

Jul 22 2022

SC Court of Appeals

FORM 4

JUDGMENT IN A CIVIL CASE

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW
IN THE COURT OF COMMON PLEAS

CASE NO. 2020 CP-28-00554

ELIZABETH A. FARMER

JAMES TIMOTHY SORT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: JOHN W. WELLS

Attorney for : [X] Plaintiff [ ] Defendant
or
[ ] Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- [ ] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
[X] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. [ ] See Page 2 for additional information.
[ ] ACTION DISMISSED (CHECK REASON): [ ] Rule 12(b), SCRPC; [ ] Rule 41(a), SCRPC (Vol. Nonsuit); [ ] Rule 43(k), SCRPC (Settled); [ ] Other
[ ] ACTION STRICKEN (CHECK REASON): [ ] Rule 40(j), SCRPC; [ ] Bankruptcy; [ ] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [ ] Other
[ ] STAYED DUE TO BANKRUPTCY
[ ] DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): [ ] Affirmed; [ ] Reversed; [ ] Remanded; [ ] Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: [ ] See attached order (formal order to follow) [ ] Statement of Judgment by the Court:

ORDER INFORMATION

This order [ ] ends [ ] does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Rows contain dollar signs (\$).

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

\_\_\_\_\_  
**Circuit Court Judge**

\_\_\_\_\_  
**Judge Code**

\_\_\_\_\_  
**Date**

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
JOHN W. WELLS

\_\_\_\_\_  
MICHAEL WRIGHT

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**  
**(Instructions for Information Only-Not to be filed with Form 4C)**

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title “Circuit Court Judge” below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the “Judgment Amount To Be Enrolled” box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF KERSHAW )  
 )  
Elizabeth A. Farmer )  
 )  
Plaintiff, )  
 )  
Vs. )  
 )  
James Timothy Short )  
 )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

**FINAL ORDER**

Civil Action No.: 2020-CP-28-00554

**PRESIDING JUDGE: JEFFREY M. TZERMAN  
COURT REPORTER: TRAVIS MCLEOD  
ATTORNEY FOR PLAINTIFF: JOHN W. WELLS  
ATTORNEY FOR DEFENDANT: MICHAEL D. WRIGHT**

This action was commenced by the filing of a Summons, Complaint and Lis Pendens on July 17, 2020. The Summons, Complaint and Lis Pendens were thereafter served on the Defendant as appears from the Affidavit of Service filed on August 3, 2020. The Defendant filed an Answer and Counterclaim on August 14, 2020. The Plaintiff filed and served a Reply to the Counterclaim on September 2, 2020. The case was referred to me by Order of The Honorable Alison Renee Lee dated March 29, 2021. A hearing on the merits was held on August 5, 2021.

The Plaintiff was present at the hearing together with her attorney John W. Wells. The Defendant was also present together with his attorney, Michael D. Wright. The Plaintiff presented the testimony of Robert Lackey, a Registered Land Surveyor, Greg Newman, a Licensed Realtor, Kevin Ard, a Licensed Appraiser, Derek Farmer and Elizabeth Farmer. The Defendant presented the testimony of Jim McLeod, a Licensed Appraiser, and the Defendant.

## FINDINGS OF FACT

From the testimony and the exhibits presented by the witnesses, I make the following findings of fact:

1. That this is an action involving real estate located within the County of Kershaw, State of South Carolina and that the Court of Common Pleas in the County of Kershaw, State of South Carolina has in rem jurisdiction to hear this matter.

2. That the Plaintiff is a citizen and resident of the County of Kershaw, State of South Carolina.

3. That the Defendant is a citizen and resident of the Commonwealth of Virginia.

4. That the property which is the subject of this lawsuit is described as follows:

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being in the County of Kershaw, State of South Carolina, containing Fifty-Five (55) acres, more or less, as shown on plat prepared for James Timothy Short by Robert H. Lackey Surveying, Inc., dated January 8, 2018, and recorded in the Office of the Register of Deeds for Kershaw County in Plat Book D27, at Page 7B. Reference to said plat is hereby made pursuant to authority contained in §30-5-250 of the Code of laws of South Carolina, 1976, as amended, for a more complete and accurate description thereof. Be all measurements a little more or less.

This property is identical to the property conveyed to James Timothy Short and Elizabeth A. Farmer by Wyrian Alana B. Todd by deed dated February 1, 2018, recorded in the ROD for Kershaw County in Volume 3815 at page 183 on February 8, 2018.

Tax Map No.: 281-00-00-082

5. That the Plaintiff and the Defendant are joint tenants with the right of survivorship in the above-described property.

6. That the property originally consisted of a Tract 9 containing twenty-eight (28) acres

and a Tract 10 containing twenty-seven (27) acres on a sketch prepared by Robert H. Lackey in February of 2012, Plaintiff's Exhibit 2. That sketch is not recorded.

7. That the property has approximately six hundred (600') feet of road frontage on Kellytown Road, a public road.

8. That on the February 2012 sketch, Tract 9 is the western one-half (1/2) of the property and Tract 10 is the eastern one-half (1/2) of the property.

9. That the southern end of the property borders a Twenty-Five-Mile Creek and approximately twenty-two (22) acres of the property bordering the Twenty-Five Mile Creek are in the one hundred (100) year flood plain.

10. That of the fifty-five (55) total acres, approximately ten (10) acres are cleared land suitable for agriculture and residential use. Approximately twenty-three (23) acres are uplands which are wooded and not cleared. Approximately twenty-two (22) acres are classified as bottom lands and are in or near the flood plain.

11. That the ten (10) acres of agricultural lands have a per acre value of six thousand twenty-two and 26/100 (\$6,022.26) dollars, the uplands have a value of five thousand thirty-two and 22/100 (\$5,032.22) dollars per acre and the bottom lands have a value of two thousand nine hundred ten and 75/100 (\$2,910.75) dollars per acre all according to the testimony of Kevin Ard, the Plaintiff's appraiser. At trial, the Plaintiff's appraiser testified to a total land value of the subject property of two hundred thirty-eight thousand eight hundred and 00/100 (\$238,800.00) dollars.

12. That Jim McLeod, the Defendant's appraiser valued the total acreage at two hundred forty-eight thousand eight hundred seventy-five and 00/100 (\$248,875.00) dollars, yielding an

average value per acre of four thousand five hundred twenty-five and 00/100 (\$4,525.00) dollars. Mr. McLeod did not differentiate between upland acres, the bottom land acres, and the agricultural acres. The average per acre value given by the Plaintiff's appraiser was for four thousand three hundred forty-two and 00/100 (\$4,342.00) dollars per acre which is close to the value given by the Defendant's appraiser per acre.

13. That the Plaintiff's appraiser and the Defendant's appraiser were close to each other in the average value per acre, and because the Plaintiff's appraiser segregated the acres into upland acres, agricultural acres and bottom lands acres which segregation will be useful in dividing the property in kind between the Plaintiff and the Defendant, I choose to use the value that the Plaintiff's appraiser assigned to the upland acres, agricultural acres and bottom land acres.

14. That the parties have made improvements to the property since purchasing the property in 2018, consisting of a 48' by 60' metal building with a concrete floor with one roll up door and two (2) walk through doors. A portion of this building it serves as living quarters and the larger portion of the building serves as a shop. The parties have also fenced a portion of the agricultural acres and built two (2) sheds to provide shelter for horses or other animals in the pastures.

15. The appraisers varied widely on the value of the improvements. The Plaintiff's appraiser testified that the value of the improvements was fifty-five thousand and 00/100 (\$55,000.00) dollars. The Defendant's appraiser put the value of the improvements as depreciated at one hundred twenty thousand seven hundred eleven and 36/100 (\$120,711.36) dollars. The latest appraisal by the Kershaw County Tax Assessor of the improvements gave them

a value of eighty-seven thousand one hundred and 00/100 (\$87,100.00) dollars. The Plaintiff testified that he had spent sixty-eight thousand two hundred sixty-four and 51/100 (\$68,264.51) dollars on the improvements, and the Defendant presented evidence that he had spent approximately ninety-one hundred fifty-three and 31/100 (\$9153.31) dollars on the improvements. That produced a total cost of the improvements of seventy-seven thousand four hundred seventeen and 31/100 (\$77,417.31) dollars. However, the Plaintiff and the Defendant both contributed uncompensated labor in making the improvements.

16. I value the improvements, based on all the testimony and exhibits presented, at eighty-five thousand and 00/100 (\$85,000.00) dollars.

17. That S.C. DHEC has issued permits to construct at least two (2) septic systems on the subject property.

18. That SC DOT has issued two (2) encroachment permits for the subject property.

19. That per the Court's instructions given after the hearing, Kevin Ard has performed a calculation of the land value of Tract 9 attached to this Order showing the value of the land only of the twenty-eight (28) acre Tract 9 on Lackey's February 12, 2012, sketch is one hundred thirteen thousand one hundred eighty-two and 00/100 (\$113,182.00) dollars, taking into consideration the bottom land acres, the upland acres and the agricultural acres included in that tract. Mr. Ard's calculations shown on the attached exhibit were made after the hearing. The total land value shown on the exhibit for both tracts is two hundred forty thousand and 00/100 (\$240,000.00) dollars.

20. That per the Court's instructions given after the hearing, Kevin Ard has performed a calculation of the land value of Tract 10 attached to this Order showing the value of the land only

of the twenty-seven (27) acre Tract 10 on the February 12, 2012, Lackey sketch is one hundred twenty-six thousand eight hundred eighteen and 00/100 (\$126,818.00) dollars, taking into consideration the bottom land acres, upland acres and agricultural acres included in that tract. Mr. Ard's calculations shown on the attached exhibit were made after the hearing. The total land value for both tracts as shown on the exhibit is two hundred forty thousand and 00/100 (\$240,000.00) dollars.

21. That Tract 9 on the February 12, 2012, Lackey sketch has no improvements and has a land value of one hundred thirteen thousand one hundred eighty-two and 00/100 (\$113,182.00) dollars.

22. That Tract 10 on the February 12, 2012, Lackey sketch has a land value of one hundred twenty-six thousand eight hundred eighteen and 00/100 (\$126,818.00) dollars, and improvements valued at eighty-five thousand and 00/100 (\$85,000.00) dollars, for a total value of Tract 10 of two hundred eleven thousand eight hundred eighteen and 00/100 (\$211,818.00) dollars.

23. That the ideal division in kind of the property is can be achieved by using the wet weather stream between Tract 9 and Tract 10 as shown on the February 12, 2012, sketch, and requiring the party receiving Tract 10, to pay the party receiving Tract 9 one-half (1/2) of the difference in value, or forty-nine thousand three hundred eighteen and 00/100 (\$49,318.00) dollars.

#### **CONCLUSIONS OF LAW**

I conclude as a matter of law that the Court has jurisdiction over the parties and the subject matter of this action. I further conclude as a matter of law that a partition action is an

equitable action to be heard by a judge alone. Ackerman v. Herd 28 S.C. 626 340 SE2d 560 (Ct. App. 1986) The standard of proof is the preponderance of the evidence. Ackerman v. Herd, Supra. In partition actions, a partition in kind is favored when it can be fairly made without injury to the parties. Smith v. Pearson 210 S.C. 524 43SE2d 479 (1947) The Plaintiff and the Defendant hold title to the property as joint tenants with rights of survivorship which renders the property subject to partition under §15-61-10 SC Code of Laws Ann.

On the issue of Ouster, the Defendant relies on the case of Jones v. Massey 14 S.C. 292 (1880). That case requires an allegation that the ousting party kept the other party out of the land by force which was not alleged in Jones v. Massey nor in the case at bar in order for the ousted party to be entitled to his share of the rental value of the property.

In paragraph 29 of the Defendant's counterclaim, the Defendant alleges that on several occasions that he has been denied access to the property and has been unable to obtain possession of his personal property items located on the property despite demands for the same. Since the Defendant has not alleged that he was kept out by force, he is entitled to his portion of rents profits actually received by the Plaintiff, but he is not entitled to the rental value of the property. Jones v. Massey Supra. There was no evidence of rents and profits being actually received by the Plaintiffs during any period since the property was purchased.

The Plaintiff has moved for a Writ of Partition appointing Commissioners in Partition to make a division in kind under Rule 71(f) S.C.R.C.P. I conclude as a matter of law that the Writ of Partition can be dispense with in this case under §15-61-100 S.C. Code of Law Ann. With the advance of technology in the area computer mapping, a division in kind can be done by the Court using a mapping program saving both parties the unnecessary expense of paying five

Commissioners to go to the land and make the division in kind.

Now Therefore it is Ordered

1. The property located at 1301 Kellytown Road, Lugoff, South Carolina is divided in kind according to the February 12, 2012, Robbie Lackey Sketch, Plaintiff's Exhibit 2, with the Plaintiff receiving title to Tract 10 on that sketch and the Defendant receiving title to Tract 9 on that sketch.
2. That the Court hereby commissions Robert H. Lackey to prepare a plat for recording in the Kershaw County ROD showing Tract 9 and Tract 10 as depicted on Plaintiff's Exhibit 2.
3. The Court shall execute a deed conveying and vesting title to Tract 9 to the Defendant and the Court shall execute a deed conveying and vesting title to Tract 10 to the Plaintiff once a plat has been prepared and approved for recording showing the division between Tract 9 and Tract 10.
4. That all further requests of relief raised by the pleadings are denied.
5. That the Plaintiff and Defendant shall equally split the cost of the Court Reporter who made the trial transcript, and the cost of preparing the plat by Robbie Lackey.
6. That the Plaintiff shall pay to the Defendant the sum of forty-nine thousand three hundred eighteen and 00/100 (\$ 49,318.00) dollars, within ninety (90) days of this Order, which payment will equalize the value of the property of each party at One hundred sixty-two thousand five hundred and 00/100 (\$162,500.00) dollars.

AND IT IS SO ORDERED.

\_\_\_\_\_ [SEAL]  
The Honorable Jeffrey M. Tzerman,  
Master-In-Equity for Kershaw County

Camden, SC

Date: \_\_\_\_\_



Kershaw Common Pleas

**Case Caption:** Elizabeth A Farmer VS James Timothy Short

**Case Number:** 2020CP2800554

**Type:** Master/Order/Partition and Form 4

IT IS SO ORDERED

s/ Jeffrey M. Tzerman, 3056