownership Order and the Adverse Possession Complaint rely upon distinct factual bases, such that res judicata does not bar the Complaint. *See* Opening Brief at 32–34; *id.* at 32–33 n.8 (discussing *Gurga v. Roth*, 964 N.E. 2d 134 (Ill. App. Ct. 2011), where the court

found that a subsequent claim for adverse possession was not barred by res judicata, distinguishing between "the question of title" and "the right to possession").[8] Adverse possession requires a showing that possession of the property at issue was actual, open and notorious, exclusive, continuous, and hostile, for a period of 15 consecutive years. *Gan v. Van Buren Street Methodist Church*, 224 A.3d 1205, 1206–07 (D.C. 2020). The previous proceeding simply did not address the issue of current or historic physical possession of the property. *See* 2016 Ownership Order at Appx.001–Appx.011. Thus the "time, space, and origin" of the facts relevant to the two proceedings are not related. *See Geter*, 268 F. Supp. 3d at 41.[9] Appellees fail to cite a single case where a claim of adverse possession was barred due to litigation of another, unrelated, ownership principle.[10]

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[8] *See also Arthur Young & Co. v. Sutherland*, 631 A.2d 354, 366–67 (D.C. 1993) (res judicata does not apply to a retaliation case related to previous foreclosure case where the court made "no findings on this issue"); *Elwell v. Elwell*, 947 A.2d 1136, 1140 (D.C. 2008) (res judicata did not apply to renegotiation of alimony terms where "appellant's present claim is different than what was considered and adjudged" in a previous order where the "issue was not presented"); *Coster v. Schwat*, 502 F. Supp. 3d 260, 263–64 (D.D.C. 2020) (under analogous Delaware law, holding that despite a "[p]artial factual overlap . . . it would be a stretch" to bar separate claims of alleged company mismanagement).

[9] The application of res judicata is particularly inappropriate here since Ms. Yates has continued to satisfy the elements of adverse possession. *See Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 140 S. Ct. 1589, 1596 (2020) (res judicata "generally does not bar claims that are predicated on events that postdate the filing of the initial complaint" (quotation omitted)).

[10] For example, in *Faulkner v. GEICO*, this Court found that claims against an insurer for fraud and nonpayment of benefits stemmed directly from an automobile accident and thus were barred given an earlier suit against that same insurer

2. Appellees Improperly Seek to Add New Elements to an Adverse Possession Claim.

Appellees' assert that once ownership has been determined by a court, res judicata applies to bar any future claim to ownership of the Property. This position defies both the law and common sense. The D.C. Code does not place any such limitation on an individual's right to assert an adverse possession claim. *See* D.C. Code § 16-1113. Indeed, D.C. Code § 16-3301 states that property that is adversely possessed vests in the holder without the holder filing a complaint to quiet title. *See* D.C. Code § 16-3301. Appellees' interpretation of res judicata would expressly contradict § 16-3301, however, by forcing the holder to perfect

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stemming from the same automobile accident, but a claim for wrongful cancellation of the same insurance policy was not barred as it did not stem from the accident. 618 A.2d 181, 183–84 (D.C. 1992). In *Shin v. Portals Confederation Corp.*, this Court found that an action for fraudulent misrepresentation and breach of contract regarding a lease that "arose out of the same contract and surrounding negotiations" as a different suit was precluded where a court had already determined damages concerning the lease. 728 A.2d 615, 617–19 (D.C. 1999). In *Carrollsburg v. Anderson*, this Court found that a previous decision granting an easement precluded a condominium association from charging a monthly fee for the garage and limiting access. 791 A.2d 54, 63 (D.C. 2002). *See also Carr v. Rose*, 701 A.2d 1065, 1071, 1073 (D.C. 1997) (examining Pennsylvania law to determine that a Pennsylvania court decision had res judicata effect where a previous case involved the "same cause of action"); *Molovinsky v. Monterey Coop.*, 689 A.2d 531, 533 (D.C. 1997) (involving a contractual claim that was, for relevant purposes, *already settled and then dismissed with prejudice* in small claims court); *Smith v. Jenkins*, 562 A.2d 610, 613, 615 (D.C. 1989) (barring a claim for misrepresentation in D.C. court based on a claim for misrepresentation in a Maryland proceeding where "there can be no doubt . . . that the underlying claims are identical," and "the underlying facts of the case comprise a single occurrence or chain of related events").

title or risk losing the right to bring such a claim, and requiring such perfection before any other court issues an order regarding ownership.

Further, adverse possession as a doctrine changes the legal ownership of property. *See* D.C. Code § 16-1113. A rule that precluded any future claim of adverse possession if a previous determination of ownership has been made would extinguish the doctrine altogether. Here, Appellees assert that Ms. Yates is barred from bringing her claim for adverse possession four years after a court-determined ownership order, despite the fact that she has continued to adversely possess the Property during the pendency of this litigation. *See, e.g.*, A. Yates Brief at 11. In so arguing, Appellees seek to create a rule whereby even in 15, 50, or 500 years, no party in privity can quiet title by adversely possessing the Property. This sweeping limitation on adverse possession doctrine clearly violates black letter law permitting such claims to change legal ownership decisions. Appellees' argument to expand res judicata and eliminate the adverse possession doctrine should be rejected by this Court.[11]

[11] Appellees' assertion that a court can dismiss a second action if the plaintiff has "deliberately flouted orders of the court" is also irrelevant. *See* A. Yates Brief at 13 (citing Restatement (Second) of Judgments, § 19, cmt. a (1982)). Appellees do not provide any explanation or authority regarding whether and how D.C. applies this outdated Restatement, which merely permits application of res judicata. In addition, the Adverse Possession Complaint is distinct from the issues decided in the 2016 Ownership Order such that any orders stemming from that Order would be unrelated to her Complaint and insufficient as a basis to terminate her claim.

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

As set forth in Ms. Yates's Opening Brief, the Superior Court erred in dismissing Ms. Yates's Adverse Possession Complaint because, notwithstanding the Superior Court's erroneous application of res judicata, Ms. Yates adequately alleged each of the required elements of adverse possession and therefore met her burden on a motion to dismiss.

Appellees argue, as a threshold matter, that the Court's ruling on the Motion to Dismiss should be reviewed for an abuse of discretion rather than *de novo*. With respect to substance of the ruling, they appear to concede that Ms. Yates's possession was actual, open and notorious, and continuous. They argue only that Ms. Yates (and Rita E. Yates before her) did not present sufficient evidence that she possessed the Property in a hostile and exclusive manner for 15 years.

Appellees misstate both this Court's standard of review on appeal and the Superior Court's standard of review on a motion to dismiss. Even if it were appropriate for the Superior Court to adjudicate the merits of the adverse possession claim on a motion to dismiss, Ms. Yates provided sufficient evidence to support her claim.

1. Appellees Misstate the Standard of Review on Appeal.

As an initial matter, Appellees assert that the Superior Court treated the Motion to Dismiss Adverse Possession Complaint as conceded, and therefore that

this Court reviews the granting of that Motion for abuse of discretion. *See* Gormley Brief at 3. This argument fails for two reasons. First, this Court reviews all rulings on motions to dismiss *de novo*, regardless of whether the non-movant filed a formal opposition to the motion. *See Hoff v. Wiley Rein, LLP*, 110 A.3d 561, 564 (D.C. 2015) ("We review an order granting a motion to dismiss de novo, applying the same standard the trial court was required to apply." (quotation omitted)). Second, even if a different standard of review applied to conceded motions, the Superior Court stated expressly that its ruling was "address[ing] the merits based upon the facts as currently presented" "rather than simply deeming the Motion to Dismiss conceded," making this a null point. *See* Order Dismissing the Adverse Possession Claim at Appx.217; *supra* n.4. Thus, this Court reviews *de novo* the Superior Court's granting of the Motion to Dismiss.

2. Ms. Yates Alleged Sufficient Facts to Overcome a Motion to Dismiss.

Appellees assert that the Superior Court correctly found that Ms. Yates failed to demonstrate the requisite hostility and exclusivity for a claim for adverse possession. *See* Gormley Brief at 1–2, 9–10; A. Yates Brief at 14–18. First, according to Appellees, Rita E. Yates did not give the other alleged Property owners "hint" that she exclusively owned the Property until 2008 when she responded to Frank Yates, Jr. filing a petition to probate the estate of Lydia Yates (the mother of Rita E. Yates and Frank Yates, Jr.), and that Appellees have no

obligation to make their ownership rights apparent without such notice. *See, e.g.*, A. Yates Brief at 14–15. Second, Appellees reject any reliance on Ms. Yates's assertion that one of the home refinances was used to buy out Frank Yates, Jr.'s ownership. *See* A. Yates Brief at 16–17. Third, they argue that other heirs lived in the Property at various times, defeating any claim of exclusive possession of the Property. *See* A. Yates Brief at 14, 17; Gormley Brief at 1–2. Finally, Appellees argue that Ms. Yates's allegations that she and her mother have been the exclusive payors of all costs and collectors of all rents since 1982, and that her mother attempted to transfer the entire Property to Ms. Yates in her last will and testament, are insufficient to show hostility or exclusivity. *See, e.g.*, A. Yates Brief at 15–16; Gormley Brief at 9.

None of these arguments justifies the dismissal of Ms. Yates's Adverse Possession Complaint. Nearly all of them address the merits of the claim itself rather than the sufficiency of the allegations, as is required at the motion to dismiss stage. *See, e.g., Poola v. Howard Univ.*, 147 A.3d 267, 276 (D.C. 2016) (To survive a motion to dismiss a complaint need only plead enough facts "to raise a reasonable expectation that discovery will reveal evidence of." (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007))); *Johnson v. Chase Manhattan Mortg. Corp.*, No. CIV 04-344 EGS, 2006 WL 2506598, at *2 (D.D.C. Aug. 28, 2006) (When reviewing a motion to dismiss a complaint for adverse possession,

the court must accept the plaintiff's allegations as true and afford the plaintiff every favorable inference.).

Appellees' arguments would fail, however, even if considered on the merits. First, Appellees cannot turn a blind eye to Rita E. Yates's uncontested open and notorious physical possession of the Property and then claim they had insufficient notice of her belief that she exclusively owned the Property; the behavior of an ordinary possessor "serves to give notice to the owner" for purposes of satisfying the exclusivity requirement of adverse possession. Restatement (Third) of Property (Servitudes) § 2.17 (Am. Law Inst. 2000).[12]

Appellees' second assertion that any alleged buyout of Frank Yates, Jr.'s sale is irrelevant because no writing of such transfer exists and therefore that such transfer is invalid under the Statute of Frauds is immaterial to this appeal. *See* A. Yates Brief at 16–17. Ms. Yates is not asking this Court to void Frank Yates, Jr.'s share in the Property based on the alleged buyout. Rather, she is using this allegation to establish elements of her adverse possession claim. Accordingly, she is not required to provide any evidence at this stage. *See Poola*, 147 A.3d at 276.

[12] *See also Preston v. Preston*, 207 P.2d 313, 319 (Okla. 1949) (notice of adverse possession is sufficient where an act puts the cotenant "on inquiry, which, if diligently pursued, will lead to notice or knowledge of the fact"); *Carnevale v. Dupee*, 783 A.2d 404, 412 (R.I. 2001) ("The adverse possessor is under no duty to quiet title by judicial action, nor to vigorously assert [her] right at every opportunity.'" (alteration in original) (citation omitted)).

As to their third argument, Appellees have not—and cannot—identify time periods in which other potential heirs lived at the Property such that there is no 15-year period in which adverse possession could have vested, as would be necessary to defeat Ms. Yates's claim. *See* D.C. Code § 16-1113 (15-year statutory period to establish adverse possession). Neither of the two examples Appellees provide of others living in the home would be sufficient to defeat a showing by Ms. Yates that her possession was hostile or exclusive. *See* A. Yates Brief at 17. The fact that Rita E. Yates's sister Norma Yates and daughter Sheila Yates were both permitted to stay in the home for periods of time is unremarkable, particularly where Norma Yates paid "rent" as a tenant or guest would, and Rita A. Yates was the caretaker of her daughter Sheila Yates, who had a serious disability. Indeed, the fact that the Property was used as a family home prior to 1982, and *no others* have lived there in a way that imitated ownership since, is evidence that Rita E. Yates adversely possessed the Property since at least that time.

Appellees' final argument—that allegations that Ms. Yates and her mother have been the exclusive payors of all costs and collectors of all rents since 1982, and that her mother attempted to transfer the entire Property to Ms. Yates in her last will and testament, are insufficient to show hostility or exclusivity—similarly fails. *See* A. Yates Brief at 15–16; Gormley Brief at 9. Appellees ignore the

substantial additional allegations Ms. Yates alleged in support of this prong.[13] Numerous courts have found similar allegations sufficient to support contentions of hostility and exclusivity. *See Tilley v. Unopened Succession of Howard*, 976 So. 2d 851, 854 (La. Ct. App. 2008) (holding that an invalid deed attempting to transfer an interest in a property still serves as notice that a party intended to adversely possess the property); *Preston v. Preston*, 207 P.2d 313, 318–20 (Okla. 1949) (establishing adverse possession where co-tenant lived in the property for over twenty years, during which time he paid a mortgage on it, built a house and garage, paid the taxes and collected rents, and no other person ever claimed or asserted any property rights or demanded any rents or income); *Hodge v. Wright*, 435 P.3d 126, 131 (Okla. 2019) (party adversely possessed the property where she paid taxes on the property, improved it, maintained it, fenced it and locked the gate to the exclusion of all others, and used it for cattle for more than fifteen years). In addition, Appellees' own arguments demonstrate that Rita E. Yates's and Ms.

[13] *See, e.g.*, Opening Brief at 3–7 (highlighting facts from the Adverse Possession Complaint, including that after Lydia Yates died in 1982, Rita E. Yates "proclaimed the house to be exclusively hers through statements and actions"; no family member ever made a claim to the Property prior to 2009; and Rita E. Yates made significant improvements and modifications to the Property); *id.* at 7–20 (history of expressing exclusive ownership of the Property through litigation); *id.* at 38–41 (restating facts and further alleging that Rita E. Yates and Ms. Yates presumed nobody else held an ownership claim or would contribute to renovation costs; nobody ever tried to terminate their possession of the Property; and that they did not permit others to claim even partial ownership to the Property); Adverse Possession Complaint at Appx.189; Motion for Reconsideration at Appx.252.

Yates's possession of the Property has been hostile since at least 2008, when probate of Lydia Yates's estate began. *See* Gormley Brief at 1 (describing Rita E. Yates's and Ms. Yates's "specific intent to hinder the Court process of property liquidation throughout the past dozen or so years since the original Petition for Probate was filed by Frank Yates, Jr."); A. Yates Brief at 14–15. Such allegations are more than sufficient to state a cognizable claim for adverse possession.

III. THE ORDER FOR SALE OF THE PROPERTY MUST BE VACATED BECAUSE MS. YATES'S ADVERSE POSSESSION CLAIM IS STILL PENDING

As argued in the Opening Brief, the Superior Court erred in issuing the 2021 Order of Sale of the Property because that decision was based on its erroneous dismissal of Ms. Yates's Adverse Possession Complaint. *See* Opening Brief at 42; Order Dismissing the Adverse Possession Claim at Appx.214. Appellees argue that "[t]he division of ownership of the Property had been determined," and thus, the Superior Court "did not err in his decision to order the property sold . . . ." A. Yates Brief at 21; *see also id.* at 10; Gormley Brief at 2, 4, 11. Appellees' arguments are incorrect. If any part of the Adverse Possession Complaint or its subsequent appeals are still pending, *i.e.*, if this Court remands on any issue, then ownership of the Property cannot be said to have been determined, and, thus,

affirming the Order of Sale would be premature and inappropriate.[14]

CONCLUSION

For the aforementioned reasons, Ms. Yates respectfully requests that this Court grant the relief she has requested.

[14] Appellees' statements that the tax foreclosure case is decreasing the value of the Property as time goes on is inaccurate, and Appellees fail to provide any explanation or support for their assertion. *See* A. Yates Brief at 21; Gormley Brief at 11; *see also Estafinos v. Yates*, No. 2018-CA-005991 L(RP) (D.C. Super. Ct.).

Dated: December 27, 2021

Respectfully Submitted,

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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

Emily P. Grim
Name

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Email Address

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

12/27/2021
Date

CERTIFICATE OF SERVICE

I, Emily P. Grim, hereby certify that on December 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 December 28, 2021 as follows:

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