

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)

IN THE COURT OF COMMON PLEAS

2022-CP-36-326

RECEIVED

Feb 05 2024

SC Court of Appeals

Lena Sue Yarborough)
)
Plaintiff)

vs.)

ORDER ON MOTION TO RECONSIDER

Joel F. Yarborough III)
)
Defendant)

This matter was before me on September 7, 2023 for a hearing to determine whether the subject properties might be partitioned equitably between the parties. Other matters, including awarding attorney fees and ordering reimbursement for expenses advanced by either party, were reserved for a future hearing. I issued an order dated January 8, 2024 which was filed on January 9, 2024. On January 19, 2024, the Plaintiff filed a motion for reconsideration and amendment of my order. The motion is denied.

The Plaintiff apparently contends that I am not allowed to determine what weight should be given to her expert witness (Mr. Royer)'s testimony in determining whether her proposed partition is equitable. I disagree. It is a well-established rule of law that the final determination of the credibility and weight accorded to evidence is reserved to the finder of fact. I have considered Mr. Royer's testimony, along with all of the other testimony and evidence presented, and based on the weight I gave to the testimony presented, including his testimony, I found that the Plaintiff had not met her burden of proving, by the greater weight or preponderance of the evidence, that her proposed partition is equitable. I decline to reconsider that finding.

The Plaintiff also contends that my decision that her proposed partition was not equitable was solely based my view of the ease of harvesting timber on the Defendant's proposed tract. She completely overlooks a specific finding in my order that portion she would be receiving contains virtually all of the high, flat ground while the Defendant's portion would consist of a lot of gullies and creeks. Mr. Royer took the topography of the land into account, along with other factors, into making his recommendations. His testimony indicated that he did not consider the relative topographies to be very significant at all. However, after giving the matter a great deal of thought, and considering other evidence regarding differences in topography, I chose to give the comparative topographies greater weight than he did.

Finally, the Plaintiff contends that I lacked the authority to partition the property by allotment to the Defendant. She argues that the Defendant did not request partition by allotment in his pleadings. However, the Plaintiff ignores the fact that she requested a "partition in kind or by allotment" herself. Her first cause of action in the Complaint seeks a partition in kind or by allotment. Paragraph 10 of the Complaint acknowledges the court's authority to make partition in kind or by allotment. Paragraph 17 of the Complaint and paragraph 3 of the prayer for relief specifically seek partition in kind or by allotment. The Defendant's Answer admits the allegations of those Paragraphs and joins in the prayer for relief. The argument that I lacked the authority to partition by allotment is completely without merit.

With regard to the Plaintiff's argument that I should allot the property to her, instead of to the Defendant, I would point out that her request was not made until long after the hearing was over and then only in response to a question from me. That issue is not properly before me.

IT IS THEREFORE ORDERED that the motion for reconsideration is denied.

AND IT IS SO ORDERED!

February 1, 2024
Greenwood, South Carolina

/s/ Charles M. Watson Jr.
Charles M. Watson Jr., Special Referee