THE STATE OF SOUTH CAROLINA
In the Supreme Court

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Sep 18 2023
S.C. SUPREME COURT

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

Unpublished Opinion No. 2023-UP-146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

Yvonne J. Robinson

Respondent,

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

Appellants

PETITION FOR A WRIT OF CERTIORARI

Donray & Cynthia Jones
Troy & Emma Washington
(All of Pacolet, SC)
Pro se litigants

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CERTIFICATE OF COUNSEL

The appellants certify that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on August 18, 2023.

QUESTIONS PRESENTED

1. DID THE APPELLATE COURT ERR BY RULING THAT CONSIDERATION OF THE APPELLANTS' RIGHT OF FIRST REFUSAL IS NOT PRESERVED FOR APPELLATE REVIEW?

2. DID THE APPELLATE COURT ERR BY RULING THAT WHETHER THE MASTER ERRED BY FAILING TO ORDER AN APPRAISAL OF THE PROPERTY AT ISSUE IS NOT PRESERVED FOR APPELLATE REVIEW?

3. DID THE APPELLATE COURT ERR BY RULING THAT WHETHER THE MASTER ERRED BY GRANTING ROBINSON'S PETITION FOR A PARTITION IN KIND IS NOT PRESERVED FOR APPELLATE REVIEW?

4. DID THE APPELLATE COURT ERR IN AFFIRMING THE MASTER'S RULING TO AWARD ATTORNEY FEES TO THE RESPONDENT?

STATEMENT OF THE CASE

This case is about a 3.84-acre tract of land which was jointly purchased by the Respondent (Yvonne Robinson) and the Appellants (Donray & Cynthia Jones and Troy & Emma Washington). Robinson, the Joneses, and the Washingtons, respectively, each own an undivided one-third interest in the land. This fact is recorded in a warranty deed, dated April 21, 2016, which also lists them as "joint tenants with rights of survivorship, and not tenants in common." Their undivided interests encompass the whole property, giving each owner equal rights to the entire property, as it is not divided into parts or shares.

On November 7, 2019, Ms. Robinson hired Cole Land Surveying to conduct a survey. This survey was drawn to reflect the subject property as it would appear if it were divided into three

separate parcels of land. (ROA 55). This survey does not mirror the original and binding survey (conducted in March 1994) which shows an undivided 3.84 acres, and which correlates to the parties' warranty deed. (ROA 54).

In December 2019 the Appellants received notice from Respondent's counsel that Robinson desired to create new deeds to reflect the survey she had just commissioned. She sought to terminate the joint tenancy by physically dividing the land into three separate parcels. The Appellants communicated that they did not agree to physically divide the land.

On January 16, 2020, Robinson filed a complaint with the court in which she sought a partition in kind of the land. Ms. Robinson prayed the Court would lay aside the 2016 warranty deed and order that new deeds be signed in accordance with her survey. On February 2, 2020, the appellants mailed a written answer to this complaint, expressing that they did not agree to physically dividing the land. Accordingly, this matter was referred to the master-in-equity, Gordon G. Cooper, on February 13, 2020, to determine the applicable law in this matter.

On February 19, 2020, this action came before the Court in a preliminary hearing. The master considered Ms. Robinson's petition to partition the land and her request to create new deeds and made a ruling concerning it. The master's verdict, in determining the applicable law, was that this partition action was subject to the provisions specified in South Carolina Code 15-61-25. This section, applicable to all partition actions filed after May 25, 2006, gives one or more joint tenants or tenants in common the right of first refusal to purchase the interests in the property before its judicial partition and sets out the procedures that must be followed. This ruling, in effect, set into motion a sale, not a partition in kind. The master's Order was filed with

the Court on February 24, 2020. Neither party filed an objection or complaint concerning the master's ruling.

SC 15-61-25 (A) provides that the Court shall allow the non-petitioning tenants to notify the court within 10 days of the trial date of their interest to purchase the subject property. The Court sent notice of a hearing to be held on June 9, 2020. Accordingly, on May 29, 2020, the Joneses and the Washingtons timely filed a written notice with the Court of their interest in purchasing Robinson's one-third interest in the subject property, as this is required to exercise right of first refusal. This letter was sent in accordance with the procedures outlined in the master's ruling. The hearing was later rescheduled for October 13, 2020, due to the COVID pandemic.

At this hearing, the master ordered the parties to take 30 days (ending on November 12, 2020) to agree upon a purchase price for Ms. Robinson's one-third property interest. However, they were unable to agree on a price for the respondent's interest. This was communicated to the master by Ms. Robinson's attorney. On November 30, 2020, the master entered a final ruling, without a follow-up hearing, which, in a surprising turn of events, ordered a partition in kind, pursuant to the respondent's survey, and awarded attorney fees to the respondent.

The master ordered a judicial partition prior to the appellants having an opportunity to purchase the Respondent's interest. SC Section 15-61-25 (B) specifies that in the event the parties cannot agree on a purchase price for the interest, the Court must appoint an appraiser to determine its value. After the value is determined, the non-petitioning tenants shall be allowed to purchase the interest at the determined price, prior to partition, as specified in SC

15-61-25(D). As the judge did not follow the procedures outlined in the applicable law, but rather ordered a partition when the parties couldn't agree on a purchase price, this ruling is an error of law. On December 30, 2020, the appellants timely served a notice of appeal on the respondent's attorney and filed it with the trial court.

In its unpublished opinion dated April 5, 2023, the Court of Appeals affirmed the master-in-equity's decision. On April 18, 2023, the appellants filed a petition for rehearing with the Court of Appeals. In an order dated August 18, 2023, the Court of Appeals denied the appellants' petition for rehearing. The appellants in this matter respectfully ask this Court to grant a Writ of Certiorari to review the Court of Appeals' decision to affirm the master-in-equity's order granting the Respondent's petition for a partition in kind and associated attorney fees.

ARGUMENTS

1. THE APPELLATE COURT ERRED BY RULING THAT CONSIDERATION OF THE APPELLANTS' RIGHT OF FIRST REFUSAL IS NOT PRESERVED FOR APPELLATE REVIEW.

The Opinion reads "Whether the master erred by characterizing Appellants' alleged right of first refusal as optional is not preserved for appellate review because although Appellants notified the master of their interest in purchasing Robinson's property interest, they failed to argue to the master that they were entitled to a right of first refusal. See Berry v. Spang, 433 S.C. 1, 10, 855 S.E.2d 309, 314 (Ct. App. 2021) ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [circuit] court." (alteration in original) (quoting Elam v. S.C. Dep't of Transp., 361 S.C. 9, 23, 602 S.E.2d 772, 779-80 (2004)))."

This issue had, in fact, already been ruled on by the circuit court. In response to the Respondent's complaint in which she petitioned for a partition in kind, the master-in-equity, prior to the October hearing, filed an Order on February 19, 2020, ruling that this partition action is subject to the provisions of South Carolina Code 15-61-25: Right of first refusal of joint tenant or tenant in common to purchase property prior to partition; procedure. (ROA 1-4). SC Code 15-61-25(A) plainly states "Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the non-petitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case. The non-petitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not."

By definition, entitlement is the right to a particular privilege or benefit, granted by law or custom; therefore, by complying with the law [in this case SC Code 15-61-25 (a)], the law itself grants the appellants entitlement to the right of first refusal. Prior to a partition, the law entitles the non-petitioning tenants to purchase the petitioning tenant's interest. If the non-petitioning tenant does not purchase the interest as provided in this section, "the Court shall proceed according to its traditional practices in partition sales" (SC 15-61-25 (E)).

The first step in the process, in accordance with the law, is for the non-petitioning tenants to notify the Court of their interest in purchasing the interests in the property no later than 10 days prior to the trial date. The appellants demonstrated the exercise of their right; they complied with the provisions of the law by timely filing a letter with the Court expressing their

intent to purchase the property. (ROA 19) In addition to their written argument to the court that they were invoking their right of first refusal, the appellants reiterated their intent to purchase the property interest at trial. (ROA 42, L 24-25, ROA 43 L1-2) This fact is acknowledged by the Respondent, the Master, and the Appellate Court. The law provides that the Court shall allow the non-petitioning joint tenants to purchase the interests in the property prior to partition. The appellants argue that the entire procedure concerning right of first refusal outlined in SC 15-61-25 must be followed prior to a judicial partition. The law does not give the master the option to disallow the appellants right of first refusal when they have clearly communicated to the Court their desire to purchase the interest in the property.

Again, as SC 15-61-25 is the law that the master ruled to be applicable to this action, the matter of the right of first refusal referenced by this law was already established by the Court. Hence, the issue had been ruled on and should have been preserved for appellate review.

2. A COURT-ORDERED APPRAISAL SHOULD HAVE BEEN PERFORMED WHEN AN AGREEMENT COULD NOT BE REACHED CONCERNING THE PRICE OF THE SUBJECT PROPERTY.

The Opinion reads “Whether the master erred by failing to order an appraisal of the property at issue is not preserved for appellate review because Appellants did not request that the master order an appraisal and the master did not rule on whether an appraisal was proper. See id. ("Issues and arguments are preserved for appellate review only when they are raised to and ruled on by the [circuit] court." (alteration in original) (quoting Elam, 361 S.C. at 23, 602 S.E.2d at 779-80)).

At the October 13th hearing, the master ordered the parties to take 30 days (ending on November 12, 2020) to agree upon a purchase price for Ms. Robinson's one-third interest. (ROA 5) Ms. Robinson's attorney was instructed to inform the master as to whether a purchase price was agreed to or not during that time. The master ended the hearing by saying: "I don't care what you sell it for. If y'all can negotiate something, a price, and everybody is agreeable to it, that's great. It has nothing to do with anything. So, I am not setting any guidelines. It's just business, folks, arriving at a figure as to what works. Okay? Then I will see you soon." (ROA 48-49). The case was left in an open, "non-ruling" status.

Following the master's order, all parties attempted during the subsequent 30-day period to arrive at an agreeable purchase price for Ms. Robinson's one-third interest in the land but were unsuccessful. (ROA 56-58). This was communicated to the master by Ms. Robinson's attorney. South Carolina Code 15-61-25 (B) states "In the circumstances described in subsection (A) of this section, and in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers, as the court shall approve, appointed for that purpose by the court." The Appellants had already met the requirements for non-petitioning joint tenants proscribed in subsection A by timely notifying the Court of their interest in purchasing the property prior to the hearing. Since the parties couldn't agree to a price, the law provides for the Court to decide. The appellants expected the Court to then settle the matter by appointing an appraiser who would decide the value of the respondent's interest.

As the case was not ended after the hearing (ROA5) but left in a non-ruling status, and the Judge's final words were "Then I will see you soon" (ROA 49), the appellants were of the

understanding that they would have another opportunity to address the Court concerning their efforts to negotiate a price. There was no follow-up hearing, and thus no discussion of an appraisal. The next communication from the master was a mailed ruling in which he ordered a partition in kind (ROA 11-12).

The Appellants argue that the Master did not follow the procedure proscribed by law when the parties could not reach an agreement concerning the price. Had the master followed the legal procedure for this petition, a court-ordered appraisal would have been ordered to determine the value of the Respondent's interest and the appellants would have been allowed 45 days to pay the price determined by the Court, so that they would receive a title transferring ownership of the interest to them. This is plainly stated in Section 15-61-25 (D): "After the valuation of the interest in property is completed as provided in subsection (B) or (C) of this section, the non-petitioning joint tenants or tenants in common seeking to purchase the interests of those filing the petition shall have forty-five days to pay into the court the price set as the value of those interests to be purchased. Upon the payment and approval of it by the court, the court shall execute and deliver or cause to be executed and delivered the proper instruments transferring title to the purchasers."

The Appellate Court opines that the appellants failed to request an appraisal at the hearing. The appellants did not argue for an appraisal at the hearing because a Court-appointed appraisal is reserved only if the non-petitioning tenant notifies the Court in writing of their desire to purchase the interest in the property and the parties cannot reach an agreement as to the price (South Carolina Code 15-61-25 (B)). Had all parties been able to agree upon a

purchase price during the 30-day timeframe given by the Master, no Court-ordered appraisal would have been necessary. But the parties could not agree, and in the preliminary hearing, the master ruled that ordering an appraisal is the duty of the court under these circumstances. The provisions and remedies provided by this law are indeed proper, and this matter should have been reserved for appellate review.

3. THE MASTER ERRED IN GRANTING THE RESPONDENT'S PETITION FOR A PARTITION IN KIND AND THIS MATTER SHOULD HAVE BEEN PRESERVED FOR APPELLATE REVIEW.

The Opinion reads "Whether the master erred by granting Robinson's petition for a partition in kind is not preserved for appellate review because Appellants did not argue to the master that a partition in kind was improper under South Carolina law or that a partition in kind was proper only when the property at issue was determined to be "heirs' property."'

The determination that this was not heirs property had, in fact, already been made by the circuit court, prior to the trial. The court's first duty in a partition action is to determine whether the property is heirs' property. SC Code § 15-61-10 (B) states: "In an action to partition real property, upon motion of a party or from statements contained in the pleadings, a court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the property must be partitioned under Article 3, Chapter 61, Title 15, unless all of the cotenants otherwise agree in a record." This Article is also known as the "Clementa C. Pinckney Uniform

Partition of Heirs' Property Act". This law applies to all petitions for partition filed on or after January 1, 2017.

According to Article 3, Section 15-61-320 (9), a partition in kind is defined as "the division of heirs' property into physically distinct and separately titled parcels." As evident from the warranty deed, the subject property is not heirs' property. Accordingly, in response to the Respondent's filed complaint in which she requested a partition in kind, the master-in-equity ruled in a preliminary hearing in February 2020 that this partition action is subject to the provisions of South Carolina Code 15-61-25: Right of first refusal of joint tenant or tenant in common to purchase property prior to partition; procedure. (ROA 1-4), (ROA 8, paragraph 2).

Although the respondent sought a partition in kind, the master has jurisdiction to decide the applicable law for this action. SC Code § 15-61-50 states: "The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties." In the preliminary hearing the master decided the applicable law in this action to be SC 15-61-25, which does not provide for a partition in kind. Neither party objected to this ruling of the master as ordered. Because the master had already ruled on the applicable law in this case, the appellants argue that his final ruling for a partition in kind is in direct contradiction to the applicable law and to his first ruling.

SC 15-61-25 gives the right of first refusal to the non-petitioning tenants to purchase the subject interest. A partition sale would result if the non-petitioning tenants do not purchase the petitioning tenant's interest in accordance with SC 15-61-25(D). This is clearly stated in SC 15-61-25 (E): "In the event that the non-petitioning joint tenants or tenants in common fail to pay the purchase price as provided in subsection (D) of this section, the court shall proceed according to its traditional practices in partition sales. The remedy specified by the applicable law is a sale. Moreover, the master's directive to the parties to negotiate a price for the respondent's interest clearly aligns with a partition sale and not a partition in kind. Neither the master's February 2020 ruling nor his instructions at the October 2020 hearing indicated that a partition in kind was proper or even being considered as a remedy by the Court.

Before a judicial partition can take place in this action, the Court must provide for the non-petitioning tenants to purchase the interest in the property. The master's unlawful ruling abruptly interrupted the judicial procedure set forth in SC Section 15-61-25 (B), which states that the Court's duty is to appoint an appraiser when the parties cannot agree on a purchase price for the interest to be sold. The master's order circumvents the judicial process that should have been carried out prior to partition.

Since the dictates of this section of the applicable law were not followed by the master, but rather an order to partition was filed at this juncture, the appellants were denied due process of the law and were disallowed to purchase Ms. Robinson's interest as they were lawfully seeking to do. This error of law injuriously robs the appellants, through no fault of their own, of their

ownership and access to two-thirds of the property that they legally purchased. And this without any compensation!

If the master's ruling is upheld, the appellants lose access to not only the land but also to the large storage/shop building which is erected and affixed to the land that would now belong solely to the respondent. Both the respondent and the appellants equally contributed to the purchase price of the land and the building. However, the master's ruling disregards the appellants' financial interest in the property. The appellants would have to remove all their stored items from the storage building and purchase a new storage building to house them. Likewise, as the respondent would own the parcel containing the shared storage building, her parcel would have a higher market value than each of the two parcels relegated to the appellants, due to having an affixed structure on it. In addition, the master's ruling makes the respondent the sole owner of the large garden that the owners have always shared for years. It has required time, finances, and a lot of work to till, plant, fertilize, fence, and maintain this garden space. The partition procedures must be fair and equitable to all parties of the action. Pruitt v. Pruitt, 298 S.C. 411, 380 S.E. 2d 862, (Ct. App. 1989). The master's final ruling is distinctly unequitable and injurious to the appellants.

The master's order, filed on February 24, 2020, includes this written statement: "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." (ROA 4). That decision was that this action was subject to the provisions of SC 15-61-25 (ROA 1-2). The master's final order, granting the Respondent a partition in kind, effectually nullifying the appellants' right of first refusal, goes directly against the master's pre-

trial Order and against the applicable law that is the determinant of this case. This is a blatant error of law. Further, no applicable South Carolina was referenced in the ruling in its support. The duty of the Court was to ensure that that the procedures proscribed by law were carried out. Following the law is not optional. The master erred in awarding a petition in kind as it is not in harmony with the law as it is plainly written, and that consideration should have been reserved for appellate review.

4. THE APPELLATE COURT ERRED IN AFFIRMING THE MASTER'S RULING TO AWARD ATTORNEY FEES TO THE RESPONDENT.

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

The Judge did not give a valid legal reason for awarding the Respondent attorney's fees and costs. Note in his final order, the judged concluded attorney fees and costs in this action were pursuant to SC Code 16-51-110 (ROA 11). There is no such law in the SC Code of Laws; thus it cannot be used as a legal basis for a decision. Regardless of the master's intent, a nonexistent law cannot be enforced.

CONCLUSION

The fourteenth amendment to the United States Constitution states, in part, "nor shall any state deprive any person of life, liberty, or property, without due process of law". The appellants plead to this honorable court to intervene in this matter so that they are not deprived of their property due to this unlawful ruling. The judge committed an error of law which is deleterious to the appellants. The judicial process was violated by the master's final ruling, and the appellants pray for a writ of certiorari. We pray the master's order be reversed in its entirety, and that the trial court be instructed to follow the procedures outlined in SC 15-61-25 so that an appraised value for the subject interest can be determined and the appellants can exercise their lawful right to first refusal.

Respectfully submitted,

September 18, 2023

Donray & Cynthia Jones	s/ Donray Jones
Troy & Emma Washington	s/ Cynthia Jones
(all of Pacolet, SC)	s/ Troy Washington
	S/ Emma Washington