

THE STATE OF SOUTH CAROLINA

In the Supreme Court

RECEIVED

APPEAL FROM CHARLESTON COUNTY

JUN 08 2023

Court of Common Pleas

S.C. SUPREME COURT

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No.: 2023-000763

James Kevin Holmes, Respondent,

v.

Cynthia Elaine Collie , Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This partition action was commenced by the filing of a Lis Pendens, Summons, and Complaint on February 10, 2022. An Affidavit of Default was filed on March 16, 2022. A video default hearing was scheduled for April 8, 2022 but continued until April 20, 2020 because the Petitioner falsely claimed she did not have internet access.

Having been given notice of the reconvened hearing, Petitioner chose not to attend. The Petitioner had filed an Answer and Counterclaim and the Respondent elected to proceed only for a referral to the Master-In-Equity. The Circuit Court issued an Order referring the case to the Master-in-Equity preserving the Petitioner's right to seek a trial by jury on contested factual issues on June 9, 2020. Exhibit A: Circuit Court Order filed 6/9/20.¹ Petitioner filed a Rule 59(e) motion for reconsideration on June 17, 2022. Before a hearing could be held, the Petitioner filed a Notice of Appeal divesting the Circuit Court of jurisdiction on August 17, 2022.

The Court of Appeals dismissed the appeal for two reasons: first, because a referral to the Master-In-Equity preserving the right to a jury issue on contested factual issues was not a final order or decision and, second, because the Rule 59(e) motion was pending in the lower court on December 9, 2022. The Court of Appeals denied rehearing *en banc* on April 11, 2023.

This Petition for Writ of Certiorari was filed on May 11, 2023.

¹ Since the Court of Appeals ruled without Record on Appeal or Brief, Respondent submits three (3) exhibits in support of his Return.

ARGUMENT

Far from being a “traditional filer,” the Petitioner is a disbarred attorney who has been repeatedly sanctioned for filing frivolous lawsuits. Her purpose is to delay this partition action as long as possible while she lives rent free on Sullivan’s Island. A writ of certiorari is not a matter of right and failure to present material facts with accuracy, brevity, and clarity is a sufficient reason to deny a petition. This frivolous petition is so replete with untrue, immaterial, impertinent, and scandalous statements that sanctions are warranted to discourage like conduct in the future.

I. The Order appealed from is not a final order or decision from which an appeal may be taken.

An appeal may only be taken from a “final judgment, appealable order or decision.” Rule 201, SCACR. Orders that are not final are not immediately appealable. The Court of Appeals correctly ruled “The referral of a case to the master-in-equity is not immediately appealable unless the appellant is deprived of a mode of trial. *See N. Carolina Fed. Sav. & Loan Ass’n v. Twin States Dev. Corp.*, 289 S.C. 480, 347 S.E.2d 97 (1986); *Williford v. Downs*, 265 S.C. 319, 218 S.E.2d 242 (1975); *Collier v. Green*, 244 S.C. 367; 137 S.E.2d 277 (1964).” The Order appealed preserved the Petitioner’s right to request a trial by jury on contested factual issues. The Order appealed is not an appealable order or decision and the Petition should be denied.

The Court of Appeals correctly ruled an order is not appealable when a Rule 59(e) post-trial motion remains pending in the Lower Court. *Hudson v. Hudson*, 290

S.C. 215, 349 S.E.,2d, 341 (1986). There was a Rule 59(e) motion pending in the lower Court when the Petitioner filed her Notice of Appeal. The Petition should be denied.

II. There is no Family Court action pending between the parties.

The Petitioner misrepresents that there is a Family Court action pending between the parties. Following their divorce nineteen years ago, the Family Court administratively dismissed the case for lack of prosecution. Petitioner's attempts to resurrect the case have all failed. *See*: Court of Appeals Orders filed on 12/9/22 and 4/11/23 in *C. Holmes v. James Kevin Holmes*, Appellate Case No.: 2022-001146.

Even if a Family Court action was still pending, the Family Court would not have had exclusive jurisdiction. As ruled by the Circuit Court, a partition action is a matter of right that is not suspended by an interest in or a right to use the property. Section 15-61-10, *S.C. Code Anno.*, 1976, as amended; *Thompson v. Brunson*, 283, S.C. 221, 225, 321 S.E.2d 622 (Ct. App. 1984). The Family Court only has jurisdiction over property if a party asks the court to dispose of it. *Thompson, Id.* at 229. As the Circuit Court Order found, the parties divorced in 2004, the children of the marriage are all grown and emancipated, and neither party had requested partition of the marital residence prior to the filing of this action. The Circuit Court is vested with jurisdiction in all cases to partition real property held in joint tenancy. Section 20-7-420, *S.C. Code Anno.*, 1976 as amended; *Eichor v. Eichor*, 290

S.C. 484, 351 S.E.2d 353 (Ct. App. 1986); *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996). The Circuit Court has jurisdiction to hear this partition action and the Petition should be denied.

III. No ex parte hearing without notice was held.

Petitioner misrepresents an *ex parte* hearing was held without her having notice or being given an opportunity to be heard. Petitioner was served with notice and given every opportunity to be heard for not one, but two, hearings. The first video hearing was noticed to be held on April 8, 2022 but continued when the Petitioner falsely claimed she lacked internet access to attend. Exhibit B: Respondent's Rule 240(c)(3) Affidavit.

At the Court's direction, Respondent's counsel not only gave notice of the hearing being rescheduled for April 20, 2022 but advised she could participate by telephone and provided the telephone number of the Clerk's Office if she needed assistance. Exhibit C: Notice of Hearing filed 4/7/22. Had the Petitioner bothered to call the Clerk, she would have learned she could be provided a private room with computer audio and visual access for the hearing. The Petitioner deliberately chose not to participate in the hearing. *See* Exhibit A. No *ex parte* hearing without notice was ever held and the Petition should be denied.

IV. There has been no denial of due process.

The inadvertently missing audio transcript of the hearing is a red herring. All the Circuit Court's interlocutory Order did was refer the partition action to the

Master-in-Equity. The Judge's reasons for his Order are fully set forth in his Order.

Remanding the case to "reconstruct the record" is unnecessary and will only cause further delay.

Rather than allowing remittitur so the Lower Court could rule on the pending Rule 59(e) motion, the Petitioner filed for a rehearing *en banc*. Rather than allowing remittitur following the denial of her motion for rehearing in the Court of Appeals, the Petitioner filed this Petition for Writ of Certiorari. The sixteen-month delay is exactly what the Petitioner wants. Delay so she can continue to live rent free on Sullivan's Island for as long as possible. No denial of due process has been shown and the Petition should be denied.

V. The rambling, repetitive, and frivolous petition is so replete with untrue, immaterial, impertinent, and scandalous statements sanctions are warranted to discourage like conduct in the future.

The Petitioner deliberately misrepresents material facts as set forth above. Her impertinent insinuation that the action was dismissed "at the impermissible direct or indirect behest of untrustworthy attorney defendant" is completely unsupported. She deliberately fails to attend noticed Court hearings, then protests she's been denied the right to be heard. She attempts to shroud herself with the constitutional mantle of such civil rights heroes as Congressman Elijah Cummings, Congressman John Lewis, and the Honorable J. Waring Waites, while despicably accusing the legal system of applying "Alex Murdaugh 'rules of law.'"

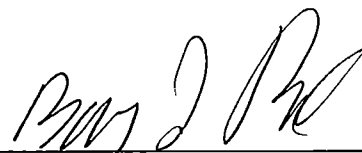
Rule 269, SCACR, provides “Where an appeal, petition, or motion is frivolous or taken solely for the purpose of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.” The Petitioner has not been discouraged by her disbarment nor by multiple sanctions being imposed for filing frivolous lawsuits. Her immediate appeal from any intermediate order not to her liking, followed by motions for additional time and stays, motions for rehearing often *en banc*, and petitions for certiorari serve only to delay. To be effective sanctions must take away the benefit of her delay tactics.

This Court can discourage such conduct in the future by ruling the Petitioner in on ten (10) days notice to show cause why she shouldn't be held in contempt of Court for her deliberate lying, falsely accusing judges and opposing counsel of unethical conduct, and accusing the entire legal system of applying “Alex Murdaugh ‘rules of law’” and persistent lawlessness. To help prevent future frivolous appeals this Court could appoint a Special Master to preside over this case and require a written statement from such Master stating he or she has entered a final decision or order or a decision or an order denying a mode of trial before the Petitioner can file a subsequent appeal. This Court could disincentivize the Petitioner's delay tactics in the future by retaining jurisdiction so any appeal that is filed will be heard directly by the Court thereby eliminating the inherent delay in the normal appellate process.


CONCLUSION

For the foregoing reasons, the Respondent respectfully prays that the Petition for Writ of Certiorari to the Court of Appeals be denied and that the Petitioner be ruled in on ten (10) days notice to show cause why she should not be held in contempt of Court for her willful misrepresentations, impertinent and scandalous statements, and vexatious disparagement of legal system and impose further sanctions to discourage and disincentive such conduct in the future.

Respectfully submitted,

By: 
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Charleston, South Carolina


___ day of June, 2023.

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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE #: 2021-CP-10-05478

James Kevin Holmes,)
)
Plaintiff,)
)
vs.)
)
Cynthia Elaine Collie n/k/a Cynthia Elaine)
Holmes,)
)
Defendant.)
)

ORDER

I held a motion hearing in the above matter via Webex on or about April 20, 2022 at 10:30 a.m. The Plaintiff appeared with his attorney, Barry I. Baker, Esquire. The Defendant did not make an appearance. The file reflects that on or about April 8, 2022, the Attorney for the Plaintiff provided Notice of Hearing to Defendant which included specific instructions on access to the virtual courtroom and a contact person at the Clerk's Office to assist with any questions or difficulties. In response to the Notice of Hearing, on or about April 15, 2022, Defendant sent a letter to the Clerk of Court for Charleston County advising that she was allegedly unable to participate in a Webex hearing. Thereafter, on April 19, 2022, the Clerk of Court's Office notified all parties by email that the hearing would proceed virtually. There is no indication in the record that the Defendant contacted the Clerk's Office to try to make other arrangements so that she could participate in the hearing.

I first heard the Plaintiff's Motion to Refer this matter to the Master-in-Equity for Charleston County; I then heard the Motion to Dismiss filed by the Defendant on or about March 18, 2022 as well as her Demand for a Jury Trial in an Affidavit filed April 15, 2022. I will address

each of the motions separately; however, before I address the motions, I want to provide some factual background.

FACTUAL BACKGROUND

The parties were married on September 4, 1978. Three children were born of this union, all of whom are now adults. The youngest child is now thirty years of age.

The parties purchased the home, the subject matter of this partition action, by deed from Stewart W. Johnson dated March 22, 1985 and recorded March 26, 1985 in the ROD Office for Charleston County in Book D144 at page 144.

The parties moved into the home shortly thereafter, and their three children were raised in the home. The Defendant currently lives alone in the home.

On January 30, 2004, the presiding judge of the Family Court of the Ninth Judicial Circuit dissolved the marriage as will be reflected by reference to Case No. 2003-DR-10-3935. The divorce was the only issue addressed in the Decree of Divorce. As for the other remaining issues, the Order provided as follows: "IT IS HEREBY ORDERED that all other issues including, but not limited to, temporary and permanent custody, child support, alimony, and the equitable division of marital property and retirement accounts are reserved and preserved pending discovery, mediation, and further Court hearings, if necessary". The Family Court has never held any subsequent hearing on these remaining issues.

MOTION TO REFER TO THE MASTER-IN-EQUITY

The within action involves a partition of real estate. In accordance with Rules 53 and 71 of SCRCF, this case shall be and is hereby referred to the Master-in-Equity for Charleston County.

DEFENDANT'S MOTION TO DISMISS

Defendant asserts the position that the Family Court has jurisdiction over this matter and that the Circuit Court has no jurisdiction to hear and determine the pending partition action filed by the Plaintiff.

I find that the cases of *Thompson v. Brunson*, 283 S.C. 221, 321 S.E.2d 622 (Ct. App. 1984), *Eichor v. Eichor*, 290 S.C. 484, 351 S.E.2d 353 (Ct. App. 1986), and *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996), are binding authority on this issue.

Our Courts have interpreted Section 15-61-10, Code of Laws of South Carolina 1976, as amended, to provide that a partition action among co-tenants is compellable as a matter of right thereunder and that a partition action is “not suspended by an interest in or a right to use the property.” *Thompson*, 283 S.C. at 225.

In the *Thompson* case, the Court of Appeals noted, “[t]he trial court erroneously concluded it had continuing jurisdiction emanating from the divorce decree and subsequent support and custody litigation between the parties. Section 20-7-420 of the Code furnishes the family court jurisdiction over the parties’ property only if a party asks the court to dispose of the property. Prior to institution of the mother’s partition action, neither party had requested the family court to dispose of the marital residence.” *Id.* at 229.

In the *Eichor* case, the Court of Appeals noted the following: (1) Family Courts are courts of limited jurisdiction; (2) Section 15-61-50, Code of Laws of South Carolina, 1976, vests jurisdiction in the Circuit Court in all cases of real and personal property held in joint tenancy or in common to make partition in kind or by allotment; (3) an action for partition of undivided interests is not marital litigation and thus is not within the jurisdiction of the Family Court. It concluded by stating jurisdiction over partition actions is vested in the Court of Common Pleas.

In the *Gilly* case, the trial court found that the Family Court did not have jurisdiction to entertain the partition action inasmuch as the partition action was not incidental to

a divorce action and the suit did not seek separate maintenance or support. This case also cited the *Eichor* decision and held that the Circuit Court had jurisdiction of partition actions and further noted partition of undivided interests is not marital litigation and is not within the jurisdiction of the Family Court. The Supreme Court affirmed and noted that the jurisdiction of a court depends upon "the state of affairs at the time the action is invoked." *Gilly*, 327 S.C. at 10. Once jurisdiction attaches, a subsequent filing will not ordinarily oust the jurisdiction already attached.

In the case at bar, the parties were divorced on January 30, 2004. At the time of filing of the within partition action, neither of the parties have requested that the Family Court to issue a ruling as to the custody, child support, alimony and equitable division of marital property and retirement accounts pending further discovery, mediation and further court proceedings, if necessary. In this case, it is abundantly clear that all of the children born of the union of the parties have been emancipated more than a decade and that neither child support nor custody is at issue. There is no evidence of any kind presented to this Court that would show that either party took action since January 30, 2004 to resolve any issues that were reserved by the Family Court. The Court is therefore of the opinion that the Family Court does not have continuing jurisdiction "flowing from the divorce decree" as cited in the *Thompson* case and this Court finds that the Defendant's Motion to Dismiss should be denied.

RULING ON DEMAND FOR JURY TRIAL

This Court refrains from making any ruling on whether or not the Defendant is entitled to a jury trial in this matter and refers the issue of the Demand for a Jury Trial to the Master-in-Equity for Charleston County. It is, therefore,

ORDERED, ADJUDGED AND DECREED that this case shall be referred to The Honorable Mikell R. Scarborough, Master in Equity for Charleston County, to take testimony and

issue a final decree, with any appeal from the Master to be directly to the South Carolina Court of Appeals; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendant's Motion to Dismiss is denied; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for a Jury Trial shall be held in abeyance and shall be decided by the Master-in-Equity for Charleston County; and

IT IS SO ORDERED!

Honorable R. Markley Dennis, Jr.
Presiding Judge Ninth Judicial Circuit

ELECTRONIC SIGNATURE PAGE MAY FOLLOW.

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S.C. SUPREME COURT



Charleston Common Pleas

Case Caption: James Kevin Holmes VS Cynthia Elaine Collie , defendant, et al
Case Number: 2021CP1005478
Type: Order/Referred to Master or Special Referee

R. Markley Dennis Jr., 2060

R. Markley Dennis Jr., 2060

Electronically signed on 2022-06-09 13:39:08 page 6 of 6

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No.: 2022-1146

James Kevin Holmes, Respondent,

v.

Cynthia Elaine Collie, Petitioner.

RESPONDENT'S RULE 240(C)(3) AFFIDAVIT

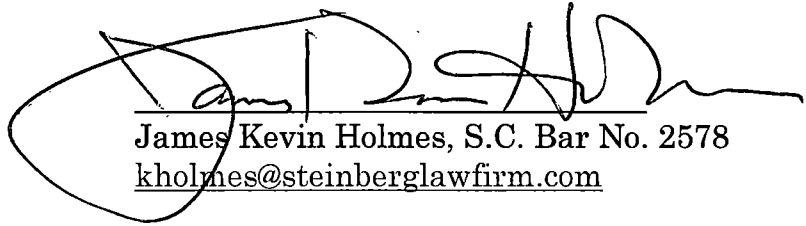
PERSONALLY APPEARED before me, Notary Public for the State of South Carolina, James Kevin Holmes, who first being duly sworn, deposes and says:

1. I am James Kevin Holmes. I am a licensed practicing attorney in good standing, South Carolina Bar No. 2578. I am of counsel with the Steinberg Law Firm, L.L.P., 61 Broad Street, Post Office Box 9, Charleston, South Carolina 29402, (843) 720-2800.

EXHIBIT B

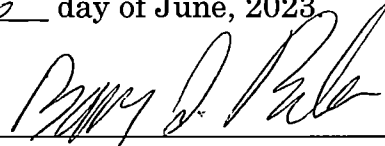
2. I know of my own personal knowledge the Petitioner has internet access because I pay the monthly A.T.& T bill, Account Number 8438833010145, for her service and regularly receive emails from her.

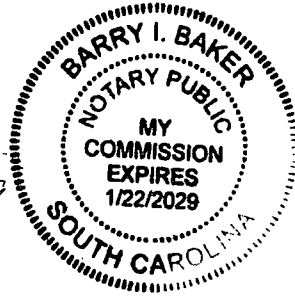
Further the deponent sayeth not.


James Kevin Holmes, S.C. Bar No. 2578
kholmes@steinberglawfirm.com

SWORN TO before me this

6th day of June, 2023


Notary Public for the State of SC
My Commission Expires: 01-22-2029



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE #: 2021-CP-10-05478

James Kevin Holmes,)
)
)
Plaintiff,)
)
)
vs.)
)
)
Cynthia Elaine Collie n/k/a Cynthia Elaine)
Holmes,)
)
)
Defendant.)
)

NOTICE OF HEARING

A motion hearing has been set in the above-referenced matter for April 20, 2022 at 10:30 a.m. before the Honorable R. Markley Dennis via the WebEx Virtual Courtroom for the purpose of taking testimony, findings of facts and conclusions of law and to enter final judgment therein without further Order of the Court in reference to the filed Motion to Dismiss and motion for reference to the Master-in-Equity. This hearing will be held using remote communication technology to avoid the need for a physical appearance by any party, witness, or counsel, as provided for in South Carolina Supreme Court Administrative Order 2020-04-30-02 (RE: Statewide Evictions and Foreclosures) and South Carolina Supreme Court Administrative Order 2020-04-22-01 (RE: Operation of the Trial Courts During the Coronavirus Emergency). The hearing will be conducted by Judge Dennis via the Court's Webex video conference system which has both audio and video capabilities.

To access the virtual courtroom, go to the South Carolina Judicial website at SCCOURTS.ORG. Click "Calendar", then "Monthly View", then "Circuit" on the day the hearing is scheduled. Scroll until you find Judge R. Markley Dennis, Jr., then click the Virtual Courtroom link. Enter your name and email to join. At the request of the Court, please submit memos and briefs 72 hours prior to the hearing.

If you have any questions, please contact Joy Johnson at 843-958-5049 or
jsjohnson@charlestoncounty.org.

s/Barry I. Baker
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Charleston, SC

April 7, 2022

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