

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Aug 16 2024

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2024-000062

Roy Williams, Respondent,

v.

Jamma L. W. Bradford,Appellant.

INITIAL BRIEF OF RESPONDENT

s/Leonard R. Jordan, Jr.

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE MASTER CORRECTLY RULED THAT WILLIAMS OWNED AN UNDIVIDED ONE-THIRD INTEREST IN THE SUBJECT REAL PROPERTY AND THAT HE WAS ENTITLED TO A PARTITION IN KIND OF THE PROPERTY.
- II. WHETHER THE MASTER CORRECTLY RULED THAT BRADFORD'S COUNTERCLAIM SHOULD BE DENIED.
- III. WHETHER THE MASTER HAD SUBJECT MATTER JURISDICTION PURSUANT TO THE ORDER OF REFERENCE, AS BRADFORD WAS NOT DEPRIVED OF A MODE OF TRIAL TO WHICH SHE WAS ENTITLED, AND ALTHOUGH GIVEN AMPLE NOTICE, SHE FAILED TO CONTEST THE REFERENCE OF THE CASE TO THE MASTER UNTIL AFTER AN ADVERSE DECISION ON THE MERITS FOLLOWING A TRIAL IN WHICH BRADFORD FULLY PARTICIPATED.

STATEMENT OF THE CASE

This suit for partition of real property was commenced by the filing of a Summons and Complaint by the Respondent, Roy Williams (“Williams”), on June 2, 2021 (R.pp. ____). The Appellant, Jamma L. W. Bradford (“Bradford”), was personally served on July 27, 2021. Prior to being served, Bradford, on July 2, 2021, filed an Answer (R.p. ____) and a separate Counterclaim (R.p. ____) to Williams’ Complaint. Said Answer and Counterclaim were not served upon Williams’ counsel – not by e-filing or by traditional means. As a consequence of the failure of Bradford to serve her responsive pleadings, she was technically in default;¹ and Williams’ counsel, acting without knowledge of her filed-pleadings, filed an Affidavit of Default on September 1, 2021, (R.p. ____) and requested the issuance of an Order of Reference, referring this case to Joseph M. Strickland, the Master in Equity for Richland County. The Order of Reference was issued by the Chief Deputy Clerk of Court and filed on September 7, 2021. (R.p. ____)

When Williams’ counsel was made aware of Bradford’s Answer and Counterclaim, he promptly issued a Reply to the Counterclaim, and he served same by mail upon Bradford on September 2, 2021. The Reply and a Certificate of Mailing were filed on September 2, 2021. (R.pp. ____) From this point on, Bradford was treated, in all respects, as an answering Defendant.²

Williams’ counsel also promptly notified Bradford of the Order of Reference by mail; and on October 6, 2021, Bradford mailed and faxed a letter, with numerous Exhibits, to Judge Strickland (R.pp. ____). Said letter, a copy of which was not sent to Plaintiff’s counsel,³ did not complain that the case had been improperly referred to the Master in Equity. Instead, the letter explained her defense and counterclaim.

¹ See Rule 55(a), SCRCF.

² As stated in the Brief of Appellant, “Williams’ counsel – quite commendably – does appear to have treated Bradford in all respects as not being in default.” (R.p. ____) (A.B.p. 12)

³ This ex parte letter was filed by the Master’s staff in the case records on October 6, 2021.

Williams' counsel thereafter served Bradford by mail with discovery requests; and as a consequence of Bradford's evasive responses, he served Bradford by mail with, and filed on January 6, 2022, a Motion to Determine Sufficiency of Responses to Discovery Requests. (R.pp. ____) A hearing on said Motion was scheduled for February 3, 2022, and a Notice of Hearing was mailed to Bradford, and filed, on January 20, 2022. (R.p. ____) Prior to the motion hearing, Bradford mailed and faxed another ex parte letter to Judge Strickland dated January 17, 2022. (R.p. ____) As before, said letter did not complain about Judge Strickland's appointment by Order of Reference. Bradford attended, and fully participated in, the motion hearing before the Master.

The case was called for a trial on the merits before the Master on July 17, 2023. This trial was scheduled only after another continuance request by Bradford was granted. (R.p. ____) (6/8/23 letter) Bradford attended the trial, and she participated in the trial to the full extent that she requested. She did not raise any issue regarding the Master's lack of authority.

At the trial, the facts and circumstances of the subject real property were testified to at length. The subject real property is a parcel containing 5.64 acres, as shown on a 2015 plat. (R.p. ____) This parcel lies on the south side of Griffins Creek Road, situated among four (4) other, smaller parcels, as shown on said plat. Three (3) of these smaller parcels are owned by Williams. (R.pp. ____) (Tr. 9-10)

Williams and Bradford both testified regarding a deed from Williams to Emma Lou Young ("Young") dated June 27, 1995, which deed (the "**1995 Deed**") is the crux of this case. (R.pp. ____) (Ex 5, 3) Numerous earlier deeds in the title chain of a large tract containing the subject real property, by which various undivided interests in said tract were conveyed, (R.pp. ____) (Ex 5) were also discussed. Interests in this large tract, which were inherited by the numerous heirs of Lily Williams, the adopted mother of both Williams and Bradford, who died in 1981, were

conveyed by many deeds, which consistently described the large tract as “Fifty-Two (52) acres, more or less.” (R.pp. ____) (Ex 5) Among these deeds were deeds conveying undivided interests in the large tract to both Williams and Bradford. (R.pp. ____)

The 1995 Deed was a gift by Williams to Young, his birth-mother. (R.p. ____) Young then resided (and she now resides) on the portion of the large tract lying on the north side of, and fronting on, Griffins Creek Road. In 1995, Williams owned (and he now owns) fee simple titles of multiple, smaller parcels of land on the south side of Griffins Creek Road (mentioned above), on which he then engaged (and he now engages) in a used car business. (R.p. ____) (Tr.p. 45, 43) He testified that he had no need for the portion of the large tract on the north side of said Road whereon Young’s homestead is located. (R.p. ____) (Tr.p. 45)

When Williams proposed the gift to his mother, Young called upon Shell Suber, Esquire, who was her attorney, to draw a deed. (R.p. ____) (Tr.p. 45) Williams contacted Mr. Suber and requested that a deed be prepared and instructed him on his intentions (R.p. ____) (Tr.p. 46); and Williams executed the 1995 Deed, with Mr. Suber serving as a witness (R.p. ____). Williams relied upon Mr. Suber to prepare the deed in accordance with his instructions. (R.p. ____) (Order)

The 1995 Deed (R.p. ____), which was prepared without the benefit of a plat, described the property conveyed by Williams as a “**portion**” of the large tract previously described as 52 acres “**now containing approximately 42.92 acres, more or less.**”

The 1995 Deed was ambiguous.⁴ Mr. Suber’s failure to better describe such real property should not be charged against Williams (the grantor) when the deed was prepared by the grantee’s attorney.

The large tract (known and described as containing 52 acres, more or less) turned out to be

⁴ Ambiguity of the 1995 Deed was stipulated by Williams’ counsel. (R.p. ____) (Tr. 81)

somewhat less than 52 acres, as the four smaller parcels (discussed above) had been carved-out well before the 1995 Deed, as had a public right-of-way, now known as Griffins Creek Road (referred to in the earlier deeds as a “county paved road” or as “S.C. Highway 1032”), (R.pp. ____) (Ex 4) which Road bi-sected the large tract.

Based upon a relatively current tax map sheet of the large tract, (R.p. ____) the portion of the large tract lying on the north side of Griffins Creek Road together with the subject parcel on the south side of said Road contained 48.76 acres. (R.pp. ____) (Ex. 7) (Tr. 42)

The 2015 plat (R.p. ____) (Ex. 2) shows the portion of the large tract situated solely on the north side of the Road as containing 44.47 acres (17.56 acres + 26.91 acres).

Bradford claims that the 1995 Deed conveyed the entire tract of land lying on both sides of Griffins Creek Road,⁵ which contained 48.76 acres (according to the county tax map referred to above), while Williams claims that the 1995 Deed, which reflects only 42.92 acres being conveyed, complied with his intention to gift to Young only the property on the north side of Griffins Creek Road. (R.pp. ____) (Tr.p. 43, 47) The said 42.92 acres supports Williams’ intention, as the difference between the two acreages (48.76 acres – 42.92 acres = 5.84 acres) was determined to be 5.64 acres when the subject property was surveyed for the 2015 plat two decades later. Williams’ claims were found to be persuasive, and this calculation was included in the appealed Order.⁶

The Master announced his decision at the conclusion of the trial, granting the relief requested by Williams and denying Bradford’s Counterclaim. (R.p. ____) (Tr.p. 90) He subsequently issued an Order to Partition Real Estate on August 21, 2023, (R.p. ____) and then an

⁵ Bradford suggests that she knows, better than Williams, what the 1995 Deed was intended to convey, when the only parties to this deed were Williams and Young. Since the purpose of the 1995 Deed was to make a gift of property, even the grantee could not opine as to the grantor’s intention, at least when the grantor is in a position to express his intention.

⁶ See quote from appealed Order on page 10, infra.

Amended Order to Partition Real Estate on August 22, 2023. (R.p. ____). Having decided that an undivided one-third interest in the subject property was owned by Williams, the Master ordered a partition in kind, and he granted judgment in Williams' favor against Bradford for two-thirds of Williams' attorney's fees. (R. pp. 6-8.)

On September 7, 2023, Bradford, through her counsel, Parker E. Howle, filed a Motion to Reconsider (R.p. ____), raising issues regarding the accuracy of the Affidavit of Default (R.p. ____) and the failure to obtain Bradford's consent to the Order of Reference (R.p. ____). Neither of these issues were raised before, or at, the trial. It was nevertheless clear that Bradford was treated, in all respects, as an answering Defendant, that she had no objection to Judge Strickland being designated as the trial judge and that she was allowed to present her defense and claims to the full extent she requested. The Motion to Reconsider also disputed Judge Strickland's decision on the merits in favor of Williams, rehashing the legal description in the 1995 Deed and disputing the award of attorney's fees and costs to Williams.

Williams filed a Return to Motion to Reconsider (R.p. ____)

The Motion to Reconsider was heard by Judge Strickland on December 12, 2023; and at the conclusion of the hearing, the Master denied the Motion. (R.p. ____) An Order Denying Motion to Reconsider was issued and filed on December 15, 2023. (R.p. ____)

Bradford filed her Notice of Appeal on January 12, 2024. (R.p. ____)

STANDARD OF REVIEW

“Deeds are construed to determine the intent of the parties. To construe a deed, a court looks first at the language of the instrument because the court presumes it declares the intent of the parties. When, and only when, the meaning of a deed is not clear, or is ambiguous or uncertain, will a court resort to established rules of construction to aid in the ascertainment of the grantor's

intention by artificial means where such intention cannot otherwise be ascertained.” *Hunt v. S.C. Forestry Comm’n*, 358 S.C. 564, 569, 595 S.E.2d 846 (Ct.App. 2004)

As provided in *Brownlee v. Miller*, 208 S.C. 252, 261, 37 S.E.2d 658 (1946), quoting from Devlin on Real Estate, Vol. 2, Section 1012, “. . . [g]enerally the rule may be stated to be, that the deed will be sustained, if it is possible from the whole description, to ascertain and identify the land intended to be conveyed [and] . . . [a]s that is certain which can be made certain, the description, if it will enable a person of ordinary prudence acting in good faith and making inquiries, which the description would suggest to him to identify the land, is sufficient.”

STATEMENT OF FACTS

As argued by Bradford, the 1995 Deed from Williams to Young must be construed as conveying his undivided interest in the **entirety** of the large tract of land inherited by the various heirs of Lily Williams, including Williams and Bradford. (R.p. ____) The large tract was, in every previous conveyance, described as “Fifty-Two (52) acres, more or less.” (R.pp. ____) If the 1995 Deed were intended to convey the entire tract, it could have simply described the property as “Fifty-Two (52) acres, more or less.” Instead, the property conveyed by the 1995 Deed was described as a “portion” of said tract “now containing approximately 42.92 acres, more or less.” (R.p. ____) Based upon this wording, it would be implausible to conclude that it was the intention of the drafter or the grantor of said deed that the **entirety** of the large tract was to be conveyed.

The Master, after considering the evidence and testimony, concluded that the 1995 Deed conveyed only the portion of the large tract situated on the north side of Griffins Creek Road and that Williams retained his interest in the subject property situated on the south side of said Road. (R.p. ____)

ARGUMENTS

RESPONDENT'S COUNTER TO APPELLANT'S ARGUMENT I
(Interpretation of the 1995 Deed)

The Master correctly ruled that Williams' conveyance to Young was limited to the portion of the large tract on the north side of Griffins Creek Road.

The 1995 Deed described the property conveyed as “now containing approximately 42.92 acres, more or less.” This number of acres is clearly not an estimate. It is obviously a calculated figure, which cannot be ignored as immaterial.

Not knowing how Attorney Suber⁷ arrived at the number of acres he cited in the legal description, the court is left with a limited number of options. First, an attempt can be made to determine his thought process.

Attention is called to Williams' Return to Motion to Reconsider (R.p. ____), which provided a suggestion for how this figure may have been calculated. A plausible explanation of how Attorney Suber determined the “42.92 acres,” which he inserted in the legal description of the 1995 Deed, is as follows:

Actual acreage of large tract: 49.42 acres, determined after, first, deducting from the 52 acres the following acreages contained in the following platted parcels (R.pp. ____), all on the south side of Griffins Creek Road, to wit:

TMS 36400-05-01 (first deeded 1959)	1.00 acre
TMS 36400-05-02 (first deeded 1946)	.50 acre
TMS 36400-05-03 (first deeded 1974)	.57 acre
TMS 36400-05-04 (first deeded 1975)	<u>.51 acre</u>
SUBTOTAL	2.58 acres

It would be plausible for Mr. Suber (or anyone) to have estimated (1) the acreage of the right-of-way of Griffins Creek Road as, say, 1.00 acre and (2) the acreage of the subject property on the

⁷ Mr. Suber died on May 8, 2023. (R.p. ____)

south side of Griffins Creek Road as, say, 5.50 acres (close to what we now know contains 5.64 acres, according to the 2015 plat). Using those estimates to calculate the acreage of the portion of the large tract on north side of Griffins Creek Road, the calculation would be: 49.42 acres, minus 1.00 acre (for the Road), minus 5.50 acres (for the subject property), equals 42.92 acres – the exact acreage cited in the 1995 Deed.

If the suggested calculation is not convincing, then, based upon the parties' arguments, there remain only a few other options:

(a) since the 1995 is ambiguous, rely on extrinsic evidence,⁸ which Judge Strickland did, accepting Williams' explanation of his intention to convey only the portion of the large tract on the north side of Griffins Creek Road and not the property on the south side due to his business interests; (R.p. ___) (Tr.p. 43, 45) and concluding that the description in the 1995 Deed indicated an intention to convey significantly less acreage than was contained in the large tract;⁹ or

(b) accept Bradford's argument, and conclude, that the 1995 Deed conveyed all of the large tract in which Williams owned an undivided interest, which conclusion requires that certain words in the legal description, which indicated to the contrary, be ignored; or

(c) conclude that the 1995 Deed is void, as the property intended to be conveyed cannot be identified.¹⁰

⁸ *Smith v. Du Rant*, 336 S.C. 80, 90, 113 S.E.2d 349 (1960) (“When the intention of the grantor is not accurately expressed in the deed, extrinsic evidence may be admitted to explain it.”)

⁹ *Hoyler v. State*, 428 S.C. 279, 290, 833 S.E.2d 845 (Ct. App. 2019), citing *S.C. Dep't of National Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 303 (2001) (“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation. It is a question of law for the court whether the language of a contract is ambiguous. Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties. The determination of the parties' intent is when a question of fact.” (citations omitted)).

¹⁰ *Id.*, at 295 (“While a property description need not be perfect, it must allow one examining it to identify the property conveyed; otherwise, the conveyance is void.”)

With regard to sub-items (a) and (b) above, it must be pointed-out that, “[i]n determining the grantor’s intent, the deed must be construed as a whole and effect given to every part of it if it can be done consistently with the law.” *Proctor v. Steedley*, 398 S.C. 561, 573, 730 S.E.2d 357 (Ct. App. 2012); and also that, “[t]he master is ‘without authority to consider parties’ secret intentions’ and ‘words cannot be read into a [deed] to impart an intent unexpressed when the deed was recorded.’” *Edgewater on Broad Creek Owners Ass’n v. Ephesian Ventures, LLC*, 430 S.C. 400, 406-07, 845 S.E.2d 211 (Ct. App. 2020).

Bradford’s position regarding Williams’ intention in gifting property to Young by the 1995 Deed, when she was not a party to the Deed, when her attorney did not examine the title, (R.p. ____) (Tr.p. 70) and when the acceptance of her reading of the legal description necessarily requires ignoring important parts of the legal description, is unsustainable.

Declaring the 1995 Deed to be void would return to Williams the entirety of his undivided interest in the entire large tract, not just the subject property, even the portion of the large tract, which he intended to convey to his mother. This would produce an unintended result, but one which would result in sustaining the appealed Order, as Williams would own an undivided one-third interest in the subject property (along with other property).

Attention is called to Judge Strickland’s Amended Order to Partition Real Estate, which found that,

The fact is that the acreage (42.92) cited in the disputed deed is significantly less than the gross acreage (52) owned by the Plaintiff and is also significantly less than the Assessor’s estimate of the net acreage of the tract (less the aforesaid three lots and the road right-of-way) (48.76). The acreage cited in the deed must logically be taken as reflecting an intention by the Plaintiff–grantor to convey only a portion of, actually much less acreage than, the tract then owned by the Plaintiff. Interestingly, the difference between the Assessor’s estimate (48.76 acres) and the said cited acreage (42.92) is 5.84 acres, which is quite close to the acreage of the Property (5.64 acres). (R.p. ____)

RESPONDENT'S COUNTER TO APPELLANT'S ARGUMENT II
(Bradford's Counterclaim)

The Master correctly denied Bradford's Counterclaim.

Bradford's Argument claims that she is entitled to rent from Williams when her Counterclaim (R.p. ____) does not mention such alleged claim. At the hearing, Bradford barely mentioned "rent" ("he's not paying me rent"), (R.pp. ____) and she made no disclosure of what this alleged claim involved.

Bradford's Argument also claims that she "had an unjust enrichment claim against Williams," but her Counterclaim does not mention this alleged claim. At the hearing, Bradford did not mention this alleged claim.

Bradford's Argument also claims that "she was entitled to Williams' eviction," but her Counterclaim doesn't mention this alleged claim. At the hearing, Bradford once mentioned the word "eviction," (R.p. ____) falsely claiming that her Counterclaim included a claim for eviction among other alleged relief.

With Judge Strickland's decision in favor of Williams, who was declared to be the owner of an undivided one-third interest in the subject property, i.e. a tenant-in-common, the Bradford Counterclaim necessarily fails. "A cotenant has the right, in common with his cotenants, to the possession of the property owned in common, so ordinarily the possession by one cotenant is the possession of all." *Watson v. Little*, 224 S.C. 359, 364, 79 S.E.2d 384 (1953).

RESPONDENT'S COUNTER TO APPELLANT'S ARGUMENT III
(Order of Reference; Subject Matter Jurisdiction)

The Master had subject matter jurisdiction under the Order of Reference, which did not deprive Bradford of a mode of trial to which she was entitled, and Bradford failed to contest the Order of Reference, until after an adverse decision on the merits by the Master following a trial in which Bradford fully participated.

According to Rule 71(a) of the South Carolina Rules of Civil Procedure, "[a]ctions to . . .

obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53. . . .” In light of Rule 71(a), Bradford can have no complaint about the mode of trial in this case.

According to Rule 53(c), SCRCF, “[o]nce referred, the master . . . shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.” Consistent with this Rule, the Order of Reference to Judge Strickland was effectively unlimited in authority. It expressly provided authority “. . . to make findings of fact and conclusions of law; dispose of any and all issues and enter a final judgment in the case; hear and dispose of any issues after judgment and to entertain and rule upon motions made pursuant to Rules 52(b), 59, and 60, SCRCF.” (R.p. _____)

Bradford obviously received timely notice of the Order of Reference, as she sent a letter to Judge Strickland dated October 6, 2021 (R.p. _____). Her letter provided the Master with a copy of her Answer and separately explained her position. So, instead of appealing the Order of Reference, Bradford sought to improve her position by engaging in *ex parte* communications with the Master.

The Supreme Court, in *Hagood v. Summerville*, 362 S.C. 191, 196-97, 607 S.E.2d 707 (2004), citing *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985), determined that an “order referring case to master in equity affects the mode of trial, a substantial right, and party waived his objection to the reference and his right to jury trial by failing to immediately appeal the order.”

The belated arguments regarding the Order of Reference (first raised in Bradford’s Motion to Reconsider) do not expressly raise the issue of “right to trial by jury” or “denial of specific mode of trial,” and such issues can be waived by the failure to make a demand or to timely appeal. As to jury trial, Rule 38(b) and (d), SCRCF, requires a party to serve and file a demand for trial by jury and provides that the failure to do so timely “. . . constitutes a waiver of trial by jury. . . .”

“[T]he proper procedure for raising lack of subject matter jurisdiction prior to trial is to file a motion to dismiss pursuant to Rule 12(b)(1), SCRPC.” *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct. App. 1993).

As the Order of Reference did not deprive Bradford of a mode of trial to which she was entitled, and since Bradford, instead of objecting to said Order, engaged in ex parte communications with the Master in an attempt to improve her position; and since she was allowed to fully participate in the trial of this case, she should not be heard to complain that the Master lacked subject matter jurisdiction, raised for the first time in her Motion to Reconsider after an adverse decision.

CONCLUSION

For the foregoing reasons, the Master correctly concluded, after a trial on the merits at which both parties fully participated, that Williams owned a one-third undivided interest in the subject real property, that Williams was entitled to a partition in kind, that Bradford’s Counterclaims should be denied and that attorney’s fees and costs incurred by Williams should be apportioned between the parties based upon the parties’ respective shares of the subject real property.

Wherefore, Williams respectfully requests that this Court affirm the decision of the lower court.

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PROOF OF SERVICE

I, Leonard R. Jordan, Jr., attorney for Respondent, hereby certify that I have, this 16th day of August, 2024, served a copy of the Initial Brief of Respondent and Respondent's Designation of Matter to be Included in Record on Appeal upon Appellant's counsel, as indicated below:

Andrew S. Radeker, Esquire, at drew@radekerlaw.com

s/Leonard R. Jordan, Jr. _____

Leonard R. Jordan, Jr.