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March 25, 2014

VIA EMAIL ONLY - ecarter@sccourts.org

Ms. Elizabeth Carter
Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Wilkins Lee Byrd, et al v. E. Butler McDonald
Appeal of Case No. 2013-CP-16-0431
Our File No. 12-061

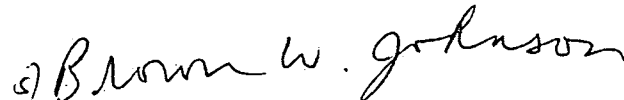
Dear Ms. Carter:

As requested, I am enclosing orders as follows:

1. Order of Marvin I. Lawson, Judge of Probate for Darlington County;
2. Order of Judge Michael J. Baxley confirming Judge Lawson's Order.

Technically speaking, I do not know if we are appealing one or both orders, and I would appreciate your guidance.

Yours very truly,



BROWN W. JOHNSON

BWJ:sp
Enclosures

A hearing on the matter was held on Wednesday, December 5, 2012, at 11:00 a.m. in the Darlington County Probate Court. Present at the hearing were the Petitioner, E. Butler McDonald, Gena Phillips Ervin, his attorney of record, Wilkins Lee Byrd, Ann B. Crump, Brown W. Johnson their attorney of record and Terry Crump. Also present was Cely Ann Baker Brigman the Guardian *ad Litem* for Respondents John Doe and Richard Roe.

Prior to the call of the case this Court decided in with the agreement of the parties present, to move forward only on the causes of action in the Petition originally filed by the Petitioner. The Counterclaims made by the Respondents will be heard at a later date.

Based on the review of record and evidence presented at the hearing, I make the following findings of facts:

1. All known individuals were properly served with a Summons, Lis Pendens and Petition as well as a Notice of Hearing and replied by way of answer counterclaim.
2. Respondents John Doe and Richard Roe were served by publication in *Hartsville Messenger* once a week for three weeks beginning on August 3, 2012. The Guardian *ad Litem* filed an Answer stating that after publication in the *Hartsville Messenger* more than thirty (30) days had passed and she had heard from no one as a result of the publication.
3. By Motion dated October 31, 2012, E. Butler McDonald by and through his attorney, Gena Phillips Ervin filed a Motion to notify tenants in common of Right of First Refusal by mail. Prior to the hearing, Brown W. Johnson is the attorney for the Respondents filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction dated November 8, 2012. This Motion was denied by the Court prior to the start of the hearing.
4. On November 5, 2012, this Court issued its Order allowing Mrs. Ervin to notify all interested parties of their Right of First Refusal to purchase the property.
5. That Notice was done on November 8, 2012, by mailing the Order and a letter notifying tenants in common of Right of First Refusal to Brown Johnson as the attorney for all named Respondents and to Cely Ann Baker Brigman as the Guardian *ad Litem* Nisi.

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Maurice Brown
JUDGE OF PROBATE

6. Pursuant to the terms of that Order, anyone interested in purchasing the property subject to the action was to notify Mrs. Ervin in writing on or before November 21, 2012.
7. Based on the testimony at the hearing, no interested party had notified Mrs. Ervin of their wish to purchase the same.

I make the following conclusions of law:

1. This Court has subject matter jurisdiction over these proceedings pursuant to S.C. Code Ann. § 62-1-302 (a)(1).
2. Venue is properly vested in Darlington County pursuant to S.C. Code Ann. § 62-3-201 (a)(1).
3. S.W. Byrd died on July 8, 1923, while a resident of Darlington County, South Carolina and his Estate was probated in Darlington County Probate Roll No.: 79-26.
4. At the time of his death, S. W. Byrd owned a one-hundred percent interest in the following described real property:

All that certain parcel or tract of land in Darlington County, South Carolina, containing in the aggregate three hundred four (304) acres, more or less, delineated on a plat made by T.E. Wilson, C.E., on April 24, 1947, as four adjacent tracts containing seventy one (71) acres, ninety eight (98) acres, one hundred twenty (120) acres and fifteen (15) acres, more or less, respectively, said land being shown on said plat to be bounded in the aggregate as follow: on the North by land now or formerly of J.W. Coker and in a very small part by the paved highway from Hartsville to Antioch School; on the East in part by Horse Pen Branch; in part by land of unnamed owner, in part by land now or formerly of J.D. Coker and in part by land "formerly of Segars now Lunn"; on the South in part by land now or formerly of J.D. Coker, in part by land "formerly Segars now Lunn", in part by the run of Boggy Swamp, in part by land "formerly J.J. Ward's land now Goodson", and on the West in part by Boggy Swamp and in part by land now or formerly of Richard Sumner and in a very small part by the aforesaid highway from Hartsville to Antioch School and in part by land now or formerly of J.W. Coker. Said land was owned by the late S.W. Byrd at the time of his death on July 8, 1923. See Darlington County Probate Roll 79-26.

SAVING AND EXCEPTING THEREFROM: Deeds recorded in Book D30 at Page 56 and D311 at Page 101 in the Office of the Clerk of Court for Darlington County.

Tax Map No.: 076-00-02-004.

5. All of the children of S. W. Byrd have since died leaving various children, spouses and others heirs and in most cases in more than ten years have passed

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Maria Aurora

since the death of the original heirs of S.W. Byrd and no Estate can now be probated.

6. I find that the current owners of the property described in paragraph four above are as follows:

- a) Wilkins L. Byrd, 32.67 %
- b) Joan Rutledge Gary, 17.35 %
- c) Robert Larsen, 10.21 %
- d) Robert Stanton, 8.16 %
- e) C. E. Stanton, 8.16 %
- f) Laura Klettner Bynum, 7.14 %
- g) John Norwood Klettner, 7.14 %
- h) Byrd Thomson, 5.10 %
- i) Ann Crump, 2.04 %
- j) Butler McDonald, 2.04 %

7. Partition of the property described in paragraph 4 by physical petition is impractical and therefore should be sold at auction.

8. Pursuant to S.C. Code Ann. § 15-61-110, the Petitioner is entitled to reasonable attorney fees in the cost of this action.

9. After payment of the above-mentioned fees and cost, the net proceeds of the sale shall be divided pursuant to the percentages listed in paragraph 6 above.

It is now, therefore, Ordered, Adjudged and Decreed that:

1. The heirs and percentage of ownership of the property that is subject of this action are as follows:

msl

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Maurice Johnson

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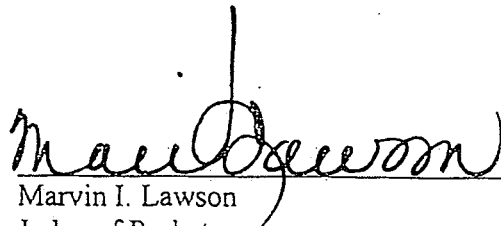
- a) Wilkins L. Byrd, 32.67 percent
- b) Joan Rutledge Gary, 17.35 %
- c) Robert Larsen, 10.21 %
- d) Robert Stanton, 8.16 %
- e) C. E. Stanton, 8.16 %
- f) Laura Klettner Bynum, 7.14 %
- g) John Norwood Klettner, 7.14 %
- h) Byrd Thomson, 5.10 %
- i) Ann Crump, 2.04 %
- j) Butler McDonald, 2.04 %

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 JUDGE OF PROBATE
 DARLINGTON COUNTY

2. The property described in paragraph 4 above is incapable of physical partition and therefore must be partitioned by Auction after Publication of Notice of Sale in the *Hartsville Messenger* once a week for three consecutive weeks.


3. Petitioner is entitled reimbursement of his attorney fees and cost as a result of this action pursuant to S.C. Code Ann. § 15-61-110, with the remaining proceeds to be divided pursuant to the percentages listed above.


IT IS SO ORDERED!



 Marvin I. Lawson
 Judge of Probate
 Darlington County

Darlington, South Carolina
 May 13, 2013.
 April 13, 2013.

TRUE CERTIFIED COPY,

 CLERK OF COURT/RMG
 DARLINGTON COUNTY, S.C.

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 JUDGE OF PROBATE

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
Wilkins Lee Byrd, et al.,)
)
Appellants,)
)
v.)
)
E. Butler McDonald,)
)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

C/A No.: 2013-CP-16-431

**ORDER AFFIRMING DECISION
OF THE PROBATE COURT**

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2014 FEB 28 PM 1:51
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

This matter came before the Court by way of an appeal from a Darlington County Probate Court Order determining the heirs of S.W. Byrd and ordering a partition of certain real property by public sale. The Court convened a hearing on this matter on October 7, 2013, during a regularly scheduled term of Common Pleas Non-Jury court in Darlington County, South Carolina. Present and participating at the hearing were Brown W. Johnson, Esquire, on behalf of Appellants; and Gena P. Ervin, Esquire, for Respondents. Based on the arguments and memoranda presented by the parties, an analysis of the prevailing law, and a review of the Clerk's file, this Court affirms in full the judgment of the Probate Court.

Just

The litigation in this case arises from an Order of the Probate Court determining the heirs of S.W. Byrd and ordering partition of the S.W. Byrd Farm, a tract of real property located approximately five miles outside the city of Hartsville, South Carolina. The Respondent and Appellants are the heirs of the estate of Jewel Elizabeth Byrd (Betty Byrd), who died intestate in 2003. The parties are also heirs to an adjacent tract of land – C.E. Byrd Farm – but own different percentages of ownership. In April 2012, Respondent instituted this action by filing a Summons, Lis Pendens, and Petition for Determination of Heirs and Partition for Real Property. Appellants filed an Answer and Counterclaim seeking a partition of the C.E. Byrd Farm in which

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Scott B. Suggs
**CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.**

Respondent has more than a 40% interest. On May 21, 2013, the Probate Court issued its Order directing the S.W. Byrd Farm sold by public auction.

In their appeal, Appellants raised numerous issues, claiming the Probate Court erred by: (1) denying Appellants' right to purchase Respondent's minority interest of approximately 2% in the S.W. Byrd Farm as provided by S.C. Code Ann. § 15-61-25; (2) holding that partition of the property by allotment was not practical and that the property should instead be sold by public auction; (3) ordering the property sold by public auction in spite the fact that Appellants made alternative offers; (4) failing to appoint an appraiser pursuant to S.C. Code Ann. § 15-61-25(B) after Respondent rejected Appellants' alternate offers of a cash buy-out or a deed of property; (5) determining percentages of ownership based on personal property from a partnership which, Appellants claim, does not exist rather than determining percentages of ownership pursuant to S.C. Code Ann. § 62-3-101 and the relevant common law; and (6) ruling that Respondent is entitled to reasonable attorney's fees and costs.


JMB
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This matter is one in equity. See *Campbell v. Jordan*, 382 S.C. 445, 451, 675 S.E.2d 801, 804 (Ct. App. 2009). While the circuit court may find facts in accordance with its own view of the evidence in an appeal in equity, it is "not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility." *Marichris, LLC v. Derrick*, 384 S.C. 345, 351, 687 S.E.2d 301, 305 (Ct. App. 2009). In this case, after review, this Court holds that the factual findings and legal conclusions of the Probate Court were both in accordance with the evidence in the case, South Carolina real property and estate law, and the interests of justice.

Based on a review of the file, the Court finds that there is ample evidence to affirm the Probate Court's findings as to the heirs of S.W. Byrd and the percentage ownership thereof in the

property that is the subject of this dispute. The Court further finds that there is sufficient evidence to support the Probate Court's decision that the Appellants failed to timely comply with the dictates of S. C. Code Ann. § 15-61-25(A) and that the property should be sold rather than partitioned in kind. Finally, the Court finds no reason to disturb the Probate Court's award of attorney's fees and costs pursuant to S. C. Code Ann. § 15-61-110. All other grounds of appeal by the Appellants are found to be without merit, and the Probate Court's decision is affirmed in its entirety.

IT IS SO ORDERED.

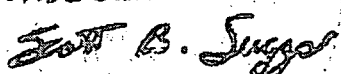


J. Michael Baxley
Presiding Circuit Court Judge
Fourth Judicial Circuit

February 17, 2014

Hartsville, South Carolina

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SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,

**CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.**

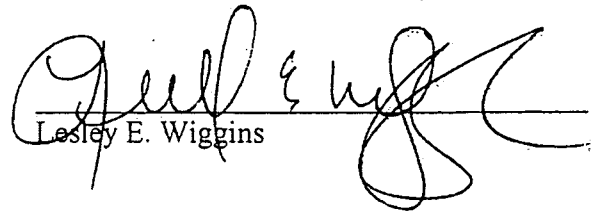
STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)
)
E. Butler McDonald,)
)
Respondent,)
)
vs.)
)
Wilkins Lee Byrd, et al.)
)
Appellant.)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C.A. NO.: 2013-CP16-431

CERTIFICATE OF MAILING

I, LESLEY E. WIGGINS, employee for the law firm of Orr, Elmore & Ervin, LLC, attorneys for the Petitioner, E. Butler McDonald, in the above captioned action, certify that I have this 10th day of March, 2014 served one (1) copy of order affirming the decision of the Probate Court filed in this matter upon the below named by depositing the same in the United States Mail, with sufficient postage affixed, and addressed as follows:

All Respondent's
c/o Brown W. Johnson
P.O. Box 1865
Florence, SC 29503


Lesley E. Wiggins