

STATE OF SOUTH CAROLINA)
)
 COUNTY OF UNION)
)
 Sally T. Atwater and Ashley)
 Atwater, as Trustees of the Sally)
 D. Atwater Revocable Trust,)
)
 Plaintiffs,)
)
 Vs)
)
)
 Curtis Dunbar, individually and)
 as former Co-Personal)
 Representative of the Estate of)
 Theo(dosia) Dunbar,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 C.A. No.: 2022-CP-4400184

ORDER

RECEIVED
Jan 30 2025
SC Court of Appeals

This matter came before me on this 9th day of September, 2024, on a motion for summary judgment of Curtis Dunbar, individually and as former co-personal representative of the Estate of Theo(dosia) Dunbar (hereinafter “Defendant”) by and through his attorney, Will All, and a motion for summary judgment filed by Sally T. Atwater and Ashley Atwater, as Trustees of the Sally D. Atwater Revocable Trust (hereinafter “Plaintiff”) by and through their attorney, Tyler McLeod.

Rule 56(c), SCRCP states summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. “In determining whether any triable issue of fact exists, the evidence and all inference which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Grimsley v. S.C. Law Enf’t Div., 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015). “Even though courts are required to view the facts in the light most

favorable to the nonmoving party, to survive a motion for summary judgment, ‘it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.’”

Id. (quoting Town of Hollywood v. Floyd, 403 S.C. 455, 477, 744 S.E.2d 161, 166 (2013)).

“The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact.” Bennett v. Inv’rs Title Ins. Co., 370 S.C. 578, 588-89, 635 S.E.2d 649, 654 (Ct. App. 2006). If the moving party is successful, the nonmoving party must then come forward with specific facts showing there is a genuine issue for trial. Id.

Theo(dosia) Dunbar died on November 17, 2005 and left all of her property to her daughter, Sally (Sara) Wilson Dunbar Atwater, and her son Curtis Means Dunbar equally. The Will also contained a provision following this residuary clause concerning the Property at issue in this case which stated “The farm on Highway S-44-4 in Pinckney Township is to go to my son, Curtis Means, as part of his proportionate share of my estate.”

Nevertheless, all of the real property of the Estate, including the farm on Highway S-44-4 in Pinckney Township, off Kelly Road, Union, SC 29379 with tax map number 038-00-00-035 (hereinafter the “Property”) was distributed fifty percent (50%) to Sally D. Atwater and fifty percent (50%) to Curtis Dunbar, without reducing Curtis Dunbar’s proportionate share of the Estate, via a Deed of Distribution recorded in Union County, South Carolina on September 4, 2008 in Deed Book 236 at Page 461 (hereinafter “Deed of Distribution”). The Deed of Distribution was signed by both Sally D. Atwater and Curtis Dunbar, as the Co-Personal Representatives of the Estate of Theo(dosia) Dunbar and distributed the Property equally to both Sally D. Atwater and Curtis Dunbar, who were also the only two devisees under the Will.

Sally D. Atwater treated the Property as her own, paying taxes and maintenance on the Property for sixteen (16) years prior to her death on March 9, 2021. Curtis Dunbar also treated the

Property as jointly owned by himself and his sister Sally as he was not solely responsible for the taxes and maintenance on the Property and even sent numerous emails to his accountant indicating the Property was jointly owned and listing Sally D. Atwater's one-half (1/2) share of the Property. On June 20, 2018, Sally D. Atwater transferred the Property to the Sally D. Atwater Revocable Trust dated April 6, 2018. On December 1, 2021, after the death of Sally D. Atwater, and more than **sixteen (16)** years after the Estate was opened and the co-personal representatives were appointed, Curtis Dunbar unilaterally filed a corrective deed of distribution in an attempt to change the ownership of the Property to one hundred percent (100%) owned by him without providing notice to Plaintiff or filing an action to recover the Property which Defendant alleges was distributed in an improper distribution.

South Carolina Probate Code Section 62-3-912 allows contracts among successors which alter the distributions of an estate. Section 62-3-912 provides that "competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled under the will of the decedent...in any way that they provide in a written contract executed by all who are affected by its provisions." The Deed of Distribution was executed by both Sally D. Atwater and Curtis D. Dunbar, who were the only two people affected by its provisions at that time and constitutes a written contract between them to distribute the real property of the Estate equally between the two of them.

The Deed of Distribution "granted, bargained, sold and released" the Property to Sally D. Atwater and Curtis D. Dunbar. Union County, South Carolina Deed Book 236: 461. The language contained in the Deed of Distribution was clearly more than just releasing the Property in accordance with the Will and clearly states that the Property was "granted, bargained, sold and released to Sally D. Atwater and Curtis M. Dunbar." The Deed of Distribution was signed by both

Sally D. Atwater and Curtis D. Dunbar as co-personal representatives of the Estate of Theodosia Dunbar, who were also the only two devisees and heirs at law of the Estate. The Deed of Distribution therefore constitutes a contract between Sally D. Atwater and Curtis D. Dunbar pursuant to South Carolina Probate Code Section 62-3-912.

Even if the original Deed of Distribution did not constitute a written contract pursuant to South Carolina Probate Code Section 62-3-912, which this Court finds that it does, Curtis D. Dunbar's share of the Estate of Theodosia Dunbar's Estate was not proportionately reduced, as required by the Will of Theodosia Dunbar. Counsel for Curtis D. Dunbar conceded that Curtis D. Dunbar could not document that his share of the Estate was proportionally reduced since Curtis D. Dunbar and Sally Atwater waived the final accounting. Waiving the final accounting was consistent with the overall informal way that Curtis D. Dunbar and Sally Atwater settled the Estate and makes it even more clear that the Deed of Distribution was intended to be their agreement. Furthermore, Curtis D. Dunbar admitted in deposition testimony that his share of the Estate was not proportionately reduced by the value of the Property.

Based on the foregoing, the arguments of Counsel for the parties, the Memorandums of Law submitted by the parties along with the Exhibits and the deposition testimony of Curtis Dunbar filed with this Court, Plaintiff's Motion for Summary Judgment is **GRANTED** as to the Plaintiff's causes of action for Quiet Title and Declaratory Judgment and Defendant's Motion for Summary Judgment is **DENIED**. This Order does not dispose of the entire case as Plaintiff still has causes of action for Partition and Breach of Fiduciary Duty, but it does dispose of all of Defendant's Counterclaims. The causes of action for Promissory Estoppel, Constructive Trust and Preliminary Injunction/TRO are moot as the issue concerning the title of the Property is resolved by this Order. Therefore, it is hereby **ORDERED** that the Property at issue is owned fifty percent

(50%) by Sally Atwater, Ashley Atwater and Sara Lee Atwater as Co-Trustees of the Sally D. Atwater Revocable Trust and fifty percent (50%) by Curtis D. Dunbar as tenants in common. And it is further **ORDERED** that a copy of this Order shall be recorded in the Register of Deeds Office for Union County, South Carolina, and shall be properly indexed in the chain of title to the herein described Property under the name of Curtis Dunbar as Grantor and Sally Atwater, Ashley Atwater and Sara Lee Atwater, as Co-Trustees of the Sally D. Atwater Revocable Trust and Curtis Dunbar as Grantee in the same manner as other deeds are recorded to reflect the ownership as fifty percent (50%) being owned by Sally Atwater, Ashley Atwater and Sara Lee Atwater, as Co-Trustees of the Sally D. Atwater Revocable Trust and fifty percent (50%) by Curtis D. Dunbar as tenants in common.

IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

Judge William A. McKinnon
Union County Court of Common Pleas

Date: _____

Union, South Carolina



Union Common Pleas

Case Caption: Sally Atwater , plaintiff, et al VS Curtis M. Dunbar

Case Number: 2022CP4400184

Type: Order/Summary Judgment

So Ordered

/s William A. McKinnon, #2761, Circuit Judge