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Apr 19 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2021-000017

APPEAL FROM CHEROKEE COUNTY
Gordon G. Cooper, Master-in-Equity

Unpublished Opinion No. 2023-UP-146
Submitted March 1, 2023
Filed April 5, 2023

Yvonne J. Robinson

Respondent,

v.

Donray Curtis Jones, Cynthia Denise
Jones, Emma Kelly Washington, and
Troy Eliazar Washington

Appellants

PETITION FOR REHEARING

Donray & Cynthia Jones
125 Hudnut Drive
Pacolet, SC 29372

Troy & Emma Washington
118 Hudnut Drive
Pacolet, SC 29372

INTRODUCTION

In accordance with Rule 240, a petition for rehearing shall state with particularity the points supposed to have been overlooked or misapprehended by the court. The Court opined that the appellants' arguments were not preserved for appellate review. The petitioners respectfully request a rehearing to reconsider what we construe to be omissions or misunderstandings of the facts which affected the Court's decision.

CITATION OF AUTHORITY

SC Code 15-61-25 (2013)

POINTS TO RECONSIDER

1. The Opinion states, "Whether the master erred by characterizing Appellants' alleged right of first refusal as optional is not preserved for appellate review because although Appellants notified the master of their interest in purchasing Robinson's property interest, they failed to argue to the master that they were entitled to a right of first refusal."

In response to the Respondent's complaint in which she requested a partition in kind, the master-in-equity, prior to the hearing held on October 13, 2020, filed an order on February 19, 2020, ruling that this partition action is subject to the provisions of South Carolina Code 15-61-25: Right of first refusal of joint tenant or tenant in common to purchase property prior to partition; procedure. (ROA 1-4), (ROA 8, paragraph 2). This law outlines the procedure to be followed in all partition actions filed after May 25,

2006. This order was served upon the Appellants by the Respondents' lawyer. This order summarily dismissed any other partition options except those specified in this code, the only applicable law to this case. By his own order, the master ruled that the right of first refusal provided in this law applies to the Appellants as non-petitioning joint tenants. If this fact was not a given, this law would not have been ordered to be followed in this partition case.

According to the judge's ruling and the dictates of Section (A) of SC Code 15-61-25: "Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the non-petitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case. The non-petitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not."

The appellants relied on the Master-in-Equity to follow his own ruling. They had no reason to doubt that the procedure outlined in his order would be followed at the hearing. Their objective at the hearing was to affirm they had met the legal requirements proscribed of joint tenants described in Section A of the applicable code. The appellants did abide by the law by timely sending a letter to the Court, and made that fact known three times during the hearing. The master-in-equity acknowledged at the hearing that he had, in fact, received the letter. (ROA 42, L 24-25, ROA 43 L1-2)

At the end of the hearing on October 13, 2020, the judge stated that the only thing to be considered for the next 30 days would be settling on a price for the Respondent's interest and left the case in a non-ruling status (ROA 43 L 14-22). This corresponds to the procedure described in Section B of SC Code 15-61-25. Nothing about this language has anything to do with a physical partition in kind. This is done for a partition sale only, in this case the purchase of the Respondent's one-third interest in the land.

In his final ruling, the Master said, "While defendants wished to purchase the Plaintiff's interest in the subject property, that was not agreed to by all parties." The law does not require all parties to agree. If we all agreed, we wouldn't need the direction of the Court. SC Code 15-61-25 (A) does clearly state, however, "The non-petitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not." After informing the Court of their intent to purchase the Respondent's interest in the subject property, the Appellants should have been allowed to do so. By ruling to award the Respondent a partition in kind, the judge chose not to follow the applicable law that gives the Appellants first right of refusal, thus deeming their right as optional. The master failed to follow the law and directly contradicted his two prior Orders concerning this case.

2. The Opinion states “Whether the master erred by failing to order an appraisal of the property at issue is not preserved for appellate review because Appellants did not request that the master order an appraisal and the master did not rule on whether an appraisal was proper.”

South Carolina Code 15-61-25 (B) states “In the circumstances described in subsection (A) of this section, and in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers, as the court shall approve, appointed for that purpose by the court.” According to the applicable law, the Court shall approve an appraiser to determine the value of the interests to be sold if the joint tenants have informed the Court of their interest in purchasing it, and the parties cannot reach an agreement as to the price.

The Appellants had already met the requirements for non-petitioning joint tenants proscribed in subsection A by timely notifying the Court of their interest in purchasing the property prior to the hearing. The judge acknowledged receipt of their letter during the trial. Then at the end of the trial, the master-in-equity ordered the parties to take 30 days to try to negotiate a price for the Respondent’s one-third interest and left the case in a “non-ruling status”. This was the only thing to be considered according to the master-of-equity. Neither the Respondent nor the Appellants objected to this ruling. As this order was in line with South Carolina Code 15-61-25 (B) and did not conflict the Judge’s original ruling, it evoked no cause for concern or argument.

Based on the master's own Order that outlined the procedure to be followed in this partition case, determining an agreed-upon sales price was the proper next step. The appellants did not argue for an appraisal at this point because a Court-appointed appraisal is reserved only in the event the parties cannot reach an agreement as to the price. Had both parties been able to agree upon a purchase price during the 30 days following the hearing (ending November 12, 2020), no Court-ordered appraisal would have been necessary.

The case was not ended after the hearing (ROA5), and the Judge's final words were "Then I will see you soon" (ROA 49), so we were of the understanding that we would have another opportunity to address the Court. The appellants tried to negotiate a fair price with the Respondent, but the parties couldn't agree on a purchase price. This was communicated to the master by the respondent's lawyer. However, we didn't have another hearing. Our next communication from the master was a mailed third ruling in which he ordered a partition in kind. The Appellants argue that the Master did not follow the procedure proscribed by law when the parties could not reach an agreement concerning the price. The next step should have been a Court-ordered appraisal. This is the legal remedy the law affords under these circumstances.

3. The Opinion states "Whether the master erred by granting Robinson's petition for a partition in kind is not preserved for appellate review because Appellants did not argue to the master that a partition in kind was improper under South Carolina law or that a

partition in kind was proper only when the property at issue was determined to be "heirs' property."

The Respondent did seek a partition in kind in her complaint, and in response the master-in-equity, prior to the hearing, filed an order on February 19, 2020, stating that this partition action is subject to the provisions of South Carolina Code 15-61-25: Right of first refusal of joint tenant or tenant in common to purchase property prior to partition; procedure. This order defined what the proper procedure is and does not include provisions for a partition in kind. There was no need for the Appellants to argue concerning the impropriety of a partition in kind since that had already been determined by the master in his prior ruling which states the law which applies in this case (ROA 2). There was no expectation that a partition in kind was even a remedy to be discussed.

In his final ruling, the Judge states that he encouraged all parties to try to reach a resolution before the Court had to decide based on the law to be applied in this matter (ROA 10). However, the only law that applies to this matter is SC Code 15-61-25 as confirmed by the original Order of the master. To apply any different law would be contrary to the original ruling that was sent to both parties prior to the hearing.

4. The Opinion states "The master did not abuse his discretion by awarding attorney's fees and costs to Robinson." See S.C. Code Ann. § 15-61-110 (2005).

Please note in his final order, the master states his basis in deciding to award attorney's fees as SC Code 16-51-110 (ROA 11). There is no such law in the SC Code of Laws. Regardless of the master's intent, a nonexistent law cannot be enforced.

CONCLUSION

For the reasons mentioned above, the Appellants humbly request a rehearing of this case. We request that the trial court's final order be reversed and remanded with instructions for a court-ordered appraisal of the subject property so that the appellants can exercise their right of first refusal, and not to award the Respondent attorney's fees.

Respectfully submitted,

April 18, 2023

Donray & Cynthia Jones s/ Donray Jones

Troy & Emma Washington s/ Cynthia Jones

(all of Pacolet, SC) s/ Troy Washington

s/ Emma Washington

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Apr 19 2023

SC Court of Appeals

April 18, 2023

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Yvonne J. Robinson, Respondent, v. Donray Curtis Jones, Cynthia Denise Jones, Emma Kelly Washington, and Troy Eliazer Washington, Appellants; Appellate Case No. 2021-00017; Unpublished Opinion No. 2023-UP-146, Submitted March 1, 2023 – Filed April 5, 2023

Dear Ms. Kitchings:

Enclosed for filing is a Petition for Rehearing for the above-referenced case. The required filing fee is being mailed via the U.S. Postal Service.

This petition has been served on the respondent on April 18, 2023, by mailing it via the U.S. Postal Service to the respondent's lawyer, Scott Talley, at 291 S. Pine Street, Spartanburg, SC 29302.

Sincerely,

s/ Emma Washington