



Clerk of the Court
Received 11/29/2021 03:51 PM
Filed 11/29/2021 03:51 PM

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 APPELLEE ANGELO YATES

Deidra L. McEachern, Esq.
The McEachern Law Firm, Inc.
6710 Oxon Hill Road, Suite 210
Oxon Hill, MD 20745
(301) 925-4069 – Office
(866) 929-1915 – Facsimile

*Counsel for Attorney for Appellee
Angelo Yates*

RULE 28(a)(2) STATEMENT

Pursuant to D.C. Ct. App. R. 28(a)(2)(A), Appellee Angelo Yates lists 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 Emily P. Grim, Esq. Rachel H. Jennings, Esq. and Brandon A Levey, Esq.)
Brian R. Gormley, Esq. as P.R. for the Estate of Lydia Yates and Frank Yates, Jr.
Delores Yates (represented by Brian R. 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), Appellee Angelo Yates, by and through counsel, affirms that he is an individual, not a corporation, and he has no parent companies, subsidiaries, or affiliates that have any outstanding securities in the hands of the public.

By: /s/ Deidra L. McEachern
Deidra L. McEachern, Esq.
The McEachern Law Firm, Inc.
6710 Oxon Hill Road, Suite 210
Oxon Hill, MD 20745
(301) 925-4069 – Office
(866) 929-1915 – Facsimile

*Counsel for Attorney for Appellee
Angelo Yates*

TABLE OF CONTENTS

RULE 28(a)(2) STATEMENT.....i

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITES.....iv

QUESTIONS PRESENTED.....1

BACKGROUND.....2

STATEMENT OF THE FACTS.....3

PROCEDURAL HISTORY.....4

STANDARD OF REVIEW.....7

SUMMARY OF ARGUMENT.....9

ARGUMENT.....10

CONCLUSION.....22

REDACTION VERTIFICATE DISCLOSURE FORM.....24

CERTIFICATE OF SERVICE.....26

TABLE OF AUTHORIES

Cases

1. *Boyd v. Kilpatrick Townsend & Stockton* , 164 A.3d 72 (D.C. 2017).....7

2. *Ballard v. Dornic* , 140 A.3d 1147 (D.C. 2016).....7

3. *Washington Tent and Awning Co. v. 818 Ranch, Inc.*, D.C.App., 248 A.2d 126 (1968)...7

4. *U.S. Bank, N.A. v. 1905 2nd Street NE, LLC*, 85 A.3d 1284 (D.C.2014).....7

5. *Elwell v. Elwell* 947 A.2d 1136 (D.C. 2008).....8

6. *M.D. v. R.W.* , 194 A.3d 374 (D.C. 2018).....8

7. *Price v. Independence Federal Savings Bank*, 110 A.3d 567 (2015).....8

8. *Calomiris v. Calomiris* , 3 A.3d 1186 (D.C. 2010).....8

9. *In re Estate of Yates*, 988 A.2d 466 (D.C.2010).....8

10. *In re Baseer*, 19 A.3d 341 (D.C. 2011).....8

11. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 113 S.Ct. 1489,
123 L.Ed.2d 74 (1993).....8, 20

12. *In re M.L.*, 28 A.3d 520 (D.C. 2011).....8

13. *In re L.L.*, 974 A.2d 859 (D.C.2009).....8

14. *Johnson v. United States*, 398 A.2d 354 (D.C.1979).....8

15. *Stutsman v. Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.*, 546 A.2e 367,
370 (D.C. 1988).....10

16. *Molovinsky v. Monterey Coop.*, 689 A.2d 531, 533 (D.C. 1997).....11

17. *Carr v. Rose*, 701 A.2d 1065, 1070 (D.C. 1997).....11, 12

18. *Carrollsborg v. Anderson*, 791 A.2d 54 (D.C. 2002).....11

19. <i>Shinn v. Portals Confederation Corp.</i> , 728 A.2d 615, 618 (D.C. 1999).....	11
20. <i>Smith v. Jenkins</i> , 562 A.2d 610, 615 (D.C. 1989).....	12
21. <i>Faulkner v. GEICO</i> , 618 A.2d 181, 183 (D.C. 1992).....	12
22. <i>Montana v. United States</i> , 440 U.S. 147, 153-54, 99 S.Ct. 970, 973-74, 59 L.Ed.2d 210 (1979).....	13
23. <i>Sears v. Catholic Archdiocese</i> , 5 A.3d 653, 658 (D.C. 2010).....	14
24. <i>Smith v. Tippett</i> , 569 A.2d 1186, 1190 (D.C. 1990).....	14, 15
25. <i>Bonds v. Smith</i> , 143 F.2d 369, 370 (D.C. 1944).....	17
26. <i>Gore v. Hall</i> , 112 A.2d 675, 678 (Md. 1955).....	18

Statutes and Rules

1. Super. Ct. Civ. R. 52(a).....	7
2. D.C. Code 1967, § 17-305(a).....	7
3. Super. Ct. Civ. R. 6(b).....	8, 20

QUESTIONS PRESENTED

1. Did the trial court err in determining that res judicata bar Ms. Rita L. Yates' claim of adverse possession of the property in question?
2. Did Ms. Rita E. Yates obtain the property in question through adverse possession, and if so, did she pass the property in fee simple to the Appellant?
3. Did the trial court err in denying Ms. Rita L. Yates' Motion to Extend time to file a Notice of Appeal of the denial of her reconsideration of her Complaint for Adverse Possession?
4. Did the trial court err in ordering the sale of property in question?

BACKGROUND

On September 14, 1955 the subject property, 1528 A Street, NE, Washington, DC 20002, (the Property) was transferred from the Grace Murphy to the following: One half undivided interest to Frank Yates his wife Lydia Yates as tenants by the entirety. The remaining one-half interest to Frank Yates, Jr. and his wife Annabelle Yates, and Frank Yates, Jr.'s sister, Rita Eunice Yates. *Appellee Appendix (A- 1)*

After that time there were several attempts (most deemed invalid) to transfer the property to other individuals. The last invalid attempt to transfer the property came in 2014 when the Appellant, Rita L. Yates, as Personal Representative for the Estate of Rita Eunice Yates attempted to transfer the property in its entirety to herself. Various Yates family members/heirs litigated for some 10 years with the Appellant and/or her mother regarding ownership of the Property. Finally, the parties made an unsuccessful attempt to settle the issue of ownership through mediation. Thereafter a two-day trial to determine ownership of the Property was held in May 2015. At no time before or during the trial did the Appellant make a claim or defense of adverse possession. The Appellant and Yates family member/heirs herein were parties to that trial. In April 2016 Judge Erik Christian ruled that the Estate of Lydia Yates owns 50% share of the Property and Frank Yates, Jr., Annabelle Yates, and Rita E. Yates owns the remaining share as tenants in common. Frank Yates Jr. filed a Renewed Motion for Immediate Order to Sell on October 28, 2016. Judge Christian issued an order on December 13, 2016 directing that the parties file a listing agreement by December 31, 2016, the Property be listed for sale by January 6, 2017 and that it be made available for showing every weekend after January 7, 2017 until it was sold. Frank Yates, Jr. died on July 3, 2018. The house was never shown in anticipation of

sale. The Appellant filed a claim for adverse possession on January 31, 2020. The PR for Frank Yates, Jr. and Lydia Yates filed a Motion to Dismiss. The Appellant did not file an opposition to the Motion to Dismiss and the Court granted the Motion to Dismiss holding that re judicata precluded the adverse possession claim. The Appellant filed an untimely Motion to Reconsider which was denied. The Appellant then filed the instant appeal of the denial of her adverse possession claim and the denial of her Motion to Reconsider.

STATEMENT OF THE FACTS

The property in question is located at 1528 A Street, NE, Washington, DC 20002. It first came into the Yates family possession in 1955 when it was transferred from Grace Murphy to Frank Yates his wife Lydia Yates 50% interest as tenants by the entirety and the remaining 50% interest to Frank Yates, Jr. and his wife Annabelle Yates, and his sister Rita Eunice Yates as tenants in common. On May 14, 1964, Frank Yates, Lydia Yates and Annabelle Yates signed a deed and attempted to transfer the property in fee simple to Aaron and Sally Riskin by tenant by the entirety. (A- 3) However, neither owner Frank Yates, Jr. nor Rita Eunice Yates signed the deed.

On June 10, 1964 Aaron and Sally Raskin signed a deed purporting to convey the property to Frank and Lydia Yates as tenants by the entirety. Lydia Yates died intestate on June 20, 1982, and Frank Yates, Sr. predeceased her. (A- 5)

On September 22, 2008, Sally Raskin who survived her husband Aaron signed a Corrective Quitclaim Deed conveying her interest in the property to Rita Eunice Yates. (A- 7)

On February 5, 2014, Rita L. Yates, as Personal Representative of the Estate of Rita Eunice Yates signed a deed granting Rita L. Yates interest in the property held by Rita Eunice

Yates. (A- 9)

While the deed of September 14, 1955 purported to transfer 50% of the property to Frank Yates and his wife Lydia Yates, and the other half to Frank Yates, Jr., Annabelle Yates and Rita Eunice Yates, as tenants by the entirety, Judge Erik Christian in his order dated April 21, 2016 ruled that because tenants by the entirety can only exist between spouses or domestic partners and the conveyance did not expressly pass the property to the three as joint tenants, 50% of the property was passed to Frank Yates, Jr., his wife Annabelle Yates, and Rita Eunice Yates as tenants in common and that the February 5, 2014 deed transferred “the interest Rita L. Yates had” [*emphasis ours*] in the Property to Rita E. Yates (A- 10)

PROCEDURAL HISTORY

On November 25, 2008, Frank G. Yates, Jr. filed a Petition for Probate requesting that the Court appoint him as Personal Representative of the Estate of Lydia L. Yates. (In re Estate of Lydia Yates, Case No. 2008 ADM 001252 (D.C. Super. Ct. Nov. 25, 2008)). On January 12, 2009, Rita E. Yates, Appellant's mother, filed a Complaint and Objection to Frank G. Yates, Jr.'s Petition for Probate (Yates v. Yates, Case No. 2009 LIT 000001). On May 14, 2009, Frank G. Yates, Jr. filed an Answer and Counterclaim seeking partition of the property located at 1528 A Street, NE, Washington, D.C. 20002, that is the subject matter of this appeal. On June 4, 2009, Rita E. Yates filed a Motion to Strike the Answer and Counter Claim as Untimely. On July 10, 2009, the Hon. Rhonda Reid Winston granted the Motion and dismissed the Probate Petition finding that Frank G. Yates, Jr.'s Answer had been untimely filed. On October 26, 2009, Rita E. Yates moved for voluntary dismissal of her Complaint which Judge Winston dismissed on

November 5, 2009. On August 13, 2010, Judge Winston dismissed Frank G. Yates, Jr.'s Counterclaim for his failure to join necessary parties. Frank G. Yates, Jr. again petitioned for probate of the Estate of Lydia Yates. (In re Estate of Lydia Yates, Case No. 2008 ADM 001252) on May 10, 2010. On August 24, 2013, Rita E. Yates died and the court appointed Appellant as Personal Representative of her Estate. (In re Estate of Rita E. Yates, Case No. 2013 ADM 001223). Shortly thereafter, Appellant, acting as Personal Representative for the Estate of Rita E. Yates, deeded the Property to herself. On January 20, 2014, Frank G. Yates, Jr. and Roland Yates filed a Motion to Reopen Counterclaimants' Counterclaim for Sale of the Property that is the subject of this appeal. On September 16, 2014, the Hon. Erik P. Christian granted the motion, reviving Frank G. Yates, Jr.'s Counterclaim. After unsuccessful mediation attempts, the court held a trial to determine ownership of the Property on May 4, 2015 and May 12, 2015. On April 21, 2016, Judge Christian ruled that, during her lifetime, Decedent Rita E. Yates held an ownership interest in the Property as tenants in common with her brother, Frank Yates, Jr., Anabelle Yates, and the Estate of Lydia Yates. (Yates v. Yates, Case No. 2009 LIT 000001, April 21, 2016). Judge Christian 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. There was no request for reconsideration or appeal of Judge Christian's decision. On October 18, 2016, Frank G. Yates, Jr. filed a Renewed Motion for Immediate Order to Sell. During a December 13, 2016 hearing, Judge Christian granted the Motion and ordered: (1) that the Parties file a listing agreement by December 31, 2016; (2) that the Property be listed for sale by January 6, 2017; and (3) that the Property be available for showing starting the weekend of January 7, 2017, and every weekend

thereafter until the Property was sold. There was no motion for reconsideration of the ruling and no appeal. On December 13, 2016, Attorney Kellee G. Baker, Esq., entered an appearance in the LIT case. On July 3, 2018, Frank G. Yates, Jr. died. The Register of Wills in Prince George's County, Maryland appointed Delores Yates as the personal representative of Frank G. Yates, Jr.'s estate. On July 22, 2019, Delores Yates filed a Petition for Probate of the Estate of Lydia Yates, and, on June 17, 2020, the Court granted the petition and appointed Mr. Gormley as Personal Representative. Despite Judge Christian's 2016 ruling in Yates v. Yates, the Appellant filed a Complaint on January 31, 2020, some four years later claiming she obtained 100 % of the property through adverse possession. On February 11, 2021, a Motion to Dismiss Complaint for Adverse Possession was filed on behalf of the Estate of Frank Yates, Jr. and the Estate of Delores Yates. (Appellant's Brief Appx. 199) Appellant failed to respond by the Court's deadline of February 25, 2021, to respond to the Motion to Dismiss. On February 26, 2021, Chambers inquired by email of Appellant's attorney whether Appellant intended to file a response. Appellant's counsel did not respond. On March 10, 2021, Appellant filed a Motion to File Opposition to Motion to Dismiss Out of Time. (Appellant's Brief Appx. 211) Appellant's pleading failed to advise the Court that she had communicated with Defendants about her intention to file the motion, which is required by the Court's Rules and the Civil Division's General Order. The filing, therefore, is procedurally deficient. Nevertheless, Judge Albert Irving, Jr. addressed the merits and on March 15, 2021, issued an order granting PR for Estate of Lydia Yates' and PR for Estate of Frank Yates' Motion to Dismiss the Complaint for Adverse Possession. (A- 21) Judge Irving also issued an Omnibus Order providing that if the Appellant refused to cooperate that a Trustee be appointed to be paid from the Appellant's share of the

proceed of the sale. (A- 33) In April 2021 Appellant filed a Motion to Reconsider the Adverse Possession Complaint and a Motion to Extend Time to File Notice of Appeal Denial of Reconsideration which was also denied. The Appellant filed the instant appeal of both the order denying her Complaint for Adverse Possession and her Motion to Reconsider the Dismissal of her Complaint for Adverse Possession, both of which were denied. Appellant appeals from those rulings.

STANDARD OF REVIEW

When reviewing the lower court's ruling this court gives great deference to the trial judge's determination of the issues that comes before him or her. To overturn a trial court's decision the court must find that the lower court clearly erred. See *Boyd v. Kilpatrick Townsend & Stockton*, 164 A.3d 72, 78 (D.C. 2017); *Ballard v. Dornic*, 140 A.3d 1147, 1150 (D.C. 2016). When a case is tried by the court sitting without a jury, the trial judge's "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Super. Ct. Civ. R. 52(a); see Super Ct. L & T R. 2 (making Civ. R. 52 applicable to proceedings in the Landlord and Tenant Branch). [This court's] function is limited to reviewing the record and we may disturb the trial court's ultimate findings and conclusions only if they are clearly erroneous or without evidence to support them. See D.C. Code 1967 § 17-305(a); *Washington Tent and Awning Co. v. 818 Ranch, Inc.*, D.C.App., 248 A.2d 126, decided November 29, 1968.

However, this Court's review of application of the doctrines of collateral estoppel and res judicata is de novo. See *U.S. Bank, N.A. v. 1905 2nd Street NE, LLC*, 85 A.3d 1284, 1287

(D.C.2014); *Elwell v. Elwell*, 947 A.2d 1136, 1139 (D.C. 2008); *M.D. v. R.W.*, 194 A.3d 374, 379 (D.C. 2018). That said, in determining whether res judicata applies, “[this Court] 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.” *Price v. Independence Federal Savings Bank*, 110 A.3d 567, 571 (2015). (Citing *Calomiris v. Calomiris*, 3 A.3d 1186, 1190 (D.C. 2010)) (alteration in original) (quoting *Elwell* at 1140).

The determination of whether the trial court abused its discretion in denying a motion for the enlargement of time to file an appeal the court is directed to the discretion of the trial court. See *In re Estate of Yates*, 988 A.2d 466, 468 (D.C.2010) (citing Super. Ct. Civ. R. 6(b) (a deadline may be enlarged “in [the trial court's] discretion”). In deciding whether appellant's neglect is excusable, the trial court should consider “the danger of prejudice [to other parties], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” *In re Baseer*, 19 A.3d 341, 345 (D.C. 2011) citing *Yates*, 988 A.2d at 468 (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993) (alteration in original)).

Even if this court determines that the trial court abused its discretion the query doesn't stop there. The court must determine “whether the exercise of discretion was in error and, if so, whether the impact of that error requires reversal.” *In re M.L.*, 28 A.3d 520, 528 (D.C. 2011), citing *In re L.L.*, 974 A.2d 859, 862-63 (D.C.2009). (quoting *Johnson v. United States*, 398 A.2d

354, 367 (D.C.1979). (internal quotation marks omitted)."

SUMMARY OF ARGUMENT

I. THE COURT DID NOT ERR IN DETERMINING THAT RES JUDICATA BARS MS. RITA L. YATES' CLAIM OF ADVERSE POSSESSION OF THE PROPERTY IN QUESTION.

The trial court did not err in determining that re judicata bars Rita L. Yates' (hereinafter Appellant) claim of adverse possession of the property in question. The Appellant, Appellees Frank Yates, Jr. (via The Estate of Frank Yates, Jr.) and Roland Yates were all parties to 2015 numerous proceedings regarding and finally a trial to determine ownership of "the Property" at 1528 A Street, NE, Washington, DC. The Appellant was represented by counsel and at that time made no claim of adverse possession of the property. Because ownership of the property was ruled at the conclusion of that trial and that ruling was not appealed at that time the Appellant is now precluded from making a claim of adverse possession of the said property. The trial court did not err in barring the Appellant's claim.

II. MS. RITA E. YATES DID NOT OBTAIN THE PROPERTY IN QUESTION THROUGH ADVERSE POSSESSION, AND DID NOT PASS THE PROPERTY IN FEE SIMPLE TO THE APPELLANT.

After a trial on the issue of ownership of the property Ms. Rita E. Yates never owned the Property in fee simple. Nothing in Rita E. Yates actions amounted to adverse possession of the Property. Thus, was not able to pass it in fee simple to the Appellant. Ms. Rita E. Yates actions concerning the property did not amount to adverse possession. She could not pass what she did not have.

III. THE TRIAL COURT DID NOT ERR IN DENYING MS. RITA L. YATES' MOTION FOR RECONSIDERATION OF HER COMPLAINT FOR ADVERSE POSSESSION OR HER 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 the Appellant in the motion and did not feel that an extension was warranted. The trial court did not abuse its discretion and thus, its decision must be upheld.

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

Ownership of the property in question was determined after trial and thereafter the owners/parties were not in agreement with what to do with the property. No owner agreed to buy the other owners out and the District of Columbia had a tax lien on the property. Thus, the trial court was justified in authorizing the sale of the property. The court did not err in ordering the sale of the property in question.

ARGUMENT

V. THE COURT DID NOT ERR IN DETERMINING THAT RES JUDICATA BARS MS. RITA L. YATES' CLAIM OF ADVERSE POSSESSION OF THE PROPERTY IN QUESTION.

The court did not err in determining that res judicata or collateral estoppel bars Rita L. Yates, the Appellant, claim of adverse possession of the Property in question. Under the doctrine of res judicata a final judgment on the merits “embodies all of the party’s rights arising out of the transaction involved,” *Stutsman v. Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.*,

546 A.2e 367, 370 (D.C. 1988) and precludes relitigation in subsequent proceedings of all issues arising out of the same cause of action between the same parties or their privies, whether or not the issues were raised at the first proceeding. *Molovinsky v. Monterey Coop.*, 689 A.2d 531, 533 (D.C. 1997). Such a judgment “estops not only as to ever ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented.” *See, Carr v. Rose*, 701 A.2d 1065, 1070 (D.C. 1997); *Carrollsbury v. Anderson*, 791 A.2d 54 (D.C. 2002); *See also, Shinn v. Portals Confederation Corp.*, 728 A.2d 615, 618 (D.C. 1999). In the lower court the Appellant, Frank Yates, Jr. and Roland Yates were parties to a Complaint for the Partition of the Property, a Counterclaim for Sale in Lieu of Partition of Property, and a Motion for the Sale of the Property. In fact, on Page 2 of Appellant’s Brief she acknowledges that there has been a “tortured history of the dispute over the ownership of this Property.” Thus, there is no question that actions to determine ownership of the Property have been determined. She also admits that the more than a decade of litigation over the Yates family home crosses sever cases between herself, her mother, Rita E. Yates, the P.R. for the Estate of Lydia Yates and the P.R. for Frank Yates. These are the very parties that are the parties herein, and more importantly that were the parties when the determination was made by the lower court that Appellant’s claim of adverse possession was barred by res judicata. Just as all of the other proceedings before it, is simply a claim to determine in who ownership lies. "In determining whether two cases are based on the same cause of action, 'the courts have considered the nature of the two actions and the facts sought to be proved in each one.'" *Shin* 728 A.2d at 619 (quoting *Amos* 497 A.2d at 1085). Res judicata applies when the earlier litigation involved the same parties or their privies. "Privity has been described as mutual or successive relationships to the same right of property, or such an

identification of interest of one person with another as to represent the same legal right." *Carr v. Rose*, 701 at 1076 (internal quotations omitted). Traditionally recognized privies include "those who control an action although not parties to it; those whose interests are represented by a party to the action; and successors in interest." *Smith v. Jenkins*, 562 A.2d 610, 615 (D.C. 1989) (internal quotations omitted). The Appellant is claiming adverse possession based on her successor interest via her mother Rita E. Yates.

We submit that a claim of adverse possession is a defense that should have been made in response to the Motion for Partition of the Property, Counterclaim for Sale in Lieu of Partition of Property and to the Motion for Sell of the Property. All of these actions were brought, heard and decided by trial on the merits in 2015 and 2016. No such defense of adverse possession was ever presented during any hearing on these matters.

When determining whether res judicata applies the nature and scope of a "cause of action" is determined by the factual nucleus, not the theory on which a plaintiff relies. A cause of action includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. *See Faulkner v. GEICO*, 618 A.2d 181, 183 (D.C. 1992). Thus, the Appellant's failure to present a claim or defense of adverse possession of the Property when its ownership was being determined was fatal to her cause. She could not maintain such a claim some four or five years later.

The purpose of the doctrine of re judicata is "to prevent the relitigation of claims that the [parties] have already had a full and fair opportunity to litigate, thereby protecting adversaries from expensive and vexatious multiple lawsuits, conserving judicial resources, and minimizing the likelihood of inconsistent outcomes." *Smith v. Jenkins*, 562 A.2d 610, 615 (D.C. 1989)

(citing *Montana v. United States*, 440 U.S. 147, 153-54, 99 S.Ct. 970, 973-74, 59 L.Ed.2d 210 (1979)). It also can require dismissal of the second action “even though the substantive issues have not been tried, especially if the plaintiff has failed to avail himself of opportunities to pursue his remedies in the first proceeding or has deliberately flouted orders of the court.”

RESTATEMENT (SECOND) OF JUDGMENTS SEC. 19 cmt. a. Clearly, the Appellant failed to avail herself of the opportunities to pursue remedies at the trial level by not claiming a defense of adverse possession when ownership of the property was litigated, and later when she failed to timely file an opposition to the Motion to Dismiss her claim of adverse possession. She again failed to file an opposition to the Motion after her counsel was contacted by the judge’s chambers who inquired if she planned to oppose the motion. Additionally, Appellant has flouted the order of the court to sell the property. Instead of abiding any part of the court’s order she simply ignored or frustrated them. The Court appointed Trustee had the Property appraised at \$740,000, listed it and received offers of up to \$800,000. Appellant hired an alternative appraiser who valued the property at \$705,000. Yet the Appellant has remained in the property, basically prevented its sale. There is also a tax foreclosure pending on the property. Appellant’s appeal further frustrates the court’s order to sell the Property. After flouting and frustrating the courts order and over four years after ownership of the Property was determined in final ruling the Appellant filed an action for adverse possession. (Appellant Brief Appx. 189) This is one of the very things that the doctrine of res judicata was designed to prevent. Clearly, the trial judge did not err in ruling that res judicata barred the Appellant’s claim of adverse possession.

VI. MS. RITA E. YATES DID NOT OBTAIN THE PROPERTY IN QUESTION THROUGH ADVERSE POSSESSION, AND IF SO, WAS SHE ABLE TO PASS THE PROPERTY IN FEE SIMPLE TO THE APPELLANT?

"To establish title by adverse possession, [an individual] must demonstrate possession of the land that is 'actual, open and notorious, exclusive, continuous, and hostile,' throughout a period of fifteen years." *Sears v. Catholic Archdiocese*, 5 A.3d 653, 658 (D.C. 2010) (quoting *Smith v. Tippett*, 569 A.2d 1186, 1190 (D.C. 1990); see also D.C. Code § 12-301 (establishing that the time limit for bringing an action "for the recovery of lands, tenements, or hereditaments" is 15 years). When Rita E. Yates lived in the property in question it was not hostile. The property was the home first came into the Yates family when it was conveyed to Lydia Yates and her husband Frank Yates and their children Rita E. Yates and Frank Yates, Jr. and Annabelle Yates, Frank Yates, Jr.'s then wife (parents of Appellee Angelo Yates). Frank Yates predeceased Lydia Yates. For years various family members lived in the home, during and after the death of both Lydia Yates. The home was looked at as the family home. The Appellee's and Rita E. Yates' mother Lydia Yates lived in the home until she passed away. While Appellant claims that no family member including Frank Yates, Jr. ever made any claim to the Property prior to 2009 when Frank Yates, Jr. file a Petition to Probate Lydia Yates estate. In fact, at no time prior 2009 did Rita E. Yates give hint that she felt she owned the Property exclusive of any right to any of the other owners and this was in response to Frank Yates Jr, filing the Petition to probate Lydia Yates' estate. Furthermore, because of the requirement that the taking of property by adverse possession has to be hostile, the onus to make it clear that there is such is on the person making the claim. The rightful owners have no obligation to make their ownership rights apparent, especially when they are not on notice that there is such an attempt to make a claim of ownership

exclusive of their rights being made. Moreover, there is a presumption that a person occupying the land of another does so with the latter's consent and, accordingly, "adversity must be established by clear and convincing evidence." *Smith*, 569 A.2d at 1190. There is a presumption "that possession is adverse when there is open and continuous use of another's land for the statutory period, and this presumption is effective to establish title in the absence of evidence to the contrary." *Id.* "'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." 5 R. POWELL, THE LAW OF REAL PROPERTY § 1013 (2) at 91-19 (Rev. ed. 1989). Rita E. Yates was a partial owner of the property in question. Consequently, she had a right to possess it. However, nothing in her behavior would lead any of the other owners to conclude that that possession was hostile. "'Hostile' possession has been defined as possession that is opposed and antagonistic to all other claims, and which conveys the clear message that the possessor intends to [solely] possess the land as his own." 7 POWELL, *supra*, § 1013 (2) at 91-17. Because Rita E. Yates was the sister of Frank Yates Jr. and the Property was the "family home" owned by him, her, his then wife, Annabelle, Rita E. Yates and the heirs of their mother Lydia Yates' (some of whom had lived in the house from time to time) Frank Yates, Jr. had no reason to believe that Rita E. Yates somehow believed to be the sole owner of the property.

Appellant argue that she and her other Rita E. Yates have been the sole payors of all costs associated with the home and the collector of all rents received since 1982 shows that Rita E. Yates solely owned the property. However, since they were the ones who were living in the home and thus reaping the benefits from it, the payments were mere compensation for such

benefits. It could not reasonably be expected that other owners not living in the property would be required to pay for the home that Appellant's and her mother were living in and they were not. This by no means meant they were giving up their ownership in the home.

The Appellant further alleges that the home was refinanced in 1964 and 1972 and she "had understood" that one of these refinances was used to buy out Frank Yates, Jr. This is mere unfounded speculation on the Appellant's part and there are no documents to back up such a claim. The Statute of Frauds dictate the transfer of an interest in real property must be in writing signed by the party against whom the contract is being enforced. No such writing exists. Appellant's claim of such a transfer is self-serving and unenforceable.

To establish continuous possession of land for 15 years, a party may "tack" the time that she personally spent on the land to that of her predecessors. "Tacking consists of successive, uninterrupted possession by persons between whom privity exists." *Bonds v. Smith*, 143 F.2d 369, 370 (D.C. 1944); see also, Tacking, Black's Law Dictionary (10th ed. 2014) (Tacking is defined as "[t]he joining of consecutive periods of possession by different persons to treat the periods as one continuous period "). "If such tacked possessions constitute one continuous adverse possession for the statutory period it will be sufficient." *Bonds*, 143 F.2d at 370-71 (emphasizing that "[i]t is possession not title which is vital" in determining whether a putative adverse possessor has held the land long enough). Even so, as noted in *Gore v. Hall*: It is unquestionable that where different persons enter upon land in succession without any privity of estate, the last possessor is not allowed to tack the possession of his predecessors to his own, so as to make out a continuity of possession sufficient to bar the entry of the owner ... " because "the moment the first occupant quits possession, the constructive possession of the owner is

restored[.] *Gore v. Hall*, 112 A.2d 675, 678 (Md. 1955). In this case other family member, heirs lived in the house. The Appellant notes her sister (who is an heir through Lydia Yates) lived for a period of time in the home. This would have prevented any sole continuous hostile possession of the Property had any existed, which we contend did not. Again, it is of no moment that the sister paid Rita E. Yates rent. Because she allegedly was paying the mortgage it is understandable that any rent paid by any heir who lived in the home would be paid to the person paying the mortgage. In addition, Sheila Yates who also would have been an heir via Rita E. Yates and her grandmother Lydia Yates lived in the property. Sheila Yates (Frank Yates Jr's niece) who had a serious disability lived in the house and did not die until 2007. This would better explain why Frank Yates, Jr. did not file the Petition to Probate his mother Lydia's estate until 2008. This was the family home. His niece who was disabled lived in it. He at no time gave up his ownership right in it and after his disabled niece died, he filed to probate his mother's estate so that the house could be sold, and the proceeds could be divided between the rightful owners.

Because Rita E. Yates never obtained the property by adverse possession, she could not convey it to the Appellant. Even if Appellant had a valid claim of Adverse Possession of the Property in question, as pointed out above, she would be collaterally estopped from making such a claim because when the issue of ownership of the Property had already been litigated four years prior to her making any such claim.

VII. THE TRIAL COURT DID NOT ERR IN DENYING MS. RITA L. YATES' MOTION FOR RECONSIDERATION OF HER COMPLAINT FOR ADVERSE POSSESSION OR HER 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 Court did not err in denying the Appellant's Motion for Reconsideration of her

Complaint for Adverse Possession or her Motion to Extend Time to File a Notice of Appeal of her Motion for Reconsideration of her Complaint for Adverse Possession. From 2008 through 2015 the Appellant and the Frank Yates, Jr. and Roland Yates were involved in multiple legal battle over the ownership of the Property in question. There were Complaints, Counterclaims for sale of the Property, Motions for Partition of Property, voluntary and involuntary dismissals of claims filed and the parties participated in unsuccessful mediation to settle ownership of the property. On October 18, 2016 a Renewed Motion to Sell was filed. On December 13, 2016 Judge Erik Christian ordered the parties to come up with a listed agreement, that Property be listed for sell and the Property be made available for showing each week until the property was sold. There was no appeal of that decision. Despite the order the Appellant did not list or show the property. Instead, four years later she filed a Complaint for Adverse Possession. Frank Yates, Jr. and Roland Yates filed a Motion to Dismiss the Adverse Possession Complaint. The Appellant never responded to the Motion to Dismiss and her Complaint for Adverse Possession was dismissed. It is in the trial Court's sound discretion whether to enlarge time to file a responsive pleading or a motion to reconsideration. In this case the Appellant failed to file a responsive pleading to the Motion to dismiss by the February 25, 2021 date. The Court went a step further and sent an email on February 26, 2021 to Appellant's attorney asking if she were going to be filing a response. Appellant's attorney did not respond to the email. On March 10, 2021, Appellant filed a Motion to File Opposition to Motion to Dismiss Out of Time but failed to allege that she had sought consent from the Defendants, which is required by the Court's Rules and the Civil Division's General Order. Judge Albert Irving noted filing, that the filing was procedurally deficient. Nevertheless, he addressed the merits and on March 15, 2021, issued an

order granting PR for Estate of Lydia Yates' and PR for Estate of Frank Yates, Jr's Motion to Dismiss the Complaint for Adverse Possession. In April 2021 Appellant filed a Motion to Reconsider the Adverse Possession Complaint and a Motion to Extend Time to File Notice of Appeal Denial of Reconsideration which was also denied. The Court gave the Appellant ample time to file an opposition to the Motion to Dismiss her Adverse Possession Complaint and the Appellant failed to timely do so.

While D.C. Sup. Ct. Rule 6(b)(1) authorizes the Court at its discretion to extend time for filings for good cause or for excusable neglect, there was no good cause given in this case nor any excusable neglect claimed. The Supreme Court has held that the phrase "excusable neglect" permits a court, "where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control." *Pioneer Inv. Servs. Co.*, at 388, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993). Determining whether a party's neglect is excusable "is at bottom an equitable one, taking [into] account . . . all relevant circumstances surrounding the party's omission." *Id.* at 395, 113 S.Ct. 1489. The factors a court considers include "the danger of prejudice [to other parties], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." In this case the facts support the Court's decision not to allow the extension. The Court went over and beyond what was necessary by sending an email out to Appellant's counsel asking if she would be filing a response to the Motion to Dismiss after the response was due and then the court still did not rule on the motion until nearly two week later. Moreover, the subject of the dismissal was something that had been litigated four years prior. Clearly, the court did not abuse its

discretion in denying Appellant's Motion to Reconsider the Dismissal.

Even if it were determined that the Court abused its discretion in denying the Appellant's Motion to Reconsider or her Motion to Extend Time to File Appeal of the Dismissal of her Adverse Possession complaint, it would be harmless error. The Court determined the dismissal of the complaint based on the merits and was justified in its finding.

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

The trial Court determined that the Appellant did not obtain the property via adverse possession and determined that Judge Erik Christian outlined the proper division of the Property to be 50% to the Estate of Lydia Yates, 16.66% to Frank Yates, Jr. 16.66% Annabelle Yates, and 16.66% to the Estate of Rita E. Yates. The parties have been unable to reach a settlement regarding division and no party was able or willing to buy the other party(ies) out. The Property is subject to a tax sale which the longer the property is not sold only decreases the value of each parties interest in it. The Appellant has purposely prolonged the process of division of the property in question, depriving the other owners of their proper entitled benefits from its sale and the filing of yet another claim of ownership of the property is just another delay tactic, as is this appeal. Judge Irving recognized the Appellant's purposeful frustration of the rightful division of the Property and ordered that the Appellant be financially responsible for any trustee that would be appointed if necessary to facilitate the sale of the Property. The division of ownership of the Property had been determined. Thus, Court did not err in his decision to order the property sold and the proceeds divided between the parties according to their ownership share.

CONCLUSION

Consequently, the trial court did not err in determining that res judicata bar Ms. Rita L. Yates' claim of adverse possession of the property in question. Ms. Rita E. Yates never obtained the Property adverse possession. Thus, she was not able to pass the property in fee simple to the Appellant. What she was able to do was to pass all that she owned to the Appellant and that was 1/3 of the 50% of the Property she obtained at the time the property was first conveyed and her intestate portion obtained through her mother Lydia Yates.

Furthermore, the trial court did not err in denying Ms. Rita L. Yates' Motion to Extend time to file a Notice of Appeal of the denial of her reconsideration of the Dismissal of her Complaint for Adverse Possession. The Appellant had ample time to respond to the Motion to Dismiss her complaint and failed to do so even after her counsel was contacted by the judge. She likewise had ample time to file the Notice of Appeal but failed to do so. There is not automatic right to an extension of time for filing and good cause, nor excusable neglect was not shown for Appellant's failure to timely file. Additionally, the issue of adverse possession was moot. Ownership had been finally determined and res judicata correctly barred the Appellant's attempt at one more bite at the apple. Litigation in this case had gone on for over 10 years and the proper division of the property had been determined, the parties were not able or willing to buy one another out, and absent the sale of the Property the other owners would be deprived of their ownership rights. Therefore, the trial court did not err in ordering the sale of this Property.

Based on all of the foregoing, we submit that the lower court's rulings in this case should be affirmed.

Respectfully submitted,

/s/ Deidra L. McEachern
Deidra L. McEachern, Esq.
Bar No. 418572
Attorney for Appellee Angelo Yates
The McEachern Law Firm, Inc.
6710 Oxon Hill Road, Suite 210
Oxon Hill, MD 20745
(301) 925-4069 – Office
(866) 929-1915 – Facsimile
Mceachernlaw@aol.com

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 taxpayeridentification 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/ Deidra L. McEachern
Signature

Deidra L. McEachern, Esq.
Name

Meachernlaw@aol.com
Email Address

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

11-29-2021
Date

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of Appellee Angelo Yates was sent via eService or First Class Mail on this 29th day of November to the following persons:

Copies e-served to:

Brian Gormley, Esq.

For: Estate of Frank Yates, Estate of Lydia Yates, Delores Yates
brian@gormleylawoffice.com

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 *
Lorraine Brown *
Gloria B. Lewis *
30 18th St. SE
Washington, DC 20003

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

James Brown *
Keith Brown *
Lorraine 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/ Deidra L. McEachern
Deidra L. McEachern

