

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-26-7941

John Sherrill and Estate of Gaye Marie Reynolds,)
)
)
Plaintiffs,)
)
Gary Moore and Robert Moore,)
)
)
Defendants.)

ORDER

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CLERK OF COURT

Presiding Judge: Cindy Graham Howe
Date of Hearing: May 15, 2012
Attorney for Plaintiff: Gene M. Connell, Jr.
Attorney for Robert Moore: Cheevin T. "Lex" Gardner
Attorney for Gary Moore: Kimberley Campbell
Court Reporter: Ray Swartz & Associates

The underlying case is an action to collect on a wrongful death judgment obtained by the Plaintiffs against Gary Moore. This matter was referred to me by Order of Reference filed on or about May 27, 2009.

The Defendants Gary Moore and Robert Moore jointly own as tenants in common a parcel of real property and mobile home located at 5848 Creekside Drive in Myrtle Beach, South Carolina (hereinafter "the Property"). Gary Moore is currently incarcerated by the South Carolina Department of Corrections. His projected release date is July 18, 2018.

On or about November 10, 2011, the Plaintiff, John Sherrill, filed a Motion for a Judicial Sale of the Property in execution of the Plaintiff's judicial lien against the one half interest owned by Gary Moore (Robert Moore was not a party to the original wrongful death lawsuit).

On November 22, 2011, the Defendant Gary Moore filed a motion for an order declaring that his interest in the Property is subject to the homestead exemption §15-41-30; in support of the motion, Gary Moore's counsel filed an affidavit in which Gary Moore stated that he resided at the Property prior to his arrest and incarceration, that he

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considers the Property to be his home, and that he intends to return there upon his release from prison.

On May 15, 2012, the parties, through their attorneys, appeared before the undersigned at a hearing on the motions of the Plaintiff and of Gary Moore. At the hearing, the Plaintiff asserted that even if Gary Moore were entitled to the homestead exemption in his interest in the Property, at a judicial sale of the Property the Plaintiff would be entitled to enter a non-cash bid in the amount of the judgment without depositing cash equal to the amount of the homestead exemption. Counsel for Gary Moore argued that under homestead exemption statutes and applicable case law, the officer conducting the sale must require the high bidder, even if it is the judgment creditor, to pay cash in the amount of the homestead exemption.

The undersigned requested that the parties submit memoranda setting forth their positions on this latter issue. After reviewing the Motions, affidavit of Gary Moore, memoranda submitted by the parties and the applicable law and giving the issues due and thorough consideration, I make the following findings of fact and conclusions of law:

1. The undisputed evidence indicates that the Property is Gary Moore's residence under the meaning of S.C. Code Ann. §15-41-30(A)(1). The Defendant, Gary Moore, is entitled to the homestead exemption in his one half interest in the Property pursuant to S.C. Code Ann. §15-41-30(A)(1), and pursuant to *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (Ct.App. 2002) (finding that a judgment debtor was entitled to the protection of the homestead exemption despite being incarcerated at the time of execution on the judgment).

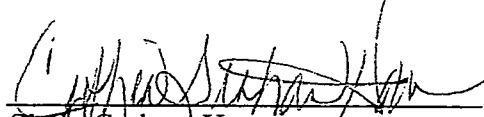
2. The Plaintiff or other successful bidder at an execution sale of Gary Moore's interest in the Property must pay cash in an amount equal to the homestead exemption. S.C. Code Ann. §15-41-10; *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that

1. Gary Moore is entitled to the homestead exemption in his one half interest in the Property.

2. That successful bidder at a judicial sale of Gary Moore's interest in the Property shall be required to pay to the selling officer cash in an amount equal to the homestead exemption, even if the successful bidder is the judgment creditor.

IT IS SO ORDERED.


Cindy Graham Howe
Horry County Master in Equity

Dated: April 15, 2013
Conway, South Carolina

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