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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Aiken County
Courtney Clyburn-Pope, Circuit Court Judge

Opinion No. 2023-UP-151 (S.C. Ct. App. filed April 12, 2023)

Deborah T. Weeks, Respondent,

v.

David W. Weeks, Petitioner.

In Re: Estate of James Randall Weeks, Jr.

APPENDIX

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THE STATE OF SOUTH CAROLINA
The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No: 2021-001253

Deborah T. Weeks Appellant

v.

David W. Weeks Respondent

In Re: Estate of James Randall Weeks, Jr.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
DEBORAH T. WEEKS,)
Petitioner,)
vs.)
DAVID W. WEEKS,)
Respondent.)
IN RE: ESTATE OF JAMES)
RANDALL WEEKS, JR.)
_____)

IN THE PROBATE COURT
CASE NUMBER 2017ES02-0855

ORDER

A hearing in this matter was held before me on February 27, 2020. Present were Petitioner, Deborah T. Weeks (Deborah) and her attorney, Leon Green, Esq. Also present was Respondent, David W. Weeks (David), Dawn Weeks (Dawn), the daughter of the Decedent, and Arthur W. Rich, Esq., Attorney for David. After taking testimony from Deborah, David and Dawn, I find the following facts.

FACTS

The Decedent, James Randall Weeks, Jr. (Decedent), died on August 16, 2017. He left his Last Will and Testament dated February 9, 2001, under which all assets were devised to his two children, Joshua Randall Weeks and Miranda Dawn Weeks, or the survivor thereof, in equal shares. Joshua Randall Weeks predeceased Decedent and therefore Miranda Dawn Weeks (Dawn) is the sole beneficiary under the Will.

The Decedent's brother, David, was appointed in the Will as the Personal Representative of the estate and has been issued Letters Testamentary by this Court and is currently acting in that capacity.

Deborah filed a Petition with this Court alleging that she was entitled to an elective share against the estate of the Decedent. David, in his capacity as Personal Representative, filed an Answer to the Petition for an elective share denying the claim.

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The Court finds as a matter of fact that the claim was timely filed.

The amended Inventory and Appraisement in this estate indicates assets of real estate of \$77,110.35 and miscellaneous personal property of \$19,555.00. The real estate consists of two parcels. Parcel number one is approximately 255 acres located in Aiken County, S.C. The valuation on the Inventory indicates that the appraised value of the property is \$670,000.00 less a forty (40%) percent discount, giving a value of the Decedent's interest of \$69,310.35.

Decedent's interest in this property was inherited from his mother, Harriett J. Weeks, who died on November 11, 2010. A Deed of Distribution from the estate of Harriett J. Weeks was issued on April 5, 2012. The Deed of Distribution conveyed the property as follows:

- (1) To David W. Weeks as Trustee for the Benson A. Weeks Trust, an 8/29th interest;
- (2) To David Weldon Weeks, an 8/29th interest;
- (3) To Sylvia M. Studley f/k/a Marilyn W. Burris, an 8/29th interest; and
- (4) To James Randall Weeks, Jr., a 5/29th interest.

The Deed of Distribution indicates that the original tract was 320 acres, less a tract of 32 acres, and less a second tract which had been sold out of the property.

This property has been in the Weeks family since 1894. The property was originally sold to Luther J. Weeks by deed of J.V.D. Weeks, et al, dated April 2, 1894, recorded in Title Book Y, Page 243, records of Aiken County, S.C. The property was subsequently conveyed from Luther J. Weeks to Alvin W. Weeks on November 13, 1944, recorded in Title Book 94, Page 218, records of Aiken County, S.C. Subsequently, Alvin W. Weeks died on July 30, 1956 devising his property to his wife, Cora Randall Weeks for her lifetime and the remainder to his children under his Last Will and Testament. Cora Randall Weeks later died and the property was conveyed by her heir, Sylvia M. Weeks, to Harriett K. Weeks by deed dated April 14, 1978, recorded in Title Book 605, Page 142; by her heir, David W. Weeks, to Harriett K. Weeks by deed dated April 4, 1978, recorded in Title Book 605, Page 155; by her heir, Benson A. Weeks

by deed dated April 5, 1978 in Book 605, Page 139; and by her heir, James R. Weeks by deed dated June 21, 1979 in Book 646, Page 62, records of Aiken County, S.C. Accordingly it appears from the records that this property has been in the Weeks family for approximately 126 years.

At the death of Harriett Kilgore Weeks, her estate had her property appraised. A copy of an appraisal was filed with the Court, which said appraisal was completed by Holstein Appraisals of Batesburg-Leesville on September 6, 2011. The appraised value of the property at that time was \$670,000.00. The appraisal indicates that the property consisted of 320 acres of cropland and woodland improved with a farmhouse. It is evident that the actual acreage of the property being appraised was approximately 255 acres, not 320 acres. It also appears from the appraisal that the value of any cropland, woodland and timber on the property was included.

Since this property was appraised for the estate of Harriett K. Weeks on September 6, 2011, only seven years prior to the date of decedent, the Court finds that the appraised value of \$670,000.00 has not changed and that it is an accurate appraisal for the purposes of this estate.

The Court further acknowledges that when any individual owns property only owning a fractional interest in the property, that the true value of the property is diminished for a lack of marketability and minority discounts. There are a number of cases, mostly in Federal Court, discussing applicable discounts for lack of marketability and minority discounts.

There are also Treasury regulations regarding the same. The cases as to the appropriate discount range from 20% to 60%. In this particular case, the Personal Representative used a 40% discount, which is the midway point between the generally accepted discount figures of 20% to 60%. The Court therefore specifically finds that the valuation for purposes of this inventory of \$69,310.35 accurately reflects the value of the property in this estate.

The second piece of real estate in the estate is 1121 Weeks Road, which the Personal Representative has shown at a value of \$7,800.00. This property was conveyed from Harriett

K. Weeks (the mother of Decedent) to Decedent on June 20, 1983, recorded in Title Book 792, Page 257, records of Aiken County, S.C. The Personal Representative retained the services of Maurice M. Williams, Jr. of Aiken County, S.C., a certified real estate appraiser, to value this property. Mr. Williams submitted his appraisal dated August 21, 2018 indicating a value of \$7,800.00. The Court therefore specifically finds that the valuation of \$7,800.00 on the inventory reflects an accurate value of this property.

Tangible personal property on the amended Inventory consists of 33 items with a total estimated value of \$19,555.00. The Personal Representative testified at the hearing that this indicates an accurate list of tangible property owned by the decedent at the time of his death and the accurate value. There was a good deal of testimony at the hearing from both David, Dawn and Deborah regarding items of tangible personal property. Deborah also submitted a list of what she believes to be tangible personal property of the estate and an estimated value of \$43,080.00. The Court specifically notes that Deborah has not been on the property of the Decedent since the date of their separation in 2010 and therefore had limited information as to which items of tangible personal property that she remembered might still be on the property. Based on the testimony of David and Dawn, the Court specifically finds that the items of tangible personal property owned by the Decedent as listed upon the Inventory, with a value of \$19,555.00, represents an accurate listing of tangible personal property of the estate with a value of \$19,555.00.

Decedent and Petitioner were married on or about January 10, 1998. Previously, Petitioner was married and divorced to three other individuals, namely:

- a. Webb Knox Singletary
Married - December 15, 1973
Divorced - February 21, 1983
- b. Jerry W. Smith
Married - February 26, 1983
Divorced - August 22, 1996

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- c. Kevin Leroy Shirley
Date of Marriage - unknown
Divorced - January 6, 1998

Decedent married Petitioner on January 10, 1998. From the records it appears that there was significant marital litigation between the parties as shall be described herein but that the parties were never formally divorced.

Petitioner and Decedent had a long involved history of marital litigation prior to the death of Decedent. Initially, Petitioner filed a Petition for an Order of Protection from Decedent on May 3, 2010. An Order was issued by the Aiken County Family Court on May 20, 2010. This Order gave Decedent possession of the marital residence, certain horses and other tangible property to Petitioner and issued a mutual restraining order.

Subsequently, Petitioner filed a Complaint in the Aiken County Family Court asking the Court to provide her with an equitable value of the marital home and its contents, for the decedent to pay certain utilities and maintenance, and to be awarded certain assets of the marriage. An Order by the Aiken County Family Court dated May 20, 2010 indicated that the Petitioner and Decedent had reached an agreement whereby Decedent retained the marital residence and granting Petitioner certain property of the marriage and issuing a mutual restraining order. As part of the marital proceedings, Petitioner filed her affidavit with the Court dated September 8, 2010. Therein she swore that she was making the representations for the purpose of appearing in Family Court at a final hearing for divorce. She states that she had been separated from Decedent since May 1, 2010 and had been continuously separated since that time. She further stated that there was no chance of reconciliation between the parties. She asked for alimony and for division of certain marital assets. She further stated that she was asking the Court to grant a divorce based on the grounds of adultery and physical cruelty and she was asking the Court for equitable division of marital property. Subsequently, the Family Court of Aiken County issued its Order dated November 1, 2010. At that point the parties had reached a temporary agreement regarding all the bills, cell phones, possession of the marital

home, and other assets. The Order further indicated that a later hearing would be held to address marital property after the payments were made on a vehicle. A Financial Declaration filed with the Court by the decedent dated February 15, 2011 did not indicate the ownership of any real estate.

An Order was issued by the Family Court of Aiken County, S.C. on March 23, 2011. In that Order, the Decedent was ordered to pay alimony to Petitioner and the Order further made division of other tangible property of the marriage. The Order further stated that the parties shall live separate and apart from one another as if they were unmarried. Subsequently, the case was dismissed without prejudice by Order of the Family Court dated August 5, 2012 due to the fact that the parties had failed to pursue the matter further.

It therefore appears that there were three hearings between these parties that were all held on a temporary basis. Deborah received substantial tangible property in the settlement, which was listed on Exhibit F provided to the Court. Deborah specifically denies receiving some of the items and disputes the amount of the items, but even accounting for the items which she denies receiving and the values which she states, it appears to the Court that she still received approximately \$32,000.00 in marital property from the divorce and the Court so finds.

The Court further finds that although the final temporary Order of the Court does not specifically state that all marital assets are divided, that it appears from the division of the assets and the assets that still remain in the estate that Deborah received substantial assets from the divorce, the value of which is at least equal to or higher than the tangible assets owned by the Decedent at the date of his death. The Family Court action was later dismissed for lack of the Petitioner (Deborah) pursuing the matter further. The Decedent was ordered to pay \$250.00 per month to Deborah and according to Deborah, she received this for several months, but the Decedent failed to continue paying alimony. Nevertheless, from 2011 until the date of the death of Decedent, approximately seven years later, Deborah never further pursued divorce and never further pursued action to recover additional property from the marriage. Therefore, the Court

specifically finds that Deborah received all assets from the marriage to which she was entitled and that the litigation between the parties essentially and for all practical purposes resulted in a final property division of the parties. The Court further notes that the Decedent's interest in the 255 acres was only received by him after the death of his mother which occurred following the final Order of the Family Court in 2011.

In 2013, the Decedent's son, Joshua, died. The health of the Decedent at that time was declining and his daughter, Dawn, moved with her family back onto the family property in Aiken, where she tended to Decedent until his death. Dawn continues to reside in an old farmhouse located on the 255 acre tract. Deborah testified that following the death of Decedent that she applied for and began receiving Social Security benefits based upon the work records of the Decedent. She is currently receiving approximately \$1,300.00 per month.

A list of funeral expenses, administrative expenses and any enforceable claims that have been incurred by the estate to date are in the amount of \$31,583.12 and shown on Exhibit G. The Court therefore specifically finds that the expenses shown on Exhibit G in the amount of \$31,583.12 are valid for the payment of funeral expenses, administrative costs and any enforceable claims.

LAW

In South Carolina the concept of dower and courtesy have been eliminated. To protect the surviving spouse from impoverishment, South Carolina and most other states provide for the right of an elective share. "The legislative purpose behind the elective share statute is to protect the family unit from becoming society's ward by preventing impoverishment of the surviving spouse." Williams v Williams 517 S.E. 2d 689 335 S.C. 386.

"Since State common law did not require a spouse to devise any property to a surviving spouse, statute giving surviving spouse to take elective share is a statute of creation, and, thus, strict compliance with this term is mandatory in order to exercise the right of elective share."

Simpson v. Sanders 445 S.E. 2d 93 314 S.C. 413.

Section 62-2-201 of the S.C. Code of Laws provides for the right of an elective share.

An elective share is one-third of decedent's probate estate.

Section 62-2-204 of the S.C. Code of Laws provides in part that the elective share does not apply to "a complete property settlement entered into or in anticipation of separation or divorce." Section 62-2-207(d) of the S.C. Code of Laws provides "in choosing assets to fund the elective share, remaining property of the probate estate is applied so that liability for the balance of the elective share of the surviving spouse is satisfied from the probate estate, with devises abating in accordance with Section 62-3-902. Section 62-2-202 of the S.C. Code of Laws provides that for purposes of computing the elective share that any calculation of the available probate estate must be reduced by funeral and administrative expenses and enforceable claims.

S.C. further limits property which may be divided between the spouses in a divorce action for equitable distribution. Pursuant to Section 20-3-630 of the S.C. Code of Laws, property "acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse" is not subject to marital division.

In many states there are statutes which would prevent the Petitioner in this case from receiving an elective share. For example, in New Jersey the elective share statute provides that there is no elective share where "provided that at the time of death the decedent and the surviving spouse or domestic partner had not been living separate and apart in different habitations or had not ceased to cohabit as man and wife, either as the result of judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his death under the laws of this State." NJ Rev Stat § 3B:8-1 (2013). In Pennsylvania an elective share is not allowed "in the event a married person domiciled in this Commonwealth dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 and grounds have not been established as provided in 23 Pa.C.S. § 3323(g)". 20 PaC.S. § 2203(c)

Further in Connecticut, no elective share is allowed "if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death" CT Gen Stat § 45a-4536(g).

For legal purposes, a fair market value of property transferred to another party is measured on the date of the transfer "as the price at which the property would change hands between a hypothetical willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." Treasury Regulation Section 20.2031-1(b). Real estate fractional ownership interests, also called a tenancy in common interest, exist as in this case when two or more co-tenants each own a separate fractional share of undivided property. In the absence of an agreement between the co-tenants, each co-tenant may possess and enjoy the entire real estate. Although having equal right to possess and enjoy, he or she cannot exclude the other co-tenants or designate any portion as his or her own. Real estate fractional ownership interests typically suffer from the valuation influences of a lack of marketability and a lack of ownership control. There are numerous cases in the tax court and federal court which support discounting for both minority discounts and lack of marketability. For cases discussing discounting for lack of marketability, see Lefrak vs. Commissioner 66 T.C.M. 1297(1993). Also, Connecticut Bank and Trust Company vs. U.S. 71-1 USTC #12,753 (439 F.2nd 931), For a case discussing the applicability of minority discounts, see Propsta vs. U.S. #82-2 USTC #13,502 (680 F.2nd 1248). Also see Bright vs. U.S. 81-2 USTC #13,436 (658 F.2nd 999).

DISCUSSION

Respondent argues that if the Court should determine that Petitioner is entitled to an elective share, that Petitioner should receive no elective share from the real estate owned by the Decedent. Decedent owned two parcels of property at his death, both of which were received from his mother, Harriett Kilgore Weeks. The property at 1121 Weeks Road, valued at \$7,800.00, was deeded to Decedent by his mother in 1983. It is a parcel of land with no

improvements thereon. The second property owned by the Decedent was an undivided 5/29th interest in approximately 255 acres which was owned by Decedent's mother, Harriett Kilgore Weeks, at the time of her death. Pursuant to the Last Will and Testament of Harriett Kilgore Weeks, the Decedent inherited a 5/29th interest in this property. Harriett Kilgore Weeks died on November 11, 2010 at the time when the Decedent and Petitioner were already separated. The property was later conveyed to Decedent in 2012 from the Estate of Harriett Kilgore Weeks. It is therefore obvious that the 5/29th interest in the property was not property owned by the Decedent or Petitioner during their marriage and should be excluded from any claim of elective share by Petitioner. Section 20-3-630 of the S.C. Code of Laws specifically states that property which is acquired by either party "by inheritance, devise, bequeath or gift from a party other than the spouse is not subject to marital division." Although our elective share statute is not specific, the principle as stated under Section 20-3-630 should apply equally to claims under the elective share. The rationale here, of course, is that a surviving spouse or a spouse under divorce litigation should have no claim to property acquired by the other party by inheritance or gift from a third party such as in this case which was clearly owned by Decedent's mother. Further, the property was not even in the name of Decedent at the time of the separation of the parties due to the fact that Decedent's mother was still living. If Petitioner is allowed to claim an elective share interest against an inherited property of the Decedent, she would be receiving assets which she clearly would not have been able to receive had the divorce been finalized.

Respondent further argues that in the event that the Court determines that the elective share should apply to the inherited real estate and the lot deeded to Decedent by his mother, that the Court should order that the estate may pay a sufficient sum to Petitioner for her interest in the property. Discounts for lack of control and minority interests are well established. Most of the cases in this area in the Tax Court and Federal Court are based on Federal law for gift and estate tax purposes, however the principle of the valuation discount should equally apply in an

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estate. Respondent argues that if the Court should find such an interest, that the 40% discount as applied to the valuation of the inventory is correct.

Respondent further argues that if the Court allows an elective share, that it must be reduced by the value of the funeral and administrative expenses and enforceable claims pursuant to Section 62-2-202 of the S.C. Code of Laws. The amount of administrative expenses, funeral and enforceable claims as testified to by Respondent and pursuant to Exhibit G are \$31,583.12.

Respondent further argues that if the real estate is excluded from the estate, that the only assets in the estate that are subject to equitable distribution are the tangible property with a value of \$19,555.00, which is significantly less than the estate expenses. Therefore, the amount of the elective share will be reduced to zero excluding real estate.

The guiding principle for the elective share is based on the social argument that a surviving spouse should not be totally impoverished at the death of a spouse. In this case, however, the Decedent was the fourth husband of the Petitioner and they had been separated for approximately seven years prior to the death of the Decedent. Petitioner initiated Family Court action for separation and divorce and there were three hearing in the Family Court. The Family Court Order provided for separation and division of many items of tangible personal property and ordered the Decedent to pay alimony. It is obvious from the proceedings that the Petitioner had ample opportunity to visit the marital property and to remove most, if not all, of the property which she desired. In fact, the records reveal that the items removed by Petitioner had a value which likely exceeded the tangible property of the Decedent at the time of his death.

The Family Court actions were initiated by Petitioner. She failed to pursue the divorce, although she had previously asked for it in her pleadings. The Family Court action was dismissed by Administrative Order for failure to pursue the action.

Petitioner would not have been able to recover any interest in the Decedent's real estate in the divorce action based upon Section 20-3-630 of the S.C. Code of Laws. She now,

therefore, seeks an elective share in the inherited and gifted property owned by Decedent which he received from his mother, which would have been unavailable to her in the divorce. Should this Court allow her to receive an elective share against the inherited property, this would grant property to her unavailable in the Family Court action. This is an obvious unjust result. This Court is obligated to follow the law, but it is not obligated to turn a blind eye to justice. "A wrong does not cease to be a wrong because it is cloaked in the form of law." Newman v Dore 275 N.Y. 371, 9 N.E. 2d 968.

IT IS THEREFORE ORDERED that it is the finding of this Court that Petitioner's Elective Share claim in hereby disallowed. Petitioner is entitled to nothing for her Elective Share Claim against the estate of the Decedent due to the fact that there was essentially and for all practical purposes, a Family Court Order terminating all marital rights and equitable distribution between the spouses.

So Ordered this 15th day of May, 2020.

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of 12 pages

Tonya L. Marchant
Honorable Tonya L. Marchant
Probate Judge for Aiken County, S.C.

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN**

THIS IS TO CERTIFY THAT THIS THE FOREGOING IS A TRUE AND
CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT
WITNESS MY HAND AND SEAL OF THE COURT THIS THE

15th DAY OF May A.D. 2020

Tonya L. Marchant
JUDGE OF PROBATE FOR AIKEN COUNTY, S.C.

BY A. Cuff CLERK

6

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Debra Weeks

Plaintiff(s),

vs.

James R. Weeks

Defendant(s).

IN THE FAMILY COURT
SECOND JUDICIAL CIRCUIT

ORDER OF DISMISSAL
(Without Prejudice)

Docket No. 2010 -DR-02- 1080

WHEREAS by administrative order of the Chief Justice of South Carolina dated May 9, 2006, it was ordered that all domestic relations cases with the exception of DSS Abuse and Neglect cases shall be disposed of within 365 days of their filing; and

WHEREAS pursuant to said order the Chief Administrative Judge for Family Court shall direct and oversee the monitoring of all cases which are older than 365 days, and for which no final hearing has been requested; and

WHEREAS, this case is over 365 days old and no request for a hearing or pretrial/status conference has been made by any unrepresented party or attorney of record despite being noticed to make such request within thirty (30) days and despite being noticed that failure to make such request within such thirty (30) day period would result in the case being dismissed without prejudice, all pursuant to administrative order of the undersigned;

IT IS THEREFORE ORDERED that this case is dismissed without prejudice;

IT IS FURTHER ORDERED any orders previously issued in this case shall be of no further effect, shall no longer be subject to enforcement, and any support arrearages having accumulated under this case number pursuant to a temporary order are hereby dismissed.

IT SO ORDERED.

Date: 8/5, 2012

Aiken, S.C.

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AIKEN COUNTY

AUG 06 2012

9:30 AG
CLERK OF COURT

Family Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Robert J. Haric, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

APR 02 2018

Robert J. Haric
C.C.P. & G.S., Aiken County, S.C.

FOR CLERK OF COURT OFFICE USE ONLY

Docket No. 2010-DR-02-1080

This judgment was entered on the AUGUST 6, 2012 and a copy mailed first class or placed in the appropriate attorney's box on AUGUST 6, 2012 to attorneys of record or to parties when appearing pro se) as follows:

ATTORNEY (S) FOR THE PLAINTIFF(S)

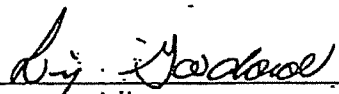
BRETT LANCER (M)
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33 ALICIA DRIVE
AIKEN, SC 29801

ATTORNEY (S) FOR THE DEFENDANT (S)

P. A. ANDERSON (B)
JAMES R. WEEKS
1123 WEEKS RD.
AIKEN, SC 29801

GUARDIAN AD LITEM

Court Reporter: _____


CLERK OF COURT

By: ASHLEY GUNTER 

Custodial Parent (if applicable): _____

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
DEBRA WEEKS,)
Plaintiff,)
v.)
JAMES RANDALL WEEKS,)
Defendant.)

IN THE FAMILY COURT OF THE
SECOND JUDICIAL CIRCUIT

CASE NO: 2010-DR-02-1080

TEMPORARY ORDER

DATE OF HEARING: February 15, 2010 at 10:00 a.m.
TRIAL JUDGE: Honorable Vicki Snelgrove
PLAINTIFFS' ATTORNEY: Sidney Jones
DEFENDANTS' ATTORNEY: Andy Anderson
COURT REPORTER: Cheri Young *vs*

This matter came before the Court pursuant to a motion for temporary relief. This case was initiated with the filing of a Summons, Complaint, and Motion for Temporary Relief by Plaintiff on July 15, 2010. Defendant's attorney Andy Anderson accepted service of the pleadings on July 19, 2010. At the hearing, the Plaintiff was represented by Sidney Jones and the *vs* Defendant by ~~Kris~~ *Andrew* Anderson.

A previous temporary hearing has been held on September 8, 2010 where an agreement was read into the record that notified the Court of the parties' personal assets that must be equitably distributed and that a temporary agreement concerning some of the items had been reached. It was explained that the Defendant is paying for the Plaintiff's truck, insurance and cell phones and will continue to do so until the truck is paid for in December 2010; and the parties were asking the Court to approve a temporary order until December 2010 when the

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AIKEN COUNTY

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CLERK OF COURT

parties will request another hearing to address the remaining issues. The Plaintiff's attorney then published the agreement on the record and the Defendants attorney agreed.

The hearing today is to address those issues since the vehicle at issue is now paid in full.

It is agreed that:

1. The parties shall live separate and apart from one another, free from the control, restraint or interference of the other, as if they were unmarried.
2. The Defendant shall have use and possession of the marital home until a later hearing to determine the assts that shall be divided.
3. The Plaintiff will have possession of her '04 GMC truck and the Defendant will provide full coverage insurance on same.
4. The Defendant continues to pay for the Defendants cell phone package as is now done.
5. The Plaintiff shall remove her name from any joint bank accounts that might be in existence with the Defendant.
6. The Defendant has accounted for any deposits that might have been made to any of his accounts from any source that were made to benefit the Plaintiff's children.
7. The Defendant shall take all financial records in this possession to an agreed upon accountant.
8. The Plaintiff has not received the "blue tractor" as the last order stipulated and the Defendant will not do anything to hinder its removal into the Plaintiff's possession. This does not remove this tractor from the inventory of martial assets. The Plaintiff agrees to be the only person to use the tractor while it is in her possession and agrees to make that Defendant aware of the tractor's location.

2/8 #2

9. Both parties still agree to cooperate with the identification and appraisal of all marital property and are restrained from transferring, disposing of, devaluing, moving, hiding, or in any way interfering with the orderly identification and placing value on said property.
10. The parties shall be mutually restrained from harming, harassing, threatening, molesting, stalking, tracking or in any way interfering with the other, whether in person, by telephone, e-mail, text messages, voicemails, or any other electronic or other means.
11. The parties agree that they may conduct discovery in accordance with the South Carolina Rules of Family Court and the South Carolina Rules of Civil Procedure and that a hearing will be requested to address the marital property after the Plaintiff's truck payments are complete.

CONCLUSIONS OF LAW

This Court has jurisdiction of the parties and subject matter. I find that the parties have entered into this agreement knowingly, freely and voluntarily, that they understand the agreement and its most recent changes, that they were not under duress or coercion to enter into the Agreement, that they believe the agreement is in their best interests, that they can abide by the Agreement, and that they wish the Court to make this Agreement an Order of the Court and leave this case open pending a division of the marital assets and a final hearing for divorce is held. The parties understand that a violation of this Order could subject them to the contempt powers of the Court.

The Court does find a disparity in income and the Defendant is to pay the Plaintiff \$250.00 per month in alimony due on the first (1st) of each month, *commencing April 1, 2011.* If the payment is ever more *v8* than 5 days late then the Plaintiff can file an affidavit to the same and have the payments paid through the clerk of court including the 5% surcharge.

YJ #3

IT IS ORDERED that the Agreement of the parties as stated herein is approved and is the Order of this Court.

AND IT IS SO ORDERED!



Honorable Vicki Snelgrove
Presiding Family Court Judge
Second Judicial Circuit

Aiken, South Carolina

March 23, 2011

FAILURE TO COMPLY WITH THIS ORDER WILL SUBJECT THE OFFENDER TO AN ORDER OF CONTEMPT WITH A POSSIBLE PENALTY OF UP TO ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) IN FINES AND/OR TWELVE MONTHS IMPRISONMENT AND/OR THREE HUNDRED HOURS OF COMMUNITY SERVICE.

5
STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
DEBORAH WEEKS,)
PLAINTIFF,)
VS.)
JAMES R. WEEKS, II,)
DEFENDANT.)

IN THE FAMILY COURT
SECOND JUDICIAL CIRCUIT
Case No.: 10-DR-02-658

ORDER

Date of Hearing: May 11, 2010
Presiding Judge: Dale M. Gable
Court Reporter: Jennifer Smith
Attorney for Plaintiff: None
Attorney for Defendant: P. Andrew Anderson

This matter was set for an Order of Protection hearing. Plaintiff appeared with her representative from the Cumbee Center while Defendant appeared with his attorney. Plaintiff filed her Summons and Petition on May 5, 2010. Defendant was properly, personally served therewith. Upon the calling of this case, Defendant's attorney informed the Court that it appeared that the parties would be able to work out an agreement in this regard. After a brief recess, an agreement was reached. This Court finds that it does have jurisdiction over these parties and the subject matter of this action. Furthermore, venue is also proper in this Court.

The parties' agreement is as follows:

1. Defendant shall maintain possession of the marital residence.
2. Plaintiff shall retrieve from the marital residence the following: the thirteen horses, all of the horse took and equipment, the horse trailer, the fifth wheel, and all of her and her daughter's personal effects (clothes, toiletries, medications, and jewelry). To accomplish retrieving these items, Plaintiff shall contact the Aiken County Sheriff's Office who should escort her onto the property and ensure a peaceful exchange. Defendant shall cooperate in this regard.

FILED
AIKEN COUNTY
MAY 28 2010
3:56 AC
CLERK OF COURT

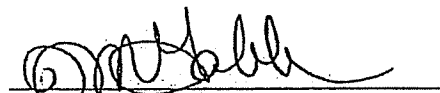
3. When Plaintiff comes to retrieve the items listed, she shall return to Defendant her keys to the marital residence and the church.
4. Both parties are restrained from: communicating with each other; harassing, bothering, intimidating, and coming about the other; sending messages to each other; and contacting each other in any way.
5. Both parties shall also be restrained from disposing of marital assets, assets acquired during the marriage, and all of the assets specifically mentioned in this Order. Furthermore, both parties are restrained from incurring marital debt and debt in the name of the other party.

This Court finds that the parties' agreement is fair and reasonable to both parties. As such, the parties' agreement should constitute the Order in this matter.

Therefore, this Court issues this Order as follows:

The parties' agreement as found hereinabove is hereby approved by this Court and made the Order of this Court. As such, it is enforceable by the contempt powers of this Court.

AND IT IS SO ORDERED this 27 day of May, 2010, in Aiken, South Carolina.


Dale M. Gable
Presiding Family Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE FAMILY COURT
SECOND JUDICIAL CIRCUIT

DEBORAH WEEKS

Plaintiff(s),

vs.

JAMES R. WEEKS II

Defendant(s).

JUDGMENT IN A
FAMILY COURT CASE

Docket No. 2010-DR-02-658

CHECK ONE:



DECISION BY COURT. This action came to trial or hearing before the court.
The issues have been tried or heard and an order rendered.



ACTION DISMISSED (CHECK REASON):

- ☐ Rule 12(b), SCRCP
☐ Rule 41(a), SCRCP (Vol. Nonsuit)
☐ Rule 43(k), SCRCP (Settled)
☐ Family Court Benchmark
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Date: _____, 20

_____, S.C.

Family Court Judge

This judgment was entered on MAY 28, 2010 and a copy mailed/ hand-delivered/ boxed on JUNE 1, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

FOR THE PLAINTIFF (S)

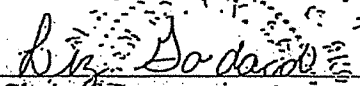
FOR THE DEFENDANT (S)

DEBORAH WEEKS (M)

P. ANDREW ANDERSON (B)

GUARDIAN AD LITEM

LT. EDMONDS


Clerk of Court

By: ASHLEY GUNTER AG

Custodial Parent (if applicable):

SCRCPFORM4F (12/2009)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
DEBRA WEEKS,)
Plaintiff,)
v.)
JAMES RANDALL WEEKS,)
Defendant.)

IN THE FAMILY COURT OF THE
SECOND JUDICIAL CIRCUIT

CASE NO: 2010-DR-02-1080

TEMPORARY ORDER

FILED
AIKEN COUNTY

NOV 01 2010

3:35 AG
CLERK OF COURT

DATE OF HEARING: September 8, 2010 at 3:00 a.m.
TRIAL JUDGE: Honorable Vicki Snelgrove
PLAINTIFFS' ATTORNEY: Sidney Jones
DEFENDANTS' ATTORNEY: Kris Anderson for Andy Anderson
COURT REPORTER: Cheri Young

This matter came before the Court pursuant to motion for temporary relief. This case was initiated with the filing of a Summons, Complaint, and Motion for Temporary Relief by Plaintiff on July 15, 2010. Defendant's attorney Andy Anderson accepted service of the pleadings on July 19, 2010. At the hearing, the Plaintiff was represented by Sidney Jones and the Defendant by Kris Anderson.

At the commencement of this Temporary Hearing, the attorney for the Plaintiff notified the Court that the parties have extensive personal assets that must be equitably distributed but had reached a temporary agreement concerning some of the items. It was explained that the Defendant is paying for the Plaintiff's truck, insurance and cell phones and will continue to do so until the truck is paid for in December 2010; and the parties are asking the Court to approve a temporary order until December 2010 when the parties will request another hearing to address

Filed: 9-6-2017
Tonya L. Marchant
Probate Court Judge
By: Amitchell

Page 1 of 4



the remaining issues. The Plaintiff's attorney then published the agreement on the record and the Defendants attorney agreed. The parties' agreement is as follows:

1. The parties shall live separate and apart from one another, free from the control, restraint or interference of the other, as if they were unmarried.
2. The Defendant shall have use and possession of the marital home until a later hearing to determine the assets that shall be divided.
3. The Plaintiff will have possession of her F250 Ford truck and the Defendant will continue making the payments on the truck and will provide full coverage insurance on same.
4. The Defendant continues to pay for the Defendants cell phone package as is now done.
5. The Plaintiff agrees to remove her name from any joint bank accounts that might be in existence with the Defendant.
6. The Defendant agrees to account for any deposits that might have been made to any of his accounts from any source that were made to benefit the Plaintiff's children.
7. Both parties agree to assist each other in providing any records that might be associated with any income for tax purposes from the year 2000 to present. The parties agree to take all financial records in their possession to an agreed upon accountant.
8. The Plaintiff will have possession of the "blue tractor" that is a marital asset and will be accountable for its maintenance and operation and the Plaintiff will be responsible for removing it from the marital property and transporting it to her home. This does not remove this tractor from the inventory of marital assets. The Plaintiff agrees to be the only person to use the tractor while it is in her possession and agrees to make that Defendant aware of the tractor's location.

9. The Defendant agrees to allow Plaintiff access to home to remove her and the children's personal clothing and karaoke machine, at a mutually agreed upon time convenient to both parties.

10. The Defendant agrees to purchase Niki Weeks a computer for her use in school and other education needs. This computer will be purchased no later than October 8, 2010.

11. Both parties agree to cooperate with the identification and appraisal of all marital property and are restrained from transferring, disposing of, devaluing, moving, hiding, or in any way interfering with the orderly identification and placing value on said property. The Plaintiff will return any keys in her possession and the Defendant will maintain them in a safe and secure way.

12. The parties shall be mutually restrained from harming, harassing, threatening, molesting, stalking, tracking or in any way interfering with the other, whether in person, by telephone, e-mail, text messages, voicemails, or any other electronic or other means.

13. The parties agree that they may conduct discovery in accordance with the South Carolina Rules of Family Court and the South Carolina Rules of Civil Procedure and that a hearing will be requested to address the marital property after the Plaintiff's truck payments are complete.

CONCLUSIONS OF LAW

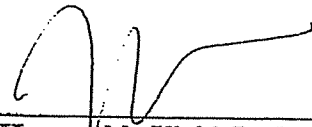
This Court has jurisdiction of the parties and subject matter. I find that the parties are entering into this agreement knowingly, freely and voluntarily, that they understand the agreement, that they were not under duress or coercion to enter into the Agreement, that they believe the agreement is in their best interests, that they can abide by the Agreement, and that they wish the Court to make this Agreement an Order of the Court and leave this case open for a



hearing in December 2010 and until the one year of separation has been completed and a final hearing for divorce is held. The parties understand that a violation of this Order could subject them to the contempt powers of the Court.

IT IS ORDERED that the Agreement of the parties as stated herein is approved and is the Order of this Court.

AND IT IS SO ORDERED!



Honorable Vicki Snelgrove
Presiding Family Court Judge
Second Judicial Circuit

Aiken, South Carolina

N. Snelgrove
October 1, 2010

FAILURE TO COMPLY WITH THIS ORDER WILL SUBJECT THE OFFENDER TO AN ORDER OF CONTEMPT WITH A POSSIBLE PENALTY OF UP TO ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) IN FINES AND/OR TWELVE MONTHS IMPRISONMENT AND/OR THREE HUNDRED HOURS OF COMMUNITY SERVICE.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP0201051

Deborah T Weeks et al
PLAINTIFF(S)

David W Weeks et al
DEFENDANT(S)

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.
- ☐ **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.
- ☐ **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:

This matter comes before the Court on an appeal from Probate Court. A hearing was held on August 2, 2021. After consideration of the evidence and arguments by counsel for both the Appellate and Respondent, the Court finds no errors of law. The Probate Court's decision is **AFFIRMED**.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/27/2021.

Deborah T. Weeks

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Aiken Common Pleas

Case Caption: Deborah T Weeks , plaintiff, et al VS David W Weeks , defendant, et al
Case Number: 2020CP0201051
Type: Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2021-09-27 15:57:03 page 3 of 3

Honorable Tonya L. Marchant: Mr. Green?

L. Green: Thank you Your Honor. That list that we have shown the Judge is that what you believe was in the estate at the time of his death?

D. Weeks: Yes.

L. Green: Now, would you then, if the Court rules you are entitled to one third Elective Share would you ask the Court to then allow you then to go on this property and observe the estate assets?

D. Weeks: Yes.

L. Green: Is there a time that is convenient for you that you would like to put on the record?

D. Weeks: Okay, tomorrow.

L. Green: Within thirty days.

D. Weeks: Next Wednesday.

L. Green: If the Court would allow you could be ready as soon as March the 4th?

D. Weeks: Yes.

L. Green: The other issue relates to the real property associated with this estate. I think that has all been cited for the record but as far as the numbers that were uses and you have already got copies of all this Your Honor. I don't know if Mr. Rich's documents have attached to it the value that was given by the tax assessor's office. I want to include this as Exhibit Number Two.

Honorable Tonya L. Marchant: In his briefs are you referring to?

L. Green: He gave a bunch of documents. What if I make this my Exhibit?

Honorable Tonya L. Marchant: Sure. Deed of Distribution recorded April 18th 2012. Any objection Mr. Rich? I believe it was part of your packet right?

A. Rich: It is.

Honorable Tonya L. Marchant: It is Exhibit D for the Respondent and I am going to mark it Number 2 for the Petitioner.

L. Green: Thank you Your Honor.

Honorable Tonya L. Marchant: You are welcome. Without objection.

L. Green: Now this document is what? A deed of distribution?

D. Week: Yes.

L. Green: Does it show then what interest Mr. James Randall Weeks has in that property?

D. Weeks: It has got....

L. Green: Is it five twenty ninth?

D. Weeks: Yes it is.

L. Green: Interest in that property? Does it say then when Mr. Weeks got that property? The date that it was put into the RMC office? Registered with the RMC office?

D. Weeks: 2012.

L. Green: So you were still married to Mr. Weeks at that time?

D. Weeks: Yes.

L. Green: Then on the back of this document it has tax assessor information related to the value. The third page from the back. It says page one of two. It has tax assessor's value for this property as what? Does it say one million three thousand four hundred and sixty five dollars?

D. Weeks: Yes.

L. Green: Would you ask this Court then to require Mr. Weeks to amend the amended Inventory to include this number?

D. Weeks: Yes.

L. Green: Or at the very least require him to have an appraisal done that will truly reflect the value of this property?

D. Weeks: Yes.

L. Green: This is Exhibit Two. I think he has on the amended inventory six hundred and seventy thousand dollars as the value of this property. You would ask the Court to require him to either A. have an appraisal done or B. adjust the number to reflect the tax assessor's numbers.

D. Weeks: Yes.

L. Green: This one also has values from the assessor's office that is not reflected on Mr. Rich's documents.

Honorable Tonya L. Marchant: Any objection Mr. Rich?

A. Rich: No objection.

Honorable Tonya L. Marchant: Title to.....

A. Rich: That has already been.....

Honorable Tonya L. Marchant: It is in your packet of briefs?

A. Rich: We have already introduced it.

L. Green: That is his document. Mine has.... On the back of mine it has documentation associated with the tax assessor's office.

Honorable Tonya L. Marchant: So a little additional documentation. We will mark this as Petitioner's Number Three.

L. Green: Thank you Your Honor.

Honorable Tonya L. Marchant: Just a way to keep up with it.

L. Green: Absolutely.

Honorable Tonya L. Marchant: You may continue.

L. Green: Ms. Weeks, you have already talked to Mr. Rich about this document here. This document shows Mr. Weeks came into ownership of this property on or about when?

D. Weeks: 1983.

L. Green: So he had ownership of this property prior to him and you becoming married?

D. Weeks: Yes.

L. Green: During the course of the marriage did he do anything with that property? Did he sell it or did he get any encumbrances on it?

D. Weeks: No.

L. Green: So it was still his property?

D. Weeks: Yes.

L. Green: He owned it by himself?

D. Weeks: Yes.

L. Green: So at the time of his death did he own that piece of property? How much acreage is it? One acre?

D. Weeks: Yes.

L. Green: One acre. According to the tax assessor's office this property is valued at what?

D. Weeks: \$12,000

L. Green: Okay and according to the amended Inventory filed by the Personal Representative he shows that property valued at \$7800. Do you recall that document that he showed you?

D. Weeks: Yes.

L. Green: Then would you ask this Court to either A. require the PR to adjust that number to reflect the tax assessor's numbers, the Aiken County tax assessor's numbers or B. Have it appraised and get the true value of that property. Is that your request?

D. Weeks: Yes.

L. Green: So is it your position then Ms. Weeks that this estate was established when the application was made for Mr. Weeks, David Weeks to become the Personal Representative you were married to Mr. Weeks?

D. Weeks: Yes.

L. Green: So anything subsequent to that you do not believe is relevant to this case?

D. Weeks: Correct.

L. Green: So you would ask this Court then to look at what was requested in the... you ask this Court to look at what was in the Will and the personal items, all the personal items and the real property be distributed to the heirs? Including you as an heir?

D. Weeks: Yes.

L. Green: Lastly you would ask this Court to require your name to be added to a Deed of Distribution or some agreement worked out between yourself and the Personal Representative?

D. Weeks: Yes.

L. Green: You would also request that the Deed of Distribution also be made for the one acre that it would include your name as having a one third interest in that?

D. Weeks: Yes.

L. Green: That is all I have Your Honor.

Honorable Tonya L. Marchant: Anything on redirect? Please answer any questions that Mr. Rich would have of you.

A. Rich: Are you aware that usually the tax assessor's value is usually incorrect?

D. Weeks: A lot of time yes.

A. Rich: I am going to show you copies of appraisals in just a minute. You have asked for the Court to rule that the Personal Representative to have both properties appraised?

D. Weeks: Yes.

A. Rich: Are you willing to pay the money for the appraisals because there is no money in this estate. Are you willing to put up the money for the appraisals?

D. Weeks: I am willing to split it.

A. Rich: You know to appraise a 255 acre piece of property is going to be quite expensive? So you are saying you will put up half the money to have it appraised?

L. Green: Your Honor, I would object to that question.

A. Rich: What is wrong with that question?

L. Green: Because you are putting information in her mind and she isn't a professional in terms of what the property is.....

A. Rich: I am asking her about having it appraised.

L. Green: Your Honor, this land has tons of wood on it, agricultural that could be harvested. As a matter of fact the majority of that property two hundred and fifty something acres consists of timberland. So for them to come in and say six hundred and seventy thousand dollars and nobody has valued the timberland then I would think that would be unfair and I would object to having something from that far back filed.

A. Rich: Your Honor, the Court can assign whatever weight they want to this but it is the most recent appraisal and I contend that it is relevant.

Honorable Tonya L. Marchant: The Court is going to overrule the objection and going to accept the certified appraisals as submitted at that time. However, that does not mean that the Court will not require that a more recent appraisal be established. I am not saying that it will but that might be an option. You may continue.

L. Green: One other point Your Honor is that he doesn't even know what the exact acreage is and for that reason alone there should be an appraisal done.

A. Rich: If I may continue with my question. This is a deed of distribution from the estate of Harriet Weeks is it not?

D. Weeks: That is correct.

A. Rich: The legal description indicates that is three hundred and twenty acres and then it says less thirty two acres and less another tract of land. In other words it was three twenty minus these two. Is that the way it appears to you?

D. Weeks: Yes.

A. Rich: So you don't know exactly what the acreage is?

D. Weeks: Correct.

A. Rich: Tell me about this land. Was this family land?

200 acres or 255 acres and we don't really know but we have shown that he has an interest in it by a deed of distribution. Furthermore, we have shown that he has an interest in the one acre that we are talking about. So those two documents show he has an interest in those two properties. Our main contention arise when we start talking about the personal property that he owned and what the values are. Well, you know typically when we have an issue as to what the value of the property is and we can't agree on it we go ahead and sell it and divide the proceeds. So if we can't agree on what those numbers are and we don't have any scientific information to support it then we should sell it all and divide up the proceeds. We believe it is one price and they believe it is another then we should have some person that is uninterested and have an estate sale and sell all that personal property and divide the proceeds. The other issue relates to the value of the property. Now that is a big issue because going from six hundred and seventy thousand dollars from one million dollars down to six hundred and seventy thousand dollars obviously something was different when they did the evaluation of the appraisal back in 2011 versus what the tax assessor says it is now. They make an argument that the tax assessor's numbers are always wrong. Well if they are wrong then let's get a right answer for it. How can their appraisal be correct which was done back in 2011 and what the county has on record now? So if we have that huge discrepancy then let's get a true appraisal. Then the other issue is we don't have the money. Well there is a piece of property that is worth \$12,000 or if you look at the appraised value which is \$7,800 but the assessor says it is worth \$12,000. So let's sell it and get an appraisal done and see what the true values are and go with that. Anything short of that would not be fair to my client. She did what the law said she needed to do. She has complied with that. So there is nothing left but the Court to decide if she is entitled to that one third and what the value of these properties are. One acre, 255 or whatever the case may be let's figure out what those acreages are and the true values and move forward.

Honorable Tonya L. Marchant: Thank you. Mr. Rich?

A. Rich:

Our contention that she is entitled to file for an Elective Share and as far as we know they were still married but our contention is she gets nothing as far as the Elective Share because she had been separated from this man for eight years before he died. They had gone through substantial marital litigation. There were three hearings. Section 62-2-802 of the code says if there is a valid proceeding concluded by an Order to terminate all marital property or confirming equitable distribution between the spouses unless they are living together then there is no

Elective Share. Those Orders are not final and I recognize that however, the three hearings the last case was dismissed by Administrative Order because the moving parties did not follow through. The moving party was Ms. Weeks. She and her attorney chose not to go further with it. She has already received substantial property from the marriage at that point and there was no point in her pursuing it because there was nothing else to divide. The property was not listed on the Financial Declaration either the one acre or the property he inherited. The inherited property clearly wasn't because he didn't get it until after they were separated. So it is our contention and Mr. Green has dismissed the marital litigation as not being relevant but I contend that it is relevant because in essence it is an Order to essentially confirm equitable distribution between the parties under section 802 therefore dismissing her claim for Elective Share completely. That is our initial position. I have outlined in my brief the background of the Elective Share as to the purpose of it. The parties had been separated for eight years and had completely divided the property and she said she received alimony for two months or for some period of time and she continues to collect his social security. Depending on the value of the tangible personal property, the tangible property she received before is according to our calculations is almost triple what is in the estate. We can argue what the values are and what is there but she certainly received, according to what she testified to, she got at least as much out of the marriage as was in the estate. She got her share. There is nothing fundamentally fair about her to receive anything. In terms of the real estate the property was deeded to him in 1983 by his mother for the purpose of getting a loan and it was a gift. The other property was family property that has been in this family for seventy five or eighty years. It is owned by four different family members. It was inherited by him from his mother after they were separated. There is nothing fundamentally fair about her receiving a bit of that property. There is nothing fair about that. If this was a divorce she clearly would not get it. The statute on marital litigation specifically says there is no equitable distribution for property that is inherited. Clear as a bell. Our Elective Share statute does not directly address that and I will admit. In my brief and I show many other states and by Court filings have ruled that in a situation just like this there should be no Elective Share for inherited property. If she gets the property she just owns an undivided interest in it along with everybody else. It doesn't matter what the value is. The only way the appraisals come into it is if the Court rules that the estate has the option to buy her out. We would have to give her some percentage of the five twenty ninths. That is what she is going to own. It would be a waste to have it appraised again. The last appraisal is seven

years old and this is raw land. I think the Court can take recognition that raw land over the last seven years in Aiken County has decreased. Certainly in 08 and 09 the values plummeted significantly. This was done in 2011. On the one acre property the estate had it appraised. It would just be a waste of money to go out and have all this property appraised. Who knows about the taxes she owes. The best information that I have got is that the tax liens are still there. I don't know but if they are still there and she gets an interest in this property it is gone. The tax liens are going to suck up the whole thing and there is not going to be anything left. Again if there is, if you are going to look at the value of the property and in my brief I talk about this and the lack of marketability. Those are valid arguments. Finally if you rule against us on everything else the expenses of this estate have to be subtracted from the value of the estate. Again we can argue about the value of the tangible personal property but the tangible personal property in the estate without the real estate is only \$19,000 and we have \$31,000 in expenses. If the Court takes that real estate out of it there is nothing left. The expenses exceed the amount of the tangible property. Even if we go back and adjust according to what her testimony is I don't think we are going to come up with more than \$31,000. Even if we do that and the expenses are valid and there has been no testimony that the expenses are not valid it is going to reduce her Elective Share down to zero. The biggest question of course is the real estate and again I would submit to you that there is absolutely nothing fair or equitable about her receiving one piece of this property. It is all inherited property from his mother and she is not entitled to any of it.

Honorable Tonya L. Marchant: Thank you.

L. Green: Quick rebuttal Your Honor.

Honorable Tonya L. Marchant: Yes sir.

L. Green: Your Honor, again the issue related to whether or not she is entitled to something based on some divorce decree, the statute is clear on that, it says if there has not been a final adjudication that the spouse is still entitled to that one third Elective Share. We do not have anything in any of these temporary orders or interim orders or any dismissal indicating that these parties were ever divorced any no property settlement was agreed to. What they did prior to the decedent's death that is not even relevant to today's case. The estate was established, the estate was established on the death and I believe my paralegal says on the date of the application. They keep talking about this social security. A wife is

1	State of South Carolina)	In the Court
	)	Of Common Pleas
2	County of Aiken)	Case No.: 2020-CP-02-01051
	)	
3	Deborah T. Weeks, et al.,)	
	)	
4	Plaintiff,)	
	)	
5	vs.)	Transcript of Record
	)	
6	David W. Weeks, et al.,)	
	)	
7	Defendant.)	
	)	
8		

9

August 2, 2021.

10

Aiken, South Carolina

11

12 BEFORE:

13

The Honorable Courtney Clyburn-Pope, Judge

14

15 APPEARANCES:

16

17

Leon Edward Green, Esquire
Attorney for the Plaintiff

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Clarke W. McCants, III, Esquire
Attorney for the Defendant

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Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

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1 Thereupon, the following proceedings were had,

2 BAILIFF: All rise. The Honorable Courtney
3 Clyburn-Pope presiding.

4 THE COURT: Good morning. Please be seated. Madam
5 Clerk, call the first case.

6 THE CLERK: The first case is 2020-CP-02-01051,
7 Deborah T. Weeks versus David W. Weeks. It's a Probate
8 appeal.

9 THE COURT: Good morning, Mr. Green and Mr. McCants.

10 MR. GREEN: Good morning.

11 MR. McCANTS: Good morning, Your Honor.

12 THE COURT: How are you all this morning?

13 MR. GREEN: Doing fine.

14 MR. McCANTS: Fine, thank you.

15 THE COURT: Okay. This is a motion to appeal a
16 Probate Court decision?

17 MR. GREEN: That's correct, Your Honor.

18 THE COURT: Yes, sir. I'll hear from you.

19 MR. GREEN: Thank you, Your Honor. Please the
20 Court. Your Honor, as you already said, this is a
21 Probate matter wherein the appellant filed for a
22 one-third elective share under the Probate statute and
23 there was a hearing on this matter and the appellant was
24 denied the one-third elective share. The Judge that
25 ruled in that, Honorable Judge Marchant, said that my

1 client was not entitled to an elective share because she
2 had waived or slash agreed to a permanent property
3 settlement. Your Honor, we have about five exceptions to
4 that order that we want to advance before the Court
5 today.

6 THE COURT: Yes, sir.

7 MR. GREEN: The first one is that we believe that
8 the Court did commit error by disallowing this elective
9 share because clearly under the statute all that has to
10 happen is a person has to be married to a person that
11 died in this county, at the time of the death be married
12 and they are entitled to that elective share. The only
13 way that that's denied is, there are three ways in which
14 that can be denied. It can be denied by based on a
15 permanent final settlement with full disclosure and then
16 that person would also need to waive it or disclaim it
17 and neither of those things happened in this case so we
18 believe that the appellant is entitled to the elective
19 share.

20 Counsel will probably argue that the appellant did
21 agree to a final settlement of the property which we
22 disagree with because in order for a final settlement to
23 happen those things have to happen. The Judge has to
24 know about an order. What they're gonna say is that
25 there was a temporary order placed before the Judge and

1 that somehow that temporary order became a permanent
2 agreement between the parties and, Your Honor, that
3 doesn't happen on a temporary matter unless the parties
4 agree to that to happen. In this situation the parties
5 didn't agree for a temporary hearing to become a final
6 hearing.

7 THE COURT: There was never a final hearing, Mr.
8 Green?

9 MR. GREEN: Never a final hearing, Your Honor. But
10 they're gonna say that a temporary matter was the final
11 here, which temporary orders can become final if the
12 parties agree to it. In this case there was no
13 agreement. Even in the order itself it says that this is
14 a temporary order and that we're gonna talk about
15 discovery, we're gonna talk about restraining orders,
16 keeping the properties that were in the marital estate
17 from being distributed or conveyed or something like
18 that. So clearly we believe that our client is entitled
19 to the one third elective share.

20 And, Your Honor, we said that we have five
21 exceptions. The other exception that we believe is, this
22 Judge applied a domestic statute and thereby eliminating
23 inherited property from the estate. Well, the Probate
24 statute doesn't cut out any exception of any sort that
25 says that because the property is inherited, it's not

1 divisible or it's not susceptible to the elective share.
2 It clearly states what is. And if anything, that's in
3 the Probate estate whether it's inherited or otherwise or
4 again, anything of that sort is still supposed to be
5 considered within the one-third elective share. So we
6 believe that the domestic statute that was used in this
7 case was improper.

8 The other exception we have, Your Honor, is talking
9 about the appraised value of the property. There were an
10 appraisal for \$670,000.00 and then there was an inventory
11 that had property in it for \$800,000.00 and then there
12 was another document that had the property and the estate
13 at a million dollars. So we were objecting to anything
14 that created that ambiguity. So what we said was we
15 believe that the Court should go ahead and do, have an
16 appraisal done by an expert so that we can determine what
17 the true values of the properties within that estate
18 should be. Well, the court said that, well, we don't
19 need to do that. We can use the lesser of all those
20 three numbers. We believe that that was arbitrary and
21 should not have been done that way and we should have
22 been allowed to have a professional appraisal done.

23 Counsel is probably gonna argue and say, well, you
24 should have did that in a timely fashion, but the statute
25 doesn't put a time limit on it. I can ask for that the

1 day of the court hearing for an appraisal. The statute
2 allows us to do that. And so we ask the Court to allow
3 us to have a professional appraiser do an appraisal so
4 that we can get the correct property amounts in the
5 estate. We were denied that opportunity.

6 The other exception, Your Honor, is the 40 percent
7 marketability minority discount. Never heard of that in
8 a Probate matter. I wasn't able to find any case law to
9 support that position. We believe that whatever values
10 that a professional appraisal produces for an estate
11 property should be that property amount and not with any
12 exceptions, 40 percent discount or any type of discount.
13 We believe that the Court should not allow that to
14 happen. As a matter of fact, as I said, there's no
15 authority, and I know that in Family Court matters, I do
16 Family Court stuff, and I know that sometimes in Family
17 Court matters that deduction or discount is allowed, but
18 usually what happens is you have an expert who comes in
19 and goes through all the evidence and information and
20 then make an educated analysis of that situation and then
21 apply whatever discount they believe is necessary. In
22 this situation we didn't have any of that. The Judge
23 just said, okay, I'm gonna allow a 40 percent discount.
24 Never heard of that, haven't found any of that in South
25 Carolina case law.

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P.O. Box 184, Lexington, South Carolina 29071

1 And fifth, Your Honor, we believe that the Court
2 committed error in finding that a temporary Family Court
3 order that we talked about earlier terminated all of the
4 marital rights of the appellant. Well, I never heard of
5 a temporary order terminating anything permanently and
6 that's, the object of it is, it's temporary. So in this
7 situation the parties have not had a final order of any
8 sort. I know they're gonna talk about there's an order
9 in place November sometime, 2020, November 2019,
10 somewhere along in there there's a temporary order, but
11 the statute says that there has to be a full, complete
12 final order in order for a person's rights to be
13 eliminated under that statute. We just don't have that
14 here.

15 And, Your Honor, I just don't see how this person
16 can be disallowed a one-third elective share. I mean,
17 that's just part of the statute that says that you're
18 entitled to that unless you either waive it or there's a
19 final agreement between the parties, or you've waived it
20 or you've disclaimed it. Something like that has to
21 happen. And even if that happens, it has to be in
22 writing. There's no documentation whatsoever in this
23 case that shows that there was either a waiver, a
24 disclaimer, or a full and final settlement. Cannot find
25 it anywhere in this case and, therefore, the appellant

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1 has to be allowed to have their one-third elective share.

2 Has to. There's no other way around it. Thank you.

3 THE COURT: Thank you, Mr. Green. Mr. McCants.

4 MR. McCANTS: I'll try to get up and get closer,
5 Your Honor, so you can hear me. Good morning again.

6 THE COURT: Good morning.

7 MR. McCANTS: I'm gonna try and explain why Judge
8 Marchant was right in this case. First off, Judge, we've
9 got the standard review to look at which I'm sure you're
10 familiar with. We have outlined all of this information
11 extensively in briefs and I don't want to argue every
12 point of the brief unless you would like me to because
13 you've got a full courtroom and I'm confident that you've
14 looked at the briefs, and basically the law in this state
15 is that the Probate Judge's order should be upheld if
16 there's evidence to support it.

17 And I realize Mr. Green's argument with the legal
18 issues with the law as to Judge Marchant's order is an
19 error in the law, but what Leon has not discussed though
20 is that there's an exception in the Probate code which I
21 cite in my brief. It's 62-2-204 which clearly
22 contemplates, Your Honor, situations where two
23 individuals, though not formally divorced, can, in fact,
24 divide all of the property by certain agreements whether
25 they be in writing or otherwise. Mr. Green pointed out

1 there's nothing in writing. That's not required. If you
2 read the statute, it talks about a written agreement and
3 then it talks about agreement with respect to what the
4 parties intend to do with their marital property. And
5 Judge Marchant cited a couple of cases in her order and I
6 cited in my brief a case out of North Carolina. It's
7 called The Estate of Cracker, which addresses the
8 parties, even though they don't have anything in writing
9 with regard to resolving marital property, the divorce
10 action can imply to agree to resolve everything.

11 And that's important in this case, Judge, because
12 here I think seven or eight years passed between the
13 point in time when these folks were last in the Family
14 Court, over the course of a very tumultuous marriage by
15 the way, Your Honor, and they didn't enter into a final
16 order of divorce or a final order separating property,
17 but life moved on and the appellant in this case raised
18 no issues with regard to the resolution of distribution
19 of any marital property until the death of the respondent
20 in this particular matter. It's very difficult, I think,
21 for the appellant in this case to argue somehow that
22 these two folks did not intend to distribute everything
23 that was owned between them at the time that they were
24 last in the Family Court.

25 Another point that Mr. Green referred to is this

1 concept that even the property for which the appellant
2 seeks an elective share at this point in time, even if
3 it's available in Probate Court, it was never marital
4 property. It could have been distributed as part of the
5 Family Court in the first place because it was inherited
6 property. I go into Family Court routinely. You've been
7 there, Your Honor. You know it's pretty much boiler
8 plate at this point, if you inherit property that is not
9 part of the marital estate, it can't be divided. So
10 between the period of time between the last time Mr.
11 Weeks was before the Family Court and before his death
12 according to what I've got, she never came back to Family
13 Court to contend in any way that the marital property
14 should be divided.

15 Any reasonable person, Your Honor, over that period
16 of time would have said, wait a minute. Something is
17 unresolved. We need to get that resolved and get our
18 life moving in a direction other than arguing over
19 property and they simply did not do that. Nobody held in
20 abeyance the issue of the distribution of any property in
21 the Family Court. It just went away. And that's what
22 Judge Marchant specifically found. She ruled, therefore,
23 the Court specifically finds that the appellant received
24 all assets from the marriage to which she was entitled,
25 that the litigation between the parties essentially for

1 all practical purposes resulted in a final property
2 division of the parties, and that's in the Family Court.

3 And there's plenty of law, and the statute that I
4 cited allows a envision situation where two individuals
5 are not formally divorced, therefore, still married, but
6 they can resolve property issues to the point where the
7 elective share never comes up later as part of any
8 matter. So Ms. Weeks had full opportunity to discovery,
9 to figure out what was available property wise in Family
10 Court. She was represented by able counsel who
11 thoroughly explored and vetted those issues and Judge
12 Marchant saw that and she said it was resolved way back
13 when and the elective share did not apply.

14 My standpoint, again, using the standard on review
15 is that Judge Marchant's order is clearly supported by
16 the evidence, it's also clearly supported by the statute
17 I cited, the case law that's cited in her order, and in
18 addition to that that case I presented to you out of
19 North Carolina, the Cracker case, which I think will be
20 very helpful to the Court in evaluating the issues before
21 you today. I'll be happy to answer any questions you may
22 have, Your Honor.

23 THE COURT: I don't have any questions. I did have
24 an opportunity to read those briefs. Let me allow
25 Mr. Green a chance to respond.

1 MR. McCANTS: Yes, ma'am. Thank you.

2 THE COURT: Thank you. Mr. Green.

3 MR. GREEN: Thank you, Your Honor. If I may
4 respond. Your Honor, there's no affirmative duty that's
5 laid upon the appellant to file a continuing action
6 related to a divorce action. The PR can do that, can
7 finish up an action if they choose to do that, but in
8 this case the whole action was dismissed which means that
9 in a temporary situation everything goes back to the
10 status quo. So there's no order of any sort that would
11 require the Court, the Judge, unless the Judge makes up
12 their own rule, which appears to be in this case, to
13 allow a dead temporary order to be rejuvenated.

14 As far as implications, Your Honor, Mr. McCants says
15 that, well, these parties' intent was to have this as a
16 final order. Well, let me say this about this temporary
17 order that he's talking about. In that same temporary
18 order that he believes that the intent of the parties was
19 to have a final order in place, it says, in the beginning
20 of that temporary order it says, this is a temporary
21 hearing and that it is not meant to be anything
22 permanent. We're gonna hold these issues related to
23 property open. That's what the order itself says. And
24 then further in that order it says, well, the parties
25 will agree to cooperate with identifying and appraising

1 the marital property and then agree to a restraining
2 order and then agree for the discovery to be done. If
3 that was a permanent situation, then why would they ask
4 for an opportunity to appraise the property, to do
5 further discovery? And they said that it was a temporary
6 order. In order for that to be converted, it has to have
7 the approval of the Judge. They have to tell the Judge.
8 First of all, you can't go to the Judge and say, Judge,
9 this is a temporary order and then later on say it's a
10 final order. Well, the Judge has to know about that so
11 that they can make a decision related to that.

12 And then finally, Your Honor, as far as the marital
13 property, there is no exception in the Probate statute
14 that says that marital property, inherited property is
15 exempted. There's nothing in the case law, statute or
16 anything that says that inherited property is exempted.
17 Yeah, we do that in family law because that's what the
18 family law statute says, but there's no Probate statute
19 that gives that authority. Thank you.

20 THE COURT: Thank you, Mr. Green. All right.
21 Gentlemen, I'll get you a decision by the end of the
22 week.

23 MR. McCANTS: Thank you, Your Honor.

24 MR. GREEN: Thank you, Your Honor.

25 THE COURT: Thank you. Nice to see both of you.

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 2nd day of October, 2021.

11 I FURTHER CERTIFY that the forgoing 14 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 18th day of November, 2021.

17

18

By:s/Steven E. LeBlanc

19

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Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

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Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

Marriage



Certificate

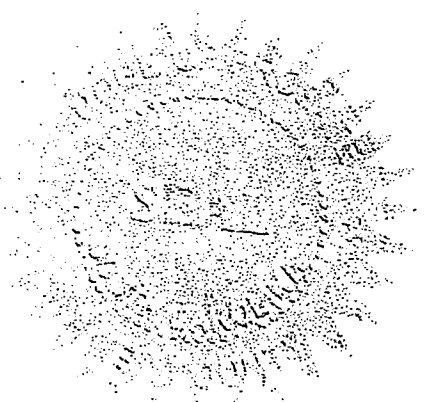
STATE OF
SOUTH CAROLINA
COUNTY OF AIKEN

PROBATE COURT
LICENSE NO.: 195704

To Whom It May Concern:

This is to certify that on the 10th day of January, 1998, at , in the County of , State of South Carolina, JAMES RANDALL WEEKS JR (born 5/27/1951 in SOUTH CAROLINA) and DEBORAH LYNN SHIRLEY (born 1/28/1956 in NORTH CAROLINA) were united in Bonds of Matrimony by FRANKLIN D HAMMOND, MINISTER, in accordance with the law of South Carolina, and as shown by the records of this Court.

Witness my Hand and Seal of said Court,
this the 16th day of March, 2017.



Forrest R. Marchant

JUDGE OF PROBATE

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

CUMBERLAND COUNTY

DISTRICT COURT DIVISION

Case No. 83 Cvd 190

Deborah Taylor Singletary

VS

Webb Knox Singletary, III

JUDGMENT OF ABSOLUTE DIVORCE

FILED FEB 21 AM 10:23
 CLERK OF SUPERIOR COURT
 CUMBERLAND COUNTY

THIS CAUSE COMING ON TO BE HEARD, and being heard by the undersigned Judge presiding at a regular civil session of the District Court, Twelfth Judicial District, CUMBERLAND County, Fayetteville, North Carolina;

And it appearing to the Court, and the Court so finding, that this is a cause of action for absolute divorce on the ground of one year's separation brought by the Plaintiff under the provisions of North Carolina General Statute, Chapter 50, Section 6 et seq.; that there is no controversy between the parties as to support or alimony, and it appearing that the Defendant was served properly by personal service on January 19, 1983. And it further appearing that no request for jury trial has been filed by the Defendant with the Clerk of this Court under the provisions of N.C.G.S. 50, Section 10, and that therefore, the right to have the facts determined by a jury is deemed to be waived; and the Court, without objection, proceeded to hear the evidence offered by the Plaintiff in support of the allegations of the Complaint, all of which material allegations are deemed denied, and the Court, having heard the evidence, makes the following FINDINGS OF FACT:

1. The Plaintiff has been a resident of North Carolina for more than six months immediately before the commencement of this action.
2. The Plaintiff and the Defendant were lawfully married to each other on December 15, 1973.
3. The Plaintiff and the Defendant, with the intention to permanently terminate the marital relationship, have lived separate and apart from each other continuously for more than one year immediately before the commencement of this action.

Based on the foregoing FINDINGS OF FACT, the Court reaches as a CONCLUSION OF LAW that the Plaintiff should be granted an absolute divorce from the Defendant, grounded on one year's separation.

IT IS NOW, THEREFORE, upon motion of the Attorney for the Plaintiff, ORDERED, ADJUDGED AND DECREED that the bonds of matrimony heretofore existing between the Plaintiff and the Defendant be, and the same are hereby dissolved and the Plaintiff is granted an absolute divorce from the Defendant.

IT IS FURTHER ORDERED that the Plaintiff is restored to the use of her maiden name, Deborah Taylor.

IT IS FURTHER ORDERED that the costs of this action be paid by the Plaintiff.

Done in Fayetteville, N.C., this 21st day of February, 1983.

S/ Sol M. Cherry
 Judge Presiding

A TRUE COPY

CLERK OF SUPERIOR COURT

CUMBERLAND COUNTY

BY Rosalyn Miles

HOPKINS & ALLEN, Attorneys At Law - 212 Main St. - Tarboro, North Carolina 27860

NORTH CAROLINA
COLUMBUS COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

FILED

96-13-31

Jerry W. Smith
vs.

96 AUG 23 AM 11:13

Deborah L. Smith COLUMBUS COUNTY C.S.C. JUDGMENT OF DIVORCE

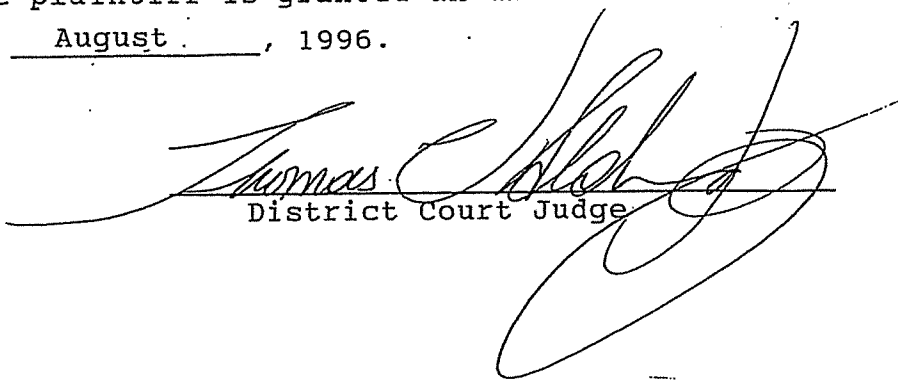
This cause coming on to be heard and being heard before the undersigned Judge Presiding over the August 22, 1996 Civil Session of District for the County of Columbus, and from the record proper and testimony of witnesses, the Court makes the following findings of fact:

1. This is an action for absolute divorce based upon the continuous separation of the plaintiff and defendant for one year.
2. This action was filed and summons issued on the 17th day of July 1996.
3. Service of process was obtained upon the Defendant on the 22 day of July 1996.
4. The defendant has failed to file answer or other responsive pleading as required by the Rules of Civil Procedure.
5. Plaintiff has been a resident of the State of North Carolina for more than six months next preceding the institution of this action.
6. Plaintiff and defendant were lawfully married on the 26th day of February, 1983.
7. Plaintiff and defendant separated each from the other on the 9th day of June 1994 intending to remain permanently separate and apart, and have not resume the marital relationship at any time said date of separation.
8. That the plaintiff and the defendant have remained permanently separate and apart for more than one year prior to the institution of this action.
9. There were 2 children born of the marriage and all matters of support and equitable distribution have previously been settled by the parties.

Based upon the foregoing findings of fact, the court concludes as a matter of law that this court has jurisdiction over the parties and subject matters, the plaintiff is entitled to an absolute divorce.

It is now, therefore, ordered, adjudged and decreed that the bonds of matrimony previously existing between the plaintiff and defendant are hereby dissolved, and the plaintiff is granted an absolute divorce.

This the 22 day of August, 1996.


District Court Judge

A TRUE COPY
CLERK OF SUPERIOR COURT
COLUMBUS COUNTY

By Denise Edwards
Assistant Deputy Clerk Superior Court

452.1530

ORDER

IN THE SUPERIOR COURT OF
RICHMOND COUNTY, STATE OF GEORGIA

KEVIN LEROY SHIRLEY,

PLAINTIFF,

V.

DEBORAH LYNN TAYLOR SHIRLEY,

DEFENDANT.

C.A. # RCD 2097/97

000212
MB 630
FILED IN THIS OFFICE
98 JAN -6 AM 11:47
CLERK SUPERIOR COURT

FINAL JUDGMENT AND DECREE OF TOTAL DIVORCE

Upon consideration of this case upon the evidence submitted as provided by law, it is the judgment of the Court that a total divorce be granted, that is to say a divorce a vinculo matrimonii, between the parties to the above-stated case upon legal principles.

IT IS HEREBY CONSIDERED, ORDERED AND DECREED by the Court that the marriage contract heretofore entered into between the parties to this case, from and after this date, be and is set aside and dissolved as fully and effectually as if no such contract had ever been made or entered into.

Plaintiff and Defendant in the future shall be held and considered as separate and distinct persons altogether unconnected by any nuptial union or civil contract, whatsoever, and both shall have the right to remarry.

This 6th day of January, 1998

Carl C. Bruning J.S.
J.S.C.A.J.C.

PREPARED BY:

Marilyn H. Protzeller
MARILYN H. PROTZELLER
Attorney for the Plaintiff
GSB # 461012
Post Office Box 1170
Augusta, Georgia 30903
(706) 724-6678

Filed in this office this 6th day of January, 1998
Elaine C. Johnson
DEPUTY CLERK

STATE OF GEORGIA

SUPERIOR COURT

RICHMOND COUNTY

I, TONYA ROWLAND, Deputy Clerk of Superior Court of Richmond County,
Georgia, hereby certify that the foregoing is a true copy of the original of file and
of record in this office in Re:

RCD-2097-97

KEVIN LEROY SHIRLEY -VS- DEBORAH LYNN TAYLOR SHIRLEY

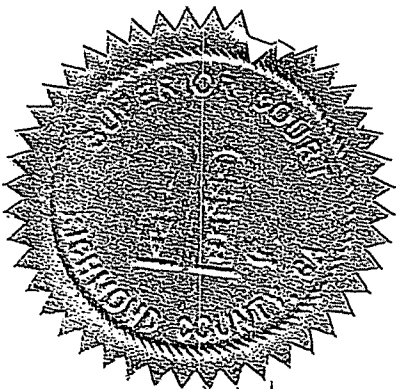
FINAL JUDGMENT AND DECREE OF TOTAL DIVORCE

SIGNED JANUARY 6, 1998

Witness my signature and the seal of said court herefore affixed at
Augusta, Georgia this 4TH day of APRIL 2018.



DEPUTY CLERK





Parcel Summary

Parcel ID 170-00-01-001
 Location Address 1085 WEEKS RD
 + Additional addresses:
 AIKEN 29805
 Legal Description
 (Note: Not to be used on legal documents)
 Property Class / Property Type AGRICULTURAL / REAL PROPERTY
 Neighborhood EQUINE13
 Fire District COUCHTON FIRE DEPARTMENT
 Building Description
 Tax District UNINCORPORATED
 Millage Rate 6% RATIO = 239.50 OWNER-OCCUPIED 4% RATIO = 102.20
 Acres 255.00
 Exemptions
 Council District COUNCIL DISTRICT ONE
 Location Description SOF HWY 206



Owner Information

Sylvia M Studley et al
 4470 James Madison Trl
 Dayton, OH 45400

Land Information

Land Type	Units	Unit Type	Appraised Value	Market Value
Residential 6%	3	AC	\$10,800	\$10,800
Ag Timber 4%	252	AC	\$32,760	\$907,200

Residential Buildings

Type Single-family Residence
 Style Two Story
 Units 1
 Total Area Sq Ft 2,155
 Heated Area Sq Ft 2,155
 Exterior Walls Frame, Siding, Vinyl;
 Actual Year Built 1952
 Flooring Automatic Floor Cover Allowance;
 Roof Cover Metal, Preformed
 Number Fireplaces 2
 Heating Type Warmed & Cooled Air
 Bedrooms 0
 Bathrooms 3 FULL
 Garage Area
 Market Value \$82,973

Mobile Homes on Parcel

Property Card	Class	Category	Serial Number	Decal Number	Color	Length x Width	Total Area Sq Ft	Year Built	Market Value
777-00-11-249	NON-OWNER OCCUPIED RESIDENTIAL (6%)	Two-Section, Aluminum	CFLHP2ABH135603213	50606	GRAY	64 x 28	1,792	1987	\$6,922

Miscellaneous Improvement Information

Description	Size	Units	Market Value
Additional Cost (porches, canopies, etc.)			\$2,492

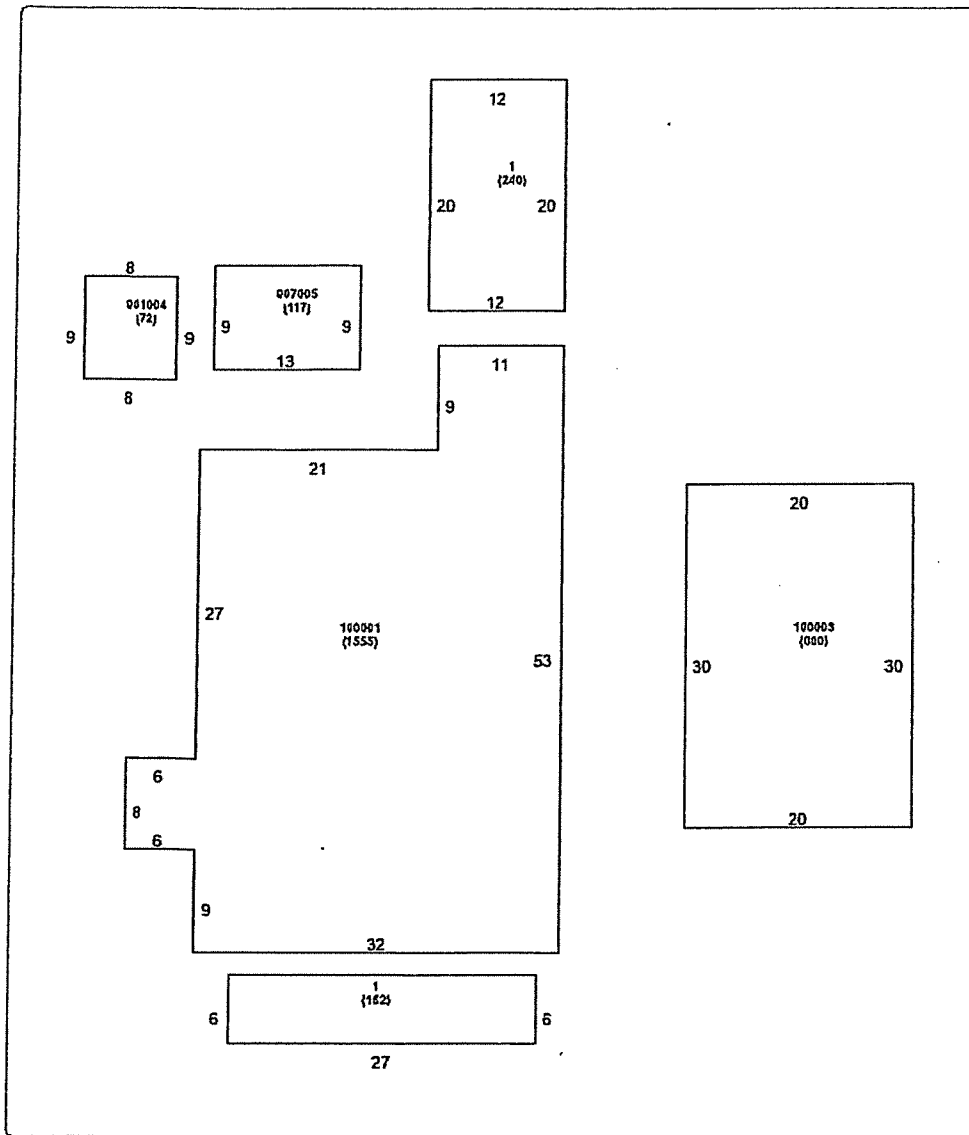
Sales

Sale Date	Buyer	Seller	Sale Price	Book/Page
4/5/2012	DAVID W WEEKS TRUSTEE FOR BENSON A WEEKS EST ET AL	HARRIETTE KILGORE WEEKS	\$0	4401/2030

Property Valuation History

	2018
Land Value	\$43,560
Improvement Value	\$85,465
Total Market Value	\$1,003,465
Total Appraised Value	\$129,025
Assessed Value	\$7,030

Sketches



Photos



No data available for the following modules: Commercial Buildings, Mobile Home Information.

The Aiken County Assessor's Office and IT/GeoServices Division strive to produce the most accurate information possible. No express or implied warranties of any kind are provided for, or applicable to, the data herein, its use, or its interpretation. All assessment information is subject to change.

Last Data Upload: 7/17/2019 11:54:06 PM

Version 2.2.33



2017E502-0855

AIKEN COUNTY ASSESSOR'S OFFICE

NAME: WEEKS TRUSTEE FOR BENSON A WEEKS EST,
DAVID W
MAILING ADDRESS: 185 EYEBROW STREET, SUMMERVILLE, SC 29483
PARCEL #: WEEKS JR, JAMES RANDALL
70-00-01-001
OLD PARCEL #: 00-225-0-01-012

APPRAISED VALUE OF PROPERTY

<u>IMPROVEMENTS</u>	\$ 85,465
<u>MOBILE HOME</u>	\$ 0
<u>LAND VALUE</u>	\$ 918,000
<u>TOTAL VALUE</u>	\$ 1,003,465

DATE: 8/30/2017

SIGNED BY: _____

RECEIVED BY: _____

Filed: 08-30-2017
Tonya L. Marchant
Probate Court Judge
By: Brittany Pearson



Prepared by:
Aiken County Government
11/22/2017 JB
Scale: 1 inch = 705 feet



Parcel Map

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File No.:

[illegible]

File No.:

GP RESIDENTIAL

3/2007

RESIDENTIAL APPRAISAL SUMMARY REPORT

File No.:

Summary of Sales Comparison Approach We searched for sales of older frame houses between 1,750 and 2,400 SF in Alken and eastern Edgefield Counties. We found three closed sales and two sales under contract. Site values were extracted from all five sales. The two pending (contract) sales were discounted based on anticipated seller concessions, which is the norm in today's market.

Indicated Value by Sales Comparison Approach \$ 38,800

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s):

1st Prior Subject Sale/Transfer

Analysis of sale/transfer history and/or any current agreement of sale/finling:

Date:

Price:

Source(s):

2nd Prior Subject Sale/Transfer

Date:

Price:

Source(s):

COST APPROACH TO VALUE (If developed)

☒ The Cost Approach was not developed for this appraisal.

Provide adequate information for replication of the following cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value):

ESTIMATED ☐ **REPRODUCTION OR** ☒ **REPLACEMENT COST NEW**

Source of cost data:

Quality rating from cost service:

Effective date of cost data:

Comments on Cost Approach (gross living area calculations, depreciation, etc.):

OPINION OF SITE VALUE

DWELLING

Sq.Ft. @ \$

Sq.Ft. @ \$

Sq.Ft. @ \$

Sq.Ft. @ \$

Sq.Ft. @ \$

Sq.Ft. @ \$

Garage/Carport

Sq.Ft. @ \$

Total Estimate of Cost-New

Less

Physical

Functional

External

Depreciation

Depreciated Cost of Improvements

"As-Is" Value of Site Improvements

Estimated Remaining Economic Life (if required):

Years

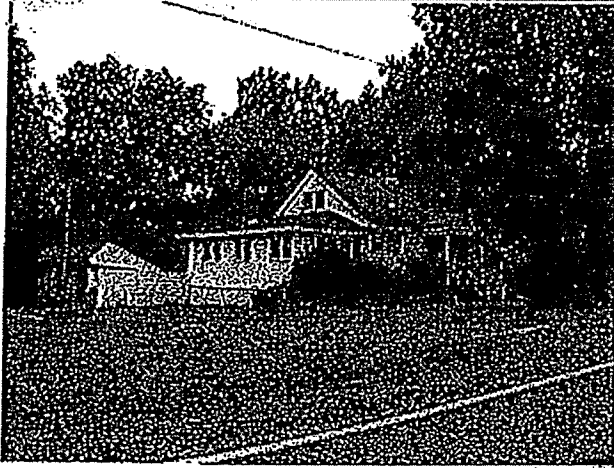
INDICATED VALUE BY COST APPROACH

GP RESIDENTIAL

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Form GPRES2G_LT — "WinTOTAL" appraisal software by a la mode, Inc. — 1-800-ALAMODE 3/2007

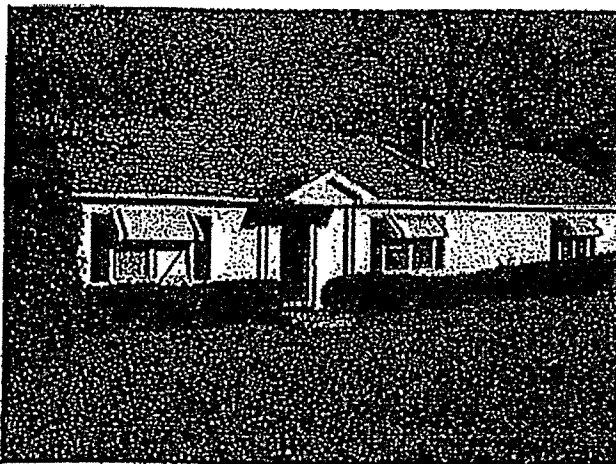
Comparable Photo Page

Borrower/Client				
Property Address 1085 Weeks Road				
City	Alken	County	Alken	State SC Zip Code
Lender	None			



Comparable 4

401 McQueen St
 Prox. to Subject 19.73 miles NW
 Sales Price 38,900
 Gross Living Area 2,370
 Total Rooms 8
 Total Bedrooms 4
 Total Bathrooms 3
 Location Rural
 View rural
 Site .38 ac
 Quality Average
 Age 60



Comparable 5

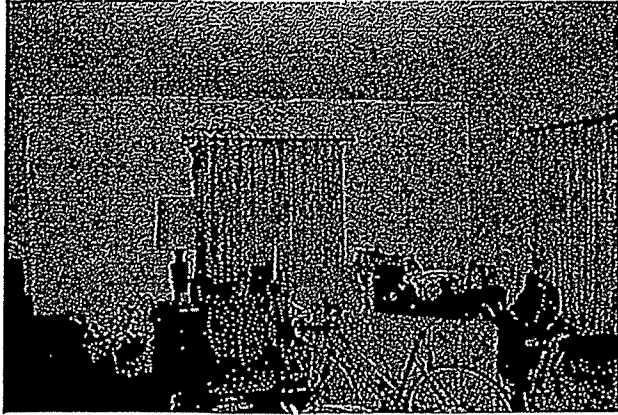
635 Addison St
 Prox. to Subject 22.81 miles NW
 Sales Price 44,000
 Gross Living Area 1,792
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2
 Location small town rural
 View Rural subdiv.
 Site .83 ac
 Quality Fair
 Age 61

Comparable 6

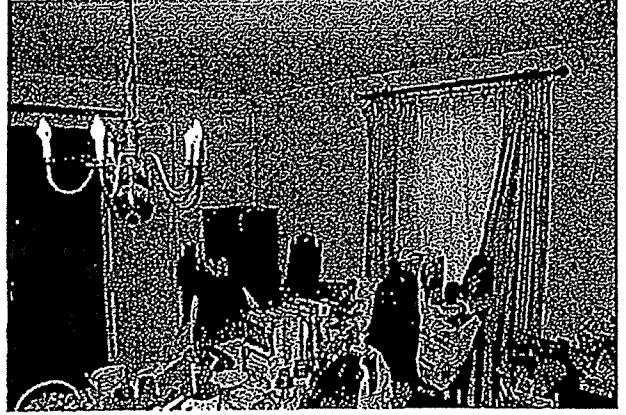
Prox. to Subject
 Sales Price
 Gross Living Area
 Total Rooms
 Total Bedrooms
 Total Bathrooms
 Location
 View
 Site
 Quality
 Age

Photograph Addendum

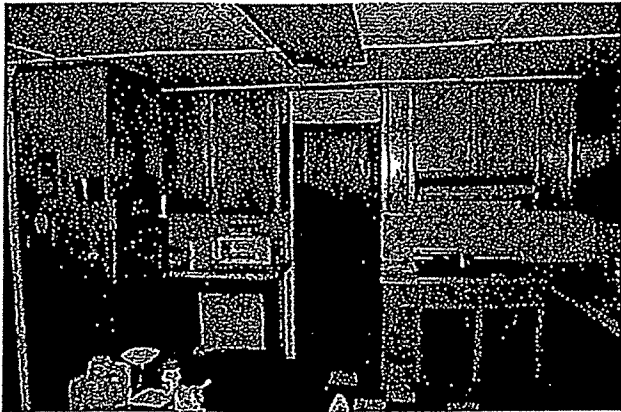
Borrower/Client				
Property Address 1085 Weeks Road				
City	Alken	County	Alken	State SC Zip Code
Lender	None			



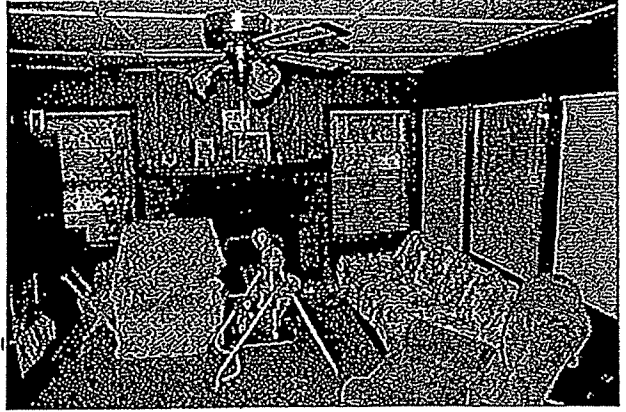
Living Room



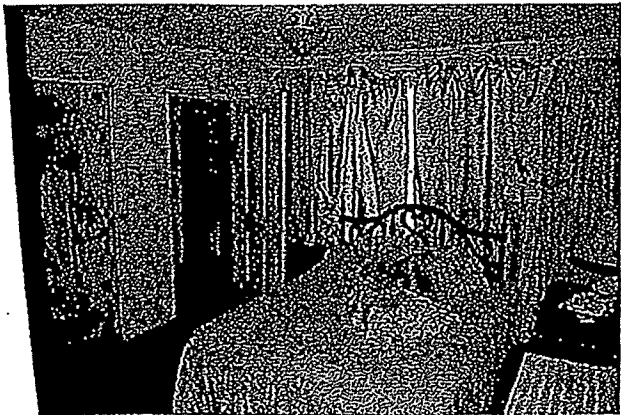
Dining Room



Kitchen



Den/family room



Master Bedroom (downstairs)

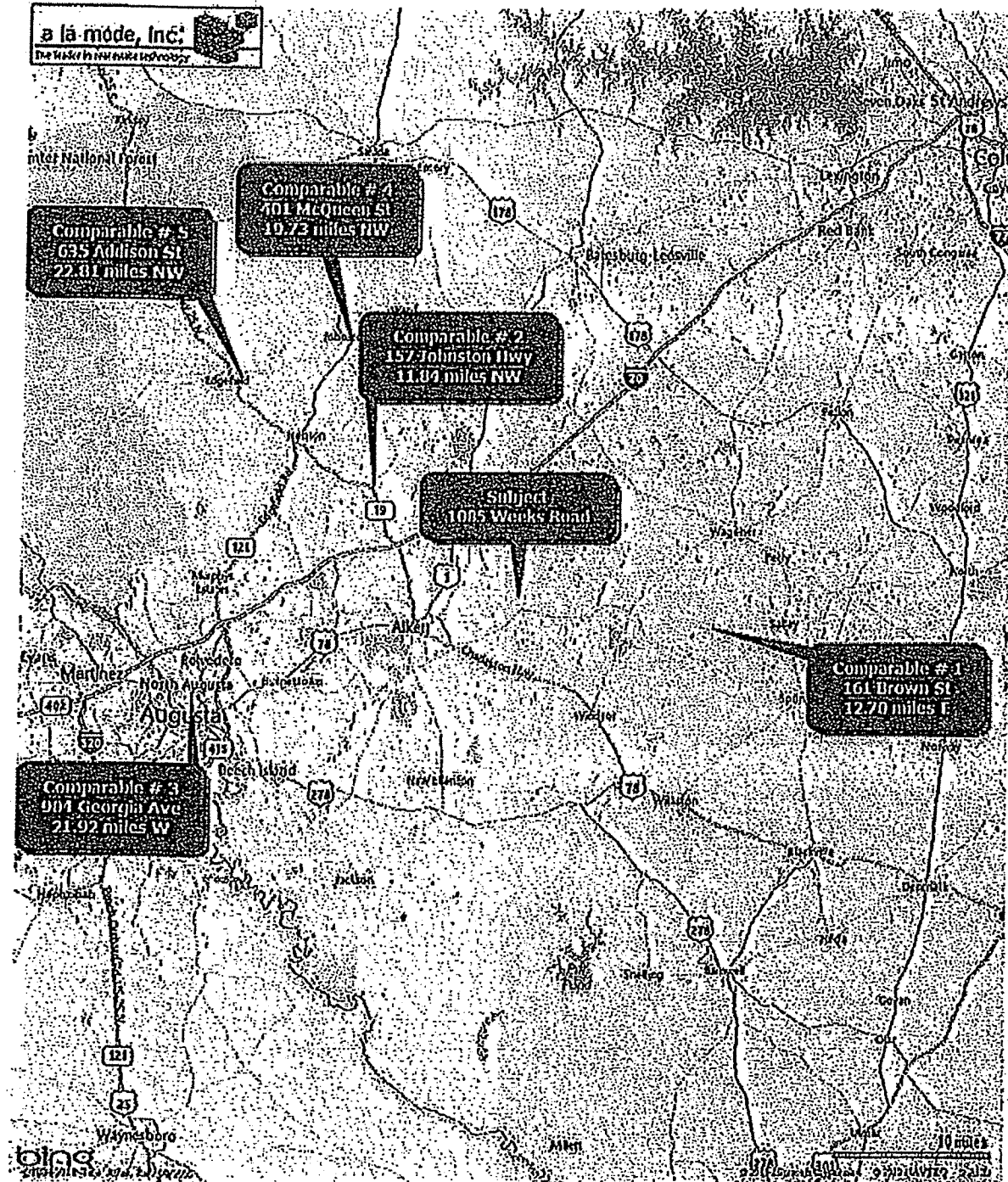


Full bath

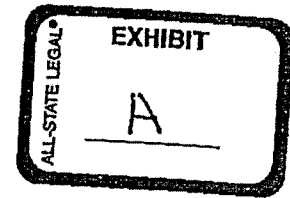
Form PIC6_LT — "WinTOTAL" appraisal software by a la mode, Inc. — 1-800-ALAMODE

Location Map

Borrower/Client				
Property Address 1085 Weeks Road				
City	Alken	County	Alken	State SC Zip Code
Leader	None			



Form MAP_LT.LOC — "WiaTOTAL" appraisal software by a la mode, Inc. — 1-800-ALAMODE



APPRAISAL OF REAL PROPERTY

LOCATED AT

1121 Weeks Rd
Aiken, SC 29805
1.15 Acre, Weeks Rd-TMS#169-00-09-001

FOR

The Estate of James Rendall Weeks
1121 Weeks Rd
Aiken, SC 29805

AS OF

August 21, 2018

BY

Maurice M. Williams, Jr.
Real Estate Appraiser
CR2763

LAND APPRAISAL REPORT

Borrower <u>N/A</u>		Census Tract <u>0202.00</u>		File No. <u>18080006</u>																																																																																																
Property Address <u>1121 Weeks Rd</u>		Map Reference <u>12260</u>																																																																																																		
City <u>Alken</u>		County <u>Alken</u>		State <u>SC</u> Zip Code <u>29805</u>																																																																																																
Legal Description <u>1.15 Acre, Weeks Rd-TMS#169-00-09-001</u>																																																																																																				
Sale Price \$ <u>N/A</u>		Date of Sale <u>N/A</u>		Loan Term <u>N/A</u> yrs.																																																																																																
Actual Real Estate Taxes \$ <u>180</u>		(or) Loan charges to be paid by seller \$ <u>N/A</u>		Property Rights Appraised ☒ Fee ☐ Leasehold ☐ De Minimis PUD																																																																																																
Lender/Clerk <u>The Estate of James Rendall Weeks</u>		Address <u>1121 Weeks Rd, Alken, SC 29805</u>																																																																																																		
Occupant <u>Vacant Land</u>		Appraiser <u>Maurice M. Williams, Jr.</u>		Instructions to Appraiser <u>Fee Simple, Market Value Appraisal</u>																																																																																																
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Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise) <u>Subject is located in a rural area of Alken County consisting of similar style homes in similar condition including single and double wide manufactured houses. Employment centers are reasonably accessible and commute times during peak traffic periods are considered reasonable. Other land use is vacant or agricultural land.</u>																																																																																																				
Dimensions <u>240 x 220 x 215 x 222</u> = <u>50,278 sq ft 1.15 Acre</u> ☐ Corner Lot Zoning Classification <u>Alken County RUD</u> Present Improvements ☒ Do ☐ Do Not Conform to Zoning Regulations																																																																																																				
Highest and Best Use ☐ Present Use ☒ Other (specify) <u>Single Family Residential</u> Etc. ☒ Public ☐ Private Gas ☐ None ☐ Private Well Water ☐ Septic System ☐ Street Lights San. Sewer ☐ Underground Ect. & Tel. ☐ Sidewalk																																																																																																				
Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions) <u>Drainage and utility easements are typical for the area and don't adversely affect the subject's marketability or value. Septic systems and private wells are typical for the area and not considered adverse to value. Public sewer and water are not available to the subject. The last sale of the subject was a non-arms length transaction conveying 1 acre of a larger tract. No plot of the subject appears in the public record.</u>																																																																																																				
The undersigned has noted the following recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.																																																																																																				
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I (WE) ESTIMATE THE MARKET VALUE OF THE SUBJECT PROPERTY AS OF <u>August 21, 2018</u> TO BE \$ <u>7,800</u>																																																																																																				
Appraiser <u>Maurice M. Williams, Jr.</u> Supervisory Appraiser (if applicable) _____ Date of Signature and Report <u>08/28/2018</u> Date of Signature _____ Title <u>Real Estate Appraiser</u> Title _____ State Certification # <u>CR-2783</u> ST SC State Certification # _____ ST Or State License # _____ ST Or State License # _____ ST Expiration Date of State Certification or License <u>06/30/2020</u> Expiration Date of State Certification or License _____ Date of Inspection (if applicable) <u>August 21, 2018</u> ☐ Did ☐ Did Not Inspect Property Date of Inspection _____																																																																																																				

ADDITIONAL COMPARABLE SALES

File No. 18080006

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 4		COMPARABLE NO. 5		COMPARABLE NO. 6	
Address	1121 Weeks Rd Aiken, SC 29805	New Holland Rd Aiken, SC 29805		Coleman Bridge Rd Aiken, SC 29805		Lot 14, Shaws Fork Rd Aiken, SC 29805	
Proximity to Subject		0.80 miles E		2.25 miles E		2.55 miles E	
Sales Price	\$ N/A	\$ 32,000		\$ 33,500		\$ 49,900	
Price \$/Sq. Ft.	\$ N/A	\$.13		\$.15		\$.23	
Data Source(s)	Inspection/CoRecs	ExtInsp.CoRecs.170-00-01-008		ExtInsp.CoRecs.204-00-01-047		ExtInsp.CoRecs.187-00-08-002	
ITEM	DESCRIPTION	DESCRIPTION	+/- \$ Adjust.	DESCRIPTION	+/- \$ Adjust.	DESCRIPTION	+/- \$ Adjust.
Date of Sale/Time Adj.	N/A	05/21/2016		09/20/2016		09/01/2016	
Location	Rural	Rural/Average		Rural/Average		Rural/Average	
Size/View	50,278 sf 1.15 Acres	5.7 Acres/Rural/Avg	-28,540	5 Acres/Rural/Avg	-24,150	5 Acres/Rural/Avg	-24,150
Access	Public/Unpaved/Avg	Public/Paved/Avg		Public/Paved/Avg		Public/Paved/Avg	
Utilities	Electric	Electric		Electric		Electric	
Topography	Gently Rolling/Avg	Gently Rolling/Avg		Gently Rolling/Avg		Gently Rolling/Avg	
Improvements	None	Fence	+5,000	None		Riding Trails	-10,000
Sales or Financing Concessions	N/A	None		None		None	
Net Adj. (Total)		☐ + ☒ - \$	-23,540	☐ + ☒ - \$	-24,150	☐ + ☒ - \$	-34,150
Indicated Value of Subject		\$ 8,480		\$ 9,350		\$ 15,750	

Comments on Market Data

MARKET DATA ANALYSIS

Supplemental Addendum

File No. 18080006

Borrower	N/A				
Property Address	1121 Weeks Rd				
City	Alken	County	Alken	State	SC Zip Code 29805
Lender/Client	The Estate of James Randall Weeks				

• Land: Market Data

The sale of small sized lots in rural Alken County have been rare in the past 24 months. The six comparable sales here are the best available to me. All six comparables are in the subject's market area. No adjustment for location is warranted. All six have equal access to utilities and amenities. There seems to be no value difference between paved and unpaved roads due to the popularity of equestrian use properties. At 1.15 acre, the subject is too small to be valued for equestrian uses. The subject has varying topography including some low areas. It appears the low areas do not preclude use of the property as residential, but a speculation test is recommended.

• Land: Market Data Comments

Sales of residential property this size in the rural areas of Alken County are scarce. The three sales analyzed here are the best available and give a good indication of the value of the subject. The adjusted sales price per acre is used as the value indicator. Adjustments for acreage are made on a per square foot basis for purposes of consistency. Comparables #1, #2 and #3 are closest sales to the subject in size but may not be closest in proximity. Sales #4, #5 and #6 are in the subject market area but are larger in size. Thus the necessity to use consistent adjustments. Sales prices of the six comparables analyzed here range from \$.08 to \$.18 per square foot. The average is \$.138, the median is \$.15 and the mean is \$.143. For the purposes of this report adjustments for the difference in size between the subject and the comparables is \$.144. An adjustment is made for economy of scale based on a paired sales analysis.

Subject Photo Page

Borrower	N/A						
Property Address	1121 Weeks Rd						
City	Aiken	County	Aiken	State	SC	Zip Code	29805
Lender/Client	The Estate of James Randall Weeks						



Subject on Left

1121 Weeks Rd
 Sales Price N/A
 G.L.A.
 Tot. Rooms
 Tot. Bedrms.
 Tot. Bathrms.
 Location Rural
 View 50,278 sf 1.15 Acre
 Site
 Quality
 Age



Subject on Right



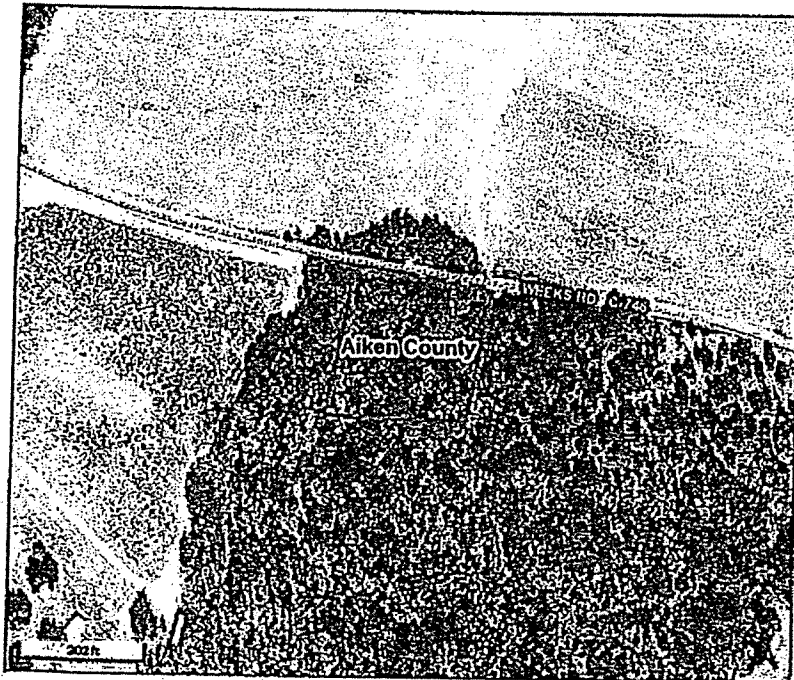
Subject Right Side

Borrower	N/A				
Property Address	1121 Weeks Rd				
City	Aiken	County	Aiken	State	SC
Lender/Cient	The Estate of James Randall Weeks		Zip Code	29805	



Aerial

 **qPublic.net**™ Aiken County, SC



Overview



Legend

County Boundaries

- ☒ Aiken County
- Barnwell County;
- Burke County;
- Columbia County;
- Edgefield County;
- Lexington County;
- Orangeburg
- County; Richmond
- County; Saluda
- County

- Parcels
- Roads

Parcel ID	169-00-09-001	Alternate ID	n/a	Owner Name	JAMES RANDALL WEEKS
Sec/Twp/Rng	1690009	Class	n/a		
Property Address	1121 WEEKS RD	Acreage	1.17		
	AIKEN				
District	n/a				
Brief Tax Description	n/a				

(Note: Not to be used on legal documents)

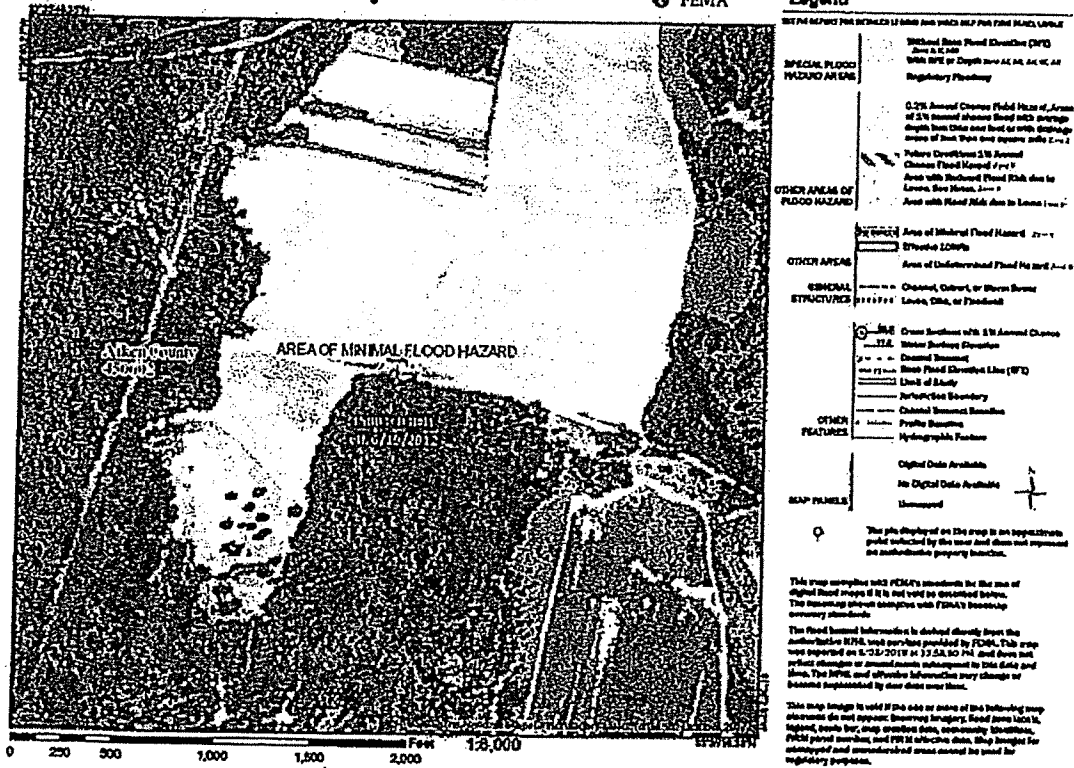
Date created: 8/16/2018
 List Data Uploaded: 8/15/2018 11:38:01 PM

Developed by  **Schneider**
 GEOGRAPHICAL

National Flood Hazard Layer FIRMette



Legend



VOL 192 PAGE 257

Transferor Must Be 21 or Older To Make Estate
Succession Subject To Estate Taxes
Transferor Must Be 21 or Older To Make Estate

STATE OF SOUTH CAROLINA,
COUNTY OF Aiken

Know all Men by these Presents,

Harriette E. Weeks

In the State aforesaid FOR AND In consideration of the
sum of FIVE (\$5.00) and love and affection DOLLARS
to DO James Randall Weeks, Route 6, Box 107, Aiken, SC

In the State aforesaid, James Randall Weeks do hereby acknowledge
that he has granted, bargained, sold, aliened, conveyed, confirmed, released and otherwise made the said
James Randall Weeks his heirs and assigns, the following
described property, to wit:

All that certain piece, parcel or lot of land
located East of the City of Aiken, County of Aiken, and
containing one acre more or less and being described as
follows: Begin at a stake on County Dirt Road 561
that is located 1,625 feet from where County dirt road No.
561 intersects with S.C. Highway No. 206
and go 1,000 feet South to a Cherry tree that is
located in the Northeast corner of said lot; hence in a
Southerly direction along a line for 240 feet to a Red Oak
Tree; thence in an Easterly direction along a line for 220
feet to a Red Oak Tree; thence in a Northerly direction for
215 feet to a live Oak Tree; thence in a Easterly direction
for 225 feet to the Cherry Tree which was the point of
beginning. Also conveyed is the right of ingress and egress
over the current driveway to said lot, said right of ingress
and egress to be 20 feet in width and extend from said
County dirt road No. to the real estate described herein.

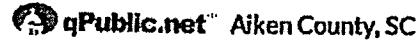
Derivation - Estate of James R. Weeks, Sr. a portion of Tax
Map No. 88-225-01-013

AIKEN COUNTY
TAX ASSESSOR
d. y. d. w. h. s.
88-225-01-013
4/21/73

Tax Card

qPublic.net - Aiken County, SC

Page 1 of 1



Parcel Summary

Parcel ID: 2AP-00-09-001
 Location Address: 1121 WEEKS RD
 Aiken 29801
 Legal Description: (Note: Not to be used on legal documents)
 Property Class / Property Type: RESIDENTIAL / REAL PROPERTY
 Neighborhood: EQUINE 4
 Fire District: COUCHTON FIRE DEPARTMENT
 Building Description: UNINCORPORATED
 Tax District: 4% RATIO = 254.3 OWNER-OCCUPIED 4% RATIO = 97.2
 Millage Rate: 1.00
 Acres: COUNCIL DISTRICT ONE
 Easements: S OF HWY 204
 Council District: S OF HWY 204
 Location Description: S OF HWY 204

Owner Information

JAMES RANDOLPH WEEKS
 1121 WEEKS RD
 Aiken, SC 29801

Land Information

Land Type	Units	Unit Type	Appraised Value	Market Value
Residential 6K	1	AC	\$12,000	\$12,000

Mobile Homes on Parcel

Property Card	Class	Category	Serial Number	Decal Number	Color	Length x Width	Total Area Sq Ft	Year	Market Value
777-00-22-065	NON-OWNER OCCUPIED RESIDENTIAL (6K)	Two-Section Aluminum	GBH4034317AB	49572	WHITE	40 x 25	1,480	2001	\$18,536

Property Valuation History

	2017	2016	2015	2014	2013
Land Value	\$12,000	\$12,000	\$8,941	\$8,941	\$8,941
Improvement Value	\$0	\$0	\$0	\$0	\$0
Total Market Value	\$12,000	\$12,000	\$8,941	\$8,941	\$8,941
Total Appraised Value	\$12,000	\$12,000	\$8,941	\$8,941	\$8,941
Assessed Value	\$270	\$720	\$540	\$540	\$540

No data available for the following modules: Residential Buildings, Commercial Buildings, Mobile Home Information, Miscellaneous Improvement Information, Sales, Skyshots, Photos.

The Aiken County Assessor's Office and IT/Geoservices Division strive to produce the most accurate information possible. No express or implied warranties of any kind are provided for, or applicable to, the data herein, its use, or its interpretation. All assessment information is subject to change.

Last Data Upload: 8/15/2018 11:28:01 PM



<https://qpublic.schneidercorp.com/Application.aspx?AppID=844&LayerID=15264&PageT...> 8/16/2018

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

* Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgement.

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

CONTINGENT AND LIMITING CONDITIONS:

The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower, the mortgagee or its successors and assigns, the mortgage insurer, consultants, professional appraisal organizations, any state or federally approved financial institution, or any department, agency, or instrumentality of the United States or any state or the District of Columbia, except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

APPRAISER'S CERTIFICATION:

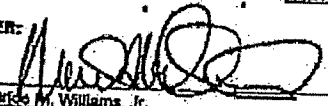
The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

This report complies with Title XI of FIRREA Act of 1989, as amended 012 U.S.C. 3331

SUPERVISORY APPRAISER'S CERTIFICATION:

If a supervisory appraiser signed this appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED:1121 Weeks Rd, Aiken, SC 29805**APPRAISER:**Signature: Name: Maurice M. Williams, Jr.Date Signed: 08/28/2018State Certification #: CR-2763

or State License #:

State: SCExpiration Date of Certification or License: 06/30/2020**SUPERVISORY APPRAISER (only if required):**

Signature: _____

Name: _____

Date Signed: _____

State Certification #:

or State License #:

State: _____

Expiration Date of Certification or License: _____

☐ Did☐ Did Not Inspect Property

LAST WILL AND TESTAMENT

I, JAMES RANDALL WEEKS, JR. , a resident of and domiciled in the County of Aiken, State of South Carolina, do hereby publish and declare this as and for my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

At the time of the making of this Will, I am legally separated from my wife,
Deborah T. Weeks. I have two living children, namely, Joshua Randall Weeks and Miranda
Dawn Weeks.

ITEM I

I direct that all my just and legally enforceable debts be paid as soon as practicable after my death. If at the time of my death, I own any real property which is subject to a mortgage, I direct that the devisee taking such mortgaged property shall take it subject to such mortgage.

ITEM II

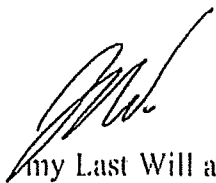
I give and bequeath all of my personal and household effects of every kind including, but not limited to, furniture, furnishings, pictures, books, silverware, wearing apparel, jewelry, and automobiles and other vehicles to my children, Joshua Randall Weeks and Miranda Dawn Weeks, or the survivor thereof, in approximately equal shares. I request that my Personal Representative and beneficiaries abide by any memorandum left by me directing the disposition

of this property or any portion thereof. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to the minor or to any person with whom such minor is residing or who has the care and control of such minor without further responsibility, and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative.

ITEM III

I give, devise and bequeath the rest, residue and remainder of my property of every kind and description, wherever situate and whether acquired before or after the execution of this Will, absolutely in fee simple to my two children, Joshua Randall Weeks and Miranda Dawn Weeks, or the survivor thereof, equally, share and share alike.

ITEM IV



I hereby nominate, constitute and appoint as Personal Representative of this my Last Will and Testament my brother, David W. Weeks, and I direct that he shall serve without bond. If for any reason he is unable or unwilling to serve or continue to serve, then I hereby nominate, constitute and appoint my son, Joshua Randall Weeks, to serve as substitute or successor Personal Representative, and I direct that he shall serve without bond.

ITEM V



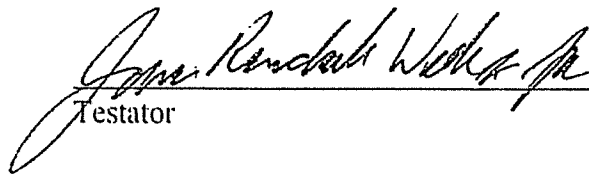
I grant unto my Personal Representative general powers; my Personal Representative is to exercise all of the powers in the management of my estate which any individual could exercise in the management of similar property owned in his own right, including the power to sell real estate and other assets, and upon such terms and conditions as to my Personal Representative may seem best. My Personal Representative is empowered to execute

and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this Will, without being limited in any way by any specific grants of power made, and without the necessity of a court order.

ITEM VI

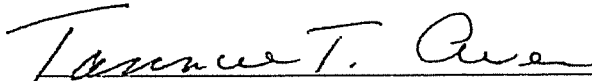
My estranged wife, Deborah T. Weeks, has a daughter, Randi Nicole Weeks, who was born after Deborah T. Weeks and I were married. I am not the biological father of Randi Nicole Weeks. I am including this Item in my Will to acknowledge the existence of Randi Nicole Weeks. I further acknowledge I am intentionally making no gift, bequest, or other disposition to Deborah T. Weeks or Randi Nicole Weeks by the provisions of this Will.

I, JAMES RANDALL WEEKS, JR., the testator, sign my name to this instrument this 9th day of February, 2011, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and I sign it willingly, that I execute it as my free and voluntary act for the purpose therein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.


Testator

We, the undersigned witnesses, sign our names to this instrument, and at least one of us, being first duly sworn, does hereby declare, generally and to the undersigned authority, that the testator signs and executes this instrument as his Last Will and that he signs it willingly, and that each of us, in the presence and hearing of the testator, hereby signs this Will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen

(18) years of age or older, of sound mind and under no constraint or undue influence.



Witness



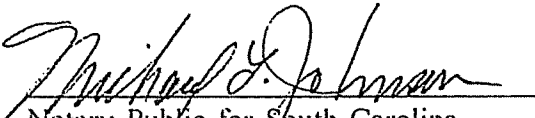
Witness

STATE OF SOUTH CAROLINA)

)

COUNTY OF AIKEN)

Subscribed, sworn to and acknowledged before me by **JAMES RANDALL WEEKS, JR.**, the testator, and subscribed and sworn to before me by Tannue T. Owen, witness, this 9th day of February, 2011.



Notary Public for South Carolina
My Commission Expires: 02/24/2014

CERTIFICATION OF VITAL RECORD

2017 ES02 0855

DEATH CERTIFICATION

STATE FILE NUMBER : 139-17-030529

DECEDENT'S NAME: *JAMES RANDALL WEEKS JR*

AKA: NA

ARMED FORCES: NO

DATE OF BIRTH: MAY 27, 1951

TYPE OF PLACE OF DEATH: DECEDENT'S HOME

NAME AND ADDRESS OF PLACE OF DEATH: 1123 WEEKS ROAD, AIKEN, SC 29805

PLACE OF DISPOSITION: CLEAR WATER BRANCH BAPTIST CHURCH CEMETERY

DISPOSITION LOCATION: AIKEN, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: 1085 WEEKS ROAD, AIKEN, AIKEN COUNTY, SC, 29805

PLACE OF BIRTH: SOUTH CAROLINA

SURVIVING SPOUSE'S NAME: DEBORAH TAYLOR

FATHER'S NAME: JAMES RANDALL WEEKS SR.

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: HARRIETTE KILGORE

INFORMANT'S NAME: MIRANDA DAWN WEEKS

MAILING ADDRESS: 1123 WEEKS ROAD, AIKEN, SC, 29805

FUNERAL HOME: SHELLHOUSE RIVERS FUNERAL HOME, INC., 715 E. PINE LOG ROAD, AIKEN, SC, 29803

FUNERAL DIRECTOR: C. MITCHELL RIVERS

EMBALMER'S NAME: JASON B HUCKS

ACTUAL OR PRESUMED DATE OF DEATH: AUGUST 16, 2017

ACTUAL OR PRESUMED TIME OF DEATH: 2035

CAUSE OF DEATH - PART I

ACUTE MYOCARDIAL INFARCTION

ATHEROSCLEROTIC CARDIOVASCULAR DISEASE

TYPE 2 DIABETES MELLITUS

COPD

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

DATE OF INJURY: NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: DR. RAYMOND COLLINS

CERTIFIER'S ADDRESS: NA

DATE FILED: AUGUST 23, 2017

DATE OF ISSUANCE: AUGUST 23, 2017

SPECIAL INSTRUCTIONS:

NA

SEX: MALE

SOCIAL SECURITY NUMB 0854

AGE: 66 YEARS

COUNTY OF DEATH: AIKEN

MARITAL STATUS: MARRIED

RELATIONSHIP: DAUGHTER

LICENSE NUMBER: 1830

LICENSE NUMBER: 2539

MANNER OF DEATH: NATURAL

AUTOPSY PERFORMED? NO

TIME OF INJURY: NA

AUTOPSY AVAILABLE? NA

INJURY AT WORK? NA

LICENSE NUMBER: 20803

Filed: 08-23-17

Tonya L. Marchant
Probate Court Judge

By: D. Villanueva

SC06171746

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Shae R. Sutton
Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

STATE OF SOUTH CAROLINA

COUNTY OF: AIKEN

IN THE MATTER OF:

JAMES RANDALL WEEKS JR

(Decedent)

IN THE PROBATE COURT

CERTIFICATE OF APPOINTMENT

CASE NUMBER: 2017ES02-0855

This is to certify that

DAVID W. WEEKS

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ SUCCESSOR PERSONAL REPRESENTATIVE
☐ SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on the 30TH day of AUGUST, 2017, is in full force and effect.

RESTRICTIONS:

NONE.

Executed this 30 day of August, 2017.

Tonya L. Marchant

Tonya L. Marchant, Probate Court Judge

Do not accept a copy of this certificate without
the raised seal of the Probate Court.



THE STATE OF SOUTH CAROLINA
The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No: 2021-001253

Deborah T. Weeks Appellant

v.

David W. Weeks Respondent

In Re: Estate of James Randall Weeks, Jr.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 25, 2022

S/ Leon E. Green
Leon E. Green
P.O. Box 1215
Aiken, South Carolina 29802
(803) 648-2025
Attorney for Appellant
SC Bar No.: 064116

THE STATE OF SOUTH CAROLINA
The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No: 2021-001253

Deborah T. Weeks Appellant

v.

David W. Weeks Respondent

In Re: Estate of James Randall Weeks, Jr.

PROOF OF SERVICE

I certify that on April 25, 2022, I served the **Record on Appeal** on the Respondent by hand delivering a copy of it to his Attorneys of record at the Law Office of Clarke W. McCants, III, Esquire, and Clarke W. McCants, IV, Esquire at 218 Newberry St., SW Aiken, SC 29801.

S/ Leon E. Green
Leon E. Green
P.O. Box 1215
Aiken, South Carolina 29802
(803) 648-2025
Attorney for Appellant
SC Bar No. 064116

THE STATE OF SOUTH CAROLINA
The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No: 2021-001253

Deborah T. Weeks Appellant

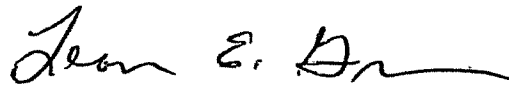
V.

David W. Weeks Respondent

In Re: Estate of James Randall Weeks, Jr.

FINAL BRIEF OF APPELLANT

May 13, 2022



Leon E. Green
P.O. Box 1215
Aiken, SC 29802
(803) 648-2025
Attorney for Appellant
SC Bar No.: 064116

Other Counsel of Record:
Clarke W. McCants, III, Esquire
Clarke Wardlaw McCants, IV, Esquire
218 Newberry Street
Aiken, SC 29801

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2) Did the Court commit error by applying the Domestic Law Statute of Equitable Apportionment of Marital Property to exclude real estate from the probate estate?	
3) Did the Court commit error by using a 2011 real estate appraisal of \$670,000.00 when <u>South Carolina Code Section 62-3-706 (A)</u> requires the use of the property's fair market value as of the date of the decedent's death?	
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STATEMENT OF ISSUES ON APPEAL

- 1) Did the Court commit error by disallowing an Elective Share from the Estate of James Randall Weeks, Jr., when the Appellant was legally married to him at the time of his death?
- 2) Did the Court commit error by applying the Domestic Law Statute of Equitable Apportionment of Marital Property to exclude real estate from the probate estate?
- 3) Did the Court commit error by using a 2011 real estate appraisal of \$670,000.00 when **South Carolina Code Section 62-3-706 (A)** requires the use of the property's fair market value as of the date of the decedent's death?
- 4) Did the Court commit error by applying a 40% Marketability/Minority discount in a probate matter where the sale of real estate is not an issue?
- 5) Did the Court commit error by finding that a temporary Family Court Order terminated all marital rights of the Appellant?

STATEMENT OF THE CASE

This matter is before the Court pursuant a Petition for Elective Share timely filed by Deborah T. Weeks on December 21, 2017, in the Probate Court for Aiken County. Deborah T. Weeks is the surviving spouse of the Decedent, James Randall Weeks, Jr., who died on August 16, 2017. James Randall Weeks, Jr., left his Last Will and Testament that did not provide for his surviving spouse, Deborah T. Weeks. (R. p. 81). Deborah T. Weeks claims that she is entitled a one-third (1/3) elective share of the probated estate of James Randall Weeks, Jr., as the surviving spouse, pursuant to **SC Code 62-2-201(a)**, Right of elective share.

Deborah T. Weeks and James Randall Weeks, Jr., were married to each other on January 10, 1998, in Aiken County, South Carolina. James Randall Weeks, Jr., died testate on August 16, 2017, in Aiken County, South Carolina, leaving his wife out of his Last Will and Testament. David W. Weeks was appointed the Personal Representative of the Estate of James Randall Weeks, Jr., on

August 30, 2017.

James Randall Weeks, Jr., executed **his Last Will and Testament** on February 9, 2011. The **Will** is filed with the Aiken County Probate Court. In the Preamble of his **Will**, James Randall Weeks, Jr., acknowledges that he was still married to Debra T. Weeks. He states that, "**I am legally separated from my wife, Deborah T. Weeks.**" The **Will** goes on to provides for the children of Mr. Weeks, but it does not provide any benefit for his surviving wife, Deborah T. Weeks.

On December 21, 2017, Deborah T. Weeks filed a timely Petition for Elective Share in the Probate Court for Aiken County. In the Petition she states that she and James Randall Weeks, Jr., were married to each other on January 10, 1998. She filed a Probate Court Certified Marriage Certificate with the Court confirming her marriage to James Randall Weeks, Jr. (R. p. 54). It is uncontroverted that the parties were never divorced from each other and were legally married to each other at the time of his death on August 16, 2017.

Deborah T. Weeks filed for a divorce from James Randall Weeks, Jr., in the Aiken County Family Court on July 15, 2010. (R. p. 13, Order of Dismissal 2010-DR-02-1080). Several Temporary Hearing were held between the parties, but there was never a final hearing to dissolve the marriage.

One of the Temporary Orders dated March 23, 2011, states that the parties wish to **leave the case open pending a division of the marital assets and a final hearing for divorce.** (R. p. 17, Conclusions of Law, paragraph 1). There was never a final hearing between the parties.

On August 5, 2012, the Aiken County Family Court issued an Order of Dismissal (Without Prejudice). The Order did not divide their marital property or divorce the parties. Deborah T. Weeks nor James Randall Weeks, Jr., elected to refile the divorce action. James Randall Weeks, Jr., subsequently died on August 16, 2017.

On February 27, 2020, a **Merits Hearing** was held on the Petition for Elective Share filed by Deborah T. Weeks. All parties were present for the hearing and testimony was taken and numerous exhibits were entered into evidence by counsel on behalf of both parties. At the close of the hearing the court announced that it would hold all rulings in abeyance and instructed both Counsel to prepare a Proposed Order and Brief in support of their position in the matter.

On May 15, 2020, the Honorable Tonya L. Marchant made a finding that a Final Family Court Order gave the Petitioner all the property she is entitled to, and excluded her from benefitting the real estate in the Probate Estate.

In addition, the Court found that the 2011 real estate appraisal of \$670,000.00, was appropriate while disregarding South Carolina Code Section 62-3-706 (A), that requires the use of the property's fair market value as of the date of the decedent's death.

The Court also found it appropriate to apply a 40% Marketability/Minority discount to the real estate in this probate matter. The Court also found that the temporary Family Court Order terminated all marital rights of Deborah T. Weeks.

On May 15, 2020, the Court issued an Order disallowing Deborah T. Weeks, the surviving spouse, an Elective Share from the Estate of James Randall Weeks, Jr. The Order was appealed to the Common Pleas Court for Aiken County.

On August 2, 2021, a hearing was held before the Honorable Courtney Clyburn Pope. After hearing the arguments of counsel and consideration of the evidence, the Circuit Court ruled that no errors of law were found and Affirmed the Probate Court's decision.

STANDARD OF REVIEW

A proceeding in probate court may either be an action at law or in equity.” In re Estate of Holden, 343 S.C. 267, 278, 539 S.E.2d 703, 709 (2000). “Whether the action is one at law or in equity is determined by the nature of the pleadings and the character of the relief sought.” Id . “When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them.” Neely v. Thomasson , 365 S.C. 345, 349–50, 618 S.E.2d 884, 886 (2005). “Questions of law, however, may be decided with no particular deference to the lower court.” Id . at 350, 618 S.E.2d at 886.

This case is an action at law and involves a misapplication of the law. Since this case involves questions involving the law, this case may be decided with no particular deference to the lower court ruling.

ARGUMENTS

ARGUMENT 1

Is Deborah T. Weeks entitled to an Elective Share from the Estate of James Randall Weeks, Jr., pursuant to S.C. Code Section 62-2-201(a) (Supp.)?

Deborah T. Weeks is the surviving spouse of James Randall Weeks, Jr., and filed a timely Petition for an elective share of his estate. There is no controversy related to Debra T. Weeks being the surviving spouse or the timeliness of filing for an Elective Share by her.

South Carolina Code Section 62-2-201(a) is clear and unambiguous regarding the election of an elective share. According to the statute, if a married person domiciled in this State dies, the

surviving spouse has a right of election to take an elective share of one-third of the decedent's **probate estate**. Debra T. Weeks made the election under the statute.

It is uncontroverted by the parties that Mr. Weeks was a resident of this State at the time of his death and is therefore, it is not an issue. All documentation filed with the Court confirms that James Randall Weeks, Jr., was resident of Aiken County South Carolina at his death.

It is also uncontroverted by the parties that Deborah T. Weeks is the surviving spouse of James Randall Weeks, Jr. She filed with the Court a certified Certificate of Marriage showing that she married Mr. Weeks on January 10, 1998. (R. p. 54).

Moreover, the Respondent acknowledges in the Transcript when he says that [it is] "Our contention that she is entitled to file for an Elective Share and as far as we know they were still married") (R. p. 36, line). The Appellant agrees with the Respondent's summation that Ms. Weeks is entitled to file an Elective Share.

When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts. See **J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth., 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999).**

Based on the statute, undisputed testimony and arguments presented, supra, Deborah T. Weeks is entitled to file and take an Elective Share of the Estate of James Randall Weeks, Jr., as a Surviving Spouse.

The ruling in by Court that the "Petitioner is entitled to nothing for her Elective Share Claim against the estate of the Decedent due to the fact that there was essentially and for all practical

purposes, a Family Court Order terminating all marital rights and equitable distribution between the spouses,”¹ The Court does correctly acknowledge that she is entitled to an elective share but incorrectly rules when it says that there is a Family Court Order terminating all marital rights and equitable distribution between the spouses.

There is no evidence to support the Probate Court ruling that a Family Court Order terminated all marital rights and equitable distribution between the spouses. There has never been a Family Court Order terminating all marital rights and equitable distribution between the spouses.

There was marital litigation between the parties where Debra T. Weeks did file for a divorce from James Randall Weeks, Jr., based on Physical Cruelty and Adultery. There were three temporary hearings where each party received some property on a temporary basis, but not any permanent distribution. The Court said in Terry v. Terry, 400 S.C. 453, 456-57, 734 S.E.2d 646, 648 (2012) (“A temporary order of the family court is without prejudice to the rights of the parties. Such orders are, by definition, temporary—they neither decide any issue with finality nor affect a substantial right”). Whatever distributions that were made during those temporary hearings **did not terminate any** marital rights and equitable distribution between the spouses, much less **all** her of rights.

Even Deborah T. Weeks testified that parties had three temporary hearings, but no final hearing was ever held in the case. She testified that there was no final property settlement agreement was entered into by them. Even the language in the temporary order dated March 23, 2011, confirms it. It states that “the parties wish to leave the case open pending a division of the

¹ The Court acknowledges that the parties are spouses. Under the Elective Share Statute, a surviving spouse has the right to an elective share that she cannot be divested of except by a written waiver. See S.C. Code § 62-2-204 (Supp.2001).

² One of the hearings was a for an Order of Protection against James Randall Weeks, Jr., filed by Debra T. Weeks.

marital assets and a final hearing for divorce." (R. p. 17, Conclusions of Law, paragraph 1). The March 23, 2011, hearing was the last hearing that was held before the Court dismissed the case and sending everything back to where it was before the start of divorce proceedings.

Moreover, the Court acknowledges the hearings were temporary hearings. In its findings, the Court stated that "It therefore appears that there were three hearings between these parties that were all held on temporary basis." (R. p. 6, second full paragraph). They were all temporary hearing and during those hearings, property was divided on a temporary basis and **was not** based on equitable division of marital assets.

Under South Carolina Law there is no such thing as temporary equitable division of marital assets in Domestic Litigation. In Terry v. Terry, 400 S.C. 453, 734 S.E.2d 646 (S.C. 2012), the Court said, "Neither Section 20-3-620 of the South Carolina Code nor case law provides that equitable division can be affected temporarily.

Furthermore, even there was such a thing as temporary equitable division of marital assets, in Domestic Litigation, a temporary order is vacated after one year and the order has no effect on anything. The entire case was dismissed after one year. (R. p. 13 Order of Dismissal dated August 5, 2012).

When the divorce action was dismissed on August 5, 2012, it also dismissed the temporary orders. In effect the temporary orders were vacated well before the Probate hearing began nearly 8 years later. It appears that the Court resurrected the temporary orders to give them effect to create a marital agreement between the parties. In either case the Probate Court does not have Subject Matter Jurisdiction to resurrect a temporary order between litigants or create an agreement between marital litigants.

Moreover, when the Court ruled that “ the Court specifically finds that Deborah received all assets from the marriage to which she was entitled and that the litigation between the parties essentially and for all practical purposes resulted in a final property division of the parties,” it exceeded interpretation of an agreement and reaches creation status or resurrection ability. The Court’s action clearly lands squarely into Domestic Relations Law. However, the Probate Court does not have the authority to make a finding related division of marital property and certainly not to resurrect a temporary order that was vacated on August 5, 2012. Even the Family Court does not resurrect a vacated/dismissed temporary order. After a dismissal of a case the Family Court in South Carolina requires a new action to be filed.

Although the Probate Court has jurisdiction to hear and determine issues relating to interpretation of marital agreements in connection with an estate, it does not have the authority to create a marital agreement between marital litigants.

ARGUMENT 2

Did the Court commit error by applying the Domestic Law Statute of Equitable Apportionment of Marital Property to exclude real estate from the probate estate?

South Carolina Code Section 62-2-202(a) is clear and unambiguous regarding what is to be included in a probate estate. According to **South Carolina Code Section 62-2-202(a)** a probate estate is the decedent’s property passing under the decedent’s will plus the decedent’s property passing by intestacy, reduced by funeral and administration expenses and enforceable claims.

In the case at hand, the Probate Court seems to apply **South Carolina Code Section 20-3-630** to exclude real estate listed on the estate inventory valued at \$670,000.00, as part of the probate estate. Consider what the Court said in the section of the Order entitled **Discussion**. The Court said that, “Petitioner would not have been able to recover any interest in the Decedent’s real estate in

the divorce action based upon **Section 20-3-630 of the S. C. Code of Laws.**" "She now, therefore, seeks an elective share in the inherited and gifted property owned by Decedent which he received from his mother, which would have been unavailable to her in the divorce." "Should this Court allow her to receive an elective share against the inherited property, this would grant property to her unavailable in the Family Court action." "This is an obvious unjust result." "This Court is obligated to follow the law, but it is not obligated to turn a blind eye to justice." (R. p. 11, paragraph 5, - p. 12) . If this was marital litigation, then it would be correct exclude inherited property based on **Section 20-3-630 of the S. C. Code of Laws,** but that is not the case. Here again the Court seems to apply Domestic Law.

Under South Carolina Law, it is clear that **South Carolina Code Section 20-3-630(1).** applies to non-marital property. That section of the code states that property acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse is non-marital property and is excluded in equitable distribution in marital litigation. However, this not marital litigation and Domestic Law do not apply. Only Probate Law applies to this case. The Court erroneously excluded the real estate listed on the amended estate inventory valued at \$670,000.00, as part of the probate estate. The Court is not allowed to use **South Carolina Code Section 20-3-630(1)** to exclude inherited property as if this is marital litigation. When a party dies before marital litigation is complete, as is the case here, that deceased party's probate assets will pass pursuant to the South Carolina Probate Code.

The real estate listed on the estate of James Randall Weeks, Jr., amended inventory, valued at \$670,000.00, is part of the probate estate unless the Court determines it to be a different amount. In either case it is subject to the elective share petitioned for by Deborah T. Weeks.

ARGUMENT 3

Did the Court commit error by using a 2011 real estate appraisal of \$670,000.00 when South Carolina Code Section 62-3-706 (A) requires the use of the property's fair market value as of the date of the decedent's death?

During the course trial of this case, Counsel for the Respondent submitted an appraisal that was conducted in 2011, with parcel ID number 170-00-01-001, which is partially owned by the estate of James Randall Weeks, Jr. The appraisal has the property appraised at \$670,000.00. The Petitioner objected to the appraisal being entered into evidence. The objection was made because the 2011 appraisal was old and was done before the rise in property values in the equine areas of Aiken County. The property is in the equine section of Aiken County. However, the Court overruled the objection made by the Petitioner. (R. p. 34, line 18 – p. 35, line 4).

The appraisal at the time was approximately 8 years old and needed to be updated. The Petitioner believes that the outdated appraisal should not have been allowed into evidence. The Petitioner might have had doubts about the values. The initial inventory dated March 21, 2019, shows the value being \$800,000.00 versus the amended inventory dated September 10, 2018, showing \$670,000.00 as the value. The initial inventory was done closer to the decedent's death.

Moreover, the 2011, appraised value of \$670,000.00, is not representative of fair market value on the date of death according the Aiken County Tax Assessor's Office. The Petitioner introduced into evidence, without objection, a deed of distribution with the 2018 Aiken County Tax Assessor's Office document attached that assessed the fair market value of the same property to be \$1,003,000.00. (See deed of distribution with Aiken County Tax Assessor Document attached). The document was introduced without objection. (R. p. 29, line 12 – p. 33, line 4).

The Aiken County Tax Assessor's Office itemized their assessments. It assessed the land as having a fair market value of \$918,000.00. It assessed the house that is situated on the land as having a fair market value of \$82,973.00. The Tax Assessor's Office also assessed the miscellaneous improvement on the property as having a fair market value of \$2,492.00. The total fair market value of the property according to the Aiken County Tax Assessor's Office is

\$1,003,465.00. Again, the property is in the equine district of Aiken County and there is a substantial difference in the values in that area of the County as compared to today.

The Court found that, "Since this property was appraised for the estate of Harriet K. Weeks on September 6, 2011, only 7 years prior to the date of the decedent [death], the Court finds that the appraised value of \$670,000.00 has not changed and that it is an accurate appraisal for the purposes of this estate." The Court ruling does not incorporate **South Carolina Code Section 62-3-706 (A)**.

Under **South Carolina Code Section 62-3-706 (A)**, within ninety days after his appointment, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, **shall**: (1) prepare an inventory and appraisement of probate property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, **its fair market value as of the date of the decedent's death**, and the type and amount of any encumbrance that may exist with reference to any item.

The Personal Representative has failed to follow the mandate of **South Carolina Code Section 62-3-706 (A)** which requires him to file an inventory with the fair market value associated with parcel ID number 170-00-01-001, consisting of 255 acres of land. The Aiken County Tax Assessor's Office appraised value of \$1,003,000.00, is the appropriate amount to be entered on the

inventory, or in the alternative, have an updated appraisal conducted by a qualified and disinterested appraiser as mandated by the statute. The Probate Court decision to allow the 2011 appraisal into evidence should be reversed and the appraised value of \$1,003,000.00 should be added to the inventory.

ARGUMENT 4

Did the Court commit error by applying a 40% Marketability/Minority discount in a probate matter where the sale of real estate is not an issue?

The Respondent requested that the Probate Court apply a 40% lack-of-marketability discount to the 255 acres of land included in the estate inventory and appraisal filed on September 10, 2018 and the amended estate inventory and appraisal filed on March 21, 2019. The Petitioner objected to the Probate Court applying a 40% lack-of-marketability discount to the 255 acres of land. There is no basis for it or any authority that requires the Probate Court to apply a 40% lack-of-marketability discount in probate litigation or to the inventory and appraisal.

The lack-of-marketability and minority discounts reflect the lack of a ready market in which owners of closely held family corporations can sell their stock. South Carolina Family Courts apply the lack-of-marketability and/or minority discounts in equitable apportionment in marital litigation. Even if they were applicable to this case the application of not automatic. The Courts apply them on a case by case basis. See Clark v. Clark (2020) reiterating that whether a marketability discount or a lack of control discount is appropriate when apportioning marital assets is determined on a case-by-case basis." There are no cases dealing with the lack-of-marketability and/or minority discounts in a probate matter.

South Carolina Code Section 62-3-706 (A) requires the Personal Representative to file an inventory with the fair market value associated with estate property. It does not make any provisions for discounting property.

The Respondent cites Lefrak vs. Commissioner 66 T.C.M. 1297(1993) and other Tax Commission cases as authority to unilaterally apply a 40% lack of marketability discount. Lefrak is a New York case wherein the parties were gifted commercial building property and they were requesting the Tax Commissioner to approve a lack of marketability and minority discount for Federal Gift Tax purposes. Petitioners offered the expert report of Mr. Gregory Vlasak to support

their contention concerning the appropriate amount of discount. In that case the Court used expert testimony to allow a combined discount of 30 percent for minority or fractional interest and lack of marketability in valuing the buildings.

Our case is different than Lefrak. In our case deals with property being transferred to Deborah T. Weeks by operation of law, via elective share. The Personal Representative attached a 40% discount to property without benefit of an expert evaluation. The inventory should reflect the fair market value and not a discounted value and not arbitrarily reduced by the Personal Representative.

ARGUMENT 5

Did the Court commit error by finding that a temporary Family Court Order terminated all marital rights of the Appellant?

There was marital litigation between the parties where Debra T. Weeks filed for a divorce from James Randall Weeks, Jr., based on Physical Cruelty and Adultery. There were three temporary hearings where each party received minimal property on a temporary basis, but not any

permanent distribution. The Court spoke about temporary distribution in Terry. In Terry v. Terry, 400 S.C. 453, 456-57, 734 S.E.2d 646, 648 (2012) ("A temporary order of the family court is without prejudice to the rights of the parties. Such orders are, by definition, temporary- they neither decide any issue with finality nor affect a substantial right "). Whatever distributions that were made during those temporary hearings did not terminate any marital rights and equitable distribution between the spouses, much less all her of rights.

Deborah T. Weeks testified that parties had three temporary hearings, but no final hearing was ever held in the case. She testified that there was no final property settlement agreement entered into by them. Even the language in the temporary order dated March 23, 2011, confirms it. It states that **"the parties wish to leave the case open pending a division of the marital assets and a final hearing for divorce."** (R. p. 17, Conclusions of Law, paragraph 1). The March 23, 2011, hearing was the last hearing that was held before the Court dismissed the case and sending everything back to where it was before the start of divorce proceedings.

Moreover, the Court acknowledges the hearings were temporary hearings. In its findings, the Court stated that "It therefore appears that there were three hearings between these parties that were all held on temporary basis." (R. p. 6, second full paragraph). They were all temporary hearing and during those hearings, property was divided on a temporary basis and was not based on equitable division of marital assets.

There is no such thing as temporary equitable division of marital assets in Domestic Litigation. In Terry v. Terry, 400 S.C. 453, 734 S.E.2d 646 (S.C. 2012), the Court said, "Neither

Section 20-3-620 of the South Carolina Code nor case law provides that equitable division can be affected temporarily.

Furthermore, even there was such a thing as temporary equitable division of marital assets, in Domestic Law, a temporary order is vacated after one year and the order has no effect on anything. The case was dismissed after one year. (R. p. 13, Order of Dismissal dated August 5, 2012). The only the case could be revived is by the institution of a new action in Family Court. Neither party filed so the case does not exist. When the divorce action was dismissed on August 5, 2012, so were the temporary orders. The initial filing was the basis for the temporary orders. In effect the temporary orders were vacated well before the Probate hearing began nearly 8 years later. The Court would have to resurrect the temporary order to give them effect, ultimately to create a marital agreement between the parties that resolved all marital litigation between them. In either case the Probate Court does not have Subject Matter Jurisdiction to resurrect a temporary order between litigants or create an agreement between marital litigants.

CONCLUSION

James Randall Weeks, Jr., was a resident of Aiken County at the time of his death. The Petitioner was legally married to him at the time of his death. The Petition for Elective Share was timely filed by the Petitioner. The Court made reversible error by disallowing an Elective Share from the Estate of James Randall Weeks, Jr., to the Petitioner.

The Court committed reversible error by applying the Domestic Law Statute of Equitable Apportionment of Marital Property to exclude real estate from the probate estate. The probate estate is the decedent's property passing under the decedent's will plus the decedent's property

passing by intestacy, reduced by funeral and administration expenses and enforceable claims. The Court erred by utilizing the Equitable Apportionment Statute in this matter exclude property.

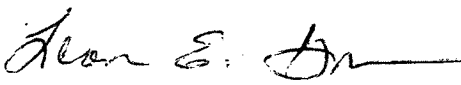
The Court is obligated by law to follow South Carolina Code Section 62-3-706 (A) which requires the use of the property's fair market value as of the date of the decedent's death. The Court failed to follow procedure by using a 2011 real estate appraisal of \$670,000.00, and by doing that, it did commit reversible error.

The Court committed reversible error by allowing the Respondent to unilaterally apply a 40% Marketability/Minority discount in a probate matter without expert testimony and where the Petitioner is not selling real estate. Marketability/Minority discount have been used in South Carolina to effect equitable distribution and is used on a case-by-case basis.

The Court committed reversible error by finding that a temporary Family Court Order terminated all marital rights of the Petitioner. A temporary order is used in marital litigation to set temporary boundaries related to property usage pending a final merits hearing. The temporary order in this probate matter was dismissed and found to no effect on equitable distribution of marital assets by the Family Court. The Family Court dismissed the case that was the foundation for the temporary order.

Based on the forgoing, the ruling in this case should be reversed on all these issues on appeal and the Probate Court directed to grant the Petitioner the Elective Share in the Estate of James Randall Weeks, Jr., and do not abridge any rights she has under the Probate Statute

Respectfully Submitted,
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Aiken, South Carolina
Dated: May 13, 2022

THE STATE OF SOUTH CAROLINA
The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No: 2021-001253

Deborah T. Weeks Appellant

v.

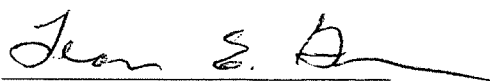
David W. Weeks Respondent

In Re: Estate of James Randall Weeks, Jr.

CERTIFICATE OF COUNSEL

I certify that the **Final Brief of Appellate** complies with the Rule 208(b) SCAR.

May 13, 2022



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THE STATE OF SOUTH CAROLINA
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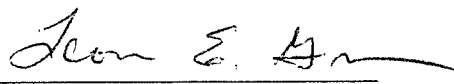
David W. Weeks Respondent

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PROOF OF SERVICE

I certify that I served the **Appellant's Final Brief** on David W. Weeks on May 16, 2022, by delivering a copy of it to his attorneys of record, Clarke W. McCants, III, Esquire and Clarke Wardlaw McCants, IV, Esquire, at 218 Newberry Street, Aiken, SC 29801.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

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Deborah T. Weeks.....Appellant.

v.

David W. Weeks.....Respondent.

FINAL BRIEF OF THE RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The Respondent respectfully submits that the following issues are presented for the Court's consideration in this matter:

1. DOES THE EVIDENCE CONTAINED IN THE RECORD FOR THIS MATTER SUPPORT THE PROBATE COURT'S DETERMINATION THAT THE APPELLANT WAIVED HER CLAIM FOR AN ELECTIVE SHARE OF THE ESTATE OF JAMES RANDALL WEEKS, JR?

2. IN THE EVENT THAT THIS COURT CONCLUDES THAT THE APPELLANT DID NOT WAIVE HER CLAIM DOES THE EVIDENCE CONTAINED IN THE RECORD FOR THIS MATTER SUPPORT THE PROBATE COURT'S CALCULATION OF THE VALUE OF CERTAIN REAL PROPERTY WHICH IS PART OF THE ESTATE?

STATEMENT OF THE CASE AND FACTUAL BACKGROUND

This matter involves an appeal from an Order of the Honorable Tonya L. Marchant, Probate Judge for Aiken County, South Carolina. In her Order Judge Marchant concluded, in part, that the Appellant waived her right to claim an elective share of the real and personal property comprising the Estate of James Randall Weeks, Jr. The Appellant then timely filed its appeal to the Circuit Court, which affirmed Judge Marchant's Order in its entirety.

The Respondent contends that there is ample evidence to support Judge Marchant's ruling on that principal issue and her Order should be affirmed. The Respondent further contends that if Judge Marchant correctly ruled with respect to this principal issue then the remaining issues raised by the Appellant as part of her appeal are moot and need not be addressed by this Court.

In 1983 Mr. Weeks' Mother, Harriett T. Weeks, conveyed to him 1.15 acres of real property located in Aiken County. (R. pp. 3-4). He owned that property until the time of his death on August 16, 2017. (R. p. 1).

Mr. Weeks and the Appellant were married on January 1, 1998. (R. p. 4). Their marriage was tumultuous, as outlined below. After just two years of being wedded the Appellant sought and obtained an Order of Protection from the Aiken County Family Court. (R. pp. 19-21). As part of that Order the Family Court Judge issued mutual restraining orders between the Parties and began the process of dividing their marital property. (Id.). There is no evidence in this case showing that Mr. Weeks and the Appellant ever lived together again as husband and wife nor otherwise reconciled their differences.

On July 15, 2010, Mrs. Weeks filed a Complaint for a divorce from Mr. Weeks.

As part of that Complaint she sought divorce immediately and on alleged at-fault grounds of adultery and physical cruelty. (R. p. 5). As noted by Judge Marchant Mrs. Weeks, at that time, filed an affidavit stating that she and Mr. Weeks separated on May 1, 2010 and had remained so separate and apart since that time. (Id.). In her affidavit she also swore under oath that there was no chance that the parties could reconcile and asked the Court to grant an award of alimony to her and a final division of marital property. (Id.).

On November 1, 2010, another Order was issued by the Family Court setting forth that the Appellant and Mr. Weeks had reached an agreement with respect to the division of certain marital property and marital debt. (R. pp. 22-25).

Harriett J. Weeks died testate on November 11, 2010. As part of her Last Will and Testament she bequeathed a 5/29th interest in certain real property owned by her to Mr. Weeks. (R. p. 2). In February 2011, Mr. Weeks executed his own Last Will and Testament leaving his entire estate to his two children. (R. p. 81), including the real property identified above. He specifically noted in his will that he was legally separated from the Appellant. (Id.).

Mr. Weeks and the Appellant found themselves before the Family Court again in February of 2011. At that time the Family Court Judge issued another Order by which Mr. Weeks was required to pay alimony to the Appellant, which he did. (R. p. 17). The Judge also undertook to further equitably divide the parties' marital property. (R. p. 16). Of note, the Appellant's Financial Declaration does not list as "marital property" the real property his Mother gave to him in 1983 or the 5/29th interest in the real property he inherited from her. (R. pp. 1-12). Likewise, the Appellant did not list such property in her Financial Declaration. (R. p. 6).

There is no dispute that as of the date of this latest Family Court Order, Mrs. Weeks

had been awarded and received a substantial part, if not all, of the property, both real and personal, that she would have ultimately received as part of a Final Order of Divorce from Mr. Weeks.

As this Court is aware, parties in divorce proceedings in South Carolina are required to finalize a such a matter within a certain period of time. Mrs. Weeks failed to do so. As a result, her complaint for divorce was administratively dismissed by the Family Court on August 5, 2012. (R. p. 13). Again, however, there is no evidence in this case that she and Mr. Weeks ended their differences, reconciled, acquired any additional property or debt together or lived as husband and wife after that date.

Of particular importance here is the fact that the Appellant never, as part of the Family Court case, asserted or contended that the real property given to Mr. Weeks by his Mother in 1983 or the 5/29th interest in the real property he inherited from her after her death should be treated by the Court as marital property subject to equitable distribution. It is also clear that the Appellant never pursued any further action in the Family Court seeking any further claim to any type of property, real or personal, to which she believed she was entitled to receive.

As noted, Mr. Weeks passed away in August 2017. His Brother, David W. Weeks, the Respondent herein, was appointed to be the Personal Representative of his Estate. (R. p. 86).

In December 2017 the Appellant filed a petition seeking an elective share of Mr. Weeks' estate. (R. p. 1). Pursuant to the Rules of the Probate Court, his Brother, as Personal Representative, filed a disallowance of that petition. (Id.). A hearing to consider the merits of those issues was held by Judge Marchant on February 27, 2020. Following that hearing, Judge Marchant issued her Order which has been appealed by the Appellant, and is now under review by this Court.

ARGUMENTS

I. THERE IS EVIDENCE CONTAINED IN THE RECORD WHICH SUPPORTS JUDGE MARCHANT'S FINDINGS AND CONCLUSIONS THAT THE APPELLANT WAIVED HER RIGHT TO CLAIM AN ELECTIVE SHARE OF THE ESTATE OF JAMES RANDALL WEEKS, JR.

When reviewing the decision of a Probate Court, the Court of Appeals should not disturb its conclusions unless review of the record discloses no evidence to support them. Matter of Howard, 315 S.C. 356 at 361, 434 S.E.2d 254 at 257 (1993); Neely v. Thomasson, 365 S.C. 345, 349, 618 S.E.2d 884, 886 (2005). In such actions, the party seeking relief, of course, bears his or her burden of proof by the greater weight of or preponderance of evidence presented. Vt. Mut. Ins. Co. v. Singleton, 316 S.C. 5, 10, 446 S.E.2d 417, 421 (1994). An appellate court considering an appeal from the Probate Court must apply the same rules of law that a higher Court would apply on appeal. Matter of Howard, 315 S.C. 356, 434 S.E.2d 254 (1993); S.C. Code Ann. § 62-1-308 (1976).

Judge Marchant correctly found and concluded that the Appellant waived any claim to an elective share of Mr. Weeks' estate by way of the Family Court proceedings. She cited S.C. Code Ann. § 62-2-204 (1976) to support her decision. That statute provides as follows:

(A) The rights of a surviving spouse to an elective share, homestead allowance, and exempt property, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver voluntarily signed by the waiving party after fair and reasonable disclosures to the waiving party of the other party's property and financial obligations have been given in writing.

(B) Unless it provides to the contrary, a waiver of all rights in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, and exempt property by each spouse in the property of the other and a disclaimer by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of a will executed before the waiver or property settlement.

After reviewing the lengthy history of the marital litigation between the Appellant and Mr. Weeks, including the agreements they reached during the course of such litigation and with respect to the division of any real or personal property interests, Judge Marchant wrote:

Therefore, the Court specifically finds that [the Appellant] received all assets from the marriage to which she was entitled and that the litigation between the parties essentially and for all practical purposes resulted in a final property division of the parties.

Such an evidentiary finding supports a legal conclusion that the Appellant waived her claim for an elective share of Mr. Weeks' estate. As part of the Family Court action both the Appellant and Mr. Weeks had the benefit of full disclosure and discovery with respect to any type of property owned by them together. Both had the benefit of able legal counsel representing them. The various Orders issued by the Family Court during the pendency of the marital litigation constitute agreements of the Parties to that litigation.

As noted in her Brief before this Court the Appellant relies heavily upon a single fact to support her claim for an elective share - that is, she and Mr. Weeks were still legally married at the time of his death. The Respondent does not dispute this fact. However, this does not control the outcome of this case. Indeed, § 62-2-204 contemplates situations where spouses, still married but legally separated, may enter into agreements by which their property is fully divided before a final and formal divorce is entered between them, rendering moot the issue of the existence of an elective share. If such an interpretation of this statutory provision is not correct then this particular section of our Probate Code is meaningless.

It appears that neither the South Carolina Court of Appeals nor our Supreme Court has directly addressed this issue. Judge Marchant, however, noted that decisions in at least

two other jurisdictions, New Jersey and Pennsylvania, would prohibit the Appellant from receiving an elective share under such circumstances as those presented in this case.

In North Carolina the Appellant would be barred from pursuing an elective share from Mr. Weeks estate. In The Matter of the Estate of Cracker, No. COA20-4 (N.C. App. 2020), the North Carolina Court of Appeals ruled that parties may even “impliedly” agree that any claims for elective shares of their respective estates may be waived in full. There, the Court of Appeals reviewed the history of the marital litigation between the parties and based upon the totality of the circumstances presented, and examining the intention of the parties, concluded that two parties, separated but not divorced, may certainly enter into agreements or other arrangements whereby each waives any claim for an elective share of their estates upon death.

Using such a standard in this case, not only is it clear that the Appellant and Mr. Weeks divided all of their marital property by way of the agreements into which they entered as part of the Family Court case, there is no evidence that they intended to hold in abeyance any unresolved claims for division of any such property. Otherwise, any reasonable person would have undertaken to pursue the division of such unresolved claims promptly during the pendency of marital litigation instead of waiting for the death of their estranged spouse. The Appellant certainly believes that the elective share she pursues now has significant value to her. That belief had to also exist during the two years spent in Family Court resolving their claims with respect to their marital property.

Judge Marchant also correctly found and concluded that even if the Appellant and Mr. Weeks did not resolve all of their property claims as part of their Family Court case, and for some unknown reason left open a division of the two real property interests involved in this matter, the Appellant seeks to recover by way of an elective share an interest in property she would never

have recovered in the Family Court. It is well-settled by statute and other applicable law that an estranged spouse has no claim to any property interests the other spouse obtained by way of “inheritance, devise, bequest or gift”. See S.C. Code Ann. § 20-3-360 (1976). In other words the Appellant should not be allowed to use a locked back door to pursue a claim which is not available by way of a front entrance.

Elective shares exist to protect one spouse who otherwise may be left impoverished by the failure, for whatever reason, of their spouse to include them as part of their estate. Such a noble societal purpose principally envisions scenarios where a disinherited spouse, by way of a marriage, has made an investment in the acquisition of property during the course of that marriage and, absent the allowance of a forced share, stands to lose that investment as a result of the selfishness or inadvertence of the now deceased spouse.

Such a scenario does not exist in this case. Mr. Weeks was the fourth husband of the Appellant. By the time he died he and the Appellant had been legally separated for almost seven years. They had divided their marital property in the Family Court. Certainly, if any issues as to claims for property remained outstanding, the Appellant would have asked the Family Court to address them while she was there and, equally importantly, more timely and promptly – there is certainly no evidence in this case suggesting that the Appellant was prevented from doing so.

The facts of this case support Judge Marchant’s legal decision in this matter. In her words we should not turn a blind eye to justice, as “a wrong does not cease to be a wrong because it is cloaked in the form of law.”

II. IN THE EVENT THAT THIS COURT CONCLUDES THAT THE APPELLANT DID NOT WAIVE HER CLAIM FOR AN ELECTIVE SHARE THE EVIDENCE CONTAINED IN THE RECORD FOR THIS MATTER FULLY SUPPORTS THE PROBATE COURT’S CALCULATION OF THE

VALUE OF CERTAIN REAL PROPERTY WHICH IS PART OF THE ESTATE.

Having decided that the Appellant is not entitled to receive an elective share from Mr. Weeks' Estate Judge Marchant proceeded further and correctly ruled with respect to the appropriate date for the valuation of an elective share and also properly discounted the value of the larger tract of real property which is part of the Estate. As stated, the Respondent believes that Judge Marchant's ruling as to the alleged existence of an elective share renders moot any need to address the other issues raised by the Appellant.

That said, S.C. Code § 63-3-706 (1976) provides that the Court's duty is to determine the value of property comprising an estate at the time of a decedent's death. There is no statutory requirement that a formal appraisal be performed. S.C. Code § 63-3-707 (1976) provides that a personal representative "may" use professional appraisers. Interestingly, § 63-3-706(B) provides that with respect to certain property a personal representative is required to obtain a formal appraisal of property of such property upon proper demand made within a certain period of time. There appears not to be such a demand in this case.

Regardless Judge Marchant did rely on a formal appraisal in determining the value of the larger tract of real estate involved in this case. The Appellant objected to this appraisal based primarily upon its age. In the end, however, the appraisal upon which Judge Marchant relied is, in fact, evidence of the real property's fair market value at the time of Mr. Weeks' death. If the Appellant believed an updated appraisal was necessary, a demand for one should have been made or the Appellant should have obtained her own appraisal.

Judge Marchant also concluded that the fair market value of the larger tract should be discounted. The Appellant, again, objected to this being done, contending that there is no legal

support for doing so.

As Judge Marchant correctly noted the larger tract is presently owned by at least twenty-nine undivided interests. Such a fact obviously directly affects the value and marketability of the property. Any willing purchaser in a stable real estate market would want the value of such a parcel of land discounted before sale and conveyance in light of what would be a huge task to clear marketable title in favor of a single landowner. Given this fact Judge Marchant's ruling on this issue should also not be disturbed.

CONCLUSION

For the reasons stated above the Respondent submits that Judge Marchant's Order, and the Circuit Court's affirmation of the same, should be fully affirmed.

Very Respectfully Submitted,

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Dated: May 16, 2022

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2021-001253

Deborah T. Weeks, Appellant,

v.

David W. Weeks, Respondent.

CERTIFICATE OF COUNSEL

I certify that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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Dated: May 16, 2022

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
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Deborah T. Weeks, Appellant,

v.

David W. Weeks, Respondent.

PROOF OF SERVICE

I certify that I served the Respondent's Final Brief on counsel for the Appellant, Leon E. Green, Esquire, on May 16, 2022, by electronic mail via the email address of record with AIS, at lgreenlaw1@msn.com.

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Deborah T. Weeks, Appellant,

v.

David W. Weeks, Respondent.

In Re: Estate of James Randall Weeks, Jr.

Appellate Case No. 2021-001253

Appeal From Aiken County
Courtney Clyburn Pope, Circuit Court Judge

Unpublished Opinion No. 2023-UP-151
Submitted March 1, 2023 – Filed April 12, 2023

REVERSED AND REMANDED

Leon Edward Green, of Leon E. Green, PC, of Aiken, for
Appellant.

Clarke W. McCants, III, of Nance & McCants, of Aiken,
for Respondent.

PER CURIAM: Deborah Weeks appeals the circuit court's order affirming the probate court's order distribution of the estate of James Randall Weeks, Jr. (the Estate). On appeal, Weeks argues the circuit court erred by affirming the probate

court's order (1) disallowing her elective share of the Estate when she was the spouse of James Randall Weeks, Jr. (the Decedent); (2) applying the family law statute of equitable apportionment of marital property to exclude real estate from the Estate; (3) using a 2011 real estate appraisal in contradiction to section 62-3-706(A) of the South Carolina Code (2022); (4) applying a forty-percent marketability or minority discount to the value of real property in the Estate; and (5) finding that a temporary family court order terminated her marital rights. We reverse and remand.

1. We hold the circuit court erred by affirming the probate court's disallowance of Weeks's elective share of the Estate because there was no final order terminating the parties' marriage and there was no evidence that Weeks knew she was waiving her right to the elective share. Therefore, we reverse as to this issue and remand to the probate court for a calculation of Weeks's elective share. *See In re Est. of Hyman*, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004) ("The standard of review applicable to cases originating in the probate court is controlled by whether the underlying cause of action is at law or in equity."); *Neely v. Thomasson*, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (2005) ("When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them."); *id.* at 350, 618 S.E.2d at 886 ("Questions of law, however, may be decided with no particular deference to the lower court."); S.C. Code Ann. § 62-2-201(a) (2022) ("If a married person domiciled in this State dies, the surviving spouse has a right of election to take an elective share of one-third of the decedent's probate estate"); *Terry v. Terry*, 400 S.C. 453, 456-57, 734 S.E.2d 646, 648 (2012) ("Such orders are, by definition, temporary—they neither decide any issue with finality nor affect a substantial right"); S.C. Code Ann. § 62-2-204(a)-(b) (2022) ("The rights of a surviving spouse to an elective share . . . may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver voluntarily signed by the waiving party after fair and reasonable disclosures Unless it provides to the contrary, a waiver of all rights in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, and exempt property by each spouse in the property of the other and a disclaimer by each of all benefits which would otherwise pass to him from the other by intestate succession or by virtue of the provisions of a will executed before the waiver or property settlement."); *Matter of Patrick*, 303 S.C. 559, 562, 402 S.E.2d 664, 665 (1991) (finding section 62-2-204 inapplicable because "[t]here is nothing in the record to indicate that [the spouse] knew he was waiving his right to the elective share").

2. We hold the circuit court erred by affirming the probate court's application of the family law statute of equitable apportionment of marital property to exclude Decedent's partial interest in real property from the Estate. Therefore, we reverse and remand as to this issue. On remand, the probate court should include Decedent's partial interest in the real property in the Estate when calculating Weeks's elective share. *See* S.C. Code Ann. § 62-2-202(a) (2022) ("[P]robate estate means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy, reduced by funeral and administration expenses and enforceable claims.").
3. We hold that evidence does not support the circuit court's affirmation of the probate court's utilization of a 2011 real estate appraisal of property in the Estate when valuing the property. Therefore, we reverse and remand for the probate court to consider the value of the property at the time of Decedent's death. *See Neely*, 365 S.C. at 349-50, 618 S.E.2d at 886 ("When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them."); S.C. Code Ann. § 62-3-706(A)(1) (2022) (explaining that within ninety days after his or her appointment, a personal representative shall "prepare an inventory and appraisal of probate property owned by the decedent at the time of his death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item").
4. We hold that evidence does not support the circuit court's affirmation of the probate court's application of a forty-percent marketability or minority discount because there is no evidence in the record to support the discount. Therefore, we reverse and remand as to this issue. We remand to the probate court to hear evidence on the appropriate discount. *See Neely*, 365 S.C. at 349-50, 618 S.E.2d at 886 ("When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them.").
5. Because our resolution of issue one is dispositive of this issue, we decline to rule on issue five on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

REVERSED AND REMANDED.¹

THOMAS, MCDONALD, and HEWITT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Courtney Clyburn Pope, Circuit Court Judge

Appellate Case No. 2021-001253

Deborah T. Weeks, Appellant,

v.

David W. Weeks, Respondent.

PETITION FOR REHEARING

Comes now the Respondent, by and through his undersigned Counsel, pursuant to Rule 221 S.C.A.C.R. and respectfully requests this Court to reconsider its Decision filed April 12, 2023 in the above-captioned matter.

This Petition is respectfully based upon the grounds that the Court misapprehended the Respondent's argument that the Probate Court's ruling that the Appellant waived her right to her elective share is supported by the evidence. There is evidence in the record to support the Probate Judge's ruling. The Appellant and Mr. Weeks had been continuously separated for seven years at the time Mr. Weeks died. They had previously divided their marital property in the Family Court. If any issues remained regarding the Parties' intent in this regard, the Appellant could have filed a new action in the Family Court. The Appellant voluntarily elected to not file a new action.

The Probate Judge determined as a result of the March 23, 2011 Family Court Order, the Appellant received substantial tangible property in the settlement. The value of these assets is at least equal to or higher than the tangible assets owned by Mr. Weeks at the time of his death. The Probate Judge specifically found "... [the Appellant] received all assets from the marriage to which she was entitled and that the ligation between the parties essentially and for all practical purposes resulted in a final property division of the parties. (ROA, Pages 6-7). This finding is supported by the evidence in the record.

The Respondent respectfully contends the Court misapprehended his argument that the Probate Court properly applied S.C. Sec. 20-3-360 (1976) regarding equitable apportionment of marital property to exclude Mr. Weeks' partial interest in inherited real property from the Estate. In the Family Court case, the Appellant never contended the real property given to Mr. Weeks by his Mother in 1983 or the 5/29th interest in the real property he inherited from his Mother should be treated as marital property subject to equitable distribution. She should not be allowed to take a contrary position in the Probate Court by contending she is entitled to a one-third share of the Probate Estate which includes the inherited property.

Further, the Respondent respectfully contends the Court misapprehended his argument that the Probate Court properly valued the Probate Estate and using an appraisal performed in 2011. S.C. Code Sec. 63-3-706 (1976) provides that the Court's duty is to determine the value of the property comprising an estate at the time of a decedent's death. There is no statutory requirement that a formal appraisal be performed. The statute indicates a personal representative "may" use professional appraisers. Additionally, S.C. Code Sec. 63-3-706 (B) provides that the personal representative is required to obtain a formal appraisal upon proper demand by an interested individual and within a certain period of time. The Appellant did not request a formal

appraisal, nor did she obtain her own appraisal.

The Respondent respectfully contends the Court misapprehended his argument that there is evidence to support the Probate Judge's application of a 40% marketability/minority discount to the inherited real property. Appellant did not dispute the fact that the larger tract was owned by at least twenty-nine undivided interests. This fact alone clearly impacts the value and marketability of the property. Any reasonable purchaser would demand a discount on the value of the property given the huge task to clear marketable title in favor of a single landowner. The Probate Judge's ruling on this issue should be affirmed.

Based on the foregoing, the Respondent respectfully requests this Court to reconsider its decision rendered in this matter and enter an Order affirming the Probate Court's Order and the Circuit Court's affirmance thereof.

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Dated: April 27, 2023

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The South Carolina Court of Appeals

Deborah T. Weeks, Appellant,

v.

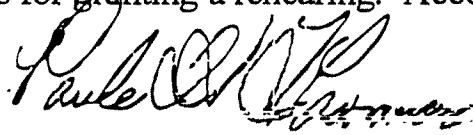
David W. Weeks, Respondent.

In Re: Estate of James Randall Weeks, Jr.

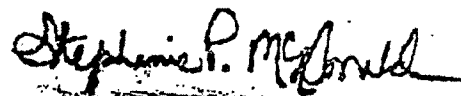
Appellate Case No. 2021-001253.

ORDER

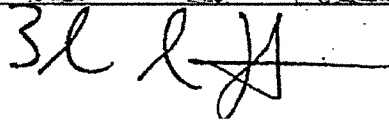
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Leon Edward Green, Esquire
Clarke W. McCants, III, Esquire

FILED
May 04 2023