

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

**Aug 29 2024**

S.C. SUPREME COURT

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APPEAL FROM AIKEN COUNTY

Courtney Clyburn-Pope, Circuit Court Judge

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Appellate Case No. 2023-000890

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Deborah T. Weeks ..... Respondent

v.

David W. Weeks ..... Petitioner

---

**APPENDIX**

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August 20, 2024

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ORIGINAL

THE STATE OF SOUTH CAROLINA  
The Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas  
Courtney Clyburn Pope, Circuit Court Judge

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Appellate Case No: 2021-001253

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Deborah T. Weeks ..... Appellant

v.

David W. Weeks ..... Respondent

In Re: Estate of James Randall Weeks, Jr.

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**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
  
DEBORAH T. WEEKS, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
DAVID W. WEEKS, )  
 )  
Respondent. )  
 )  
IN RE: ESTATE OF JAMES )  
RANDALL WEEKS, JR. )  
\_\_\_\_\_ )

IN THE PROBATE COURT  
CASE NUMBER 2017ES02-0855

**ORDER**

A hearing in this matter was held before me on February 27, 2020. Present were Petitioner, Deborah T. Weeks (Deborah) and her attorney, Leon Green, Esq. Also present was Respondent, David W. Weeks (David), Dawn Weeks (Dawn), the daughter of the Decedent, and Arthur W. Rich, Esq., Attorney for David. After taking testimony from Deborah, David and Dawn, I find the following facts.

**FACTS**

The Decedent, James Randall Weeks, Jr. (Decedent), died on August 16, 2017. He left his Last Will and Testament dated February 9, 2001, under which all assets were devised to his two children, Joshua Randall Weeks and Miranda Dawn Weeks, or the survivor thereof, in equal shares. Joshua Randall Weeks predeceased Decedent and therefore Miranda Dawn Weeks (Dawn) is the sole beneficiary under the Will.

The Decedent's brother, David, was appointed in the Will as the Personal Representative of the estate and has been issued Letters Testamentary by this Court and is currently acting in that capacity.

Deborah filed a Petition with this Court alleging that she was entitled to an elective share against the estate of the Decedent. David, in his capacity as Personal Representative, filed an Answer to the Petition for an elective share denying the claim.

*Page #1  
of 12 pages  
adw*

The Court finds as a matter of fact that the claim was timely filed.

The amended Inventory and Appraisement in this estate indicates assets of real estate of \$77,110.35 and miscellaneous personal property of \$19,555.00. The real estate consists of two parcels. Parcel number one is approximately 255 acres located in Aiken County, S.C. The valuation on the Inventory indicates that the appraised value of the property is \$670,000.00 less a forty (40%) percent discount, giving a value of the Decedent's interest of \$69,310.35.

Decedent's interest in this property was inherited from his mother, Harriett J. Weeks, who died on November 11, 2010. A Deed of Distribution from the estate of Harriett J. Weeks was issued on April 5, 2012. The Deed of Distribution conveyed the property as follows:

- (1) To David W. Weeks as Trustee for the Benson A. Weeks Trust, an 8/29th interest;
- (2) To David Weldon Weeks, an 8/29th interest;
- (3) To Sylvia M. Studley f/k/a Marilyn W. Burris, an 8/29th interest; and
- (4) To James Randall Weeks, Jr., a 5/29th interest.

The Deed of Distribution indicates that the original tract was 320 acres, less a tract of 32 acres, and less a second tract which had been sold out of the property.

This property has been in the Weeks family since 1894. The property was originally sold to Luther J. Weeks by deed of J.V.D. Weeks, et al, dated April 2, 1894, recorded in Title Book Y, Page 243, records of Aiken County, S.C. The property was subsequently conveyed from Luther J. Weeks to Alvin W. Weeks on November 13, 1944, recorded in Title Book 94, Page 218, records of Aiken County, S.C. Subsequently, Alvin W. Weeks died on July 30, 1956 devising his property to his wife, Cora Randall Weeks for her lifetime and the remainder to his children under his Last Will and Testament. Cora Randall Weeks later died and the property was conveyed by her heir, Sylvia M. Weeks, to Harriett K. Weeks by deed dated April 14, 1978, recorded in Title Book 605, Page 142; by her heir, David W. Weeks, to Harriett K. Weeks by deed dated April 4, 1978, recorded in Title Book 605, Page 155; by her heir, Benson A. Weeks

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of 12 pages  
sl fm*

by deed dated April 5, 1978 in Book 605, Page 139; and by her heir, James R. Weeks by deed dated June 21, 1979 in Book 646, Page 62, records of Aiken County, S.C. Accordingly it appears from the records that this property has been in the Weeks family for approximately 126 years.

At the death of Harriett Kilgore Weeks, her estate had her property appraised. A copy of an appraisal was filed with the Court, which said appraisal was completed by Holstein Appraisals of Batesburg-Leesville on September 6, 2011. The appraised value of the property at that time was \$670,000.00. The appraisal indicates that the property consisted of 320 acres of cropland and woodland improved with a farmhouse. It is evident that the actual acreage of the property being appraised was approximately 255 acres, not 320 acres. It also appears from the appraisal that the value of any cropland, woodland and timber on the property was included.

Since this property was appraised for the estate of Harriett K. Weeks on September 6, 2011, only seven years prior to the date of decedent, the Court finds that the appraised value of \$670,000.00 has not changed and that it is an accurate appraisal for the purposes of this estate.

The Court further acknowledges that when any individual owns property only owning a fractional interest in the property, that the true value of the property is diminished for a lack of marketability and minority discounts. There are a number of cases, mostly in Federal Court, discussing applicable discounts for lack of marketability and minority discounts.

There are also Treasury regulations regarding the same. The cases as to the appropriate discount range from 20% to 60%. In this particular case, the Personal Representative used a 40% discount, which is the midway point between the generally accepted discount figures of 20% to 60%. The Court therefore specifically finds that the valuation for purposes of this inventory of \$69,310.35 accurately reflects the value of the property in this estate.

The second piece of real estate in the estate is 1121 Weeks Road, which the Personal Representative has shown at a value of \$7,800.00. This property was conveyed from Harriett

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HJK

K. Weeks (the mother of Decedent) to Decedent on June 20, 1983, recorded in Title Book 792, Page 257, records of Aiken County, S.C. The Personal Representative retained the services of Maurice M. Williams, Jr. of Aiken County, S.C., a certified real estate appraiser, to value this property. Mr. Williams submitted his appraisal dated August 21, 2018 indicating a value of \$7,800.00. The Court therefore specifically finds that the valuation of \$7,800.00 on the inventory reflects an accurate value of this property.

Tangible personal property on the amended Inventory consists of 33 items with a total estimated value of \$19,555.00. The Personal Representative testified at the hearing that this indicates an accurate list of tangible property owned by the decedent at the time of his death and the accurate value. There was a good deal of testimony at the hearing from both David, Dawn and Deborah regarding items of tangible personal property. Deborah also submitted a list of what she believes to be tangible personal property of the estate and an estimated value of \$43,080.00. The Court specifically notes that Deborah has not been on the property of the Decedent since the date of their separation in 2010 and therefore had limited information as to which items of tangible personal property that she remembered might still be on the property. Based on the testimony of David and Dawn, the Court specifically finds that the items of tangible personal property owned by the Decedent as listed upon the Inventory, with a value of \$19,555.00, represents an accurate listing of tangible personal property of the estate with a value of \$19,555.00.

Decedent and Petitioner were married on or about January 10, 1998. Previously, Petitioner was married and divorced to three other individuals, namely:

- a. Webb Knox Singletary  
Married - December 15, 1973  
Divorced - February 21, 1983
- b. Jerry W. Smith  
Married - February 26, 1983  
Divorced - August 22, 1996

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JCH*

c. Kevin Leroy Shirley  
Date of Marriage - unknown  
Divorced - January 6, 1998

Decedent married Petitioner on January 10, 1998. From the records it appears that there was significant marital litigation between the parties as shall be described herein but that the parties were never formally divorced.

Petitioner and Decedent had a long involved history of marital litigation prior to the death of Decedent. Initially, Petitioner filed a Petition for an Order of Protection from Decedent on May 3, 2010. An Order was issued by the Aiken County Family Court on May 20, 2010. This Order gave Decedent possession of the marital residence, certain horses and other tangible property to Petitioner and issued a mutual restraining order.

Subsequently, Petitioner filed a Complaint in the Aiken County Family Court asking the Court to provide her with an equitable value of the marital home and its contents, for the decedent to pay certain utilities and maintenance, and to be awarded certain assets of the marriage. An Order by the Aiken County Family Court dated May 20, 2010 indicated that the Petitioner and Decedent had reached an agreement whereby Decedent retained the marital residence and granting Petitioner certain property of the marriage and issuing a mutual restraining order. As part of the marital proceedings, Petitioner filed her affidavit with the Court dated September 8, 2010. Therein she swore that she was making the representations for the purpose of appearing in Family Court at a final hearing for divorce. She states that she had been separated from Decedent since May 1, 2010 and had been continuously separated since that time. She further stated that there was no chance of reconciliation between the parties. She asked for alimony and for division of certain marital assets. She further stated that she was asking the Court to grant a divorce based on the grounds of adultery and physical cruelty and she was asking the Court for equitable division of marital property. Subsequently, the Family Court of Aiken County issued its Order dated November 1, 2010. At that point the parties had reached a temporary agreement regarding all the bills, cell phones, possession of the marital

home, and other assets. The Order further indicated that a later hearing would be held to address marital property after the payments were made on a vehicle. A Financial Declaration filed with the Court by the decedent dated February 15, 2011 did not indicate the ownership of any real estate.

An Order was issued by the Family Court of Aiken County, S.C. on March 23, 2011. In that Order, the Decedent was ordered to pay alimony to Petitioner and the Order further made division of other tangible property of the marriage. The Order further stated that the parties shall live separate and apart from one another as if they were unmarried. Subsequently, the case was dismissed without prejudice by Order of the Family Court dated August 5, 2012 due to the fact that the parties had failed to pursue the matter further.

It therefore appears that there were three hearings between these parties that were all held on a temporary basis. Deborah received substantial tangible property in the settlement, which was listed on Exhibit F provided to the Court. Deborah specifically denies receiving some of the items and disputes the amount of the items, but even accounting for the items which she denies receiving and the values which she states, it appears to the Court that she still received approximately \$32,000.00 in marital property from the divorce and the Court so finds.

The Court further finds that although the final temporary Order of the Court does not specifically state that all marital assets are divided, that it appears from the division of the assets and the assets that still remain in the estate that Deborah received substantial assets from the divorce, the value of which is at least equal to or higher than the tangible assets owned by the Decedent at the date of his death. The Family Court action was later dismissed for lack of the Petitioner (Deborah) pursuing the matter further. The Decedent was ordered to pay \$250.00 per month to Deborah and according to Deborah, she received this for several months, but the Decedent failed to continue paying alimony. Nevertheless, from 2011 until the date of the death of Decedent, approximately seven years later, Deborah never further pursued divorce and never further pursued action to recover additional property from the marriage. Therefore, the Court

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JRM

specifically finds that Deborah received all assets from the marriage to which she was entitled and that the litigation between the parties essentially and for all practical purposes resulted in a final property division of the parties. The Court further notes that the Decedent's interest in the 255 acres was only received by him after the death of his mother which occurred following the final Order of the Family Court in 2011.

In 2013, the Decedent's son, Joshua, died. The health of the Decedent at that time was declining and his daughter, Dawn, moved with her family back onto the family property in Aiken, where she tended to Decedent until his death. Dawn continues to reside in an old farmhouse located on the 255 acre tract. Deborah testified that following the death of Decedent that she applied for and began receiving Social Security benefits based upon the work records of the Decedent. She is currently receiving approximately \$1,300.00 per month.

A list of funeral expenses, administrative expenses and any enforceable claims that have been incurred by the estate to date are in the amount of \$31,583.12 and shown on Exhibit G. The Court therefore specifically finds that the expenses shown on Exhibit G in the amount of \$31,583.12 are valid for the payment of funeral expenses, administrative costs and any enforceable claims.

### LAW

In South Carolina the concept of dower and courtesy have been eliminated. To protect the surviving spouse from impoverishment, South Carolina and most other states provide for the right of an elective share. "The legislative purpose behind the elective share statute is to protect the family unit from becoming society's ward by preventing impoverishment of the surviving spouse." Williams v Williams 517 S.E. 2d 689 335 S.C. 386.

"Since State common law did not require a spouse to devise any property to a surviving spouse, statute giving surviving spouse to take elective share is a statute of creation, and, thus, strict compliance with this term is mandatory in order to exercise the right of elective share." Simpson v. Sanders 445 S.E. 2d 93 314 S.C. 413.

Section 62-2-201 of the S.C. Code of Laws provides for the right of an elective share. An elective share is one-third of decedent's probate estate.

**Section 62-2-204 of the S.C. Code of Laws provides in part that the elective share does not apply to "a complete property settlement entered into or in anticipation of separation or divorce."** Section 62-2-207(d) of the S.C. Code of Laws provides "in choosing assets to fund the elective share, remaining property of the probate estate is applied so that liability for the balance of the elective share of the surviving spouse is satisfied from the probate estate, with devise abating in accordance with Section 62-3-902. Section 62-2-202 of the S.C. Code of Laws provides that for purposes of computing the elective share that any calculation of the available probate estate must be reduced by funeral and administrative expenses and enforceable claims.

S.C. further limits property which may be divided between the spouses in a divorce action for equitable distribution. Pursuant to Section 20-3-630 of the S.C. Code of Laws, property "acquired by either party by inheritance, devise, bequest, or gift from a party other than the spouse" is not subject to marital division.

In many states there are statutes which would prevent the Petitioner in this case from receiving an elective share. For example, in New Jersey the elective share statute provides that there is no elective share where "provided that at the time of death the decedent and the surviving spouse or domestic partner had not been living separate and apart in different habitations or had not ceased to cohabit as man and wife, either as the result of judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or nullity of marriage to a decedent prior to his death under the laws of this State." NJ Rev Stat § 3B:8-1 (2013). In Pennsylvania an elective share is not allowed "in the event a married person domiciled in this Commonwealth dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 and grounds have not been established as provided in 23 Pa.C.S. § 3323(g)". 20 Pa.C.S. § 2203(c)

Further in Connecticut, no elective share is allowed "if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death" CT Gen Stat § 45a-4536(g).

For legal purposes, a fair market value of property transferred to another party is measured on the date of the transfer "as the price at which the property would change hands between a hypothetical willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." Treasury Regulation Section 20.2031-1(b). Real estate fractional ownership interests, also called a tenancy in common interest, exist as in this case when two or more co-tenants each own a separate fractional share of undivided property. In the absence of an agreement between the co-tenants, each co-tenant may possess and enjoy the entire real estate. Although having equal right to possess and enjoy, he or she cannot exclude the other co-tenants or designate any portion as his or her own. Real estate fractional ownership interests typically suffer from the valuation influences of a lack of marketability and a lack of ownership control. There are numerous cases in the tax court and federal court which support discounting for both minority discounts and lack of marketability. For cases discussing discounting for lack of marketability, see Lefrak vs. Commissioner 66 T.C.M. 1297(1993). Also, Connecticut Bank and Trust Company vs. U.S. 71-1 USTC #12,753 (439 F.2nd 931), For a case discussing the applicability of minority discounts, see Propsta vs. U.S. #82-2 USTC #13,502 (680 F.2nd 1248). Also see Bright vs. U.S. 81-2 USTC #13,436 (658 F.2nd 999).

#### DISCUSSION

Respondent argues that if the Court should determine that Petitioner is entitled to an elective share, that Petitioner should receive no elective share from the real estate owned by the Decedent. Decedent owned two parcels of property at his death, both of which were received from his mother, Harriett Kilgore Weeks. The property at 1121 Weeks Road, valued at \$7,800.00, was deeded to Decedent by his mother in 1983. It is a parcel of land with no

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SPH

improvements thereon. The second property owned by the Decedent was an undivided 5/29th interest in approximately 255 acres which was owned by Decedent's mother, Harriett Kilgore Weeks, at the time of her death. Pursuant to the Last Will and Testament of Harriett Kilgore Weeks, the Decedent inherited a 5/29th interest in this property. Harriett Kilgore Weeks died on November 11, 2010 at the time when the Decedent and Petitioner were already separated. The property was later conveyed to Decedent in 2012 from the Estate of Harriett Kilgore Weeks. It is therefore obvious that the 5/29th interest in the property was not property owned by the Decedent or Petitioner during their marriage and should be excluded from any claim of elective share by Petitioner. Section 20-3-630 of the S.C. Code of Laws specifically states that property which is acquired by either party "by inheritance, devise, bequeath or gift from a party other than the spouse is not subject to marital division." Although our elective share statute is not specific, the principle as stated under Section 20-3-630 should apply equally to claims under the elective share. The rationale here, of course, is that a surviving spouse or a spouse under divorce litigation should have no claim to property acquired by the other party by inheritance or gift from a third party such as in this case which was clearly owned by Decedent's mother. Further, the property was not even in the name of Decedent at the time of the separation of the parties due to the fact that Decedent's mother was still living. If Petitioner is allowed to claim an elective share interest against an inherited property of the Decedent, she would be receiving assets which she clearly would not have been able to receive had the divorce been finalized.

Respondent further argues that in the event that the Court determines that the elective share should apply to the inherited real estate and the lot deeded to Decedent by his mother, that the Court should order that the estate may pay a sufficient sum to Petitioner for her interest in the property. Discounts for lack of control and minority interests are well established. Most of the cases in this area in the Tax Court and Federal Court are based on Federal law for gift and estate tax purposes, however the principle of the valuation discount should equally apply in an

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[Signature]

estate. Respondent argues that if the Court should find such an interest, that the 40% discount as applied to the valuation of the inventory is correct.

Respondent further argues that if the Court allows an elective share, that it must be reduced by the value of the funeral and administrative expenses and enforceable claims pursuant to Section 62-2-202 of the S.C. Code of Laws. The amount of administrative expenses, funeral and enforceable claims as testified to by Respondent and pursuant to Exhibit G are \$31,583.12.

Respondent further argues that if the real estate is excluded from the estate, that the only assets in the estate that are subject to equitable distribution are the tangible property with a value of \$19,555.00, which is significantly less than the estate expenses. Therefore, the amount of the elective share will be reduced to zero excluding real estate.

The guiding principle for the elective share is based on the social argument that a surviving spouse should not be totally impoverished at the death of a spouse. In this case, however, the Decedent was the fourth husband of the Petitioner and they had been separated for approximately seven years prior to the death of the Decedent. Petitioner initiated Family Court action for separation and divorce and there were three hearing in the Family Court. The Family Court Order provided for separation and division of many items of tangible personal property and ordered the Decedent to pay alimony. It is obvious from the proceedings that the Petitioner had ample opportunity to visit the marital property and to remove most, of not all, of the property which she desired. In fact, the records reveal that the items removed by Petitioner had a value which likely exceeded the tangible property of the Decedent at the time of his death.

The Family Court actions were initiated by Petitioner. She failed to pursue the divorce, although she had previously asked for it in her pleadings. The Family Court action was dismissed by Administrative Order for failure to pursue the action.

Petitioner would not have been able to recover any interest in the Decedent's real estate in the divorce action based upon Section 20-3-630 of the S.C. Code of Laws. She now,

therefore, seeks an elective share in the inherited and gifted property owned by Decedent which he received from his mother, which would have been unavailable to her in the divorce. Should this Court allow her to receive an elective share against the inherited property, this would grant property to her unavailable in the Family Court action. This is an obvious unjust result. This Court is obligated to follow the law, but it is not obligated to turn a blind eye to justice. "A wrong does not cease to be a wrong because it is cloaked in the form of law." Newman v Dore 275 N.Y. 371, 9 N.E. 2d 968.

**IT IS THEREFORE ORDERED** that it is the finding of this Court that Petitioner's Elective Share claim in hereby disallowed. Petitioner is entitled to nothing for her Elective Share Claim against the estate of the Decedent due to the fact that there was essentially and for all practical purposes, a Family Court Order terminating all marital rights and equitable distribution between the spouses.

So Ordered this 15<sup>th</sup> day of May, 2020.

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of 12 pages

Tonya L. Marchant  
Honorable Tonya L. Marchant  
Probate Judge for Aiken County, S.C.

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

THIS IS TO CERTIFY THAT THIS THE FOREGOING IS A TRUE AND  
CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT.  
WITNESS MY HAND AND SEAL OF THE COURT THIS THE

15th DAY OF May A.D. 2020

Tonya L. Marchant  
JUDGE OF PROBATE FOR AIKEN COUNTY, S.C.

BY S. Cuff CLERK

6

STATE OF SOUTH CAROLINA )

IN THE FAMILY COURT  
SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN )

Debra Weeks )  
Plaintiff(s), )

**ORDER OF DISMISSAL**  
(Without Prejudice)

vs. )

James R. Weeks )  
Defendant(s). )

Docket No. 2010-DR-02-1080

WHEREAS by administrative order of the Chief Justice of South Carolina dated May 9, 2006, it was ordered that all domestic relations cases with the exception of DSS Abuse and Neglect cases shall be disposed of within 365 days of their filing; and

WHEREAS pursuant to said order the Chief Administrative Judge for Family Court shall direct and oversee the monitoring of all cases which are older than 365 days, and for which no final hearing has been requested; and

WHEREAS, this case is over 365 days old and no request for a hearing or pretrial/status conference has been made by any unrepresented party or attorney of record despite being noticed to make such request within thirty (30) days and despite being noticed that failure to make such request within such thirty (30) day period would result in the case being dismissed without prejudice, all pursuant to administrative order of the undersigned;

IT IS THEREFORE ORDERED that this case is dismissed without prejudice;

IT IS FURTHER ORDERED any orders previously issued in this case shall be of no further effect, shall no longer be subject to enforcement, and any support arrearages having accumulated under this case number pursuant to a temporary order are hereby dismissed.

IT SO ORDERED.

Date: 8/5, 2012

Aiken, S.C.

Family Court Judge

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

I, Robert J. Hane, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

FILED  
AIKEN COUNTY

AUG 06 2012  
9:30 AG  
CLERK OF COURT

APR 02 2018

Robert J. Hane / Margaret S. Hane  
C.C.C.P. & G.S., Aiken County, S.C.

000013

FOR CLERK OF COURT OFFICE USE ONLY

Docket No. 2010-DR-02-1080

This judgment was entered on the AUGUST 6, 2012 and a copy mailed first class or placed in the appropriate attorney's box on AUGUST 6, 2012 to attorneys of record or to parties when appearing pro se) as follows:

**ATTORNEY (S) FOR THE PLAINTIFF(S)**

BRETT LANCER (M)  
DEBRA WEEKS  
33 ALICIA DRIVE  
AIKEN, SC 29801

**ATTORNEY (S) FOR THE DEFENDANT (S)**

P. A. ANDERSON (B)  
JAMES R. WEEKS  
1123 WEEKS RD.  
AIKEN, SC 29801

**GUARDIAN AD LITEM**

Court Reporter: \_\_\_\_\_

Custodial Parent (if applicable): \_\_\_\_\_

  
\_\_\_\_\_  
CLERK OF COURT

By: ASHLEY GUNTER 

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )  
DEBRA WEEKS, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JAMES RANDALL WEEKS, )  
 )  
Defendant. )  
\_\_\_\_\_ )

IN THE FAMILY COURT OF THE  
SECOND JUDICIAL CIRCUIT

CASE NO: 2010-DR-02-1080

**TEMPORARY ORDER**

**DATE OF HEARING:** February 15, 2010 at 10:00 a.m.  
**TRIAL JUDGE:** Honorable Vicki Snelgrove  
**PLAINTIFFS' ATTORNEY:** Sidney Jones  
**DEFENDANTS' ATTORNEY:** Andy Anderson  
**COURT REPORTER:** Cheri Young *vps*

This matter came before the Court pursuant to a motion for temporary relief. This case was initiated with the filing of a Summons, Complaint, and Motion for Temporary Relief by Plaintiff on July 15, 2010. Defendant's attorney Andy Anderson accepted service of the pleadings on July 19, 2010. At the hearing, the Plaintiff was represented by Sidney Jones and the Defendant by *v Andrew* ~~Kris~~ Anderson.

A previous temporary hearing has been held on September 8, 2010 where an agreement was read into the record that notified the Court of the parties' personal assets that must be equitably distributed and that a temporary agreement concerning some of the items had been reached. It was explained that the Defendant is paying for the Plaintiff's truck, insurance and cell phones and will continue to do so until the truck is paid for in December 2010; and the parties were asking the Court to approve a temporary order until December 2010 when the

*[Handwritten signature]*

**FILED**  
**AIKEN COUNTY**  
**MAR 23 2011**  
*OK 12:20*  
**CLERK OF COURT**  
**000015**

parties will request another hearing to address the remaining issues. The Plaintiff's attorney then published the agreement on the record and the Defendants attorney agreed.

The hearing today is to address those issues since the vehicle at issue is now paid in full.

It is agreed that:

1. The parties shall live separate and apart from one another, free from the control, restraint or interference of the other, as if they were unmarried.
2. The Defendant shall have use and possession of the marital home until a later hearing to determine the assts that shall be divided.
3. The Plaintiff will have possession of her '04 GMC truck and the Defendant will provide full coverage insurance on same.
4. The Defendant continues to pay for the Defendants cell phone package as is now done.
5. The Plaintiff shall remove her name from any joint bank accounts that might be in existence with the Defendant.
6. The Defendant has accounted for any deposits that might have been made to any of his accounts from any source that were made to benefit the Plaintiff's children.
7. The Defendant shall take all financial records in this possession to an agreed upon accountant.
8. The Plaintiff has not received the "blue tractor" as the last order stipulated and the Defendant will not do anything to hinder its removal into the Plaintiff's possession. This does not remove this tractor from the inventory of martial assets. The Plaintiff agrees to be the only person to use the tractor while it is in her possession and agrees to make that Defendant aware of the tractor's location.

*28 # 2*

9. Both parties still agree to cooperate with the identification and appraisal of all marital property and are restrained from transferring, disposing of, devaluing, moving, hiding, or in any way interfering with the orderly identification and placing value on said property.

10. The parties shall be mutually restrained from harming, harassing, threatening, molesting, stalking, tracking or in any way interfering with the other, whether in person, by telephone, e-mail, text messages, voicemails, or any other electronic or other means.

11. The parties agree that they may conduct discovery in accordance with the South Carolina Rules of Family Court and the South Carolina Rules of Civil Procedure and that a hearing will be requested to address the marital property after the Plaintiff's truck payments are complete.

#### CONCLUSIONS OF LAW

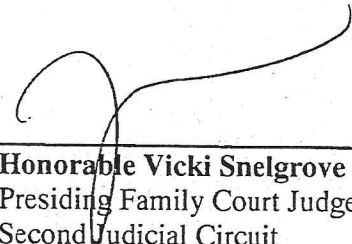
This Court has jurisdiction of the parties and subject matter. I find that the parties have entered into this agreement knowingly, freely and voluntarily, that they understand the agreement and its most recent changes, that they were not under duress or coercion to enter into the Agreement, that they believe the agreement is in their best interests, that they can abide by the Agreement, and that they wish the Court to make this Agreement an Order of the Court and leave this case open pending a division of the marital assets and a final hearing for divorce is held. The parties understand that a violation of this Order could subject them to the contempt powers of the Court.

The Court does find a disparity in income and the Defendant is to pay the Plaintiff \$250.00 per month in alimony due on the first (1<sup>st</sup>) of each month., *commencing April 1, 2011.* If the payment is ever more *vr* than 5 days late then the Plaintiff can file an affidavit to the same and have the paymenyts paid through the clerk of court including the 5% surcharge.

*vr #3*

IT IS ORDERED that the Agreement of the parties as stated herein is approved and is the Order of this Court.

**AND IT IS SO ORDERED!**



---

Honorable Vicki Snelgrove  
Presiding Family Court Judge  
Second Judicial Circuit

Aiken, South Carolina

March 23, 2011

**FAILURE TO COMPLY WITH THIS ORDER WILL SUBJECT THE OFFENDER TO AN ORDER OF CONTEMPT WITH A POSSIBLE PENALTY OF UP TO ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) IN FINES AND/OR TWELVE MONTHS IMPRISONMENT AND/OR THREE HUNDRED HOURS OF COMMUNITY SERVICE.**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 DEBORAH WEEKS, )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 JAMES R. WEEKS, II, )  
 DEFENDANT. )  
 \_\_\_\_\_ )

IN THE FAMILY COURT  
 SECOND JUDICIAL CIRCUIT  
 Case No.: 10-DR-02-658

ORDER

Date of Hearing: May 11, 2010  
 Presiding Judge: Dale M. Gable  
 Court Reporter: Jennifer Smith  
 Attorney for Plaintiff: None  
 Attorney for Defendant: P. Andrew Anderson

This matter was set for an Order of Protection hearing. Plaintiff appeared with her representative from the Cumbee Center while Defendant appeared with his attorney. Plaintiff filed her Summons and Petition on May 5, 2010. Defendant was properly, personally served therewith. Upon the calling of this case, Defendant's attorney informed the Court that it appeared that the parties would be able to work out an agreement in this regard. After a brief recess, an agreement was reached. This Court finds that it does have jurisdiction over these parties and the subject matter of this action. Furthermore, venue is also proper in this Court.

The parties' agreement is as follows:

1. Defendant shall maintain possession of the marital residence.
2. Plaintiff shall retrieve from the marital residence the following: the thirteen horses, all of the horse took and equipment, the horse trailer, the fifth wheel, and all of her and her daughter's personal effects (clothes, toiletries, medications, and jewelry). To accomplish retrieving these items, Plaintiff shall contact the Aiken County Sheriff's Office who should escort her onto the property and ensure a peaceful exchange. Defendant shall cooperate in this regard.



FILED  
 AIKEN COUNTY  
 MAY 28 2010  
 3:56 AC  
 CLERK OF COURT

000019

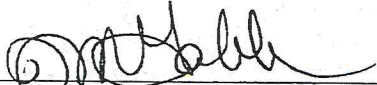
3. When Plaintiff comes to retrieve the items listed, she shall return to Defendant her keys to the marital residence and the church.
4. Both parties are restrained from: communicating with each other; harassing, bothering, intimidating, and coming about the other; sending messages to each other; and contacting each other in any way.
5. Both parties shall also be restrained from disposing of marital assets, assets acquired during the marriage, and all of the assets specifically mentioned in this Order. Furthermore, both parties are restrained from incurring marital debt and debt in the name of the other party.

This Court finds that the parties' agreement is fair and reasonable to both parties. As such, the parties' agreement should constitute the Order in this matter.

Therefore, this Court issues this Order as follows:

The parties' agreement as found hereinabove is hereby approved by this Court and made the Order of this Court. As such, it is enforceable by the contempt powers of this Court.

AND IT IS SO ORDERED this 27 day of May, 2010, in Aiken, South Carolina.

  
\_\_\_\_\_  
Dale M. Gable  
Presiding Family Court Judge

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE FAMILY COURT  
SECOND JUDICIAL CIRCUIT

DEBORAH WEEKS )  
Plaintiff(s), )

vs. )

JAMES R. WEEKS II )  
Defendant(s). )

**JUDGMENT IN A  
FAMILY COURT CASE**

Docket No. 2010-DR-02-658

CHECK ONE:

**DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and an order rendered.

**ACTION DISMISSED (CHECK REASON):**

- Rule 12(b), SCRPC
- Rule 41(a), SCRPC (Vol. Nonsuit)
- Rule 43(k), SCRPC (Settled)
- Family Court Benchmark
- Other: \_\_\_\_\_

**IT IS ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:

Date: \_\_\_\_\_, 20

\_\_\_\_\_, S.C.

\_\_\_\_\_  
Family Court Judge

This judgment was entered on MAY 28, 2010 and a copy mailed/ hand-delivered/ boxed on JUNE 1, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

*FOR THE PLAINTIFF (S)*

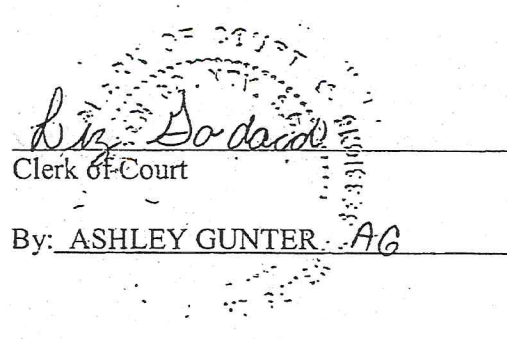
*FOR THE DEFENDANT (S)*

DEBORAH WEEKS (M)

P. ANDREW ANDERSON (B)

*GUARDIAN AD LITEM*

LT. EDMONDS

  
\_\_\_\_\_  
Clerk of Court

By: ASHLEY GUNTER AG

Custodial Parent (if applicable):

SCRPCFORM4F (12/2009)

000021

S

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF AIKEN )  
 )  
 DEBRA WEEKS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JAMES RANDALL WEEKS, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE FAMILY COURT OF THE SECOND JUDICIAL CIRCUIT

CASE NO: 2010-DR-02-1080

TEMPORARY ORDER  
 FILED  
 AIKEN COUNTY  
 NOV 01 2010  
 3:35 AG  
 CLERK OF COURT

DATE OF HEARING: September 8, 2010 at 3:00 a.m.  
 TRIAL JUDGE: Honorable Vicki Snelgrove  
 PLAINTIFFS' ATTORNEY: Sidney Jones  
 DEFENDANTS' ATTORNEY: Kris Anderson for Andy Anderson  
 COURT REPORTER: Cheri Young

This matter came before the Court pursuant to motion for temporary relief. This case was initiated with the filing of a Summons, Complaint, and Motion for Temporary Relief by Plaintiff on July 15, 2010. Defendant's attorney Andy Anderson accepted service of the pleadings on July 19, 2010. At the hearing, the Plaintiff was represented by Sidney Jones and the Defendant by Kris Anderson.

At the commencement of this Temporary Hearing, the attorney for the Plaintiff notified the Court that the parties have extensive personal assets that must be equitably distributed but had reached a temporary agreement concerning some of the items. It was explained that the Defendant is paying for the Plaintiff's truck, insurance and cell phones and will continue to do so until the truck is paid for in December 2010; and the parties are asking the Court to approve a temporary order until December 2010 when the parties will request another hearing to address

Filed: 9-6-2017  
 Tonya L. Marchant  
 Probate Court Judge  
 By: DMitchell

S

the remaining issues. The Plaintiff's attorney then published the agreement on the record and the Defendant's attorney agreed. The parties' agreement is as follows:

1. The parties shall live separate and apart from one another, free from the control, restraint or interference of the other, as if they were unmarried.
2. The Defendant shall have use and possession of the marital home until a later hearing to determine the assets that shall be divided.
3. The Plaintiff will have possession of her F250 Ford truck and the Defendant will continue making the payments on the truck and will provide full coverage insurance on same.
4. The Defendant continues to pay for the Defendant's cell phone package as is now done.
5. The Plaintiff agrees to remove her name from any joint bank accounts that might be in existence with the Defendant.
6. The Defendant agrees to account for any deposits that might have been made to any of his accounts from any source that were made to benefit the Plaintiff's children.
7. Both parties agree to assist each other in providing any records that might be associated with any income for tax purposes from the year 2000 to present. The parties agree to take all financial records in their possession to an agreed upon accountant.
8. The Plaintiff will have possession of the "blue tractor" that is a marital asset and will be accountable for its maintenance and operation and the Plaintiff will be responsible for removing it from the marital property and transporting it to her home. This does not remove this tractor from the inventory of marital assets. The Plaintiff agrees to be the only person to use the tractor while it is in her possession and agrees to make that Defendant aware of the tractor's location.

Rjt#2

9. The Defendant agrees to allow Plaintiff access to home to remove her and the children's personal clothing and karaoke machine, at a mutually agreed upon time convenient to both parties.

10. The Defendant agrees to purchase Niki Weeks a computer for her use in school and other education needs. This computer will be purchased no later than October 8, 2010.

11. Both parties agree to cooperate with the identification and appraisalment of all marital property and are restrained from transferring, disposing of, devaluing, moving, hiding, or in any way interfering with the orderly identification and placing value on said property. The Plaintiff will return any keys in her possession and the Defendant will maintain them in a safe and secure way.

12. The parties shall be mutually restrained from harming, harassing, threatening, molesting, stalking, tracking or in any way interfering with the other, whether in person, by telephone, e-mail, text messages, voicemails, or any other electronic or other means.

13. The parties agree that they may conduct discovery in accordance with the South Carolina Rules of Family Court and the South Carolina Rules of Civil Procedure and that a hearing will be requested to address the marital property after the Plaintiff's truck payments are complete.

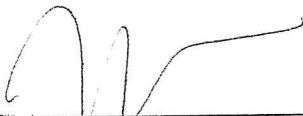
CONCLUSIONS OF LAW

This Court has jurisdiction of the parties and subject matter. I find that the parties are entering into this agreement knowingly, freely and voluntarily, that they understand the agreement, that they were not under duress or coercion to enter into the Agreement, that they believe the agreement is in their best interests, that they can abide by the Agreement, and that they wish the Court to make this Agreement an Order of the Court and leave this case open for a

hearing in December 2010 and until the one year of separation has been completed and a final hearing for divorce is held. The parties understand that a violation of this Order could subject them to the contempt powers of the Court.

IT IS ORDERED that the Agreement of the parties as stated herein is approved and is the Order of this Court.

**AND IT IS SO ORDERED!**

  
\_\_\_\_\_  
Honorable Vicki Snelgrove  
Presiding Family Court Judge  
Second Judicial Circuit

Aiken, South Carolina

*N. Snelgrove*  
October 1, 2010

**FAILURE TO COMPLY WITH THIS ORDER WILL SUBJECT THE OFFENDER TO AN ORDER OF CONTEMPT WITH A POSSIBLE PENALTY OF UP TO ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) IN FINES AND/OR TWELVE MONTHS IMPRISONMENT AND/OR THREE HUNDRED HOURS OF COMMUNITY SERVICE.**

STATE OF SOUTH CAROLINA  
COUNTY OF Aiken  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP0201051

Deborah T Weeks et al  
PLAINTIFF(S)

David W Weeks et al  
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

This matter comes before the Court on an appeal from Probate Court. A hearing was held on August 2, 2021. After consideration of the evidence and arguments by counsel for both the Appellate and Respondent, the Court finds no errors of law. The Probate Court's decision is AFFIRMED.

ORDER INFORMATION

This order  ends  does not end the case.  See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/27/2021 .

Deborah T. Weeks

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Aiken Common Pleas

**Case Caption:** Deborah T Weeks , plaintiff, et al VS David W Weeks , defendant, et al  
**Case Number:** 2020CP0201051  
**Type:** Order/Electronic Form 4

So Ordered

The Honorable Courtney Clyburn Pope

Electronically signed on 2021-09-27 15:57:03 page 3 of 3

ELECTRONICALLY FILED - 2021 Sep 27 4:07 PM - AIKEN - COMMON PLEAS - CASE#2020CP0201051

000028

Honorable Tonya L. Marchant: Mr. Green?

L. Green: Thank you Your Honor. That list that we have shown the Judge is that what you believe was in the estate at the time of his death?

D. Weeks: Yes.

L. Green: Now, would you then, if the Court rules you are entitled to one third Elective Share would you ask the Court to then allow you then to go on this property and observe the estate assets?

D. Weeks: Yes.

L. Green: Is there a time that is convenient for you that you would like to put on the record?

D. Weeks: Okay, tomorrow.

L. Green: Within thirty days.

D. Weeks: Next Wednesday.

L. Green: If the Court would allow you could be ready as soon as March the 4<sup>th</sup>?

D. Weeks: Yes.

L. Green: The other issue relates to the real property associated with this estate. I think that has all been cited for the record but as far as the numbers that were uses and you have already got copies of all this Your Honor. I don't know if Mr. Rich's documents have attached to it the value that was given by the tax assessor's office. I want to include this as Exhibit Number Two.

Honorable Tonya L. Marchant: In his briefs are you referring to?

L. Green: He gave a bunch of documents. What if I make this my Exhibit?

Honorable Tonya L. Marchant: Sure. Deed of Distribution recorded April 18<sup>th</sup> 2012. Any objection Mr. Rich? I believe it was part of your packet right?

A. Rich: It is.

Honorable Tonya L. Marchant: It is Exhibit D for the Respondent and I am going to mark it Number 2 for the Petitioner.

L. Green: Thank you Your Honor.

Honorable Tonya L. Marchant: You are welcome. Without objection.

L. Green: Now this document is what? A deed of distribution?

D. Week: Yes.

L. Green: Does it show then what interest Mr. James Randall Weeks has in that property?

D. Weeks: It has got....

L. Green: Is it five twenty ninth?

D. Weeks: Yes it is.

L. Green: Interest in that property? Does it say then when Mr. Weeks got that property? The date that it was put into the RMC office? Registered with the RMC office?

D. Weeks: 2012.

L. Green: So you were still married to Mr. Weeks at that time?

D. Weeks: Yes.

L. Green: Then on the back of this document it has tax assessor information related to the value. The third page from the back. It says page one of two. It has tax assessor's value for this property as what? Does it say one million three thousand four hundred and sixty five dollars?

D. Weeks: Yes.

L. Green: Would you ask this Court then to require Mr. Weeks to amend the amended Inventory to include this number?

D. Weeks: Yes.

L. Green: Or at the very least require him to have an appraisal done that will truly reflect the value of this property?

D. Weeks: Yes.

L. Green: This is Exhibit Two. I think he has on the amended inventory six hundred and seventy thousand dollars as the value of this property. You would ask the Court to require him to either A. have an appraisal done or B. adjust the number to reflect the tax assessor's numbers.

D. Weeks: Yes.

L. Green: This one also has values from the assessor's office that is not reflected on Mr. Rich's documents.

Honorable Tonya L. Marchant: Any objection Mr. Rich?

A. Rich: No objection.

Honorable Tonya L. Marchant: Title to.....

A. Rich: That has already been.....

Honorable Tonya L. Marchant: It is in your packet of briefs?

A. Rich: We have already introduced it.

L. Green: That is his document. Mine has.... On the back of mine it has documentation associated with the tax assessor's office.

Honorable Tonya L. Marchant: So a little additional documentation. We will mark this as Petitioner's Number Three.

L. Green: Thank you Your Honor.

Honorable Tonya L. Marchant: Just a way to keep up with it.

L. Green: Absolutely.

Honorable Tonya L. Marchant: You may continue.

L. Green: Ms. Weeks, you have already talked to Mr. Rich about this document here. This document shows Mr. Weeks came into ownership of this property on or about when?

D. Weeks: 1983.

L. Green: So he had ownership of this property prior to him and you becoming married?

D. Weeks: Yes.

L. Green: During the course of the marriage did he do anything with that property? Did he sell it or did he get any encumbrances on it?

D. Weeks: No.

L. Green: So it was still his property?

D. Weeks: Yes.

L. Green: He owned it by himself?

D. Weeks: Yes.

L. Green: So at the time of his death did he own that piece of property? How much acreage is it? One acre?

D. Weeks: Yes.

L. Green: One acre. According to the tax assessor's office this property is valued at what?

D. Weeks: \$12,000

L. Green: Okay and according to the amended Inventory filed by the Personal Representative he shows that property valued at \$7800. Do you recall that document that he showed you?

D. Weeks: Yes.

L. Green: Then would you ask this Court to either A. require the PR to adjust that number to reflect the tax assessor's numbers, the Aiken County tax assessor's numbers or B. Have it appraised and get the true value of that property. Is that your request?

D. Weeks: Yes.

L. Green: So is it your position then Ms. Weeks that this estate was established when the application was made for Mr. Weeks, David Weeks to become the Personal Representative you were married to Mr. Weeks?

D. Weeks: Yes.

L. Green: So anything subsequent to that you do not believe is relevant to this case?

D. Weeks: Correct.

L. Green: So you would ask this Court then to look at what was requested in the... you ask this Court to look at what was in the Will and the personal items, all the personal items and the real property be distributed to the heirs? Including you as an heir?

D. Weeks: Yes.

L. Green: Lastly you would ask this Court to require your name to be added to a Deed of Distribution or some agreement worked out between yourself and the Personal Representative?

D. Weeks: Yes.

L. Green: You would also request that the Deed of Distribution also be made for the one acre that it would include your name as having a one third interest in that?

D. Weeks: Yes.

L. Green: That is all I have Your Honor.

Honorable Tonya L. Marchant: Anything on redirect? Please answer any questions that Mr. Rich would have of you.

A. Rich: Are you aware that usually the tax assessor's value is usually incorrect?

D. Weeks: A lot of time yes.

A. Rich: I am going to show you copies of appraisals in just a minute. You have asked for the Court to rule that the Personal Representative to have both properties appraised?

D. Weeks: Yes.

A. Rich: Are you willing to pay the money for the appraisals because there is no money in this estate. Are you willing to put up the money for the appraisals?

D. Weeks: I am willing to split it.

A. Rich: You know to appraise a 255 acre piece of property is going to be quite expensive? So you are saying you will put up half the money to have it appraised?

L. Green: Your Honor, I would object to that question.

A. Rich: What is wrong with that question?

L. Green: Because you are putting information in her mind and she isn't a professional in terms of what the property is.....

A. Rich: I am asking her about having it appraised.

A. Rich: What value did the appraiser put on that property?

D. Weeks: Six hundred and seventy thousand dollars.

A. Rich: And you believe that was accurate then?

D. Weeks: Yes.

A. Rich: Do you believe that is still accurate?

D. Weeks: I have no reason not to yes sir.

A. Rich: Are you familiar with land prices in that area?

D. Weeks: No sir I am familiar with a lot of for sale signs but I have no idea.

A. Rich: To the best of your knowledge does that reasonably represent an accurate value of this property.

D. Weeks: Yes sir it does.

A. Rich: The tax assessor has it appraised for something like a million dollars.

D. Weeks: Yes sir.

A. Rich: Do you believe that is incorrect?

D. Weeks: I do.

A. Rich: I will also show you Exhibit D. This is the deed of distribution from the estate of Harriet Weeks.

D. Weeks: Yes sir.

L. Green: Is he going to put that one in?

Honorable Tonya L. Marchant: Are you introducing the appraisals Mr. Rich?

A. Rich: I am sorry did I not do that?

L. Green: I object to that. That is a 2011 appraisal. That is almost ten years old.

A. Rich: It is seven years before he died and it is the most accurate and current appraisal that we have and I contend that it is relevant. If it is seven years before his death and there have been no improvements on it and it is raw land.

L. Green: Your Honor, this land has tons of wood on it, agricultural that could be harvested. As a matter of fact the majority of that property two hundred and fifty something acres consists of timberland. So for them to come in and say six hundred and seventy thousand dollars and nobody has valuated the timberland then I would think that would be unfair and I would object to having something from that far back filed.

A. Rich: Your Honor, the Court can assign whatever weight they want to this but it is the most recent appraisal and I contend that it is relevant.

Honorable Tonya L. Marchant: The Court is going to overrule the objection and going to accept the certified appraisals as submitted at that time. However, that does not mean that the Court will not require that a more recent appraisal be established. I am not saying that it will but that might be an option. You may continue.

L. Green: One other point Your Honor is that he doesn't even know what the exact acreage is and for that reason alone there should be an appraisal done.

A. Rich: If I may continue with my question. This is a deed of distribution from the estate of Harriet Weeks is it not?

D. Weeks: That is correct.

A. Rich: The legal description indicates that is three hundred and twenty acres and then it says less thirty two acres and less another tract of land. In other words it was three twenty minus these two. Is that the way it appears to you?

D. Weeks: Yes.

A. Rich: So you don't know exactly what the acreage is?

D. Weeks: Correct.

A. Rich: Tell me about this land. Was this family land?

200 acres or 255 acres and we don't really know but we have shown that he has an interest in it by a deed of distribution. Furthermore, we have shown that he has an interest in the one acre that we are talking about. So those two documents show he has an interest in those two properties. Our main contention arise when we start talking about the personal property that he owned and what the values are. Well, you know typically when we have an issue as to what the value of the property is and we can't agree on it we go ahead and sell it and divide the proceeds. So if we can't agree on what those numbers are and we don't have any scientific information to support it then we should sell it all and divide up the proceeds. We believe it is one price and they believe it is another then we should have some person that is uninterested and have an estate sale and sell all that personal property and divide the proceeds. The other issue relates to the value of the property. Now that is a big issue because going from six hundred and seventy thousand dollars from one million dollars down to six hundred and seventy thousand dollars obviously something was different when they did the evaluation of the appraisal back in 2011 versus what the tax assessor says it is now. They make an argument that the tax assessor's numbers are always wrong. Well if they are wrong then let's get a right answer for it. How can their appraisal be correct which was done back in 2011 and what the county has on record now? So if we have that huge discrepancy then let's get a true appraisal. Then the other issue is we don't have the money. Well there is a piece of property that is worth \$12,000 or if you look at the appraised value which is \$7,800 but the assessor says it is worth \$12,000. So let's sell it and get an appraisal done and see what the true values are and go with that. Anything short of that would not be fair to my client. She did what the law said she needed to do. She has complied with that. So there is nothing left but the Court to decide if she is entitled to that one third and what the value of these properties are. One acre, 255 or whatever the case may be let's figure out what those acreages are and the true values and move forward.

Honorable Tonya L. Marchant: Thank you. Mr. Rich?

A. Rich:

Our contention that she is entitled to file for an Elective Share and as far as we know they were still married but our contention is she gets nothing as far as the Elective Share because she had been separated from this man for eight years before he died. They had gone through substantial marital litigation. There were three hearings. Section 62-2-802 of the code says if there is a valid proceeding concluded by an Order to terminate all marital property or confirming equitable distribution between the spouses unless they are living together then there is no

Elective Share. Those Orders are not final and I recognize that however, the three hearings the last case was dismissed by Administrative Order because the moving parties did not follow through. The moving party was Ms. Weeks. She and her attorney chose not to go further with it. She has already received substantial property from the marriage at that point and there was no point in her pursuing it because there was nothing else to divide. The property was not listed on the Financial Declaration either the one acre or the property he inherited. The inherited property clearly wasn't because he didn't get it until after they were separated. So it is our contention and Mr. Green has dismissed the marital litigation as not being relevant but I contend that it is relevant because in essence it is an Order to essentially confirm equitable distribution between the parties under section 802 therefore dismissing her claim for Elective Share completely. That is our initial position. I have outlined in my brief the background of the Elective Share as to the purpose of it. The parties had been separated for eight years and had completely divided the property and she said she received alimony for two months or for some period of time and she continues to collect his social security. Depending on the value of the tangible personal property, the tangible property she received before is according to our calculations is almost triple what is in the estate. We can argue what the values are and what is there but she certainly received, according to what she testified to, she got at least as much out of the marriage as was in the estate. She got her share. There is nothing fundamentally fair about her to receive anything. In terms of the real estate the property was deeded to him in 1983 by his mother for the purpose of getting a loan and it was a gift. The other property was family property that has been in this family for seventy five or eighty years. It is owned by four different family members. It was inherited by him from his mother after they were separated. There is nothing fundamentally fair about her receiving a bit of that property. There is nothing fair about that. If this was a divorce she clearly would not get it. The statute on marital litigation specifically says there is no equitable distribution for property that is inherited. Clear as a bell. Our Elective Share statute does not directly address that and I will admit. In my brief and I show many other states and by Court filings have ruled that in a situation just like this there should be no Elective Share for inherited property. If she gets the property she just owns an undivided interest in it along with everybody else. It doesn't matter what the value is. The only way the appraisals come into it is if the Court rules that the estate has the option to buy her out. We would have to give her some percentage of the five twenty ninths. That is what she is going to own. It would be a waste to have it appraised again. The last appraisal is seven

years old and this is raw land. I think the Court can take recognition that raw land over the last seven years in Aiken County has decreased. Certainly in 08 and 09 the values plummeted significantly. This was done in 2011. On the one acre property the estate had it appraised. It would just be a waste of money to go out and have all this property appraised. Who knows about the taxes she owes. The best information that I have got is that the tax liens are still there. I don't know but if they are still there and she gets an interest in this property it is gone. The tax liens are going to suck up the whole thing and there is not going to be anything left. Again if there is, if you are going to look at the value of the property and in my brief I talk about this and the lack of marketability. Those are valid arguments. Finally if you rule against us on everything else the expenses of this estate have to be subtracted from the value of the estate. Again we can argue about the value of the tangible personal property but the tangible personal property in the estate without the real estate is only \$19,000 and we have \$31,000 in expenses. If the Court takes that real estate out of it there is nothing left. The expenses exceed the amount of the tangible property. Even if we go back and adjust according to what her testimony is I don't think we are going to come up with more than \$31,000. Even if we do that and the expenses are valid and there has been no testimony that the expenses are not valid it is going to reduce her Elective Share down to zero. The biggest question of course is the real estate and again I would submit to you that there is absolutely nothing fair or equitable about her receiving one piece of this property. It is all inherited property from his mother and she is not entitled to any of it.

Honorable Tonya L. Marchant: Thank you.

L. Green: Quick rebuttal Your Honor.

Honorable Tonya L. Marchant: Yes sir.

L. Green: Your Honor, again the issue related to whether or not she is entitled to something based on some divorce decree, the statute is clear on that, it says if there has not been a final adjudication that the spouse is still entitled to that one third Elective Share. We do not have anything in any of these temporary orders or interim orders or any dismissal indicating that these parties were ever divorced any no property settlement was agreed to. What they did prior to the decedent's death that is not even relevant to today's case. The estate was established, the estate was established on the death and I believe my paralegal says on the date of the application. They keep talking about this social security. A wife is

1 State of South Carolina )  
 2 County of Aiken )  
 3 Deborah T. Weeks, et al., )  
 4 Plaintiff, )  
 5 vs. )  
 6 David W. Weeks, et al., )  
 7 Defendant. )  
 \_\_\_\_\_ )

In the Court  
 Of Common Pleas  
 Case No.: 2020-CP-02-01051

Transcript of Record

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August 2, 2021  
 Aiken, South Carolina

BEFORE:

The Honorable Courtney Clyburn-Pope, Judge

APPEARANCES:

Leon Edward Green, Esquire  
 Attorney for the Plaintiff

Clarke W. McCants, III, Esquire  
 Attorney for the Defendant

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INDEX

PAGE

MOTION

3

Certificate of Reporter

15

EXHIBITS

NO. DESCRIPTION

ID EVDS.

NONE

1 Thereupon, the following proceedings were had,

2 BAILIFF: All rise. The Honorable Courtney  
3 Clyburn-Pope presiding.

4 THE COURT: Good morning. Please be seated. Madam  
5 Clerk, call the first case.

6 THE CLERK: The first case is 2020-CP-02-01051,  
7 Deborah T. Weeks versus David W. Weeks. It's a Probate  
8 appeal.

9 THE COURT: Good morning, Mr. Green and Mr. McCants.

10 MR. GREEN: Good morning.

11 MR. McCANTS: Good morning, Your Honor.

12 THE COURT: How are you all this morning?

13 MR. GREEN: Doing fine.

14 MR. McCANTS: Fine, thank you.

15 THE COURT: Okay. This is a motion to appeal a  
16 Probate Court decision?

17 MR. GREEN: That's correct, Your Honor.

18 THE COURT: Yes, sir. I'll hear from you.

19 MR. GREEN: Thank you, Your Honor. Please the  
20 Court. Your Honor, as you already said, this is a  
21 Probate matter wherein the appellant filed for a  
22 one-third elective share under the Probate statute and  
23 there was a hearing on this matter and the appellant was  
24 denied the one-third elective share. The Judge that  
25 ruled in that, Honorable Judge Marchant, said that my

1 client was not entitled to an elective share because she  
2 had waived or slash agreed to a permanent property  
3 settlement. Your Honor, we have about five exceptions to  
4 that order that we want to advance before the Court  
5 today.

6 THE COURT: Yes, sir.

7 MR. GREEN: The first one is that we believe that  
8 the Court did commit error by disallowing this elective  
9 share because clearly under the statute all that has to  
10 happen is a person has to be married to a person that  
11 died in this county, at the time of the death be married  
12 and they are entitled to that elective share. The only  
13 way that that's denied is, there are three ways in which  
14 that can be denied. It can be denied by based on a  
15 permanent final settlement with full disclosure and then  
16 that person would also need to waive it or disclaim it  
17 and neither of those things happened in this case so we  
18 believe that the appellant is entitled to the elective  
19 share.

20 Counsel will probably argue that the appellant did  
21 agree to a final settlement of the property which we  
22 disagree with because in order for a final settlement to  
23 happen those things have to happen. The Judge has to  
24 know about an order. What they're gonna say is that  
25 there was a temporary order placed before the Judge and

1 that somehow that temporary order became a permanent  
2 agreement between the parties and, Your Honor, that  
3 doesn't happen on a temporary matter unless the parties  
4 agree to that to happen. In this situation the parties  
5 didn't agree for a temporary hearing to become a final  
6 hearing.

7 THE COURT: There was never a final hearing, Mr.  
8 Green?

9 MR. GREEN: Never a final hearing, Your Honor. But  
10 they're gonna say that a temporary matter was the final  
11 here, which temporary orders can become final if the  
12 parties agree to it. In this case there was no  
13 agreement. Even in the order itself it says that this is  
14 a temporary order and that we're gonna talk about  
15 discovery, we're gonna talk about restraining orders,  
16 keeping the properties that were in the marital estate  
17 from being distributed or conveyed or something like  
18 that. So clearly we believe that our client is entitled  
19 to the one third elective share.

20 And, Your Honor, we said that we have five  
21 exceptions. The other exception that we believe is, this  
22 Judge applied a domestic statute and thereby eliminating  
23 inherited property from the estate. Well, the Probate  
24 statute doesn't cut out any exception of any sort that  
25 says that because the property is inherited, it's not

1 divisible or it's not susceptible to the elective share.  
2 It clearly states what is. And if anything, that's in  
3 the Probate estate whether it's inherited or otherwise or  
4 again, anything of that sort is still supposed to be  
5 considered within the one-third elective share. So we  
6 believe that the domestic statute that was used in this  
7 case was improper.

8 The other exception we have, Your Honor, is talking  
9 about the appraised value of the property. There were an  
10 appraisal for \$670,000.00 and then there was an inventory  
11 that had property in it for \$800,000.00 and then there  
12 was another document that had the property and the estate  
13 at a million dollars. So we were objecting to anything  
14 that created that ambiguity. So what we said was we  
15 believe that the Court should go ahead and do, have an  
16 appraisal done by an expert so that we can determine what  
17 the true values of the properties within that estate  
18 should be. Well, the court said that, well, we don't  
19 need to do that. We can use the lesser of all those  
20 three numbers. We believe that that was arbitrary and  
21 should not have been done that way and we should have  
22 been allowed to have a professional appraisal done.

23 Counsel is probably gonna argue and say, well, you  
24 should have did that in a timely fashion, but the statute  
25 doesn't put a time limit on it. I can ask for that the

1 day of the court hearing for an appraisal. The statute  
2 allows us to do that. And so we ask the Court to allow  
3 us to have a professional appraiser do an appraisal so  
4 that we can get the correct property amounts in the  
5 estate. We were denied that opportunity.

6 The other exception, Your Honor, is the 40 percent  
7 marketability minority discount. Never heard of that in  
8 a Probate matter. I wasn't able to find any case law to  
9 support that position. We believe that whatever values  
10 that a professional appraisal produces for an estate  
11 property should be that property amount and not with any  
12 exceptions, 40 percent discount or any type of discount.  
13 We believe that the Court should not allow that to  
14 happen. As a matter of fact, as I said, there's no  
15 authority, and I know that in Family Court matters, I do  
16 Family Court stuff, and I know that sometimes in Family  
17 Court matters that deduction or discount is allowed, but  
18 usually what happens is you have an expert who comes in  
19 and goes through all the evidence and information and  
20 then make an educated analysis of that situation and then  
21 apply whatever discount they believe is necessary. In  
22 this situation we didn't have any of that. The Judge  
23 just said, okay, I'm gonna allow a 40 percent discount.  
24 Never heard of that, haven't found any of that in South  
25 Carolina case law.

Steven E. LeBlanc, R.P.R., Circuit Court Reporter  
P.O. Box 184, Lexington, South Carolina 29071 000045

1           And fifth, Your Honor, we believe that the Court  
2           committed error in finding that a temporary Family Court  
3           order that we talked about earlier terminated all of the  
4           marital rights of the appellant. Well, I never heard of  
5           a temporary order terminating anything permanently and  
6           that's, the object of it is, it's temporary. So in this  
7           situation the parties have not had a final order of any  
8           sort. I know they're gonna talk about there's an order  
9           in place November sometime, 2020, November 2019,  
10          somewhere along in there there's a temporary order, but  
11          the statute says that there has to be a full, complete  
12          final order in order for a person's rights to be  
13          eliminated under that statute. We just don't have that  
14          here.

15          And, Your Honor, I just don't see how this person  
16          can be disallowed a one-third elective share. I mean,  
17          that's just part of the statute that says that you're  
18          entitled to that unless you either waive it or there's a  
19          final agreement between the parties, or you've waived it  
20          or you've disclaimed it. Something like that has to  
21          happen. And even if that happens, it has to be in  
22          writing. There's no documentation whatsoever in this  
23          case that shows that there was either a waiver, a  
24          disclaimer, or a full and final settlement. Cannot find  
25          it anywhere in this case and, therefore, the appellant

1 has to be allowed to have their one-third elective share.

2 Has to. There's no other way around it. Thank you.

3 THE COURT: Thank you, Mr. Green. Mr. McCants.

4 MR. McCANTS: I'll try to get up and get closer,  
5 Your Honor, so you can hear me. Good morning again.

6 THE COURT: Good morning.

7 MR. McCANTS: I'm gonna try and explain why Judge  
8 Marchant was right in this case. First off, Judge, we've  
9 got the standard review to look at which I'm sure you're  
10 familiar with. We have outlined all of this information  
11 extensively in briefs and I don't want to argue every  
12 point of the brief unless you would like me to because  
13 you've got a full courtroom and I'm confident that you've  
14 looked at the briefs, and basically the law in this state  
15 is that the Probate Judge's order should be upheld if  
16 there's evidence to support it.

17 And I realize Mr. Green's argument with the legal  
18 issues with the law as to Judge Marchant's order is an  
19 error in the law, but what Leon has not discussed though  
20 is that there's an exception in the Probate code which I  
21 cite in my brief. It's 62-2-204 which clearly  
22 contemplates, Your Honor, situations where two  
23 individuals, though not formally divorced, can, in fact,  
24 divide all of the property by certain agreements whether  
25 they be in writing or otherwise. Mr. Green pointed out

1 there's nothing in writing. That's not required. If you  
2 read the statute, it talks about a written agreement and  
3 then it talks about agreement with respect to what the  
4 parties intend to do with their marital property. And  
5 Judge Marchant cited a couple of cases in her order and I  
6 cited in my brief a case out of North Carolina. It's  
7 called The Estate of Cracker, which addresses the  
8 parties, even though they don't have anything in writing  
9 with regard to resolving marital property, the divorce  
10 action can imply to agree to resolve everything.

11 And that's important in this case, Judge, because  
12 here I think seven or eight years passed between the  
13 point in time when these folks were last in the Family  
14 Court, over the course of a very tumultuous marriage by  
15 the way, Your Honor, and they didn't enter into a final  
16 order of divorce or a final order separating property,  
17 but life moved on and the appellant in this case raised  
18 no issues with regard to the resolution of distribution  
19 of any marital property until the death of the respondent  
20 in this particular matter. It's very difficult, I think,  
21 for the appellant in this case to argue somehow that  
22 these two folks did not intend to distribute everything  
23 that was owned between them at the time that they were  
24 last in the Family Court.

25 Another point that Mr. Green referred to is this

1 concept that even the property for which the appellant  
2 seeks an elective share at this point in time, even if  
3 it's available in Probate Court, it was never marital  
4 property. It could have been distributed as part of the  
5 Family Court in the first place because it was inherited  
6 property. I go into Family Court routinely. You've been  
7 there, Your Honor. You know it's pretty much boiler  
8 plate at this point, if you inherit property that is not  
9 part of the marital estate, it can't be divided. So  
10 between the period of time between the last time Mr.  
11 Weeks was before the Family Court and before his death  
12 according to what I've got, she never came back to Family  
13 Court to contend in any way that the marital property  
14 should be divided.

15 Any reasonable person, Your Honor, over that period  
16 of time would have said, wait a minute. Something is  
17 unresolved. We need to get that resolved and get our  
18 life moving in a direction other than arguing over  
19 property and they simply did not do that. Nobody held in  
20 abeyance the issue of the distribution of any property in  
21 the Family Court. It just went away. And that's what  
22 Judge Marchant specifically found. She ruled, therefore,  
23 the Court specifically finds that the appellant received  
24 all assets from the marriage to which she was entitled,  
25 that the litigation between the parties essentially for

1 all practical purposes resulted in a final property  
2 division of the parties, and that's in the Family Court.

3 And there's plenty of law, and the statute that I  
4 cited allows a envision situation where two individuals  
5 are not formally divorced, therefore, still married, but  
6 they can resolve property issues to the point where the  
7 elective share never comes up later as part of any  
8 matter. So Ms. Weeks had full opportunity to discovery,  
9 to figure out what was available property wise in Family  
10 Court. She was represented by able counsel who  
11 thoroughly explored and vetted those issues and Judge  
12 Marchant saw that and she said it was resolved way back  
13 when and the elective share did not apply.

14 My standpoint, again, using the standard on review  
15 is that Judge Marchant's order is clearly supported by  
16 the evidence, it's also clearly supported by the statute  
17 I cited, the case law that's cited in her order, and in  
18 addition to that that case I presented to you out of  
19 North Carolina, the Cracker case, which I think will be  
20 very helpful to the Court in evaluating the issues before  
21 you today. I'll be happy to answer any questions you may  
22 have, Your Honor.

23 THE COURT: I don't have any questions. I did have  
24 an opportunity to read those briefs. Let me allow  
25 Mr. Green a chance to respond.

1 MR. McCANTS: Yes, ma'am. Thank you.

2 THE COURT: Thank you. Mr. Green.

3 MR. GREEN: Thank you, Your Honor. If I may  
4 respond. Your Honor, there's no affirmative duty that's  
5 laid upon the appellant to file a continuing action  
6 related to a divorce action. The PR can do that, can  
7 finish up an action if they choose to do that, but in  
8 this case the whole action was dismissed which means that  
9 in a temporary situation everything goes back to the  
10 status quo. So there's no order of any sort that would  
11 require the Court, the Judge, unless the Judge makes up  
12 their own rule, which appears to be in this case, to  
13 allow a dead temporary order to be rejuvenated.

14 As far as implications, Your Honor, Mr. McCants says  
15 that, well, these parties' intent was to have this as a  
16 final order. Well, let me say this about this temporary  
17 order that he's talking about. In that same temporary  
18 order that he believes that the intent of the parties was  
19 to have a final order in place, it says, in the beginning  
20 of that temporary order it says, this is a temporary  
21 hearing and that it is not meant to be anything  
22 permanent. We're gonna hold these issues related to  
23 property open. That's what the order itself says. And  
24 then further in that order it says, well, the parties  
25 will agree to cooperate with identifying and appraising

1 the marital property and then agree to a restraining  
2 order and then agree for the discovery to be done. If  
3 that was a permanent situation, then why would they ask  
4 for an opportunity to appraise the property, to do  
5 further discovery? And they said that it was a temporary  
6 order. In order for that to be converted, it has to have  
7 the approval of the Judge. They have to tell the Judge.  
8 First of all, you can't go to the Judge and say, Judge,  
9 this is a temporary order and then later on say it's a  
10 final order. Well, the Judge has to know about that so  
11 that they can make a decision related to that.

12 And then finally, Your Honor, as far as the marital  
13 property, there is no exception in the Probate statute  
14 that says that marital property, inherited property is  
15 exempted. There's nothing in the case law, statute or  
16 anything that says that inherited property is exempted.  
17 Yeah, we do that in family law because that's what the  
18 family law statute says, but there's no Probate statute  
19 that gives that authority. Thank you.

20 THE COURT: Thank you, Mr. Green. All right.  
21 Gentlemen, I'll get you a decision by the end of the  
22 week.

23 MR. McCANTS: Thank you, Your Honor.

24 MR. GREEN: Thank you, Your Honor.

25 THE COURT: Thank you. Nice to see both of you.

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CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON )

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of Common Pleas in and for the State of South Carolina on the 2nd day of October, 2021.

I FURTHER CERTIFY that the forgoing 14 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 18th day of November, 2021.

By:s/Steven E. LeBlanc

Steven E. LeBlanc, Sr., R.P.R.  
Eleventh Circuit Court Reporter  
State of South Carolina.