

Member Article: A Deed Alone Is Not Enough

A Deed Alone Is Not Enough: Georgia Supreme Court Clarifies Limits on Adverse Possession

By Brian S. Goldberg
Shareholder, Buchalter PC (Atlanta, GA)



In a decision that refines the contours of Georgia’s law on prescriptive title, the Georgia Supreme Court held that a recorded deed—standing alone—is not sufficient to establish adverse possession under color of title. In *Brownphil, LLC v. Cudjoe*, 915 S.E.2d 860 (Ga. 2025), the Court vacated a Court of Appeals decision and clarified that even when a claimant has a deed, they must also demonstrate actual possession of the land to meet the statutory requirements for acquiring title by prescription.

The Dispute

The case involved an undeveloped lot in Bibb County with two competing claimants:

- Brownphil, LLC asserted ownership through a deed supported by a continuous chain of title.
- Peter Cudjoe, the appellee, conceded his deed lacked a valid chain but argued that he had acquired title through adverse possession under color of title pursuant to O.C.G.A. § 44-5-164.

Cudjoe claimed that his recorded deed, combined with his longstanding claim of ownership, was sufficient to satisfy the legal requirements of constructive possession. The trial court agreed and granted him summary judgment. The Georgia Court of Appeals affirmed.

The Supreme Court’s Reversal

On certiorari, the Georgia Supreme Court reversed. Writing for a unanimous Court, Justice Verda Colvin stated:

“A recorded deed, by itself, cannot satisfy both the notice and land-possession requirements of adverse possession under color of title.” (*Brownphil*, 915 S.E.2d at 861.)

While the Court acknowledged that a recorded deed provides notice to the world of a party’s claim, it made clear that the deed alone does not establish possession—an essential element of prescriptive title.

Clarifying Possession Under the Statute

Georgia’s statutory scheme distinguishes between actual and constructive possession:

Actual possession, under O.C.G.A. § 44-5-165, is evidenced by “enclosure, cultivation, or any use and occupation ... so notorious as to attract the attention of every adverse claimant and so exclusive as to prevent actual occupation by another.”

Constructive possession, per O.C.G.A. § 44-5-166, extends only when a person with color of title is in actual possession of some portion of the land. Without that physical possession, constructive possession cannot attach.

In *Brownphil*, Cudjoe failed to establish that he had actually possessed any portion of the property. Yet, the lower courts mistakenly concluded that the mere recordation of his deed was sufficient to establish constructive possession.

Key Takeaway: A Deed Is Not a Substitute for Dominion

The Court highlighted a crucial difference: while a deed may give “color of title,” it does not substitute for the physical dominion or control necessary to establish adverse possession. To acquire title under O.C.G.A. § 44-5-164, the claimant must combine written evidence of title with *actual* possession for at least seven years.

This interpretation aligns with precedent, including *Sewell v. Sprayberry*, 186 Ga. 1 (1938), and *Turner v. Neisler*, 141 Ga. 27 (1913), which required both color of title and actual possession.

To hold otherwise, the Court explained, would paradoxically allow a defective deed—insufficient to establish ownership—to ripen into ownership merely through the passage of time, without any physical acts of possession. “This cannot be,” the Court concluded. (*Brownphil*, 915 S.E.2d at 864.).

Practical Implications for Practitioners

This decision carries important implications for real estate litigators and transactional counsel alike:

- Quiet title actions, boundary, and title disputes: A claimant asserting adverse possession must support their claim with evidence of physical use or control, not just a deed. Recorded instruments are important, but they must be paired with tangible acts on the ground.
- Client counseling: Clients mistakenly relying on flawed deeds for adverse possession should be advised that mere recordation does not shield them from competing claims unless they actively use or occupy the property.

Conclusion

The Supreme Court’s ruling in *Brownphil v. Cudjoe* reinforces a fundamental tenet of Georgia property law: prescriptive title cannot be claimed from paper alone. Possession—real, visible, and exclusive—remains the bedrock of any prescriptive title claim. In the world of adverse possession, it is not enough to record a deed—you must act on it.

Call to Action

1. The Real Property Law Section wants to hear from you! Please submit your substantive articles or editorials for publication in the Section newsletter. Submissions may be sent to GARplscommittee@gmail.com.

2. We are always looking for new speakers or topics of interest from our members. Please reach out to any of our Executive Committee leaders or members to nominate yourself or others to speak at a future CLE or to suggest a topic relevant to our Section. We are also accepting articles or items of interest from our membership throughout the year.



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