

THE STATE OF SOUTH CAROLINA
In the 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Unpublished Opinion No. 2023-UP-146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

APPENDIX

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

Counsel of Record:
Scott Talley
291 S Pine St
Spartanburg, SC 29302
Attorney for Respondent

RECEIVED

Sep 19 2023

S.C. SUPREME COURT

INDEX

Record on Appeal.....	1
Supplemental Record on Appeal.....	61
Final Brief of Appellant	70
Final Brief of Respondent	85
Court of Appeals Opinion	97
Petition for Rehearing	100
Ruling on Rehearing Petition	109

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JUN 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2021-000017

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Gordon G. Cooper, Circuit Court Judge

Case No. 2020-CP-11-00040

Yvonne J. Robinson

Respondent,

v.

Appellants.

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

RECORD ON APPEAL

Scott F. Talley
134 Oakland Avenue
Spartanburg, SC 29302

Attorney for the Respondent

Donray & Cynthia Jones
125 Hudnut Drive
Pacolet, SC 29372

Troy & Emma Washington
118 Hudnut Drive
Pacolet, SC 29372

Appellants

INDEX

Page

Orders, Judgments, Decrees, or Decisions

Order Re: Partition Action, filed Feb. 24, 2020.....	1
Order Re: Parties' Resolution of Matter of Interest Among Themselves, Filed October 19, 2020	5
Order Re: Physical Partition of Land, Filed December 4, 2020.....	7

Pleadings

Respondent's Amended Complaint, filed January 16, 2020.....	15
Appellants' letter to Court expressing their intent to purchase Respondent's interest in the land, filed May 29, 2020.....	19

Transcripts

Hearing, held on October 13, 2020.....	20
--	----

Other Material or Documents

Appellants' answer to the amended complaint, dated 2/2/2020.....	50
Warranty Deed, signed April 21, 2016.....	52
Survey corresponding to warranty deed, filed March 10, 1994.....	54
Respondent's survey, filed November 7, 2019.....	55
Appellants' first letter to Resolve the Interest Matter, per Judge's instruction, dated October 25, 2020.....	56
Respondent's Reply Letter to Appellants regarding price of interest and mobile home, dated October 28, 2020.....	57
Appellants' second letter to Respondent to resolve price of subject interest, dated November 3, 2020.....	58

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS

Yvonne J. Robison

Plaintiffs,

Donray Curtis Jones; Cynthia Curtis Jones;
Emma Kelly Washington; Troy Eliazer
Washington

Defendants,

ORDER

(Partition Action)

CASE NO.: 2020-CP-11-00040

This Partition Action is before this Court on an Order of Reference issued by Amy W. Cox Spartanburg County Clerk of Court on **February 13th, 2020**. South Carolina Code §15-61-25 sets out the procedures that must be followed in partition actions filed after May 25, 2006 which are as follows:

- (A) The non-petitioning joint tenants or tenants in common who are interested in purchasing the property shall notify the Court of that interest no later than ten (10) days prior to the date set for the trial of the case.
- (B) In the circumstances described in paragraph (A), 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 appraisers appointed pursuant to this section shall make their report in writing to the Court within thirty (30) days after their appointment. The costs of the appraisers appointed pursuant to this section shall be taxed as a part of the cost of court to those seeking to purchase the interests of the joint tenants or tenants in common petitioning to sell their interest in the property described in the petition for partition.
- (C) In the event that the petitioning joint tenants or tenants in common object to the value of the interests as determined by the appointed appraisers, those joint tenants or tenants in common shall have ten (10) days from the date of filing of the report to file written notice of objection to the report and request a hearing before the Court on the value. An evidentiary hearing limited to the proposed valuation of the interests of the petitioning joint tenants or tenants in common shall be conducted, and an order as to the valuation of the interests of the petitioning joint tenants or tenants in common shall be issued.
- (D) After the valuation of the interest in property is completed as provided in paragraphs (B) or (C), the non-petitioning joint tenants or tenants in common seeking to purchase the interest of those filing the petition shall have forty-five (45) 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

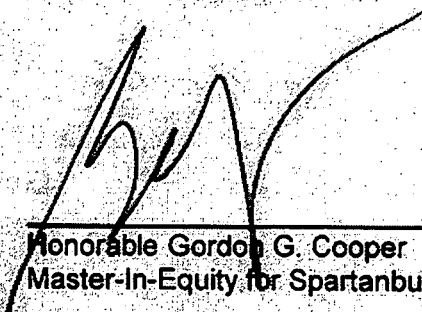
cause to be executed and delivered the proper instruments transferring title to the purchasers.

- (E) In the event that the non-petitioning joint tenants or tenants in common fail to pay the purchase price as provided in paragraph (D), the Court shall proceed according to its traditional practices in partition sales.

THEREFORE, IT IS HEREBY ORDERED that this Partition Action is subject to the provisions of South Carolina Code §15-61-25.

IT IS FURTHER ORDERED that the Attorney for the Plaintiff shall provide a copy of this Order to all Defendants in this action at their last known address and file a Certificate of Mailing with the Spartanburg County Clerk of Court.

AND IT IS SO ORDERED this 19th day of February 2020.



Honorable Gordon G. Cooper
Master-In-Equity for Spartanburg County

FORM 4

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

JUDGMENT IN A CIVIL CASE

Yvonne J. Robinson

CASE NO. 2020-CP-11-00040

Donray Curtis Jones; Cynthia Denise
Jones; Emma Kelly Washington; Troy
Eliazer Washington

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **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
- ☐ **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 ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

Order (Partition Action)

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Gordon G. Cooper, Master In Equity

3065

Judge Code

02-19-2020

Date

For Clerk of Court Office Use Only

This judgment was entered on the 24 day of Feb, 2020 and a copy mailed first class or placed in the appropriate attorney's box on this 24 day of Feb, 2020 to attorneys of record or to parties (when appearing pro se) as follows:

Scott F. Talley, Esq.Talley Law Firm, P.A.134 Oakland AvenueSpartanburg, SC 29302

ATTORNEY FOR PLAINTIFF(S)

ATTORNEY FOR DEFENDANT(S)



CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-11-00040

YVONNE J. ROBINSON

DONRAY CURTIS JONES, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Scott F. Talley

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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: A hearing was held on October 13, 2020. The parties may resolve this matter among themselves as to Plaintiff's interest in the land that is subject of this action on or before November 12, 2020. Counsel for the Plaintiff shall inform the Court on November 12, 2020 if no resolution has been reached, or before if a resolution is reached between the parties. If no resolution is agreed upon, the Court will issue its decision.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order.		

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1:

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS

Yvonne J. Robinson)
Plaintiff,)

FINAL ORDER

vs.)

Case No. 2020-CP-11-00040

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

This matter was before me for a final hearing on Tuesday, October 13, 2020 pursuant to an Order of Reference filed February 13, 2020. Said Order of Reference was to make appropriate findings of fact and conclusions of law with authority to enter a final judgment.

Plaintiff initially filed her Lis Pendens, Summons and Complaint on January 14, 2020. An Amended Complaint was properly filed on January 16, 2020. In her Amended Complaint, Plaintiff is seeking a partition, in kind, or in the alternative, a reformation of the Warranty Deed recorded in Deed Book 84, Page 1910, Cherokee County Register of Deeds. The subject property is more fully described as follows:

All that certain piece, parcel or lot of land lying, situate and being in the State of South Carolina, County of Cherokee, known as 3.84 acres, located on Union Highway and Hudnut Drive as shown on plat prepared for William L. Moss, Jessie Moss and Wesley A. Gordon by Lavender, Smith & Associates, Inc. dated March 7, 1994 and recorded in Book S-111, Page 6 of the Clerk's Office for Cherokee County, reference to which is made for the purpose of providing a more particular description of said real property.

DERIVATION: This being the same property conveyed to Emma Kelly Washington and Troy Eliazer Washington, as joint tenants with rights of survivorship and no as tenants in common and to Donray Curtis Jones and Cynthia Denise Jones as joint tenants with rights of survivorship and not as tenants in common by Warranty Deed from Yvonne J. Robinson recorded in Deed Book 84, Page 1910 on April 25, 2016 in

Office of the Register of Deeds for Cherokee County, South Carolina. See also, this being a fractional interest in the real property conveyed to Yvonne J. Robinson by deed of Lee's Interior Design, LLC dated September 3, 2014 and recorded on September 9, 2014 in Deed Book 71, Page 926 of the Office of the Register of Deeds for Cherokee County, South Carolina.

Defendants were served with the Lis Pendens, Amended Summons and Amended Complaint on or about January 21, 2020 as shown by the Affidavits of Service that were e-filed January 24, 2020. Defendants sent a letter to Plaintiff's counsel on February 2, 2020 as an answer to Plaintiff's Amended Complaint. Said letter was e-filed on October 12, 2020 in advance of this hearing. On May 29, 2020, Defendants filed another document with the Clerk of Court for Cherokee County indicating they wanted to purchase the 1/3 interest of the Plaintiff in the subject property.

On February 24, 2020, the Court filed its Order (Partition Action) which was also served on Defendants by counsel for the Plaintiff. Notice of the date, time and place of today's hearing was served upon the Defendants and e-filed with the Court. At the call of the case, Plaintiff was present with her attorney, Scott F. Talley, Esquire. All Defendants were also present in the courtroom and expressed their desire to proceed pro se in this matter. The Court questioned the Defendants about this matter and their understanding of these proceedings; the Defendants acknowledged understanding and their desire to represent themselves in this matter.

Plaintiff presented the Warranty Deed filed in Book 84, Page 1910, Cherokee County Register of Deeds. The parties agreed, via their testimony, that Plaintiff purchased the property and paid the purchase price for it on or about September 3, 2014. Defendants were to pay Plaintiff their share of the purchase price. The parties had agreed to buy land and put their homes on the land. At the time of purchase, Defendants did not have the funds to do so; Plaintiff therefore advanced the full purchase price. Plaintiff placed a home on the land, and both Defendant couples

ROA 8

did so as well. In April 2016, Plaintiff signed a Deed to the Defendants. Plaintiff believed that said deed was conveying to each Defendant couple approximately 1/3 of the total property, specifically the 1/3 of the total property upon which their home was located. The Deed, previously referenced, did not do what Plaintiff thought it did; in fact, said Deed conveyed 1/3 interest in the property to each Defendant couple. Therefore, upon the Deed being recorded on April 25, 2016, the Plaintiff and all Defendants owned the entire property as tenants in common. This deed, recorded in Book 84, Page 1910, Cherokee County Register of Deeds, was entered into evidence.

Plaintiff, later realizing what the Deed actually did, had a survey prepared by Cole Land Surveying, LLC on October 15, 2019. The plat of said survey was approved by Cherokee County and recorded on November 7, 2019 in Plat Volume 117, Page 1304, Cherokee County Register of Deeds. This plat divided the property into Parcel A (approx.. 1.28 acres); Parcel B (approx.. 1.27 acres) and Parcel C (approx.. 1.28 acres). This plat is the basis for Plaintiff's request to partition the property in kind as set forth in said plat. Referring to the plat, Plaintiff resides on Parcel B. Defendants Troy Washington and Emma Kelly Washington reside on Parcel A and Defendants Donray Curtis Jones and Cynthia Denise Jones reside on Parcel C. In addition to asking for the partition of the subject property in kind, Plaintiff requested attorney's fees pursuant to SC Code 15-61-110. An Affidavit of Attorney's Fees was entered into evidence.

Defendants all denied that they intended to divide the property with Plaintiff as shown on the referenced plat. They all testified that they desired for the entire 3.84 acres tract to remain owned by all parties to this matter as tenants in common, even understanding that they could not sell their "share" or "portion" of the land without the consent of all other owners, including the Plaintiff.

At the close of testimony, the Court encouraged all parties to try to reach a resolution before it had to take make a decision based on the pleadings and law to be applied in this matter. The parties did not reach any resolution so this Order was issued.

Based on my review of the pleadings, the testimony and evidence presented at the hearing as well as the applicable law in South Carolina, I hereby make the following findings of fact:

1. Plaintiff is a resident of and domiciled in the State of South Carolina. Plaintiff is an owner of the subject property.
2. Defendants are residents of and domiciled in the County of Cherokee, State of South Carolina. Defendants are owners of the subject property by way of conveyances set forth in the derivation clause below.
3. Service of the Amended Summons and Complaint was proper.
4. The property which is the subject of this action is located in Cherokee County, South Carolina, and this Court has jurisdiction over the parties and subject matter.
5. All parties were given proper notice of the date, time and place of the final hearing.
6. At the time of the final hearing, the 3.84 acres tract of land is owned by Plaintiff with one-third (1/3) ownership; Defendants Donray Curtis Jones and Cynthia Denise Jones with one-third (1/3) ownership; and, Defendants Emma Kelly Washington and Troy Eliazer with one-third (1/3) ownership of the subject property as tenants in common based on the Deed recorded in Book 84, Page 1910, Cherokee County Register of Deeds.
7. Regardless of the parties intentions or understanding at the time said Deed was signed in 2016, pursuant to South Carolina law, Plaintiff is entitled to file this action and request the relief she seeks herein, partition in kind of the subject property.

ROA 10



8. No alternative partition in kind was offered by the Defendants in response to Plaintiff's request to partition the property as set forth in the October 2019 plat. While Defendants wished to purchase the Plaintiffs interest in the subject property, that was not agreed to by all parties.
9. I have considered all relevant factors required of me and the fee affidavit presented at the hearing by the Plaintiff regarding an award of attorneys fees and costs in an action such as this pursuant to SC Code 16-51-110. I find that each Defendant couple shall be responsible for 1/3 of the Plaintiff's fees and costs incurred in this matter. The total fee is \$3500, and the costs incurred are \$116.24.

Based on these findings of fact, it is hereby ordered as follows:

1. The subject property be partitioned pursuant to the survey prepared by Cole Land Surveying recorded November 7, 2019 and attached hereto;
2. Upon filing of this Order in the Cherokee County Register of Deeds, the assessor's records and property records, for tax purposes, shall be amended to show:
Defendants Troy Washington and Emma Kelly Washington as owners of Parcel A as set forth on said plat (Grantor Yvonne J. Robinson, Grantees Troy Washington and Emma Kelly Washington); Plaintiff Yvonne J. Robinson as owner of Parcel B as set forth on said plat (Grantor Lee's Interior Design, LLC; Grantee Yvonne J. Robinson); and Defendants Donray Curtis Jones and Cynthia Denise Jones as owners of Parcel C as set forth on said plat (Grantor Yvonne J. Robinson; Grantees Donray Curtis Jones and Cynthia Denise Jones);

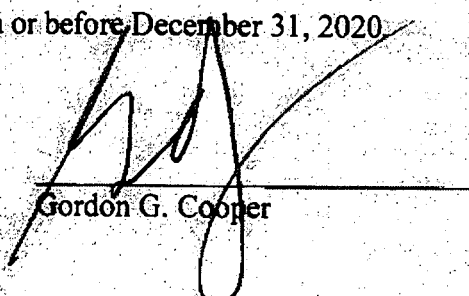
ROA 11

#5
[Signature]

3. Each of the three parcels shall be issued a separate tax map number and be owned free of any claim by the party designated herein from claims of the other parties named herein; and
4. Plaintiffs request for attorneys fees and costs is hereby granted. Defendants Troy Washington and Emma Kelly Washington shall pay the amount of \$1205.41 as their 1/3 of the total fees/costs. Defendants Donray Curtis Jones and Cynthia Denise Jones shall pay the amount of \$1205.41 as their 1/3 of the total fees/costs. These amounts shall be paid directly to Plaintiff's counsel at his office, 134 Oakland Avenue, Spartanburg, South Carolina 29302 on or before December 31, 2020.

It is so ordered!

November 30, 2020


Gordon G. Cooper

ROA 12

#6
gx

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-11-00040

YVONNE J. ROBINSON

DONRAY CURTIS JONES, ET AL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Scott F. Talley

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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: A hearing was held on October 13, 2020. The parties may resolve this matter among themselves as to Plaintiff's interest in the land that is subject of this action on or before November 12, 2020. Counsel for the Plaintiff shall inform the Court on November 12, 2020 if no resolution has been reached, or before if a resolution is reached between the parties. If no resolution is agreed upon, the Court will issue its decision.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
118, 121 and 125 Hudnut Drive, Pacolet, SC 29372
111-00-00-002.00

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

3065
Judge Code

12-1-2020
Date

For Clerk of Court Office Use Only

This judgment was entered on the 4 day of Dec., 2020 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of Dec., 2020 to attorneys of record or to parties (when appearing pro se) as follows:

Scott F. Talley

134 Oakland Avenue

Spartanburg, SC 29302

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS

Yvonne J. Robinson)
Plaintiff,)
vs.)
Donray Curtis Jones, Cynthia Denise Jones,)
Emma Kelly Washington and Troy Eliazar)
Washington,)
Defendants.)

AMENDED SUMMONS

Case No. 2020-CP-11-00040

(NON-JURY)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Amended Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service; and, if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended Complaint.

TALLEY LAW FIRM, P.A.

/s/ Scott F. Talley
Scott F. Talley
134 Oakland Avenue
Spartanburg, SC 29302
864/595-2966

January 16, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS

Yvonne J. Robinson)

Plaintiff,)

vs.)

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

Defendants.)

AMENDED COMPLAINT

Case No. 2020-CP-11- 00040

(NON-JURY)

NOW, COMES THE PLAINTIFF COMPLAINING OF THE DEFENDANTS AS FOLLOWS:

1. Plaintiff is a resident of and domiciled in the State of South Carolina. Plaintiff is an owner of the subject property.
2. Defendants are, upon information and belief, residents of and domiciled in the County of Cherokee, State of South Carolina. Defendants are owners of the subject property by way of conveyances set forth in the derivation clause below.
3. The property which is the subject of this action is located in Cherokee County, South Carolina, and this Court has jurisdiction over the subject matter hereto.
4. The property that is the subject of this action is more fully described as follows:

All that certain piece, parcel or lot of land lying, situate and being in the State of South Carolina, County of Cherokee, known as 3.84 acres, located on Union Highway and Hudnut Drive as shown on plat prepared for William L. Moss, Jessie Moss and Wesley A. Gordon by Lavender, Smith & Associates, Inc. dated March 7, 1994 and recorded in Book S-111, Page 6 of the Clerk's Office for Cherokee County, reference to which is made for the purpose of providing a more particular description of said real property.

DERIVATION: This being the same property conveyed to Emma Kelly Washington and Troy Eliazer Washington, as joint tenants with rights of survivorship and no as tenants in common and to Donray Curtis Jones and Cynthia Denise Jones as joint tenants with rights of survivorship and not as tenants in common by Warranty Deed from Yvonne J. Robinson recorded in Deed Book 84, Page 1910 on April 25, 2016 in

Office of the Register of Deeds for Cherokee County, South Carolina. See also, this being a fractional interest in the real property conveyed to Yvonne J. Robinson by deed of Lee's Interior Design, LLC dated September 3, 2014 and recorded on September 9, 2014 in Deed Book 71, Page 926 of the Office of the Register of Deeds for Cherokee County, South Carolina.

5. Upon information and belief, the subject property is now owned by Plaintiff with one-third (1/3) ownership; Defendants Donray Curtis Jones and Cynthia Denise Jones with one-third (1/3) ownership; and, Defendants Emma Kelly Washington and Troy Eliazer with one-third (1/3) ownership of the subject property based on an erroneous deed recorded in Deed Book 84, Page 1910, Cherokee County Register of Deeds.
6. At the time of signing the Warranty Deed (Exhibit A attached hereto) recorded April 25, 2016, it was the intent of the Grantor, your Plaintiff in this action, to divide the property into three (3) parcels as indicated on the survey (Exhibit B attached hereto) recorded November 7, 2019 and prepared by Cole Land Surveying, with each party owning one of those three (3) parcels.
7. All parties to this action now own the entirety of the subject property based on the erroneous deed.
8. The Plaintiff is informed and believes that the property should be partitioned, in kind, pursuant to the survey attached hereto.
9. Plaintiff is informed and believe that the attorney's fees and costs required to accomplish this partition should be assessed against the Defendants interest as provided in Section 15-61-110 of the 1976 Code of Laws for South Carolina, as amended.

FOR A SECOND CAUSE OF ACTION

10. Plaintiff incorporates herein her previous allegations.
11. Plaintiff alleges that the deed referenced above for the subject property should be reformed based on the mutual mistakes of both Plaintiffs and the Defendant.

12. Plaintiff alleges that the conduct of the parties regarding the subject property subsequent to the recording of the deed referenced above is evidence of the mutual mistake of the parties.
13. Plaintiff is informed and believes that the Court should reform said deed to comply with the plat attached hereto as Exhibit B which sets forth the intent of the Plaintiff and is supported by the subsequent conduct of the Defendants.

WHEREFORE, Plaintiffs pray that the Court:

1. That the subject property be partitioned pursuant to the survey prepared by Cole Land Surveying recorded November 7, 2019 and attached hereto;
2. Assess attorney's fees and costs against the Defendants as provided in Section 15-61-110 of the 1976 Code of Laws for South Carolina, as amended;
3. In the alternative, the deed recorded in Deed Book 84, Page 1910, Cherokee County Register of Deeds shall be set aside and Plaintiff ordered to sign new deeds in accordance with the survey attached hereto as Exhibit B and,
4. For such other and further relief as this Court may deem just and proper.

TALLEY LAW FIRM, P.A.

/s/ Scott F. Talley
Scott F. Talley
134 Oakland Avenue
Spartanburg, SC 29302
864/595-2966

January 16, 2020

Donray C. Jones and Cynthia D. Jones
125 Hudnut Drive, Pacolet, SC 29372

Troy E. Washington and Emma K. Washington
118 Hudnut Drive, Pacolet, SC 29372

May 29, 2020

Master-in-Equity
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2020 MAY 29 PM 4:41
BRANDY W. MCBEE

Re: Yvonne J. Robinson vs. Donray Curtis Jones, Cynthia Denise Jones, Emma Kelly Washington and Troy Eliazer Washington

Case number 2020-CP-11-00040

Partition Action

In reference to the Notice of Hearing served on us, we wish to inform the court of our interest in purchasing the one-third interest ownership of Yvonne J. Robinson in the property described as follows:

All that certain piece, parcel or lot of land lying, situate and being in the State of South Carolina, County of Cherokee, known as 3.84 acres, located on Union Highway and Hudnut Drive as recorded in Deed Book 84, Page 1910 on April 25, 2016 in Office of the Register of Deeds for Cherokee County, South Carolina.

Yours sincerely,

Donray Curtis Jones

Cynthia Denise Jones

Emma Kelly Washington

Troy Eliazer Washington

p.p. *Cynthia D. Jones*

ROA 19

1 JUDGE COOPER: Let's go on the record then.
2 This is case number 2020-CP-11-00040. This is a
3 Cherokee County case. The caption of the case is
4 Yvonne Robinson versus Donray Curtis Jones, Cynthia
5 Denise Jones, Emma Kelly Washington and Troy Eliazer
6 Washington.

7 So everybody is listed in the caption. All
8 the parties are present in the courtroom. Mr. Talley,
9 you are the plaintiff. Are you ready to proceed?

10 MR. TALLEY: Yes, sir. Your Honor, may it
11 please the Court, we are here today on the amended
12 complaint filed on this matter on June 16, 2020. My
13 name is Scott Talley on behalf of the plaintiff Yvonne
14 Robinson.

15 As Your Honor indicated, this is a Cherokee
16 County case pursuant to an order of reference, such
17 that we can conduct these proceedings. Your Honor,
18 this is in regards to a tract of land totaling
19 approximately 3.84 acres located in Cherokee County.
20 And I am happy to call my first witness.

21 JUDGE COOPER: Let's see, she will take a
22 seat right over there.

23 YVONNE ROBINSON
24 being first duly sworn, testified as follows:

25 JUDGE COOPER: Please state your full name

1 for the record.

2 THE WITNESS: Yvonne Robinson.

3 JUDGE COOPER: We are all going to have to
4 speak slower and louder because of these masks, so
5 let's just remember that as we answer the questions and
6 go through.

7 EXAMINATION

8 BY MR. TALLEY:

9 Q. Ma'am, you are Yvonne J. Robinson?

10 A. I am.

11 Q. And what is your address?

12 A. 119 Hudnut Drive, Pacolet, South
13 Carolina.

14 Q. How long have you resided at that
15 address?

16 A. I bought the land in 2014, but I didn't
17 permanently move up there until 2018.

18 Q. And when you bought the land, I stated
19 earlier, it's about 3.84 acres; is that your
20 understanding?

21 A. Yes.

22 Q. And then at some point did you have a
23 deed to convey portions to the four individuals
24 that are seated here in the courtroom?

25 A. Can I explain what happened?

1 Q. Speak up.

2 A. I was called by the Hyde Law Firm that
3 the Washingtons and the Joneses had obtained them
4 to do a deed or something, so I was called in.
5 And that's how that first deed came into...

6 Q. And when you say the first deed, I will
7 show you this document. Is that the deed you are
8 referring to?

9 A. Yes.

10 MR. TALLEY: Your Honor, this has previously
11 been marked as Plaintiff's Exhibit 1. I would like to
12 move it into evidence.

13 (PLF. EXH. 1, Warranty Deed, was marked
14 into evidence.)

15 JUDGE COOPER: You folks have any objection
16 to that deed? You have seen it before the one?

17 MS. JONES: No, sir.

18 JUDGE COOPER: That will be Plaintiff's 1, a
19 copy of the deed.

20 MS. JONES: And, Your Honor, for reference it
21 is what was attached to Amended 1 that was filed in
22 this matter.

23 BY MR. TALLEY:

24 Q. Ms. Robinson, I am now going to hand you
25 what is now Plaintiff's Exhibit 1. If you will

1 look at the second page of that document, does
2 your signature appear in the middle of that page?

3 A. It does.

4 Q. And if you look at the first page, do
5 you see at the top it says, Deed Prep Only -- No
6 Title Exam?

7 A. Yes.

8 Q. Did you understand what that meant?

9 A. Not exactly.

10 Q. If I understood your testimony
11 correctly, you were asked to come in and sign a
12 deed?

13 A. Yes.

14 Q. What did you think you were signing?

15 A. I thought I was signing that we all own
16 a third of the land, where our homes were. When I
17 bought the land, it was three septic tanks on the
18 property, and I thought that when you move your
19 home, you would own a third of the 3.8 where your
20 home was and everybody would do that.

21 Q. So this deed was done in April of 2016.
22 Is it your testimony that at the time that deed
23 was done there was three homes on the land?

24 A. Yes.

25 Q. And who owned those homes?

1 A. The Washingtons owned one. The Joneses
2 owned one, and I did.

3 Q. Repeat that. You got to keep your voice
4 up.

5 A. The Washingtons owned one. The Joneses
6 owned one, and I owned one.

7 Q. And those homes were in place on the
8 land at the time you signed Exhibit 1; is that
9 correct?

10 A. Yes.

11 Q. I think you also testified there was
12 three septic tanks on the land as well?

13 A. Yes.

14 Q. Did each septic tank serve a particular
15 home?

16 A. It did.

17 Q. Were the defendants residing in their
18 particular home at the time that deed was signed?

19 A. Yes.

20 Q. And to your knowledge is the home they
21 reside in their permanent residence?

22 A. As far as I know.

23 Q. At some point after signing Exhibit 1,
24 did you realize that, in fact, the property had
25 not been divided?

1 Q. And you don't dispute the Washingtons
2 would own this particular parcel?

3 A. No.

4 Q. And you are asking that you be granted
5 the parcel upon which your home sits in the
6 middle, correct?

7 A. Yes.

8 Q. You would also need access through
9 Hudnut Drive; as has been done today?

10 A. Yes.

11 Q. When the tax bill comes out from
12 Charleston County is there three tax bills or just
13 one?

14 A. Just one.

15 Q. Who pays those taxes?

16 A. We all divide it. It usually goes to
17 Ms. Washington's house.

18 Q. You pay a third? And the Washingtons
19 pay a third? And the Jones pay a third?

20 A. Yes.

21 Q. How long have y'all been doing that?

22 A. Up to date.

23 Q. And are there separate water meters
24 serving these properties?

25 A. Now there is.

1 A. It is.

2 Q. Is that what you paid my firm in this
3 matter?

4 A. Yes.

5 MR. TALLEY: Your Honor, I would like to mark
6 this as Exhibit 3.

7 JUDGE COOPER: All right.

8 (PLF. EXH. 3, Attorney Fee Affidavit, was
9 moved into evidence.)

10 MR. TALLEY: Those are all the questions.
11 Please answer any questions the defendants or the Court
12 may have.

13 JUDGE COOPER: You folks have any questions
14 that you wish to ask the plaintiff?

15 MS. JONES: No.

16 JUDGE COOPER: Let me ask a couple of
17 questions.

18 THE WITNESS: Yes, sir.

19 JUDGE COOPER: What was the original deal,
20 did you get \$16,000 at the time you signed this deed?

21 THE WITNESS: No.

22 JUDGE COOPER: Because the deed calls out
23 consideration of 16,000.

24 THE WITNESS: Can I explain what happened? I
25 bought land, and they paid a third of the cost of the

1 land each, so we would have equal ownership.

2 JUDGE COOPER: Well, it says you got 16,000,
3 that's what I am trying --

4 THE WITNESS: I did get it.

5 JUDGE COOPER: But you bought it --

6 THE WITNESS: -- outright. I bought it
7 outright, and I sold them a third of it so that makes
8 them pay \$8,000 a piece.

9 JUDGE COOPER: So they were repaying you what
10 you paid for it?

11 THE WITNESS: Yes.

12 JUDGE COOPER: Is that what happened?

13 THE WITNESS: Yes.

14 JUDGE COOPER: So the attorneys
15 represented -- or who prepared the document? Was it
16 your attorney or their attorney?

17 THE WITNESS: They seeked him out, so he
18 called me. The attorney called me. They initially
19 went to the Hyde Law Firm. I don't know who initiated
20 it on over there but a law firm called me.

21 JUDGE COOPER: Thank you.

22 You folks have any questions at all?

23 MS. JONES: For Ms. Robinson?

24 JUDGE COOPER: Yes.

25 MS. JONES: No, sir.

1 MR. TALLEY: Just one point of clarification
2 based on the Court's question, if I may.

3 BY MR. TALLEY:

4 Q. Ms. Robinson, you purchased the property
5 yourself in 2014, correct?

6 A. I did.

7 Q. How much did you pay at that time?

8 A. 24,000.

9 Q. So you paid 24,000. The 16,000 you
10 received at the time you signed that deed was
11 8,000 from each defendant for their portion of the
12 property as depicted on the deed?

13 A. Each family.

14 Q. Each couple, that was your intent,
15 correct?

16 A. Correct. Yes.

17 Q. They were in essence paying you back for
18 their portion that you had purchased two years
19 prior?

20 A. Yes.

21 MR. TALLEY: That's all I have, Your Honor.

22 JUDGE COOPER: Are you folks all related?

23 THE WITNESS: No.

24 JUDGE COOPER: How did you happen to -- did
25 you have the property on the market, and they came to

1 you? Or how did this work?

2 THE WITNESS: No. We are not related. We
3 were looking to move out of the city and
4 Ms. Washington, I believe, found the property. And we
5 came together. She came to me, and they didn't have
6 money or credit or whatever. I was able to buy the
7 land and so I did.

8 JUDGE COOPER: So you fronted the money?

9 THE WITNESS: I fronted, yes, sir.
10 Installments -- they paid me back.

11 JUDGE COOPER: So what you are saying was,
12 notwithstanding what this deed says, is that each
13 person was to own their property where their house is
14 located?

15 THE WITNESS: Yes.

16 JUDGE COOPER: And that was the property in
17 that survey?

18 THE WITNESS: Yes.

19 JUDGE COOPER: You described in the survey --
20 how did you arrive at the metes and bounds, the
21 description of the property? Was that in the old
22 survey?

23 THE WITNESS: Yes. I had looked at the old
24 survey, and then I had a surveyor come out and use the
25 description of the property. They measured everything

1 some land out in the country. And we found this parcel
2 of land. And, at the time, Ms. Robinson -- we were all
3 friends. And so we agreed together to purchase this
4 property at the time. Ms. Robinson put the money
5 upfront for it, the 24,000 upfront for it. The
6 property was not parceled out. As you see it here, it
7 was just one piece of property. Ms. Robinson put the
8 money upfront for it, and then in time we paid our
9 share so that we would each have one-third interest in
10 the property. When we all had our shares paid for, we
11 went ahead and paid her back the money. Then there was
12 a deed drawn up to show that we all owned one-third
13 interest in the property.

14 JUDGE COOPER: And you understood that was
15 the property that was going to be titled?

16 THE WITNESS: Yes, sir. It was very clear.

17 JUDGE COOPER: Whose direction? Who gave the
18 direction for the title to be set up that way?

19 THE WITNESS: The conversation for the title
20 was actually held at the Hyde Law Firm. I was not
21 present. Ms. Robinson was present, and Ms. Washington
22 was present. It was understood that it was all one
23 property and that we would all own one-third interest
24 in this entire property.

25 JUDGE COOPER: So you understood that and

1 A. Yes, sir.

2 MR. TALLEY: No further questions.

3 JUDGE COOPER: You have anything further for
4 Ms. Jones?

5 MR. TALLEY: I do not.

6 JUDGE COOPER: You may step down. Thank you.

7 Mr. Jones, you have anything further to add?

8 MR. JONES: YES.

9 JUDGE COOPER: If you do, take the stand up
10 here. Come up here and let me put you under oath,
11 Mr. Jones.

12 DONRAY CURTIS JONES

13 being first duly sworn, testified as follows:

14 EXAMINATION

15 JUDGE COOPER: Please state your full name
16 and address for the court reporter.

17 THE WITNESS: My name is Donray Jones. I
18 live at 125 Hudnut Drive, Pacolet, South Carolina.

19 JUDGE COOPER: And you were going to add
20 something further to what your wife said?

21 THE WITNESS: Well, I was in the lawyer's
22 office when the deed was signed, and the lawyer went
23 through extreme communications of the ramifications if
24 this did not work. We listened to him for an hour.
25 There was nothing misunderstood of signing this deed.

1 Everything that could possibly be communicated, the
2 lawyer did. It wasn't go in there, sign papers, and
3 leave. We were in there a good hour to an hour and a
4 half listening to him of the ramifications of signing
5 this deed.

6 So I just want to make sure you understand
7 that this wasn't a haphazard signing. We were in there
8 over an hour listening to the ramifications of who --
9 what could take place of all of us signing this deed.
10 We signed this as a one piece of land. Everyone owning
11 the land. We had that understanding, and that is the
12 truth.

13 JUDGE COOPER: Okay.

14 Mr. Talley, any questions?

15 MR. TALLEY: No, your Honor.

16 JUDGE COOPER: Thank you, sir. You may step
17 down.

18 Ms. Washington, who wants to speak on your
19 behalf?

20 MS. WASHINGTON: I will.

21 JUDGE COOPER: Why don't you come up and take
22 a seat in the stand.

23 EMMA KELLY WASHINGTON

24 being first duly affirmed, testified as follows:

25 THE WITNESS: I do not swear as Christian,

1 property has come up again. This is the first time for
2 Ms. Robinson. It was the second time for us. So in
3 the middle of the conversation, Ms. Robinson
4 volunteered. She said I will go in. I have it. I can
5 pay for it. And y'all can just pay me back. So since
6 we were in that kind of family and friendship, it
7 doesn't seem like a problem. We went and said okay, we
8 will do that. We will do that. If you pay it upfront,
9 we will pay you back. So everyone would have paid the
10 same amount.

11 After everyone had paid the same amount,
12 that's when -- we had paid our 8,000 and the Jones --
13 it was time to get a deed done to record that. So I
14 told Ms. Robinson that I knew of a lawyer because I had
15 used him before with another sale. And I recommended
16 that we use the Hyde Law Firm.

17 It was her property so she was the one that
18 would have to call the lawyer. So we got the date set
19 up for us to go and for Ms. Robinson to sign the deed.
20 When we were there, we discussed at length the type of
21 deed that we wanted. We talked at length about having
22 it -- keeping it exactly the way it is on the original
23 survey, which I have here, that we would keep it as one
24 piece of property.

25 The lawyer explained and told us, well, if

1 you keep it as one piece of property, if either of you
2 decide you want to move or you wanted to sell it, you
3 are going to have to get everybody else's permission.
4 And we were fine with that because of the fact that if
5 it was not done that way, then we would be right here,
6 what we are doing now. Someone could decide I don't
7 want to live here anymore, and I made it very clear I
8 don't want strangers coming in amongst us here and
9 dividing a piece of property. We did not want that.
10 We wanted it to be exactly the way that it is right
11 now, one piece of land, with everyone owning the same
12 percentage.

13 I remember the lawyer's words exactly. He
14 said, do you understand that that means that you do not
15 own one piece of grass, all three of you own
16 100 percent of that grass. That is what he said. He
17 made it very clear. Yes, we do understand that. We
18 want to keep it exactly the way it is, so it will not
19 be split up. That deed was signed. That is the deed
20 that is still on the books.

21 The original survey that was done in 1994,
22 that is the survey that we all saw. And that is the
23 survey that was used to do the deed. So this survey
24 that Ms. Robinson did just last year is after us having
25 already been on the land since 2014. So now this is a

1 new understanding. I don't know where the
2 miscommunication is coming from. We have one tax bill,
3 because it's one piece of land. And it always has
4 been. That's what we did.

5 Ms. Robinson is correct, we all come in
6 together to pay the tax bill. But it's still one piece
7 of property and always has been. And I wanted to
8 dispute the claim that we did not respond to his
9 letter. I have the letter right here that we sent to
10 them with the proof that they received it. So I don't
11 understand what this paying for her lawyer fees and all
12 that type of thing is for. We have not done anything
13 differently than what the original deed already told
14 us. That's it.

15 JUDGE COOPER: Now, this current survey that
16 you have in front of you, how was that drawn up, or
17 what did those lot lines come from? Have you seen that
18 before? You said you saw a 1994 survey.

19 THE WITNESS: Right. The original survey is
20 the one that we all have. Ms. Robinson had this new
21 survey done just last year without any input from us.
22 It's just something she decided to do.

23 JUDGE COOPER: So the 1994 survey that I
24 mentioned did not have these lots?

25 THE WITNESS: No. No, sir.

1 JUDGE COOPER: Then I misunderstood. I
2 thought this came directly out of the 1994 survey.

3 THE WITNESS: No. This is something that she
4 just did last year. The survey that all of us have,
5 it's on the table, there, here, this is the original
6 survey where it clearly shows 3.84 undivided acres.

7 Ms. Robinson, because she wants to own a
8 portion herself and divide it all up, she wanted us to
9 sign new deeds, which you have to do if you are trying
10 to do what she is trying to do. She had this survey
11 done on her own just last year. And now she wants us
12 to sign new deeds and partition the land.

13 MR. JONES: Do you and your family, do you
14 understand the purpose of this lawsuit?

15 THE WITNESS: Not really because the deed is
16 clear to us.

17 JUDGE COOPER: Let me explain it so that
18 everybody understands what I can do given this action
19 that has been filed. This is called an action for a
20 partition of property. In a case such as this, where
21 you got everybody owning a piece, one of the co-owners,
22 no matter what -- a lot of times it happens in families
23 and whatever, business partner -- somebody doesn't want
24 to be in the same group anymore. And if they can't
25 agree as to how it's going to be done, any one of the

1 owners can file a partition action. And that's what
2 this is, to either have, one, the property sold on the
3 open market. I don't think y'all want to do that.

4 THE WITNESS: No.

5 JUDGE COOPER: Or I can divide it up. And
6 have it divided up in kind, which everybody gets a
7 piece of the pie. So this is an action that is set out
8 by law that when co-owners can't get along or they just
9 don't want to be co-owners anymore, they can file this
10 action. So just to make sure you understand what the
11 options are in this case and why the plaintiff has
12 taken this avenue, as a provision that is allowed by
13 law, co-owners, families, whoever, can't always get
14 along, then they can go into this type of thing when
15 the original intent was all in good faith.

16 Mr. Talley, have I correctly stated what your
17 plaintiff is seeking?

18 MR. TALLEY: Yes, sir. And, Your Honor, I
19 think we tried to lay out in the complaint as well as
20 the amended complaint that it was not the plaintiff's
21 desire to sell the property. I think looking at this
22 one as depicted on Exhibit 2, this is one where in kind
23 partition makes sense. Based on her testimony just
24 now, they have, in essence, lived as the survey depicts
25 since 2014. So they have been there six years.

1 THE WITNESS: We have not been living in the
2 way that Mr. Talley just described with us, with the
3 Washingtons staying on this portion and the Joneses
4 staying on this portion. In that portion that
5 Ms. Robinson is claiming for herself has a huge garden
6 area that all of us have been using for the past six
7 years. Also included in that portion is the storage
8 barn that all of us have been using for the past six
9 years. So all of us have had access to all of the land
10 since we have been there. To do what she is suggesting
11 is that the big whole garden area, that all of us have
12 been using, now becomes hers along with the barn. So
13 all of us lose out on what we had all the time. So we
14 have not been living separate on these individual
15 pieces. We have been living exactly the way the deed
16 shows and the survey. Everyone has access to all parts
17 of the property. So that would be something that would
18 change drastically for us. Also on that portion is a
19 well that Ms. Robinson is claiming her part.

20 JUDGE COOPER: Where do you get your water
21 from?

22 THE WITNESS: From Natural Water. If we had
23 desire to use the well, we wouldn't be able to do that
24 because it would be a part of what she is claiming is
25 hers.

1 JUDGE COOPER: All of you have water to your
2 property; is that correct?

3 THE WITNESS: Yes, we do.

4 JUDGE COOPER: And everyone has their own
5 electric meters?

6 THE WITNESS: No, we do not. But I am just
7 making the point that it is -- we are not all staying
8 on our separate pieces, including on that piece as we
9 have all been sharing together including the storing.

10 JUDGE COOPER: And that storage barn looks
11 like it's closer to your property.

12 THE WITNESS: No. No it's actually closer to
13 her house and the Joneses' house.

14 JUDGE COOPER: But just to make sure you all
15 understand the options that I have by law with this
16 case based on the fact that it's a partition action.

17 THE WITNESS: We are not trying to keep
18 Ms. Robinson there, and we are not trying to stop her
19 from living there. We just want the property remained
20 as what we purchased in consideration of \$16,000.
21 Ms. Robinson's understanding is that we own thirds of
22 the land and not one-third interest in the land. And I
23 think that's some of the confusion that has been a part
24 of this case, is her understanding of interest versus
25 part. But if Ms. Robinson no longer wants to have her

1 one-third interest, we have already submitted our
2 interest in purchasing her interest. She no longer has
3 to stay there or be there or be unhappy. We are just
4 trying to keep it what we purchased.

5 JUDGE COOPER: Now these are mobile homes?

6 THE WITNESS: Yes, sir.

7 JUDGE COOPER: Have they been de-titled?

8 THE WITNESS: What does that mean?

9 JUDGE COOPER: They are not part of the land.
10 Mobile homes can be moved.

11 THE WITNESS: They are all mobile homes.

12 JUDGE COOPER: They hadn't been de-titled?

13 THE WITNESS: No. They have not. So what we
14 all own together is just the land itself. The things
15 that we own individually are the mobile homes that we
16 placed on the land.

17 JUDGE COOPER: Anything further?

18 THE WITNESS: No.

19 JUDGE COOPER: Mr. Talley, anything?

20 MR. TALLEY: No, sir.

21 JUDGE COOPER: You may step down. Thank you.
22 Anything, sir?

23 MR. WASHINGTON: No.

24 JUDGE COOPER: Mr. Talley, anything in final?

25 MR. TALLEY: No, sir. I think I have already

1 stated just a moment ago what we are asking for.

2 MS. JONES: May I ask a question? I heard
3 the options were you could partition the land or --

4 JUDGE COOPER: I was just going to go through
5 the options, and maybe that will clear up the question.
6 So go over the options that I have and based on this is
7 a court of equity I can do a lot of things. Number 1
8 is I could require the property auctioned off at public
9 auction. And I don't think anybody wants that because
10 you got to find another piece of property and the worst
11 possible scenario is my selling the property on the
12 courthouse steps. It gets the bottom line, I mean
13 bottom price.

14 The other is to partition the property and
15 draw it up and everybody gets what is, in effect, a
16 third. So you multiply or divide out the number of
17 acres, divide by 3. And then however I can work that
18 out, then reform everything. Then you folks, each
19 family, would get a third. And then Ms. Robinson would
20 get a third, not a third interest but what would amount
21 to acreage that would be equal to one-third of the
22 total. And each group would own it by themselves,
23 separate. That's an option.

24 The other option is prior to all of this is
25 if Ms. Robinson wants to sell, that negotiations be

1 entered into for the purchase of her interest in the
2 property. That's an option.

3 So that's all, unless there is some other,
4 Mr. Talley, that I have not seen within the scope of a
5 partition option, what I have the option to do. So,
6 Mr. Talley, I don't know if it would be fruitful or
7 whether your client even wants to consider selling.
8 And I don't know what the value of the property is. I
9 don't know anything about the property. I am just
10 looking at it on the screen here.

11 MR. TALLEY: That's not of interest to her.
12 We've had that conversation.

13 JUDGE COOPER: That conversation is already
14 done. Okay.

15 MS. JONES: Your Honor, if I may?

16 JUDGE COOPER: Yes.

17 MS. JONES: I have here copies of text
18 messages. This one is dated 9/23/2019 to all of us
19 from Ms. Robinson saying I have had the property
20 surveyed for the one-third I own in preparation to
21 sell, which includes into part of the big garden. So
22 we are of the understanding that Ms. Robinson's
23 understanding in having the survey done was to sell
24 her, as she says, one-third that she owns. Thus we did
25 petition the Court when we got the action that we were

1 interested in purchasing.

2 JUDGE COOPER: I saw that.

3 MR. TALLEY: Your Honor, I can certainly have
4 her testimony -- testify what I knew what she said --
5 she doesn't want to be hamstrung. The survey is drawn
6 the way it is. And the relief sought is what it is.
7 And the letters I mentioned earlier were sent at the
8 end of 2019, basically asking these defendants if they
9 would consent to the relief that we are seeking in this
10 action so she has no interest again. She can testify
11 that she has no interest in selling her share of this
12 property. The complaint lays out clearly that she is
13 asking it be partitioned in kind.

14 JUDGE COOPER: Mr. Talley, what I am going to
15 do in this case is I am going to step back -- not step
16 back -- but put this matter in kind of a nonruling
17 status for 30 days. And that's something I just made
18 up, but I want to make sure that Ms. Robinson and the
19 parties cannot agree as to a purchase price from
20 Ms. Robinson's interest if she wants to sell. So I am
21 going to leave it for 30 days, where that can be the
22 only matter to be considered for 30 days. After 30
23 days, if there is an impasse or the parties can't reach
24 or it's a situation where we just can't do it, she
25 doesn't want to do it, then I will make a ruling as to

1 with it. But I want to make sure that we have
2 exhausted all other possibilities given the particular
3 nature of this property and the original intent of this
4 purchase.

5 Sometimes even the best of intentions, even
6 with close family members, and it may well be the other
7 end of that is that Ms. Robinson realizes she can't
8 sell without all of y'all. But it sounds like the
9 whole structure sounds like a good idea at the time;
10 however, sometimes they don't go as they should. So
11 now that you know what my options are, did I answer
12 your question?

13 MS. JONES: Yes, sir. You did.

14 JUDGE COOPER: And I would rather something
15 work out than having to take other options and knowing
16 that it is mobile homes are not affixed to the
17 property, that they can be moved, hers can be moved.
18 So let's do it that way. And then hopefully this
19 will -- I don't know if y'all are still talking or not
20 or if you need to just contact Mr. Talley. I will
21 leave that to y'all where y'all can discuss.

22 Mr. Talley, anything further?

23 MR. TALLEY: No, sir. Covered everything.
24 And I will draft a Form 4 to include the November 12
25 deadline, and I will certainly communicate with the

1 Court if there is any resolution. Short of that or if
2 that day comes and goes -- if not I will let you know
3 that as well.

4 MS. WASHINGTON: Just to make sure I
5 understand what we are doing, so between today and
6 November 12, what you are saying is that we come
7 together and agree on a purchase price of her interest?

8 JUDGE COOPER: Well, basically that's it.
9 Hopefully what you can do is -- and she realizes too
10 that it's not an absolute thing that I divide it up.
11 So if she understands the possibility of having it all
12 sold rather than divide it up, so there can't be an
13 assumption on her part that I am going to do what she
14 requests. I can do all of it. Mr. Talley knows you
15 can't count on that. So I want her to understand as
16 well that if you say, well, I am not because I am going
17 to get my share. That's not necessarily so. And if
18 you decide that any point in the future that you want
19 to sell rather than sell to these folks, then you
20 realize you got to consider the cost, real estate
21 commissions, and everything else. A lot of things. I
22 know you and your attorney will talk about it, but
23 don't assume that if y'all don't work something out,
24 you are going to get exactly what you requested. I
25 don't want that to be a given.

1 MS. ROBINSON: Yes, sir.

2 JUDGE COOPER: So hopefully if we cannot come
3 to an agreement --

4 MS. WASHINGTON: That's fair. Then the other
5 option would be to sell the entire property? Sell it
6 all so everybody is off the land?

7 JUDGE COOPER: Everybody loses. Or I divide
8 it up.

9 MS. WASHINGTON: And we lose what we have,
10 including our garden space and the barn?

11 JUDGE COOPER: If it's not on your section or
12 your acreage.

13 MS. WASHINGTON: Can I ask a question?

14 JUDGE COOPER: Sure.

15 MS. WASHINGTON: Suppose I had a survey done
16 and I designated, okay, let's see, she wants to divide
17 it this way, and I want to divide it this way. Whose
18 ultimate decision is which way it gets divided?

19 JUDGE COOPER: It's my decision.

20 MS. WASHINGTON: So you can decide this way
21 the land will be split up?

22 JUDGE COOPER: Right.

23 MR. WASHINGTON: Okay.

24 JUDGE COOPER: This is not something -- this
25 is her presentation. Basically an offer, let's do it

1 this way. It's not something that all of y'all agreed
2 to.

3 MR. WASHINGTON: No.

4 JUDGE COOPER: She presented it. I thought
5 it originally was based on the 1994 survey that had
6 lots drawn out on it.

7 MR. WASHINGTON: No.

8 JUDGE COOPER: So if you come up with
9 something else and wanted me to consider that.

10 MS. WASHINGTON: I think for us what we would
11 like the Court to consider is what our deed says.

12 JUDGE COOPER: That's the other option. But
13 in the partition action, something has got to happen.

14 MS. WASHINGTON: Right. And we are willing
15 to purchase her --

16 JUDGE COOPER: Well, I want y'all to just
17 think about that and don't go on the record with that
18 and get me involved in that part. But when a partition
19 action is filed, something has got to happen at the end
20 of it.

21 MS. WASHINGTON: Right.

22 JUDGE COOPER: And that's why the law says if
23 I can't find it, it can't be divided up and everybody
24 else get more or less the same, then I sell it. So
25 what I am doing is allowing us to now step back, take

1 30 days, and see if you can arrive at something based
2 on the fact that you know what my options are to rule
3 on this case. Okay? Do you have any questions at all?

4 MS. JONES: No, sir.

5 JUDGE COOPER: Mr. Talley?

6 MR. TALLEY: No, sir.

7 JUDGE COOPER: Then I will calendar that for
8 November 12, and we will see where it goes.

9 MS. WASHINGTON: I do have a question.

10 JUDGE COOPER: Wait a minute.

11 MS. WASHINGTON: I did actually have a
12 question.

13 JUDGE COOPER: Okay.

14 MS. WASHINGTON: The figure that we come up
15 with, is it just something that we agree to, or is it
16 based --

17 JUDGE COOPER: I don't care what you sell it
18 for. If y'all can negotiate something, a price, and
19 everybody is agreeable to it, that's great.

20 MS. WASHINGTON: Okay.

21 JUDGE COOPER: It has nothing to do with
22 anything. So I am not setting any guidelines. It's
23 just business folks, arriving at a figure as to what
24 works. Okay?

25 MS. WASHINGTON: Yes.

1 JUDGE COOPER: Then I will see you soon.
2 (The non-jury trial was concluded at
3 10:45 A.M.)
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2/2/2020

Talley Law Firm, P.A.
134 Oakland Avenue
Spartanburg, SC 29302

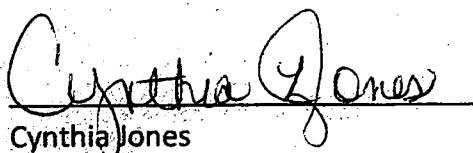
Attn: Scott F. Talley

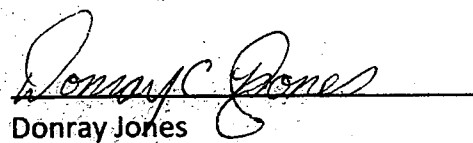
Re: Case No. 2020-CP-11-00040

Yvonne J. Robinson vs. Donray Jones, Cynthia Jones, Emma Washington, and Troy Washington

In answer to the amended complaint:

When the warranty deed was signed on April 21, 2016, our intention was the same as it is to this present day: for the land to remain undivided, with each party having a 1/3 interest in the land. The wording of the deed is clear and we were all advised as to its terms by the counsel at Hyde Law Firm at the time of signing. Ms. Robinson's signature affirms the same. We have never communicated or suggested anything to the Plaintiff to the contrary.


Cynthia Jones


Donray Jones

RDA 50

2/2/2020

Talley Law Firm, P.A.
134 Oakland Avenue
Spartanburg, SC 29302

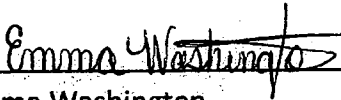
Attn: Scott F. Talley

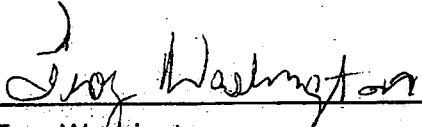
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In answer to the amended complaint:

When the warranty deed was signed on April 21, 2016, our intention was the same as it is to this present day: for the land to remain undivided, with each party having a 1/3 interest in the land. The wording of the deed is clear and we were all advised as to its terms by the counsel at Hyde Law Firm at the time of signing. Ms. Robinson's signature affirms the same. We have never communicated or suggested anything to the Plaintiff to the contrary.


Emma Washington


Troy Washington

ROA 51

201600001729
 Filed for Record in
 CHEROKEE COUNTY, SC
 PHYLLIS COYLE, REGISTER OF DEEDS
 04-25-2016 At 11:49 am.
 DEED 69.20
 Volume 84 Page 1910 - 1911

HYDE LAW FIRM, P.A.
 753 E. Main Street, Suite One
 Spartanburg, SC 29302

DEED PREP ONLY- NO TITLE EXAM

Instrument Volume Page
 201600001729 84 1910

STATE OF SOUTH CAROLINA }

WARRANTY DEED

COUNTY OF CHEROKEE }

KNOW ALL MEN BY THESE PRESENTS, THAT, I, Yvonne J. Robinson, in consideration of Sixteen Thousand and no/100 Dollars (\$16,000.00), the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release an undivided one-third (1/3) fee simple interest unto Emma Kelly Washington and Troy Eliazer Washington, as Joint Tenants with Rights of Survivorship and not as Tenants in Common, and an undivided one-third (1/3) fee simple interest unto Donray Curtis Jones and Cynthia Denise Jones, as Joint Tenants with Rights of Survivorship and not as Tenants in Common, in the real property described as follows:

All that certain piece, parcel or lot of land lying, situate and being in the State of South Carolina, County of Cherokee, known as 3.84 acres, located on Union Highway and Hudnut Drive as shown on plat prepared for William L. Moss, Jessie moss and Wesley A. Gordon by Lavender, Smith & Associates, Inc. dated March 7, 1994 and recorded in Book S-111, Page 6 of the Clerk's Office for Cherokee County, reference to which is made for the purpose of providing a more particular description of said real property.

DERIVATION: This being a fractional interest in the real property conveyed to Yvonne J. Robinson by deed of Lee's Interior Design, LLC dated September 3, 2014 and recorded on September 9, 2014 in Deed Book 71, Page 926 of the Office of the Register of Deeds for Cherokee County, South Carolina.

TMS No.: 111-00-00-002.00
 Property Address: 119 Hudnut Drive, Pacolet, SC 29372
 Grantees' Address: 118 Hudnut Drive, Pacolet, SC 29372

DEED ONLY: The preparer of this instrument was neither furnished with, nor requested to review, an abstract on the described property and therefore expresses no opinion as to condition of title.

RDA 52

Instrument
201600001729Volume Page
84 1911

Together with all and singular the rights, members, hereditaments and appurtenances to said premise belonging or in anywise incident or appertaining: TO HAVE AND TO HOLD ALL and singular the interests in the premises before mentioned unto the grantees, and their heirs and assigns forever. And the grantor does hereby bind the grantor and the grantor's heirs, executors and administrators to warrant and forever defend all and singular said premises unto the grantees and the grantees' heirs and assigns against the grantor and the grantor's heirs and against every person whomever lawfully claiming or to claim the same or any part thereof, except as to conditions, reservations, restrictions and easements of record, if any.

WITNESS the Grantor's hand and seal this 21st day of April, 2016.

SIGNED, sealed and delivered

In the presence of:

[Signature]
Witness

Yvonne J. Robinson (LS)
Yvonne J. Robinson

[Signature]
Witness

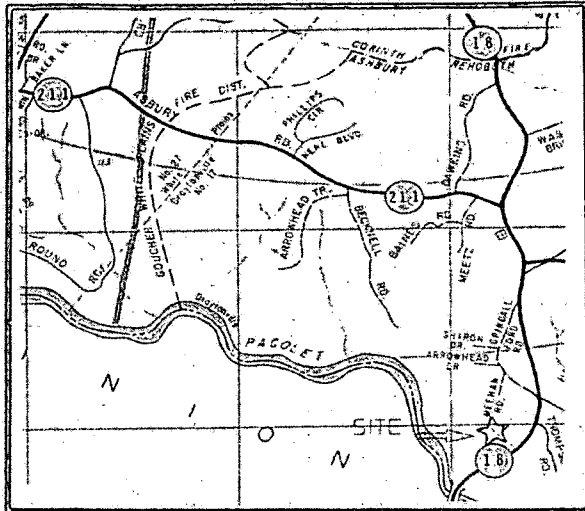
STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

ACKNOWLEDGEMENT

I, THE UNDERSIGNED Notary Public of the County and State aforesaid, verify that the within named Yvonne J. Robinson personally appeared before me this day and acknowledged the execution of the foregoing instrument, and that the subscribing witnesses are not parties to or beneficiaries of the transaction. Witness my hand and official stamp or seal this 21st day of April, 2016.

[Signature]
Notary Public for South Carolina
My commission Expires: 4/4/2024

ROA 53



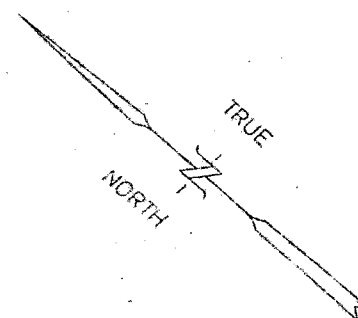
LOCATION MAP

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

3-14-94
KP

MAR 10 3 36 PM '94

VOL 311 PAGE 6
KATIE V. BAINES
CLERK OF COURT



CATAWBA TIMBER COMPANY

UNION HIGHWAY
S. C. ROUTE 18

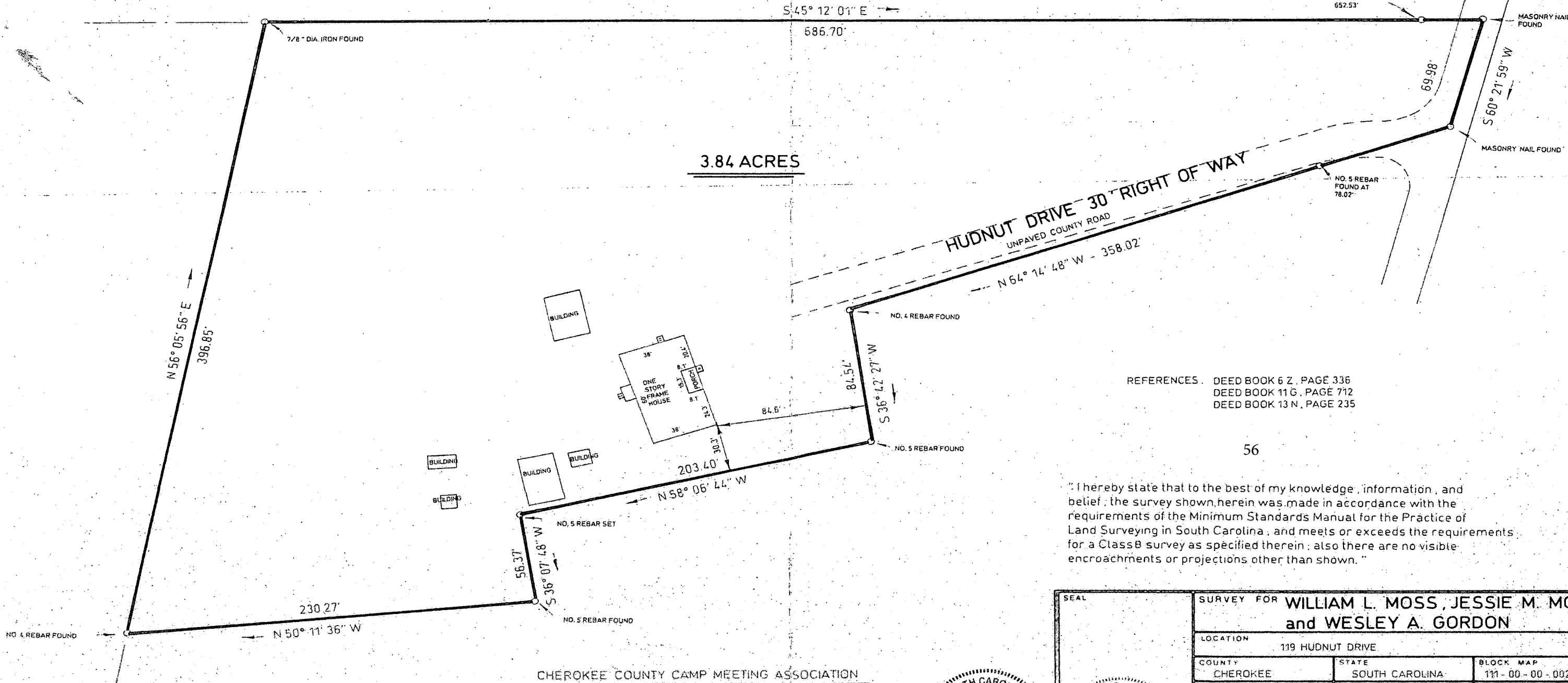
3.84 ACRES

HUDNUT DRIVE 30' RIGHT OF WAY
UNPAVED COUNTY ROAD

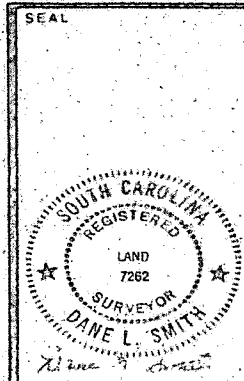
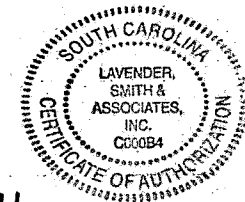
REFERENCES: DEED BOOK 6 Z, PAGE 336
DEED BOOK 11 G, PAGE 712
DEED BOOK 13 N, PAGE 235

56

"I hereby state that to the best of my knowledge, information, and belief, the survey shown herein was made in accordance with the requirements of the Minimum Standards Manual for the Practice of Land Surveying in South Carolina, and meets or exceeds the requirements for a Class B survey as specified therein; also there are no visible encroachments or projections other than shown."



CHEROKEE COUNTY CAMP MEETING ASSOCIATION



SURVEY FOR WILLIAM L. MOSS, JESSIE M. MOSS and WESLEY A. GORDON		
LOCATION 119 HUDNUT DRIVE		
COUNTY CHEROKEE	STATE SOUTH CAROLINA	BLOCK MAP 111-00-00-002
SCALE 1" = 40'	DATE MARCH 7, 1994	REFERENCE ABOVE
GRAPHIC SCALE 40 0 40 80 120		
LAVENDER, SMITH AND ASSOCIATES, INC. LAND SURVEYORS AND MAPPERS 2082 EAST MAIN STREET SPARTANBURG S.C. 29303-585436 108 RIDGEWAY ROAD GAFFNEY S.C. 29341-4893078		

ROA 54

The structure shown on this lot is not in an established flood hazard area

ROA 54

10/25/2020

Talley Law Firm, P.A.
134 Oakland Avenue
Spartanburg, SC 29302

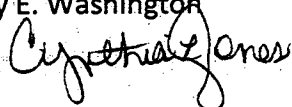
Attn: Scott F. Talley

Re: Case No. 2020-CP-11-00040

Yvonne J. Robinson vs. Donray Jones, Cynthia Jones, Emma Washington, and Troy Washington

In answer to the amended complaint:

This letter is our attempt to resolve the matter as to Ms. Robinson's 1/3 interest in the land. Please communicate to us whether your client would sell her interest to us, and at what price. We are willing to purchase her interest at a fair price, so that neither party suffers unnecessary damage or loss due to partitioning the land. We feel that this is the best and most fair solution. Time is of the essence so a prompt response is requested.

Donray C. Jones
Cynthia D. Jones
Emma K. Washington
Troy E. Washington
p.p. 

ROA 56



TALLEY Law Firm, P.A.

Scott F. Talley
Shannon M. Phillips
Wendy N. Griffith
Michael P. Bender*
* Licensed in SC and NC

October 28, 2020

Donray Curtis Jones and Cynthia Denise Jones
125 Hudnut Drive
Pacolet, SC 29372

RE: Yvonne J. Robinson v. Donray Curtis Jones, Cynthia Curtis Jones,
Emma Kelly Washington, Troy Eliazer Washington
CA No. 2020-CP-11-00040

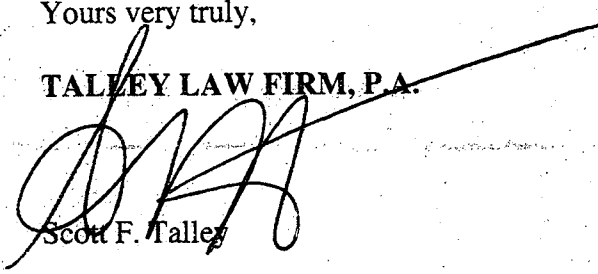
Dear Mr. and Ms. Jones:

I received your letter dated October 25 on October 28. I have spoken with Ms. Robinson. She will sell you her interest in the land and her mobile home for \$72,000. This price is not negotiable. The Court set a deadline of November 12 for us to inform it of the intentions of the parties – either resolve the matter or have the Court issue an order. If you wish to purchase her interest in the land, and the mobile home, as set forth herein, a written contractual agreement must be entered on or before November 11, 2020. Otherwise, on November 12, I will let the Court know this matter has not been resolved. Please advise.

With kind regards, I remain

Yours very truly,

TALLEY LAW FIRM, P.A.


Scott F. Talley

/hh

cc: Yvonne Robinson

ROA 57

11/3/2020

Talley Law Firm, P.A.
134 Oakland Avenue
Spartanburg, SC 29302

Attn: Scott F. Talley

Re: Case No. 2020-CP-11-00040

Yvonne J. Robinson vs. Donray Jones, Cynthia Jones, Emma Washington, and Troy Washington

In answer to the amended complaint:

The Court left us the discretion of settling the matter concerning Ms. Robinson's interest in the land we jointly own. This is our only intent. If Ms. Robinson is willing to set a price for her interest in the land, we are willing to entertain it. Otherwise, the Court will have to settle the matter.

Donray C. Jones
Cynthia D. Jones
Emma K. Washington
Troy E. Washington
p.p. ~~Emma Washington~~

RDA 58

RECEIVED

MAR 09 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2021-000017

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Gordon G. Cooper, Circuit Court Judge

Case No. 2020-CP-11-00040

Yvonne J. Robinson

Respondent,

v.

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

Appellants.

SUPPLEMENTAL RECORD ON APPEAL

Scott F. Talley
134 Oakland Avenue
Spartanburg, SC 29302

Attorney for the Respondent

Donray & Cynthia Jones
125 Hudnut Drive
Pacolet, SC 29372

Troy & Emma Washington
118 Hudnut Drive
Pacolet, SC 29372

Appellants

INDEX

Page

Transcripts

Hearing held on October 13, 2020..... Supp. ROA1

1 got.

2 BY MR. TALLEY:

3 Q. Ms. Robinson, the property shown here,
4 if you would -- and I will hold it and do as best
5 we can so everybody can see -- does it purport to
6 divide the 3.84 acres into three separate parcels?

7 A. It does.

8 Q. And if you would, just by pointing out
9 on the plat, identify the three parcels and who
10 lives where.

11 A. The Washingtons. Mine. And the
12 Joneses.

13 Q. So the Washingtons live here?

14 A. Um-hum.

15 Q. You have this middle tract?

16 A. Yes.

17 Q. And the Jones live here?

18 A. Yes.

19 Q. The plat also shows a roadway identified
20 as Hudnut Drive; is that accurate?

21 A. It is.

22 Q. Is that the ingress and egress from
23 Highway 18 for all three parcels?

24 A. Yes.

25 Q. How long has Hudnut Drive been in

1 existence?

2 A. I can't tell you. All I know is the
3 first survey was done on file in 1994, so...

4 Q. Does that 1994 show Hudnut Drive?

5 A. Yes.

6 Q. Coming into this property?

7 A. Yes.

8 Q. Since you acquired the property in 2014,
9 has Hudnut Drive been used as the ingress and
10 egress for this property?

11 A. Yes.

12 Q. To your knowledge have the defendants
13 used Hudnut Drive to access their particular homes
14 on this property?

15 A. Yes.

16 Q. Does this plat depict what you thought
17 you were doing when you signed the deed in 2016?

18 A. It does.

19 Q. And as part of this action, are you
20 asking the Court to partition in kind your
21 property into these three separate parcels?

22 A. I am.

23 Q. You don't dispute that the Joneses would
24 own this particular parcel, do you?

25 A. No, I don't.

1 Q. When were the water meters installed?

2 A. I don't know when the original one was,
3 but I installed one this year in March.

4 Q. Now, prior to us commencing this action,
5 do you recall my office, at your direction,
6 sending correspondences to Ms. Washington and
7 Ms. Jones asking that this by signing, deeds to
8 comport with the plat entered as Exhibit 2?

9 A. I did.

10 Q. And they resolved to do so?

11 A. Correct.

12 Q. We had to bring this action to partition
13 amongst the owner the property as set forth in
14 Exhibit 2; is that correct?

15 A. Correct.

16 Q. And you understand it's the Court's
17 discretion and the partition, it can allocate cost
18 and fees if it grants the relief you are seeking?

19 A. Yes.

20 Q. Are you asking the Court to do that in
21 this matter?

22 A. I am.

23 Q. I am going to show you this fee
24 affidavit that reflects \$3,500 paid plus cost; is
25 that accurate?

1 and then divided it.

2 JUDGE COOPER: And all of these properties
3 are basically the same amount of property in each one?

4 THE WITNESS: Yes. And I am thinking like I
5 have the least amount, but that's okay.

6 JUDGE COOPER: Mr. Talley, anything further?

7 MR. TALLEY: Nothing. That's the plaintiff's
8 case.

9 JUDGE COOPER: Let's do this. Who wants to
10 speak for the Jones?

11 MS. JONES: I will.

12 JUDGE COOPER: And you are?

13 MS. JONES: Cynthia Jones.

14 JUDGE COOPER: If you would come up and take
15 the stand, please.

16 CYNTHIA JONES

17 being first duly sworn, testified as follows:

18 EXAMINATION

19 JUDGE COOPER: State your full name and
20 address for the record.

21 THE WITNESS: Cynthia Denise Jones.
22 125 Hudnut Drive, Pacolet, South Carolina.

23 JUDGE COOPER: And, Mr. Talley, if you will
24 help me.

25 MR. TALLEY: And I have other copies. You

1 on that parcel. Whose home is that?

2 A. That is my sister and I -- our mother.

3 Q. And does somebody live there now?

4 A. Our mother.

5 Q. Your mother lives there?

6 A. Yes.

7 Q. You said you wanted your family to have
8 a tract of land. My client is not a member of
9 your family, correct?

10 A. Correct.

11 Q. And you understand that the way the deed
12 is written if you and your family decide you want
13 to sell this land, you have to have my client's
14 consent?

15 A. Yes, sir. We understand that.

16 Q. And that if she wanted to sell her land,
17 she would have to have all of your consent?

18 A. Yes.

19 Q. Does that make sense to you?

20 A. Yes, sir.

21 Q. Explain that.

22 A. Because we aren't blood family. But at
23 the time, Ms. Robinson was a part of our family.
24 We are not blood related, but at that time we had
25 a relationship where we acted as family. We were

1 very close at that time.

2 Q. So if you improve the property around
3 your home, you are okay with Ms. Robinson getting
4 the benefits of those improvements?

5 A. Yes, sir.

6 Q. And you think it seems equitable if she
7 makes improvements around her home, the four of
8 you would get the benefits of those improvements?

9 A. The property around all of our homes
10 belong to all of us, so any improvements that were
11 done we would all benefit from it because it
12 belonged to all us.

13 Q. Regardless of who paid for it?

14 A. Yes, sir.

15 Q. Now, you testified -- I think you were
16 not present when the deed Exhibit 1 was signed,
17 correct?

18 A. Correct.

19 Q. Who reached out to set that appointment
20 so that people could go to the Hyde Law Firm?

21 A. I received information from
22 Ms. Robinson as to the law firm that we were going
23 to, that it would be in Greenville. I did not
24 reach out anywhere.

25 Q. You think this took place in Greenville?

1 interested in purchasing.

2 JUDGE COOPER: I saw that.

3 MR. TALLEY: Your Honor, I can certainly have
4 her testimony -- testify what I knew what she said --
5 she doesn't want to be hamstrung. The survey is drawn
6 the way it is. And the relief sought is what it is.
7 And the letters I mentioned earlier were sent at the
8 end of 2019, basically asking these defendants if they
9 would consent to the relief that we are seeking in this
10 action so she has no interest again. She can testify
11 that she has no interest in selling her share of this
12 property. The complaint lays out clearly that she is
13 asking it be partitioned in kind.

14 JUDGE COOPER: Mr. Talley, what I am going to
15 do in this case is I am going to step back -- not step
16 back -- but put this matter in kind of a nonruling
17 status for 30 days. And that's something I just made
18 up, but I want to make sure that Ms. Robinson and the
19 parties cannot agree as to a purchase price from
20 Ms. Robinson's interest if she wants to sell. So I am
21 going to leave it for 30 days, where that can be the
22 only matter to be considered for 30 days. After 30
23 days, if there is an impasse or the parties can't reach
24 or it's a situation where we just can't do it, she
25 doesn't want to do it, then I will make a ruling as to

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

Appellate Case No. 2021-000017

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Gordon G. Cooper, Circuit Court Judge

Case No. 2020-CP-11-00040

Yvonne J. Robinson

Respondent,

v.

Appellants.

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

FINAL BRIEF OF APPELLANTS

Donray & Cynthia Jones
125 Hudnut Drive
Pacolet, SC 29372

Troy & Emma Washington
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Pacolet, SC 29372

TABLE OF CONTENTS

Table of Authorities	iii
Statement of Issues on Appeal.....	iii
Statement of the Case.....	1
Facts.....	2
Arguments	
1. The trial court erred in dismissing the appellants' right of first refusal, treating it as only an option.....	6
2. The trial court erred by not ordering an appraisal, prior to partition, to determine the value of the interest to be sold.....	8
3. The trial court erred in ordering a partition in kind.....	10
4. The trial court erred in awarding attorney's fees to the respondent.....	10
Conclusion.....	12

TABLE OF AUTHORITIES

STATUTES

S.C. Code § 15-61-25.....	1,5,6,7,9
S.C. Code § 15-61-320.....	10
S.C. Code § 27-7-40.....	3

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY DISMISSING THE APPELLANTS' RIGHT TO FIRST REFUSAL, TREATING IT AS ONLY AN OPTION?
2. DID THE TRIAL COURT ERR BY NOT ORDERING AN APPRAISAL, PRIOR TO PARTITION, TO DETERMINE THE VALUE OF THE INTEREST TO BE SOLD?
3. DID THE TRIAL COURT ERR IN ORDERING A PARTITION IN KIND?
4. DID THE TRIAL COURT ERR IN AWARDING ATTORNEY'S FEES TO THE RESPONDENT?

STATEMENT OF THE CASE

On January 16, 2020, Yvonne Robinson (Respondent) filed a complaint in which she sought a partition in kind of a 3.84 acre tract of land that she owns jointly with Donray Jones, Cynthia Jones, Emma Washington, and Troy Washington (Appellants). Ms. Robinson requested the subject property to be partitioned pursuant to a survey she had drawn up two months earlier, on November 7, 2019. She also requested that the Court set aside the Warranty Deed which records that she sold a two-third interest in the entire property to the appellants. On February 2, the appellants mailed a written answer to Ms. Robinson's attorney, expressing that they did not agree to physically divide the land. This matter was referred to the master-in-equity, Honorable Gordon G. Cooper. A partition action was filed by the Court on February 24, 2020, subject to the provisions of South Carolina Code §15-61-25. The appellants received notice that a hearing would be held on June 9, 2020. On May 29, 2020, the appellants filed a notice with the Court of their interest to purchase the respondent's one-third interest in the subject property. The hearing was subsequently postponed until October 13, 2020 due to the pandemic.

At the hearing, the judge ordered that the parties take 30 days to try to work out the matter among themselves as to the respondent's one-third interest in the land. If the parties could not come to a resolution, the Court would have to make a decision based on the applicable law. The parties were unable to agree on a purchase price of the interest within the 30 days. There was no final hearing; the Court simply e-filed a judgment on December 4, 2020. The court ordered that the land be partitioned in kind. The Court also ordered the appellants to pay a collective two-thirds of the respondent's attorney fees. On December 30, 2020 the appellants timely served the Notice of Appeal on the respondent's attorney and filed it with the trial court.

FACTS

This case is about a 3.84 acre tract of land located in Cherokee County, SC. (R. 20, L.19). Ms. Robinson (Respondent), along with Donray Jones, Cynthia Jones, Emma Washington, and Troy Washington (Appellants) own this property together. (R.52-53). They all wanted land out in the country. (R.29, L.3) This property had three septic tanks, a well, a large storage/shop building, and plenty of land for gardening. They agreed to purchase it together. (R.30, L.3 and R.33, L 4-5).

Since they were purchasing the land together, each party was responsible for one-third of the \$24,000 cost. (R.26, L.25 and R.27, L.1). The Joneses and the Washingtons needed time to secure their portion of the purchase price, which was \$8000 each. (R. 28, L. 9-13 and R. 29, L.8-10). In September 2014, Ms. Robinson paid the full purchase price of \$24,000 for the land upfront, with the agreement that the Joneses and the Washingtons would pay back \$16,000, their share of the purchase price. (R. 29, L. 8-10 and R. 30, L.4-5) The Joneses and the Washingtons began to make installment payments until the debt was paid. (R. 29, L. 9-10)

Because there were three septic tanks already on the property, each party could move a mobile home onto the land and live on it if they chose. (R. 24, L. 11-13) The Washingtons were the first to live on the land, moving a mobile home onto the property in December 2014. The Joneses placed a mobile home on the land and started living there in September 2015. Ms. Robinson also placed a mobile home on the land but did not permanently move into it until 2018. (R. 21, L. 16-17; R. 23, L. 21-24; R.24, L. 5-6) The mobile homes were arranged to allow everyone access to a tank. This arrangement of the mobile homes did not physically divide the land into three parts. None of these mobile homes are de-titled. (R. 40, L.12-13; R. 44, L.16-17).

In the spring of 2016, the appellants paid off their balance to Ms. Robinson. Ms.

Robinson, Mr. Jones, and Mrs. Washington all went to Hyde Law Firm on April 21, 2016 to have a new property deed drawn up to show all of the joint owners. (R. 22, Ln. 2-4; R. 33, L.11-13; R.52-53)

Before Ms. Robinson signed the new deed, much discussion was held with the lawyer to make sure everyone understood and agreed to a joint tenancy. (R. 31, L. 21-25; R.32, L. 6-11; R.33, L. 20-24; R. 34, L. 1-23). The deed would not split the land up into thirds or give each party a separate parcel. It gave each party a one-third interest in the land. Ms. Robinson signed the deed acknowledging that, in consideration of \$16,000, she had sold an undivided one-third interest to the Washingtons and an undivided one-third interest to the Joneses in the entire 3.84 acres. (R.52-53) The wording of the warranty deed conclusively creates a joint tenancy. S.C. Code § 27-7-40. The Washingtons and the Joneses are listed as joint tenants with the Rights of Survivorship and not as Tenants in Common.

It is of significance that the deed Ms. Robinson signed describes the parcel of land as “all that certain piece, parcel or lot of land...known as 3.84 acres... as shown on the plat prepared... by Lavender, Smith & Associates, Inc. dated March 7, 1994 and recorded in Book S-111, Page 6 of the Clerk’s Office for Cherokee County”. (R.52-53) This survey is the reference that was used to provide a more particular description of the real property. The deed does not purport to partition the land into separate parcels. It reflects that the parties would have equal ownership of the 3.84 acre parcel.

From the time the land was purchased in 2014, the tenants have shared in the expenses of preparing and maintaining it. There has always been one property bill for the parcel. When the property bill comes, Ms. Robinson, the Washingtons, and the Joneses each contribute one-third of the payment. (R.25, L.11-22; R.35, L. 5-7). This was the arrangement even before the

Washingtons and Joneses were added to the deed.

The property itself has been shared since 2014. The storage/shop building in the middle of the property is shared by all tenants. (R.38, L.7-8). The land is shared and maintained by all tenants, including a huge garden area that they cleared, fertilized, planted, and fenced together. (R.38, L.4-6). There is also a well centered on the property. (R. 38, L.18-19). All of the joint owners have access and rights to all parts of the property. (R.38, L.15-17).

On September 23, 2019, Ms. Robinson sent a text message to the appellants stating "I have had the property surveyed for the one-third I own in preparation to sell, which includes into part of the big garden." (R.42, Ln. 17-24) This is how the appellants first learned that Ms. Robinson desired to split up the land to sell it. Because the land is owned jointly, the only way she could do this is if the land was physically partitioned and the desired section awarded to her. It is significant to note that the portion that Ms. Robinson is requesting for herself (R.55, parcel B) includes the storage/shop building, the shared garden, and the well. (R. 38, Ln. 4-6, 7-8, 18-19)

Ms. Robinson had a survey performed without the appellants' knowledge, in which the surveyors drew a plat to show the property as three different parcels. (R.35, L.19-25; R.36, L.1-6). This survey was recorded on November 7, 2019 with the Cherokee County Register of Deeds. This survey, however, does not change how the land is owned, per the registered deed. It simply shows how Ms. Robinson wishes it to be divided. (R.46, L.24-25; R.47, L.1-7; R.55).

On January 16, 2020, Ms. Robinson filed a complaint in which she sought a partition in kind of the land. She also requested that the Court set aside the Warranty Deed that records that she sold a two-third interest in the property to the appellants. She argued that the deed was "erroneous" and did not reflect her understanding of what she was signing. (R.17, #5, #7) Ms. Robinson prayed the Court that the "Plaintiff (herself) be ordered to sign new deeds in

accordance with the survey” from November 2019. (R.18, #3). On February 2, 2020 the appellants mailed a letter to Ms. Robinson’s attorney, expressing that they didn’t agree to physically divide the land and wanted to keep their purchased interests in the property. (R.50).

This matter was referred to the master-in-equity, Honorable Gordon G. Cooper. Accordingly, a partition action order was filed by the Court on February 24, 2020, subject to the provisions of South Carolina Code §15-61-25. (R. 1-4). This code details the procedure that must be followed for all petitions for partition filed after May 25, 2006.

The appellants received notice that a hearing would be held on June 9, 2020. On May 29, 2020, the appellants timely filed a notice with the Court of their interest to purchase the respondent’s one-third interest in the subject property. (R. 19). The hearing was subsequently postponed until October 13, 2020 due to COVID social distancing requirements.

At the hearing on October 13, the judge ordered that the parties take 30 days to try to work out the matter among themselves as to the respondent’s one-third interest in the land. (R. 5-6). If the parties could not come to a resolution, the Court would have to make a decision based on the applicable law. (R.10, 1st par.). The parties were unable to agree on a purchase price of the interest within the 30 days. (R.10, 1st par.) There was no follow-up hearing; the Court’s judgment was e-filed on December 4, 2020. (R. 7-14) The court ordered that the land be partitioned in kind pursuant to the recent survey. The Court also ordered the appellants to pay a collective two-thirds of the respondent’s attorney fees and costs. (R. 11-12, #1-4)). On December 30, 2020 the appellants timely served the Notice of Appeal on the respondent’s attorney and filed it with the trial court.

ARGUMENTS

I. THE TRIAL COURT ERRED BY DISMISSING THE APPELLANTS' RIGHT TO FIRST REFUSAL, TREATING IT AS ONLY AN OPTION.

Prior to the hearing, the Court filed an order stating that this partition action was subject to the provisions of S.C. Code § 15-61-25. (R.1,2)) This code reads: "Upon the filing of a partition for petition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning 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 nonpetitioning join 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." S.C. Code §15-61-25 (A). The code clearly provides that, prior to partition, a joint tenant has first right of refusal to purchase the property.

After receiving the Court's order of partition, the appellants filed a proper and timely notice to the court of their desire to purchase the respondent's interest in the land. (R.19). During testimony, the appellants reiterated to the Judge that they had complied with the requirement to inform the Court of their interest in purchasing Ms. Robinson's interest.(R.39, L.25-R.40, L.1-2) . The Judge acknowledged that he had seen the filing. (R.42, L.24-25; R.43, L.1-2). Later, when the judge was reminded again of the wording of the deed and that the appellants had already given notice of their desire to purchase Ms. Robinson's interest, the Judge's reply was "Well, I want y'all to just think about that and don't go on the record with that and get me involved in that part. But when a partition action is filed, something has got to happen at the end of it." (R.47, L.10-20). The appellants agree that "something has got to happen at the end of it." However, there is a process that must be followed by law. When listing what his

options were for settling this case, the Judge said: "This is called an action for a partition of property. In a case such as this, where you got everybody owning a piece, one of the co-owners, no matter what -- a lot of times it happens in families and whatever, business partner -- somebody doesn't want to be in the same group anymore. And if they can't agree as to how it's going to be done, any one of the owners can file a partition action. And that's what this is, to either have, one, the property sold on the open market. I don't think y'all want to do that... Or I can divide it up. And have it divided up in kind, which everybody gets a piece of the pie." (R.36, L.19-25-R.37, L.1-7).

The judge treated the appellants' right to first refusal as only an option.

Judge Cooper: "The other option is prior to all of this is if Ms. Robinson wants to sell, that negotiations be entered into for the purchase of her interest in the property. That's an option." (R. 41, L.24-25- R.42, L.1-2). The applicable code does not define the first "right" of refusal as optional; it is a legal right. In addition, it is not dependent upon if the petitioning tenant "wants" to sell her interest to the nonpetitioning tenants. This right becomes enforceable "upon the filing of a petition for partition of real property owned by joint tenants or tenants in common." S.C. Code § 15-61-25, (A).

Without dispute, jointly-owned property is subject to partition. However, the appellants should have been allowed to exercise their legal right of first refusal to purchase the property, prior to partition. In addition, the law states that if the nonpetitioning tenants fail to timely pay the determined purchase price of the interest, the court shall proceed according to its traditional practices in partition sales. S.C. Code § 15-61-25, (E). The law does not provide for a partition in kind in this code, only a partition sale. Further, no partition sale can take place if the nonpetitioning tenants exercise the first right of refusal. It is exercised "prior" to partition. The

trial court erred by dismissing the appellants' right to first refusal, prior to partition.

II. THE TRIAL COURT ERRED BY NOT ORDERING AN APPRAISAL, PRIOR TO PARTITION, TO DETERMINE THE VALUE OF THE INTEREST TO BE SOLD.

The judge's order at the end of the hearing was that the parties take 30 days to try to work out the matter among themselves as to the respondent's one-third interest in the land. Ms.

Washington asked the judge to clarify what he meant by that.

MS. WASHINGTON: Just to make sure I understand what we are doing, so between today and November 12, what you are saying is that we come together and agree on a purchase price of her interest?

JUDGE COOPER: Well, basically that's it. (R.45, L.4-8)

When questioned as to how to arrive at a purchase price, the judge left it at the parties' discretion.

MS. WASHINGTON: The figure that we come up with, is it just something that we agree to, or is it based --

JUDGE COOPER: 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.

MS. WASHINGTON: Okay.

JUDGE COOPER: 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?

MS. WASHINGTON: Yes. (R. 48, L.14-25)

The judge was extending an opportunity to all the joint owners to decide on a price of

Ms. Robinson's interest without there being a ruling from the Court. That was the only thing to be considered for the next 30 days.

JUDGE COOPER: Mr. Talley, what I am going to do in this case is I am going to step back -- not step back -- but put this matter in kind of a nonruling status for 30 days. And that's something I just made up, but I want to make sure that Ms. Robinson and the parties cannot agree as to a purchase price from Ms. Robinson's interest if she wants to sell. So I am going to leave it for 30 days, where that can be the only matter to be considered for 30 days. (R.43, L.14-22).

The Washingtons and the Joneses had no issue with the direction the Judge was taking, since the law says joint tenants have first right of refusal once a petition for partition is filed. They agreed to working out a fair price with Ms. Robinson.

On October 25 the appellants sent a letter to Ms. Robinson, seeking a fair price for her interest. (R.56) However, Ms. Robinson did not want to negotiate a price for her interest in the land only, but for her interest along with her mobile home. (R.57). The appellants were not interested in purchasing her mobile home, which has nothing to do with the interest in the land. (R.58)

When the parties could not agree to a purchase price of the respondent's interest, the court failed to follow the applicable law, which requires a court-ordered appraisal of the land to determine the value of the interest to be sold. SC Code §15-61-25 (B). This is the remedy the law provides. Upon completion of the appraisal, the appellants should have been allowed to purchase the interest at its appraised value. South Carolina Code §15-61-25, (D). Upon the payment and the approval of it by the Court, the Court should have executed and delivered the proper instruments transferring title to the appellants. South Carolina Code §15-61-25 (B).

The judge did not follow the applicable law, but instead chose to order a partition in kind based on Ms. Robinson's survey. (R. 11, #1). There was no law stated that allows for that.

III. THE TRIAL COURT ERRED IN ORDERING A PARTITION IN KIND.

The respondent sought a partition in kind, a remedy which is not applicable in this case. By definition, a partition in kind is "the division of heirs' property into physically distinct and separately titled parcels." South Carolina Code §15-61-320 (9). But, the subject property in this case is not heirs' property. The appellants were each deeded a one-third interest in the property in total consideration of \$16,000 paid to the respondent. (R.52-53)

The judge erred when he ordered a partition in kind. By ordering a physical partition, the appellants lose their purchased interest in the storage/shop building and the well. The respondent becomes the sole owner of both. (R.55) This would add value to her parcel only, which is an unequitable distribution. In addition, the respondent becomes the sole owner of the large garden that all the owners share. The expenses necessary to fertilize, till, plant, and fence this space have been shared by everyone.

Since each tenant purchased a 1/3 interest in the entire property, a partition in kind would effectively take away each tenant's right and access to 2/3 of the property. (R.55) This ruling is deleterious to the appellants' interest in the land and goes against the applicable law which gives the appellants first right of refusal, prior to a partition.

IV. THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES AND COURT COSTS TO THE RESPONDENT.

Ms. Robinson could have legally sold or given away her one-third interest in the property without getting the courts involved. This would have effectually ended the joint tenancy. The

reason this action was commenced is because the respondent desired, rather, a partition in kind, a remedy the law does not allow her to do independently. After the respondent filed her petition for partition, the Judge sent an order dictating the applicable law for this case, which gives the joint owners first right of refusal prior to partition. The appellants gave notice of their intent to purchase the subject interest more than four months prior to the October 13, 2020 trial date. Ms. Robinson had ample time to work out a resolution with the appellants without a trial or court costs. However, since she did not seek the remedy the law offered, the trial took place and she was represented and invoiced by her chosen Counsel. This is through no fault of the appellants. Thus, no attorney's fees should have been awarded.

Further, the judge did not give any valid legal reason for awarding the attorney's fees and costs. In his final order, the judge concluded attorney fees and costs in this action were pursuant to SC Code §16-51-110. (R.11, #9). Based on this "finding of fact", the Judge granted the Respondent's request for attorney fees and costs. This fictitious code does not exist anywhere in the SC Code of Laws; therefore, it cannot serve as a legal basis for a decision. For these reasons, the judge erred in ordering a reward for attorney's fees and costs.

CONCLUSION

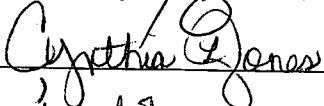
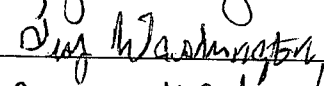
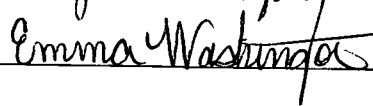
For the reasons stated, the Trial Court's entire order should be reversed and remanded with instructions for a court-ordered appraisal to determine the value of the Respondent's interest, so that the appellants can exercise their right to first refusal, and not to award the Respondent any attorney fees or costs.

June 16, 2021

Respectfully submitted,

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RECEIVED

Apr 04 2022

SC Court of Appeals

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

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

Case No.: 2020-CP-11-00040
Appellate Case No: 2021-000017

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

Appellants,

vs.

Yvonne J. Robinson

Respondent.

FINAL BRIEF OF RESPONDENT YVONNE J. ROBINSON

s/ Scott F. Talley

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April 4, 2022

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES ON APPEAL.....	1
1. DID THE TRIAL COURT ERR IN PROCEEDING TO PARTITION THE PROPERTY IN KIND, PURSUANT TO STATUTE?	
2. WAS THE TRIAL COURT REQUIRED TO ORDER AN APPRAISAL PRIOR TO PARTITION OF THE PROPERTY IN KIND?	
3. WAS THE TRIAL COURT CORRECT TO APPORTION COSTS AND ATTORNEYS FEES TO ALL PARTIES, INCLUDING APPELLANTS, AS PERMITTED BY STATUTE?	
STATEMENT OF THE CASE.....	1,2
STANDRARD OF REVIEW.....	2,3
STATEMENT OF FACTS.....	3,4,5
ARGUMENT.....	5,6,7,8
CONCLUSION.....	8
CERTIFCATE OF SERVICE.....	9

TABLE OF AUTHORITIES

	<i>Page</i>
 CASES	
Zimmerman v. Marsh, 365 S.C. 383, 386, 618 S.E.2d 898, 900 (2005).....	2,5
365 S.C. at 388, 618 S.E.2d at 901. (2005).....	2,5
Pruitt v. Pruitt, 298 S.C. 411, 414, 380 S.E.2d 862, 864 (Ct.App.1989).....	2,5
Anderson v. Anderson, 299 S.C. 110, 114, 382 S.E.2d 897, 899 (1989).....	2,5
Campbell v. Jordan, 675 S.E.2d 801, 382 S.C. 445 (S.C. App. 2009)).....	3,7
Wilder Corp. v. Wilke, 330 SC 71, 497 S.E.2d 731 (1998).....	3,7
Honea v. Honea, 292 SC 456, 357 S.E.2d 191 (Ct. App. 1987).....	3,7
 STATUTES	
S.C. Code Ann § 15-61-320.....	3,
S.C. Code Ann § 15-61-25.....	5,6
S.C. Code Ann. § 15-61-50.....	3,6,7,8
S.C. Code Ann. § 15-61-110.....	8

STATEMENT OF ISSUES OF APPEAL

- 1. DID THE TRIAL COURT ERR IN PROCEEDING TO PARTITION THE PROPERTY IN KIND, PURSUANT TO STATUTE?**
- 2. WAS THE TRIAL COURT REQUIRED TO ORDER AN APPRAISAL PRIOR TO PARTITION OF THE PROPERTY IN KIND?**
- 3. WAS THE TRIAL COURT CORRECT TO APPORTION COSTS AND ATTORNEYS FEES TO ALL PARTIES, INCLUDING APPELLANTS, AS PERMITTED BY STATUTE?**

STATEMENT OF THE CASE

On January 14, 2020 Plaintiff initiated this action by filing a Lis Pendens, Summons and Complaint. On January 16, 2020 an Amended Complaint was filed wherein Plaintiff sought a Partition in Kind, or in the alternative a reformation of the Warranty Deed recorded in Deed Book 84, at Page 1920, Cherokee County Register of Deeds. Based on said deed, the property subject of this action was owned by Plaintiff owning one-third interest, Appellants, Donray Curtis Jones and Cynthia Jones owning one-third interest, and Appellants, Emma Kelly Washington and Troy Eliazer Washington owning one-third interest. Appellants filed their answer to the Amended Complaint on or about October 12, 2020 stating that, their intention was the same as it is to this present day; for the land to remain undivided with each party having a one-third interest in the land. On or about October 15, 2019, Respondent Robinson had Cole Land Surveying, LLC perform a survey of the subject property showing division into three separate parcels. The plat of this survey was recorded on November 7, 2019 in Cherokee County Register of Deeds. On

February 24, 2020 the Court issued its Partition Order dated February 19, 2020, which was served on the Defendants/Appellants. On May 29, 2020, prior to the first scheduled hearing in this matter, Appellants did file a document with the Clerk of Court for Cherokee County indicating that they wanted to purchase the 1/3 interest of the Plaintiff in the subject property. This matter came to trial and the Court issued an Order filed December 4, 2020 partitioning the subject property in kind pursuant to the October 15, 2019 survey of the property by Cole Surveying. In addition, the Court ordered the Appellants to pay two-thirds of the attorney's fees/costs incurred by Respondent. This appeal followed.

STANDARD OF REVIEW

In her Amended Complaint, the Respondent sought partition of the subject property in-kind pursuant to a survey she had completed which was entered into evidence. The standard of review for a partition action heard by the Master in Equity is an equitable action and, as such, this Court may find facts in accordance with its view of the preponderance of the evidence. Zimmerman v. Marsh, 365 S.C. 383, 386, 618 S.E.2d 898, 900 (2005). The partition procedure must be fair and equitable to all parties of the action. Pruitt v. Pruitt, 298 S.C. 411, 414, 380 S.E.2d 862, 864 (Ct.App.1989). This Court has previously stated that partition in kind is favored when it can be fairly made without injury to the parties. Anderson v. Anderson, 299 S.C. 110, 114, 382 S.E.2d 897, 899 (1989). Furthermore, equitable considerations such as the length of ownership and sentimental attachment to property may be considered in a partition action, but the pecuniary interests of all of the parties is the determining factor in deciding whether to require a judicial sale or to allow a partition by allotment. Zimmerman, 365 S.C. at 388, 618 S.E.2d at 901 (2005). Furthermore, "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" § 15-61-50. Campbell v. Jordan, 675 S.E.2d 801, 382 S.C. 445 (S.C. App. 2009). In addition, "The special referee had jurisdiction to partition the property pursuant to Section 15-61-50 and incidentally to allot certain portions of the property to the respective parties in the action." Campbell v. Jordan, 675 S.E.2d 801, 382 S.C. 445 (S.C. App. 2009). In this case, the Court allowed the Appellants an opportunity, if agreement was reached, to purchase Respondent's interest in the subject property. The parties were unable to do so, and by their own letter post trial letter, Appellants stated that the Court would have to decide the issue presented.

Furthermore, issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the appellate court with a platform for meaningful review. Wilder Corp. v. Wilke, 330 SC 71, 497 S.E.2d 731 (1998). It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Honea v. Honea, 292 SC 456, 357 S.E.2d 191 (Ct. App. 1987). This case does not involve heir's property as defined in S.C. Code § 15-61-320. At no point prior to trial or during trial did the Appellants allege that the subject property was heir's property.

STATEMENT OF FACTS

Ms. Robinson moved to the land in 2018. (R.21, L.16-17). Ms. Robinson testified that she thought she signed a deed that they would all own 1/3 of the total land where their homes were located. (R.23, L.15-20). There were already three septic tanks on the property and that when she located her home there it related to the location of one of the septic tanks. There were three homes on the land at the time the deed was done in April of 2016. Appellants already lived on the land and had their home connected to one of the three septic tanks. (R.23 L.22-24). Respondent testified

that she realized after signing the deed to the Appellants that the property was not “divided” and all three owned the entire parcel as tenants in common. In 2019, she had the property surveyed to divide the property into three lots, as equal in size as possible, to include the location of each parties’ home on the property. That survey purported to divide the 3.4 acres into three separate parcels. (Supp.R.1, L.5-7). Ingress and egress from Highway 18 to all three parcels, as provided, is set forth on the plat. (Supp.R.1, L.22-24). Respondent thought that was the survey depicted was being done with the property when she signed her deed in 2016. (Supp.R.2, L.16-18). Respondent did not dispute the fact that each of the Appellant couples would own a particular tract as shown in the plat. (Supp.R.2, L.23-25). There are separate water meters on the property. (R.25, L.23-25). Respondent was informed that the Court could allocate costs and fees if the relief she was seeking was granted. (Supp.R.3 L.16-18). Respondent testified that the metes and bounds shown on the survey the court relies upon on partitioning the property in kind was based on historical information obtained by the surveyors. (R.29, L.23-25)(Supp.R.4 L.1). Appellant Jones testified that she wanted her family to have a tract of land, however, all parties owning the land are not family. (Supp.R.5, L.7-10). In addition, Ms. Jones stated that she believed that the deed was signed in Greenville, when in fact, it was signed at a law firm in Spartanburg (Supp.R.6, L.23-25)(R.31, L.1).

At the hearing on October 13, 2020 the Master ordered that the parties take 30 days to try to work out the matter amongst themselves as to the Respondent’s one-third interest in the land or a purchase price of same. If the parties could not come to a resolution, the Court would have to make a decision based on the applicable law. (R.43 L.14-25). There was no follow-up hearing; the Court’s Final Order was e-filed on December 4, 2020. The court ordered that the land be partitioned in kind pursuant to the survey, (R.55). The Court also ordered the Appellants to pay a

collective two-thirds of the respondent's attorney fees and costs. (R.12). On December 30, 2020 the Appellants timely served the Notice of Appeal addressed to the Respondent's counsel and filed it with the trial court.

ARGUMENT

1. DID THE TRIAL COURT ERR IN PROCEEDING TO PARTITION THE PROPERTY IN KIND, PURSUANT TO STATUTE?

A partition is an equitable action and, as such, this Court may find facts in accordance with its view of the preponderance of the evidence. Zimmerman v. Marsh, 365 S.C. 383, 386, 618 S.E.2d 898, 900 (2005). The partition procedure must be fair and equitable to all parties of the action. Pruitt v. Pruitt, 298 S.C. 411, 414, 380 S.E.2d 862, 864 (Ct.App.1989). This Court has previously stated that partition in kind is favored when it can be fairly made without injury to the parties. Anderson v. Anderson, 299 S.C. 110, 114, 382 S.E.2d 897, 899 (1989). Furthermore, equitable considerations such as the length of ownership and sentimental attachment to property may be considered in a partition action, but the pecuniary interests of all of the parties is the determining factor in deciding whether to require a judicial sale or to allow a partition by allotment. Zimmerman, 365 S.C. at 388, 618 S.E.2d at 901 (2005).

Appellants rely upon S.C. Code § 15-61-25 in arguing that they had a right of first refusal to purchase the property of the Respondent. While it is admitted that the Appellants, at least 10 days prior to the trial of the matter, submitted a statement of their interest in purchasing the property, the cited statute contemplates a scenario where the Plaintiff/Respondent in this matter, is seeking to sell the property. Herein, Respondent asked for partition in kind. See Amended Complaint. The process set forth in S.C. Code § 15-61-25(B), wherein the parties cannot reach agreement, states that the "value of the interest or interests to be sold shall be determined" by

appraisers. Here, no filing submitted by either party sought a sale of the entire parcel of property. Furthermore, prior to issuing its final order, the trial court afforded the parties an opportunity to try to resolve the matter, in the spirit of S.C. Code § 15-61-25, yet the parties were not able to agree. While they never formally asked for any formal appointment of appraisers, the Court did allow the parties time prior to issuing the final order to see if they could resolve the price issue. The Appellants never put a price on the subject property, but they did send letters dated October 5, 2020 asking if Respondent would sell her interest and at what price. Further, Appellant Jones stated in that letter that they were willing to purchase at a fair price so that nobody suffers damage, etc., and that time was of the essence so a prompt response was necessary. Respondent, on October 28, 2020, as to the price, was willing to take \$72,000.00. On November 3, 2020, Appellants replied that the Court would have to settle the matter. The Court then issued its order December 4, 2020.

Appellants did not try to get an appraiser appointed or find any value for the portion of property that they wanted to purchase. They never paid any money into the Court during the pendency of the action, or take the steps necessary to protect their rights, even when afforded the opportunity after the trial of this matter. In Appellants' appeal on page 8, the Appellants acknowledge that the Judge extended yet another opportunity to decide on a price without further ruling of the Court. Appellants' reliance on S.C. Code §15-61-25 is incorrect due to the fact that the amended complaint in this matter sought to partition the property in kind, and not sell it, as contemplated by said statute. S.C. Code § 15-61-50 was the partition procedure as requested by the Plaintiff in the amended complaint and based on the survey which was attached as an exhibit to the complaint and entered into evidence at the hearing.

"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" § 15-61-50. (citing Campbell v. Jordan, 675 S.E.2d 801, 382 S.C. 445 (S.C. App. 2009)).

"The special referee had jurisdiction to partition the property pursuant to Section 15-61-50 and incidentally to allot certain portions of the property to the respective parties in the action." (citing Campbell v. Jordan, 675 S.E.2d 801, 382 S.C. 445 (S.C. App. 2009)).

2. WAS THE TRIAL COURT REQUIRED TO ORDER AN APPRAISAL PRIOR TO PARTITION OF THE PROPERTY IN KIND?

If Appellants desired to have the property appraised and sold as they now argue, that matter was not raised in any responsive pleading or at trial. Other than the May 2020 filing wherein they state they desire to purchase the property interest of the Respondent, nothing else was done. Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the appellate court with a platform for meaningful review. Wilder Corp. v. Wilke, 330 SC 71, 497 S.E.2d 731 (1998). It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. Honea v. Honea, 292 SC 456, 357 S.E.2d 191 (Ct. App. 1987).

3. WAS THE TRIAL COURT CORRECT TO APPORTION COSTS AND ATTORNEYS FEES TO ALL PARTIES, INCLUDING APPELLANTS, AS PERMITTED BY STATUTE?

It is clear pursuant to S.C. Code § 15-61-50, that the Court has jurisdiction in a matter such as this to make partition in kind or by allotment to more than one of the parties. Further, pursuant to S.C. Code § 61-11-110, the Court of Common Pleas may fix attorney fees in all partition proceedings as may be equitable, assess such fees against any or all of the parties or interests. The parties testified that they split all costs associated with the subject property, including the property taxes. Respondent wrote the parties prior to commencement of the underlying action inquiring

about Appellants desire to partition the property as the trial court found. They were not interested in doing so at that time so this action followed. An Affidavit of Attorney's fees/costs was entered into evidence at the trial of this matter and found to be reasonable by the trial court. This issue was within the jurisdiction of the trial court based on statute.

CONCLUSION

The trial courts order shall be affirmed and the costs of this appeal shall be assessed against the Appellants.

Respectfully submitted,

s/ Scott F. Talley

Scott F. Talley, Esquire
TALLEY LAW FIRM, P.A.
291 S. Pine St.

Spartanburg, South Carolina 29302
Attorney for Respondent

April 4, 2022

RECEIVED

Apr 04 2022

SC Court of Appeals

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

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

Case No.: 2020-CP-11-00040
Appellate Case No: 2021-000017

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

Appellants,

vs.

Yvonne J. Robinson

Respondent.

CERTIFICATE OF COUNSEL

IT IS HEREBY CERTIFIED that the Final Brief of Respondent in this matter complies with South Carolina Rule of Appellate Procedure 211(b).

April 4, 2022

s/ Scott F. Talley

Scott F. Talley, Esquire
TALLEY LAW FIRM, P.A.
291 S. Pine St.
Spartanburg, South Carolina 29302
Attorney for Respondent

**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**

Yvonne J. Robinson, Respondent,

v.

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

Appellate Case No. 2021-000017

Appeal From Cherokee County
Gordon G. Cooper, Master-in-Equity

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

AFFIRMED

Donray Curtis Jones, Cynthia Denise Jones, Emma Kelly
Washington, and Troy Eliazer Washington, all of
Pacolet, pro se.

Scott Franklin Talley, of Talley Law Firm, P.A., of
Spartanburg, for Respondent.

PER CURIAM: Donray Jones, Cynthia Jones, Troy Washington, and Emma Washington (collectively, Appellants) appeal a master-in-equity's order granting Yvonne Robinson's petition for a partition in kind of a parcel of real property

owned by all parties as joint tenants with rights of survivorship. On appeal, Appellants argue the master erred by (1) construing their statutory right of first refusal as optional, (2) failing to order an appraisal of the property, (3) ordering a partition in kind, and (4) awarding attorney's fees and costs to Robinson. We affirm.

1. 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))).

2. 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)).

3. 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." *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)).

4. 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 court of common pleas may fix attorneys' fees in all partition proceedings and, as may be equitable, assess such fees against any or all of the parties in interest."); *S & W Corp. of Inman v. Wells*, 283 S.C. 218, 220, 321 S.E.2d 183, 185 (Ct. App. 1984) ("[Section 15-61-110] clearly states that the fixing and assessing of attorney's fees is a matter within the circuit court's discretion, the exercise of which will not be disturbed absent a showing of abuse thereof.").

AFFIRMED.¹

WILLIAMS, C.J, and GEATHERS and VERDIN, JJ., concur.

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

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Apr 19 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No. 2021-000017

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 REHEARING

Donray & Cynthia Jones
125 Hudnut Drive
Pacolet, SC 29372

Troy & Emma Washington
118 Hudnut Drive
Pacolet, SC 29372

INTRODUCTION

In accordance with Rule 240, a petition for rehearing shall state with particularity the points supposed to have been overlooked or misapprehended by the court. The Court opined that the appellants' arguments were not preserved for appellate review. The petitioners respectfully request a rehearing to reconsider what we construe to be omissions or misunderstandings of the facts which affected the Court's decision.

CITATION OF AUTHORITY

SC Code 15-61-25 (2013)

POINTS TO RECONSIDER

1. The Opinion states, "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."

In response to the Respondent's complaint in which she requested a partition in kind, the master-in-equity, prior to the hearing held on October 13, 2020, 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), (ROA 8, paragraph 2). This law outlines the procedure to be followed in all partition actions filed after May 25,

2006. This order was served upon the Appellants by the Respondents' lawyer. This order summarily dismissed any other partition options except those specified in this code, the only applicable law to this case. By his own order, the master ruled that the right of first refusal provided in this law applies to the Appellants as non-petitioning joint tenants. If this fact was not a given, this law would not have been ordered to be followed in this partition case.

According to the judge's ruling and the dictates of Section (A) of SC Code 15-61-25:

"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."

The appellants relied on the Master-in-Equity to follow his own ruling. They had no reason to doubt that the procedure outlined in his order would be followed at the hearing. Their objective at the hearing was to affirm they had met the legal requirements proscribed of joint tenants described in Section A of the applicable code. The appellants did abide by the law by timely sending a letter to the Court, and made that fact known three times during the hearing. The master-in-equity acknowledged at the hearing that he had, in fact, received the letter. (ROA 42, L 24-25, ROA 43 L1-2)

At the end of the hearing on October 13, 2020, the judge stated that the only thing to be considered for the next 30 days would be settling on a price for the Respondent's interest and left the case in a non-ruling status (ROA 43 L 14-22). This corresponds to the procedure described in Section B of SC Code 15-61-25. Nothing about this language has anything to do with a physical partition in kind. This is done for a partition sale only, in this case the purchase of the Respondent's one-third interest in the land.

In his final ruling, the Master said, "While defendants wished to purchase the Plaintiff's interest in the subject property, that was not agreed to by all parties." The law does not require all parties to agree. If we all agreed, we wouldn't need the direction of the Court. SC Code 15-61-25 (A) does clearly state, however, "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." After informing the Court of their intent to purchase the Respondent's interest in the subject property, the Appellants should have been allowed to do so. By ruling to award the Respondent a partition in kind, the judge chose not to follow the applicable law that gives the Appellants first right of refusal, thus deeming their right as optional. The master failed to follow the law and directly contradicted his two prior Orders concerning this case.

2. The Opinion states “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.”

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.” According to the applicable law, the Court shall approve an appraiser to determine the value of the interests to be sold if the joint tenants have informed the Court of their interest in purchasing it, and the parties cannot reach an agreement as to the price.

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. The judge acknowledged receipt of their letter during the trial. Then at the end of the trial, the master-in-equity ordered the parties to take 30 days to try to negotiate a price for the Respondent’s one-third interest and left the case in a “non-ruling status”. This was the only thing to be considered according to the master-of-equity. Neither the Respondent nor the Appellants objected to this ruling. As this order was in line with South Carolina Code 15-61-25 (B) and did not conflict the Judge’s original ruling, it evoked no cause for concern or argument.

Based on the master's own Order that outlined the procedure to be followed in this partition case, determining an agreed-upon sales price was the proper next step. The appellants did not argue for an appraisal at this point because a Court-appointed appraisal is reserved only in the event the parties cannot reach an agreement as to the price. Had both parties been able to agree upon a purchase price during the 30 days following the hearing (ending November 12, 2020), no Court-ordered appraisal would have been necessary.

The case was not ended after the hearing (ROA5), and the Judge's final words were "Then I will see you soon" (ROA 49), so we were of the understanding that we would have another opportunity to address the Court. The appellants tried to negotiate a fair price with the Respondent, but the parties couldn't agree on a purchase price. This was communicated to the master by the respondent's lawyer. However, we didn't have another hearing. Our next communication from the master was a mailed third ruling in which he ordered a partition in kind. 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. The next step should have been a Court-ordered appraisal. This is the legal remedy the law affords under these circumstances.

3. The Opinion states "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 Respondent did seek a partition in kind in her complaint, and in response the master-in-equity, prior to the hearing, filed an order on February 19, 2020, stating 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. This order defined what the proper procedure is and does not include provisions for a partition in kind. There was no need for the Appellants to argue concerning the impropriety of a partition in kind since that had already been determined by the master in his prior ruling which states the law which applies in this case (ROA 2). There was no expectation that a partition in kind was even a remedy to be discussed.

In his final ruling, the Judge states that he encouraged all parties to try to reach a resolution before the Court had to decide based on the law to be applied in this matter (ROA 10). However, the only law that applies to this matter is SC Code 15-61-25 as confirmed by the original Order of the master. To apply any different law would be contrary to the original ruling that was sent to both parties prior to the hearing.

4. 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).

Please note in his final order, the master states his basis in deciding to award attorney's fees as SC Code 16-51-110 (ROA 11). There is no such law in the SC Code of Laws. Regardless of the master's intent, a nonexistent law cannot be enforced.

CONCLUSION

For the reasons mentioned above, the Appellants humbly request a rehearing of this case. We request that the trial court's final order be reversed and remanded with instructions for a court-ordered appraisal of the subject property so that the appellants can exercise their right of first refusal, and not to award the Respondent attorney's fees.

Respectfully submitted,

April 18, 2023

Donray & Cynthia Jones s/ Donray Jones

Troy & Emma Washington s/ Cynthia Jones

(all of Pacolet, SC) s/ Troy Washington

s/ Emma Washington

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Apr 19 2023

SC Court of Appeals

April 18, 2023

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Yvonne J. Robinson, Respondent, v. Donray Curtis Jones, Cynthia Denise Jones, Emma Kelly Washington, and Troy Eliazer Washington, Appellants; Appellate Case No. 2021-00017; Unpublished Opinion No. 2023-UP-146, Submitted March 1, 2023 – Filed April 5, 2023

Dear Ms. Kitchings:

Enclosed for filing is a Petition for Rehearing for the above-referenced case. The required filing fee is being mailed via the U.S. Postal Service.

This petition has been served on the respondent on April 18, 2023, by mailing it via the U.S. Postal Service to the respondent's lawyer, Scott Talley, at 291 S. Pine Street, Spartanburg, SC 29302.

Sincerely,

s/ Emma Washington

The South Carolina Court of Appeals

Yvonne J. Robinson, Respondent,

v.

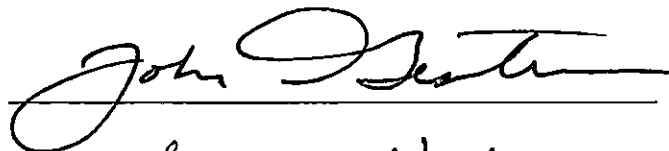
Donray Curtis Jones, Cynthia Denise Jones, Emma Kelly
Washington and Troy Eliazer Washington, Appellants.

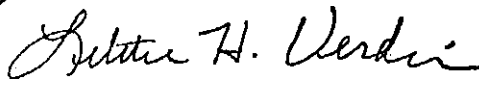
Appellate Case No. 2021-000017

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.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:

Donray Curtis Jones

Cynthia Denise Jones

Emma Kelly Washington

FILED
Aug 18 2023

Troy Eliazer Washington
Scott Franklin Talley, Esquire