

RECEIVED

May 03 2023

SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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

Case No.: 2020-CP-11-00040
Appellate Case No: 2021-000017
Unpublished Opinion 2023-UP-146
Filed April 5, 2023

**Donray Curtis Jones, Cynthia
Denise Jones, Emma Kelly
Washington, and Troy Eliazer
Washington,**

Appellants,

vs.

Yvonne J. Robinson

Respondent.

RETURN TO PETITION FOR REHEARING

s/ Scott F. Talley

Scott F. Talley, Esquire

TALLEY LAW FIRM, P.A.

291 S. Pine St.

Spartanburg, South Carolina 29302

Attorney for Respondent

May 3, 2023

In her Amended Complaint, the Respondent sought partition of the subject property in-kind pursuant to a survey she had completed which was entered into evidence. The standard of review for a partition action heard by the Master in Equity is an equitable action and, as such, this Court may find facts in accordance with its view of the preponderance of the evidence. Zimmerman v. Marsh, 365 S.C. 383, 386, 618 S.E.2d 898, 900 (2005). This Court has previously stated that partition in kind is favored when it can be fairly made without injury to the parties. Anderson v. Anderson, 299 S.C. 110, 114, 382 S.E.2d 897, 899 (1989). Appellants rely upon S.C. Code § 15-61-25 in arguing that they had a right of first refusal to purchase the property of the Respondent. While it is admitted that the Appellants, at least 10 days prior to the trial of the matter, submitted a statement of their interest in purchasing the property, the cited statute contemplates a scenario where the Plaintiff/Respondent in this matter, is seeking to sell the property. Herein, Respondent asked for partition in kind. See Amended Complaint. The process set forth in S.C. Code § 15-61-25(B), wherein the parties cannot reach agreement, states that the “value of the interest or interests to be sold shall be determined” by appraisers. Here, no filing submitted by either party sought a sale of the entire parcel of property. There is no right of first refusal, as Appellants argue, when the relief sought in the pleadings, and the only relief set forth before the Court, is a partition in kind. Appellants never argued that partition in kind was not proper in this matter.

The Master allowed the parties a chance to resolve this matter, if able to do so, at the conclusion of the hearing before issuing a ruling on the matter before the Court. At the hearing on October 13, 2020 the Master ordered that the parties take 30 days to try to work out the matter amongst themselves as to the Respondent’s one-third interest in the land or a purchase price of same. If the parties could not come to a resolution, the Court would have to make a decision based

on the applicable law. (R.38 L.14-25) (R.39 L.1-7). No appraisal was requested, and thus no appraisal was ordered, or needed, based on the relief sought by the Respondent. By their own letter post trial letter, Appellants stated that the Court would have to decide the issue presented. There was no follow-up hearing; the Court's Final Order was e-filed on December 4, 2020. The court ordered that the land be partitioned in kind pursuant to the survey, (Respondent's Exhibit 2). (Fin. Ordr, 5-6. 2020).

The Court also ordered the Appellants to pay a collective two-thirds of the respondent's attorney fees and costs. (Fin. Ordr,5-6. 2020). It is clear pursuant to S.C. Code § 15-61-50, that the Court has jurisdiction in a matter such as this to make partition in kind or by allotment to more than one of the parties. Further, pursuant to S.C. Code § 61-11-110, the Court of Common Pleas may fix attorney fees in all partition proceedings as may be equitable, assess such fees against any or all of the parties or interests. The parties testified that they split all costs associated with the subject property, including the property taxes. Respondent wrote the parties prior to commencement of the underlying action inquiring about Appellants desire to partition the property as the trial court found. They were not interested in doing so at that time so this action followed. This issue was within the jurisdiction of the trial court based on statute; there has been now showing of abuse in the fixing and assessing of fees in this matter based on the issues in this matter and the evidence that was presented.

RECEIVED

May 03 2023

SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **Return to Petition for Rehearing** has been served via U.S. Mail this 3rd day of May, 2023 upon: **Donray Curtis Jones, 125 Hudnut Dr., Pacolet, SC 29372, Cynthia Denise Jones, 125 Hudnut Dr., Pacolet, SC 29372, Emma Kelly Washington, 118 Hudnut Dr., Pacolet, SC 29372, and Troy Eliazer Washington, 118 Hudnut Dr., Pacolet, SC 29372.**

/s/ Hannah L. Hinson
Hannah L. Hinson, Paralegal



Scott F. Talley
Wendy N. Griffith
Roger L. Couch*
* Of Counsel

RECEIVED
May 03 2023
SC Court of Appeals

May 3, 2023

VIA U.S. MAIL AND E:MAIL: ctappfilings@sccourts.org

Jenny A. Kitchings, Clerk
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Donray Curtis Jones, Cynthia Denise Jones, Emma Kelly Washington and Troy
Eliazer Washington v. Yvonne J. Robinson
Case No.: 2020-CP-11-00040
Appellate Case No: 2021-000017

Dear Clerk:

Please find enclosed the Return to Petition for Rehearing, together with a Certificate of Service. By copy of this letter to Appellants/Petitioners, I am serving them with a copy of same.

Sincerely,
TALLEY LAW FIRM, P.A.

Scott F. Talley, Esq.

Scott F. Talley

/hh

Copy to: Donray Curtis Jones (U.S. Mail)
Cynthia Denise Jones (U.S. Mail)
Emma Kelly Washington (U.S. Mail)
Troy Eliazer Washington (U.S. Mail)