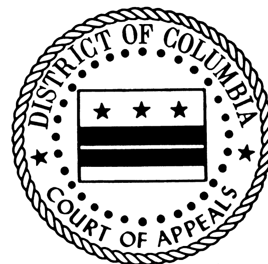

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No. 21-CV-240

Consolidated with Appeal Cases

21-CV-0419, 21-CV-0570, & 21-PR-0251

DISTRICT OF COLUMBIA COURT OF APPEALS

RITA L. YATES

Plaintiff/Appellant,
v.
EUGENE KENNETH ALLEN, JR., ET AL.,

Defendants/Appellees

ON APPEAL FROM A JUDGMENT OF THE

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA – PROBATE DIVISION

BRIEF FOR APPELLEES BRIAN GORMLEY, PERSONAL REPRESENTATIVE OF THE ESTATE OF LYDIA YATES, AND DELORES YATES, PERSONAL REPRESENTATIVE OF THE ESTATE OF FRANK YATES, JR.

Brian Gormley, Esq., Bar#488494
Law Firm of Brian Gormley, LLC
10605 Concord St., Ste 420
Kensington, MD 20895
(240) 514-2358 (T)
(866) 594-5652 (F)
brian@gormleylawoffice.com

Attorney for Appellees

RULE 28(a)(2) STATEMENT

Pursuant to D.C. Ct. App. R. 28(a)(2)(A), Appellees list the following parties and counsel that were a part of the proceedings in the D.C. Superior Court case below and/or in the cases consolidated with the case herein:

Rita L. Yates (represented by Kellee Baker, Esq., Emily P. Grim, Esq. Rachel H. Jennings, Esq. and Brandon A Levey, Esq.)
Antonio Yates (represented by Deidra McEachern, Esq.)
Brian Gormley, Esq. as PR for the Estate of Lydia Yates
Delores Yates, as PR for the Estate of Frank Yates, Jr. (represented by Brian Gormley, Esq.)
Eugene K. Allen Natasha Poteat Shaunteka Sally Shaunice Yates
Estate of Sharon Yates Allen Estate of Deandre Yates Carol Brown
James Brown Keith Brown Lorrie Brown
Estate of Charles Brown Estate of Gloria Brown Marlene Barner
Eldridge C. 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
Estate of Frank G. Yates
Estate of Sandra Jenkins
Reginald Brown
Gloria Lewis
Kenneth Yates
Robin Owens Shaw
Estate of Carrie Jenkins

Pursuant to D.C. Ct. App. R. 28(a)(2)(B), Appellees, through undersigned counsel, affirm that they are individuals, not a corporation, and have no parent companies, subsidiaries, or affiliates that have any outstanding securities in the hands of the public.

By /s/ Brian Gormley
Brian Gormley, Esq. #488494
Law Firm of Brian Gormley, LLC
10605 Concord St., Ste 420
Kensington, MD 20895
(240) 514-2358 (T)
(866) 594-5652 (F)
brian@gormleylawoffice.com

Attorney for Appellees

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QUESTIONS PRESENTED

1. Did the trial court err in granting Appellees' Motion to Dismiss the Complaint for adverse Possession?

2. Did the trial court err in denying Appellant's Motion to Extend time to file a Notice of Appeal of the denial of her Motion for Reconsideration of her Complaint for Adverse Possession?

3. Did the trial court err in ordering the sale of property in question?

BACKGROUND, STATEMENT OF FACTS AND PROCEDURAL HISTORY

Rather than reiterate facts and legal arguments previously articulated by Ms. Yates and Appellee Antonio Yates ("Antonio"), Appellees incorporate by reference the applicable sections of procedural history in Ms. Yates's brief and Background/Statement of Facts in Antonio's brief. Importantly, Appellees would note that the "facts" as outlined by Ms. Yates are both disputed and irrelevant for this appeal. Contrary to the rosy picture painted by Ms. Yates's counsel, and lest the Court view Ms. Yates with a scintilla of empathy, Ms. Yates and her mother, Rita E. Yates, have acted in bad faith with unclean hands and 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.[1] Contrary to Ms. Yates's claims, the subject property was used as a family home with individuals moving in

[1] This strategy has been so successful that Mr. Yates, Jr., along with many of the other heirs of the applicable estates that are parties to this case, have since passed away.

and out, not one whereby Appellant and her mother exerted hostile, exclusive and continuous possession for the statutory fifteen year period to establish adverse possession. Regardless, no trial for an adverse possession claim occurred at the Superior Court level, and as such a review of disputed facts is inapposite, given the present posture of the case. It therefore seems sufficient to note the dispute and focus instead on the substantive points for appeal. To that end, throughout this brief, Appellees will merely emphasize points of disagreement or clarification and rely on arguments already ably outlined by Antonio.

As a procedural note, Ms. Yates has filed an appeal of both the underlying Order granting Appellees 'Motion to Dismiss the Adverse Possession Complaint, as well as ancillary appeals for denials of the attendant Motion for Reconsideration and Motion to Extend Time to Appeal said Motion for Reconsideration. These ancillary matters do not add any substantive value to the underlying appeal of the Motion to Dismiss, and accordingly are given short shrift here. Stated differently, if the Court finds that the Motion to Dismiss was properly granted, the remaining appeals, including the Order to Sell the Property, will become moot. Due to the duration of this litigation, Appellees would request this Court to 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. Entertaining the latter, including remanding the case back to the Superior Court for yet another round of litigation, will cost the parties multiple

additional years of litigation and tens of thousands of dollars. The status quo of course only benefits Ms. Yates, who has lived in the subject property for more than ten years without paying rent or mortgage. Judicial economy, due process and consideration of the parties who have waited over a decade to receive their inheritance (including some of whom who have since died, as noted) demand finality.

STANDARD OF REVIEW

Legal conclusions are reviewed *de novo*, while factual findings are subject to a *clearly erroneous* standard. *Ballard v. Dornic*, 140 A.3d 1147, 1150 (D.C. 2016). Determinations of whether to grant an extension of time, as well as decisions under Rule 12-I(e) for relief requested in an unopposed motion, are subject to an *abuse of discretion* standard. *In re Estate of Yates*, 988 A.2d 466, 468 (D.C. 2010).

SUMMARY OF ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN GRANTING THE DISMISSAL OF APPELLANT'S CLAIM OF ADVERSE POSSESSION OF THE SUBJECT PROPERTY.

The trial court did not err in determining that the doctrine of *res judicata* bars Ms. Yates's claim of adverse possession of the property in question. Alternatively, in the absence of an opposition, the trial court is given discretion under Super.Ct.Civ.R. 12-I to grant the relief requested in a motion, which discretion the trial court did not abuse here.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION TO EXTEND TIME TO FILE A NOTICE OF APPEAL OF THE DENIAL OF HER MOTION FOR RECONSIDERATION OF HER COMPLAINT FOR ADVERSE POSSESSION.

The trial court has wide discretion when determining whether or not to grant a motion to extend time for filings. The trial court considered the claims provided by Ms. Yates in the motion for an extension, and did not feel that an extension was warranted. The trial court did not abuse its discretion, and its decision must be upheld.

III. THE TRIAL COURT DID NOT ERR IN ORDERING THE SALE OF THE PROPERTY IN QUESTION.

Ownership of the property in question was determined after a two- day trial in May 2015. In December 2016, Appellant was ordered to list the subject property and cooperate with showings. She did neither. The property is now subject to the final stages of tax lien foreclosure. Ms. Yates owns a 16.66% interest in the property, and has proven she is unwilling to sell it voluntarily. Thus, the trial court was justified in ordering its sale.

ARGUMENT

IV. THE TRIAL COURT DID NOT ERR IN GRANTING THE DISMISSAL OF APPELLANT'S CLAIM OF ADVERSE POSSESSION OF THE SUBJECT PROPERTY.

The trial court did not err in granting Appellees 'Motion to Dismiss. The trial judge discussed several grounds in his Order, including the lack of opposition, the

preclusive effects of *res judicata*, and the finding that Ms. Yates did not adequately plead the elements of an adverse possession claim. Any one of these alternative theories provides adequate grounds for affirmation of the Order and denial of this appeal.

Super.Ct.Civ.R. 12-I(e) provides:

> OPPOSING POINTS AND AUTHORITIES. Within 14 days after service of the motion or at such other time as the court may direct, an opposing party must file and serve a statement of opposing points and authorities in opposition to the motion. If a statement of opposing points and authorities is not filed within the prescribed time, the court may treat the motion as conceded.

Pursuant to Rule, judges have discretion to treat as conceded unopposed motions. Here, Ms. Baker, who entered an appearance in the probate case in December 2016 and nominally in the adverse possession case in December 2020,[2] has represented Appellant for years. During the preceding months prior to the filing of the Motion to Dismiss, she participated in status hearings in the probate and adverse possession matters before Judge Irving, during which she was apprised of the trial court's expectations for filing deadlines. Indeed, in an effort to assist Ms. Baker with the

[2] As noted in the various pleadings, it is clear that Appellant did not draft the adverse possession complaint, a fact that Ms. Baker all but conceded during one of the status hearings before Judge Irving. Ms. Baker has also been heavily involved in the related tax sale foreclosure case, having filed multiple pleadings, and had discussions with undersigned inside the courthouse in early 2020 regarding the adverse possession arguments, so has intimate familiarity with Appellant's claims and cases.

procedural technicalities, undersigned waived service of process in order to expedite adjudication, and dutifully filed the Motion to Dismiss initially in the probate matter at the trial court's direction, and then subsequently in the adverse possession case. Ms. Baker was well aware of the Motion to Dismiss itself, given that it was filed multiple times and served on her. Undersigned even discussed the substance of the Motion to Dismiss with her in a virtual status hearing before Judge Irving, and in the courthouse after an in person hearing in the related tax sale foreclosure proceeding in early 2020. Given the trial court's view that this litigation has continued for far too long, that Ms. Yates has exercised bad faith in not quitting the premises after multiple Court Orders and that she has made frivolous claims solely in order to remain in the subject property, *see, e.g.*, Order appointing Mr. Gormley as Personal Representative of the Estate of Lydia Yates, Appellees 'Appx. 1-2, it should come as no surprise, and certainly is well justified, that the Court exercised its discretion accordingly. Interestingly, Ms. Yates does not raise or respond to this point in her brief.

Separately, the trial court also found that, as a substantive matter, *res judicata* precludes Ms. Yates from advancing her adverse possession claim. Without repeating Antonio's arguments, it is worth highlighting the error of Ms. Yates's analysis in her appellate brief. She suggests therein that she may now advance her claims for adverse possession by virtue of the mere fact that no such claim was made in the May 2015 LIT trial. *See* App. Brief, pp.30-32 ("…the required elements of

each claim are distinct, and therefore the claims are also, by necessity, distinct such that res judicata is inapplicable.”). This conclusion is simply wrong.

According to the same case to which Ms. Yates cites (among many other cases), *Patton v. Klein*, 746 A.2d 866 (D.C. 1999), referring to *res judicata*, the Court stated:

> The doctrine operates to bar in the second action not only claims which were actually raised in the first, but also those arising out of the same transaction which could have been raised. If there is a common nucleus of facts, then the actions arise out of the same cause of action. The nature and scope of a `cause of action' is determined by the factual nucleus, not the theory on which a plaintiff relies. In determining whether the claim arises from the same factual nucleus, we consider the nature of the two actions, the facts necessary to prove each and 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' expectations or business understanding or usage.

Id. at 869-70 (internal citations and quotations omitted). The theory of Ms. Yates’s claim, now *res judicata*, is irrelevant. 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 (ADM probate, LIT probate, adverse possession). Indeed, the probate court in its April 2016 Order even opened by stating: “This matter is before the Court on consideration of the trial held by the Court *regarding ownership rights* in real property located at 1528 A Street, NE, Washington, DC 20002.” Appx. 1. (Emphasis added.) Again, the Court later stated its scope of review was to adjudicate “what if any ownership interest in the Subject

Property Rita Eunice Yates possessed…" Appx. 4. The fact that Ms. Yates failed to advance any adverse possession argument during the LIT trial, despite the posture styled as a partition case and arguments that she did not have any ownership interest whatsoever, is not a valid excuse to allow for a separate lawsuit some four years later, once she again feels threatened by family heirs and an imminent tax sale foreclosure. She had an explicit opportunity to raise adverse possession as a claim, and in fact would have been incentivized to do so given the nature of the proceeding and Mr. Yates, Jr.'s assertions that she had no interest at all in the subject property. Her failure to prosecute all of available claims then estops any subsequent suits now. *Molovinsky v. Monterey Coop., Inc.*, 689 A.2d 531, 533 (D.C. 1997).

Bolstering this conclusion are the subsequent proceedings in the LIT matter, also referenced by the trial court. Specifically, on October 28, 2016, Mr. Yates, Jr. filed a "Renewed motion for immediate order to sell 1528 A Street NE Washington, DC to which all parties have conceded", against which no opposition was ever filed. The motion was granted on December 13, 2016, along with an order to appraise and list the subject property shortly thereafter. No appeal or motion for reconsideration was filed in response to this Order. Of course, Ms. Yates never complied with the Court's December 2016 Order (or the March 2021 Order for that matter), but is *fully* estopped from arguing now that she has retained rights to sole ownership of the property, or can otherwise disobey an otherwise legitimate Court Order from which she never appealed. The standing Order from 2016 is to sell the property based on

the percentage ownership interests Judge Christian laid out in the April 2016 Order. Yet again, Ms. Yates's Appeal Brief does not touch on this manifest preclusion to the relief she now requests.

In addition to the two previous rationales for dismissal, each sufficient in their own right, the trial court analyzed the merits of Ms. Yates's adverse possession pleading, and properly found it to be lacking. Specifically, the Court found that Ms. Yates failed to plead sufficient factual averments to show hostility. Appx. 223-24. Ms. Yates's Appeal Brief cites only two allegations that she claims demonstrate hostility: her mother's last will and testament that bequeaths her interest in the property to Ms. Yates, and the fact that a sister paid "rent" to her mother. Neither of these facts, even if true, show hostility toward other owners. Renting a room in a home is something even a tenant could do in the form of a sub-lease. Likewise, Ms. Yates's mother's bequest of her interest in real property has no legal effect as it relates to other title holders 'interests. As the real estate axiom says, one can only convey what one has. If Ms. Rita E. Yates was a tenant in common, as Judge Christian held, then her 16.66% interest would pass under the terms of her will, and she would necessarily only be able to convey that 16.66% interest. The deed from Ms. Yates as personal representative of her mother's estate would validly convey just that: 16.66% of the total ownership of the property. Such a provision in a will in no way demonstrates any sort of hostility or possession that is "opposed and antagonistic to all other claims, and which conveys the clear message that the

possessor intends to possess the land as his own…" *Smith v. Tippett*, 569 A.2d 1186, 1190 (D.C. 1990). It simply conveys what is otherwise rightfully Ms. Yates's mother's ownership interest.

V. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANT'S MOTION TO EXTEND TIME TO FILE A NOTICE OF APPEAL OF THE DENIAL OF HER MOTION FOR RECONSIDERATION OF HER COMPLAINT FOR ADVERSE POSSESSION.

As previously stated, Ms. Yates receives little mileage from being granted or denied an extension on time to appeal the denial of her Motion for Reconsideration. The underlying merits are addressed in the trial court's Order granting the Motion to Dismiss, which is also appealed here. Further, the arguments articulated in the Motion for Reconsideration are poor at best. Ms. Baker raises a circular and wholly irrelevant argument about all parties not being served, which as the trial court noted in its denial, was waived both by undersigned and by the filing of a Motion to Dismiss in its own right. Likewise, simply reiterating the same arguments regarding the sufficiency of an adverse possession claim does not satisfy the rigorous standard required by Rule 59(e), to wit, showing manifest injustice, clear error, new facts or change of controlling law. The Motion for Reconsideration was poorly reasoned, and does not warrant further discussion.

VI. THE TRIAL COURT DID NOT ERR IN ORDERING THE SALE OF THE PROPERTY IN QUESTION.

Ownership of the property in question was determined after a two-day trial in May 2015. In December 2016, Ms. Yates was ordered to list the subject property and cooperate with showings. She did neither. The property is now subject to the final stages of tax lien foreclosure. Ms. Yates owns a 16.66% interest in the property, and has proven she is unwilling to sell it voluntarily, having now flouted two Court Orders and being sanctioned by the imposition of Court-appointed trustee's costs. Given the prior rulings in this case, the trial court was justified in authorizing the sale of the property. Again, this Order follows from the trial court's previous Orders regarding ownership and sale, and its disposition is a natural by-product of how this Court rules on the Appeal of the Order granting Appellees 'Motion to Dismiss.

CONCLUSION

The purpose of the doctrine of *res judicata* - i.e., to put an end to perpetual re-litigation of issues that were or could have been raised by parties or those in privity - is directly implicated here. Ms. Yates has held up the sale of the subject property and distribution of inheritance monies for dozens of heirs for a decade, living rent free in a posh neighborhood of the District all the while representing that she qualifies as *in forma pauperis* despite her apparent ability to refinance the property to pay off the tax lien debt. The merry-go-round music has stopped; the charade of endless and frivolous defenses and collateral attacks must be put to bed. Ms. Yates has reached the end of her rope and justice must be done for the many other heirs.

We pray that this Court will speedily affirm the trial court's Orders and allow the subject property to be sold once and for all.

Respectfully submitted,

By: */s Brian Gormley*

Brian Gormley, Esq. #488494
Law Firm of Brian Gormley, LLC
10605 Concord St., Ste 420
Kensington, MD 20895
(240) 514-2358 (T)
(866) 594-5652 (F)
brian@gormleylawoffice.com

Attorney for Appellees

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.

21-CV-0240,
21-CV-0419,
21-CV-0570, &
21-PR-0251
Case Number(s)

Respectfully submitted,

By: */s Brian Gormley*

Brian Gormley, Esq. #488494
Law Firm of Brian Gormley, LLC
10605 Concord St., Ste 420
Kensington, MD 20895
(240) 514-2358 (T)
(866) 594-5652 (F)
brian@gormleylawoffice.com

Attorney for Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief was sent via eService or First- Class Mail on this 3rd day of December, 2021 to the following persons:

Copies e-served to:
Deidra McEachern, Esq. for Antonio Yates
Kellee G. Baker, Esq. for Rita L. Yates kblawfirm@gmail.com
Emily Grim, Esq. for Rita L. Yates grime@gilbertlegal.com

Copies by mail to:
Ronald Yates *
5702 Longfellow St.
Temple Hills, MD 20757

Lawrence H. Yates, III * Wanda Yates *
Kimberly E. Bailey * Rickey Owens * Bernie Owens * Morney Owens *
Ray Owens * Karen Yates *
Kimberly E. Owens Bailey *
5773 Gladstone Way
Capitol Heights, MD 20743

Kenneth Yates *
4748 St. Barnabas Rd. Apt. T2
Temple Hills, MD 20748

Estate of Gloria Brown * Estate of Charles Brown
* Reginald Brown *Keith Brown * Lorrine Brown * Gloria B. Lewis *
30 18th St. SE
Washington, DC 20003

Carol Brown *
5206 Sherriff Rd., NE
Washington, DC 20019

James Brown * Keith Brown * Lorrine Brown *
30 18th St., SE
Washington, DC 20003

James Brown *
2301 11th Street, NW Apt. 507
Washington, DC 20001

David M. Jenkins *
1207 Dixie Bowie Way
Upper Marlboro, MD 20774

Warren A. Jenkins *
2300 Good Hope Toad, SE Apt. 1110
Washington, DC 20021

Eugene K. Allen * Natasha Poteat * Shaunteka Sally * Shanunice Yates * Natsha Poteat *
Estate of Sharon Yates Allen * Estate of Deandre Yates *
1314 Dunwoody Ave.
Oxon Hill, MD 20745

Marlene Barner *
3710 Excalibur Ct. Apt. 201
Bowie, MD 20716

Tracey Jones *
Estate of Doris Jenkins * Estate of Valerie Brock * Estate of Gwendolyn Reid * Estate of Carrie Jenkins *
P.O. Box 47545
District Heights, MD 20753

Kettisha McCoy *
Estate of Sandra Jenkins *
1633 Fort Dupont St, SE
Washington, DC 20020

Gayle Yates *
6100 Westchester Park Dr. Apt. 1104
College Park, MD 20740

Eldridge Carlton Jenkins, Jr. * Plantation C. Lenox *
24204 Plantation Drive
Atlanta, GA 30324

Estate of Frank G. Yates *
1206 Addison Road South
Capital Heights, MD 20743

/s/ Brian Gormley
Brian Gormley