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**Jun 27 2025**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CLARENDON COUNTY  
Court of Common Pleas

Honorable Joseph K. Coffey  
Clarendon County

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Case No. 2024-000664

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Mirlene Witherspoon, Respondent

V.

Heirs of Thomas Witherspoon, Gwendolyn Jones,  
Nakisha Christian, P. Kathleen Witherspoon, Pearl  
Martin, The South Carolina Department of Revenue,  
and Deborah West, Defendants

Of which Gwendolyn Jones is the Appellant

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**FINAL BRIEF OF APPELLANT**

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Gwendolyn Jones Dennis  
1740 E. 25<sup>th</sup> Street  
Baltimore, MD 21213  
443-467-6481  
[gwedolynjones921@yahoo.com](mailto:gwedolynjones921@yahoo.com)

Appellant, Pro se



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## **STATEMENT OF ISSUE ON APPEAL**

1. Whether the trial Court Judgment should be vacated when Appellant and other parties were not given proper notice or an opportunity to be heard?

### **STATEMENT OF THE CASE**

This case is an appeal of the granting of a default judgment in a case for partition of property. The Appellant and other heirs of Thomas Witherspoon, (deceased heir to the property), reside in Baltimore, Maryland. Appellee, Mirlene Witherspoon, resides in South Carolina and initiated an action for partition of the property but failed to properly serve the Appellant and the Baltimore heirs. Therefore, they were unable to file an answer to the Complaint for Partition. Although they were not served with the Complaint for Partition, they received notice of the request for Default Judgment and the scheduled hearing for the default. Appellant appeared at the hearing and attempted to explain the circumstances to the trial judge.

### **STANDARD OF REVIEW**

As a general rule, a Default Judgment is challenged by a Motion to set aside filed with the trial court. SCRCP 55(c). However, in this case, there is an issue of extrinsic fraud that the trial court failed and/or refused to acknowledge. The South Carolina Court of Appeals has previously allowed appeals when a party alleges extrinsic fraud. **See** Jamison v. Ford Motor Co., 373 S.C. 248, 273, 644 S.E.2d 755, 768 (Ct. App. 2007).

### **ARGUMENT**

#### **The trial Court Judgement Should Be Vacated in this matter**

The Complaint for partition was fraudulently filed with misinformation and the Court was intentionally misled with regard to the residency status of heirs to the property. This misinformation effectively deprived Appellant and other heirs of their property rights and is in conflict with the intent of the Clementa C. Pinkney Uniform Partition of Heirs' Property

Act which is rooted in the UHPA (Uniform Partition of Heirs' Property Act) which has been adopted by more than 20 states. This act is intended to help preserve family wealth passed to the next generation in the form of real property. In this case, Mirlene Witherspoon was only married to Thomas Witherspoon for one year prior to his death.

**A. Failure to properly Serve and Notify Baltimore Maryland parties was an intentional omission and constitutes fraud**

In the Complaint filed by Mirlene Witherspoon, paragraph 3 states that Gwendolyn Jones is a citizen and resident of Clarendon County. (See Exhibit A attached). This was not true and Mirlene Witherspoon knew when the Complaint was filed that this information was not true. In fact, having previously been involved in litigation in the District Court of Baltimore City for the State of Maryland (See Exhibit B), she was well aware of the correct addresses for Appellant Jones and other heirs. While the Clementa C. Pinkney Uniform Partition of Heirs' Property Act does allow for notice by publication upon the property, section 15-61-340(A) specifically states "This Article does not Limit or affect the method by which service of pleading in a partition action may be made". Section 15-61-320 (6) defines "manifest Prejudice" or "Manifest Injury" as "a result that is obviously unfair or shocking to the conscience and is direct, obvious and observable when considering the factors under Section 15-61-390(A). In this case, despite knowing that Appellant resides in Baltimore, Maryland, the Respondent, Mirlene Witherspoon, represented to the Court that Appellant was a resident of Clarendon, SC. Based upon the representation of this false information, the court determined that the Appellant and other similarly situated parties to this action were on "notice" of the intent to partition. This constitutes extrinsic fraud therefore the lower court judgment must be set aside. The United States Supreme Court has made it clear that a party may allege that an opposing party made "a misrepresentation

or a material omission of fact which was false and known to be false.” See Moore and Rogers, *Federal Relief from Civil Judgments* (1946) 55 Yale L.J. 623, 653–659; 3 *Moore's Federal Practice* (1938) 3267 *et seq.* The rule expressly does not limit the power of the court, when fraud has been perpetrated upon it, to give relief under the saving clause. *Hazel-Atlas Glass Co. v. Hartford Empire Co.* (1944) 322 U.S. 238. That is the exact situation in this case. Mirlene Witherspoon knew that the Appellant and other parties/heirs with an interest in the property lived in Baltimore, Maryland and not Clarendon South Carolina. Appellant submits that Mirlene Witherspoon possessed “special knowledge or information regarding” the transaction “that [was] not ascertainable by the appellant. See *Williams v. Sidley Austin Brown & Wood, L.L.P.*, 38 A.D.3d 219, 220 (1st Dept. 2007); *Selechnik v. Law Off. of Howard R. Birnbach*, 82 A.D.3d 1077, 1078-1079 (2d Dept. 2011).

**B. Because the Law requires Notice to all parties, the intentional omission of Appellant and others makes the Complaint invalid on its face**

The Clementa C. Pinckney Uniform Partition Of Heirs' Property Act of the South Carolina Code was intended to protect heirs not exploit them. The primary purpose was to help preserve family wealth by providing due process protections, such as notice, appraisal, and right of first refusal. In this situation, Mirlene Witherspoon exploited and used to her advantage the fact that the heirs of Thomas Witherspoon lived out of State. Under Section 15-61-330:

*Preliminary determination whether property is heirs' property; construction with Article 1 (A) In an action to partition real property under Article 1, upon motion of a party or from statements contained in the pleadings, the court shall determine, in a preliminary hearing held after the filing of the action, whether the property is heirs' property. If the court determines that the property is heirs' property, the partition of the heirs' property is governed by the provisions of this article, unless all cotenants otherwise agree in a record.*

The language of the act makes it clear that the court will rely on the representations in the Complaint to make its' determination regarding the property. As previously noted, Mirlene Witherspoon filed a Complaint asserting that Appellant and other heirs were citizens/residents of Clarendon County, South Carolina (Exhibit A). This was not true and Mirlene Witherspoon knew that this statement was false when the Complaint was filed with the court.

**2. Granting Judgment against Appellant without proper notice violates Appellant's Rights under the 5<sup>th</sup> and 14<sup>th</sup> Amendments to the Constitution**

The Fifth Amendment's Due Process Clause is intended to protect people from having their property taken away without due process of law. The Due Process Clause requires that certain procedural protections must be in place before taking away a person's rights. These protections often include Notice and An opportunity for a hearing.

The Fourteenth Amendment, which was ratified in 1868, uses the same language called the Due Process Clause, to describe a legal obligation of all states to insure these rights. The failure of the Respondent, Mirlene Witherspoon, to provide accurate information to the Court resulted in a deprivation of Appellant's rights under the Due Process clause of the 5<sup>th</sup> and `14<sup>th</sup> Amendments. Furthermore, these actions directly conflict with the goals, objectives and purpose of S.C. Code § 15-61-310

## **CONCLUSION**

For the foregoing reasons, this Court should vacate the Judgment of the lower court and require the Respondent to refile the Complaint for Partition providing true and accurate information so that all interested parties are properly notified.

Dated: June 26, 2025

Respectfully Submitted:

Gwendolyn Jones Dennis  
1740 E. 25<sup>th</sup> Street  
Baltimore, MD 21213  
443-467-6481  
[gwedolynjones921@yahoo.com](mailto:gwedolynjones921@yahoo.com)

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**PROOF OF SERVICE**

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I hereby certify that on this 26<sup>th</sup> day of June, 2025, I mailed the forgoing *Amended Initial Brief of Appellant* with the South Carolina Court of Appeals and I served a copy by first class mail on the following counsel for Respondent, Mirlene Witherspoon:

Kenneth R. Young Jr.  
Young, Keffer & Associates, PA  
23 West Calhoun Street, Suite 3  
Sumter, SC 29150

Dated: June 26, 2025  
Respectfully Submitted,  
Gwendolyn Jones Dennis  
1740 E. 25<sup>th</sup> Street  
Baltimore, MD 21213  
443-467-6481  
[gwedolynjones921@yahoo.com](mailto:gwedolynjones921@yahoo.com)

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# Exhibit A

Case No. 2024-000664

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# Exhibit B

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