

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2012-CP-33-648

FILED
JUL 25 12 46 22
CLERK OF COURT

William N. Edwards.)
Plaintiff.)

vs.)

ORDER

Howard Mark Edwards.)
Defendant.)

RECEIVED

JUL 24 2014

SC Court of Appeals

Hearing: February 7, 2014
Plaintiff's Attorney: Reynolds Williams
Defendant's Attorney: John P. Williams, Jr.

Court Reporter: Ashley Rogers
(Q&A Court Reporting)

Hearing on Motion to Reconsider: April 23, 2014

This matter was referred to me as Special Referee pursuant to an Order of Reference filed with the Clerk of Court for Marion County.

A hearing on the merits was held on February 7, 2014. The Plaintiff, William N. Edwards, (hereinafter Bill), was present with his attorney, Reynolds Williams. The Defendant, Howard Mark Edwards, (hereinafter Mark), was present with his attorney, John P. Williams, Jr. It is noted that the Plaintiff and Defendant are brothers.

An Order was issued by me on March 13, 2014 and filed with the Office of the Clerk of Court for Marion County on March 28, 2014. By and through his attorney, the Defendant, Howard Mark Edwards, filed a Notice of Motion and Motion to Reconsider, Alter, or Amend

Judgment on April 8, 2014. A hearing on the Motion was held on April 23, 2104. The original Order of March 13, 2014 is hereby amended and or modified as set forth hereinbelow.

FACTS

1. The Plaintiff and Defendant are brothers.
2. All of the land at issue is located on the north and south sides of State Road 917 in Marion County, with the northern most portion of the north tract being in Dillon County.
3. Portions of the northern tract were deeded to the parties by deeds of distribution from the Estates of Sarah E. White and Marion Gambrell, deceased aunts of the brothers. The remaining northern parcel and the southern parcel were previously owned by their mother. Mrs. Edwards conveyed this to Mark who later conveyed an undivided one-half (1/2) interest to Bill.
4. The parties have agreed that a division of the property by use of State Road 917 results in properties of substantially equal value.
5. Mark has lived since 1976 on property adjacent to the jointly owned tracts. This lot fronts on Reaves Road and is not subject to partitioning. Bill has lived in the former residence of their mother since 1999, prior to receiving an interest in the property. Mark's step-son lives in a house on the northern parcel.
6. Mark testified that he could see Bill's house "hundred and fifty, 125 yards, something like that" through trees.
7. Neither actively farm the land. Mark farmed until 2001 and since then they rented the farm land and each received farm rent income.
8. Both parties have made various improvements.
9. Mark built and uses an equipment shed just off the southeast corner of his 3.58 acre separate property on Reaves road. There was no testimony as to its exact size but it could be seen in a photo exhibit.
10. Mark did not assert any rights of a non- petitioning party under Section 15-61-25, Code of Laws of South Carolina as amended.

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DISCUSSION

Partition actions so often involve sentimental or emotional interests of some or all of the parties to an action. Prior to the merits hearing, the parties were advised that family relationships should be preserved if at all possible, and that a division by the court may not be the more digestible resolution. The parties were given a further opportunity to mutually resolve this dispute but declined. It is unfortunate that the parties could not reach an agreement.

Our courts have steadfastly ruled that partition procedure must be fair and equitable to all parties of the action.

From the testimony and exhibits it appears that when taken as a whole the subject property can be equitably divided using Road 917 as a dividing line.

CONCLUSIONS

Since the parties agree that the southern and northern parcels are essentially of the same value using Road 917 as a dividing line makes a division simple.

Although no measurements were given as to exact size it would be equitable for Mark to retain his equipment shed adjacent to his separate 3.58 acre tract on a space of up to one-half (1/2) acre to be determined by survey and plat within thirty (30) days of this Order.

Since valuation is not an issue, it would seem more equitable for Bill to retain the southern parcel since he has occupied the home thereon for approximately 15 years. Furthermore, the step-son of Mark would not be uprooted if Mark retained the northern parcel.

ORDER

NOW, THEREFORE, I find and Order that the jointly held properties be divided and allotted as follows:

Howard Mark Edwards shall have sole entitlement and fee simple to the property North of State Road 917;

That Howard Mark Edwards shall have a survey and plat prepared, within 30 days of a lot up to one-half (1/2) acre to include his equipment shed at the southwest corner of his 3.58 acre tract which is not part of the partitioning property. This portion to be cut off and allotted to

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Howard Mark Edwards, but if he does not obtain said survey and plat within thirty (30) days, he will forfeit his right to receive this lot.

William N. Edwards shall have sole entitlement and fee-simple to the property south of State Road 917, excluding the "shed lot" set out above. If Howard Mark Edwards defaults in obtaining the survey and plat, then this lot shall be a part of the property allotted to William N. Edwards.

The Attorney for Plaintiff shall prepare and submit to the court for signing deeds evidencing the partition decreed herein.

AND IT IS SO ORDERED.

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Haigh Porter, Special Referee for Marion County

June 24, 2014

Florence, SC