THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

James E. Chellis, Master in Equity

APPELLATE CASE NO. 2024-000863

RECEIVED
May 12 2025
SC Court of Appeals

Vanessa Marie Frierson ……. APPELLANT,

vs.

Judy A. Bloodworth, as sole beneficiary and as personal representative of the Estate of Jean Garris White, Debra Morse, Jackie McCoy, Christina Fightmaster, and John Doe and Mary Roe, fictitious names which represent any unknown heirs at law, devisees, widowers, executors, administrators, personal representatives, creditors, successors and assigns, firms or corporations of Jean Garris White (deceased), Junior Arch White (deceased), and any other unknown persons claiming any right, title, estate, or lien upon the real estate which is the subject of this action …….. RESPONDENTS.

FINAL BRIEF OF APPELLANT

TIMOTHY J. VITOLLO

Vitollo Law Firm
PO Box 2524
Lexington, SC 29071
(843) 371-7264

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS ……...……...…… 2

TABLE OF AUTHORITIES ……...……. 4

STATEMENT OF ISSUES ON APPEAL ……...……... 5

STATEMENT OF THE CASE ……...…….. 7

STATEMENT OF FACTS ……...……...…….. 8

ARGUMENT

1. The master-in-equity erred by finding that the Appellant amended its pleadings at trial, asking that as alternative relief to the relief requested in the Appellant-Plaintiff's Complaint, the trial court order rents and profits bottomed on ouster, as opposed to finding that the Appellant requested an accounting of rents as other and further relief in addition the relief specifically and expressly requested in the Appellant-Plaintiff's Complaint …….. 11

2. The master-in-equity erred by finding that the value of the real property at issue is $163,333.00, forming this conclusion based on a Comparable Market Analysis completed on January 4, 2023, when an updated Comparable Market Analysis showed that the value of the real property on the date that the trial was resumed on July 26, 2023 was $175,750.00 ……...……. 12

3. The master-in-equity erred by allotting all rights, title and interests in the Property to the Respondent Judy A. Bloodworth without payment or compensation to the Appellant Vanessa Marie Frierson, citing reliance on S.C. Code Ann. § 15-61-380 and § 15-61-390 ……...……. 13

4. The master-in-equity erred by allotting all rights, title and interests in the Property to the Respondent Judy A. Bloodworth, in reliance on S.C. Code Ann. § 15-61-380 and § 15-61-390, prior to providing the parties with the opportunity to purchase and buy-out the interests of any parties requesting partition by sale, as required by S.C. Code Ann. § 15-61-370 and prior to the completion of a separate partition hearing/trial …… 17

5. The master-in-equity erred by finding that the Appellant came to the court with unclean hands, and by granting the Respondent Judy A. Bloodworth equitable relief in the form of a termination of the Appellant's interest in the Property without compensation that vested sole ownership of the Property to the Respondent …….. 20

6. The master-in-equity erred by awarding the Defendant-Respondent Judy A. Bloodworth attorney's fees and costs, and by failing to award the Plaintiff-Appellant Vanessa Marie Frierson attorney's fees and costs ……...…….. 25

7. The master-in-equity err by failing to award the Appellant an accounting of rents as a result of the Respondent's exclusion of the Appellant from the Property, at least to the extent necessary to offset any amounts that Respondent might be entitled to on account of taxes or insurance paid or other contributions towards the Property ……..…….. 26

8. The master-in-equity erred by failing to order that the attorney guardian ad litem be paid reasonable costs and fees for the services provided by the guardian …….. 28

CONCLUSION ……..…….. 29

TABLE OF AUTHORITIES

Cases

Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (1993) ……..…….. 20

Felder v. Fleming, 278 S.C. 327, 295 S.E.2d 640 (1982) ……..…… 26

Grant v. Grant, 288 S.C. 86, 340 S.E.2d 791 (1986) ……..…….. 26

Guignard v. Corley, 147 S.C. 12, 144 S.C. 586 (1928) ……..…….. 21

Rules

SCRCP Rule 15 …….. 11

Statutes

S.C. Code Ann. § 15-61-310, *et. seq.*, …… *passim*

S.C. Code Ann. § 62-1-111 ……..…….. 25

S.C. Code Ann. § 62-1-302(a)(1) ……..…….. 25

STATEMENT OF ISSUES ON APPEAL

I. Did the master-in-equity err by finding that the Appellant amended its pleadings at trial, asking that as alternative relief to the relief requested in the Appellant-Plaintiff's Complaint, the trial court order rents and profits bottomed on ouster, as opposed to finding that the Appellant requested an accounting of rents as other and further relief in addition to the relief specifically and expressly requested in the Appellant-Plaintiff's Complaint?

II. Did the master-in-equity err by finding that the value of the real property at issue is $163,333.00, forming this conclusion based on a Comparable Market Analysis completed on January 4, 2023, when an updated Comparable Market Analysis showed that the value of the real property on the date that the trial was resumed on July 26, 2023 was $175,750.00?

III. Did the master-in-equity err by allotting all rights, title and interests in the Property to the Respondent Judy A. Bloodworth without payment or compensation to the Appellant Vanessa Marie Frierson, citing reliance on S.C. Code Ann. § 15-61-380 and § 15-61-390?

IV. Did the master-in-equity err by allotting all rights, title and interests in the Property to the Respondent Judy A. Bloodworth, in reliance on S.C. Code Ann. § 15-61-380 and § 15-61-390, prior to providing the parties with the opportunity to purchase and buy-out the interests of any parties requesting partition by sale, as required by S.C. Code Ann. § 15-61-370 and prior to the completion of a separate partition hearing/trial?

V. Did the master-in-equity err by finding that the Appellant came to the court with unclean hands, and by granting the Respondent Judy A. Bloodworth equitable relief in the form of a termination of the Appellant's interest in the Property without compensation that vested sole ownership of the Property to the Respondent?

VI. Did the master-in-equity err by awarding the Defendant-Respondent Judy A. Bloodworth attorney's fees and costs, and by failing to award the Plaintiff-Appellant Vanessa Marie Frierson attorney's fees and costs?

VII. Did the master-in-equity err by failing to award the Appellant an accounting of rents as a result of the Respondent's exclusion of the Appellant from the Property, at least to the extent necessary to offset any amounts that Respondent might be entitled to on account of taxes or insurance paid or other contributions towards the Property?

VIII. Did the master-in-equity err by failing to order that the attorney guardian *ad litem* be paid reasonable costs and fees for the services provided by the guardian?

STATEMENT OF THE CASE

Appellant filed a Summons and Complaint for quiet title action and partition on July 12, 2018, asking generally that the trial court declare that Appellant and Respondent Judy A. Bloodworth each own a one-half interest in the real Property at issue and that the trial court partition the Property by sale. R. pp. 34-36, 40-41. An Order of Reference referring the matter to the master-in-equity for Dorchester County, South Carolina was entered on July 30, 2019. R. p. 4.

A trial was held on two non-consecutive days, January 5, 2023 and July 26, 2023. R. p. 66. On February 5, 2024, the master-in-equity entered an order generally declaring that the Appellant and the Respondent Judy A. Bloodworth were each titleholders as to a one-half interest in the Property as tenants in common, and purporting to partition the Property by allotment by vesting sole ownership in the Property in the Respondent Judy A. Bloodworth and terminating the interest of the Appellant without any remuneration. R. p. 22, 27. Appellant filed a motion to reconsider, alter or amend on February 15, 2024, R. p. 56, and the trial court entered an order granting in part and denying in part laintiff's [sic] motion R. p. 31.

This appeal follows.

STATEMENT OF FACTS

Appellant's father, Junior Arch White and Respondent's mother, Jean Garris White were the grantees of equal one-half interests as tenants in common in certain real Property located at 249 Challedon Drive, Summerville, SC 29485 ("the Property") by deed dated July 30, 1971 and recorded on September 11, 1971 in the Register of Deeds Office for Dorchester County in Deed Book 188, at page 152. R. pp. 20, 433-435.

The Plaintiff-Appellant, Vanessa Marie Frierson, formerly known as Vanessa Marie White, was born to Junior Arch White and Norma Grace Teter in the County of Randolf, West Virginia, in 1959. R. p. 349. Archie Ray White, the only other biological child of Junior Arch White, died as an infant and predeceased Junior Arch White. R. p. 354. A divorce decree dissolving the marriage of Junior Arch White and Jean Garris White was issued in West Virginia on or about May 2, 1989. R. pp. 350-351.

On September 21, 2012, the Dorchester County Probate Court entered an Order Determining Heirs finding that Junior Arch White died intestate on July 18, 1992 without any issue and with Jean Garris White as his surviving spouse, and the court ruled that Jean Garris White was the sole heir of Junior Arch White and hence, the sole owner of the Property. R. pp. 384-386. Jean Garris White died on January 19, 2015, R. p. 378, and on September 5, 2017, the Dorchester County Probate issued an order setting aside the previous order determining heirs, on the grounds of fraud. R. pp. 356-371. In her Last Will and Testament, Jean Garris White gifted her entire probate estate to her daughter, the Respondent Judy A. Bloodworth, to the exclusion of the other children and descendants of Jean Garris White. R. pp. 388-389. Jean's interest in the Property was deeded to Judy A. Bloodworth by way of a deed of distribution, and the probate estate of Jean Garris White has been closed.

R. p. 82, para. 9-16.

Plaintiff-Appellant filed a Summons and Complaint in this action on July 12, 2018. R. pp. 34-36. In the Complaint, among other relief, Plaintiff-Appellant requests that the trial court issue a declaratory judgment finding that the Appellant and the Respondent Judy A. Bloodworth are equal one-half owners of the Property as tenants in common, that the trial court quiet title to the Property, that the trial court partition the Property by sale, and that the trial court award the Plaintiff-Appellant costs, expenses and attorney fees. R. p. 43.

The Appellant was not able to serve the Respondent Judy A. Bloodworth by private process server, and Judy A. Bloodworth, various other respondents, and unknown interested parties were served by publication. R. pp. 7-9, 13-15. The Respondent Judy A. Bloodworth filed an Answer on February 23, 2022, requesting that the action be dismissed, or in the alternative that the Property be partitioned by allotment with offsets for certain credits to the Defendant-Respondent, or in the alternative that the Property be partitioned by public sale with offsets for certain credits to the Defendant-Respondent, and for such other relief as the court may deem equitable. R. p. 55.

A trial was held on two non-consecutive days, January 5, 2023 and July 26, 2023. R. p. 66. On February 5, 2024, the master-in-equity entered an order generally declaring that the Appellant and the Respondent Judy A. Bloodworth were each titleholders as to a one-half interest in the Property as tenants in common, and purporting to partition the Property by allotment by vesting sole ownership in the Property in the Respondent Judy A. Bloodworth and terminating the interest of the Appellant without any remuneration. R. pp. 22, 27. Appellant filed a motion to reconsider, alter or amend on February 15, 2024 R. p. 56, and the trial court entered an order granting in part and denying in part laintiff's [sic] motion on

April 29, 2024. R. p. 31. Appellant filed the notice of appeal and served the same on all respondents on May 28, 2024.

ARGUMENT

1. The master-in-equity erred by finding that the Appellant amended its pleadings at trial, asking that as alternative relief to the relief requested in the Appellant-Plaintiff's Complaint, the trial court order rents and profits bottomed on ouster, as opposed to finding that the Appellant requested an accounting of rents as other and further relief in addition the relief specifically and expressly requested in the Appellant-Plaintiff's Complaint.

Issues not raised by the pleadings may be tried by express or implied consent of the parties. SCRCP R. 15(b). At trial, the Appellant-Plaintiff submitted a memo indicating that the Appellant-Plaintiff was requesting "an accounting for rents on account of the Plaintiff's exclusion from the property." R. pp. 413-415. The record of the case reflects that the Appellant-Plaintiff requested this relief in addition to other relief specifically and expressly requested in the Appellant-Plaintiff's Complaint, and not as some form of alternative relief. During opening arguments, counsel for the Appellant-Plaintiff stated as follows:

> And so we are here today asking the Court to find that […] Vanessa [the plaintiff] would be solely entitled to Junior Arch White's interest […] Beyond that […] that she should be entitled to an accounting of rents in that regard […] one half of the fair market value of the rent should be provided to Vanessa Frierson as compensation. […] I would also ask the Court to make a determination of value as to the property. […] either one of the parties will buy it out. If neither of them is able to, then the property will need to be sold. R. p. 77, para. 21 – p. 79, para. 12.

In its order entered February 5, 2024, the court indicates that "[e]ach party, however, amended their respective pleadings at trial, asking for alternative relief. Plaintiffs asks the Court, alternatively, to order rents and profits bottomed on ouster […] [t]hese amendments to the pleading [*sic*] were made at the opening of the trial of the case. Both parties consented to

the others respective amendment." R. p. 18. The record clearly reflects that the Appellant-Plaintiff requested rents in addition to the other relief requested, and there is seemingly no evidence on the record to reflect that rents were requested as any form of alternative relief.

2. The master-in-equity erred by finding that the value of the real property at issue is $163,333.00, forming this conclusion based on a Comparable Market Analysis completed on January 4, 2023, when an updated Comparable Market Analysis showed that the value of the real property on the date that the trial was resumed on July 26, 2023 was $175,750.00.

A finding of fact is to be overturned in the event of an abuse of discretion, and an abuse of discretion occurs when there is no evidence on the record to support the conclusion reached.

In its order dated February 5, 2024, the trial court found that "Defendant Judy A. Bloodworth does not contest the fair market value of the Property […] The current value of the home based on the CMA is $163,333.00." R. p. 23. The first day of the trial of the matter at issue was held on January 5, 2023, and when the hearing was not completed on that date, the trial was resumed on July 26, 2023. R. p. 66. At the initial presentation of its case on January 5, 2023, Appellant-Plaintiff submitted a Comparable Market Analysis (CMA) dated January 4, 2023, showing the value of the real property to be $163,333.00 as of that date. R. p. 409. The trial was reconvened on July 26, 2023, more than six months after the date that the prior CMA was completed. On the date that the trial reconvened, Appellant-Plaintiff submitted an updated CMA showing the value of the real property to be $175,750.00 as of July 26, 2023. R. p. 428. The record of the case would seem to reflect

that the master-in-equity mistakenly overlooked the CMA completed on July 26, 2023, and there is not sufficient evidence on the record to support a finding that the value of the real property was $163,333.00 as of February 5, 2024 when the court entered its order, as an updated CMA was available and the CMA reflecting such amount was completed more than one year prior to the date that the court entered its order.

Furthermore, it has been more than a year since a valuation has been made of the subject real property, rendering all such valuations stale. If this Court should overturn the trial court's termination of the Appellant's one-half interest in the subject real property without compensation, then an updated valuation of the real property should be required to further the interests of justice.

3. The master-in-equity erred by allotting all rights, title and interests in the Property to the Respondent Judy A. Bloodworth without payment or compensation to the Appellant Vanessa Marie Frierson, citing reliance on S.C. Code Ann. § 15-61-380 and § 15-61-390.

"Partition by allotment" means a court-ordered partition of the heirs' property where ownership to all or a portion of the heirs' property is granted to one or more cotenants proportionate in value to their interests in the entire heirs' property parcel, *with adjustments being made for payment to compensate other cotenants for the value of their respective interests in the heirs' property*. S.C. Code Ann. § 15-61-320(7) *[emphasis added]*. Pursuant to S.C. Code Ann. § 15-61-380,

> (A) If all the interests of the cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 15-61-370 or if, after conclusion of the buyout pursuant to Section 15-61-370, a cotenant remains that has requested a partition in kind or a partition by allotment, the court shall order a partition in kind or a partition by allotment, unless the court, after consideration of the factors listed in Section 15-61-390, finds that partition in kind or partition by allotment may result in manifest prejudice or manifest injury *to the cotenants as a group*. *[Emphasis added]*. In considering whether to order partition in kind or partition by allotment, the court shall approve a request by two or more parties to have their individual interests aggregated.
>
> (B) If the court does not order partition in kind or partition by allotment under subsection (A), the court shall order partition by sale pursuant to Section 15-61-400 or, if no cotenant requested partition by sale, the court shall dismiss the action.
>
> (C) If the court orders partition in kind or partition by allotment pursuant to subsection (A), the court may require that one or more cotenants pay one or more of the other cotenants amounts *so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind or the partition by allotment just and proportionate in value to the fractional interests held*.

In its order entered February 5, 2024, the master-in-equity ordered that "Defendant Judy A. Bloodworth shall be allotted all the rights, title and interests in the Property as this is the most practical result. It is also the only fair and just result […]," and the order does not require the Defendant-Respondent to pay any amounts to the Plaintiff-Appellant to compensate the Plaintiff-Appellant for her interest in the Property. R. p. 26, para. 38. The Plaintiff-Appellant filed a Motion to Reconsider, Alter or Amend on February 15, 2024, asking- among other relief- that the trial court "alter or amend its ruling that terminates the Plaintiff's right, title and interest in the Property without buyout or financial consideration [R. p. 64, para. 19]," and the trial court entered an order denying the Plaintiff's request for relief. R. p. 32, para. 19.

S.C. Code Ann. § 15-61-320(7) defines a "partition by allotment" as a court-ordered partition of heirs' property where adjustments are made for payment to compensate other cotenants for the value of their respective interests being terminated. Section 15-61-380(A) directs that if any interests of cotenants that requested by partition by sale are not purchased by other cotenants, the court is to order a partition in kind or a partition by allotment, unless a partition in kind or a partition by allotment would result in manifest prejudice or manifest injury to the cotenants as a group. Section 15-61-380(B) directs that if the court does not order partition in kind or partition by allotment, then the court is to order a partition by sale, or in the event that no cotenant requested a partition by sale, then the court shall dismiss the action. Appellant would submit that section 15-61-380(C) appears intended to mandate that a decision rendered pursuant to the "Clementa C. Pinckney Uniform Partition of Heirs' Property Act", codified at section 15-61-310, *et. seq.*, be "just" and defines a just decision as one that results in all cotenants of property adjudged to be heirs' property receiving an interest in the heirs' property or a payment that is proportionate in value to the fractional interests held; section 15-61-380(C) would also seem to permit a cotenant to be made whole by way of a mixed distribution, including both an in-kind distribution and monetary payment that combined to equal a value in proportion to the cotenant's fractional interest.

Section 15-61-390 sets forth the factors that the court should consider when deciding pursuant to Section 15-61-380 whether a partition in kind or partition by allotment would result in manifest prejudice or manifest injury to the cotenants as a group, and the relief to be provided in the event that it is found that a partition in kind or partition by allotment would result in manifest prejudice or manifest injury to the cotenants as a group is set out in Section 15-61-380(B). Pursuant to Section 15-61-380(B), if the court does not order a partition in

kind or partition by allotment, then the court is required to order a partition by sale unless no cotenants requested by partition by sale, in which case the action is to be dismissed.

Section 15-61-370 requires that certain cotenants be granted the opportunity to purchase and buyout the interests of other cotenants; section 15-61-380 permits the court to partition heirs' property in kind or by allotment; section 15-61-390 sets forth factors for the court to consider when determining whether partition in kind or by allotment would result in manifest prejudice or injury to the cotenants; section 15-61-380(B) requires that a court order a partition by sale if the heirs' property is not partitioned in kind or by allotment, or that the action be dismissed if no party requests partition by sale; and section 15-61-380(C) would best be interpreted to require that a partition in kind or partition by allotment be just and that the in-kind distribution and payments received by a cotenant be proportionate in value to the fractional interests held.

The Clementa C. Pinckney Uniform Partition of Heirs' Property Act does not permit a court to extinguish a cotenant's interest in heirs' property without receipt of a payment or a distribution in kind that is proportionate in value to the fractional interest held by the cotenant, and by allotting all the rights, title and interests in the Property to the Respondent Judy A. Bloodworth without any compensation to the Appellant, the master-in-equity committed an error at law and an abuse of discretion.

4. The master-in-equity erred by allotting all rights, title and interests in the Property to the Respondent Judy A. Bloodworth, in reliance on S.C. Code Ann. § 15-61-380 and § 15-61-390, prior to providing the parties with the opportunity to purchase and buy-out the interests of any parties requesting partition by sale, as required by S.C. Code Ann. § 15-61-370 and prior to the completion of a separate partition hearing/trial.

"Partition by allotment" means a court-ordered partition of the heirs' property where ownership to all or a portion of the heirs' property is granted to one or more cotenants proportionate in value to their interests in the entire heirs' property parcel, *with adjustments being made for payment to compensate other cotenants for the value of their respective interests in the heirs' property*. S.C. Code Ann. § 15-61-320(7) *[emphasis added]*.

Pursuant to S.C. Code Ann. § 15-61-360(B), if all cotenants have agreed to a method of valuation, then the court shall adopt the value produced by the agreed upon method of valuation. If any cotenant requests partition by sale, then following the determination of value by the court, the party filing the partition action is required to send notice to the parties that any cotenant who has not requested a partition by sale may buy all of the interests of the cotenants that requested partition by sale. § 15-61-370(A). A cotenant who did not request partition by sale and who is interested in purchasing the interests of the cotenants that did request partition by sale is required to notify the court of that interest at least ten days prior to the date set for the partition trial, and a cotenant who did not request partition by sale must be allowed to purchase the interests of any cotenant who has requested a partition by sale. § 15-61-370(B).

If only one cotenant elects to buy all of the interests of the cotenants that requested partition by sale, the court is to notify the party filing the partition action, and the party filing the partition action is to notify all of the other parties. § 15-61-370(D)(1). Pursuant to S.C. Code Ann. § 15-61-380(A),

> If all the interests of the cotenants that requested partition by sale *are not purchased by other cotenants* pursuant to Section 15-61-370 or if, *after conclusion of the buyout* pursuant to Section 15-61-370, a cotenant remains that has requested a partition in kind or a partition by allotment, the court shall order a partition in kind or a partition by allotment, unless the court, after consideration of the factors listed in Section 15-61-390, finds that partition in kind or partition by allotment may result in manifest prejudice or manifest injury to the cotenants as a group [*emphasis added*].

On February 15, 2022, the hearing was held to determine the value of the Property as required by S.C. Code Ann. § 15-61-360. R. p. 13. At the time of said hearing, it was anticipated that Respondent Judy A. Bloodworth would desire to purchase and buy-out the interest of any other co-tenants; however, the Respondent was not in agreement that the Plaintiff-Appellant Vanessa Marie Frierson was a cotenant. *See, e.g.,* R. p. 40, para. 26-28 (Complaint alleging that Plaintiff-Appellant is the sole heir of Junior Arch White) and R. p. 53, para. 9-10 (Answer only partially admitting the same); R. p. 55 (requesting that the trial court dismiss the Complaint, or in the alternative, partition the Property by allotment). At the hearing, the method of valuation agreed upon by the parties pursuant to Section 15-61-360(B) was such that a comparable market analysis would be prepared and that any disagreement as to the fair market value of the property would be resolved by way of evidence presented by the parties at the final hearing. R. p. 14.

At the time of the final hearing, held on January 5, 2023 and July 26, 2023 (*Order Declaration of Title & Partition by Allotment, p. 1*), title to the Property and a determination of the fair market value of the Property remained unresolved (*see e.g., Transcr. p. 12, para.*

19 to p. 13, para. 10; id. at p. 94, para. 20 to p. 95, para. 3; id. at p. 115, para. 10 to p. 123, para. 3; Plaintiff's exh. 6, p. 14), and as a result, S.C. Code Ann. § 15-61-370(A) would seem to require that following the entry of the court's order making a declaration of title as necessary to identify the parties who would be considered "cotenants" and determining the fair market value of the Property, the Plaintiff-Appellant who filed the partition action would be required to commence with sending notice of the opportunity for the interests of certain cotenants to be bought out. At the final hearing, all parties appeared to contemplate that the matter would be resolved by way of a buy-out (*see Transcr. p. 222, para. 5 through 19; p. 225, para. 22 to p. 226, para. 1*); however, in the event that the opportunity for buy-out failed to fully dispose of the interest in the Property, only then would Section 15-61-380(A) render it appropriate to dispose of the Property by way of a partition in kind or by allotment.

The Appellant would submit that the Clementa C. Pinckney Uniform Partition of Heirs' Property Act requires an additional partition trial/hearing following the actions required by Section 15-61-370 before heirs' property is disposed of pursuant to Section 15-61-380. Section 15-61-370(B) expressly requires that if a cotenant who has not requested partition by sale is interested in purchasing the interests of the cotenants that required partition by sale, the cotenant "shall notify the court of that interest no later than ten days *prior to the date set for the partition trial [emphasis added]*." Thus, Sections 15-61-370(A) and 15-61-370(B) would clearly require that *after* issuance of the court's order determining value and *prior* to the court partitioning the property in kind or by allotment or by sale, any cotenant who has not requested partition by sale be given notice and granted the opportunity to buy out the interests of any cotenants who requested partition by sale. Furthermore, Sections 15-61-370(B) and 15-61-370(D) would seem to require that a court refrain from

entering an order partitioning heirs' property in-kind or by allotment or by sale or dismissing the action until *after* certain cotenants have been granted the opportunity to buy-out other cotenants under Section 15-61-370 and *after* a separate "partition trial" (separate from any prior proceeding to determine the identity of the titleholders and separate from any prior proceeding to determine the fair market value of the heirs' property) has been completed.

The Defendant-Respondent Judy A. Bloodworth did not request partition by sale, except as alternative relief, R. p. 55, and the master-in-equity erred at law and abused its discretion by allotting all the rights, title and interests in the Property to the Defendant-Respondent Judy A. Bloodworth *prior* to completion of the buy-out period required by Section 15-61-370 and by ordering such an allotment *prior* to the completion of a separate partition trial.

5. The master-in-equity erred by finding that the Appellant came to the court with unclean hands, and by granting the Respondent Judy A. Bloodworth equitable relief in the form of a termination of the Appellant's interest in the Property without compensation that vested sole ownership of the Property to the Respondent.

Standard of Review. The appellate court has jurisdiction to make findings of fact in accordance with its own view of the preponderance of the evidence when reviewing equitable decisions of the trial court, *Dean v. Kilgore*, 313 S.C. 257, 259, 437 S.E.2d 154, 155 (Ct. App. 1993), and an appellate court may make its own findings of law without deference to the trial court.

In its final order, the court found that the Appellant came to the trial court with unclean hands, and opined as follows:

> The Property is Defendant Judy A. Bloodworth's home. She has lawfully resided in and on the Property without the least interest from the Plaintiff except for her interest in exacting an economic benefit through litigation. Plaintiff's interest in this Property, being economic through lawful process, is much like the proverbial gun to one's head making a demand for payment. Plaintiff's action contemplates a disposition of the Property that, if allowed, would be an absolutely destructive power against the Defendant's home, which she has built over a 30 year period, the last 8 of which have been under the distress of lawsuits. Plaintiff has a throttle held upon the peaceful existence of another human being. This does not commend itself to the favorable consideration of the court. Equity will not countenance such a stranglehold. See, *Guignard v. Corley*, 147 S.C. 12, 144 S.C. 586, 591, 62 A.L.R. 533 (1928). Accordingly, the Plaintiff comes to this Court with unclean hands.
>
> R. pp. 25-26, para. 35.

The trial court described the Property as "Defendant's home, which she has built over a 30 year period," but the record of the case presents a picture that is more nuanced, as the Respondent had the opportunity to live at the Property for much of the time with minimal contribution, inherited an interest in the Property for no consideration, and has to some extent allowed the Property to fall into a state of disrepair. The Respondent's mother, Jean Garris White and Appellant's father, Junior Arch White acquired the Property by deed dated July 30, 1971. R. p. 20, para. 4. The Respondent generally grew up at the Property, R. p. 159, para. 4-7, and has lived at the Property continuously since 1989. R. p. 155, para. 6-17. The Respondent lived at the Property with minimal responsibility for expenses related to the Property up until the death of Respondent's mother in 2015, as prior to the death of Respondent's mother, expenses associated with the Property, such as taxes and insurance, were primarily paid by Respondent's mother and Appellant's father. R. p. 160, para. 25 to p. 161, para. 5; p. 165, para. 6-12; p. 169, para. 17-25. In her Will, Jean Garris White left her

entire interest in the Property to Respondent as an inheritance, to the exclusion of her other children and heirs at law. R. pp. 388-389. Respondent's husband, Mark Bloodworth has lived at the Property with the Respondent and built an addition onto the house, but testified that the Property has fallen into some amount of disrepair. R. p. 223, para. 6-12; p. 224, para. 13-18; p. 240, para. 2 to p. 241, para. 2.

During the time that the Respondent has had the good fortune of being granted the opportunity to reside at the Property for often minimal contribution, the Appellant has struggled financially in general and struggled to maintain a steady residence. R. p. 111, para. 11 to p. 113, para. 3. Respondent's mother, Jean Garris White, acquired an interest in the Property by way of the deed through which Appellant's father, Junior Arch White acquired an interest in the Property. Regardless as to whether such perception was rooted in law, the Appellant's actions would seem to reflect a perception that Jean Garris White's interest in the Property was superior to Appellant's interest, and Appellant did not pursue the establishment of an interest in the Property until after the death of Jean Garris White. Jean Garris White passed away on January 19, 2015, R. p. 378, and the Appellant through her attorney filed a Petition for Allowance of Claim and to Set Aside the Order Establishing Heirs due to Fraud in the Dorchester County, South Carolina Probate Court on July 16, 2015. R. p. 399. There was nothing nefarious about the Plaintiff-Appellant non-pursuit of an interest in the Property until after Jean Garris White's death. Similarly, there was nothing nefarious about the Plaintiff-Appellant pursuing an interest in the Property vested in the Appellant pursuant to the South Carolina law of intestacy, and pursuing a partition of the Property by way of sale as is permitted pursuant to the Clementa C. Pinckney Uniform Partition of Heirs' Property Act. The Appellant's utilization of the justice system and the

South Carolina Courts to obtain and pursue the rights afforded to her by the South Carolina legislature, whether such rights are in the form of an economic interest or an interest in real property, is not comparable to "the proverbial gun to one's head making a demand for payment."

The language used by the trial court in its order is inflammatory and reflects a bias against the Plaintiff-Appellant in favor of the Respondent. In its order, the master-in-equity states that the Plaintiff-Appellant's pursuit of a partition action "contemplates a disposition of the Property that, if allowed, would be an absolutely destructive power against *the Defendant's home*, which she has built over a 30 year period, the last 8 of which have been under the distress of lawsuits." R. pp. 25-26, para. 35. The Property at which the Defendant-Respondent has had the privilege of residing at for much of the period since 1989 was not "the Defendant's home." Jean Garris White was the record title holder of the Property at the time of Jean's death in 2015 (as the result of an order determining heirs that was later set aside due to fraud), and the Respondent's exclusive enjoyment of the Property subsequent to the Plaintiff-Appellant asserting an interest in the Property as of July 16, 2015 has been enjoyed by the Respondent to the detriment of the Appellant. The Property is just as much the Appellant's "home" as it is that of the Respondent, and the Appellant pursuing legal recourse is not "a throttle held upon the peaceful existence of another human being," as indicated by the trial court. The trial court's assertion that the Plaintiff-Appellant came to the court with unclean hands is without legal or factual basis.

The primary justifications for the master-in-equity's order terminating the Appellant's interest in the Property and vesting sole ownership of the Property in the Respondent are the disruption to the Respondent that would be caused to the Respondent's

exclusive possession, the Appellant's pursuit of legal recourse through the courts (or as the court states, "her interest in exacting an economic benefit through litigation"), and the Respondent's sentimental attachment to the Property. The master-in-equity appears to fail to consider that the Appellant has refrained from resorting to self-help, and fails to consider the Respondent's willingness to buy out the Appellant's interest in the Property as Respondent requested partition by allotment- at least as alternative relief- as indicated in Defendant-Respondent's Answer (R. p. 55), opening arguments (R. p. 83, para. 21-24) and closing arguments (R. p. 301, para. 23 to p. 302, para. 1). Partition of the Property, whether by way of the buyout provisions of the Uniform Partition of Heirs' Property act, by allotment, or by sale, though potentially partially disruptive, would either provide Respondent the opportunity to obtain sole ownership of the Property in exchange for payment of approximately one-half the fair market value of the Property or result in the Respondent receiving sale proceeds equal to approximately one-half of the fair market value. The enforcement of the Appellant's right to receive consideration for Appellant's one-half interest in the Property would not be "an absolutely destructive power" as to the Respondent, it would only require the Respondent to relinquish the sole benefit of Appellant's interest in the Property that the Respondent has wrongfully enjoyed. The master-in-equity's decision to equitably allot the Appellant's interest in the Property to the Respondent without remuneration was not fair or just, and was in error.

6. The master-in-equity erred by awarding the Defendant-Respondent Judy A. Bloodworth attorney's fees and costs, and by failing to award the Plaintiff-Appellant Vanessa Marie Frierson attorney's fees and costs.

The probate court and the circuit court have concurrent jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions. *S.C. Code Ann. § 62-1-302(a)(1)*. In a formal proceeding under title 62 of the South Carolina Code of Laws, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the estate that is the subject of the controversy. *Id. at § 62-1-111*.

The Respondent's mother, Jean Garris White and Appellant's father, Junior Arch White acquired the Property by deed dated July 30, 1971. R. p. 20, para. 4. The order determining heirs which made Jean Garris White the sole record titleholder of the Property was set aside due to fraud, and as a result, as of the date that the Plaintiff-Appellant filed her Complaint in the matter at hand, July 12, 2018, a one-half interest in the Property was vested in the Decedent Junior Arch White, creating a cloud of title that could only be resolved by way of a quiet title action requesting a determination of heirs. The Respondent's exclusion of the Appellant from the Property and refusal to acknowledge the Appellant's interest in the Property left the Appellant with no meaningful recourse to obtain a benefit from the Property other than to pursue a partition action. The master-in-equity acted with prejudice towards the Plaintiff-Appellant, as evidenced by the master-in-equity's comparison of the Appellant's decision to pursue formal legal proceedings- as opposed to self-help- to "the proverbial gun to one's head making a demand for payment" and "a throttle held upon the peaceful

existence of another human being." The legal action filed by the Plaintiff-Appellant was for the common benefit of the parties and was filed in good faith, and the master-in-equity erred and abused its discretion by awarding attorney's fees and costs to the Respondent.

Furthermore, the Respondent's appearance in the case was delayed (*see* R. p. 52, *Respondent's Answer, filed February 23, 2022*), and was to at least some extent uncooperative in discovery (R. p. 201, para. 9 to p. 206, para. 12). The master-in-equity should have ordered attorney's fees and costs to be paid from the Respondent to the Appellant and/or from the common fund associated with the disposition of the Property.

7. The master-in-equity err by failing to award the Appellant an accounting of rents as a result of the Respondent's exclusion of the Appellant from the Property, at least to the extent necessary to offset any amounts that Respondent might be entitled to on account of taxes or insurance paid or other contributions towards the Property.

"Ouster" is the actual turning out or keeping excluded a party entitled to possession of any real property. *Grant v. Grant*, 288 S.C. 86, 340 S.E.2d 791 (Ct. App. 1986). Only in rare, extreme cases will the ouster by one cotenant of other cotenants be implied from exclusive possession and dealings with the property, such as collection of rents and improvement of the property. *Felder v. Fleming*, 278 S.C. 327, 331, 295 S.E.2d 640, 642 (1982).

The Plaintiff-Appellant filed proceedings with the Dorchester County Probate Court on July 16, 2015 which were sufficient to put the Respondent on notice that Appellant was making a good faith claim as to ownership of the Property. R. pp. 398-401. Respondent denied Appellant's paternity at the Probate Court hearing in 2017 (R. p. 366) and at the

hearing before the master-in-equity in 2023 (R. p. 159, para. 20 to p. 160, para. 3). The court appointed a realtor to complete a Comparable Market Analysis, and the Respondent failed to provide the realtor with access to the home. (R. p. 201, para. 9 to p. 206, para. 12). The Respondent refused to acknowledge Appellant's interest in the Property, and took the position at trial that the conduct of Respondent and Respondent's mother was sufficiently hostile so as to entitle the Respondent sole title to the Property by way of adverse possession.

The conduct of the Respondent and exclusive possession prevented the Appellant from experiencing any benefit from the Property, and the Respondent should have been required to pay the Appellant one-half of the fair market rental value of the Property beginning as of at least September 5, 2017 (the date that the Probate Court set aside the order determining heirs), at least to the extent necessary to offset any amounts that Respondent might be entitled to on account of taxes or insurance paid or other contributions towards the Property. Appellant acknowledges that the master-in-equity did not address Respondent's entitlement to offset in its final order or award Respondent any entitlement to contribution for taxes or insurance or other amounts paid towards the Property, and that Respondent did not request reconsideration in this regard, such that any claim of the Respondent to offset for such amounts may be barred. To the extent that Respondent is barred from claiming amounts based on contribution, this issue may be moot.

8. The master-in-equity erred by failing to order that the attorney guardian *ad litem* be paid reasonable costs and fees for the services provided by the guardian.

The Plaintiff-Appellant filed the action in the trial court to quiet title to the Property, necessitating the appointment of a guardian *ad litem* to represent the interests of any unknown heirs. The guardian *ad litem* appointed is a licensed attorney in good standing with the South Carolina, and as such should be entitled to be paid reasonable costs and fees for the services provided as necessary to represent the interests of any unknown parties and obtain a complete disposition in regards to the action to clear and quiet title. The master-in-equity's failure to award reasonable costs and fees amounts was an abuse of discretion.

CONCLUSION

The master-in-equity made various errors of fact and errors of law, and abused its discretion. For this reason, Appellant requests that this Court: (1) find that the Appellant amended its pleadings at trial and requested an accounting of rents as other and further relief in addition to the relief specifically and expressly requested in the Plaintiff-Appellant's Complaint; (2) find that the master-in-equity erred by relying on a Comparable Market Analysis that was out of date; (3) reverse the master-in-equity's ruling that vests sole title in the Property to the Respondent Judy A. Bloodworth and terminates the Appellant's interest in the Property without payment or remuneration; (4) find that the master-in-equity erred by allotting the Property to the Respondent Judy A. Bloodworth prior to the completion of the buyout period required by S.C. Code Ann. § 15-61-370; (5) find that the master-in-equity erred and abused its discretion by granting the Respondent Judy A. Bloodworth equitable relief in the form of an allotment of the Appellant's interest in the Property to the Respondent without payment or remuneration to the Appellant; (6) reverse the master-in-equity's award of attorney's fees and costs, and award the Plaintiff-Appellant attorney's fees and costs to be paid by the Respondent Judy A. Bloodworth or to be paid as part of the disposition of the Property; (7) award the Appellant one-half of the fair market rental value of the Property from September 5, 2017 to the present, at least to the extent necessary to offset any amounts that Respondent Judy A. Bloodworth might be entitled to on account of taxes or insurance paid or other contributions toward the Property; (8) order that the attorney guardian *ad litem* be paid reasonable costs and fees for the services provided by the guardian; (9) and remand the case to the Court of Common Pleas for a re-determination of value on account of the Comparable Market Analysis that has become stale, and for further buy-out proceedings pursuant to S.C. Code Ann. § 15-61-370.

Respectfully submitted,

s/ Timothy J. Vitollo
Timothy J. Vitollo, Esq.: SCB# 76170
VITOLLO LAW FIRM
Post Office Box 2524
Lexington, SC 29071
(843) 371-7264
tim@vitollolawfirm.com
Attorney for Appellant

This 12th day of May, 2025