

4. The subject property is located at 1506 Highway 45, McClellanville, SC 29458 (the "Property"). There are no other parties who claim an interest in the Property.

5. The Property is comprised of almost forty-six (46) acres of land with a house, a barn, and other outbuildings. (Plaintiff's Ex. 2, Appraisal)

6. The Plaintiff contends the property should be partitioned in kind. The Defendant previously agreed to sell her interest in the property; however, she then changed her mind.

7. This Court has jurisdiction over the parties and the subject matter of this dispute.

8. The Property which is the subject of this litigation was conveyed to Loy William Harn by deed of Charles A. Felder, Jr., dated February 19, 1990, and recorded on February 20, 1990, in Book X190 at Page 834 in the Office of the Register of Deeds for Charleston County.

9. The Property was then conveyed by Deed of Distribution from Mary Alice Harn, as Personal Representative of the Estate of Loy William Harn dated January 29, 2002, and recorded May 16, 2003, in Book A449 at Page 457 to Mary Nicole Harn, a one-half (1/2) undivided interest and to Jason Loy Harn, a one-half (1/2) undivided interest.

10. The Property is more particularly described in the aforementioned deed as follows:

ALL that certain piece, parcel or tract of land containing forty-five (45.96) acres, more or less, situate, lying and being near McClellanville, in St. James Santee Parish, County of Charleston, and being more particularly described on a plat entitled "Plat of a 45.96 acre tract located near McClellanville, St. James-Santee Parish, Charleston Co., SC" surveyed by Harold J. LeaMond, P.L. & L.S., dated April 7, 1970, and recorded in Plat Book Z, Page 119, in the office of the Clerk of Court for Charleston County; reference to which plat is hereby made for a more full and complete description.

Being the same property conveyed to Mary Nicole Harn, a one half (1/2) undivided interest and Jason Loy Harn, a one-half (1/2) undivided interest by deed of Deed of Distribution from Mary Alice Harn, as Personal Representative of the Estate of Loy William Harn dated January 29, 2002, and recorded May 16, 2003, in Book A449 at Page 457 in the Office of the Register of Deeds for Charleston County.

TMS No. 762-00-00-074

11. The Defendant, Mary Nicole Harn, is married to James Reavis and is now known as Mary Nicole Reavis.

12. The Property is owned by the parties hereto in equal shares (50/50 each).

13. At the time of the filing of this action, the parties were unable to reach an agreement either to divide the Property between themselves or for a sale of the Property.

14. The Plaintiff seeks partition of the property in kind pursuant to S.C. Code Ann. §15-61-10, *et seq.*

15. The Defendant and her husband have sought to oust the Plaintiff from the property and refused to allow him access to the property; however, this has only occurred since the Plaintiff moved out of the house located on the property in the year 2020.

16. The Plaintiff asked this Court to inquire into these matters and order a partition of this property, preferably in kind, or by purchase of the Defendant's interest in the property (allotment), pursuant to S.C. Code Ann. §15-61-10, *et seq.*

17. The fair market value for the property was previously set at \$650,000.00 as evidenced by an agreement, signed by the parties on June 23, 2022. (Plaintiff Ex. 11). The Defendant agreed to sell her half-interest in the property to the Plaintiff; however, the agreement was never consummated and this lawsuit continued.

18. Although the Defendant's husband does not have an ownership interest in the Property, Plaintiff and Defendant's husband have had several altercations at the Property.

19. Consequently, I find Defendant has interfered with the Plaintiff's quiet enjoyment of the property.

20. Defendant has also failed to pay the taxes, upkeep, and maintenance of the property; however, Defendant has placed homeowners' insurance on the property. Also, Defendant's husband now conducts commercial enterprises on the property for which he pays no rent.

21. The parties all resided together in the property at the time COVID-19 commenced until they got into several disagreements while residing together in the house. Plaintiff then moved out of the property. As a consequence of that move, Plaintiff and his wife have incurred rental expenses for where they have moved during the pendency of this action. While Defendant and her husband have continued living on the Property, they have not paid rent for its use. As tenants in common, the possession of one co-tenant is deemed the possession of all and so does not require the Defendant to pay rent. Watson v. Little, 224 S.C. 359, 79 S.E.2d 384 (1954). This well-established rule of law applies unless and until the Plaintiff can establish ouster by clear and convincing evidence, which I find does not apply here. See Fender v. Smashum, 354 S.C. 504, 581 S.E.2d 853 (Ct. App. 2003). However, I find that Plaintiff is entitled to seek contribution for the payment of taxes as he testified that he has paid taxes for all but two of their 20 years of ownership.

22. One proposal the parties discussed for subdividing the Property is shown on Plaintiff's Exhibit 5. This subdivision would have provided access to the Property; however, the Defendant refused to sign the plat and the proposed subdivision of the Property did not occur.

23. Since moving into the property, Defendant's husband James Reavis has purchased an 18-acre tract of land which is adjacent to the subject property. A dirt road, which provides prescriptive easement access to both lots, crosses through the Reavis tract. It is clear to this Court, that the continued use of this roadway by the parties will provide them with abundant opportunity for further conflicts as adjoining neighbors.

24. Based upon the testimony at trial, both parties stated they were not interested in the house where Defendants currently reside. In addition, both parties' expert appraisers submitted that the house on the property has a value of approximately \$375,000. The total value of the property per the Plaintiff's expert was \$900,000 while the Defendant's expert testified the property was valued at \$807,000, after depreciation of the house. The Court finds the value of the property, with improvements thereon, is \$900,000. The issue for the Court is how to fairly partition the property.

25. I find the property consists of 46 acres of land and is owned only by the two parties, such that the property can readily be partitioned in kind. At trial, the parties submitted several proposals for partition in kind. The Court finds that Plaintiff's Exhibit 5 shows the subdivision which most effectively divides the property; however, the Court believes the proposal should be altered in order to equalize the value of the property to each party.

26. The Court will award the proposed Tract 2, which includes the house, to the Defendant as she resides there; however, the garage/shed should be awarded to Plaintiff as part of Tract 1. The property line shall be set at an area between the shed and the pond which shall remain on the house lot. This proposal results in more land being awarded to the Plaintiff which the Court approximates to be 33 acres. The remaining 13 acres will constitute Tract 2 and belong to the Defendant. A survey will be required to show the actual property lines to the respective lots and the Court will retain jurisdiction to approve the subdivision. The parties will share equally in the cost of this survey. (The approximate lot lines are best shown on Plaintiff's Exhibit 18.)

27. The Court is concerned with the Plaintiff's access to the newly created Lot 1. The parties testified to an alternate access across Bootsie Way, which is part of the Landry Farms neighborhood adjacent to Lot 1. Bootsie Way ends at the Reavis lot which makes it the Dominant

Estate for Bootsie Way. As there exists a roadway to the property which has been in use for years to access the Harn property, the Court does not require the Plaintiff to access his lot through Bootsie way; however, it is recommended that Plaintiff seek some alternative access to his lot.¹

28. Finally, in order to equalize the values of the property the Court has determined, based upon the appraisal figures submitted, that the per acre price of the property is \$11,400 per acre. In order to equalize the respective values given the award of the house to Defendant, the Court finds that Defendant shall make a financial contribution to the Plaintiff in the amount of \$73,500. This figure represents the respective values of the property as partitioned.²

29. In addition, based upon the contributions that Plaintiff has made to keep the property maintained and the taxes paid, even since removing himself from the property and maintaining it while in use by Defendant, the Court finds Plaintiff is entitled to be reimbursed for half of the costs paid over the years. In Plaintiff's Exhibit 13, Plaintiff presents his costs and damages incurred: \$1,550 for appraisals, \$5,250 in surveys, \$5,000 in new roof materials, and \$27,000 for nine years of property taxes, for a total of \$38,800. Plaintiff's half portion of those expenses equals \$19,400. Accordingly, the Plaintiff is to be awarded the total amount of \$92,900 as the sum owed to equalize the property values in this partition action. A judgment against Defendant's interest may issue if this sum is not paid (or arrangements made to pay this sum) within six months of the final approved subdivision of the property into two lots.

¹ As Tract 2 and the Reavis lot constitute the servient estate for Tract 1 (the dominant estate), Defendant shall have the right to move the road across her property; PROVIDED, Plaintiff is not denied reasonable and equal access to his lot. An alternative proposal presented at trial was for Plaintiff to join the Landry Farm HOA and access his lot from Bootsie Way. This may well be a less costly alternative for all concerned. The court finds it would be appropriate for Defendant to pay Plaintiff's share of HOA dues for a period of 10 years to effectuate this arrangement if the parties can agree but the court will not order this at this time.

² Defendant has a \$375,000 house and \$148,200 worth of land which totals to \$523,200. Plaintiff receives land valued at \$376,200. The difference of \$147,000 divided in half equals to \$73,500.

30. Finally, because there is no common fund created from this partition as there is no sale, the parties shall be responsible for payment of their own attorney's fees. Rule 71, SCRPC.

IT IS SO ORDERED!

Mikell R. Scarborough
Master in Equity for Charleston County



Charleston Common Pleas

Case Caption: Jason Loy Harn VS Mary Nicole Reavis , defendant, et al

Case Number: 2021CP1002661

Type: Master/Order/Partition and Form 4

So Ordered

s/Mikell R. Scarborough 3062