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SC Court of Appeals

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

Vanessa Marie Frierson, Appellant,

v.

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 RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. **Appellant is not prejudiced and suffers no harm from the Master's conclusion the Appellant amended her Complaint at trial to seek rents and profits on the basis of ouster as an alternative remedy, even if the conclusion is error.**

II. **The Master did not err in finding and concluding the fair market value of the property was $163,333.00.**

III. **The Master did not err by allotting all rights, title and interests in the Property to Judy.**

IV. **The Master did not err in awarding attorney's fees.**

V. **As an additional sustaining ground, and pursuant to the standard of review, the Court of Appeals may and should affirm the ultimate result of the Master on the basis of ouster.**

STATEMENT OF THE CASE

On July 12, 2018, Vanessa Marie Frierson ("Appellant") filed a Summons and Complaint seeking to quiet title and to partition real property located at 249 Challedon Road in Dorchester County, South Carolina (the "Property"). (R.pp. 34-43). Appellant's action sought declaration that the Appellant and Judy A. Bloodworth ("Judy") were the sole owners of the Property, with each of them possessing a one-half undivided interest in the total fee. Appellant further sought partition by sale pursuant to the Clementa C. Pinckney Uniform Partition of Heir's Property Act ("Act"). By Order entered May 28, 2019, the Court appointed an attorney Guardian ad litem to represent the interests Defendants John Doe and Mary Roe, being fictitious names representing classes of people unknown to the Appellant who may claim an interest in the property. (R.pp 1-3). On July 30, 3019, the case was referred to the Master in Equity for Dorchester County. (R.pp. 4-6).

On August 6, 2019, Appellant petitioned for entry of an Order authorizing service upon Judy, another named Defendant (Debra Morse), and the Defendants Doe and Roe by way of

publication. (R.pp. 44-46). On August 9, 2019, the court entered the Order of Publication. (R.pp. 7-9). On February 6, 2020, Appellant filed a Motion pursuant to § 52-61-330 of the Act seeking the preliminary determination that the Property constituted heirs' property and was therefore subject to the Act. (R.pp 47-48). On September 10, 2020, Appellant filed an Affidavit of Publication indicating that service by publication occurred via the Summerville Journal Scene with publication dates of July 8, 2020, July 15, 2020, and July 22, 2020. (R.pp. 460-461). A virtual hearing was also held September 10, 2020, regarding Appellant's Motion for Determination of Heirs Property, for which an Order was entered on March 4, 2021, wherein the Master determined the Property constitutes heirs' property and further directed the Appellant to post the Property within ten (10) days of entry of the Order with the notices required by the Act. (R.pp. 10-12).

On September 25, 2021, Appellant filed a Motion for Determination of Value and for Default Judgment against Judy, as well as Defendants Jackie McCoy, Christina Flightmaster, and Debra Morse, which matter was set for hearing on November 9, 2021. (R.pp. 22-24). On November 7, 2021, Appellant filed a Certificate of Service indicating that on October 30, 2021, Appellant had served the Notice of Hearing for Appellant's Motion for Determination of Value and for Default Judgment, as well as the underlying Motion upon Judy and the other Defendants via U.S Mail. (R.pp. 462-463). On November 9, 2021, the undersigned noticed appearance on behalf of Judy and the hearing for that date was continued to February 12, 2022. A hearing as held on February 12, 2022, whereat following argument of Counsel, the Master granted leave for Judy to Answer the Complaint, placed the other Defendants in default, directed Appellant to obtain valuation by way of Comparative Market Analysis from a realtor agreed upon between the parties, all of which was memorialized by Order entered March 7, 2022. (R.pp. 13-15). Judy's Answer was filed February 23, 2022, prior to entry of that Order (R.pp. 52-55).

The parties subsequently proceeded in accordance with consent scheduling orders, and the matter came to be heard for final trial on two, non-consecutive days—January 5, 2023 and July 26, 2023. Following trial, the Master took the case under advisement, entering a Final Order on February 5, 2024. (R.pp 16-30). Appellant filed and served her Motion to Reconsider, Alter or Amend on February 15, 2024. (R.pp. 56-74). On April 29, 2024, the Master entered an Order granting Paragraphs two and three of the Appellant's Motion to Reconsider, Alter or Amend which corrected scrivener's errors as to a name (Archie Roy White, not Archie Ray White) and the date of a divorce order (May 2, 1989, not May 8, 1989), but denied all other matters. (R.pp. 31-33). Appellant filed and served her Notice of Appeal on May 27, 2024.

ARGUMENT

I. Appellant is not prejudiced and suffers no harm from the Master's conclusion the Appellant amended her Complaint at trial to seek rents and profits on the basis of ouster as an alternative remedy, even if the conclusion is error.

Appellant argues that the Master erred when concluding the Appellant amended her Complaint at trial "alternatively, to order rents and profits bottomed on ouster…." (R.p. 18). However, it is wholly irrelevant whether the Master erred or did no err when concluding the Appellant amended her Complaint at trial to raise ouster as an alternative remedy, or whether her claim for rents and profits in the partition action—based upon ouster—were merely part and parcel of her underlying and general prayer for "other and further relief" as originally pled.

Trial for this case was scheduled for January 5, 2023. On January 2, 2023, Appellant's Counsel e-mailed both the Master and the undersigned, attaching a memorandum in support of Appellant's request for an accounting of rents. (R.pp. 413-415). In addition to the memorandum, Appellant attached comparative rental rates provided by the realtor who provided the overall property valuation, the 2017 Order entered by the Dorchester County Probate Court, and a copy

of *Freeman v. Freeman*, 232 S.C. 95, 473 S.E.2d 467 (Ct. App. 1996). (R.pp. 393-397; R.pp. 356-371). Notably, Appellant's memorandum not only expressly block quotes the *Freeman* case as to the definition and elements necessary to establish a claim for ouster, but also further raises the argument and further details the particulars in which Appellant was excluded from the Property as if "ousted" from the same. (R.pp. 413-415). Appellant's memorandum was ultimately placed into evidence by the Appellant. (R.p. 114, line 13-p. 116, line 11). In response to this unpled doctrine presented for consideration and argument, Judy moved upon the call of the case for leave to amend her Answer to raise the affirmative defense of possession, to which amendment the Appellant consented. (R.p. 73, line 4-p. 75, line 21).

While there does not appear to be a motion from the Appellant within the record to amend her pleading to raise the doctrine of ouster as an alternative cause of action, the Appellant nonetheless raised and presented evidence and argument in furtherance of that issue and Judy responded with an affirmative defense. Whether as an independent cause of action or simply an argument in support of her general claim for other relief in the form of an accounting, the Master appears to have fully considered the Appellant's assertions that she was turned away from and denied access to the Property, and instead determined—like the Probate Court in 2017—that the Appellant slept on her rights and did not come into this litigation with clean hands. (R.pp. 16-39). Accordingly, for purposes of her appeal, Appellant fails to state how or why she has been prejudiced by the Master's conclusion that she amended her Complaint to allege an alternative remedy, and if the same is in error, it is harmless in light of the Master's ultimate ruling and his basis in reaching the same (and as a result not reaching the Appellant's seventh issue for appeal regarding an accounting). (*See Judy v. Judy,* 384 S.C. 634, 646, 682 S.E.2d 836 (Ct. App. 2009) (*quoting "*Whether an error is harmless depends on the circumstances of the particular case" (*In*

re Harvey, 355 S.C. 53, 63, 584 S.E.2d 893, 897 (2003); "No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case." (*State v. Mitchell,* 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985); Error is harmless where it could not reasonably have affected the result of the trial. (*Harvey,* 355 S.C. at 63, 584 S.E.2d at 897). Generally, appellate courts will not set aside judgments due to insubstantial errors not affecting the result. (*State v. Sherard,* 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991)).

II. The Master did no err in finding and concluding the fair market value of the property was $163,333.00.

The Master's conclusion that the fair market value of $163,333.00 is not in error and is supported by evidence and testimony. On the first date of trial, Appellant entered into evidence a comparative market analysis prepared by a realtor, Chris Mcdaid Garcia, indicating the potential fair market value of the Property based upon comparable sales in the general area of the Property of $163,333.00. (R.pp. 403-412). On the second day of trial, Appellant admitted into evidence a second comparative market analysis from the same realtor indicating a potential fair market value of $175,750.00. (R.pp. 421-432; R.p. 270, line 7-p. 279, line 1). With the exception of the Appellant's statements she had procured a realtor's opinion of value, there was no testimony presented regarding the valuation of the property. Rather, all testimony as to valuation and accuracy of the realtor's report came from Judy, her husband (Mark), and her cousin (Joyce Head).

As part of direct examination of each of these witnesses, the comparable sales utilized by the realtor were reviewed and each witness testified as to why the lower sales values were applicable to the Property instead of the higher values reflected on the realtor's sales reports. Judy and Mark both testified as to the condition of the home and its need for updating, each of them offering their opinion of value as its occupants. Of particular note, Mark, who has resided in the

Property with Judy since 1987, is involved in the building trades, and had personally observed each and every property identified as a comparable sale by the realtor, testified that given the current condition of the property and its similarity to other properties prior to their being updated, the Property at issue was more closely aligned with a price of $163,333.00. (R.p. 222, line 21-p. 244, line 10). Joyce Head testified that she has been in the home "hundreds" of times and that the house has not been updated, describing the same as "functional" and "dated and needs work". (R.p. 222, line 15-p. 257, line 15). Judy similarly testified in he same manner as her husband and cousin. Aside from the bare reports of the realtor, Appellant offered no evidence or testimony from the realtor or any other party corroborating or supporting any conclusions to be derived from the reports submitted. Given that the owner's opinion of value (i.e. Judy's opinion and that of her witnesses) is most closely aligned with the value assigned by the realtor's lower opinion of value—which was adopted by the Master—there is no error. The rule that a property owner is competent to present an opinion as to the property's value is well recognized. *Lewis v. South Carolina State Highway Dept.,* 278 S.C. 170, 173, 293 S.E.2d 434, 436 (1982); *Seaboard Coast Line R.R. v. Harrelson,* 262 S.C. 43, 46, 202 S.E.2d 4, 5 (1974); *Rogers v. Rogers,* 280 S.C. 205, 209, 311 S.E.2d 743, 746 (Ct.App.1984).

III. The Master did not err by allotting all rights, title and interests in the Property to Judy.

Appellant argues that the Master erred in allotting the Property to Judy without (i) payment or compensation to Appellant, or (ii) providing the parties with opportunity to purchase and buy-out the interests of any parties requesting partition by sale. Melded into Appellant's argument is the Master's finding and conclusion the Appellant came to the Court with unclean hands. While harsh in result, the Master's findings and conclusions are neither error at law nor abuse of discretion.

First, Appellant argues that allotment cannot be accomplished under the Act without

"adjustments being made for payment to compensate other cotenants for the value of their respective interests in the heirs' property", citing to the definition of allotment at § 15-61-320(7). Appellant then cites to provisions of § 15-61-380, emphasizing the particulars of equity among cotenants within the text of the statute (i.e. issues such as "manifest prejudice", "manifest injury", "just and proportionate"). Appellant contends that the Master's refusal to command Judy to compensate Appellant for her technical, one-half interest in the Property is unjust or manifestly prejudicial. However, the Master has acted well within the bounds of the Act as supplemented by the tenets of equity.

The Appellant requested partition by sale. Section 15-61-380(A) of the Act, using the particulars of this case, directs that if Judy (who requested allotment) does not purchase Appellant's interests, the Master shall order a partition in kind or allotment, unless partition in kind or allotment could result in manifest injury to Judy and Appellant as a group—weighing the factors of Section 15-61-390. Most importantly, Section 15-61-380(C) states that if the Master orders partition by allotment to Judy pursuant to subsection (A), the Master ***may*** require that Judy pay Appellant an amount to make the allotment just and proportionate in value to the fractional interests held. (*Emphasis added*). In the case before the Court, the Master expressly states that:

> In the Court's deliberation of partition, it has been mindful that a court of equity's responsibility is to do full justice. The Pinckney Act overall embodies this principal. But in section S.C. Code Ann. § 15-61-390 (B) the legislature requires that "[t]he court may not consider any one factor in [S.C. Code Ann. § 15-61-390] (A) to be dispositive without weighing the totality of all relevant factors and circumstances when considering partition by allotment.
>
> This Court will address each factor in S.C. Code Ann. § 15-61-390(A) that it must consider. But our State's common law maxims of equity inform this Court in this decision as well.
>
> (R.p. 18)

Following the applicable statute, Judy elected not to buy the Appellant's interests, and the Master

evaluated the factors of Section 15-61-390 as to manifest prejudice in rendering a decision regarding a partition by allotment. By virtue of her affirmative defense of possession and the myriads of equitable considerations unique to this case, the Master determined (not unlike the Probate Court in 2017) that the Appellant had not come into this matter with clean hands.

Appellant's trial exhibit 6 was an Order of the Dorchester County Probate Court entered in 2017 wherein the Probate Court set aside an Order from 2012 declaring Judy's mother as the sole heir of Appellant's father, Junior Arch White. (R.pp. 356-371). In that action, the Probate Court determined Judy's mother had committed fraud upon the court by not including Appellant as a party in a 2012 Petition to Determine Heirs for Appellant's father, concluding Judy's mother knew or should have known Appellant's father (Junior Arch White) had procured a divorce from Judy's mother in West Virginia in 1989 and that Appellant was the daughter of Junior Arch White. Although at first blush such an order seems quite damning in implication, the findings and conclusions of Probate Court lend significant credence to the Master's ultimate determination and the balancing of equities in the partition action as to the Appellant's objectives and what she has (or, more accurately, has not done) to assert her interests prior to inflicting the ultimate prejudice and harm that would befall Judy and her family as a result of a partition.

As noted by the Master, Appellant inexplicably took no action to assert her rights in and to the Property prior to the year 2015 despite reasonable notice and opportunity to do so since her father's death in 1992. Perhaps the Master "took a nod" from the Probate Court with regard to similar claims brought by the Appellant in 2017, which opined:

> Ms. Frierson requested that the Court order Ms. Bloodworth to pay attorney's fees, rent payments for loss of use of the Dorchester County property1 and punitive damages from Ms. White's estate based on her fraudulent actions. The Court DENIES this request. Ms. Frierson has some culpability in the current stature of this case. She waited approximately twenty-three (23) years to come forward to address the proper distribution of Mr. White's estate. Significant time and expense

> could have been saved by properly handling her father's estate closer to the time of his passing. If Ms. White had not lived in, paid the taxes on, and maintained the Dorchester County property, it may have been wasted with no asset to be passed from Mr. White's estate.
>
> (R.pp. 370-371)

The Master has not erred or abused discretion in determining the Appellant's monetary interests for purposes of an allotment to Judy are otherwise negated by equitable maxims cited by the Master. The Master's conclusions at Paragraph 51 of the Final Order are echoed by the findings at Paragraph 38: "It is also the only fair and just result given the Plaintiff's failure to show the slightest interest in the property other than exacting a monetary sum from the Defendant Judy A. Bloodworth. The earliest this interest became evident was 23 years after her father's death." (R.p. 26). As noted by not only the Master, but also the Probate Court, Appellant knew or should have known in 1992 or in any of the intervening 23 years to address the matter before Judy and her family poured their lives and monies into the property.

IV. The Master did not err in awarding attorney's fees.

Appellant argues the Master erred in awarding attorney's fees. The court of common pleas may fix attorneys' fees in all partition proceedings and, as may be equitable, assess such fees against any or all of the parties in interest. S.C. Code Ann. §15-61-110. In this case, the Master has not yet awarded attorney's fees, but has instead directed that Judy must petition the Master for an award of attorney's fees within ten days of entry of the Master's Final Order. Judy has petitioned for the same, but no order has been issued or heard by virtue of this appeal. Notwithstanding this procedural issue, the Master has not erred by providing for an award of attorney's fees pursuant to statute.

V. As an additional sustaining ground, and pursuant to the standard of review, the Court of Appeals may and should affirm the ultimate result of the Master on the basis of ouster.

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 the case before the Court, the Master found and concluded, *inter alia*, that: (i) the Appellant did not present sufficient evidence that Judy kept the Defendant excluded from the property, and (ii) "[t]he Plaintiff never asserted any right, title, or interest in the Property until proceeding in the Courts. Hence, the possessing co-tenants, Defendant Bloodworth and her mother, could have never put the Plaintiff on notice that they were adversely possessing the property with the intent to oust Plaintiff from her co-tenancy." (R.pp. 26-27).

Under the standard of review, the appellate court is free to make findings of fact in accordance with its own view of the preponderance of the evidence. In raising the affirmative defense of possession by way of amendment, Judy seized upon Appellant's own contention and admission that she had been put out and turned away with hostility not only by Judy, but by Judy's mother since 1992 and before. The record is replete with testimony from the Appellant that Judy's mother (and predecessor in title) expressly denied Appellant the right to the Property and other property owned by Appellant's father, all of which was the entire crux of her case in the Probate Court. All of these admissions by the Appellant as to the necessary elements of ouster were fully detailed and succinctly recited, with all specific references from the record and transcript, within the undersigned's closing arguments. (R.p. 290, line 13-p. 301, line 23). In this case, and despite the Master's finding and conclusion that no ouster occurred, there exists beyond a preponderance of the evidence within the record that for purposes of establishing Judy's claim of possession by virtue of her affirmative defense, the Appellant was indeed ousted and her claims of ownership are

defeated for purposes of partition. "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) Actual ouster of a tenant in common by a cotenant in possession occurs when the possession is attended with such circumstances as to evince a claim of exclusive right and title and a denial of the right of the other tenants to participate in the profits. *Woods v. Bivens*, 292 S.C. 76, 354 S.E.2d 909 (1987); *Brevard v. Fortune*, 221 S.C. 117, 69 S.E.2d 355 (1952). The acts relied upon to establish an ouster must be of an unequivocal nature, and so distinctly hostile to the rights of the other cotenants that the intention to disseize is clear and unmistakable. *Felder [v. Fleming]*, 278 S.C. [327] at 330, 295 S.E.2d [640] at 642 [(1982)].

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Master in Equity.

Respectfully submitted,

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