

STATE OF SOUTH CAROLINA  
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS  
IN THE THIRD JUDICIAL CIRCUIT

Case No.: 2022-CP-14-00074

Mirlene Witherspoon,

Plaintiff,

vs.

Heirs of Thomas Witherspoon,  
Gwendolyn Jones, Nakisha Christian, P.  
Kathleen Witherspoon, Pearl Martin, The  
South Carolina Department of Revenue,  
and Debra West,

Defendants.

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JUN 05 2024

SC Court of Appeals

ORDER

CERTIFIED TRUE COPY  
OF ORIGINAL FILED IN THIS OFFICE

DATE 5/20/24

Brenda B. Roberts  
CLERK OF COURT  
CLARENDON COUNTY, SC

This matter came before me regularly for hearing on April 9, 2024 in Manning. Present for the Plaintiff was Patrick M. Killen of the Sumter County bar along with Robert Hutton and Marion Hutton, attorneys-in-fact for the Plaintiff. Present for Defendants Pearl Martin and Debra West were their counsel, Hal E. Cobb and Caroline Lista, both of the Charleston County bar. Gwendolyn Jones was also present and proceeded *pro se*.

At the call of the case, I heard from both Mr. Killen and Mr. Cobb indicating that a settlement had been reached between the Plaintiff and Defendants Martin and West. However, before entertaining a recital of the settlement terms, the Court inquired into service of process on each of the Defendants. Said services of process history is discussed *infra*.

### PROCEDURAL HISTORY

1. This matter was initiated by the filing of a Lis Pendens and Summons and Complaint on February 23, 2022 and February 24, 2022, respectively.

2. On March 14, 2022, the Plaintiff filed a Motion of For Publication indicating that some Defendants, primarily the heirs of Thomas Witherspoon, could not be ~~comprehensibly~~ identified and served. On March 17, 2022, an Order allowing service by publication was entered by the Clarendon County Clerk of Court, (hereinafter referred to as "the Clerk").
3. On March 17, 2022, Defendants Kathleen Witherspoon, Nakisha Christian, Gwendolyn Jones and the South Carolina Department of Revenue (SCDOR) were served by Certified Mail, Restricted Delivery.
4. On March 28, 2022, the Plaintiff filed a motion requesting the appointment of a Guardian *ad litem* (GAL). On March 30, 2022, John S. Keffer of the Sumter County Bar was appointed GAL (for unknown heirs) by the Clerk.
5. On March 30, 2022, SCDOR filed a indicating its desire to be awarded any surplus funds, if any and its consent to referral to the Master-in-Equity or a Special Referee.
6. On April 6, 2022, Defendant West was personally served with the Summons and Complaint and Lis Pendens by a process server. The Affidavit of Service on Ms. West was e-filed on or about April 22, 2022.
7. Service of Process was made by publication made in The Manning Times on April 21, 2022, April 28, 2022, and May 5, 2022.
8. On May 20, 2022, Defendants Martin and West filed and Answer and Counterclaim by and through their counsel.
9. On May 24, 2022, the Plaintiff e-filed a Proof of Service as to Kathleen Witherspoon and SCDOR.

10. On June 7, 2022, the Plaintiff filed a copy of the certified mail green card returned from the post office as to Gwendolyn Jones. The Court acknowledges that the green card filed by the Plaintiff is unsigned. Plaintiff's counsel, acknowledging the lack of signature, represented to the Court that, during the Covid epidemic, it was common to receive back from the post office unsigned green cards. However, any doubt as to whether or not Ms. Jones was served with process was resolved by the fact that she, Ms. Jones, appeared in the Court on the hearing day (April 9, 2024) and acknowledged in response to several questions posed by the Court that she had received certified mail from the Plaintiff and provided a description of the documentation. The description provided by Ms. Jones was that of a Summons and Complaint. The Court, therefore, determined that Ms. Jones was duly served with process in this matter.

11. On June 29, 2022, the Plaintiff filed a Reply to the Counterclaim of Defendants West and Martin.

12. On July 7, 2022, the Plaintiff e-filed a copy of the certified letter green card as to Defendant Nakisha Christian. Defendant Christian neither filed response nor otherwise appeared in this matter.

13. On May 5, 2023, the Plaintiff e-filed a Settlement Agreement, a copy of which is attached hereto and incorporated herein by reference, in which they memorialized an amicable agreement as to the Plaintiff and Defendants West and Martin.

14. On or about July 25, 2023, the Clerk of Court filed an Entry of Default as to Defendants Heirs of Witherspoon, Kathleen Witherspoon, Gwendolyn Jones and Nakisha Christian.

15. On February 9, 2024, the matter was referred to me by consent for adjudication with finality.

16. On April 8, 2024, the GAL, Mr. Keffer, filed an Affidavit indicating that he had heard from no unknown heirs or potential claimants and therefore would not contest the relief sought by the parties.

### BACKGROUND

The Plaintiff and Defendants in this action have remained to have claim to title and certain property located in Clarendon County, South Carolina. This property (hereinafter referred to as “the property”) is more particularly described as follows:

All that piece, parcel or tract of land situated in Clarendon County, South Carolina containing 28 and 2/10ths acres per plat of J.T. Floyd, CE dated February 28, 1943, designate thereon as Tract No. 4 and bounded as follows to wit: North by Tract #3 allotted to the heirs of Willie Witherspoon; East by lands of Dr. T.L. Davis; South by lands allotted to John Witherspoon and Charlie Witherspoon; West by Lands of Estate of William Richburg.

Clarendon County Tax Map No.: 122-00-02-001

Pursuant to the decree of the Judge of Third Judicial Circuit of South Carolina dated May 14, 1943, and recorded in judgment roll 7946 in the Records of the Clerk of Court of Clarendon County, Henry Witherspoon was set off and partitioned from the aforementioned tract of land.

1. On an unknown date believed to be during the year 1944, Henry Witherspoon passed away intestate, leaving as his heirs, his wife, Bessie Witherspoon, and his children, John (Buster) Witherspoon, William V. Witherspoon, and Ruth Worth.
2. On specific, unidentified dates, John (Buster) Witherspoon, and Ruth Worth each passed away leaving no heirs other than Pearl Martin, Debra West and William V. Witherspoon.
3. Ruth Worth raised a child by the name of President or Andrew Witherspoon but evidence exists that same was a biological child or adoptive child of Ruth Worth.

4. At some point during the year 1991, William V. Witherspoon passed away intestate, leaving as his heirs, Thomas Jefferson Witherspoon, Pearl Martin and Debra West.

5. Heirs of the previous owner, Henry Witherspoon were determined to be the Estate of Thomas J. Witherspoon, Pearl Martin and Debra West, and title quieted in same via Order of this Court dated October 23, 2009 in civil action number 2008-CP-14-00272.

6. Thomas Jefferson Witherspoon passed away on April 1, 2005 leaving as his heirs Plaintiff, Mirlene Witherspoon, Gwendolyn Jones, Nakisha Christian and P. Kathleen Witherspoon. Determination of these heirs can be craved by referring to the Estate of Thomas Witherspoon, filed in Clarendon County, State of South Carolina with file number 2005-ES-14-00076.

#### **CONCLUSIONS OF LAW**

I find that the parties are entitled to a partition. S.C. Code Ann. §15-61-10, et seq.

I also find that because Defendants Jones, Witherspoon and Christian are in default. As such, they are not entitled to participate in the litigation process. I find, based on the filings, and the arguments of counsel at the hearing, that Defendants Witherspoon, Christian and Jones are, indeed, in default.

The parties presented to the court the aforementioned Settlement Agreement. After reviewing the settlement agreement as was filed on the e-file system and after hearing from counsel at the hearing, I believe that it, the Settlement Agreement is fair, reasonable and in the best interests of the parties.

Per the agreement, the properties shall be listed for sale with a competent Clarendon County realtor and the sale proceeds, after payoff of the SCDOR lien and after re-payment of those expenses as mentioned in Paragraph 3 of the Settlement Agreement are satisfied, split equally between Ms. Witherspoon, Ms. Martin, and Ms. West.

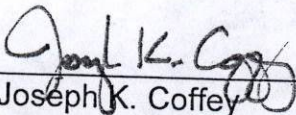
I, as the duly appointed Master-in-Equity for Clarendon County, will issue a Master's Deed converting the property to Ms. Witherspoon, Ms. Martin and Ms. West in fee. The interest of all other parties, including that lien of the SCDOR, which shall be satisfied from the sales proceeds, are formally partitioned from the property.

As stated *supra*, the Settlement Agreement presented to the court is hereby approved and shall become part of the instant order.

Based of the foregoing, it is hereby ordered that:

1. These are facts and conclusions the law has stated *supra* are ordered as stated;
2. The settlement agreement, which was filed in this court on May 23, 2023, is hereby proved and adopted to be incorporated into the instant order;
3. A Master's Deed indicating the partition of the property shall be entered and will serve to convey the property to the Plaintiff, Defendants West and Martin;
4. Upon the issuance and receipt of the Masters Deed, the property shall be listed for sale with a competent Clarendon County realtor.
5. Upon the sale of the property, repayment to Defendants West and Martin shall be made pursuant to Paragraph 3 of the settlement agreement and money should be allocated to satisfy the SCDOR lien.
6. The net proceeds shall be split between, as stated *supra*, between the Plaintiff, Defendants West and Martin in equal shares.

IT IS SO ORDERED!

  
\_\_\_\_\_  
Joseph K. Coffey  
Master-in-Equity

Manning, South Carolina  
May 9, 2024

Franklin M. Shuler  
Real Estate/Business  
Estate Planning

1 Law Range, Ste. A  
Sumter, SC 29150



SHULER KILLEN  
LAW FIRM

Patrick M. Killen  
Litigation/Probate  
Immigration

1 Law Range, Ste. B  
Sumter, SC 29150

May 16, 2024

Hon. Beulah G. Roberts  
Clerk of Court  
PO Box 136  
Manning, SC 29102

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JUN 05 2024  
SC Court of Appeals

RE: Witherspoon vs. Witherspoon, et al  
2022-CP-14-00074

Dear Ms. Roberts:

Thank you for speaking with me by telephone yesterday afternoon. Per your instructions enclosed please find the original Order in the above captioned matter. The Order was signed by the Master-in-Equity Hon. Joseph K. Coffey.

I ask that you efile this Order with the Court. I have included a copy in the event you intend to stamp the Order. If so, you may return a copy to me in the enclosed postage-paid, self-addressed envelope.

Thank you in advance for your help.

Sincerely,

Kim P. Lowder  
Legal Assistant

KPL  
Enclosures

2024 MAY 20 PM 3:18  
Beulah Roberts, Clerk-Clerk of Court S.C.

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