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SC Court of Appeals

**IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

Appeal from Charleston County
Court of Common Pleas
2022-CP-10-05123
Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2024-000460

Melanie R. Jones Metz aka Melanie Jones Metz,

Respondent

v.

**Larry Allen Windham, Jr. and First Bank, Defendants,
Of which Larry Allen Windham, Jr. is**

Appellant.

Respondent's Brief

November 4, 2025

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STATEMENT OF ISSUES ON APPEAL

- I. WHETHER THE TRIAL COURT PROPERLY HELD THAT APPELLANT FAILED TO MEET HIS BURDEN OF PROOF THAT HE WAS ENTITLED TO SPECIAL PRIORITY REPAYMENT OF HIS FINANCIAL INTEREST IN JOINLY OWNED REAL ESTATE IN A MANNER OTHER THAN FROM HIS EQUAL SHARE OF THE PROCEEDS OF THE SALE OF THE PROPERTIES

- II. WETHER THE TRIAL COURT PROPERLY DECLINED TO AWARD THE APPELLANT A SHARE PROCEEDS ON A MOBILE HOME TITLED IN RESPONDENT'S AS PART OF THE STIPULTED, NARROW RELIEF REQUESTED BY BOTH PARTIES: THE JUDICIALLY ORDERED SALE OF THREE PARCELS OF REAL ESTATE AND THE DIVISION OF PROCEEDS DERIVED FROM THE SALE OF THE THREE PARCELS REAL ESTATE

STATEMENT OF THE CASE

The parties, Appellant and Respondent were in a romantic relationship for several years during which they jointly purchased real estate. To acquire their real estate assets, the parties used various funds, including borrowed funds secured by a mortgage, funds derived from the sale of separately owned real estate, and inherited funds. No corporate holding entities were formed, no formal partnership agreements were made, either orally or in writing, and all deeds at issue were titled in the names of both parties as tenants in common. Respondent filed an action for partition pursuant to SC Code of Laws 15-61-10 et seq. (1976, as amended). Appellant Answered and Counterclaimed. Plaintiff/Respondent thereafter filed her Reply. Among other relief, each party requested the partition and sale of their jointly owned real estate and an accounting.

The case was called for trial on January 7, 2025. A single witness testified, the Respondent. The Appellant attended the trial and was available to testify but did not testify or call witnesses. Subsequently, the Circuit Court ruled that the three real estate parcels owned by the parties as tenants in common should be sold and the proceeds equally divided. The relief requested was covered by a stipulation by the parties placed on the record in which they stipulated prior to the evidentiary portion of the trial that there were three pieces of real estate that needed to be sold, and that the parties stipulated that the real estate would be sold. The sole issue before the court was entering an order to accomplish the sale of the properties and allocate the proceeds from the sale. Respondent notified the Court on the record that she was abandoning her claim for an accounting and wished the Court to sell the real estate parcels and equally divide the proceeds. Appellant raised the issue of accounting in his pleadings but presented no evidence to the Court beyond limited testimony and a document introduced through the Respondent during her testimony. Appellant presented no case.

By Final Order of February 26, 2025, the Court ordered that the three properties be sold and that the net proceeds derived from the sale be equally divided by the parties to recoup their financial interest in the property. The Court did not order that either party receive any priority payment from the proceeds. The Court did not order that Respondent reimburse Appellant for proceeds from the sale of a mobile home.

The Appellant appealed, despite any substantiated facts in the record to support his appeal and having presented no case to support his demand for affirmative relief. The trial court found that Appellant did not testify, did not introduce sufficient documentation, and otherwise failed to meet his burden of proof that he was entitled to a particular mechanism of prioritized reimbursement for his financial interests in the real estate nor that he presented any evidence that he was entitled to the proceeds from the sale of a mobile home titled in Respondent's name. The court ordered that the real estate be sold as stipulated by the parties and further ordered that thereafter the parties equally divide the net sale proceeds.

Appellant now challenges those findings.

STANDARD OF REVIEW

A partition action is an equitable action, and the appellate court may review the evidence to find facts in accordance with its own views of the preponderance of the evidence. *Zimmerman v Marsh*, 365 S.C. 383, 618 S.E.2d 898 (2005).

Findings of fact in a non-jury action are dealt the same deference as those findings by a jury and will not be reversed on appeal unless the court committed some error of law leading to an erroneous conclusion or unless the evidence is reasonably susceptible of the opposite conclusion only. The judging of the credibility of witnesses and the weight given to evidence are uniquely functions of the trial court, not the appellate court. *Bivens v Watkins*, 313 S.C. 228, 437 S.E.2d (Ct. App. 1993).

In a non-jury civil matter, the trial court's factual findings will not be disturbed unless wholly unsupported by evidence or clearly erroneous. *Townes Assocs. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

This Court defers to the trial court's evaluation of witness credibility. *Pinckney v. Warren*, 344 S.C. 382, 544 S.E.2d 620 (2001).

ARGUMENT

I. The Trial Court Correctly Found Appellant Failed to Meet His Burden of Proof that he is entitled to a special, or priority, reimbursement of his funds from the sale proceeds

Even in this appeal, the Appellant's demand is not supported by evidence nor is it made clearly. At trial, the parties agreed and stipulated that the properties were to be sold to allow each owner to recover their investment. No stipulation was made as to any priority of payment either party demanded from the proceeds distribution and no evidence was presented at the trial of the case by Appellant as to any entitlement that he had to receive his investment prior to Respondent receiving any of her financial interests or investments in the real estate parcels. The Appellant established that his client made an investment in the real estate parcels at issue and this fact was not disputed by Respondent. No evidence of any agreement between the parties that Appellant would receive the first \$150,000.00 from the sale(s) of the real estate existed nor was proven by the Respondent. Appellant did not testify or introduce any evidence that established any special priority interest in the real estate.

At trial, respondent had a burden of proof to present evidence to establish his priority repayment claim. This burden rests with the party seeking affirmative relief. *Hughes v. New Carolina Construction*, 395 S.C. 218, 224, 717 S.E.2d 183 (Ct. App. 2011).

Appellant's affirmative claim required testimony or documentary evidence to establish not only the source of the funds that he used to purchase the jointly owned real estate, but also the amount and the facts that supported his claim that he was entitled to a first-dollar reimbursement. The amount and the Respondent's belief that the source of the funds used by Appellant was through inheritance were established by through Respondent's testimony. The Appellant presented no

documents or testimony in support of his vague and unproven claim that he had a superior right to recover inherited proceeds from the proceeds derived from the sale of the three real estate parcels at issue.

The trial court correctly noted that Appellant did not take the stand, nor did he present witnesses to testify in support of his claims that he had a special priority interest in the recovery of his inheritance at issue. Appellant wrongly argues that the Appellant's testimony supports his claim that he is entitled to a first-dollar recovery from the sales proceeds to guarantee recovery of his 'seed money.' There is no testimony in the record that amounts to any special repayment claim or agreement for such between the parties. The parties used various sources of funds, borrowed, inherited, and derived from sales of other real estate, to buy land as tenants in common. Several options were available to Appellant to secure his inheritance right, but he availed himself of none. Similarly, he presented no evidence of any such right at trial and nothing found in his appellant's brief provides any reframing of his lack of evidentiary support at the trial.

The factual or legal basis for Appellant's claim does not exist and therefore could not be proven at trial. The Court properly found that due to a total lack of testimony or evidence on the issue of a special right of priority repayment or priority financial recovery did not exist in the trial record and therefore Appellant failed to establish this claim and the Court declined, rightfully, to award Appellant a special or priority right to repayment from the sales proceeds.

Essentially, Appellant is asking this Court to recast the lower court's ruling based on an inference that he insists the trial Court was required to make, despite a lack of any evidence that Appellant was entitled to a special first-priority to recover invested funds. Such an inference is not supported by the evidence, Respondent's testimony, or the documents presented at trial.

A trial judge is not required to infer a priority reimbursement right where evidence is incomplete or inconsistent. This Court's ruling is consistent and premised on the evidence presented at trial. The Court declined to make inferences to benefit the Appellant's claims which lacked any foundation beyond his attorney's argument at trial, despite Appellant's availability to testify and present evidence to further his affirmative claims.

Appellant elected not to testify and thus failed to prove his claims beyond the very limited evidence established through the Respondent's testimony which does establish that, like Respondent, Appellant used personal funds to purchase jointly titled real estate. There is no reasonable evidence or even inference that can be drawn from the testimony of Respondent that would establish priority repayment to Appellant. The trial court properly declined to award Appellant a first-dollar secured repayment from the sale of the real estate at issue in the partition action, clearly due to the lack of any evidence of an agreement or a special claim by Appellant above and beyond his deeded interest in the real estate.

II. THE TRIAL COURT PROPERLY DENIED APPELLANT'S CLAIM TO MOBILE HOME SALE PROCEEDS.

Appellant asserts entitlement to half of the proceeds from the sale of a mobile home, claiming it was acquired with joint loan funds despite Respondent's testimony that the mobile home was titled in her sole name and that she believed that the proceeds from the sale of the mobile home as belonging to her based on the idicia of ownership of the mobile home, the title in her name, solely.

Even assuming that some (or even all) of the funds used to acquire the mobile home, a titled person property item, originally belonged to the Appellant, the title of the mobile home controls the ownership, and absent joint title, the Appellant cannot establish a legal right to ownership, control, or a right to sale proceeds of the mobile home. Again, Appellant presented no testimony as to any contract, agreement, or joint ownership of the mobile home. He presented no documents demonstrating that the parties had any contract, agreement, or other corroboration of his assertion, through his counsel only, that he was owed a sum of money relating to the sale of the mobile home.

In his brief, Appellant attempts to retroactively classify the parties' former relationship as a legal partnership and impose fiduciary duties on Respondent with respect to the mobile home titled in her name. This argument was not made at trial and not preserved for appeal. Should this court nonetheless consider the argument, it is notable that zero evidence was introduced to support formation of a partnership beyond shared expenditures and the jointly deeded property. The only mention of 'partnership' in the trial transcript is during colloquy by the attorneys and there is no testimony to support the Appellant's counsel's assertion that the parties were in a partnership. Without evidence, the Court had no basis to conclude that there was a business partnership formed, and even less evidence to establish any duties or amounts owed from one 'partner' to the other. Therefore, the Court properly relied on the facts as established in testimony on the issue of the mobile home: that it was titled in Respondent's name and there was no cognizable claim proven by Appellant as to any claim on any proceeds derived from the sale of the mobile home.

The use of shared funds to buy real estate or person property does not automatically create fiduciary duties where none exist. Further, the case at bar was not an accounting action, except by virtue of Respondent's unprosecuted counterclaim. The only claim for an accounting referenced in the trial court's record was notice to the Court by Respondent that she was abandoning her claim for an accounting and instead solely presented evidence of and sought relief attendant to her claim that the jointly owned real estate (as tenants in common) was subject to partition and should be ordered to be sold and the proceeds divided by the Court's order, which was the relief granted by the trial Court. Appellant apparently attempted to prosecute a less-than-thorough accounting claim through cross-examination only and failed to persuade the trial court that his claims were valid or supported by evidence meeting any burden of proof.

The trial court's ruling was supported, again, by the lack of any evidence presented at trial by Appellant other than facts elicited from Respondent that the parties pooled funds to purchase real estate which was jointly owned and which required the Court's order in the partition action at bar to sell and divide the proceeds.

CONCLUSION

The Appellant seeks a reversal of the Circuit Court's order despite a lack of evidentiary support. The trial Court's rulings were proper and founded in the only evidence available to her: the Plaintiff/Respondent's testimony and limited knowledge about the specific demands made by Defendant/Respondent for a special priority repayment and for funds from Respondent from the sale of a mobile home titled to her. The trial court properly found that Appellant failed to meet his burden of proof regarding both the first-dollar reimbursement from the sale of a specific parcel of real estate, versus his equal share of the proceeds from the sale of each and every parcel at issue as the Court properly ordered, and his demand that he receive a share of the proceeds from the sale of a mobile home titled in the name of Plaintiff/Respondent in the absence of any support for his affirmative claim for an accounting and priority repayment.

For these reasons, Respondent respectfully requests that this Court affirm the Order of the Circuit Court.

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Appeal from Charleston County
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Melanie R. Jones Metz a/k/a Melanie Jones Metz,

Respondent,

v.

Larry Allen Windham Jr., and First Bank, Defendants,
Of which Larry Allen Windham, Jr. is

Appellant.

PROOF OF SERVICE

I hereby certify that Respondent's Brief has been served via electronic mail, properly addressed to the following counsel of record on November 4, 2025:

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November 4, 2025

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SC Court of Appeals

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South Carolina Court of Appeals

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Columbia, SC 29211

Re: Melanie R. Jones Metz v. Larry Allen Windham, Jr.
Appellate Case No.: 2025-000460

The Honorable Jenny A. Kitchings:

Enclosed please find one (1) copy of the Respondent's Initial Brief for filing and service onto all parties associated in the above-referenced matter.

With kind regards, I am,

Very truly yours,

HORN LAW FIRM, LLC

Margaret F. Horn

Margaret F. Horn

MFH

Enclosure: as stated

Jonathan Altman, Esquire (w/ encl by email)

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