

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

CASE NO. 2008-CP-26-7941

RECEIVED

FEB 19 2014

SC Court of Appeals

John Sherrill and Estate of Gaye Marie Reynolds..... Appellants

vs.

Gary Moore and Robert Moore Respondents

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-26-7941

John Sherrill and Estate of Gaye Marie
Reynolds,

Plaintiffs,

Gary Moore and Robert Moore,

Defendants.

AMENDED ORDER
DENYING PLAINTIFF
MOTION FOR
RECONSIDERATION

FILED
COUNTY
2013 JUN 12 PM 1:04
KELAMIE HUGHINS-WARD
CLERK OF COURT

1
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The underlying lawsuit is an action to collect on a civil judgment obtained by the Plaintiff against Gary Moore. In November of 2011, the Plaintiff moved for an Order compelling the sale of certain real property owned by Gary Moore and Robert Moore located at 5848 Creekside Drive; the Defendant Gary Moore filed a motion for an order declaring that his interest in the real property is subject to the homestead exemption of S.C. Code Ann. §15-41-30. Following a hearing on May 15, 2012, the undersigned ruled by Order dated April 15, 2013 and filed April 19, 2013 that Defendant Gary Moore is entitled to the homestead exemption in the real property located at 5848 Creekside Drive, Myrtle Beach, South Carolina, and that the successful bidder at a judicial sale of the property shall be required to pay the selling officer cash in an amount equal to the homestead exemption, even if the successful bidder is the judgment creditor, pursuant to *Holden v. Cribb*, 349 S.C. 132 (S.C.App. 2002).

The Plaintiff timely filed a Motion for Reconsideration pursuant to Rule 59, SCRCF, on the grounds that the case of *Holden v. Cribb* does not hold that a judgment debtor who was a criminal defendant is entitled to the homestead exemption, and that allowing the homestead exemption in this case violates the Victim's Bill of Rights as set forth in the South Carolina Constitution. The Defendant Gary Moore objected on the grounds that these issues were not raised prior to the issuance of the order.

Based upon the arguments of counsel and record I make the following findings of fact and conclusions of law:

I. The grounds for the Plaintiff's Motion for Reconsideration were raised for the first time in that Motion.

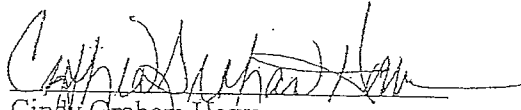
2. A party may not use a Rule 59 or other post trial motion to present the Court with issues that could have been, but were not raised earlier. *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct.App. 1990).

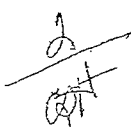
3. The Plaintiff argues that because the underlying case is in the nature of supplementary proceedings to collect a judgment that the rule articulated in *Hickman v. Hickman* should not apply because the Plaintiff could raise the issue in a subsequent supplementary proceeding. However, I find no basis for the contention that once an order is entered in the context of supplementary proceedings a litigant may use a Rule 59 or other post-judgment motion to argue issues that could have been but were not presented previously.

4. Because the Plaintiff did not raise these issues prior to the issuance of the Order filed April 19, 2013, I find that these issues are waived and the Plaintiff's Motion for Reconsideration should be denied.

The Plaintiff's Motion for Reconsideration is therefore denied.

IT IS SO ORDERED.


Cindy Graham Howe
Horry County Master in Equity


Dated: June 10, 2013
Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2008-CP-26-7941

John Sherrill and Estate of Gaye Marie
Reynolds,

Plaintiffs,

Gary Moore and Robert Moore,

Defendants.

**ORDER DENYING
PLAINTIFFS' MOTION FOR
RECONSIDERATION**

Presiding Judge:

Attorney for Plaintiffs:

Attorney for Defendant Robert Moore:

Attorney for Defendant Gary Moore:

Cynthia Graham Howe

Gene M. Connell, Jr.

Cheevin T. "Lex" Gardner

Kimberley Campbell

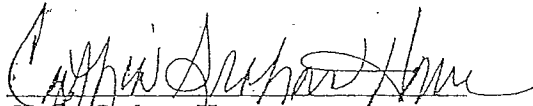
2013 MAY 29 AM 8:21
MELANIE HUGGINS-WARD
CLERK OF COURT

The underlying lawsuit is an action to collect on a civil judgment obtained by the Plaintiffs against Gary Moore. By Order dated April 15, 2013 and filed April 19, 2013, the undersigned ruled that Defendant Gary Moore is entitled to the homestead exemption in certain property located at 5848 Creekside Drive, Myrtle Beach, South Carolina, and that the successful bidder at a judicial sale of the property shall be required to pay the selling officer cash in an amount equal to the homestead exemption, even if the successful bidder is the judgment creditor.

The Plaintiffs timely filed a Motion for Reconsideration pursuant to Rule 59, SCRCP, on the grounds that allowing the homestead exemption in this case violates the Victim's Bill of Rights as set forth in the South Carolina Constitution.

This argument was raised for the first time in the Plaintiffs' Motion for Reconsideration. A party may not use a Rule 59 or other post trial motion to present the Court with issues that could have been raised earlier but were not. *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (Ct.App. 1990).

IT IS SO ORDERED.


Cynthia Graham Howe

Horry County Master in Equity

Dated: May 23, 2013
Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-26-7941

John Sherrill and Estate of Gaye Marie
Reynolds,

Plaintiffs,

Gary Moore and Robert Moore,

Defendants.

ORDER

13 APR 19 PM 3:20
CLERK OF COURT

Presiding Judge:	Cindy Graham Howe
Date of Hearing:	May 15, 2012
Attorney for Plaintiff:	Gene M. Connell, Jr.
Attorney for Robert Moore:	Cheevin T. "Lex" Gardner
Attorney for Gary Moore:	Kimberley Campbell
Court Reporter:	Ray Swartz & Associates

The underlying case is an action to collect on a wrongful death judgment obtained by the Plaintiffs against Gary Moore. This matter was referred to me by Order of Reference filed on or about May 27, 2009.

The Defendants Gary Moore and Robert Moore jointly own as tenants in common a parcel of real property and mobile home located at 5848 Creekside Drive in Myrtle Beach, South Carolina (hereinafter "the Property"). Gary Moore is currently incarcerated by the South Carolina Department of Corrections. His projected release date is July 18, 2018.

On or about November 10, 2011, the Plaintiff, John Sherrill, filed a Motion for a Judicial Sale of the Property in execution of the Plaintiff's judicial lien against the one half interest owned by Gary Moore (Robert Moore was not a party to the original wrongful death lawsuit).

On November 22, 2011, the Defendant Gary Moore filed a motion for an order declaring that his interest in the Property is subject to the homestead exemption §15-41-30; in support of the motion, Gary Moore's counsel filed an affidavit in which Gary Moore stated that he resided at the Property prior to his arrest and incarceration, that he

considers the Property to be his home, and that he intends to return there upon his release from prison.

On May 15, 2012, the parties, through their attorneys, appeared before the undersigned at a hearing on the motions of the Plaintiff and of Gary Moore. At the hearing, the Plaintiff asserted that even if Gary Moore were entitled to the homestead exemption in his interest in the Property, at a judicial sale of the Property the Plaintiff would be entitled to enter a non-cash bid in the amount of the judgment without depositing cash equal to the amount of the homestead exemption. Counsel for Gary Moore argued that under homestead exemption statutes and applicable case law, the officer conducting the sale must require the high bidder, even if it is the judgment creditor, to pay cash in the amount of the homestead exemption.

The undersigned requested that the parties submit memoranda setting forth their positions on this latter issue. After reviewing the Motions, affidavit of Gary Moore, memoranda submitted by the parties and the applicable law and giving the issues due and thorough consideration, I make the following findings of fact and conclusions of law:

1. The undisputed evidence indicates that the Property is Gary Moore's residence under the meaning of S.C. Code Ann. §15-41-30(A)(1). The Defendant, Gary Moore, is entitled to the homestead exemption in his one half interest in the Property pursuant to S.C. Code Ann. §15-41-30(A)(1), and pursuant to *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (Ct.App. 2002) (finding that a judgment debtor was entitled to the protection of the homestead exemption despite being incarcerated at the time of execution on the judgment).

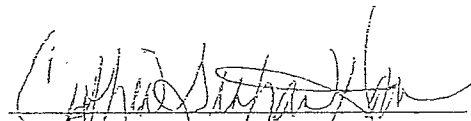
2. The Plaintiff or other successful bidder at an execution sale of Gary Moore's interest in the Property must pay cash in an amount equal to the homestead exemption. S.C. Code Ann. §15-41-10; *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that

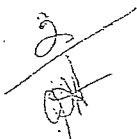
1. Gary Moore is entitled to the homestead exemption in his one half interest in the Property.

2. That successful bidder at a judicial sale of Gary Moore's interest in the Property shall be required to pay to the selling officer cash in an amount equal to the homestead exemption, even if the successful bidder is the judgment creditor.

IT IS SO ORDERED.


Cindy Graham Howe
Horry County Master in Equity

Dated: April 15, 2013
Conway, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

John Sherrill, as Personal
Representative of the Estate
of Gaye Marie Reynolds,

Plaintiff,

vs.

Gary Moore, Robert Moore, and
Steven W. Sessions,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A: NO.: 2008-CP-26-7941

FINAL ORDER

CLERK OF COURT
CLANIE HUGGINS-YARD
JUL 14 AM 10:56

This is an action brought to collect on a wrongful death judgment obtained by the Plaintiff against Defendant Gary Moore, which was filed by the Plaintiff on October 2, 2008. In due course, the Defendant Robert Moore, appeared and filed his Answer of adverse possession, and requested a jury trial.

 The Plaintiff thereafter filed a Motion for referral of the matter to the Master-In-Equity, and the same was referred to the undersigned Master pursuant to the Plaintiff's Motion for Order of Reference. This Order of Reference specifically provides that this Master hear and try all matters of fact and law in this case, and enter a final judgment in this cause, pursuant to Section 15-31-10 of the 1976 Code of Laws of South Carolina, as amended, and Rules 53 and 71 of the South Carolina Rules of Civil Procedure, as amended, and any appeal in this cause shall be directly to the South Carolina Court of Appeals.

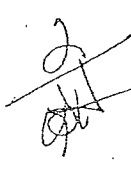
Pursuant to proper notice of hearing filed and served upon all parties, a final hearing in this matter was held on or about May 14, 2010.

As indicated hereinabove, this action is a claim to collect on a wrongful death judgment obtained by the Plaintiff against the Defendant Gary Moore, in connection with a car accident which resulted in the death of one Marie Reynolds. After settling with Defendant Gary Moore's liability insurance carrier, the Plaintiff sought to enforce a judgment on property jointly owned by the Defendants Robert A. Moore and Gary R. Moore, located at 5848 Creekside Drive, in Myrtle

Beach, South Carolina.

On or about June 22, 1988, the Defendants Robert A. Moore and Gary R. Moore agreed to jointly purchase the aforementioned property from Defendant Steven Sessions, which property was purchased with a mortgage to Defendant Sessions for \$52,000.00. During the transaction, however, an error occurred wherein Defendant Robert Moore's name was omitted from the Deed as a Grantee.

Notwithstanding the fact that the Defendant Robert Moore's name was omitted as a Grantee from the Deed, following the purchase of the property several years later on June 29, 1992, Defendant Robert A. Moore was able to solely obtain a bank loan of \$47,200.00 towards the pay-off the mortgage to Defendant Sessions, utilizing as well \$8,343.20 of his personal funds towards the pay-off. The Defendant Robert A. Moore has thereafter made, and continues to make all mortgage payments, and has paid all taxes and maintenance costs on the subject property since June 2, 1988, and has resided on the property since that time. Due to the consideration paid by the Defendant Robert A. Moore, and the fact that he has resided on the property since 1988, the Defendant claimed ownership by a resulting trust and adverse possession.

 Contrary to the Plaintiff's assertion, the Defendant Gary Moore is not the sole owner of the property, and should be a joint owner of the property by way of a resulting trust, and one half of (1/2) of the property belonging to Robert Moore is, therefore, not subject to the judgment of the Plaintiff.

The Defendant Robert A. Moore testified at the hearing. Additionally, without objection, all exhibits of both the Plaintiff and Defendant Robert A. Moore were entered into evidence.

Based upon the exhibits and sworn testimony of the witnesses, the undersigned Master finds, **AS A MATTER OF FACT**, the following:

1. That the Defendants Robert A. Moore and Gary Moore, on or about June 22, 1988, made an agreement to purchase, and did jointly purchase the within mentioned property from Defendant Steven W. Sessions, with a mortgage being given to the Defendant Sessions in the sum of \$52,000.00 to secure the property.

2. That due to an apparent error on the part of the closing attorney, which was

unbeknownst to the Defendant Robert A. Moore, his name was omitted from the Deed as a grantee.

3. That, notwithstanding the omission of his name as a grantee on the deed, the Defendant Robert A. Moore on June 29, 1992, was able to solely obtain a bank loan of \$47,200.00 from Plaza Mortgage toward the pay-off the mortgage given to the Defendant Sessions, as well as utilizing \$8,342.20 of his own money towards settlement of the mortgage debt, and that the HUD statement showed that the Defendant Sessions was paid the total pay-off amount of \$50,844.93.

4. That the closing documents for the mortgage loan obtained by the Defendant Robert A. Moore from Plaza Mortgage, clearly indicate that he, and not the Defendant Gary Moore, was considered the Borrower with Plaza Mortgage.

5. That the Defendant Robert A. Moore has made, and continues to make, all mortgage payments to Plaza Mortgage, and has paid all property taxes and maintenance costs on the subject property since June 2, 1988, and

Based upon the foregoing **FINDINGS OF FACT**, the undersigned Master finds, as a **MATTER OF LAW**, the following:

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JH
(1) That pursuant to Jocoy v. Jocoy, 562 S.E.2d 674 (S.C. Ct. App. 2002), it is the presumption that the party who pays the purchase money intended to benefit himself and a resulting trust is raised in his behalf. Equity devised the theory of resulting trust to effectuate the intent of the parties in certain situations where one party pays for property, in whole or in part, that for a different reason is titled in the name of another. McDowell v. S.C. Dept. Of Social Services, 296 S.C. 89, 370 S.E.2d 878 (Ct. App. 1987).

(2) That in this instance, due to the consideration paid by the Defendant Robert A. Moore, a resulting trust has been raised in his behalf, and he should be considered a joint owner of the property by way of the resulting trust.

Based upon the foregoing **FINDINGS OF FACT AND OF LAW**, it is, therefore, **ORDERED, ADJUDGED, AND DECREED**, as follows:

1. That the Defendant Gary A. Moore is not the sole owner of the property, but a joint

owner as tenant in common.

2. That the Defendant Robert A. Moore has paid consideration for the property, and is a joint owner of the property by way of a resulting trust.

3. That the clerk of court be ordered to convey one-half ($\frac{1}{2}$) interest as tenant in common in the property to Robert A. Moore.

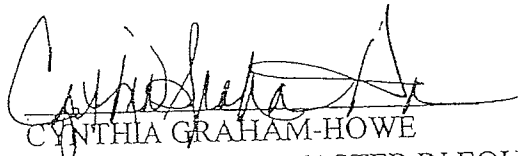
4. That the Defendant Sessions has received a total pay-off of his mortgage of \$50,844.93 and, therefore, has no mortgage lien interest, or any other interest in the property whatsoever.

5. That the Plaintiff's judgment interest attaches to Gary Moore's one-half ($\frac{1}{2}$) interest in the tenant in common.

6. That the Court's Order be referred to Sheriff for Writ of Execution.

7. That in the event that a judicial sale is needed to satisfy Plaintiff's judgment, the one-half ($\frac{1}{2}$) interest of Gary Moore's ownership of the property shall be sold at a judicial sale

AND IT IS SO ORDERED.


CYNTHIA GRAHAM-HOWE
HORRY COUNTY MASTER IN EQUITY


Dated: June 10, 2011
At Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Gaye Marie Reynolds, by her Personal
Representative John Sherrill,

Plaintiff,

vs.

Gary Moore, Robert Moore,
Mojo's Nitelife, Inc., and
A & E Distribution & Enterprises, Inc.,

Defendants.

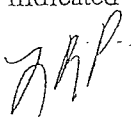
CIVIL ACTION NO. 2003-CP-26-5790

ORDER APPROVING
WRONGFUL DEATH
SETTLEMENT

HORRY COUNTY
CLERK OF COURT
09 MAY 30 AM 10:09
JCHS

THIS MATTER IS BEFORE THE COURT based on the parties' announcement that they have settled the case which was to be tried April 7, 2008 in the Horry County Courthouse. Briefly stated, the deceased, Gaye Marie Reynolds, was killed on October 20, 2002 in an automobile accident in which the Defendant Gary Moore was allegedly operating a vehicle owned by Defendant Robert Moore. After a criminal trial which, was held in the Horry County Courthouse, Gary Moore appealed his conviction for Felony DUI and refused to answer any questions or submit to a deposition in the civil case. The Administrative Judge for civil purposes stayed the case until Moore's appeal could be heard. On March 13, 2008, the South Carolina Court of Appeals in a unanimous Opinion upheld the conviction. Thereafter, the Chief Administrative Judge for civil purposes placed this matter on the active trial docket.

Prior to the trial, the parties indicated they had reached the following settlement agreement:



1. The insurer for Defendant Gary Moore shall pay the sum of Fifty Thousand and 00/100 (\$50,000.00) Dollars which represents their entire liability insurance coverage in this matter.

2. The Defendant Gary Moore, who is currently incarcerated, shall execute a Confession of Judgment in favor of the Plaintiff in the sum of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars.

3. The Defendant A & E Distribution and Enterprises, Inc. shall pay the sum of One Thousand Five Hundred and 00/100 (\$1,500.00) Dollars for a release of any potential claims.

4. The Plaintiff shall dismiss any and all claims against Defendant Robert Moore for negligent entrustment with prejudice.

5. The Defendant Gary Moore has certain real property which the Plaintiff intends to execute against once the Five Hundred Thousand and 00/100 (\$500,000.00) Dollars Confession of Judgment which is attached to this Order is entered into the records of the Clerk of Court for Horry County. The Defendants' counsel makes no representation as to the title to this property or as to any ability to execute on the property.

The Court heard testimony from Attorney John L. Sherrill, who was appointed by the Probate Court as Personal Representative of the Estate of Gaye Marie Reynolds. Mr. Sherrill testified that the Estate had four heirs: (1) David Million, the common law husband; (2) Brandy Reynolds, a/n/a Brandy Graves; (3) Sean Reynolds, a/k/a Sean Graves; and (4) Robert Wayne Nelson. Mr. Sherrill testified that he felt the settlement was in the best interest of the heirs and that the Court should approve the settlement. It was further Mr. Sherrill's testimony that the children of Reynolds suffered under a disability and that the Probate Court had provided in its Order that he should report to the Probate Court the status of the settlement approval and the

Probate Court would guide Mr. Sherrill as to what to do with the funds which were to be paid to the children of the deceased who were under disability. Furthermore, pursuant to prior Order of the Probate Court, John L. Sherrill shall act as escrow agent for purposes of receiving any funds on behalf of the Estate, such to include wrongful death as well as survivor proceeds.

This Court concurs in that assessment and requests that John Sherrill, as Personal Representative, seek guidance from the Probate Court as to how the proceeds are to be paid to the children who are under disability and who are living in Texas.

It was further related to me during the hearing that Gaye Marie Reynolds did not live long at the scene of the accident and accordingly, the Court divides the proceeds as follows: Forty-six Thousand Five Hundred and 00/100 (\$46,500.00) Dollars of the Defendant's insurance money shall be applied to the wrongful death action with Five Thousand and 00/100 (\$5,000.00) Dollars of the Defendant's insurance coverage being paid to the survival action. As to the Five Hundred Thousand and 00/100 (\$500,000.00) Dollars Confession of Judgment, Four Hundred Fifty Thousand and 00/100 (\$450,000.00) Dollars shall be applied to the wrongful death action, with Fifty Thousand and 00/100 (\$50,000.00) Dollars being applied to the survival action.

I further find that this settlement is fair and reasonable and that it should be approved. I also direct the Horry County Clerk of Court to enter judgment against the Defendant Gary Moore in the sum of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars. and that the claims against Robert Moore are hereby dismissed.

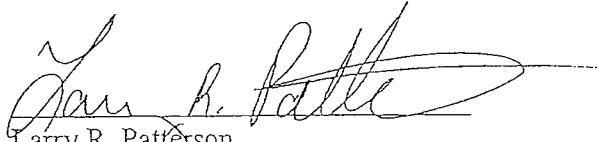
Further, I find that counsel for the Plaintiff is entitled to his attorney's fees of one-third (33-1/3%) of the settlement amount and that the remaining funds are to be divided fifty percent (50%) to David Million, as common law husband, and fifty percent (50%) to the children who are under disability with those funds being paid to attorney John Sherrill as Personal

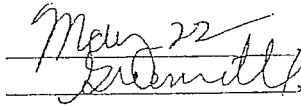


Representative with instruction to seek guidance from the Probate Court as to how those monies are to be paid to the children who are under disability and living in the state of Texas.

IT IS FURTHER ORDERED that this matter is dismissed with prejudice.

AND IT IS SO ORDERED.


Larry R. Patterson
Presiding Judge
Fifteenth Judicial Circuit


Mary 22
2008
South Carolina

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF HORRY

CASE NO: 2003CP2605790

IN THE COURT OF COMMON PLEAS

Gaye Marie Reynolds, plaintiff, et al VS Gary Moore

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☒ ACTION DISMISSED(CHECK REASON) ☐ Rule 12(b), SCRCP; ☒ Rule 41(a), SCRCP(Vol. Nonsuit;
☐ Rule 43(k), SCRCP (Settled); Other

☐ ACTION STRICKEN. ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See Attached Order

☒ Statement of Judgment by the Court:

Judgment in the amount of \$ 500,000.00

This judgment was entered on the 30 th day of May 2008 , and a copy mailed first class this
30 th day of May 2008 , to attorneys of record or to parties (when appearing pro se) as follows:

Presiding Judge: Larry R. Patterson

Gene M Connell Jr
Kelahe Connell & Connor, PC
P.O. Drawer 14547
Surfside Beach, SC 29587

Gene M Connell Jr
P.O. Drawer 14547

Surfside Beach, SC 29587

Gene M Connell Jr
P.O. Drawer 14547

Surfside Beach, SC 29587

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Huggins - Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2003-CP-26-5790

GAYE MARIE REYNOLDS,)
by her Personal Representative)
JOHN SHERRILL,)

Plaintiff,)

v.)

GARY MOORE,)

Defendants.)

CONFESSION OF JUDGMENT

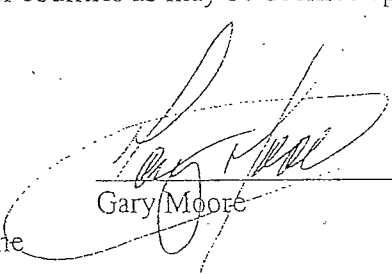
HORRY COUNTY
08 JUN -2 4:11:19
CLERK OF COURT

WHEREAS, the undersigned Defendant, Gary Moore, does verify, under oath, that he is indebted to the Plaintiff in the amount of \$ 500,000, the debt arising out of agreement to settle an automobile/pedestrian accident which resulted in the death of Mrs. Gaye Marine Reynolds on October 20, 2002, and

WHEREAS, the Defendant, Gary Moore, admits that he owes this sum of money to the Plaintiff, but neither admits nor denies liability for the underlying claim, and

WHEREAS, in consideration of the suspension of legal action against him, this Defendant does not desire, given his admitted debt, to challenge Plaintiff's claim against him in this action, and

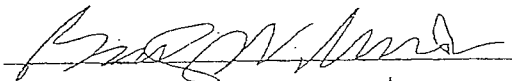
DEFENDANT, Gary Moore, hereby confesses judgment in favor of the Plaintiff in the sum of \$ 500,000 and authorize judgment to be enrolled against him in the office of the Clerk of Court for Horry County and such other counties as may be deemed appropriate by Plaintiff.



Gary Moore

SWORN TO and subscribed before me

this 4 day of April, 2008.



Notary Public

My commission expires: 9/11/15

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

David Ray Million, as Personal
Representative of Gaye Marie Reynolds,

Plaintiff,

vs.

Gary Moore and
Patsy Gardner-Alexander,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2006-CP-200460

CONSENT ORDER

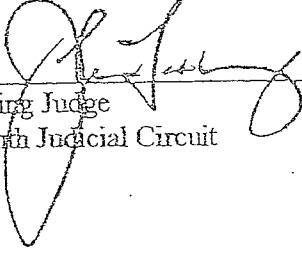
FILED
HURRY COUNTY
AUG 28 PM 4:45
CLERK OF COURT
WELFLE HUGHINS

gab
THIS MATTER IS BEFORE THE COURT based on Plaintiff's Motion to return the real property more particularly described in Exhibit A to Gary Moore. Briefly stated, the facts of the case are that Gaye Marie Reynolds was killed in an automobile accident on October 20, 2002 and the Defendant Gary Moore did on October 26, 2002, deed over certain property known as Lot Number 19 of the Socastee Creek Recreation Area, Tax Map Parcel #179-13-01-003 to the Defendant, Patsy Gardner-Alexander. This lawsuit was filed and the Defendant Patsy Gardner-Alexander now agrees to transfer this property back to the name of Gary Moore. Accordingly,

IT IS ORDERED that this property be transferred back to Gary Moore and that this property be held in the name of Gary Moore until such time as the tort action against Gary Moore is either settled or resolved.

IT IS FURTHER ORDERED that after Patsy Gardner-Alexander has signed a deed transferring the property back to Gary Moore, that this lawsuit shall be dismissed with prejudice.

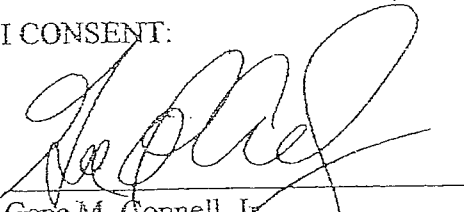
AND IT IS SO ORDERED.



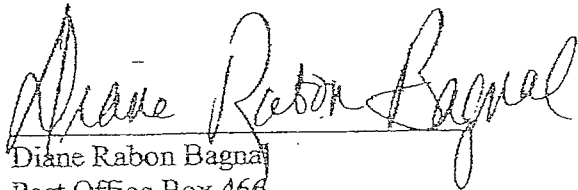
Presiding Judge
Fifteenth Judicial Circuit

08/28, 2007
Conley, South Carolina.

I CONSENT:



Gene M. Connell, Jr.
KELAHER, CONNELL & CONNOR, P.C.
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648
Attorney for Plaintiff



Diane Rabon Bagnal
Post Office Box 466
Aynor, South Carolina 29511
(843) 358-2400
Attorney for Defendant

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2008-CP-26-7941

John Sherrill as Personal Representative)
of the Estate of Gaye Marie Reynolds,)
)
Plaintiff,)

vs.)

Gary Moore, Robert Moore and)
Steven W. Sessions,)
)
Defendants.)

NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION

FILED
COUNTY
2013 APR 25 AM 9:30
CLERK OF COURT
JAMES H. JOHNS-WARREN

YOU WILL PLEASE TAKE NOTICE that the undersigned moves the Court for an Order reconsidering the Order of The Honorable Cynthia Graham Howe dated April 15, 2013 finding that the Estate of Gaye Marie Reynolds is not entitled to sell the portion of the property owned by Gary Moore without paying the homestead exemption. The basis of this Motion is as follows:

1. *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (S.C.App. 2002) does not hold that a judgment debtor who was a criminal defendant is entitled the homestead exemption and that the \$50,000 homestead exemption must be paid in case prior to the sale. The remedy being the Court could hold the sale without the homestead exemption being paid in cash.

2. The South Carolina Constitution, specifically Article I, § 24 entitled "Victims' Bill of Rights" provides in pertinent part:

(A) To preserve and protect victims' rights to justice and due process...

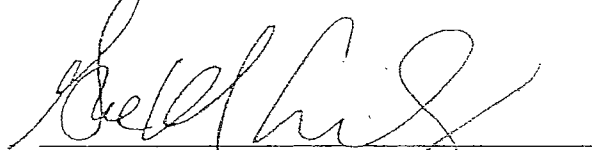
(9) receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders.

Further, it is respectfully submitted that the Victims' Bill of Rights is within the South Carolina Constitution, specifically Article I § 24 (9) which allow for full and prompt restitution. In this case, Gary Moore has no assets other than his interest in this real property. To allow him to have a homestead exemption is violative of the Victims' Bill of Rights and as a result this Court should find that a homestead exemption is not a defense when the judgment sought is restitution for a crime.

Accordingly, the Estate of Gaye Marie Reynolds asks the Court to hold as a matter of law that the homestead exemption is not applicable in a case where the judgment debtor has been convicted of a crime and the only source of monies is the sale of that property.

WHEREFORE, Plaintiff requests the Court reconsider this matter and for such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
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(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

April 19, 2013
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-26-7941

John Sherrill as Personal Representative of
the Estate of Gaye Marie Reynolds,

Plaintiffs,

v.

Gary Moore and Robert Moore,

Defendants.

)
)
)
)
) MOTION OF GARY MOORE
) FOR AN ORDER DECLARING
) THAT CERTAIN PROPERTY IS
) EXEMPT FROM LEVY PURSUANT TO
) THE HOMESTEAD EXEMPTION
)
)
)

TO: JOHN SHERRILL AND HIS ATTORNEY AND ROBERT MOORE
AND HIS ATTORNEY:

You will please take notice that on the tenth day following service hereof, or as soon thereafter as counsel may be heard, counsel for Gary Moore will move the Court for an Order that certain real property owned by Gary Moore, namely, the property located at 5848 Creekside Drive, Myrtle Beach, SC 29588, is subject to the homestead exemption under S.C. Code Ann. §15-41-30 (Supp. 2009), and that if such property is sold at judicial sale, the minimum bid must be in the amount of the exemption pursuant to §15-41-10 (1976).

The grounds for this motion are that the Creekside Drive property is the permanent residence and home of Gary Moore. This motion will be supported by the Affidavit of Gary Moore, and by the attached Memorandum of Law.

PATRICK AND STATHOS, LLC



Kimberley Campbell, attorney for Gary Moore
412 North Poplar Drive
Surfside Beach, SC 29575
(843) 238-5618 (telephone)
(843) 238-8246 (facsimile)

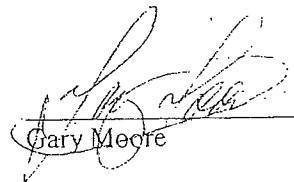
November 11, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2008-CP-26-7941
John Sherrill and Estate of Gaye Marie Reynolds,	)	
	)	
Plaintiffs,	)	
	)	AFFIDAVIT OF GARY MOORE
	)	
Gary Moore and Robert Moore,	)	
	)	
Defendants.	)	
_____	)	

Personally appeared before me, Gary Moore, who first being duly sworn, deposes and states as follows:

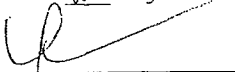
1. I am currently incarcerated in the Florence County Detention Center in Florence County, South Carolina.
2. My projected release date is July 18, 2018.
3. In or about May, 1988, I purchased the property located at 5848 Creekside Drive, Myrtle Beach, SC 29588.
4. Prior to my arrest and subsequent incarceration, I resided in the home at 5848 Creekside Drive, Myrtle Beach, South Carolina 29588.
5. Although I am incarcerated now, I consider 5848 Creekside Drive to be my primary residence. Since being incarcerated, it has always been my intent to return to my home at 5848 Creekside Drive upon my release.

Further deponent sayeth not.



 Gary Moore

SWORN to and subscribed before me
 this 21st day of November, 2011



 Kimberley Campbell
 Notary Public for South Carolina
 My Commission expires 2/21/2017

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO. 2008-CP-26-7941

John Sherrill as Personal Representative of
the Estate of Gaye Marie Reynolds,

Plaintiffs,

v.

Gary Moore and Robert Moore,

Defendants.

)
)
)
) MEMORANDUM OF LAW
) IN SUPPORT OF CLAIM OF
) ENTITLEMENT TO HOMESTEAD
) EXEMPTION
)
)
)

FACTS

The Plaintiff filed this action to collect a judgment obtained against Gary Moore. This case was referred to the Master in Equity pursuant to an Order of Reference which provided that the Master would hear and try all matters of fact and law in the case. Gary Moore was the record owner of certain property located at 5848 Creekside Drive, Myrtle Beach, SC 29588 ("Creekside Drive property"). By Order filed June 14, 2011, the Master ruled that Gary Moore's brother, Robert Moore, is the owner of a one half interest in the Creekside Drive property by virtue of a resulting trust, and that Gary Moore is a joint owner of the Creekside Drive property with Robert Moore. The June 14, 2011 order provided that Robert Moore's interest in the property is not subject to the judgment lien of the plaintiff and that Gary Moore's one half interest is subject to the judgment lien.

Gary Moore is currently incarcerated in the Florence County jail in South Carolina. His projected release date is July 18, 2008.

The Plaintiff has moved for an order granting a judicial sale.

ARGUMENT

Gary Moore's interest in the Creekside Drive property is subject to the homestead exemption pursuant to S.C. Code Ann. §15-41-30(A)(1) (2009), which states:

(A) The following real and personal property of a debtor, domiciled in this State, is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding.

(1) The debtor's aggregate interest, not to exceed fifty thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence . . ."

Although Gary Moore is currently incarcerated, he is by law entitled to the protection of the homestead exemption. See *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (Ct.App. 2002). In that case, a judgment creditor argued that the debtor was not entitled to the benefit of the homestead exemption because he was in jail. The South Carolina Court of Appeals disagreed, and held that the incarcerated debtor was entitled to the protection of the homestead exemption. 349 S.C. at 141, 561 S.E.2d at 639.

In *Holden v. Cribb*, the court discussed the underlying policy of the homestead exemption, which is to protect a certain portion of debtors' property from creditors, and "to prevent citizens from becoming dependent on the State for support." 349 S.C. at 140, 561 S.E.2d at 639. (citations omitted). After noting that the "act and intent as to domicile, and not the duration of the residence" are the determining factors" in determining residence, *id.*, citing *Miller v. Miller*, 248 S.C. 125, 149 S.E.2d 336 (1996), the court stated, "Clearly, [the debtor] had no intent to transfer his residence to the detention center, and, in fact, was being involuntarily detained." *Id.* The court went on to say that to hold otherwise "would thwart the underlying policy of the homestead exemption." *Id.*

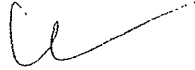
Gary Moore did not voluntarily transfer his domicile to the South Carolina Department of Corrections, and he certainly does not intend to make it his permanent home. See *Holden v. Cribb*, 349 S.C. at 141, 561 S.E.2d at 639, citing *Reynolds v. Lloyd Cotton Mills*, 177 N.C. 412, 99 S.E. 240, 242 (1919), *quoted with approval and followed in Ferguson v. Employers Mut. Cas. Co.*, 254 S.C. 235, 239, 174 S.E.2d 768, 769 (1970). As he states in his affidavit, Mr. Moore resided in the Creekside Drive property before he was incarcerated, and has intended to return there upon his release. He considers this property to be his home and primary residence.

Gary Moore is therefore by law entitled to the protection of the homestead exemption. Pursuant to S.C. Code Ann. §15-31-10, if his interest in this property is sold at judicial sale, the minimum bid *must* be in the amount of the exemption (\$50,000.00) pursuant to S.C. Code Ann. §15-31-10. *Holden v. Cribb*, 349 S.C. at 141, 561 S.E.2d at 639.

CONCLUSION

For the reasons set forth above, Gary Moore is entitled to the protection of the homestead exemption, and if his interest in the Creekside Drive property is sold at judicial sale, the minimum bid must be in the amount of the exemption.

PATRICK AND STATHOS, LLC



Kimberley Campbell, attorney for Gary Moore
412 North Poplar Drive
Surfside Beach, SC 29575
(843) 238-5618 (telephone)
(843) 238-8246 (facsimile)

November 21, 2011

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2008-CP-26-7941

John Sherrill as Personal Representative)
of the Estate of Gaye Marie Reynolds,)

Plaintiff,)

vs.)

Gary Moore, Robert Moore and)
Steven W. Sessions,)

Defendants.)

NOTICE OF MOTION AND MOTION
FOR JUDICIAL SALE

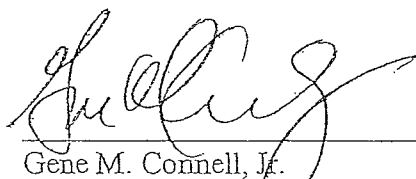
2011 NOV 10 AM 8:32
KELAHUE HUGGINS-WARD
CLERK OF COURT

CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the undersigned moves the Court for an
Order granting a judicial sale on behalf of the Plaintiff. The basis of this motion is that Plaintiff
has a judicial lien against the property of Gary Moore as to the one-half interest.

WHEREFORE, Plaintiff requests the Court issue its Order authorizing a judicial sale and
for such other and further relief as the Court may deem just, necessary and proper.

KELAHUE, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

November 1, 2011
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2008-CP-26-7941
John Sherrill and Estate of Gaye Marie Reynolds,	)	
	)	
Plaintiffs,	)	
	)	NOTICE OF APPEARANCE
	)	
Gary Moore and Robert Moore,	)	
	)	
Defendants.	)	
	)	

Please take notice that the undersigned does hereby give notice of appearance as counsel for Gary Moore in this case, and does hereby request that any and all notices given or required to be given in this case be given to and served upon the undersigned attorney at the address below.

The Clerk of Court and any other person who may be sending notices in connection with this case is hereby respectfully requested to serve upon the undersigned all such notices, motions, pleadings, correspondence, and other documents.

PATRICK & STATHOS, L.L.C.


 Kimberley Campbell, attorney for Gary Moore
 412 North Poplar Drive
 Surfside Beach, SC 29575
 (843) 238-5618 (telephone)
 (843) 238-8246 (facsimile)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-26-7941

John Sherrill and Estate of Gaye Marie
Reynolds,

Plaintiffs,

vs.

Gary Moore and Robert Moore,

Defendants.

CERTIFICATE OF SERVICE

I, the undersigned attorney for Gary Moore, do hereby certify that on this 2d day of May, 2011, I have served counsel of record in this action with a copy of the Notice of Appearance of Counsel for Gary Moore by mailing a copy of same by United States Mail, first class postage prepaid, addressed as follows:

Cheevin Lex Gardner, Esq.
P.O. Box 2740
Myrtle Beach, SC 29578
Attorney for Robert Moore

Gene M. Connell, Jr., Esq.
P.O. Drawer 14547
Surfside Beach, SC 29587
Attorney for Plaintiffs



Kimberley Campbell

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2008-CP-26-794\

John Sherrill as Personal Representative)
of the Estate of Gaye Marie Reynolds,)
)
Plaintiff,)
)
vs.)
)
Gary Moore, Robert Moore and)
Steven W. Sessions,)
)
Defendants.)
)

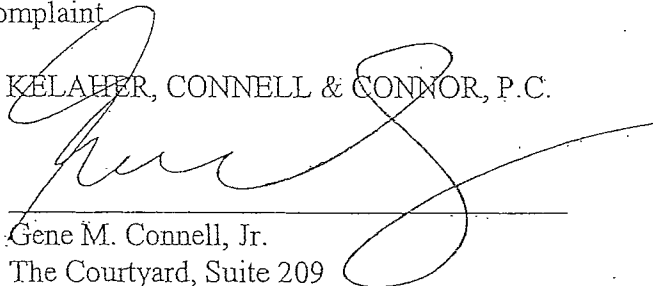
SUMMONS

FILED
HORRY COUNTY
2008 OCT -2 AM 11:48
MELANIE HUGGINS
CLERK OF COURT

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHER, CONNELL & CONNOR, P.C.


Gene M. Connell, Jr.
The Courtyard, Suite 209
1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

September 22, 2008
Surfside Beach, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2008-CP-26- 7941

John Sherrill as Personal Representative)
of the Estate of Gaye Marie Reynolds,)
)
Plaintiff,)
)
vs.)
)
Gary Moore, Robert Moore and)
Steven W. Sessions,)
)
Defendants.)
)

FILED
HORRY COUNTY
2008 OCT -2 AM 11:48
HELANIE HUGGINS
CLERK OF COURT
COMPLAINT
NON-JURY

The Plaintiff, complaining of the Defendants, would respectfully allege unto this court as follows:

1. The Plaintiff, John Sherrill, is the appointed Personal Representative of the Estate of Gaye Marie Reynolds.
2. That on or about October 20, 2002, Gaye Marie Reynolds was killed in an automobile accident by Defendant Gary Moore.
3. That on October 26, 2002, Defendant Gary Moore did deed over certain property known as Lot 19 Socastee Creek Recreation Area, Tax Map Parcel No. 1791301003 to Patsy Gardner-Alexander.
4. That pursuant to Civil Action No. 2006-CP-26-5460 the Estate brought an action against Gary Moore and Patsy Gardner Alexander to transfer the property back to the name of Gary Moore.

5. That after the aforementioned Order was signed, the Plaintiff obtained a judgment against Gary Moore in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars for wrongful death.

6. That Defendant Robert Moore is named as a Defendant because he may claim some right title interest in the aforementioned property.

7. That this is an action which is brought to collect on a wrongful death judgment obtained by the Plaintiff against the Defendant Gary Moore.

8. That the Defendant Steven W. Sessions is named because of a mortgage he may or may not have on the property found at Mortgage Book 1361, Page 898.

9. That this is a declaratory judgment action which requests the Court to inquire into the rights of the Plaintiffs and Defendants and to issue its Order as follows:

a. Finding that the property is subject to the judgment of the Plaintiff and that said property should be foreclosed and sold at public auction;

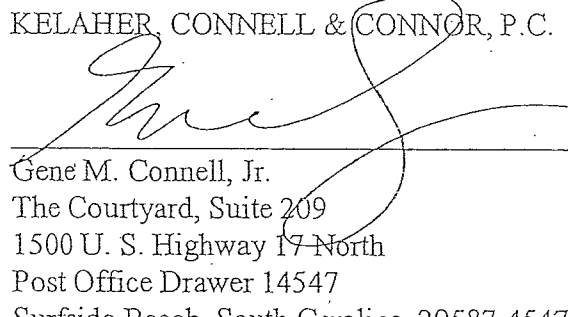
b. Finding that Steven W. Sessions does not have a valid mortgage on the property and his right should be extinguished;

c. Finding that Gary Moore is the sole owner of the property and that his rights are foreclosed by the judgment received by the Plaintiff in the amount of Five Hundred Thousand and 00/100 (\$500,000.00) Dollars.

d. Finding that Robert Moore is not the owner of the property in question and that he should be removed and/or evicted from the property and the Court should issue an Order finding that he does not have any interest in the real property.

e. Finding that the Court issue its Order finding that Plaintiff's judgment shall be foreclosed and that an Order of this Court be issued selling this property on the Courthouse steps at a public auction duly advertised pursuant to State law.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
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1500 U. S. Highway 17 North
Post Office Drawer 14547
Surfside Beach, South Carolina 29587-4547
(843) 238-5648 (phone)
(843) 238-5050 (facsimile)
gconnell@classactlaw.net
Attorney for Plaintiff

September 22, 2008
Surfside Beach, South Carolina

1 STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 2 COUNTY OF HORRY)

3

4

CASE NO. 2008-CP-26-7941

5

6 JOHN SHERRILL, as Personal)
 Representative of the Estate)
 7 of GAYE MARIE REYNOLDS,)
)
 8 Plaintiff,)

COPY

9

-vs-

HEARING:

10 GARY MOORE, ROBERT MOORE, and)
 STEVEN W. SESSIONS,)

BEFORE THE HONORABLE
 CYNTHIA GRAHAM HOWE

11

Defendants.)

12

13

14

15 Given before Trisha G. Rarick, Court Reporter and Notary
 16 Public, at the HORRY COUNTY COURTHOUSE, 1301 2nd Avenue,
 17 Conway, South Carolina, on Tuesday, May 15, 2012, at 11:55
 18 a.m.

19

20

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A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFFS:

KELAHER, CONNELL & CONNOR, P.C.
BY: GENE M. CONNELL, JR
1500 U.S. Highway 17 North
P.O. Drawer 14547
Surfside Beach, SC 29587

ON BEHALF OF THE DEFENDANTS:

PATRICK & STATHOS, LLC
BY: KIMBERLY E. CAMPBELL
P.O. Drawer 15669
412 N. Poplar Drive
Surfside Beach, SC 29587

ON BEHALF OF THE DEFENDANT:

CHEEVIN T. LEX GARDNER
5400 Highway 17 North
Myrtle Beach, SC 29578

I N D E X

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4 Certificate of Reporter

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1 THE COURT: All right. This is the case
2 of John Sherrill, as personal representative of the
3 estate of Gaye Marie Reynolds versus Gary Moore,
4 Robert Moore and Steven W. Sessions. It is civil
5 action number 2008-CP-26-7941. There is an order of
6 referral, and it is signed by the Honorable Larry B.
7 Hyman, Jr. It is dated May the 26th, 2009.
8 Therefore, this Court does have jurisdiction of this
9 matter.

10 And Mr. Gardner, is this your motion?

11 MR. GARDNER: It is not, Your Honor. It
12 is --

13 THE COURT: It's your motion; is that
14 correct?

15 MR. CONNELL: Yes, ma'am.

16 THE COURT: All right. Let me see if I
17 can find it. Last motion I found in the -- this is
18 your motion for a judicial sale?

19 MR. CONNELL: Yes, ma'am.

20 MS. CAMPBELL: Your Honor, I would ask
21 that my motion be heard too for judicial -- I mean
22 as long as we're all here.

23 THE COURT: Okay. Let me find out the
24 motions that are here then. There's a motion for
25 judicial sale, and that was filed November the 1st,

1 2011?

2 MR. CONNELL: Yes, ma'am.

3 THE COURT: Let's see. Ms. Campbell, what
4 is your motion?

5 MS. CAMPBELL: My motion is for an order
6 declaring that my client's property is subject to
7 the Homestead Exemption.

8 THE COURT: Okay. Let my find that
9 motion.

10 MS. CAMPBELL: And that was filed November
11 22, 2011.

12 THE COURT: Okay. Yes. We'll hear them
13 all at one time.

14 MS. CAMPBELL: Okay.

15 THE COURT: Since we have you all gathered
16 here, we'll hear them all.

17 MR. CONNELL: Yes, ma'am.

18 THE COURT: Okay. I found yours. Yours
19 is the motion of Gary Moore for an order declaring
20 that certain property is exempt from levy pursuant
21 to the Homestead Exemption, and that was filed
22 November -- or dated November the 21st, 2011.

23 - And are there any more motions? Mr. Gardner,
24 you don't have one?

25 MR. GARDNER: No, ma'am. If I can please

1 sound presumptuous to inform probate that we already
2 have a judgment already on this case, and I think
3 that's what the parties are fighting over.

4 THE COURT: Yes, sir.

5 MS. CAMPBELL: And, Judge, just so you
6 will be prepared, I may be making a motion in open
7 court based on some conversation we had outside the
8 courtroom.

9 THE COURT: Okay.

10 MS. CAMPBELL: We'll get to that when we
11 get to it.

12 THE COURT: All right, Mr. Connell.

13 MR. CONNELL: Your Honor, on October the
14 20th, 2002, Gaye Marie Reynolds was killed in an
15 accident in which Gary Moore was driving under the
16 influence and was subsequently convicted of that and
17 is currently in the Department of Corrections
18 serving a 15-year sentence in which he is to be
19 released in 2018.

20 Subsequent to that, a lawsuit was filed. This
21 is Mr. Miller (phonetic). He's Ms. Reynold's
22 husband. He filed a lawsuit in Circuit Court,
23 determined that there was really no coverage
24 available. The trial was had and a verdict was
25 rendered in the amount 500 and some thousand

1 dollars.

2 THE COURT: Yes, sir.

3 MR. CONNELL: As Your Honor remembers, the
4 case came to you because the issue whether or not
5 Gary Moore was the owner certain property with his
6 brother, Robert Moore, over at Socastee on the
7 Intercoastal Waterway. Your Honor issued an order
8 on June 10th, 2011. In that order, Your Honor found
9 that Robert Moore owned half of the property under a
10 resulting trust, and the other property was owned by
11 Gary Moore.

12 Your Honor then indicated in the order that the
13 Court's order was to be referred to the Sheriff for
14 Writ of Execution. I got a Writ of Execution, sent
15 it to Ms. Campbell. Ms. Campbell agreed to accept
16 service because Mr. Moore was in prison. I then got
17 a letter that she had written to the clerk's
18 office -- the Sheriff's office that indicated that
19 he -- his property was exempt from the Homestead
20 Exemption, and then had a conversation with the
21 Sheriff's office. And they indicated they were not
22 going to execute because of the situation involved.
23 So the order that Your Honor has says that in
24 the event that a judicial sale is needed to satisfy
25 plaintiff's judgment for one-half interest of Gary

1 Moore's ownership, the property shall be sold at the
2 sale. So obviously, we've jumped through all the
3 hoops now. Mr. Moore is in prison. He has no
4 assets. There's no need to have -- other than this,
5 there's no need to have supplementary proceedings
6 that I'm aware of, and it is our intention to have a
7 judicial sale to sell his half at the courthouse
8 steps.

9 And I tell you what I, on Ms. Campbell, it is
10 our intention to bid in the amount of our judgment
11 as the amount of the sale, unless a successful
12 bidder comes. And then we'll take off the \$50,000
13 Homestead Exemption and go from there.

14 THE COURT: And do a constructive receipt?

15 MR. CONNELL: Yes, ma'am. That's what I
16 was planning on doing as -- and then, of course, if
17 we get a bid, then that's a whole different
18 situation. I don't expect us to get any bids in
19 this matter. I don't know whether or not you've had
20 any experience in half interest, but usually, the
21 only people who come are people who are involved in
22 the case.

23 So anyway, that's what our intention to do is,
24 and at that point, Your Honor, if we are the
25 successor bid, which we think we will be, then

1 probably what we'll come back to Your Honor to do is
2 a partition sale.

3 THE COURT: Yes, sir.

4 MR. CONNELL: And sell the entire parcel,
5 and Mr. Moore -- Mr. Robert Moore will get his half,
6 and the Estate of Gaye Marie Reynolds will get their
7 half. And that's what our intention is to do.

8 MR. GARDNER: Your Honor, this is
9 Mr. Robert Moore, the other one-half owner.

10 THE COURT: Yes, sir.

11 MR. GARDNER: And we would argue that 1539
12 AD, which affects his property, that the plaintiff
13 required to bring a nolle bona from the Sheriff
14 department to satisfy that Mr. Gary Moore does not
15 have property -- personal property before it was
16 satisfied real property. From my belief, that
17 Mr. Gary Moore worked as an electrician before he
18 went to jail. He must have some property. And
19 without the nolo bona, we cannot be sure from the --
20 whether the Sheriff did a -- have done a complete
21 job or not and --

22 THE COURT: Did the Sheriff return a nolle
23 bona -- do you have a piece of paper?

24 MR. CONNELL: No. Your Honor, what
25 happened --

1 THE COURT: This is just a technicality?

2 MR. CONNELL: It is a technicality, and
3 what the Sheriff's office told me was the man's in
4 prison. You know, obviously, we can't bring him to
5 supplementary proceedings, and the court order says
6 that we can have a judicial sale, your order in
7 2011.

8 So I mean that's a -- that's fruitless to do
9 that in this situation. She accepted service of the
10 execution and then wrote a letter to the Sheriff's
11 department indicating, you know, we're claiming
12 Homestead Exemption. When I talked to the Sheriff's
13 department, they're not -- they're not going to go
14 out there and do something that can't be done. So
15 it just doesn't make any sense to me to do that.

16 MR. GARDNER: I believe that's the law
17 requirement on the nolle bona.

18 MR. CONNELL: If that's a problem, Your
19 Honor, I'll be happy to do downstairs after the
20 hearing and get a piece of paper if that's a big
21 deal. But I mean, you know, we went through this
22 before simply because I had wanted to have served
23 Mr. Moore, and she accepted service and then she
24 wrote --

25 THE COURT: Ms. Campbell accepted service?

1 MR. CONNELL: Yes.

2 THE COURT: Ms. Campbell, let me hear your
3 position on that.

4 MS. CAMPBELL: Thank you. I did accept
5 service. I agreed to do that so he wouldn't have to
6 serve Mr. Moore in jail, and then I just wrote the
7 Sheriff a letter and said, I represent Mr. Moore.
8 I've been served with a Writ of Execution. I'm
9 writing to let you know that he claims the Homestead
10 Exemption in respect to the real property pursuant
11 to 154130. That's all I said. I didn't say don't
12 collect. I just said we are claiming the Homestead
13 Exemption as to the real property.

14 So, you know, to the extent it's a
15 technicality, if it is required by law, you know, we
16 concur with Mr. Gardner that they would need to get
17 the nolle bona before they go further and attempt to
18 sell his half of the property.

19 But I think the real reason we're here is that
20 Mr. Connell wants to sell my client, Gary Moore's,
21 half of the real property, and I filed a motion --

22 THE COURT: Have you spoken to Mr. Moore?
23 Do you know if he has any personal property out of
24 which this judgment may be satisfied?

25 MS. CAMPBELL: I would doubt it, Your

1 Honor, but I don't know. I can ask him specifically
2 if he has anything. I doubt it would come close to
3 the \$500,000, but I don't know. I wouldn't expect
4 him to, Judge. So I just can't, you know, in good
5 faith tell you one way or the other. I just --

6 MR. CONNELL: Your Honor, I can tell you
7 this, because I had to deal with him in the trial
8 the first time in the civil trial over there. And
9 then I had deal with him in the criminal trial,
10 which was tried three times.

11 THE COURT: Yes, sir.

12 MR. CONNELL: And the man has no assets.

13 THE COURT: Was he -- did he have an
14 appointed attorney in the criminal trial?

15 MR. CONNELL: He had -- the first time, he
16 had a retained attorney. The second time, he had an
17 appointed attorney is what I remember.

18 THE COURT: Because he was deemed
19 indigent?

20 MR. CONNELL: Right. And he's a trustee
21 of the Florence County Jail right now. He's going
22 to be there until 2018. I'm sure that if he had any
23 stocks or bonds or anything, we would have long
24 since heard it before now.

25 MR. GARDNER: Your Honor, I think that is

1 all conjecture, and the law required them to make
2 sure that personal property be satisfied before real
3 property and --

4 THE COURT: I'm sorry. What did you just
5 say?

6 MR. GARDNER: I mean no respect to both,
7 but this is conjecture whether he has it or not --

8 THE COURT: He has what?

9 MR. GARDNER: Personal property or not.

10 THE COURT: Okay.

11 MR. GARDNER: Because the 1539 AD required
12 personal property to be satisfied before --

13 THE COURT: Personal property to be
14 satisfied?

15 MR. GARDNER: For them to collect on
16 personal property before real property can be -- to
17 be used to satisfy their judgment. I believe that
18 it's just conjecture right now of whether he has
19 personal property or not. It is the plaintiff's
20 proof -- burden of proof to present some evidence to
21 the Court that they have done something to
22 investigate.

23 THE COURT: Well, he has done something to
24 investigate. He sent it to the Sheriff. So you are
25 requiring the nolle bona be returned?

1 MR. GARDNER: Yes, ma'am.

2 THE COURT: Okay. You'll need to get a
3 nolle bona.

4 MR. CONNELL: All right, Your Honor.

5 THE COURT: And then once we get the nolle
6 bona, because it will be a technicality, then you
7 will ask for a judicial sale.

8 MR. CONNELL: All right.

9 THE COURT: With the Homestead Exemption.

10 MS. CAMPBELL: Yes, Your Honor, and I'm --
11 my motion is that he -- you have shown an order
12 saying that he is entitled to the Homestead
13 Exemption under the law.

14 THE COURT: Absolutely.

15 MS. CAMPBELL: Okay. Do you need me to
16 argue that, or are you going to do it?

17 THE COURT: That's statutory.

18 MS. CAMPBELL: Okay. Thank you, Judge.

19 THE COURT: I mean he would get the
20 statutory exemption.

21 MS. CAMPBELL: Okay. Well, as long as
22 we're here, Mr. Connell has told you that he -- my
23 understanding is what he intends to do is bid in the
24 judgment, not any actual cash and not put down any
25 actual cash, but just say --

1 THE COURT: He would not need to put down
2 any cash.

3 MS. CAMPBELL: You don't think so, Judge?
4 Is that your order based on -- because my
5 understanding that the purpose of the Homestead
6 Exemption is when a debtor -- that they're not
7 basically in at risk of becoming wards of the state
8 and that the law protects them up to a certain
9 amount of property. And it's 52,000 in the case
10 of -- currently 52,000 in the case of real property.

11 So this is basically to say -- I just think it
12 sort of defeats the whole purpose of the Homestead
13 Exemption to say you can satisfy your -- you know,
14 we'll knock a few thousand dollars off your judgment
15 for that so --

16 THE COURT: Certainly, you're not
17 expecting --

18 MS. CAMPBELL: Yes. I'm expecting them to
19 put down at least \$52,000 cash.

20 THE COURT: No. Absolutely not.

21 MS. CAMPBELL: Okay. Well, I would just
22 -- for the record, that's my request, and I would
23 probably be appealing that, Judge, so --

24 THE COURT: Do you have any case law on
25 that? You're expecting a creditor. This is a

1 judgment creditor to pay money.

2 MS. CAMPBELL: If he intends to build on
3 it, then yes. I mean to say that the judgment
4 creditor is not bound by the Homestead Exemption
5 just sort of defeats the entire purpose.

6 Mr. Moore gets out of prison. He's got no
7 place to go. He's got no assets. That defeats the
8 entire -- you know, if you read the comments in the
9 case law and into the statute, that's really
10 undercutting the whole purpose of the Homestead
11 Exemption. It's an interesting argument, but I
12 think you can't just say, well, Mr. Creditor, you
13 don't have to put down any money at all. Anybody
14 else would, but I just -- that really takes the
15 teeth out of it entirely.

16 So, yes, my position would be he doesn't have
17 to bid his whole 500 -- or he could bid it. He
18 doesn't have to put down that much cash, but
19 sufficient cash to satisfy the Homestead Exemption.
20 And if you'll bear with me for a second, Your Honor,
21 let me --

22 THE COURT: Yes, ma'am.

23 MS. CAMPBELL: -- look at the law real
24 quick.

25 THE COURT: Well, what would be the point

1 then? I mean what would be the point of
2 Mr. Connell's client wanting to sell this property?

3 MS. CAMPBELL: I can only imagine what the
4 point would be, but I mean if he wants to get that
5 piece of property, he's going to have to pay at
6 least that much cash for it.

7 MR. GARDNER: It would be, to me,
8 illogical.

9 THE COURT: Absolutely.

10 MS. CAMPBELL: I think it is illogical,
11 but that's -- he certainly has the right to do what
12 he legally can do. I just think he can legally get
13 away without, you know, abiding by the Homestead
14 Exemption like everyone else would have to do.

15 MR. CONNELL: Your Honor, I think you have
16 done this before. I mean this is not something new
17 for you.

18 THE COURT: No. It's not.

19 MR. CONNELL: I mean isn't that the way
20 it's always done?

21 THE COURT: Yes.

22 MR. CONNELL: That's what I thought.

23 MS. CAMPBELL: Well, I guess this will be
24 a novel issue for all of us.

25 THE COURT: Well, it's not a novel issue.

1 MS. CAMPBELL: It is for me, Judge, and I
2 don't see any case law on it, but, you know, logic
3 dictates to me that it's completely illogical to
4 allow him to say, I'm not going to give you any
5 money. I'm just going to forgive your portion of
6 your judgment.

7 MR. CONNELL: That's how it's done all the
8 time in these foreclosure cases you handle. I mean
9 you just take the 50 off the -- what I process to --

10 MS. CAMPBELL: Well, a foreclosure case
11 doesn't involve the Homestead Exemption. That
12 really is not --

13 MR. CONNELL: Or in other judgment
14 creditor cases. I think you've --

15 MS. CAMPBELL: Holden v. Cribb, Your
16 Honor, Sheriff had standing to require a judgment
17 creditors payment of Homestead Exemption, and I
18 guess there's -- I don't only see any, standing here
19 before you right now, anything that says it has to
20 be in cash, but I mean common sense dictates that it
21 needs to be in cash or, you know, whatever,
22 certified funds, that kind of.

23 MR. GARDNER: Once a foreclosure, Your
24 Honor, it's PMSI, when they have a security interest
25 there, plus lien. This is a judgment creditor.

1 MS. CAMPBELL: This is completely
2 different.

3 MR. GARDNER: This is completely
4 different.

5 MS. CAMPBELL: So certainly, if he wants
6 to bid his \$500,000 judgment, I guess I don't really
7 have any position except to the extent that at least
8 52,000 of it or whatever it is.

9 THE COURT: Well, here's the deal. If a
10 third party were to come in here and bid it, your
11 client would get cash.

12 MS. CAMPBELL: Well, Judge, no third party
13 is going to bid \$500,000 for that property, or it
14 might be 60 but --

15 THE COURT: But that's exactly how it
16 winds up in foreclosure. So the third comes and
17 bids, then --

18 MS. CAMPBELL: If a third party bids, here
19 is what will happen. He'll bid \$500,000. According
20 to him, that's his judgment. That's what he's
21 bidding, which I would take to mean the whole rest
22 of this judgment would be satisfied too if he's
23 going to bid it in on this half of the property.

24 Nobody is going to bid \$501,000 for this piece
25 of property. So Gary Moore basically would lose any

1 protection offered by the Homestead Exemption if we
2 allow them to do this. I just -- if he wants to bid
3 the 500,000 and then put the \$52,000 to satisfy the
4 requirements of the statute, that's okay with me I
5 guess. But he can't just not put anything down and
6 have my client come out of prison without any -- you
7 know, the protection of the law affords him.

8 THE COURT: Mr. Connell?

9 MR. CONNELL: Your Honor, what you have
10 said is already what I understood to be the law,
11 which is they get a knock off of the \$52,000. We
12 don't have to pay them \$52,000 to settle the
13 property. It is our intention to do what all
14 judgment creditors do is to bid in, take the
15 difference off, and we'll have his half interest.

16 I have never heard of anybody having to pay the
17 Homestead Exemption in as a payment. I don't think
18 that's the way it's intended -- it's a deduction, if
19 you will, an exemption of that amount of money. But
20 anything above that we're bidding in is ours.

21 MS. CAMPBELL: They're going to bid
22 insanely over market value. That's insuring that
23 there are no other bids; and that's insuring that
24 the client gets nothing. And I just -- you know,
25 like I said, I don't see -- just standing here

1 looking at it, I don't see anything that actually
2 addresses that particular issue, but it seems to
3 defeat the purpose.

4 MR. CONNELL: If someone comes along and
5 bids \$150,000 or whatever the number is, we may not
6 bid anything.

7 THE COURT: The only person who would be
8 interested in bidding would be the other Mr. Moore.

9 MR. CONNELL: Right.

10 MS. CAMPBELL: And he doesn't have --
11 well, I can't speak for him, but I'm pretty sure
12 he's not in a position to bid \$500,000.

13 MR. GARDNER: Your Honor, I think Mr.
14 Connell is arguing for the exception to the
15 Homestead rule, and I don't believe he can --

16 THE COURT: He's arguing for the what now?

17 MR. GARDNER: The exemption or exception,
18 both. He does not want to be the -- he wants to do
19 away with the Homestead rule, and I don't believe he
20 can quote, Your Honor, any statute that would allow
21 him that exception.

22 MS. CAMPBELL: Judge, I feel effectively
23 that's what he's saying is it doesn't count for us.
24 I mean we don't have to put any money down. The
25 client doesn't -- my client, I should say, doesn't

1 get any protection as a practical matter.

2 MR. GARDNER: And I believe the only
3 exception to the Homestead rule is the first
4 mortgage lien.

5 THE COURT: Has anyone done any real
6 research on this?

7 MS. CAMPBELL: Well, I didn't research the
8 issue of the bid because I -- the first I heard of
9 it was just now. I've researched the Homestead
10 Exemption. I'm pretty confident about that but I --
11 I need to do some additional research on the issue
12 of whether they can do what Mr. Connell is --

13 THE COURT: And it wouldn't have to be
14 just in South Carolina, because there are Homestead
15 Exemptions --

16 MS. CAMPBELL: I believe I have to go out
17 of state because I --

18 THE COURT: Right.

19 MS. CAMPBELL: -- have a whole lot here
20 cited in the case notes. None of it seems to apply
21 to that particular issue.

22 THE COURT: Mr. Connell?

23 MR. CONNELL: Your Honor, I haven't done
24 any research, because I have been over here a number
25 of times, and this has been done -- I understand

1 from what you're saying is that's been your practice
2 too I think over the years so --

3 MS. CAMPBELL: Maybe no one's objected to
4 it.

5 MR. CONNELL: I don't -- I would point out
6 the inequity of the defendant in this case trying to
7 get a \$52,000 payment from us when, in fact, the
8 defendant caused this accident, is in prison till
9 2018, and we're giving him the benefit of this
10 Homestead Exemption. We're just knocking that off
11 to the amount of the judgment, and that's -- he's
12 getting the same benefit he would get if somebody
13 came along and bid again. There's no difference in
14 the benefit he's getting if somebody came along and
15 bid in \$100,000.

16 MS. CAMPBELL: There's a big difference.
17 If somebody came along and bid in \$100,000, he'd get
18 the money as a substitute for the actual property.
19 Only up to his Homestead Exemption that he is
20 legally entitled to, this is what the legislature
21 has said.

22 MR. CONNELL: He's getting --

23 MS. CAMPBELL: I'm not asking for anything
24 he's not entitled to.

25 MR. CONNELL: He's getting credit.

1 MS. CAMPBELL: That credit doesn't do him
2 any good.

3 MR. CONNELL: A credit is the same as the
4 Homestead Exemption when you're talking about the
5 issue, if you think about that.

6 THE COURT: That's why he owes the
7 judgment. He owes the entire judgment.

8 MS. CAMPBELL: He does, but he's -- you
9 know, you can't get blood out of a stone, Judge.
10 All he's got that I know of, assuming that the Writ
11 comes back nolo bona, which I assume it will,
12 because this piece of property, the whole policy
13 behind the Homestead Exemption is to insure at that
14 debtors have some property so that they are less
15 likely to become wards of the state. So they give
16 him this amount of protection, it's not a whole lot,
17 in his homestead.

18 And we're saying to just say the judgment can
19 -- creditor can knock a little bit off the debt and
20 then sell the whole thing for an outlandish price,
21 insuring that nobody else is going to bid on it,
22 therefore, completely deprives Mr. Moore of the
23 benefit of the Homestead Exemption.

24 MR. CONNELL: Your Honor, it wouldn't do
25 anything other than if a third party came in and bid

1 \$500,000. He'd still get his \$52,000 credit.

2 THE COURT: Okay.

3 MR. CONNELL: So it makes no difference.

4 MS. CAMPBELL: Well, if the third party
5 bids \$500,000, we'll take it, but I'm pretty sure
6 that's not going to happen, because this piece of
7 property -- I'm sure everyone here would stipulate
8 it's not worth anywhere near \$500,000.

9 MR. CONNELL: And, in fact, because it
10 doesn't really matter.

11 MS. CAMPBELL: Let alone one half.

12 MR. CONNELL: I mean a bid is a bid.

13 MR. GARDNER: Your Honor, I believe she is
14 correct that the state legislature has mandated that
15 we do not leave a person totally destitute.

16 THE COURT: Well, I'm not sure that's what
17 it means. I mean if he were destitute before, he's
18 going to be destitute after. All the legislature
19 says is we're going to give him a Homestead
20 Exemption of the 52,000, but the net result is we're
21 subtracting the 52,000.

22 MR. GARDNER: Your Honor, even though they
23 have a judgment lien and, with due respect, to his
24 deceased wife, the law basically states that they do
25 not take that 52,000. The 52,000 --

1 THE COURT: That's correct.

2 MR. GARDNER: And he's no different than
3 any other creditor. The only protection that the
4 creditor has is PMSI, which is first lien. He does
5 not have a first lien. He has a judicial lien.

6 MS. CAMPBELL: Judge, may I call your
7 attention to the last paragraph of Holden versus
8 Cribb? There's a discussion of whether but for the
9 portion of the bid attributable to the Homestead
10 Exemption, the Sheriff should have or could have
11 accepted the bid without requiring cash. I think
12 that in this particular case, he can accept --
13 probably. I haven't researched it, but the judgment
14 amount, but he has to acquire cash for at least the
15 Homestead Exemption. You know, again --

16 THE COURT: What's the cite on that?

17 MS. CAMPBELL: This is Holden versus
18 Cribb. The main thrust of this particular case is
19 whether an incarcerated person is entitled to the
20 protection of the Homestead Exemption.

21 THE COURT: Well, that's not in dispute
22 here.

23 MS. CAMPBELL: I agree. That was just the
24 case that -- I really thought that was going to be
25 the disputed issue. I didn't expect this to come up

1 so -- like I said, I would have to do some more
2 research on this other issue about whether he can
3 just bid the judgment, and, therefore, in my
4 opinion, circumvent entirely the Homestead Exemption
5 for Gary Moore. I think it is you can bid the
6 judgment, but the Sheriff must require at least
7 enough cash to satisfy the Homestead Exemption, that
8 being the whole purpose of the Homestead Exemption.

9 THE COURT: What's the cite?

10 MS. CAMPBELL: The case, Your Honor, is
11 Holden v. Cribb.

12 THE COURT: Yes, ma'am.

13 MS. CAMPBELL: 349 SC 132. I'm sure
14 there's other cases that may or may not apply to. I
15 just don't have them on me, because I didn't
16 anticipate this line of argument.

17 MR. GARDNER: We could brief the Court,
18 Your Honor.

19 MS. CAMPBELL: And I'd be happy to do
20 that.

21 THE COURT: This case has been going on
22 for I think since I have been on the bench, hasn't
23 it?

24 MR. CONNELL: Yes, ma'am.

25 THE COURT: Every time I turn around. I

1 know you-all are tired of it, and especially your
2 client, Mr. Connell.

3 MS. CAMPBELL: Okay. Judge, under South
4 Carolina, every Sheriff sale, blah, blah, blah,
5 shall be for cash. There is case law indicating
6 that if -- okay.

7 THE COURT: Well, most sales are for cash.
8 All of mine are for cash or certified funds.

9 MR. GARDNER: Your Honor, I know we have
10 been at this a long time, but this is the last
11 issue. If we could brief the Court, and then this
12 case will be done.

13 MS. CAMPBELL: I think Holden v. Cribb
14 actually addresses this. I think what this is
15 saying, even if the bidder is the judgment creditor,
16 he or she has to put down enough cash to satisfy the
17 Homestead Exemption. You know, I didn't focus on
18 that portion of the case, Judge.

19 THE COURT: It just sounds strange to me.
20 It sounds strange to me that a creditor is going to
21 have to put down cash to satisfy the \$50,000
22 exemption.

23 MS. CAMPBELL: I believe that's what this
24 case says, and I believe that that is --

25 THE COURT: Well, I will be glad to read

1 it. I'm going to need to read it.

2 MS. CAMPBELL: That's fine, Your Honor,
3 and I think that's in accordance with the statutory
4 contention as well.

5 THE COURT: Yes, ma'am. Give me one
6 second, please.

7 MR. GARDNER: Your Honor, if I may, Your
8 Honor?

9 THE COURT: Yes, sir.

10 MR. GARDNER: This is the case that Ms.
11 Campbell cites, the Cribb case. It says here that
12 the plaintiff argued that the defendant is not
13 entitled to Homestead Exemption, and the Court
14 stated that the rationale for Homestead Exemption is
15 well established to protect from creditor its said
16 portion of debtors property. I believe that's what
17 Mr. Connell is arguing, exactly opposite from this
18 case, that he is entitled to be protected -- I mean
19 he is entitled to all the debtor's property, and
20 this case states that a certain portion of the
21 debtor property shall be protected for the debtor.

22 THE COURT: Well, I don't think that
23 there's any question but that your client is
24 entitled to the Homestead Exemption.

25 MS. CAMPBELL: My client, Your Honor. I

1 just think the issue now has turned into whether he
2 has to put down cash, and I think he does. I think
3 under Holden v. Cribb, I believe that's part of what
4 that case is saying, looks like Ms. Holden was the
5 judgment creditor in that case. And one of the issues
6 I guess that the Court touched on was whether the
7 Court or Sheriff should have required cash up to the
8 Homestead Exemption.

9 Were it not for the requirement of the portion
10 of the bid attributable to the Homestead Exemption
11 be paid in cash, the Sheriff could have accepted
12 Holden's bid without requiring a cash deposit
13 because it --

14 THE COURT: Here it is right here,
15 judgment creditor. As I see it, does it not say
16 that a judgment creditor was not required to pay
17 cash deposit in Sheriff's sale of the property since
18 deposit would have been immediately repaid to her in
19 her capacity as a judgment creditor?

20 MS. CAMPBELL: That was what she argued,
21 but that's not what the Court found. Oh, wait.

22 THE COURT: That is what the Court found.

23 MS. CAMPBELL: Let me read this.

24 MR. GARDNER: If I may disagree with Ms.
25 Campbell. The question is whether Mr. Moore, Gary

1 Moore, deserves \$52,000 or not, and I believe the
2 Homestead Exemption allows him that. They may claim
3 500,000, but 52 of that must go to Mr. Gary Moore.

4 MS. CAMPBELL: I guess the issue in that
5 this case was a cash deposit on the bid. I'm still
6 arguing that under the Homestead Exemption, you
7 know, elsewhere, they say but for the Homestead
8 Exemption, Holden as a judgment credit would not be
9 required to deposit cash.

10 I think this -- actually, this is talking about
11 the deposit I think that's paid right after the bid,
12 not the entire --

13 MR. GARDNER: I believe they can bid 52 in
14 that, but that 52,000 must go to Mr. Gary Moore,
15 because of Homestead Exemption.

16 THE COURT: These were strange facts as
17 well. This was a non-cash bid.

18 MS. CAMPBELL: Right. I guess this was a
19 judgment creditor, and then the last paragraph of
20 the case, we hold that, although technically moot --

21 THE COURT: This was a -- this was a child
22 support issue.

23 MS. CAMPBELL: Actually, I think there was
24 an assault and battery issue too.

25 THE COURT: Okay.

1 MS. CAMPBELL: And I don't, you know, know
2 that the circumstances of the underlying judgment
3 make any difference, unless it's a foreclosure. But
4 we hold that -- but for the portion of the bid
5 attributable to the Homestead Exemption, the Sheriff
6 could have accepted the bid without requiring cash.

7 So I think what they're saying is, yes. They
8 can accept if he bids 500,000. For anything over
9 that Homestead Exemption, they can -- they don't
10 have to require cash, but for the Homestead
11 Exemption, they do require cash.

12 MR. GARDNER: Your Honor, I just talked to
13 Mr. Connell. Perhaps we can brief the Court, and my
14 client will be willing to drop all objections of
15 nolle bona, and we'll just get this issue settled
16 once and for all.

17 THE COURT: I think that will be good.
18 Everyone here knows that Mr. Connell can get the
19 nolle bona very easily.

20 MR. GARDNER: Right.

21 THE COURT: Don't we all know that?

22 MR. CONNELL: I hope so.

23 THE COURT: Because he has been to the
24 Sheriff.

25 MR. GARDNER: Your Honor, he does only

1 deal with me in multi-million dollar cases. I'm not
2 sure he can deal with small case like this anymore.

3 THE COURT: I understand. You're not
4 going away, and your client knows that you're going
5 to stick with him to the very end.

6 MR. CONNELL: He told me today, this has
7 been ten years. I said, I'm not going to leave you
8 now. Let's just finish this thing up. Whatever
9 happens, happens.

10 THE COURT: It's been ten years since your
11 wife passed away?

12 MR. CONNELL: Going on ten years.

13 THE COURT: Going on ten years.

14 MR. CONNELL: This October will be ten
15 years.

16 THE COURT: Yes, sir. How long do you
17 think it will take you to -- how long do you need to
18 brief this issue?

19 MS. CAMPBELL: I can --

20 THE COURT: I'm not in any rush.

21 MS. CAMPBELL: I know. I don't want you
22 to lose your train of thought on this case either.
23 I wonder is Monday okay for Your Honor?

24 THE COURT: Today is Tuesday. Monday is
25 fine with me. Mr. Connell, we always have to worry

1 about your schedule. Your schedule is worse than
2 mine, and mine is pretty bad these days.

3 MR. CONNELL: Your Honor, could you give
4 me a week?

5 THE COURT: A week, that's fine. How
6 about till next Wednesday or next Friday?

7 MR. CONNELL: Friday is good.

8 THE COURT: Okay. A week from this
9 Friday?

10 MR. CONNELL: Yes, ma'am.

11 THE COURT: Today is the 15th. So that
12 would be --

13 MR. CONNELL: The 25th, right. 22nd.

14 MS. CAMPBELL: Judge, can we have them
15 both due at the same time just for --

16 THE COURT: Yes. Absolutely. It'll be
17 the 25th.

18 MS. CAMPBELL: That's fine with me.

19 MR. CONNELL: And it's my understanding
20 that the only thing you really want to know is
21 whether or not we have to pay them cash to settle --

22 THE COURT: Whether you would have to put
23 up cash for the 52,000 under the Homestead
24 Exemption; is that correct?

25 MR. CONNELL: All right.

1 MR. GARDNER: I believe the issue is
2 whether Mr. Gary Moore is entitled to 52,000 from
3 the Homestead Exemption from them or anybody.

4 MS. CAMPBELL: I think with anybody we
5 agree, but the question is with him, yeah.

6 THE COURT: With anybody else besides Mr.
7 Connell's client, we agree that anybody else would
8 have to put up the --

9 MR. GARDNER: It would just be for them
10 then?

11 THE COURT: Yes, sir.

12 MR. GARDNER: Yes, ma'am.

13 MR. CONNELL: You want me to find some
14 case law on that, Your Honor?

15 THE COURT: And my guess is you're
16 probably going to have to go outside the state, but
17 you might -- I mean I don't know. There may be some
18 in this state but --

19 MS. CAMPBELL: Just looking at the case
20 notes to the Homestead Exemption, I don't remember
21 seeing anything that -- other than I think Holden v.
22 Cribb really kind of addresses it, but I will --

23 THE COURT: I would think there's some in
24 some other states.

25 MS. CAMPBELL: I would think so, Your

1 Honor. I'll look.

2 THE COURT: Okay. Thank you very much.

3 And it doesn't have to be a fancy memo. You know,

4 if you can find some cases that are right on it,

5 say, here's this case and here's the gist of it.

6 MS. CAMPBELL: Yes, Your Honor.

7 THE COURT: I know we're all busy.

8 MR. CONNELL: I'm just going to give you

9 cases I find so you can look at them yourself.

10 THE COURT: That's fine.

11 (Deposition was concluded at 12:30 p.m.)

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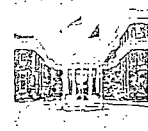
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Horry County Fifteenth Judicial Circuit Public Index



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Switch View

The State of South Carolina VS Gary Robert Moore

Case Number:	CAW200502014	Court Agency:	General Sessions	Filed Date:	10/24/2005
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Burch, Paul M.
Disposition:	Trial Guilty				
Disposition Date:	10/24/2005	Date Received:	10/24/2005	Arrest Date:	
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:	6897213	Indictment Number:	2005GS2600669	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

Name	Charge Code - Charge Description	Original Charge Code - Original Charge	Disposition Date
Moore, Gary Robert	0395-FELONY DRIVING UNDER THE INFLUENCE, DEAT	0395-FELONY DRIVING UNDER THE INFLUENCE, DEAT	10/24/2005

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Horry County Fifteenth Judicial Circuit Public Index



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Switch View

The State of South Carolina VS Gary Robert Moore

Case Number:	G021001	Court Agency:	General Sessions	Filed Date:	10/28/2002
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Central Traffic Court	Disposition Judge:	Burch, Paul M.
Disposition:	Trial Guilty				
Disposition Date:	10/24/2005	Date Received:	10/28/2002	Arrest Date:	10/24/2002
Law Enf. Case:		True Bill Date:		No Bill Date:	
Prosecutor Case:	6897211	Indictment Number:	2003GS2601789	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds

And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	Jail Sentence Concurrent - 15 Years, 0 Months, 0 Days, 0 Hours, 0 Fine + Court Costs						
	Drug and Alcohol Counseling						
	CTS - 0 Years, 0 Months, 3 Days, 0 Hours						

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

CASE NO. 2008-CP-26-7941

John Sherrill and Estate of Gaye Marie Reynolds..... Appellants

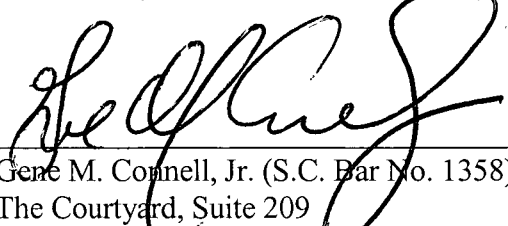
vs.

Gary Moore and Robert Moore Respondents

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

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January 24, 2014

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master in Equity

CASE NO. 2008-CP-26-7941

John Sherrill and Estate of Gaye Marie Reynolds..... Appellants

vs.

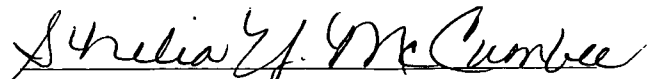
Gary Moore and Robert Moore Respondents

PROOF OF SERVICE

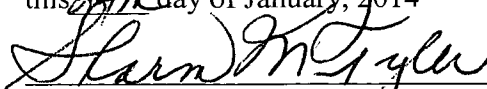
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P.C., Attorneys at Law, and that she has served a copy of the **Record on Appeal** on the Respondent Gary Moore, through his attorney of record, by depositing a copy of same in the United States Mail, postage prepaid, to:

Kimberley Campbell, Esquire
Kimberley Campbell, LLC
P. O. Box 760
Murrells Inlet, SC 29576

DATE OF MAILING: January 24, 2014


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 24th day of January, 2014


Notary Public for South Carolina
My Commission Expires: 2-25-19

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JAN 27 2014

SC Court of Appeals