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Unpublished Opinion No. 2023-UP-146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

APPELLANTS' REPLY TO RETURN OF PETITION FOR A WRIT OF CERTIORARI

Donray & Cynthia Jones
125 Hudnut Drive
Pacolet, SC 29372

Troy & Emma Washington
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Pro se litigants

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November 17, 2023

QUESTIONS PRESENTED

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

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

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

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

ARGUMENTS

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

"**Right of first refusal** of joint tenant or tenant in common to purchase property prior to partition; procedure" is literally the name of the applicable law in this case, S.C. Code 15-61-25. Following a preliminary hearing, the Master signed a Partition Order, dated February 19, 2020, ruling that this law governs the partition to partition which is the subject of this lawsuit. This law cannot be evaded or ignored by the Respondent.

On page 3 of the Return to the Writ of Certiorari, the Respondent argues the statute "contemplates a scenario where the petitioning party, like Plaintiff/Respondent in this matter, is seeking to sell the property". This is incorrect. The statute states that this law applies "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)). It does not distinguish in any way the petitioner's desire to sell or keep the property afterwards; it only addresses the procedure to partition it. The Respondent does not exclusively own any portion of the physical property. This is why she filed a petition to partition. Upon consideration of her petition, the Court ruled that the law to be applied to this partition case is SC 15-61-25. This ruling, detailing the Court's provision for the Appellants to purchase the Respondent's interests in the land prior to partition, was delivered to both parties. Neither party offered any objection to this ruling.

SC 15-61-25 (A) states "Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the 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. On page 4 of the Return to the Writ of Certiorari, the Respondent states "At no point did the Appellants claim, demand, or ask the Court to exercise their alleged right of first refusal." This statement is in direct contradiction to the Respondent's statement on page 2, "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…" It is an undisputed fact that the Appellants met the requirements of the Court to exercise right of first refusal. Their letter of intent to purchase the Respondent's interest was timely received by the Court, as is acknowledged by the Respondent and by the Master himself at the subsequent hearing.

Further, it is ridiculous to classify the Appellants' right of first refusal as "alleged". In law, an allegation is a claim of an unproven fact by a party in a pleading, charge, or defense. The Appellants are joint tenants in this matter, and it is indeed a fact that the applicable law, SC 15-61-25, explicitly states the "Right of first refusal of joint tenant or tenant in common to purchase property prior to partition."

Given all these facts, and since the Court had already ruled that the right of first refusal applies to this case, this issue should have been preserved for appellate review.

2. **THE APPELLATE COURT ERRED BY RULING THAT WHETHER THE MASTER ERRED BY FAILING TO ORDER AN APPRAISAL OF THE PROPERTY IS NOT PRESERVED FOR APPELLATE REVIEW.**

The Respondent states on page 5 of the Return to the Writ of Certiorari "Appellants' reliance on SC 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 to sell it…". However, SC 15-61-50 states "The court of common pleas has jurisdiction in all cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment to one or more of the parties

upon their accounting to the other parties in interest for their respective shares or, in case partition in kind or by allotment cannot be fairly and impartially made and without injury to any of the parties in interest, by the sale of the property and the division of the proceeds according to the rights of the parties." As such, in the preliminary hearing following review of the Respondent's petition, the Court ruled that the partition would be based on the provisions of SC 15-61-25, which does not grant a partition in kind, rather, the right of the joint tenants to purchase the subject interest in the land prior to a partition sale. The court had jurisdiction to make this ruling despite which partition method the Respondent asked for.

The Respondent's second argument in the Return to the Writ of Certiorari states "No appraisal was required to be performed nor was one demanded by the Appellants." Section 15-61-25 (B) states "In the circumstances described in subsection (A) of this section, and in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers, as the court shall approve, appointed for that purpose by the court." The statute explicitly states that it is the duty of the Court to appoint an Appraiser when the parties cannot reach an agreement as to the price of the subject interest.

The Court ordered the parties to take 30 days (following the hearing) to try to settle on a sales price for the Respondent's interest, the only matter to be considered. Following the master's order, the parties attempted to agree on a sales price. The Respondent asked for $72,000 for her one-third interest and the appellants refused that outrageous price since the entire 3.84 lot was purchased for only $24,000. When the parties could not agree on a sales price for the Respondent's interest in the land, the Appellants correctly relied on the statute of SC 15-61-25, which requires the Court to appoint an appraiser to determine the value of the interest. They communicated with the Respondent that the Court would have to decide it. This is

the decision they relied on the Court to make: the determination of the value of the Respondent's interest via a court-appointed appraiser. In this way, they could exercise their right of first refusal and purchase the Respondent's interest prior to partition sale.

When the parties couldn't agree on a price within 30 days, the master, without any follow-up hearing, mailed a ruling for a partition in kind, a remedy that is not afforded by the applicable law, SC 15-61-25, and which directly contradicts the Court's prior ruling. Therefore, upon receipt of this ruling, the Appellants timely filed an appeal.

Because the Court had already ruled the procedure to be followed in this partition case, establishing the applicable law as SC 15-61-25, which dictates the Court's duty to perform an appraisal in this circumstance, the appellate court erred by ruling that whether the master erred by failing to order an appraisal of the property is not preserved for appellate review.

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

The Respondent argues on page 7 of the Return to the Writ of Certiorari "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." The Appellate Court opines "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 appellants argue that whether a partition in kind was the proper remedy had, in fact, already been ruled on by the trial judge in a preliminary hearing prior to the October 13, 2020 hearing.

On January 16, 2020, Robinson filed a complaint with the court in which she sought a partition in kind of the land. On February 2, 2020, the appellants mailed a written answer to this complaint, arguing that they did not agree to physically dividing the land. Accordingly, this matter was referred to the master-in-equity, Gordon G. Cooper, on February 13, 2020, to determine the applicable law in this matter. On February 19, 2020, this action came before the Court in a preliminary hearing. The master's order, filed on February 24, 2020, includes this written statement: "This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." (ROA 4). The decision was that this action was subject to the provisions of SC 15-61-25 (ROA 1-2), which affects a partition sale, not a partition in kind. This ruling having thus already been rendered, the appellants had no reason to further argue against a partition in kind. The judge's ruling had already dismissed that as an option. Instead, they proceeded to exercise their right of first refusal as governed by SC 15-61-25 by timely notifying the Court of their intent to purchase the Respondent's interest in the land. They testified concerning this letter of intent at trial. They also attempted to arrive at an agreeable sales price with the Respondent, per the Master's October 2020 order.

The master's final order on December 4, 2020, granting the Respondent a partition in kind, effectually nullifies the appellants' right of first refusal, directly contradicts the trial judge's prior Order, and negates the applicable law that is the determinant of this case. This is a blatant error of law, and no South Carolina law was referenced in the ruling in its support. The issue concerning whether a partition in kind was proper in this case had already been ruled on by the trial judge, so the master's error in granting a partition in kind should have been reserved for appellate review.

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

The Opinion states "The master did not abuse his discretion by awarding attorney's fees and costs to Robinson." See S.C. Code Ann. § 15-61-110 (2005). However, the judge did not give any valid legal reason for awarding the Respondent attorney's fees and costs. Note in his final order, the judge concluded attorney fees and costs in this action were pursuant to SC Code 16-51-110 (ROA 11). SC 16-51-110 does not exist in the SC Code of Laws; thus, it cannot be used as a legal basis for a decision. A nonexistent law cannot be enforced.

CONCLUSION

The judicial process was circumvented by the master's erroneous final order. Had the master followed the legal statute and ordered an appraisal when the parties could not agree on a sales price for the Respondent's interest, instead of ordering a partition in kind with new deeds, the appellants would have been afforded the opportunity to further exercise their right of first refusal and purchase the Respondent's interest in the land at the price set by the Court. The Respondent is asking this court to ignore and disregard the applicable law in this case, the law that was ordered to be followed by the trial judge. In our honorable courts of law, established laws must be followed, and fictitious ones cannot bear sway. To do so would be to make a mockery of the judicial system. The courts must judicate based on the law and cannot operate outside of their parameters.

The fourteenth amendment to the United States Constitution states, in part, "nor shall any state deprive any person of life, liberty, or property, without due process of law". The appellants plead to this honorable court to intervene in this matter so that they are not deprived

of their property due to this unlawful ruling. The Appellants pray the master's order be reversed in its entirety, and that the trial court be instructed to follow the procedures outlined in SC 15-61-25 so that an appraised value for the subject interest can be determined and the appellants be given the opportunity to further exercise their lawful right of first refusal.

Respectfully submitted,

November 17, 2023

Donray & Cynthia Jones s/ Donray Jones

Troy & Emma Washington s/ Cynthia Jones

(all of Pacolet, SC) s/ Troy Washington

s/ Emma Washington