

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUL 28 2014

APPEAL FROM HONORABLE MARVIN I. LAWSON,
THE HONORABLE J. MICHAEL BAXLEY
DARLINGTON COUNTY
TRIAL COURT CASE NO. 2013-CP-16-431

SC Court of Appeals

APPELLATE CASE NO. 2014-000589

Wilkins Lee Byrd, Kay R. Larsen, John Norwood Klettner, Laura K. Bynum, Ann B. Crump, Robert Larsen, Joan Rutledge Gary, John Robert Stanton, John Robert Stanton, Charles E. Stanton, Byrd L. Thomson, and John Doe and Richard Roe as Representatives of all persons unknown claiming any right, title, estate, interest in or lien upon the real estate described in the Appeal herein, including but not limited to any unknown owners, unknown heirs, unknown devisees of S. W. Byrd, Mary Moore Byrd, Etta B. Klettner, S. J. Klettner, Sr., Susan Wilkins Byrd, Mary M. Byrd, Joseph D. Rutledge, John R. Larsen, Charles E. Byrd, Jewel Butler Byrd, Wilkins Norwood Byrd, Ruth Byrd, Mariam Moore Byrd, Mary K. Stanton, S. J. Klettner, Jr., Mary R. Larsen, John Rutledge Gary, Jewel Elizabeth Byrd, or any other person, any unknown infants or persons under disability or persons in the military service designated as Richard Roe, as to the property described in the Petition herein and designated as Tax Map No. 076-00-02-004,

.....Appellants.

v.

E. Butler McDonald.....Respondent.

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

Respondent proposes the following be included in the Record on Appeal:

1. Respondent's Petition for Partition;
2. Appellants' Answer and Counterclaims;
3. Respondent's Reply to Counterclaims;
4. Appellants' Amended Answer and Counterclaims;
5. November 5, 2012 Order from Probate Court re Right of First Refusal;
6. November 8, 2012 letter from Ervin to Kay Larsen;
7. Notice & Motion to Dismiss for Lack of Subject Matter Jurisdiction.
8. May 8, 2013 Second Request to Admit (Appellants);
9. May 10, 2013 Response to Request to Admit (Respondent);
10. Appellant's Notice and Motion for Court to Appoint Appraiser;
11. Order from Probate Court;
12. Order Affirming Decision of the Probate Court;
13. December 5, 2012 Transcript of Probate Hearing.
14. October 7, 2013 Transcript of Circuit Court Hearing.

I certify that this designation contains no matter which is irrelevant to this appeal.



GENA PHILLIPS ERVIN
ORR, ELMORE & ERVIN, LLC
504 South Coit Street
Post Office Box 2527
Florence, South Carolina 29503
Tel: (843)667-6613
Fax: (843) 667-0340
Email: gpe@orrfirm.com
ATTORNEYS FOR RESPONDENT

July 28, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

E. Butler McDonald,)

Petitioner,)

vs.)

Wilkins Lee Byrd, Kay R. Larsen, John)
Norwood Klettner, Laura K. Bynum,)
Ann B. Crump, Robert Larsen,)
Joan Rutledge Gary, John Robert Stanton,)
John Robert Stanton, Charles E. Stanton,)
Byrd L. Thomson, and John Doe and)
Richard Roe as Representatives of all)
persons unknown claiming any right, title,)
estate, interest in or lien upon the real estate)
described in the Complaint herein, including)
but not limited to any unknown owners,)
unknown heirs, unknown devisees of S.W.)
Byrd, Mary Moore Byrd, Etta B. Klettner,)
S.J. Klettner, Sr., Susan Wilkins Byrd,)
Mary M. Byrd, Joseph D. Rutledge, John R.)
Larsen, Charles E. Byrd, Jewel Butler)
Byrd, Wilkins Norwood Byrd, Ruth Byrd,)
Marian Moore Byrd, Mary K. Stanton,)
S.J. Klettner, Jr., Mary R. Larsen, John)
Rutledge Gary, Jewel Elizabeth Byrd, or)
any other person, any unknown infants or)
persons under disability or persons in the)
military service designated in a class as)
Richard Roe, as to the property described)
in the Petition herein and designated as Tax)
Map No. 076-00-02-004,)

Respondents.)

IN THE PROBATE COURT

DARLINGTON COUNTY

C.A. NO.: 2012-ES-16-

79026

MARVIN L. THOMSON
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

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FILED

SUMMONS

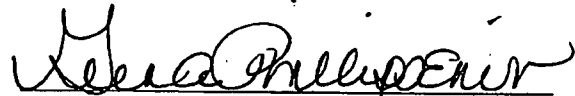
TRUE COPY
JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

TO: Respondents above-named:

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer or other responsive pleading to said Petition on the subscriber at 504 South Coit Street, Post Office Box

2527, Florence, South Carolina 29503, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer to the Petition within the time aforesaid, Petitioners will seek an Order of the Court granting the relief demanded in the Petition.

YOU ARE FURTHER NOTICED that said minors or persons under legal disability, if any, or someone in their behalf or on behalf of any of them, shall within thirty (30) days after service of this Notice upon you, move upon the Court for the appointment of a Guardian Ad Litem, Petitioner will apply to have the appointment of a Guardian Ad Litem Nisi, Cely Anne Baker Brigman, Esquire, whose address is PO Box 1871, Florence, SC 29503.

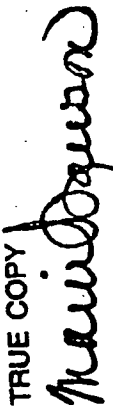


Gena Phillips Ervin
ORR, ELMORE & ERVIN, LLC
504 South Coit Street
Post Office Box 2527
Florence, South Carolina 29503
(843) 667-6613

ATTORNEY FOR PETITIONER

Florence, South Carolina

April 16, 2012

TRUE COPY

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

E. Butler McDonald,

Petitioner,

vs.

Wilkins Lee Byrd, Kay R. Larsen, John
Norwood Klettner, Laura K. Bynum,
Ann B. Crump, Robert Larsen,
Joan Rutledge Gary, John Robert Stanton,
John Robert Stanton, Charles E. Stanton,
Byrd L. Thomson, and John Doe and
Richard Roe as Representatives of all
persons unknown claiming any right, title,
estate, interest in or lien upon the real estate
described in the Complaint herein, including)
but not limited to any unknown owners,)
unknown heirs, unknown devisees of S.W.)
Byrd, Mary Moore Byrd, Etta B. Klettner,)
S.J. Klettner, Sr., Susan Wilkins Byrd,)
Mary M. Byrd, Joseph D. Rutledge, John R.)
Larsen, Charles E. Byrd, Jewel Butler)
Byrd, Wilkins Norwood Byrd, Ruth Byrd,)
Marian Moore Byrd, Mary K. Stanton,)
S.J. Klettner, Jr., Mary R. Larsen, John)
Rutledge Gary, Jewel Elizabeth Byrd, or)
any other person, any unknown infants or)
persons under disability or persons in the)
military service designated in a class as)
Richard Roe, as to the property described)
in the Petition herein and designated as Tax)
Map No. 076-00-02-004,

Respondents.

IN THE PROBATE COURT
DARLINGTON COUNTY
C.A. NO.: 2012-ES16-

79026

PETITION

TRUE COPY
JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

MARVIN L. LAWSON
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

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FILED

The Petitioner complaining of the Respondents herein and all persons unknown claiming
any right, title, estate, lien, or interest in the real property described herein adverse to the
Petitioner's title, alleges as follows:

FOR A FIRST CAUSE OF ACTION
(To Determine Heirs)

1. The Petitioner is a resident of Camilla, Georgia;

2. Upon information and belief, the Respondent Wilkins Lee Byrd is a resident of Aiken County, South Carolina; the Respondent Kay R. Larsen is a resident of Vero Beach, Florida; the Respondent John Klettner is a resident of Memphis, Tennessee; the Respondent Laura K. Bynum is a resident of Atlanta, Georgia; the Respondent Ann B. Crump is a resident of Marietta, Georgia; the Respondent Robert Larsen is a resident of Orange Park, Florida; the Respondent Joan Rutledge Gary is a resident of Bluffton, South Carolina; the Respondents John Robert Stanton and Charles E. Stanton are residents of Baton Rouge, Louisiana; and the Respondent, Byrd L. Thompson is a resident of Charlotte, North Carolina.

3. S.W. Byrd died on July 8, 1923 while a resident of Darlington County, South Carolina. His estate was probated in Darlington County Probate Roll No.: 79-26. At the time of his death S.W. Byrd's heirs were Etta Byrd Klettner, Marion Moore Byrd, Susan W. Byrd, Mary Byrd Rutledge, Wilkins N. Byrd and C.E. Byrd.

4. At the time of his death S.W. Byrd owned a one hundred percent (100%) 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

TRUE COPY
Maureen
JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

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. Upon information and belief, all of the children of S.W. Byrd have since died leaving various children, spouses and/or others as their heirs-at-law;
6. Upon information and belief, numerous of these individuals died without estates being probated in Darlington County, South Carolina, or in any other state;
7. Upon information and belief, in most cases more than ten (10) years have passed since the death of the original heirs of S.W. Byrd and no estate can now be probated;
8. The Probate Court for Darlington County has subject matter jurisdiction of these proceedings pursuant to S.C. Code Ann. Section 62-1-302(a)(1), 1976, as amended;
9. Venue is properly vested in Darlington County pursuant to S.C. Code Ann. Section 62-3-201(a)(1), 1976, as amended;
10. Upon information and belief the Petitioner is entitled to an Order of this Court determining the heirs of S.W. Byrd and declaring those heirs are owners in fee simple, and declaring those heirs are entitled to quiet and peaceful possession of the real property described herein; that no other individual other than the heirs of S.W. Byrd have any estate, right, title, lien or interest in or to the property or any part thereof, and that the title to the property be quieted to the heirs of S.W. Byrd as determined by the Court.

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Maui Dwyer
JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

FOR A SECOND CAUSE OF ACTION
(For the Partition of Real Property)

11. Petitioner hereby re-pleads and reiterates the allegations of the First Cause of Action as if fully set forth herein verbatim.

12. Upon information and belief, the Petitioner and each Respondent has an undivided interest in the property described in Paragraph 4 above.

13. Petitioner has checked the title to said real property and said report is located at 504 South Coit Street, Florence, South Carolina, and may be used, inspected, and copied by the parties to this action. The report was obtained at a cost of \$150.00 to the Petitioner.

14. Petitioner seeks a partition of the above described property among the co-owners in accordance with their respective interests.

15. Petitioner is informed and believes that the above described property is capable of physical partition among those entitled thereto in fair and equitable portions and such partition should be made.

16. Petitioner is informed and believes that it is in the best interest of all parties that the Court partition the above described property by physical partition.

17. Petitioner is further informed and believes, that pursuant to S.C. Code Ann. Section 15-61-110 he is entitled to reasonable attorney fees and the costs of this action.

WHEREFORE, THE PETITIONER PRAYS:

1. That the Court determine the heirs of S.W. Byrd and the percentage ownership of each.

2. That the Court declare those heirs are the owners in fee simple of the property described in the Petition, declare those heirs are entitled to quiet and peaceful possession of the property described herein, that no other individual other than those heirs have any estate, right,

TRUE COPY
M. Anderson
JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	DARLINGTON COUNTY
COUNTY OF DARLINGTON	)	C.A. NO. 2012-ES-16-79026
	)	
E. Butler McDonald,	)	
	)	
Petitioner,	)	
	)	ANSWER AND COUNTERCLAIMS
vs.	)	
	)	
Wilkins Lee Byrd, et al,	)	
	)	
Respondents.	)	

The Respondents hereby answer the Petition of the Petitioner and submit Counterclaims as follows:

AS TO THE FIRST CAUSE OF ACTION
(To Determine Heirs)

1. Admit the allegations contained in paragraph 1.
2. Admit the allegations contained in paragraph 2.
3. Admit so much of paragraph 3 as alleges S. W. Byrd died in 1923 and the children listed were his heirs; Respondents further allege Mary Moore Byrd, widow of S. W. Byrd was also an heir; and in addition, the estate of S. W. Byrd was closed, and the executor discharged in 1949.
4. Admit the allegations contained in paragraph 4.
5. Admit the allegations contained in paragraph 5.
6. Admit the allegations contained in paragraph 6.
7. Admit the allegations contained in paragraph 7.

8. Deny the allegations contained in paragraph 8, and further allege the Court of Common Pleas has jurisdiction of this matter pursuant to §15-61-50, S.C. Code of Laws, 1976.

9. Admit the allegations contained in paragraph 9.

10. Admit the allegations contained in paragraph 10.

AS TO THE SECOND CAUSE OF ACTION
(For the Partition of Real Estate)

11. Admit and/or deny the allegations contained in paragraph 11 as alleged above.

12. Admit the allegations contained in paragraph 12.

13. Lack knowledge or information sufficient to respond to the allegations in paragraph 13 and thereby deny the same and demand strict proof thereof.

14. Admit the allegations contained in paragraph 14.

15. The Respondent Wilkins Lee Byrd denies the allegations contained in paragraph 15 and alleges the physical partition of the property is impractical; the remaining Respondents lack knowledge or information sufficient to form a belief as to the allegations contained in paragraph 15 and demand strict proof thereof.

16. Deny the allegations contained in paragraph 16.

17. Deny the allegations contained in paragraph 17.

**FURTHER ANSWERING THE PETITION OF THE PETITIONER AND BY
WAY OF COUNTERCLAIM, THE RESPONDENTS ALLEGE**

**FOR A FIRST COUNTERCLAIM
(For the Public Sale of Additional Property
Formerly Known as the C. E. Byrd Farm)**

18. Respondents hereby allege and reiterate the allegations alleged above as if set forth herein verbatim.

19. The Petitioner and the Respondents also have an undivided interest in the property adjacent to the S. W. Byrd farm. The adjacent tract, formerly referred to as the C. E. Byrd farm, is described as follows:

All that certain parcel or tract of land in Darlington County, South Carolina, containing two hundred eighty two and 47/100 (282.47) acres; bounded now or formerly as follows: On the North by Horse Pen Branch; on the East by the run of Little Boggy Swamp; on the South by land of the Estate of W. M. Byrd, and on the West in part by land of Hugh Segars and in part by land of the Estate of S. W. Bryd, as will more fully appear by reference to plat thereof made by T. E. Wilson, C. E., on February 23, 1934, and recorded in Plat Book 18, at page 97. Reference being made to said plat for a more complete and accurate description of said property. This being the same property conveyed to C. E. Byrd by deed of Anna Margaret Nettles Ray recorded November 23, 1957, in Book 416, page 459 in the office of the Clerk of Court for Darlington County.

LESS AND EXCEPTING THEREFROM: Property conveyed to Milton L and Cora Lee Goodson in Deed 475, page 436; and Deed 494, page 236; and (2.) Property conveyed to Joel Lee Howle in Deed 497 at page 35; and Deed 640, page 64,. Said properties being shown as Lots A, B, C and D on Plat 51, at page 51 recorded in the office of the Clerk of Court for Darlington County.

Tax Map No. : 97-00-01-055

20. The Respondents seek the partition of the above described property or, if not practical, a sale of the property at a public auction with the funds being distributed in accordance with their respective interests.

21. Respondents seek a determination from this Court as to the best interest of the parties regarding a partition and/or public sale.

FOR A SECOND COUNTERCLAIM
(Breach of Fiduciary Duty)

22. The Respondents hereby allege and reiterate the allegations alleged above as if set forth herein verbatim.

23. Petitioner E. Butler McDonald serves as the personal representative of the Jewel Butler Byrd Estate.

24. The Petitioner E. Butler McDonald and the Respondent Wilkins Lee Byrd serve as co-administrators of the Jewel Elizabeth Byrd Estate.

25. The Petitioner and the Respondents have an ownership interest in the adjacent farm and its timber, formerly known as the C. E. Byrd farm.

26. The Petitioner E. Butler McDonald and Respondent Penny Crump are the sole heirs of the Jewel Butler Byrd Estate.

27. The Petitioner E. Butler McDonald, as personal representative of the Jewel Butler Byrd Estate and co-administrator of the Jewel Elizabeth Byrd Estate along with Wilkins Lee Byrd, co-administrator of the Jewel Elizabeth Byrd Estate, entered into a Tree Sales Agreement, dated September 15, 2008 with White Wood, Inc. for the sale of timber on

the property described in paragraph 19 above as the C. E. Byrd farm. The sale of said timber resulted in proceeds of \$222,465.94, of which seventy-five percent belongs to the heirs of the Jewel Butler Byrd Estate, consisting of E. Butler McDonald and Penny Crump; and the remaining twenty-five percent of the timber proceeds is owned by the heirs of the Estate of Jewel Elizabeth Byrd, consisting of both the Petitioner and the Respondents herein.

28. Without notice to Respondent Wilkins L. Byrd, co-administrator of the Jewel Elizabeth Byrd Estate, E. Butler McDonald distributed seventy-five percent of the timber sale proceeds to himself and Penny Crump and then deposited the remaining twenty-five percent (\$55,616.48) owned by the heirs of the Jewel Elizabeth Byrd Estate in the Jewel Elizabeth Byrd account, thereby co-mingling said funds which belonged to a different set of heirs.

29. In spite of objections by Wilkins L. Byrd to the co-mingling of the funds and a contention by Wilkins L. Byrd that the timber money belonged directly to the heirs of Jewel Elizabeth Byrd and should be distributed to said heirs immediately, E. Butler McDonald in breach of his fiduciary duties refused to distribute the proceeds as required by law.

30. Again without notice to Wilkins L. Byrd, E. Butler McDonald withdrew \$55,616.50 from the Jewel Elizabeth Byrd account and opened a separate account under the name of Estate of Jewel Elizabeth Byrd.

31. The timber money belonging to the heirs of C. E. Byrd has remained in the separate account established by Petitioner E. Butler McDonald unilaterally and in breach of his fiduciary duties.

32. The unilateral acts of E. Butler McDonald as described above and his failure to distribute funds to the Respondents constitute a failure to perform his fiduciary obligations, and a failure to exercise the care, skill, and caution required of a fiduciary, all to the direct and proximate damages to the Respondents herein.

FOR A THIRD COUNTERCLAIM
(Accounting)

33. Respondents Wilkins Lee Byrd and Penny Crump hereby allege and reiterate the allegations alleged above as if set forth herein verbatim.

34. Respondents Wilkins Lee Byrd and Penny Crump seek and are entitled to a full and complete accounting from the Petitioner E. Butler McDonald with respect to Petitioner's activities regarding the adjacent property, formerly referred to as the C. E. Byrd farm. In particular, the Respondents Wilkins Lee Byrd and Penny Crump seek an accounting regarding E. Butler McDonald's management of that farm and its timber.

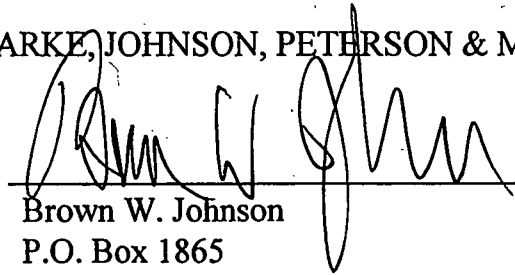
WHEREFORE, Respondents pray unto this honorable court for judgment in the following manner.

- a. An Order directing the partition and/or public sale of property owned by the S. W. Byrd Estate;
- b. An Order directing the partition and/or public sale of the adjacent property formerly referred to as the C. E. Byrd farm;
- c. An Order directing E. Butler McDonald to disburse funds from the timber sale of the C. E. Byrd farm to include an accounting of his management of the farm and its

timber; and for reasonable expenses, including the cost of this action and reasonable attorneys' fees necessarily incurred by Respondents for the common benefit of the parties hereto and for the protection, confirmation or perfection of title, or setting boundaries, or making a survey of the property;

d. For such and further relief as this court shall deem just an proper.

CLARKE, JOHNSON, PETERSON & McLEAN, P.A.

By: 

Brown W. Johnson

P.O. Box 1865

Florence, SC 29503

843-669-2401

bjohnson@cjpmlaw.com

Florence, South Carolina

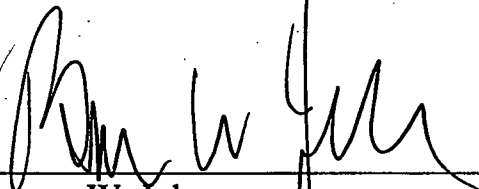
June 28, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the Answer and Counterclaims has been served upon the following via first class mail, postage pre-paid this 28th day of June, 2012:

Gena Phillips Ervin
Orr, Elmore & Ervin, LLC
P.O. Box 2527
Florence, SC 29503

CLARKE, JOHNSON, PETERSON & MCLEAN, P.A.



Brown W. Johnson
Post Office Box 1865
Florence, South Carolina 29503
(843) 669-2401

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

E. Butler McDonald,)

Petitioner,)

vs.)

Wilkins Lee Byrd, Kay R. Larsen, John)

Norwood Klettner, Laura K. Bynum,)

Ann B. Crump, Robert Larsen,)

Joan Rutledge Gary, John Robert Stanton,)

John Robert Stanton, Charles E. Stanton,)

Byrd L. Thomson, and John Doe and)

Richard Roe as Representatives of all)

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S.J. Klettner, Sr., Susan Wilkins Byrd,)

Mary M. Byrd, Joseph D. Rutledge, John R.)

Larsen, Charles E. Byrd, Jewel Butler)

Byrd, Wilkins Norwood Byrd, Ruth Byrd,)

Marian Moore Byrd, Mary K. Stanton,)

S.J. Klettner, Jr., Mary R. Larsen, John)

Rutledge Gary, Jewel Elizabeth Byrd, or)

any other person, any unknown infants or)

persons under disability or persons in the)

military service designated in a class as)

Richard Roe, as to the property described)

in the Petition herein and designated as Tax)

Map No. 076-00-02-004,)

Respondents.)

IN THE PROBATE COURT

DARLINGTON COUNTY

C.A. NO.: 79-26

**REPLY TO
ANSWER AND COUNTERCLAIMS
AND COUNTERCLAIM**

Your Petitioner, hereby responding to the Answer and Counterclaims of the Respondents would respectfully show to the Court as follows:

**AS TO THE FIRST CAUSE OF ACTION
(To Determine Heirs)**

1. Paragraphs 1 through 10 were responsive to the Petitioner's allegations and, therefore, need no further response.

AS TO THE SECOND CAUSE OF ACTION
(For the Partition of Real Property)

2. Paragraphs 11 through 17 were responsive to the Petitioners original allegations and, therefore, need no further response.

ANSWER TO RESPONDENTS' FIRST COUNTERCLAIM
(For the Public Sale of Additional Property
Formerly Known as the C. E. Byrd Farm)

3. Petitioner hereby alleges and reiterates the allegations set forth in Paragraphs 1 and 2 as if set forth herein verbatim.

4. Petitioner admits the allegations contained in Paragraph 19.

5. Petitioner denies the allegations contained in Paragraph 20 and demands strict proof thereof; and further alleges the Court of Common Pleas has jurisdiction over this matter pursuant to S.C. Code Ann. Section 15-61-50(1976) and that there is no pending action in the Darlington County Probate Court dealing with this particular property.

6. Petitioner denies the allegations in Paragraph 21 and demands strict proof thereof.

ANSWER TO RESPONDENTS' FIRST COUNTERCLAIM
(Breach of Fiduciary Duty)

7. Petitioner hereby alleges and reiterates the allegations set forth in Paragraphs 1 through 6 as if set forth herein verbatim.

8. Petitioner admits so much of Paragraph 23 as states that E. Butler McDonald currently serves as the sole Personal Representative of the Jewel Butler Byrd Estate. However, originally Gussie Butler, H.P. Butler, and Eloise Butler McDonald all of whom are now deceased, also served as Co-Personal Representatives.

9. Petitioner admits the allegations contained in Paragraphs 24 through 26.

10. Petitioner admits the allegations of Paragraph 27.

11. Petitioner denies the allegations in Paragraph 28 insomuch as they allege that the Respondent Wilkins L. Byrd had no notice of proceeds being deposited into the Jewel Elizabeth Byrd Estate. Your Petitioner further denies that placing the funds belonging to the Estate of Jewel Elizabeth Byrd into an account in the name of the Estate of Jewel Elizabeth Byrd could be co-mingling of said funds and demands strict proof thereof.

12. Petitioner denies the allegations set forth in Paragraph 29 and would allege that in spite of at least three (3) attempts to get the Respondent Wilkins L. Byrd to sign a signature card since he was a Co-Administrator, Wilkins L. Byrd has to date failed and refused to do so. Since no signature card has ever been filed with the bank, the proceeds could not, nor can they to this date be distributed as a result of Wilkins L. Byrd's failure to cooperate.

13. Petitioner denies the allegations set forth in Paragraph 30. CHECK ON THIS.

14. Petitioner denies so much of the allegations in Paragraph 31 as state that the Petitioner has breached his fiduciary duties.

ANSWER TO THIRD COUNTERCLAIM
(Accounting)

15. Petitioner hereby alleges and reiterates the allegations set forth in Paragraphs 1 through 14 as if set forth herein verbatim.

16. Petitioner denies the allegations set forth in Paragraphs 33 and 34 and demands strict proof thereof.

COUNTERCLAIM AGAINST WILKINS LEE BYRD

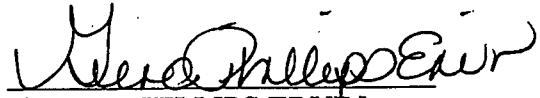
17. The Petitioner, E. Butler McDonald, hereby alleges and reiterates the allegations alleged set forth in Paragraphs 1 through 16 above as if set forth herein verbatim.

18. The Petitioner, E. Butler McDonald, as Co-Personal Representative and an heir of S.W. Byrd seeks and is entitled to a full and complete accounting from Wilkins Lee Byrd with respect to Mr. Byrd's activities regarding the S.W. Byrd property.

WHEREFORE, having fully replied to Respondents' Answer and Counterclaims, Petitioner requests this Honorable Court:

- a. Determine the heirs of S. W. Byrd and the percentage of ownership of each.
- b. That the Court declare those heirs are the owners in fee simple of the property described in the Petition, declare those heirs are entitled to quiet and peaceful possession of the property described herein and that no other individual other than those heirs have any estate, right, title, lien, or interest in or to the property or any part thereof; and that the title to the property be quieted to the heirs of S. W. Byrd as determined by this Court.
- c. That the Court order the partition of the property described in the original Petition either in kind or by public sale according to the respective rights and interests of the parties hereto or, if more equitable, the sale of the property and the division of the proceeds between the parties according to their respective interests;
- d. For reasonable expenses, including the costs of this action and reasonable attorney fees necessarily incurred by the Petitioner for the common benefit of the parties hereto and for the protection, confirmation, perfection of title, or setting the boundaries or making a survey of the property;
- e. For an Order dismissing the First, Second, and Third Counterclaims filed by the Respondents;
- f. For an Order directing Wilkins Lee Byrd to provide a complete accounting of his

management of the S.W. Byrd property, and for such other and further relief as this Court shall deem just and proper.



GENA PHILLIPS ERVIN
ORR, ELMORE & ERVIN, LLC
504 South Coit Street
P.O. Box 2527
Florence, South Carolina 29503
(843)667-6613

ATTORNEY FOR PETITIONER

Florence, South Carolina

July 31, 2012

STATE OF SOUTH CAROLINA
COUNTY OF: DARLINGTON
IN THE MATTER OF: S. W. BYRD

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IN THE PROBATE COURT
PROOF OF DELIVERY

CASE NUMBER: 79-26

On the 1st day of August, 2012, I mailed or delivered the following document, Reply to Answer and Counterclaims and Counterclaim

- ☐ A copy of which is attached hereto and incorporated herein, or
☒ The original of which is on file with the court and incorporated herein,

Delivery was accomplished by the following method (check appropriate box):

- ☐ personal delivery ☒ ordinary first class mail
☐ certified mail ☐ registered mail

to each of the following persons at the address shown:

NAME	ADDRESS
All Respondents	c/o Brown W. Johnson, PO Box 1865, Florence, SC 29503
Cely Anne Baker Brigman	PO Box 1871, Florence, SC 29503

SWORN to before me this 1st day of
August, 2012

Susanne W. Pelt

Notary Public for South Carolina

My Commission Expires: 07-31-2019

Signature: Gena Phillips Ervin

Name: Gena Phillips Ervin

Address: PO Box 2527

Florence, SC 29503-2527

Telephone (O): (843) 667-6613

(H):

E-mail: gpe@orrfirm.com

Signature:

Name:

Address:

Telephone (O):

(H):

E-mail:

) IN THE PROBATE COURT

) DARLINGTON COUNTY

) C.A. NO. 2012-ES-16-79026

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FD-36

8. Admit the allegations contained in paragraph 8.
9. Admit the allegations contained in paragraph 9.
10. Admit the allegations contained in paragraph 10.

AS TO THE SECOND CAUSE OF ACTION
(For the Partition of Real Estate)

11. Admit and/or deny the allegations contained in paragraph 11 as alleged above.
12. Admit the allegations contained in paragraph 12.
13. Admit the allegations contained in paragraph 13.
14. Admit the allegations contained in paragraph 14 and further allege partition by allotment is practical and expedient and in the best interest of all parties.
15. Admit the allegations contained in paragraph 15.
16. Admit the allegations contained in paragraph 16.
17. Deny the allegations contained in paragraph 17.

FURTHER ANSWERING THE PETITION OF THE PETITIONER AND BY
WAY OF COUNTERCLAIM, THE RESPONDENTS ALLEGE:

FOR A FIRST COUNTERCLAIM
(To Determine Heirs)

18. The Petitioner is a resident of Camilla, Georgia.
19. Upon information and belief, the Respondent Wilkins Lee Byrd is a resident of Aiken County, South Carolina; the Respondent Kay R. Larsen is a resident of Vero Beach, Florida; the Respondent John Klettner is a resident of Memphis, Tennessee; the Respondent Laura K. Bynum is a resident of Atlanta, Georgia; the Respondent Ann B. Crump is a

resident of Marietta, Georgia; the Respondent Robert Larsen is a resident of Orange Park, Florida; the Respondent Joan Rutledge Gary is a resident of Bluffton, South Carolina; the Respondents John Robert Stanton and Charles E. Stanton are residents of Baton Rouge, Louisiana; and the Respondent, Byrd L. Thomson is a resident of Charlotte, North Carolina.

20. C. E. Byrd died on October 17, 1961 while a resident of Darlington County, South Carolina. His Will was probated in the Darlington County Probate Office. At the time of his death, C. E. Byrd's heirs under his Will were his wife Jewel Butler Byrd and his daughter Jewel Elizabeth Byrd.

21. At the time of C. E. Byrd's death, C. E. Byrd owned a one-hundred percent (100%) interest in the following described real estate:

All that certain parcel or tract of land in Darlington County, South Carolina, containing two hundred eighty two and 47/100 (282.47) acres; bounded now or formerly as follows: On the North by Horse Pen Branch; on the East by the run of Little Boggy Swamp; on the South by land of the Estate of W. M. Byrd, and on the West in part by land of Hugh Segars and in part by land of the Estate of S. W. Bryd, as will more fully appear by reference to plat thereof made by T. E. Wilson, C. E., on February 23, 1934, and recorded in Plat Book 18, at page 97. Reference being made to said plat for a more complete and accurate description of said property. This being the same property conveyed to C. E. Byrd by deed of Anna Margaret Nettles Ray recorded November 23, 1957, in Book 416, page 459 in the office of the Clerk of Court for Darlington County.

LESS AND EXCEPTING THEREFROM: Property conveyed to Milton L and Cora Lee Goodson in Deed 475, page 436; and Deed 494, page 236; and (2.) Property conveyed to Joel Lee Howle in Deed 497 at page 35; and Deed 640, page 64,. Said properties being shown as Lots A, B, C and D on Plat 51, at page 51 recorded in the office of the Clerk of Court for Darlington County.

Tax Map No. : 97-00-01-055

22. Jewel Elizabeth Byrd died intestate, leaving as heirs at the time of her death the Petitioner and the Respondents listed above, and creating the possibility of others as heirs-at-law to the property described above; upon information and belief, these unknown heirs may have died without estates being probated in Darlington County, South Carolina, or in any other state.

23. The Probate Court for Darlington County has subject matter jurisdiction of these proceedings pursuant to S.C. Code Ann. §62-1-302(a)(1), 1967, as amended.

24. Venue is properly vested in Darlington County pursuant to S.C. Code Ann. §62-1-302(a)(1) 1976 as amended.

25. Upon information and belief, the respondents are entitled to an Order of this Court determining the heirs of C. E. Byrd and declaring those heirs as owners in fee simply, and declaring those heirs as entitled to quiet and peaceful possession of the real estate described herein; and no other individuals other than the heirs of C. E. Byrd have any estate, right, title, lien or interest in or to the property or any part thereof, and that the title to the property be quieted to the heirs of C. E. Byrd as determined by the Court.

FOR A SECOND COUNTERCLAIM

(For the public sale of additional property formerly known as the C. E. Byrd farm)

25. Respondents hereby allege and reiterate the allegations alleged above as if set forth herein verbatim.

26. The Petitioner and the Respondents also have an undivided interest in the C.

E. Byrd farm described as follows:

All that certain parcel or tract of land in Darlington County, South Carolina, containing two hundred eighty two and 47/100 (282.47) acres; bounded now or formerly as follows: On the North by Horse Pen Branch; on the East by the run of Little Boggy Swamp; on the South by land of the Estate of W. M. Byrd, and on the West in part by land of Hugh Segars and in part by land of the Estate of S. W. Bryd, as will more fully appear by reference to plat thereof made by T. E. Wilson, C. E., on February 23, 1934, and recorded in Plat Book 18, at page 97. Reference being made to said plat for a more complete and accurate description of said property. This being the same property conveyed to C. E. Byrd by deed of Anna Margaret Nettles Ray recorded November 23, 1957, in Book 416, page 459 in the office of the Clerk of Court for Darlington County.

LESS AND EXCEPTING THEREFROM: Property conveyed to Milton L and Cora Lee Goodson in Deed 475, page 436; and Deed 494, page 236; and (2.) Property conveyed to Joel Lee Howle in Deed 497 at page 35; and Deed 640, page 64,. Said properties being shown as Lots A, B, C and D on Plat 51, at page 51 recorded in the office of the Clerk of Court for Darlington County.

Tax Map No. : 97-00-01-055

27. The Respondents seek the Partition of the above-described property among the co-owners in accordance with their respective interest.

28. The Respondents are informed and believe that partition by allotment is not practical or expedient because of limited road footage and since the value and marketability of timber on the smaller parcels would not equal an heir's fractional timber value if the whole timber stand were sold together; therefore, respondents seek partition by public sale.

29. The Respondents seek a determination from this court as to the best interest of the parties regarding partition by public sale.

30. The Respondents are further informed and believe, that pursuant to S.C. Code Ann. §15-61-110 Respondents are entitled to reasonable attorney's fees and the cost of this action.

FOR A THIRD COUNTERCLAIM

(Accounting)

31. Respondents hereby allege and reiterate the allegations alleged above as if set forth herein verbatim.

32. Respondents seek and are entitled to a full and complete accounting from the Petitioner E. Butler McDonald of the C. E. Byrd farm and its timber/timber proceeds.

33. In particular, the Respondents seek an accounting regarding E. Butler McDonald's management for the C. E. Byrd farm and its timber/timber proceeds.

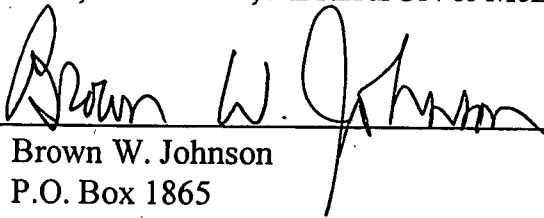
WHEREFORE, Respondents pray unto this Honorable Court for judgment in the following manner:

- a. The Court order partition by allotment in regards to the S. W. Byrd farm;
- b. The Court determine the heirs of C. E. Byrd and the percentage ownership of each;
- c. The Court declare those heirs are the owners in fee simple of the property described in the Petition, declare those heirs are entitled to quiet and peaceful possession of the property described herein, but no other individual other than those heirs have any estate, right, title, lien or interest in or to the property or any part thereof; and that the title to the property be quieted to the heirs of C. E. Byrd as determined by this Court;

- d. The Court order partition by public sale of the C. E. Byrd farm;
- e. For reasonable expenses, including the cost of this action and reasonable attorney's fees, necessary and incurred by the Petitioner for the common benefit of the parties hereto and for the protection, confirmation, or perfection of title, or setting boundaries, or making a survey of the property; and
- f. For such and further relief as this court shall deem just and proper.

CLARKE, JOHNSON, PETERSON & McLEAN, P.A.

By:



Brown W. Johnson
P.O. Box 1865
Florence, SC 29503
843-669-2401
bjohnson@cjpmlaw.com

Florence, South Carolina

December 14, 2012

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

E. Butler McDonald,

Petitioner,

vs.

Wilkins Lee Byrd, Kay R. Larsen, John
Norwood Klettner, Laura K. Bynum,
Ann B. Crump, Robert Larsen,
Joan Rutledge Gary, John Robert Stanton,
John Robert Stanton, Charles E. Stanton,
Byrd L. Thomson, and John Doe and
Richard Roe as Representatives of all
persons unknown claiming any right, title,
estate, interest in or lien upon the real estate
described in the Complaint herein, including
but not limited to any unknown owners,
unknown heirs, unknown devisees of S.W.
Byrd, Mary Moore Byrd, Etta B. Klettner,
S.J. Klettner, Sr., Susan Wilkins Byrd,
Mary M. Byrd, Joseph D. Rutledge, John R.
Larsen, Charles E. Byrd, Jewel Butler
Byrd, Wilkins Norwood Byrd, Ruth Byrd,
Marian Moore Byrd, Mary K. Stanton,
S.J. Klettner, Jr., Mary R. Larsen, John
Rutledge Gary, Jewel Elizabeth Byrd, or
any other person, any unknown infants or
persons under disability or persons in the
military service designated in a class as
Richard Roe, as to the property described
in the Petition herein and designated as Tax
Map No. 076-00-02-004,

Respondents.

IN THE PROBATE COURT
DARLINGTON COUNTY
C.A. NO.: 79-26

ORDER

MARY R. LARSON
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

2012 NOV -5 AM 8:46

FILED

This matter came before me on the filing of a Motion by Gena Phillips Ervin as attorney
for E. Butler McDonald. The Motion requests this Court issue an Order providing notice as
required by S. C. Code Ann. § 52-61-25(A). Based on the Petition, I find the manner for
providing notice of Right of First Refusal requested by the Petitioner is fair and equitable to all

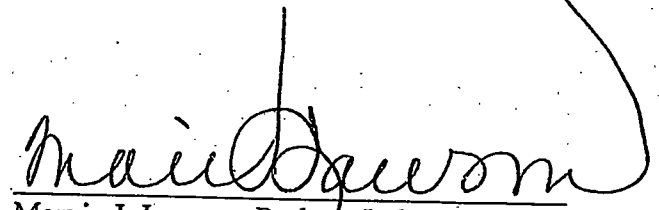
MDL

TRUE COPY
Mary R. Larson
JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

parties and therefore, comports with *Zimmerman v. Marsh*, 365 S. C. 383, 386, 618 S.E. 2nd 898, 900 (2005).

It is therefore, ORDERED, ADJUDGED, AND DECREED that the Petitioner shall send the notice of Right of First Refusal to all interested parties in this matter who shall have until November 21, 2012 to notify Gena Phillips Ervin as Attorney for the Petitioner if they are interested in purchasing the property that is the subject of this action.

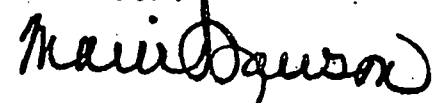
IT IS SO ORDERED!


Marvin I. Lawson, Probate Judge
Darlington County

This 5 of November, 2012

FILED
2012 NOV -5 AM 8:46
MARVIN I. LAWSON
JUDGE OF PROBATE
DARLINGTON COUNTY, SC

TRUE COPY


JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

ORR, ELMORE & ERVIN, LLC

ATTORNEYS AND COUNSELORS AT LAW

504 SOUTH COIT STREET

P.O. BOX 2527

FLORENCE, SOUTH CAROLINA 29503

LAWRENCE B. ORR
KATHY PRICE ELMORE
GENA PHILLIPS ERVIN
ASHLEY B. NANCE

TELEPHONE (843) 667-6613
FACSIMILE (843) 667-0340

November 8, 2012

Kay R. Larsen
4800 Bethel Creek Dr., Apt. 6
Vero Beach, FL 32963

RE: E. Butler McDonald vs. Wilkins Lee Byrd, et al
My File No.: 6434.001

Dear Mr. Larsen:

In April 2012 you were served with a copy of Summons, Lis Pendens, and Petition notifying you that the Petitioner, E. Butler McDonald, was seeking to determine the heirs of S.W. Byrd and a partition of certain real property of which you are a part owner.

If you are unclear what tract of land this suit covers, you may contact me or my assistant, Susanne at (843) 667-6613 and we will be more than happy to answer any questions you may have. South Carolina Code Ann. § 15-61-25 requires the Petitioner to notify you, as part owners, that you have the right to offer to buy the real property from all other owners. If you wish to make an offer for this real property, you must make that offer to me at the above address on or before November 21, 2012.

The property that is the subject of this action is described as follows:

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.

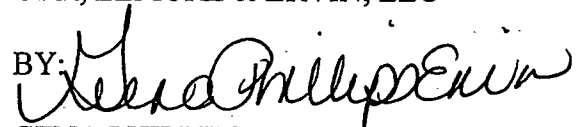
SAVING AND EXCEPTING THEREFROM: Deeds recorded in Book D30 at Page 56 and D311 at Page 101 in the Office of the Clerk of Court for Darlington County.

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

Sincerely,

ORR, ELMORE & ERVIN, LLC

BY:



GENA PHILLIPS ERVIN

GPE/swp
Enclosure

cc: E. Butler McDonald (w/enclosure)
Brown W. Johnson (w/enclosure)

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

E. Butler McDonald,

Petitioner,

vs.

Wilkins Lee Byrd, et al,

Respondents.

IN THE PROBATE COURT

DARLINGTON COUNTY

C.A. NO. 2012-ES-16-79026

**NOTICE AND MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
JURISDICTION**

TO: GENA PHILLIPS ERVIN, ESQUIRE, ATTORNEY FOR PETITIONER:

The Respondents, by and through their undersigned attorneys, hereby moves this court for an Order dismissing the above referenced case for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure, and Section 62-3-911 of the S.C. Code of Laws, 1976.

This motion is based on the above statutes and the fact that the Estate of S. W. Byrd is closed.

CLARKE, JOHNSON, PETERSON & MCLEAN, P.A.

BROWN W. JOHNSON

Post Office Box 1865

Florence, South Carolina 29503

(843) 669-2401

Florence, South Carolina

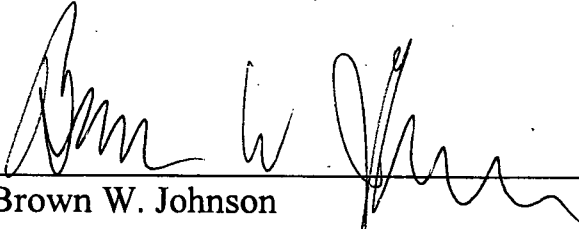
November 6th, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Notice and Motion to Dismiss for Lack of Subject Matter Jurisdiction has been served upon the following via first class mail, postage pre-paid this 8th day of November, 2012:

Gena Phillips Ervin
Orr, Elmore & Ervin, LLC
P.O. Box 2527
Florence, SC 29503

CLARKE, JOHNSON, PETERSON & MCLEAN, P.A.

A handwritten signature in black ink, appearing to read 'Brown W. Johnson', is written over a horizontal line.

Brown W. Johnson
Post Office Box 1865
Florence, South Carolina 29503
(843) 669-2401

) IN THE PROBATE COURT

) DARLINGTON COUNTY

) C.A. NO. 2012-ES-16-79026

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- (6) November 14, 2012 - letter from Johnson to Ervin;
- (7) November 26, 2012 - letter from Johnson to Ervin;
- (8) November 28, 2012 - letter from Johnson to Ervin;
- (9) November 30, 2012 (\$\$ excluded) - letter from Ervin to Johnson;
- (10) February 20, 2013 - letter from Johnson to Ervin;
- (11) March 5, 2013 - letter from Johnson to Ervin; and
- (12) March 11, 2013 - letter from Ervin to Johnson.

CLARKE, JOHNSON, PETERSON & MCLEAN, PA

5/

BROWN W. JOHNSON
Post Office Box 1865
Florence, South Carolina 29503
Attorney for Respondents

Florence, South Carolina

May 8, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)

E. Butler McDonald,)

Petitioner,)

vs.)

Wilkins Lee Byrd, Kay R. Larsen, John)

Norwood Klettner, Laura K. Bynum,)

Ann B. Crump, Robert Larsen,)

Joan Rutledge Gary, John Robert Stanton,)

John Robert Stanton, Charles E. Stanton,)

Byrd L. Thomson, and John Doe and)

Richard Roe as Representatives of all)

persons unknown claiming any right, title,)

estate, interest in or lien upon the real estate)

described in the Complaint herein, including)

but not limited to any unknown owners,)

unknown heirs, unknown devisees of S.W.)

Byrd, Mary Moore Byrd, Etta B. Klettner,)

S.J. Klettner, Sr., Susan Wilkins Byrd,)

Mary M. Byrd, Joseph D. Rutledge, John R.)

Larsen, Charles E. Byrd, Jewel Butler)

Byrd, Wilkins Norwood Byrd, Ruth Byrd,)

Marian Moore Byrd, Mary K. Stanton,)

S.J. Klettner, Jr., Mary R. Larsen, John)

Rutledge Gary, Jewel Elizabeth Byrd, or)

any other person, any unknown infants or)

persons under disability or persons in the)

military service designated in a class as)

Richard Roe, as to the property described)

in the Petition herein and designated as Tax)

Map No. 076-00-02-004,)

Respondents.)

IN THE PROBATE COURT

DARLINGTON COUNTY

C.A. NO.: 79-26

**PETITIONER'S RESPONSE
TO THE RESPONDENT'S REQUEST
TO ADMIT ¹_{2nd}**

TO: WILKINS LEE BYRD, et al., BY AND THROUGH HIS ATTORNEY, BROWN

W. JOHNSON

The Petitioner above by and through their undersigned attorney hereby answers the Respondents Second Request to Admit.

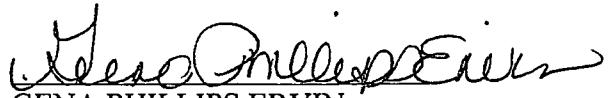
REQUEST

The attached and listed letters and e-mails are true and accurate copies of correspondence between Brown W. Johnson (Johnson), Attorney for the Respondents and Gena Phillips Ervin (Ervin), Attorney for the Petitioner and are admissible as exhibits in this case. The letters and e-mails include the following:

- (1) September 21, 2012-letter to Johnson from Gena;
- (2) September 27, 2012-letter from Ervin to Johnson;
- (3) November 1, 2012-letter from Johnson to Ervin;
- (4) November 8, 2012-letter from Ervin to Johnson;
- (5) November 9, 2012- letter from Johnson to Ervin;
- (6) November 14, 2012- letter from Johnson to Ervin;
- (7) November 26, 2012- letter from Johnson to Ervin;
- (8) November 28, 2012- letter from Johnson to Ervin;
- (9) November 30, 2012 (\$\$ excluded)- letter from Ervin to Johnson;
- (10) February 20, 2013-letter from Johnson to Ervin;
- (11) March 5, 2013- letter from Johnson to Ervin; and
- (12) March 11, 2013- letter from Ervin to Johnson.

Response: The Petitioner admits that the letters and e-mails above listed are true and accurate copies of correspondence between Brown and Ervin but denies that they are

admissible as exhibits in this case.



GENA PHILLIPS ERVIN
ORR, ELMORE & ERVIN, LLC
504 South Coit Street
P.O. Box 2527
Florence, South Carolina 29503
(843)667-6613

ATTORNEY FOR PETITIONER

Florence, South Carolina

May 10, 2013

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE PROBATE COURT
DARLINGTON COUNTY
C.A. NO. 2012-ES-16-79026

E. Butler McDonald,
Petitioner,

vs.

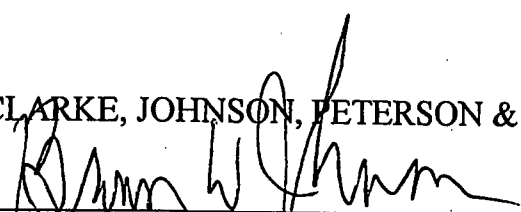
Wilkins Lee Byrd, et al,
Respondents.

**NOTICE AND MOTION FOR COURT
TO APPOINT APPRAISER**

TO: GENA PHILLIPS ERVIN, ESQUIRE, ATTORNEY FOR PETITIONER:

The Respondents, by and through their undersigned attorneys, hereby request the Court appoint a real estate appraiser to determine the value of the interest to be sold in these partition actions. This motion is made pursuant to §15-61-25(B), S.C. Code of Laws, 1976 and Respondents' contention the parties cannot reach an agreement as to the value of the property; and this Court should appoint an appraiser to determine the value of the interest of the property.

CLARKE, JOHNSON, PETERSON & MCLEAN, P.A.


BROWN W. JOHNSON
Post Office Box 1865
Florence, South Carolina 29503
(843) 669-2401

Florence, South Carolina

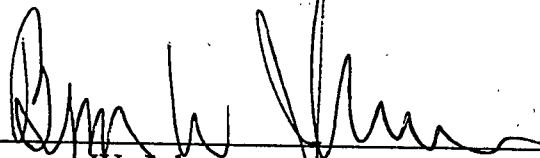
April 16, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Notice and Motion for court to Appoint Appraiser by Court has been served upon the following via first class mail, postage pre-paid this 16 day of April, 2013:

Gena Phillips Ervin
Orr, Elmore & Ervin, LLC
Post Office Box 2527
Florence, South Carolina 29503

CLARKE, JOHNSON, PETERSON & MCLEAN, P.A.



Brown W. Johnson
Post Office Box 1865
Florence, South Carolina 29503
(843) 669-2401

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

E. Butler McDonald,

Petitioner,

vs.

Wilkins Lee Byrd, Kay R. Larsen, John
Norwood Klettner, Laura K. Bynum,
Ann B. Crump, Robert Larsen,
Joan Rutledge Gary, John Robert Stanton,
John Robert Stanton, Charles E. Stanton,
Byrd L. Thomson, and John Doe and
Richard Roe as Representatives of all
persons unknown claiming any right, title,
estate, interest in or lien upon the real estate
described in the Complaint herein, including
but not limited to any unknown owners,
unknown heirs, unknown devisees of S.W.
Byrd, Mary Moore Byrd, Etta B. Klettner,
S.J. Klettner, Sr., Susan Wilkins Byrd,
Mary M. Byrd, Joseph D. Rutledge, John R.
Larsen, Charles E. Byrd, Jewel Butler
Byrd, Wilkins Norwood Byrd, Ruth Byrd,
Marian Moore Byrd, Mary K. Stanton,
S.J. Klettner, Jr., Mary R. Larsen, John
Rutledge Gary, Jewel Elizabeth Byrd, or
any other person, any unknown infants or
persons under disability or persons in the
military service designated in a class as
Richard Roe, as to the property described
in the Petition herein and designated as Tax
Map No. 076-00-02-004,

Respondents.

IN THE PROBATE COURT
DARLINGTON COUNTY
C.A. NO.: 79-26

ORDER

2013 MAY 13 PM 2:49
JUDGE
DARLINGTON COUNTY

FILED

This matter came before me pursuant to filing a Summons, Lis Pendens and Petition by E. Butler McDonald on April 18, 2012, in the above-mentioned matter. The Respondent's filed an Answer and Counterclaim dated June 28, 2012. A reply to the Counterclaim was filed by the Petitioner on August 2, 2012.

MDL
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TRUE COPY
Mari D. Gerson
JUDGE OF PROBATE

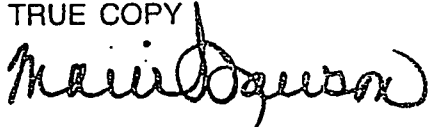
A hearing on the matter was held on Wednesday, December 5, 2012, at 11:00 a.m. in the Darlington County Probate Court. Present at the hearing were the Petitioner, E. Butler McDonald, Gena Phillips Ervin, his attorney of record, Wilkins Lee Byrd, Ann B. Crump, Brown W. Johnson their attorney of record 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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TRUE COPY

JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

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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Marie D. Quinn

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:

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JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

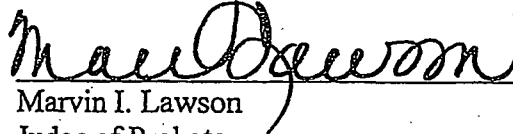
- a) Wilkins L. Byrd, 32.67 percent
- b) Joan Rutledge Gary, 17.35 %
- c) Robert Larsen, 10.21 %
- d) Robert Stanton, 8.16 %
- e) C. E. Stanton, 8.16 %
- f) Laura Klettner Bynum, 7.14 %
- g) John Norwood Klettner, 7.14 %
- h) Byrd Thomson, 5.10 %
- i) Ann Crump, 2.04 %
- j) Butler McDonald, 2.04 %

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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
April 13, 2013.

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JUDGE OF PROBATE
DARLINGTON COUNTY, S.C.

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**

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

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Jan 1

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.

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.

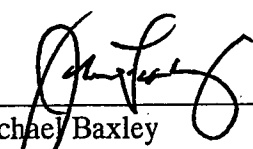
In their appeal, Appellants raised numerous issues, claiming the Probate Court erred by: (1) denying Appellants' right to purchase Respondent's minority interest of approximately 2% in the S.W. Byrd Farm as provided by S.C. Code Ann. § 15-61-25; (2) holding that partition of the property by allotment 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.

Jan 2
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.



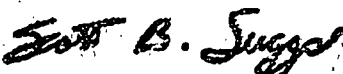
J. Michael Baxley
Presiding Circuit Court Judge
Fourth Judicial Circuit

February 17, 2014

Hartsville, South Carolina

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

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

1 STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
2 COUNTY OF DARLINGTON) CASE NO.: 79-26

3
4 IN THE ESTATE OF:)
5 S. W. BYRD:) PROBATE HEARING
6)

7 A Hearing before The Honorable Marvin I. Lawson,
8 Probate Judge for Darlington County, in the above
9 styled case, was held in Darlington, South Carolina, on
10 the 5th day of December, 2012, commencing at 2:10 p.m.
11

12
13
14 APPEARANCES OF COUNSEL

15 FOR THE PETITIONER
16 BUTLER McDONALD: GENA PHILLIPS ERVIN, ESQUIRE
17 FOR: BROWN W. JOHNSON, ESQUIRE
18 AS GUARDIAN AD LITEM: CELY A. B. BRIGMAN, ESQUIRE
19
20

21
22
23 ADVANTAGE COURT REPORTING
24 240 Muscovy Trail
25 Sumter, S. C. 29150
PHONE: 803-469-2202

1 JUDGE: All right. We are here in the Estate of
2 S. W. Byrd, 79-26. We have Ms. Gena Ervin here and Mr.
3 Brown Johnson. Will you each put on the record who you
4 represent please...

5 MS. ERVIN: Yes, Your Honor.

6 JUDGE: ...and let me not forget Ms. Cely Brigman.

7 MS. ERVIN: I'm Gena Ervin, Your Honor, and I
8 represent Butler McDonald, the Petitioner in -- in this
9 case.

10 JUDGE: All right. Mr. Johnson?

11 MR. JOHNSON: May it please the Court, Your Honor.

12 JUDGE: Certainly.

13 MR. JOHNSON: I'm Brown Johnson. I represent
14 Wilkins Bryd and all of the other Respondents in the
15 Partition Action.

16 JUDGE: All right. And Ms. Brigman is the
17 Guardian Ad Litem?

18 MS. BRIGMAN: I am.

19 JUDGE: All right. Ms. Ervin, Mr. Johnson has
20 filed a Motion that I believe would need to be taken up
21 before we can move forward with that. Would that be
22 your...

23 MS. ERVIN: Yes, Your Honor.

24 JUDGE: Mr. Johnson, I'll be glad to hear your
25 Motion.

1 MR. JOHNSON: Your Honor, first of all I would to
2 see if we could reach an agreement today, with Ms.
3 Ervin and the Court, on what we are to decide today, if
4 anything. First of all...

5 JUDGE: I sure hope that it'll be something all of
6 this time.

7 ALL: (CHUCKLES)

8 JUDGE: I don't mean that wrong. Go right ahead.

9 MR. JOHNSON: We -- our contention -- and I had
10 tried -- I had asked to postpone the hearing, in hopes
11 that we could agree on two (2) things: An appraiser to
12 appraise the real estate; and someone to do timber
13 cruise. I we got a notice from the Petitioner, through
14 Ms. Ervin, of a First Right of Refusal; but, Mr.
15 McDonald also owns a small portion of the property.
16 What we would like to do -- and what I think the
17 Statutes allow us to -- first of all have the property
18 and the timber appraised; and then see if we can
19 purchase his interest; and we do not think that the
20 Petitioner has properly complied with the Statute
21 regarding Right of First Refusal; because, they simply
22 say, "You have a right..." -- their contention is, "You
23 have a right to purchase the property outright." We
24 don't want to purchase the property outright. We want
25 to purchase his interest and in order to do that we

1 need an appraiser and a timber cruise. So, I
2 respectively submit that we decide on an appraiser and
3 a timber cruise; adjourn this hearing, and then see if
4 the Parties can reach an agreement regarding Mr.
5 McDonald's interest in the property.

6 JUDGE: Ms. Ervin?

7 MS. ERVIN: Your Honor, if you'd look, the file
8 will show that on November 8th that I served on
9 everybody the Order and letter to notify Tenants in
10 Common the right of First Refusal. They had -- the
11 Statute requires that they make a offer ten (10) days
12 before the hearing; they had until November 21st. No
13 one (1) has actually made an offer. I don't believe
14 that my client should -- plus they want client's share
15 in the expense of the appraisal and the cruise. They
16 are the ones who are interested in, perhaps, purchasing
17 a piece of the property. I don't believe that they
18 have complied with the Statute, nor that we should have
19 to pay cost to help them figure out what they want to
20 offer.

21 MR. JOHNSON: Your Honor, how should I -- we
22 figure out what we want to offer without an appraisal?
23 It seems premature. If we have the Right to -- of First
24 Refusal, it seems to me that they should give us a
25 purchase price. What will it take to buy Mr.

1 McDonald's interest? And neither Party -- neither
2 side, Petitioner or Respondents, can do anything until
3 we have an actual appraisal and a timber cruise to do
4 that. We'll be happy to make them an offer, if we have
5 some basis.

6 JUDGE: Tell me this then, Mr. Johnson -- I'm not
7 saying that I'm going to do it, of course; but, how
8 long are you talking about to get all of this done?

9 MR. JOHNSON: Two (2) weeks, three (3) weeks.

10 JUDGE: My goodness. Well thank goodness things
11 are moving with lightning speed around here. It's
12 better than usual. Ms. Ervin?

13 MS. ERVIN: Your Honor, they could have done that
14 in the last three (3) weeks; and if you'd look at
15 Section 62-39-11, it provides for if you can't agree --
16 you know, if they had made an offer and had turned it
17 down because we could not agree on a value; then, the
18 Court could have -- could have -- I'm sorry. Then the
19 Court would appraise -- would appoint more than one (1)
20 appraiser and tax the cost to the person seeking to
21 purchase the property. It's on 15-61-25.

22 JUDGE: 15-61-25.

23 MS. ERVIN: But, they've had the three (3) weeks.
24 They could have gotten the appraisal, they just did
25 not, and no one (1) has made a written offer to

1 purchase.

2 MR. JOHNSON: Your Honor, we did submit a written
3 offer, by the way of a trade. The C. E. Byrd, another
4 piece, or another tract of land is owned the same
5 Parties, in different shares, is also involved in this
6 case, by way of Counter Claim.

7 JUDGE: Uh-huh.

8 MR. JOHNSON: So, we have Counterclaimed to
9 partition or somehow resolve -- and we propose a trade
10 of one (1) interest for another interest, which was
11 refused. So -- so, now we've got to determine a price
12 -- a value of the property; in effect, find out what
13 it's worth and then we will try to deal with Mr.
14 McDonald's interest.

15 JUDGE: Let me ask you this, Mr. Johnson -- now, I
16 might be wrong in this; but you know, often times I see
17 clients come into the Court here, and they're ignorant
18 of the Court and ignorant of the process, ignorant of
19 business, ignorant of everything it seem; but yet, life
20 goes on. But here we've got upstanding people, with
21 plenty of sense, that knows about business; and you are
22 actually trying to tell me that they don't know what
23 the thing is worth?

24 MR. JOHNSON: I think, to accurately -- in these
25 times, when the value all real estate has changed in

1 the last four (4) or five (5) years -- I mean,
2 certainly, you know, we could come up with something;
3 but, I don't think that they're going to agree to it
4 without an appraisal; and I have suggested the J. B.
5 Lofton Company, in Cheraw; which was highly recommended
6 my me -- I frankly don't know Mr. Lofton, and also Tin
7 Dargan (PHONETIC SPELLING) to do the timber cruise. I
8 think that they are in agreement with Mr. Dargan. They
9 don't know -- and I don't know if they researched Mr.
10 Lofton or not; but, it seems like, to me, that we need
11 that before we can accomplish anything; and they simply
12 refuse. They insisted on our paying, when we agreed to
13 try -- suggested that we trade interest in various
14 tracts of land -- or the two (2) tracts of land. They
15 suggest -- they insisted that we had to pay their
16 attorney's fees. I then said, "Let's see if we can
17 agree on an appraisal. We'll divide -- evenly divide
18 the cost; and then we will try to resolve this case."

19 JUDGE: Ms. Ervin?

20 MS. ERVIN: Your Honor, this case, as you well
21 know, has been going on for quite some time. It's --
22 I'm not even sure when Mr. Byrd died...

23 MR. McDONALD: Twenty-three (1923).

24 MS. ERVIN: 1923, and we are still fighting about
25 the same thing over and over; and I guess my client's

1 position is, "It's time to get something done." and...

2 MR. JOHNSON: Well, Your Honor, we will get
3 something done.

4 MS. ERVIN: ...not continuing to put things off.
5 I don't think that they complied with the Statute, and
6 we would request we be allowed to go -- and you need --
7 you have to determine the heirs before you can figure
8 whose percent -- what his percentage anyway. So, I
9 don't see that putting the hearing off is going to
10 (THEN STOPS SPEAKING)...

11 JUDGE: Mr. Johnson?

12 MR. JOHNSON: Could you bear with me one (1)
13 minute?

14 JUDGE: Sure. Sure.

15 (MR. JOHNSON SPEAKS TO HIS CLIENTS)

16 MR. JOHNSON: Your Honor...

17 JUDGE: Yes, Sir.

18 MR. JOHNSON: ...first of all my clients would
19 agree to bear the expense of the appraisal and the
20 timber cruise. Many of the owners live out of State.
21 They have no way of knowing the value of the property,
22 and so, I think it would benefit everyone; and we're
23 prepared to show -- we're ready to go forward to show
24 that Mr. McDonald is the problem, is the reason this
25 thing has dragged on for years; and we have brought

1 witnesses here, from out of State, to testify that he
2 is the one (1) that has prolonged everything.

3 JUDGE: All right. Let...

4 MR. JOHNSON: I might add to the Court -- mention
5 to the Court, we have also brought a Claim for Breach
6 of Fiduciary Duty, and -- and we want -- we would like
7 to discuss those issues here today. We can resolve --
8 we can certainly hear that.

9 JUDGE: Well, first of all, the only actual
10 written motion that I have is the Motion to Dismiss for
11 Lack of Subject Matter Jurisdiction...

12 MR. JOHNSON: Yes, Sir.

13 JUDGE: ...and if you all want to say anymore
14 about that, and let me rule on that one (1) first.

15 MS. ERVIN: Well, he's the Moving Party. (THEN
16 SPEAKING TO MR. JOHNSON) Go ahead.

17 MR. JOHNSON: (SPEAKS TO HIS CLIENTS) Your Honor,
18 we feel like this Court belongs -- the Court of Common
19 Pleas case belongs in the Court of Common Pleas
20 pursuant to Statute, and we would respectfully request
21 that the case be dismissed for Lack of Jurisdiction
22 pursuant to the Code Section that I cited in my Motion.

23 JUDGE: All right. Ms. Ervin?

24 MS. ERVIN: Your Honor, I would call the Court's
25 attention to Section 62-1-302a, which gives the Probate

1 Court exclusive jurisdiction to determine heirs, which
2 is our First Cause of Action. Once that was filed,
3 there was an active case in the Probate Court. They
4 could have removed it to Circuit Court within ten (10)
5 days if they wanted, after responses -- all responsive
6 pleadings were filed. They have missed that deadline.
7 In addition Section 62-3-911 gives the Court -- the
8 Probate Court the authority to partition in kind or by
9 sale; so, I think this Court definitely has
10 jurisdiction; venue was obviously proper because the --
11 at least on the S. W. Byrd property because it is in
12 Darlington County; and we would request that we be
13 allowed to continue, at least with the S. W. Byrd
14 property, Your Honor.

15 JUDGE: Mr. Johnson, anything else?

16 MR. JOHNSON: No, Your Honor. I would point out
17 again that the C. E. Byrd, although we have not
18 appointed a Guardian Ad Litem for the heirs -- or the
19 unknown heirs, is a part of this action. We have
20 Counterclaimed to partition that action; so, -- and we
21 would simply point that out to the Court. This case --
22 this estate -- the estate -- if I'm not mistaken, this
23 particular S. W. Byrd died in 1923 -- (STOPS SPEAKING
24 TO THE COURT AND STARTS CONFERRING WITH HIS CLIENT,
25 INAUDIBLE, AND THEN BEGINS SPEAKING TO THE COURT AGAIN)

1 -- the estate was closed in 1948.

2 JUDGE: Do we have -- I haven't ever seen an order
3 closing it. Do you all have such a thing?

4 MR. JOHNSON: Can -- can Mr. Byrd address the
5 answer to that question?

6 JUDGE: Well, no. You're the lawyer.

7 MR. JOHNSON: Yes, Sir. Your Honor, it -- my
8 understanding is that it was closed in 1948.

9 JUDGE: Let me -- I've not seen an order closing.
10 Now, if there is one (1), I'd like to see it. We have
11 about three (300) or four hundred (400) of these type
12 things that, under the old system, were just left
13 hanging and just hanging; and oh, it's a mess all the
14 time because everyone of these should have been brought
15 up under the new Probate Code 1984, '5, '6, '7,
16 somewhere along in there. But, because they hadn't
17 done to much in the Probate Court at that time, they
18 didn't bring a bunch of them up, three (300) or four
19 hundred (400) of them; so, that why we find ourselves
20 in these messes. But anyway, if you all have something
21 to show me where it's closed, I'd like to see it.

22 Mr. JOHNSON: I can't hand up anything, Your
23 Honor.

24 MS. ERVIN: Your Honor, I would just also argue
25 that even if it had been closed, our Petition to

1 Determine Heirs would have -- you've given it the same
2 file number, it would have reopened, or it appears to
3 have been reopened; and neither -- and I haven't seen
4 anything that would say that it's closed.

5 MR. JOHNSON: Your Honor, we think that we can
6 find an order in -- (STOPS SPEAKING TO THE COURT AND
7 STARTS CONFERRING WITH HIS CLIENT, INAUDIBLE, AND THEN
8 BEGINS SPEAKING TO THE COURT AGAIN) -- in S. W. Byrd's
9 Estate closing the file. (STARTS LOOKING AT A
10 DOCUMENT)

11 JUDGE: That it right there?

12 MR. JOHNSON: (STARTS APPROACHING THE BENCH)

13 JUDGE: Hold in abeyance one (1) minute and lets
14 see what we can find.

15 MR. JOHNSON: It's signed by the Court by the
16 Honorable Judge Fountain (PHONETIC SPELLING). It says,
17 "That the Petitioner is from henceforth and forever
18 discharged and dismissed from all liability as
19 Administrator of the foresaid..." (THEN HANDS THE
20 DOCUMENT TO THE JUDGE)

21 JUDGE: (LOOKS AT THE DOCUMENT) It didn't get
22 copied, but that's that. All right. Let me ask you
23 this; is there anything further? We'll get Ms. Ervin's
24 rebuttal as to that. Mr. Johnson?

25 MR. JOHNSON: Your Honor, since there's no open

1 estate, then I would respectively request that the case
2 be dismissed for lack of jurisdiction, pursuant to the
3 Court of Law 62-3-911.

4 JUDGE: What about that, Ms. Ervin?

5 MS. ERVIN: Your Honor, I would just repeat again
6 that 62-1-302a gives you exclusive jurisdiction to
7 determine heirs. Once you have jurisdiction over the
8 matter, which was properly done by, based upon his own
9 Code Section, you have the authority to partition
10 property.

11 JUDGE: Let me see one (1) thing, then we'll move
12 on. (REVIEWS SOMETHING, NOT VISIBLE)

13 MS. ERVIN: In addition, Your Honor, just judicial
14 economy would make sense. He -- what he's saying -- on
15 his argument we'd have to determine heirs and then file
16 a separate suit, in another Court, to partition the
17 property; which just involves multiple suits.

18 JUDGE: All right. Upon Ms. Ervin's argument, the
19 Motion to Dismiss is respectively denied and we're
20 going to move forward.

21 MR. JOHNSON: Your Honor, may I inquire; are we
22 moving forward on the issue of heirs?

23 JUDGE: (NODS HEAD) Heirs. Yes, Sir.

24 MR. JOHNSON: Anything else? About -- what about
25 attorney fees? They have asked for attorney fees.

1 JUDGE: Well, I'm just going to do heirs, and then
2 we're going to see how we go.
3 MR. JOHNSON: All right.
4 JUDGE: And then I'm going to see what we're going
5 to do on that.
6 MR. JOHNSON: All right.
7 JUDGE: Let's do heirs.
8 MS. ERVIN: Well, Your Honor, the -- the Petition
9 included determining heirs and a partition of property.
10 JUDGE: Yes.
11 MS. ERVIN: And that was filed...
12 JUDGE: Yes, Ma'am, I mean.
13 MS. ERVIN: ...in April of 2012. In April of 2000
14 -- April 26th, 2012 we made a motion for the
15 appointment of Guardian Ad Litem for those -- for John
16 Doe and Richard Roe, that order was granted on April
17 26th, and as a result, was published Notice in -- in
18 the newspaper. I believe you have a copy showing that
19 they have been properly noticed.
20 JUDGE: I do
21 MS. ERVIN: You also have an Answer of the
22 Guardian Ad Litem from -- that was filed September
23 28th, saying she had heard from no one. Then we had an
24 Answer and Counterclaim from the Respondents, and a
25 reply to the Answer and Counterclaim. And the

1 Petitioner made a motion for an order to notify tenants
2 in common the right of first refusal, and that was
3 filed November 5th; as well as your order allowing us,
4 to do so; and on November 8th, 2012, we sent the letter
5 out to everyone, giving them their right of first
6 refusal -- notifying them of their right of first
7 refusal. And I guess I will call at this time Butler
8 McDonald.

9 MS. BRIGMAN: If I could just put one thing on the
10 record.

11 JUDGE: Yes, Ma'am, Guardian Ad Litem.

12 MS. BRIGMAN: As Ms. Ervin stated, I have not
13 received notice or been contacted by anybody in regards
14 to the Estate of S. W. Byrd. The first purpose of
15 going forward today, it is my understanding that we are
16 dealing just with the petition on the Estate of S. W.
17 Byrd, and nothing to do with the Estate of C. E. Byrd.

18 JUDGE: That's true, at this time

19 MS. BRIGMAN: All right. Thank you, Sir.

20 JUDGE: Now, let me ask this -- it might just be
21 me, but I don't see -- and it might be because of my
22 staple or whatever -- any answer of the Guardian Ad
23 Litem in here.

24 MS. ERVIN: I have a clocked copy, Your Honor
25 (HANDS UP A DOCUMENT).

1 JUDGE: Well, let's trust it's in here then. It
2 might have been put in this other. (LOOKS THROUGH HIS
3 FILE) The 28th. Hold one (1) minute. My apologies,
4 it's in here. Here's your copy, Ms. Ervin (HANDS
5 DOCUMENT BACK TO MS. ERVIN).

6 MS. ERVIN: Thank you.

7 JUDGE: All right (INDICATES FOR MS. ERVIN TO
8 PROCEED).

9 MS. ERVIN: I call Butler McDonald.

10 MR. McDONALD: (APPROACHES THE WITNESS STAND)

11 JUDGE: (SPEAKING TO THE COURT REPORTER) If you
12 would just put the Bible over that way.

13 COURT REPORTER: (PLACES THE BIBLE IN IT'S NORMAL
14 PLACE)

15 JUDGE: That's fine. (THEN SPEAKING TO THE
16 WITNESS) Left hand on the Bible, and raise your right
17 hand please.

18 MR. McDONALD: (COMPLIES WITH INSTRUCTIONS)

19 JUDGE: Do you solemnly swear the testimony you
20 give the Court to be the truth, whole truth, and
21 nothing but the truth, so help you God?

22 MR. McDONALD: Yes, Sir.

23 JUDGE: All right. Full name and address for the
24 record please.

25 MR. McDONALD: (TAKES HIS PLACE ON THE WITNESS

1 STAND) Ershkin (PHONETIC SPELLING) Butler McDonald,
2 7275 Georgia Highway 97, Camilla, Georgia, 31730.

3 JUDGE: All right. The witness is ready, Ms.
4 Ervin.

5 MS. ERVIN: Okay.

6 QUESTIONS TO MR. McDONALD BY MS. ERVIN:

7 Q: Mr. Butler, we're here today -- we petitioned
8 to determine the heirs of the S. W. Byrd estate. Is
9 that correct?

10 A: That's what I understand.

11 Q: Can you tell us your relationship, or how you
12 fit in?

13 A: My Uncle was C. E. Byrd, which inherited part
14 of the S. W. Byrd Farm.

15 Q: And are you familiar with this -- with this
16 family?

17 A: Probably more than any of the other cousins.
18 Yes.

19 Q: Do you have any idea who S. W. Byrd -- who S.
20 W. Byrd and Mary Moore Byrd's children were?

21 A: By the chart. I knew some of them. I knew
22 my Uncle Ed. I guess. I remember Sue. I think Sue
23 lived in Hartsville. I might be wrong on where they
24 lived. I remember Wilkins' daddy. And I don't
25 remember...

1 Q: But to your knowledge, he was a child?

2 A: Right, that's what I understand, according to

3 the chart. I don't know the details on all that.

4 Q: Now, you mention the chart. Can you explain

5 this chart that you're holding to us and where it came

6 from?

7 A: This came from John Scott, who - John -- I

8 mean Robert Larsen got him to -- to do this chart; and

9 Wilkins and I, according to John -- there's letter from

10 John Scott, helped him do the thing. He got

11 information from me and from Wilkins. Wilkins knew all

12 of them -- all of them more than I did.

13 Q: All right.

14 A: Since this all happened, I -- I've learned a

15 lot about where they are and who they are.

16 Q: And in doing this, did he do research on S.

17 W. Byrd and his family?

18 A: I'm pretty -- I'm pretty sure that he did.

19 Q: And he was paid to attempt to determine the

20 heirs?

21 A: According to Robert Larsen, he was paid.

22 Q: Okay. And, based on the information you

23 have, in your opinion, is this a correct assessment of

24 the ownership interest in...

25 A: As far as I know. Yes, Ma'am.

1 Q: You haven't seen anything any different?
2 A: No. No different.
3 Q: Let me show you this letter from -- to Rob -
4 to Robert Larsen from John Scott. Are you familiar
5 with that?
6 A: Yes. Yes, Ma'am. I think I gave you a copy
7 of this.
8 Q: Did that come along with this chart?
9 A: Yes, Ma'am.
10 Q: Okay.
11 MR. JOHNSON: Your Honor, I respectfully object.
12 This is John Scott's letter. I'm not going to be able
13 to cross examine him today, he's not here. We weren't
14 notified that you intended to call John Scott. He's
15 basically testifying on something John Scott did.
16 JUDGE: He can testify of his own knowledge, if he
17 knows.
18 Q: To your knowledge, is this chart a correct
19 assessment of the heirs of S. W. Byrd and their
20 percentages?
21 A: As far as I know.
22 Q: Okay. And you have also requested the Court
23 partition the property. Is that correct?
24 A: Yes, Ma'am.
25 Q: In your opinion, is the property capable of

1 being divided in kinds, so that every person with an
2 interest gets a little piece?

3 A: I -- I don't think so.

4 Q: Okay.

5 A: I could be wrong, but I don't think so.

6 Q: And you would request that the - you're
7 requesting the court sell it?

8 A: I requested.

9 Q: So, you wish it to be done by public or
10 private sale, or do you care?

11 A: Public Sale...

12 Q: Public sale?

13 A: ...in front of the Courthouse.

14 Q: Okay. Since this chart was done, I note that
15 it was made assuming that John Larsen's father would
16 disclaim an interest, and that would be Kyle Larsen.
17 Is that correct?

18 A: Yes, Ma'am.

19 Q: Has that happened?

20 A: As far as I know, yes Ma'am. I think I gave
21 you a copy of that in.

22 Q: All right. I'll give you a copy of the
23 disclaimer from Kyle Larsen giving his interest -- and,
24 so, based on that, that would make, in your opinion,
25 this chart correct?

1 A: Yes, Ma'am.

2 Q: Do you know of any other individuals who

3 might have an interest in this property?

4 A: Not as I know of.

5 Q: Okay. That's all the questions I have for

6 him...

7 JUDGE: Mr. Johnson.

8 MS. ERVIN: ... for the moment.

9 QUESTIONS TO MR. McDONALD BY MR. JOHNSON:

10 Q: Mr. McDonald, you agree that Wilkins Byrd, as

11 a native of Darlington County, who grew up in -- in

12 Byrdtown; and knows these -- this family, and knows

13 this property ,and knows the heirs better than you.

14 You lived in Camilla. Is that correct?

15 A: I agree.

16 Q: You would agree with that?

17 A: Yes, Sir.

18 Q: Okay.

19 A: It's his Aunt.

20 COURT REPORTER: (SPEAKING TO THE WITNESS) Keep

21 your voice up, I'm having trouble hearing you.

22 A: Okay.

23 Q: And you would certainly agree that he does,

24 in fact, know more about the family, know who the

25 families are and the respective owners of the property,

1 Q: But you don't want to do that, do you?
2 A: (NO RESPONSE)
3 Q: That's not what you want to do, do you?
4 A: No, Sir. It needs to come to a head and --
5 and it's been -- it's been hanging too long. His --
6 his Uncle...
7 Q: Well, why can't...
8 A: ...his Uncle John -- his Uncle John Klettner,
9 (PHONETIC SPELLING) tried to do and couldn't get it
10 done and he - he...
11 Q: Well, why don't we just buy your interest?
12 We'd pay you in full for the property and -- based on a
13 -- an appraisal and a timber cruise?
14 A: Well, you know, I just don't think you could
15 do it; unless...
16 Q: You just want to disrupt things, don't you?
17 A: No, Sir.
18 Q: You just want to see how much aggravation,
19 how much problems you can cause?
20 MS. ERVIN: Your Honor, he's getting a little
21 personal, I would object.
22 MR. JOHNSON: Your Honor, they're personal. I'm
23 going to show a long history of this. This is part of
24 our case.
25 JUDGE: He may continue.

1 QUESTIONS BY MR. JOHNSON CONTINUES:

2 Q: Isn't it true, you're just trying to disrupt
3 everything?

4 A: No, Sir.

5 Q: You don't want your interest, you just want
6 to see how much trouble you can cause for the other
7 owners?

8 A: At one (1) time, when the Larsen brothers
9 wanted to get it done...

10 Q: Get? What do you mean "get it done"?

11 A: Get it sold. But now -- now, they have gone
12 and sided with Wilkins, and I don't know why; but
13 that's fine.

14 Q: Let me ask you this; would you allow us to
15 buy your interest in the property?

16 A: No. I don't think -- I don't think so. I
17 just think it needs...

18 Q: But why?

19 A: Because of the rest of...

20 Q: Why would...

21 A: ...the rest of the family -- I know Robert,
22 Robert Larsen and -- and Byrd Thompson, they want money
23 too. And -- and his -- his Aunt -- hold on now if I'm
24 thinking wrong. Jane Rutledge, has always gotten money
25 from -- from the S. W. Byrd Farm, and some of us hadn't

1 been -- some of the family hadn't been getting any and
2 -- but...

3 Q: Well, we -- we're offering to buy your
4 property, based on a -- a good appraisal, or -- or you
5 can get your own appraisal. We'll have the property
6 appraised and we will buy you out. And you oppose
7 that?

8 A: Right.

9 Q: And if these other parties want to do that,
10 they can come to us and we'll discuss that with them.
11 But, nobody has come forward; none of these cousins
12 that you mentioned say they want out.

13 A: At one (1) time they did.

14 Q: Well, they don't now. They can come to us,
15 or -- or come to me and be a part...

16 MS. ERVIN: Your Honor, I -- I just -- he's being
17 argumentative and it's really irrelevant.

18 MR. JOHNSON: Your Honor, just trying to show the
19 best way to resolve this conflict.

20 JUDGE: All right. (INDICATES FOR MR. JOHNSON TO
21 PROCEED)

22 QUESTIONS BY MR. JOHNSON CONTINUES:

23 Q: Now, Sir, I want to ask you -- ask you about
24 -- you have asked for attorney fees?

25 A: Yes.

1 Q: You have asked for attorney...

2 A: (NODS HEAD)

3 Q: You have asked that your attorney be paid by

4 the respondents?

5 A: Right.

6 MR. JOHNSON: Okay. Your Honor, may -- may I be

7 heard on the issue of attorney's fees?

8 JUDGE: Yes, Sir.

9 MR. JOHNSON: There -- there are two (2) statutes

10 -- two (2) provisions in our Code which would allow

11 attorney fees. In both cases, the Court is given

12 considerable discretion on awarding attorney fees, and

13 it's all based on equity; or based on what's fair and

14 reasonable; and I would respectfully submit that the

15 conduct of Mr. Wilkins has been un-equitable; has been

16 unfair; and he has prolonged the stress of owning this

17 property; and I would like to question him about

18 various matters; some of which don't involve this

19 particular estate, but certainly does; to show that he

20 -- his own conduct has been un-equitable, and unfair;

21 and he is the reason these problems have persisted for

22 years, and years, and years. May I pursue?

23 JUDGE: Yes, Sir. Now, we're not...

24 MS. ERVIN: Your Honor, I would object to his

25 being allowed to bring in things that are not relevant

1 to S. W. Byrd.

2 JUDGE: Well, you...

3 MR. JOHNSON: This is relevant...

4 JUDGE: Well, let me say about this now; I

5 understand where he's going, in that the conduct as to

6 whether I award certain attorney's fees can be looked

7 at; but - now, we're not going to go far a field; and

8 Ms. Ervin, you have certainly the right to object at

9 the right -- at certain times, and I'm not ready to go

10 far a field; but, he can...

11 MR. JOHNSON: It -- it -- it will all...

12 JUDGE: ...you understand what I'm saying, Mr.

13 Johnson?

14 MR. JOHNSON: Yes, Sir. Your Honor, I'll try to

15 confine it as much as possible.

16 QUESTIONS BY MR. JOHNSON CONTINUES:

17 Q: Mr. Byrd, I want to ask you, first of all,

18 what was your connection with -- let me show you this

19 chart. This is just a blowup (DISPLAYS A DOCUMENT TO

20 THE WITNESS).

21 MS. ERVIN: Is that on the S. W. Byrd? Could I

22 see it first please?

23 MR. JOHNSON: This is the -- S. W. Byrd Estate

24 (DISPLAYS THE DOCUMENT TO MS. ERVIN).

25 MS. ERVIN: Okay. Thank you.

1 QUESTIONS BY MR. JOHNSON CONTINUES:

2 Q: Let me see what -- I wish everybody could it
3 see it. But, you were involved in what -- can I refer
4 to her as Jewel Byrd, your Aunt Jewel?

5 A: Right. Aunt Jewel.

6 Q: And her daughter was Betty Byrd?

7 A: Right. Jewel is...

8 Q: Okay. You were involved in -- in both of
9 those estates?

10 A: Right. I'm the Executor.

11 Q: Executor of -- of which one (1)?

12 A: Jewel Butler Byrd.

13 Q: Jewel Butler Byrd, who was -- died, I think,
14 in 1977?

15 A: Right.

16 Q: And that estate is still -- there's still
17 litigation pending in that -- in that estate?

18 A: They're still waiting to sell it.

19 Q: Okay.

20 COURT REPORTER: (SPEAKING TO THE WITNESS AND
21 INDICATING FOR HIM TO SPEAK UP) Sir.

22 JUDGE: Talk loud. That won't pick you up
23 (SPEAKING ABOUT THE MICROPHONE). Everybody talk loud,
24 I'm kind of half deaf myself.

25 Q: So -- so she died in 1977, and you were the

1 Executor of the Jewel Butler Byrd Estate?

2 A: My Uncle and I were at the time.

3 Q: Okay. And his name was what?

4 A: H. P. Butler.

5 Q: And he is now deceased?

6 A: Right.

7 Q: All right, Sir. In 1977, after her death,

8 there was a safe deposit box at a bank there. Are you

9 familiar with that?

10 A: Which Byrd you talking about?

11 Q: Your Aunt Jewel.

12 A: You get the wrong...

13 Q: Oh. I'm sorry.

14 A: ...got the wrong one (1), I think it's got to

15 be Jewel Elizabeth Byrd.

16 Q: Pardon me. I'm sorry. That -- that was

17 Betty Byrd, my apologies.

18 A: Right. Right.

19 Q: There was a safe deposit box in the Betty

20 Byrd Estate, and you were the first - you were the

21 co-executor, with your Uncle -- who's the other fellow,

22 Wilkins or...

23 A: Are you talking about Jewel Elizabeth? Now,

24 you're getting mixed up I think, Sir.

25 Q: I'm talking about Betty Byrd.

1 A: That's right.

2 Q: Okay.

3 A: My -- my wife and I were guardians for Jewel

4 Elizabeth Byrd, Betty.

5 Q: Okay. And after her death, it was discovered

6 that there was a safe deposit box that she owned at the

7 time of her death.

8 A: Yeah. We knew it. That's right.

9 Q: Okay. And the box was opened on numerous

10 occasions by you?

11 A: Right, Sir.

12 Q: Okay. And Wilkins Byrd later became

13 co-executor of that -- of the Betty Byrd Estate?

14 A: That's true.

15 Q: And that was at the assistance of Penny

16 Crump, and others who wanted Wilkins involved?

17 A: (NO VERBAL RESPONSE, MISSED ANY GESTURE MADE)

18 Q: Did the -- by the way the safe deposit box

19 was at the Bank of Camilla?

20 A: That's true.

21 Q: And were you involved with the Bank of

22 Camilla?

23 A: I'm an officer of the Bank of Camilla.

24 Q: Okay. And didn't you state that the -- there

25 never was an inventory of the safe deposit box?

1 A: Right. I think that's right. We never did.
2 Wilkins wouldn't come down and inventory it; wouldn't
3 come down and open it; so, Michael Hall, who's the
4 attorney, has been down and opened it, and there wasn't
5 anything in there. Like I told him, there wasn't -- it
6 had a c -- we got a CD and two (2) checking accounts in
7 Jewel Elizabeth Byrd's Estate.

8 Q: But it was never inventoried; you never told
9 the heirs what was in that safe deposit box?

10 A: We -- we never opened it after -- we -- I --
11 I probably went in there one (1) time after that, but
12 that -- to put a CD or something in there, but the --
13 it's -- there was nothing in there, and Mr. Michael
14 Hall, the attorney in Albany, came and -- and got it --
15 got the -- opened it.

16 Q: You acknowledge there was some stock in that
17 safe deposit box, was there not?

18 A: No, Sir. At the time there wasn't.

19 Q: There was no stock in it?

20 A: No, Sir.

21 Q: And after...

22 A: I think I'm right, now.

23 Q: And you still have not accounted for that
24 stock, have you?

25 A: Yes Sir. The stock is accounted for.

1 Wilkins...

2 Q: What happened...

3 A: Wilkins Byrd got part of the money.

4 Q: Okay.

5 A. Twenty thousand dollars (\$20,000.00) and I

6 think. Ann Crump, that's sitting in here now, she got

7 twenty thousand dollars (\$20,000.00).

8 Q: Okay. Let me ask you about estate assets.

9 Your -- it was your responsibility to prepare an

10 inventory of the assets of the estate, both the Jewel

11 Byrd Estate and the Betty Byrd Estate. Is that

12 correct?

13 A: That's true.

14 Q: But you never provided an inventory of the

15 assets of either estate to the heirs?

16 A: We've got a -- I turned in to the Probate

17 Court the -- approximately how much, and I'm not -- I

18 hadn't got that with me. It's in the Probate Court of

19 Mitchell County. The stock, the real -- the real

20 estate value -- I mean, the real estate, and how many

21 acres, because I didn't know the values. The -- and

22 all the stock that Jewel Elizabeth -- Elizabeth Byrd

23 had.

24 Q: Betty Byrd?

25 A: Right.

1 Q: Okay. Can you refer to Betty Byrd and Jewel
2 Byrd; Jewel being the mother, and Betty being the
3 daughter?
4 A: Right.
5 Q: But -- but -- but you never...
6 MS. ERVIN: Your Honor, I just -- I don't see
7 anything relative at all.
8 JUDGE: Move on along with this, Mr. Johnson...
9 MS. ERVIN: I've gotten a ticket already.
10 JUDGE: ...what you talking to or about.
11 MR. JOHNSON: Okay.
12 QUESTIONS BY MR. JOHNSON CONTINUES:
13 Q: I want to simply submit to you, Mr. McDonald,
14 that you never provided an inventory, unless you've
15 done it in the last few weeks.
16 A: It is a -- it is a -- it's filed in the
17 Probate Court of Mitchell County Georgia, what Betty
18 Byrd had in her estate.
19 Q: When was that done?
20 A: Back in -- after she died.
21 Q: In 2003?
22 A: Three (2003) -- three (2003) or four (2004).
23 It's a file -- it's a file in the Courthouse.
24 Q: All right, Sir. Now...
25 A: The stock, because of the -- I wouldn't have

1 a value of the real estate, because she owned a -- the
2 part of the S. W. Byrd, and I didn't know what it was
3 worth, and I didn't know what the C. E. Byrd Estate
4 was; but far as assets, money, and stock...

5 Q: But not insurance? No insurance -- there was
6 no -- was there an insurance policy?

7 A: Insurance policy was there. That's true.

8 Q: Well, why didn't you mention it?

9 A: Because it was left to my Uncle, Penny
10 Crump's daddy, and myself.

11 Q: Okay. I want to ask you about that
12 insurance. In 1977, Betty Beth Byrd was declared
13 incompetent?

14 A: Yes, Sir. In what year, I don't know. I've
15 forgotten...

16 Q: About 1977.

17 A: ...because we -- no. It was '71.

18 Q: Okay. '71.

19 A: Because we moved her from -- Betty and my
20 Aunt lived here in Darlington; and my Aunt Jewel
21 started having hardened arteries, and we moved Betty
22 and Aunt Jewel down to my mother's and aunt's and -
23 place and her -- her home place.

24 Q: And you were involved in the proceedings to
25 have her declared incompetent?

1 A: With -- and my H -- and my Uncle H. P.
2 Butler.
3 Q: Yes, Sir. And you obtained a medical report
4 from a Doctor B. Shiver?
5 A: Michael -- yeah. Robert Shiver.
6 Q: Okay. And in that report it stated...
7 A: Right.
8 Q: ...or he stated, "Ms. Byrd is very ill, and
9 in my medical opinion, totally incapable of managing
10 her affairs." Do you remember that?
11 A: I don't remember it, but sir she -- she...
12 MS. ERVIN: Your Honor, what relevance is any of
13 this to the actions here today?
14 MR. JOHNSON: I -- I'm going to get right to it.
15 JUDGE: You hurry on to it.
16 MR. JOHNSON: (STARTS TO SPEAK TO THE WITNESS)
17 1977. Here's Mr. Shiver's report. (THEN STARTS
18 SPEAKING TO THE JUDGE) Your Honor, if you want to see
19 this, or -- or I'll admit it as an exhibit -- I will it
20 as an exhibit.
21 MS. ERVIN: I'd like to see it first, Your Honor.
22 I might object.
23 JUDGE: Certainly.
24 MR. JOHNSON: In his report, he stated that Ms.
25 Byrd was totally incapable of managing her business

1 affairs and she was declared incompetent, was she not?

2 A: That's what I -- yes.

3 Q: Okay. But in spite of that, in 1990, you

4 purchased a life insurance policy from Standard Life

5 listing Betty as the insured and listing yourself, and

6 H. P. Butler as the sole beneficiary. Is that correct?

7 A: I talked to my Uncle H. P., and he said that

8 he didn't believe they could get the policy. The guy

9 went to the hospital, talked to her, and far as I know

10 -- I know he did, I reckon, and got the policy, and he

11 and I agreed that we'd do -- we'd take it out.

12 Q: Okay. How did...

13 A: It was both of us.

14 Q: Okay. But, in spite of the fact that she'd

15 been declared incompetent for almost twenty (20) --

16 twenty (20) years before, she was able -- your

17 testimony, do I understand it, she was able to fill out

18 an application for insurance?

19 A: He went and did the application.

20 Q: Oh. You didn't do it?

21 A: No, Sir. I didn't go to the Court -- I

22 didn't go to the hospital. He went -- he...

23 Q: Who was -- who were the beneficiaries?

24 A: My -- H. -- my Uncle H. P. and I.

25 Q: Okay. You -- so -- and how was it paid for?

1 Eight (8)...

2 A: It was paid...

3 Q: ...or one (1) of the premiums...

4 A: It was paid out of Betty's account.

5 Q: Okay. So, you -- you were in charge of

6 her...

7 A: That's what -- that's what...

8 Q: ...you were her guardian...

9 A: ...but I had an uncle that was in charge of

10 it, too, at the time.

11 Q: I understand your uncle -- yeah. It was you

12 and your uncle...

13 A: Okay.

14 Q: ... purchased, with her money, a life

15 insurance policy, the one (1) premium here is eight

16 hundred and twenty-six dollars and twenty-four cents

17 (\$826.24), listing you as the beneficiary?

18 A: And H. P. Butler.

19 Q: That's right.

20 A: Okay.

21 Q: Okay. So, you're in charge of her, you took

22 her money, got a life insurance policy...

23 MS. ERVIN: Your Honor, I had it answered a

24 million times. I object.

25 JUDGE: Well -- well, move on to something else,

1 Mr. Johnson.

2 MR. JOHNSON: All right, Sir.

3 QUESTIONS BY MR. JOHNSON CONTINUES:

4 Q: You didn't include those proceeds in the
5 inventory, did you?

6 A: No, Sir. Because they was left -- it was left
7 to H. P. and I.

8 Q: Well -- well, tell us how -- how was that in
9 her benefit for her to pay money to insure you, or to
10 insure her life, with you as the beneficiary?

11 MS. ERVIN: Your Honor, we are not here...

12 Q: You're not contending that was in her...

13 MS. ERVIN: ...to retry her estate. They have
14 long since...

15 JUDGE: He can answer that quickly, and then we'll
16 move on to the next thing. Go right ahead, Mr.
17 Johnson, you can ask that again.

18 QUESTIONS BY MR. JOHNSON CONTINUES:

19 Q: So, you're the only -- you and your uncle were
20 the only ones that received benefits from those life --
21 that life insurance policy?

22 A: That's -- that is -- that was right when we
23 did it. That is -- that's true.

24 Q: Now, you don't contend that that was in your
25 wards best interest -- in Betty Byrd's best interest?

1 A: My uncle and I, at the time, I reckon we did
2 think about it, because he -- he laughed about it when
3 I told him that -- that -- I said, "I've got a guy that
4 wants to try to write an insurance policy on Betty."
5 He said, "Send her over there -- send him over there
6 to." And he went...

7 Q: You're not contending that was...

8 A: I didn't go. I didn't go when he was
9 there...

10 Q: ...in the best -- you -- well, you...

11 A: ...and I -- let me just mention another
12 thing.

13 Q: ...no. But you were the beneficiary.

14 JUDGE: Let me say this now; we -- that's been
15 asked and answered, and the gist is there; so, we'll
16 move on to the next thing.

17 MR. JOHNSON: Okay.

18 QUESTIONS BY MR. JOHNSON CONTINUES:

19 Q: I want to ask you about -- Betty did have
20 some stock in Sunoco?

21 A: That's true.

22 Q: And -- and -- and you -- you obtained that as
23 Personal Representative -- as Executor, you've got that
24 stock?

25 A: He and I -- he and I did it.

1 Q: Okay.

2 A: Wilkins Byrd.

3 Q: And -- and that stock was drawing a -- a

4 dividend, or paying dividend of three (3%) to four

5 percent (4%)?

6 A: I assume so.

7 Q: And you sold that stock?

8 A: Did we not? Wilkins Byrd and I sold the

9 stock.

10 Q: Okay. And what...

11 A: Because we were going to try to finish up and

12 get the estate done, but...

13 Q: Well, what did you do with the money?

14 A: We still got some. We've got some of the

15 money.

16 Q: What did you do with it?

17 A: We -- we got -- I think - (THEN LOOKS AT

18 SOMEONE ELSE AND STARTS TO ASK THEM) how many of us got

19 twenty thousand (\$20,000.00)...

20 Q: No. (INDICATING THAT HE MUST ANSWER WITHOUT

21 CONFERRING WITH SOMEONE ELSE)

22 A. I'm sorry. Twenty (\$20,000.00) -- let me

23 tell you, the Crumps got twenty thousand (\$20,000.00);

24 I got twenty thousand (\$20,000.00); the Stanton

25 brothers got twenty thousand (\$20,000.00); Joan and...

1 Q: Did -- did you put the money in the Camilla
2 Bank?
3 A: Yes, sir. We did.
4 Q: For how long was it there?
5 A: I can't -- I ain't got those details. I
6 couldn't tell you.
7 Q: Well, isn't it true that that stock...
8 A: And there's some - there's some still there.
9 Q: The stock...
10 A: It's a CD and -- and -- and some timber money
11 still there.
12 Q: The return on that stock was about one point
13 two five percent (1.25%); as opposed to three (3% to
14 four percent (4%) that the dividends at Sunoco was
15 paying for the stock?
16 A: That's probably true; but, don't forget, you
17 got a co-administrator that wanted to sell it, too. I
18 didn't have -- I didn't have the authority to sell it
19 all. Mr. Wilkins Byrd had the other half to sign, and
20 he signed it, and we sold it.
21 Q: There is still litigation going on in -- in
22 the Probate Court in Camilla over Betty Byrd's Estate?
23 A: Yes, Sir.
24 Q: And some of these things will be litigated?
25 Some of these issues?

1 A: That's -- that's right.

2 Q: Who is your attorney at the present time?

3 A: Michael Hall.

4 Q: Michael Hall?

5 A: (NODS HEAD)

6 Q: How many attorneys, since Betty Byrd's death,

7 have you gone through, or have you used?

8 A: Well, when Betty was -- when Betty was sick,

9 and everything in the hospital, we used Billy Tyson.

10 And then Billy got tired of looking at it, and trying

11 to get things straightened out -- and I'm going to be

12 honest with you, he couldn't even get -- as many emails

13 as he sent to Wilkins Byrd, and Wilkins Byrd hadn't

14 answered a one (1) of them back to him -- and that's

15 fine. But that's -- that's it -- but now, I went one

16 (1) day to say something to Billy, and I said, "Well,

17 Billy, I tell you we just need to get another

18 attorney." So, I went and got Michael Hall, who's

19 supposed to be a -- a real estate and personal attorney

20 some -- for this, Probate.

21 Q: Billy Tyson wasn't your first attorney, was

22 he?

23 A: The only one (1) that I've ever known; and

24 Ms. Crump and Wilkins didn't want him to be the

25 attorney. He's been the attorney for the family, after

1 Ms. Garland (PHONETIC SPELLING) died, as long as I know
2 and as far as I know.

3 Q: I want to ask you also about -- after Betty
4 Byrd's death -- and I think she died in 2003 -- you
5 were the Personal Representative of -- of her estate?

6 A: No. My wife and I were.

7 Q: Your wife and I?

8 A: No. No. We were guardians for Betty.
9 Wilkins and I was appointed.

10 Q: Okay. Now, there was a -- later on, I think
11 in about 2008, you cut some timber on the C. E. Byrd
12 Farm?

13 A: And Jewel Butler -- and Jewel Elizabeth Byrd
14 Farms.

15 Q: Yes. And the proceeds were over two hundred
16 thousand dollars (\$200,000.00)?

17 A: No, Sir. The proceeds for Betty was
18 fifty-five thousand six hundred and something dollars
19 (\$55,600.00 PLUS). And the...

20 Q: No. Not -- not...

21 A: Betty Byrd's part of it.

22 Q: Well, but the C. E. Byrd, that -- the -- the
23 total amount of proceeds -- the total amount of
24 proceeds for the timber was how much?

25 A: A hundred (\$100,000.00), two hundred

1 (\$200,000.00), I don't know. I ain't got those -- I
2 ain't got those figures.

3 MS. ERVIN: Your Honor...

4 Q: But it was over two hundred thousand dollars
5 (\$200,000.00 PLUS).

6 MS. ERVIN: ...he's still dealing with an estate
7 that's not before you.

8 JUDGE: I'm going -- I have to let him go into it
9 the least bit; but, I am hoping to hurry on with it.

10 MR. JOHNSON: Thank you.

11 QUESTIONS BY MR. JOHNSON CONTINUES:

12 A: I haven't got the figures... ckck

13 Q: I understand.

14 A: ...on the C. E. -- on Jewel Butler Byrd.
15 I've got the figure -- it's fifty-five thousand six
16 hundred and sixteen dollars and fifty cents
17 (\$55,616.50).

18 Q: The -- the...

19 A: And it's in an account by itself.

20 Q: Yes, Sir. And you and Wilkins had a
21 disagreement as to how that money was to...

22 A: And -- and that's right. Wilkins has never
23 signed the...

24 Q: But let me ask you this; you distributed to
25 yourself and Ms. Crumb your share?

1 A: Crump.

2 Q: Crump, excuse me.

3 A: Yes, Sir. Our half (1/2) -- I mean, our
4 three quarters (3/4) .

5 Q: Three quarters (3/4) of it?

6 A: That's right. She's got that.

7 Q: And the twenty-five percent (25%), there was
8 a dispute about that?

9 A: That's right.

10 Q: And didn't you refuse to send that to the --
11 the heirs?

12 A: That's right. Hadn't done it. That's right.
13 It's still there.

14 Q: Well, will you agree to distribute it to
15 those heirs?

16 A: We didn't know -- we didn't know the
17 percentage of heirs, at the time, either. You had one
18 (1) -- well, anyway, go ahead.

19 Q: You held that money, didn't you? You held
20 that money to use as a bargaining tool?

21 A: No. I did not.

22 Q: Did you ever approach Penny Crump and try to
23 get her to agree to side with you on some issue, to --
24 to the detriment of Wilkins Byrd and his family?

25 A: No. No, Sir. Because Mr. Tyson said that --

1 that Penny Crump had taken sides with Wilkins Byrd.

2 Q: You're not surprised with that? You and Ms.

3 Crump have had disagreements on numerous estates?

4 A: Not -- just one (1).

5 Q: All right, Sir.

6 A: As far a I know. That was my -- well, that

7 ain't got anything to do with it either.

8 Q: And now -- I mean, but there have been

9 difficulties? There have been problems with you and

10 the other members of the family -- between you and

11 other members of the family?

12 A: There's nobody in the middle of the family,

13 but her.

14 Q: I'm talking about Wilkins Byrd and his...

15 A: I ain't had any -- I ain't had any with the

16 other part -- the part of the family, surely not the

17 Byrd side.

18 Q: It's just with Ms. Crump?

19 A: Well, Ms. Crump and -- well, Wilkins, because

20 I told him we need to get this thing straightened out

21 and nobody's done anything, since...

22 Q: Well, are -- are you in agreement to transfer

23 -- to get rid of that fifty -- I think it's

24 approximately fifty-seven thousand dollars (\$57,000.00)

25 from the sale of timber?

1 A: Well, whatever the Judge says to do with it.
2 That's -- yes. If you want to. Yes, Sir.
3 MR. JOHNSON: That's all I have, Your Honor.
4 JUDGE: All right. Ms. Ervin?
5 QUESTIONS TO MR. McDONALD BY MS. ERVIN:
6 Q: To your -- of your own personal knowledge,
7 did anyone ever make a final determination of the heirs
8 and what percentage each one (1) has in the Estate of
9 Jewel Byrd? Has there been an agreement as to who owns
10 what percentage?
11 A: Jewel Butler -- which one? Jewel Elizabeth
12 or Jewel Butler?
13 Q: Jewel Butler.
14 A: The only thing we've had is what Scott --
15 John Scott sent us.
16 Q: And it's your understand that Mr. Wilkins
17 Byrd does not agree with that?
18 A: That -- that's true, but the letter that came
19 from Scott stated that Wilkins -- he talked to Wilkins
20 and I to get the information for it.
21 Q: But -- but you have nothing that gives -- we
22 do not have a permanent approved percentages of the
23 heirs, as to who gets what percentage?
24 A: No.
25 Q: So, without that could you, without violating

1 a judiciary duty, distribute the money?

2 A: I couldn't.

3 Q: If you wanted to distribute the money, if --

4 if you reached it could you distribute it?

5 A: If we reached the -- probably could, if we

6 reached the decision of what percentages.

7 Q: I mean, were you -- can you actually

8 distribute the money yourself?

9 A: No. I can't.

10 Q: And who else has to consent?

11 A: Wilkins Byrd.

12 Q: Did you ever send -- have an occasion to send

13 him some signature cards for the account?

14 A: Yes, Ma'am. On -- on the fifty-five thousand

15 dollar (\$55,000.00) one (1) -- I mean, fifty-six

16 thousand dollars (\$56,000.00). Yes.

17 Q: On how many occasions?

18 A: I don't know how many times the bank sent

19 them to him; maybe twice (2 TIMES). I don't know.

20 Q: Did he ever send -- did he ever sign them and

21 send them back?

22 A: No, Ma'am.

23 Q: So, at present, has anybody ever get that

24 money out of the bank?

25 A: Not the fifty-five (\$55,000.00) -- not the

1 fifty-six thousand (\$56,000.00) timber sale.

2 Q: All right. Now, I know Mr. Johnson made the

3 -- made comments about the fact that Wilkins knows more

4 about the family than you. Would that be personally?

5 Just that he knew them personally?

6 A: Yeah. Probably so.

7 Q: Okay. But to the best of your knowledge, the

8 -- the chart of heirs that we presented is correct?

9 A: As far as I know. I -- I think so.

10 Q: And you are requesting that this Court

11 determine the heirs, and then sell the property by

12 public sale?

13 A: Yes, Ma'am.

14 Q: And I believe you requested attorney's fees,

15 not necessarily assessed against the Respondents, but

16 assessed against the purchase price. Is that correct?

17 A: That's correct.

18 MS. ERVIN: Just one (1) second, Your Honor. All

19 right. That's all I have right now, Your Honor.

20 JUDGE: All right. Mr. Johnson, anything in reply

21 to that?

22 MR. JOHNSON: Yes.

23 QUESTIONS TO MR. McDONALD BY MR. JOHNSON:

24 Q. As I understand it, then you're agreeing, Mr.

25 McDonald, that your share of the S. W. Byrd Estate is

1 two point zero four (2.04)?

2 A: That's what I understand.

3 Q: Okay. And -- and do you have -- what is that
4 -- what is it worth? What is your opinion? You're one
5 (1) of the owners. What's that property worth?

6 A: I ain't -- I ain't got it.

7 MS. ERVIN: Your Honor, ask and answer.

8 MR. JOHNSON: He can...

9 JUDGE: Well now, you know, if he wishes to -- if
10 he knows he might want to say. If he doesn't know, or
11 if he knows he might not want to say; whatever.

12 QUESTIONS BY MR. JOHNSON CONTINUES:

13 Q: Mr. McDonald?

14 A: I'm going to leave -- the way I'm going to
15 answer this is, I'm going to let -- leave it up to the
16 Court to get it done. That's the way I'm going to...

17 Q: Okay. And -- and the Court -- the Court
18 would want an appraisal. Don't you think? I mean, the
19 Court's got...

20 A: No, Sir. I think it can go -- once again,
21 I'm going to say I think it ought to go before the
22 Courthouse Square and let -- then you'll know what the
23 value of the property is worth. You're going to go
24 spend eight hundred (\$800.00) to sixteen hundred
25 dollars (\$1,600.00), I think you said, to -- to get it

1 appraised; and if you go take it and put it before the
2 Courthouse, and whatever it brings -- if it doesn't
3 bring but a dollar (\$1.00) an acre, that's all,
4 everybody will lose out.

5 Q: And that wouldn't matter to you, because you
6 just want to cause problems.

7 A: No. I ain't want to...

8 Q: You don't care about getting a fair share of
9 your interest in the property, that's not your goal, is
10 it?

11 MS. ERVIN: Your Honor, I think he's being a
12 little too combative.

13 JUDGE: Well, we have been over that before.

14 MR. JOHNSON: Yes Sir.

15 QUESTIONS BY MR. JOHNSON CONTINUES:

16 Q: Finally, Mr. McDonald, do you object to the
17 Respondents -- the other owners, buying you out?

18 A: I just like to get this settled, however we
19 get it settled. And I think the way to get it settled
20 is get it before the Courthouse Square and let them
21 sell it -- sell the property.

22 MR. JOHNSON: Thank you. That's all I have.

23 JUDGE: All right. Ms. Ervin, you done?

24 MS. ERVIN: (INDICATES THAT SHE HAS NOTHING
25 FURTHER)

1 JUDGE: Thank you, Sir. You may step down.
2 MR. McDONALD: (STEPS DOWN OFF THE WITNESS STAND)
3 JUDGE: Next witness please.
4 MR. JOHNSON: Your Honor, still on the issue of
5 attorneys fees, can I call Ms. Crump? Just briefly.
6 JUDGE: Oh. Let me say, I have left out our
7 Guardian Ad Litem.
8 MS. BRIGMAN: That -- that's fine. I didn't have
9 any questions, Judge.
10 JUDGE: I'm glad, because I just let you sit
11 there.
12 MS. BRIGMAN: I would've let you know.
13 JUDGE: I thank you. On the matter of just the
14 fees, Ms. Ervin, what -- what do you wish on that?
15 MS. ERVIN: Your Honor, there's the Statute
16 15-61-110, that says, "In a partition action, the Court
17 can affix the attorney fees in all partition actions,
18 and can assess fees against any or all parties." I
19 don't know why we need witnesses. That would be up to
20 the Court to determine whether...
21 JUDGE: Well...
22 MR. JOHNSON: Your Honor, I cited the case that
23 Mr. McDonald -- his conduct is inequitable, and he's
24 not entitled to attorney's fees, and I believe that's
25 the Law.

1 MS. ERVIN: Your Honor, in this Case he has cited
2 nothing that he has done that is inequitable. He's
3 going back years, and its all hearsay.

4 JUDGE: ...well, do you want -- let me ask you
5 this, Mr. Johnson, do you have one (1) more witness as
6 far as the attorneys fees?

7 MR. JOHNSON: I do, Your Honor, very briefly Ms.
8 Crump.

9 JUDGE: If it is, I'm going to give every body a
10 full airing of this situations and faults, and
11 whatever, and then the Court will, I'm sure
12 erroneously, conclude it. Every body thinks so, no
13 matter what the Court does. You know if the Court is
14 in your business, you're in bad shape. And I found
15 that out during my twenty (20) years up here, and the
16 fourteen (14) years I spent down as the Clerk of Court,
17 I found that out then too. Nobody's ever satisfied.
18 Go right ahead, Mr. Johnson.

19 MR. JOHNSON: Ms. Crump, please. Your Honor, may
20 I submit -- (THEN SPEAKING TO MS. CRUMP) go ahead, just
21 have a seat.

22 JUDGE: Ms. Crump, left hand on the Bible and
23 raise your right hand please.

24 MS. CRUMP: (COMPLIES WITH INSTRUCTIONS)

25 JUDGE: Solemnly swear the testimony you give to

1 be the truth, whole truth, and nothing but the truth,
2 so help you God?

3 MRS. CRUMP: I will.

4 JUDGE: Have a seat right there in just a minute,
5 I'll have you give your full name and address.

6 MS. CRUMP: (TAKES HER PLACE ON THE WITNESS STAND)

7 JUDGE: All right, thank you. Ms. Crump, if you
8 could give us, loudly, your full name and address
9 please, Ma'am.

10 MS. CRUMP: I'm a school teacher, I know how to do
11 that.

12 JUDGE: Thank you.

13 MS. CRUMP: My full name is Anne Templeton Butler
14 Crump, and I live at 4164 River Cliff Chase, Marietta
15 30067.

16 JUDGE: In Georgia?

17 MS. CRUMP: In Georgia.

18 JUDGE: In Georgia?

19 MS. CRUMP: Yes.

20 JUDGE: Okay.

21 MS. CRUMP: I forgot about that.

22 JUDGE: Mr. Johnson, briefly you say?

23 QUESTIONS TO MS. CRUMP BY MR. JOHNSON:

24 Q: Ms. Crump, you are Mr. McDonald's first
25 cousin?

1 A: I am.

2 Q: And you are an heir to the, both the Jewel

3 Byrd Estate and the Betty Byrd Estate. Is that right?

4 A: I am.

5 Q: Have -- have you had dealings with Mr.

6 McDonald in the past on other estate matters?

7 A: I have.

8 Q: Can you give us a brief history of -- when

9 did that begin and what was it with?

10 MS. ERVIN: Your Honor?

11 JUDGE: Very briefly I'm going to let him do it,

12 so the record will be complete; but, it isn't going to

13 be very long. He's promised me that. Go right ahead,

14 Mr. Johnson.

15 QUESTIONS BY MR. JOHNSON CONTINUES:

16 Q: When did you deal with -- first with, Mr.

17 McDonald?

18 A: We had to have an estate petitioned in

19 Florida. Then we -- for -- since 1993 I'm thinking it

20 was finally settled in 2009, the estate of a maiden

21 aunt in Camilla.

22 Q: Okay. And were both you and Butler involved

23 in those estates?

24 A: Uh-huh. Yes.

25 Q: Okay. And in regards to the S. W. Byrd

1 Estate, you are also heirs now?

2 A: Yes.

3 Q: Okay. Did -- after his -- after -- after Ms.

4 Betty Byrd's Estate -- or died in 2003, who was the

5 co-executors of that estate? Co-administrators, I

6 guess.

7 A: Well, Butler had petitioned the Court -- and

8 I believe I'm saying this right -- to become the

9 executor -- the sole executor, and I said, "No."

10 Q: Why?

11 A: Well, because he and I didn't seem -- we

12 couldn't seem to get things worked out, and then we had

13 another whole family to deal with, and I felt that --

14 for my selfish reasons, I didn't want to have to deal

15 with him by myself.

16 Q: Okay. And so who did you ask -- who did you

17 and other family members want to become the Co-executor

18 of the Betty Byrd Estate?

19 A: Well, my attorney in Atlanta recommended that

20 Wilkins Byrd be named.

21 Q: Okay. And Wilkins Byrd is very familiar with

22 the family? Would you agree with that?

23 A: Well, yeah. I mean, he is a Byrd. He's

24 lived here, he -- he grew up with them.

25 Q: Okay. And -- and were you familiar with the

1 issue involving the safe deposit box?

2 A: Yes. I mean, I read the notices that came to

3 me. I mean, you know, I read the back and forth that I

4 got copies of.

5 Q: Did you ever get a full inventory of the

6 assets in both the Jewel Byrd and the Betty Byrd

7 Estate?

8 A: Not until recently.

9 Q: Okay. Recently?

10 A: Well, because their trying to, you know,

11 close Betty's Estate.

12 Q: Now, I want to ask you this question; has

13 Butler prolonged the strife associated with this

14 property?

15 A: He's prolonged the strife. He's prolonged

16 the settling anything I've had to do with him -- deal

17 with him.

18 MR. JOHNSON: Thank you. Your Honor, that's all I

19 have.

20 MS. CRUMP: (STARTS TO STEP DOWN FROM THE STAND)

21 MR. JOHNSON: Wait. She might have a question.

22 JUDGE: Ms. Ervin, anything?

23 MS. ERVIN: Yes, Your Honor.

24 QUESTIONS TO MS. CRUMP BY MS. ERVIN:

25

1 Q: Ms. Crump, who suggested Wilkins Byrd as
2 Co-personal Representative? Whose idea was that?
3 A: We -- my attorney is -- with a south -- my
4 attorney in Atlanta is with a South Carolina firm, and
5 he suggested that we pick -- you know, pick somebody
6 that was familiar with it, and he...
7 Q: Did he give you Wilkins Byrd's name?
8 A: Did my attorney?
9 Q: (INDICATES AN AFFIRMATIVE RESPONSE)
10 A: No.
11 Q: "Who gave you Wilkins Byrd's name?" is my
12 question.
13 A: We -- we discussed it among us, and we have
14 his law firm, you know, decide that this would be
15 somebody that I felt like I could trust..
16 Q: Isn't it true that Wilkins Byrd's name came
17 up because of Mr. McDonald mentioning him?
18 A: He may -- it may -- and I'm going to give him
19 credit. It may have.
20 Q: All right.
21 A: But, I will tell you this; since I've had the
22 conflict with him that I've had, I wasn't just going to
23 go, "Yeah. It's okay. I'm signing on with him." So,
24 I did have it checked out. In fact, I thought Wilkins
25 was about eighty (80). I had my characters wrong.

1 So....

2 Q: And a lot of the things that -- anything that

3 happened in this estate that Mr. Brown (MEANING MR.

4 BROWN JOHNSON) keeps bringing up, have to be done by

5 two (2) individuals, Wilkins and Mr. McDonald. Isn't

6 that correct?

7 A: (NO RESPONSE)

8 Q: Both have to sign off on it. Is that not

9 correct?

10 A: Yeah. But I know that...

11 Q: That's all...

12 A: ...okay. Yes.

13 Q: A "yes" or "no" is all I needed.

14 A: Yes.

15 MS. ERVIN: All right. That's all I have.

16 A: Okay.

17 JUDGE: (SPEAKING TO MR. JOHNSON) Anything?

18 MR. JOHNSON: (INDICATING A NEGATIVE RESPONSE AND

19 THEN SPEAKING TO MS. CRUMP) Thank you.

20 JUDGE: Thank you, Ma'am, so much.

21 MS. CRUMP: Uh-huh.

22 MS. ERVIN: (SPEAKING TO THE JUDGE) Ms. Brigman

23 again. You forgot her.

24 JUDGE: Ms. Brigman?

25 MS. BRIGMAN: I don't have any questions, Judge.

1 JUDGE: Thank you, Ma'am.

2 MS. CRUMP: (STEPS DOWN FROM THE WITNESS STAND)

3 JUDGE: Now, Mr. Johnson, anything further as far
4 as the attorney's fees business?

5 MR. JOHNSON: Nothing on the attorney's fees, Your
6 Honor.

7 JUDGE: All right. Now, Ms. Ervin?

8 MS. ERVIN: Your Honor, there was nothing in any
9 of this testimony that said he's done anything, in this
10 matter, that would make it inequitable for us to
11 receive attorney's fees; and I think, Your Honor is
12 probably familiar enough with South Carolina to know
13 that the statute allows attorney's fees, and as general
14 rule, are assessed against the proceeds of the sale.
15 And I don't see anything in this case that would make
16 any difference.

17 JUDGE: All right. We back -- I'm going to hold
18 abeyance, of course, right now. Let me ask this; now,
19 we move back to the determination of heir's question.
20 Anything further from you, Ms. Ervin?

21 MS. ERVIN: No, Your Honor.

22 JUDGE: Anything further from you, Mr. Johnson?

23 MR. JOHNSON: May I please, Your Honor. I call
24 Wilkins Byrd.

25 JUDGE: All right. Thank you.

1 MR. BYRD: (APPROACHES THE WITNESS STAND)
2 JUDGE: Left hand on the Bible, and raise your
3 right hand please.
4 MR. BYRD: Yes, Sir. (COMPLIES WITH INSTRUCTIONS)
5 JUDGE: Do you solemnly swear the testimony you
6 give to be the truth, whole truth, and nothing but the
7 truth, so help you God?
8 MR. BYRD: I do.
9 JUDGE: Have a seat right over here.
10 MR. BYRD: (TAKES HIS PLACE ON THE WITNESS STAND)
11 JUDGE: Full name and address for the record,
12 please.
13 MR. WILKINS: My name is Wilkins Lee Byrd. The
14 address is 434 Berrie, spelled B-E-R-R-I-E, Road, Aiken
15 South Carolina 29801.
16 JUDGE: All right. (SPEAKING TO MR. JOHNSON) The
17 witness is with you.
18 QUESTIONS TO MR. BYRD BY MR. JOHNSON:
19 Q: Mr. Byrd, what is your -- tell us about --
20 first of all, did you grow up in Darlington County?
21 A: Yes, Sir.
22 Q: And were you educated in the private schools
23 of Darlington County?
24 A: Yes, Sir.
25 Q: I believe you finished Hartsville High

1 School?

2 A: That's correct.

3 Q: Okay. And after that, what -- what further
4 education did you -- have you had?

5 A: After high school I attended college at
6 Preston University, and then worked for a few years,
7 and then returned to Law School at the University of
8 South Carolina, in Columbia.

9 Q: Are you a licensed attorney in South
10 Carolina?

11 A: I am. Yes, Sir.

12 Q: And what have you done during your legal
13 profession? Tell us about that.

14 A: My career was a little unusual. I was hired
15 by a Federal Judge, Judge Charles Simons, as his Law
16 Clerk on graduation, and as it developed, I worked for
17 him for twenty-two (22) years, until his death.

18 Q: And since that time, have you practiced law,
19 or what have -- what have you done, or did you retire
20 with him?

21 A: I -- I did retire at that time, and have been
22 inactive in practice since.

23 Q: Okay. Are you a Beneficiary of the S. W.
24 Byrd Estate?

25 A: Yes.

1 Q: And -- and also the C. E. Byrd Estate?
2 A: Yes.
3 Q: And, are you very -- are you familiar with --
4 let me ask you -- first of all, let me ask you to
5 identify this. Can you -- and we may -- it may be
6 necessary for you to stand up here, so the Judge can
7 see it. Can everybody can see that? (DISPLAYS A
8 CHART).
9 EVERYONE ELSE: (NO RESPONSE)
10 Q: I think -- you seem to be the expert on, or
11 know more than anyone else about the family. Can you
12 just tell us about the S. W. Byrd Estate? Who the
13 heirs are, and where you come in, and where Mr.
14 McDonald falls in the ownership chart?
15 A: Yes, Sir. I'll do my best to make it
16 comparatively simple. My grandfather was S. W. -- S.
17 W., Samuel Wilkins Byrd. He died in 1923. His widow,
18 Mary Moore Byrd, survived him, and died in 1948. Six
19 (6) children were born to the two (2) of them, and they
20 are listed on the uppermost line there. Etta; Sue;
21 Mary Byrd. And then three (3) additional sons; C. E.
22 Byrd, we knew him as Uncle Ed; my Uncle Wilkins; and my
23 father, Marion Byrd. Etta Byrd had two (2) children,
24 Mary Klettner, and she -- she married S. J. Klettner.
25 The two (2) children of Etta Byrd and S. J. Klettner

1 were Mary Stanton, that's her married name; and S. J.
2 Klettner, Junior; both of whom are deceased now. Susan
3 Byrd -- Sue Byrd died without issue, never married.
4 Mary Byrd Rutledge married Joe Rutledge, and they had
5 two (2) children; Mary Larsen, who is deceased; and
6 Joan Rutledge Gary, who is still alive, and lives in
7 Bluffton. My Uncle Ed married Jewel Butler Byrd, as
8 you have heard before; Aunt Jewel to us; and the two
9 (2) of them had a single child, Betty, or Jewel
10 Elizabeth Byrd. My Uncle Wilkins married Ruth James
11 Byrd. They had no children. He died intestate, in
12 1957, and my Aunt Ruth sold her interest, as a
13 surviving spouse, to certain of the siblings of her
14 husband. The Klettner children did not buy any portion
15 of her interest. And then finally, my father married
16 Mary Lee of Hartsville, and I am their only child.
17 Moving to the next generation, Mary Klettner Stanton,
18 the daughter of Etta Byrd Klettner, died after Betty
19 Byrd, leaving two (2) children; Robert Stanton and C.
20 E. Stanton. S. J. Klettner, Junior died shortly before
21 Betty Byrd, leaving Laura Klettner Bynum and John
22 Norwood Klettner; two (2) children. Mary Larsen also
23 died before Betty Byrd, leaving three (3) children, at
24 that time; Rob Larsen, Byrd Thompson, and John Dane
25 Larsen. Sadly, John Dane Larsen died very soon after

1 his mother, as is shown down here (POINTING TO THE
2 CHART). Now, to return -- to refer to Mr. McDonald and
3 Mrs. Crump; Jewel Elizabeth Byrd, who we knew as Betty,
4 the invalid, died intestate, then living in Georgia in
5 2003; and her fractional interest descended under the
6 applicable law to her cousin. She had never been
7 married, had no spouse, had no issue. According to
8 this chart, Mrs. Crump and Butler McDonald receive
9 shares amounting to two point zero four (2.04) percent;
10 and the chart also shows the devolution of similar
11 amounts to the other cousins as provided under Georgia
12 Law. I would like to explain to the Court that -- that
13 is one (1) point with which I personally disagree with
14 this chart. This is based on the theory that Betty
15 Byrd's interest in S. W. Byrd Farm was personal
16 property. In other words, that her interest in the
17 farm was a part of a partnership interest; and as a
18 partnership interest, was personal property and passed
19 under Georgia Law, because it controlled her personal
20 property. Now, I -- I do not agree with that; although
21 it is contrary to my own interests; and regrettably,
22 benefits Mr. McDonald. I believe that the proper
23 passage of Betty Byrd's interest would be under South
24 Carolina Law. I do not believe the S. W. Byrd Farm --
25 well, the ownership of the S. W. Byrd Farm's land was

1 personal property. I believe it was a real property
2 interest; and so, I believe it should pass under the
3 applicable South Carolina Statute.

4 MS. ERVIN: Your Honor, he's testifying, he's not
5 answering questions at this point. I would object.

6 MR. JOHNSON: Well, that's what -- that's exactly
7 what he's...

8 JUDGE: We understand.

9 MR. JOHNSON: ...he is testifying.

10 MS. ERVIN: But I mean, he needs -- there needs to
11 be some questions.

12 MR. JOHNSON: Your Honor, I asked him to explain
13 the chart, and he's doing that. Would it help...

14 JUDGE: Well, there's no jury here.

15 MR. JOHNSON: Your Honor, I've -- what I've got is
16 I think he can better explain this twenty-five percent
17 (25%) from the C. E. Byrd.

18 JUDGE: All right.

19 QUESTIONS BY MR. JOHNSON CONTINUES:

20 Q: Would that help, Wilkins, to show the South
21 Carolina as opposed to the Georgia?

22 A: I -- I'd be glad to approach it any way the
23 Court wishes.

24 Q: Well, complete that and then I'll hand you
25 this one (1) and see if that - "this" would be the C.

1 E. Byrd chart.

2 A: Yes, Sir.

3 JUDGE: Go right ahead.

4 A: I -- I was nearly at the end of kind of
5 confusing issue. But, as I'm sure the Court is well
6 aware, under South Carolina Intestate Distribution, an
7 estate of a person in the position of my cousin Betty
8 would be divided with no children, no spouse, no
9 surviving parents, would be divided half (1/2) to the
10 mother's side, half (1/2) to the father's side, and
11 that would yield a higher percentage of ownership for
12 Mrs. Crump, Mr. McDonald. It would also include,
13 because South Carolina Law does not push overboard
14 descendants of a first cousin who did not survive
15 Betty; it would also include, in a small amount, my
16 Klettner and Larsen cousins down there. Under this
17 structure, it -- it would exclude them and would
18 diminish the interests of Mrs. Crump and Mr. McDonald
19 by a small amount, about one percent (1%). As I say,
20 that's a statement against interest, but I feel that my
21 duty to the -- to the cousins requires me to state that
22 in that respect, I differ with the characterization of
23 Betty's interest as a personal property interest.

24 JUDGE: Let the record reflect that this, again,
25 was a chart prepared by whom?

1 MR. JOHNSON: I think it was prepared by John
2 Scott -- Attorney John Scott, with the assistance, or
3 with the input from Wilkins and I think...

4 JUDGE: That's previously on the record, but I
5 just want it put in there.

6 MR. BYRD: Yes. But I -- I agree with point, Your
7 Honor. It was prepared at the request of my cousin
8 Robert Larsen. I -- I debated that point, that I just
9 explained to you with Mr. Scott, but he insists on this
10 structure as being the correct one (1).

11 JUDGE: All right.

12 QUESTIONS BY MR. JOHNSON CONTINUES:

13 Q: Wilkins, this is a chart of the C. E. Byrd
14 family -- estate. Would it better -- would it insist
15 you to explain that difference with using this chart,
16 or do you think you can cover it?

17 A: Mr. Brown (MEANING MR. BROWN JOHNSON), I'll
18 be glad to -- to expand on any of this, if you or the
19 Court would like me to. I'm -- I'm not sure that there
20 is a great deal in addition I could say. The same
21 parties, of course, are reflected because the same
22 parties are at interest in both the C. E. Byrd Farm and
23 the S. W. Byrd Farm. The ownership percentages are
24 distinctly different in the C. E. Byrd Farm. Would you
25 like me to go through that? I...

1 MR. JOHNSON: I don't see...

2 JUDGE: I believe I can...

3 MR. BYRD: I, I don't know that.

4 MR. JOHNSON: ...the different percentages. In

5 regards to the C. E. Byrd, at the time of his death, he

6 left a Will, of course, and seventy-five percent (75%)

7 went to the Jewel that's your Aunt...

8 A: Yes.

9 Q: ... Jewel.

10 A: Jewel Butler Byrd.

11 Q: And then twenty percent (20%) went to Betty

12 Byrd.

13 A: Twenty-five percent (25%), actually.

14 Q: Excuse me. Twenty-five percent (25%). Jewel

15 being his wife -- his widow, and Betty being his

16 daughter?

17 A: Yes.

18 Q: And, of course, all the property is in South

19 Carolina. As indicated by this chart, this twenty-five

20 percent (25%) should pass, pursuant to South Carolina

21 Law?

22 A: That's certainly my position, and I believe

23 every attorney who has looked at it has felt that it

24 should.

25 Q: And also, at the time of death, property

1 transfers title -- or title to property transfers at
2 the time of death. Is that correct?

3 A: I was always taught that it was a springing
4 interest and that it passed immediately at death.

5 JUDGE: I think every body would agree upon their
6 last breath that it passes, for whatever it's worth.

7 Q: And that would include -- and that would
8 include the trees, the -- the timber on...

9 A: I agree.

10 Q: ...on the property?

11 A: I believe the trees to be a fixture or in
12 pertinence, or a part of the property, the ownership of
13 which would pass at the same time.

14 Q: But under Scott's missed interpretation, even
15 thought these parties received interest in the land and
16 the timber at the time of death, a few of these cousins
17 would be left out -- two (2) of these cousins would be
18 left out?

19 A: Well, they would be under a proposed final
20 distribution that Mr. McDonald and his Georgia attorney
21 purporting the act for the Betty Byrd Estate, although
22 they're acting unilaterally; but, they have proposed --
23 they would divide the timber proceeds, that you're
24 asking about, as if they were personal property; that
25 is to say in five (5) ways; leaving out the Klettner

1 children, and the Larsen children. I believe that that
2 timber and the proceeds derived from it, are properly
3 divided under South Carolina Law and pursuant to the
4 same Statute under which the land, itself, is divided.

5 Q: Thank you. Now, you're familiar with the
6 sale of timber that was described by Mr. McDonald,
7 which I think took place in 2008?

8 A: Yes, Sir.

9 Q: And tell us about your disagreement with Mr.
10 McDonald on the distribution of those funds, or the
11 proceeds from the sale of timber.

12 A: Yes. I will. When the timber proceeds were
13 received, as Mr. McDonald indicated, he took three
14 quarters (3/4) of it, that portion attributable to the
15 Jewel Butler Byrd Estate -- Aunt Jewel's Estate; and,
16 as I understand, initially placed them in the estate
17 account. I had, of course, no voice in that, and no
18 problem with it either. That's appropriate under --
19 under the Will and under the ownership of that land.
20 The one quarter (1/4) of the timber proceeds, which
21 were attributable to Betty Byrd -- her one quarter
22 (1/4) as we saw on the chart that she received from her
23 father's Will; Mr. McDonald initially deposited in the
24 Betty Byrd Estate account at the Bank of Camilla. I
25 immediately objected to his doing that, saying several

1 things. Number one (1), that he was commingling funds
2 belonging -- belonging to one (1) group of heirs,
3 beneficiaries in a larger pool, the regular estate
4 account, which belonged to a different group. That is
5 the five (5) cousins who shared, under the Georgia Law,
6 in Betty's personal property. There were considerable
7 assets there, as he testified earlier, basically
8 derived from the sale of securities, the stock. I -- I
9 made that known to his attorney, Mr. Tyson, and to
10 Butler. After a time, without notice to me, Mr.
11 McDonald moved -- and -- and -- excuse me. I also made
12 known to Mr. Tyson, and Mr. McDonald, at that point my
13 position -- my legal position, that those funds were
14 not estate funds at all. That because the land --
15 ownership of the land had devolved at death to the
16 beneficiaries, that that was also true of the timber
17 upon it; and that that money was directly the property
18 of the beneficiaries and was not an estate asset at
19 all. In any event, I got no response to that, other
20 than Mr. Tyson saying he wanted the opinion of a South
21 Carolina attorney, which he considered me not to be;
22 and without notice to me, Mr. McDonald then moved the
23 funds that he had previously deposited in the main
24 estate account, into a separate, newly created account
25 in the Bank of Camilla. It was at that time that the

1 Bank of Camilla contacted me, asking that I sign a
2 deposit card. I expressed my surprise that this had
3 been -- that this had happened without my consent, that
4 they'd even opened an account without my consent as a
5 Co-administrator; but, that in any event, I was in no
6 position to sign a deposit card, because I insisted
7 these were not funds belonging to the estate. I
8 consider that to amount to a waiver of the objection
9 and a waiver of my position that this money belong
10 directly to the heirs, and should never have been taken
11 by Mr. McDonald and deposited in an estate account.
12 Now, that was the reason that I refused to sign those
13 deposit cards. I might say, at the same time, Mr.
14 McDonald had insisted that Betty's Estate repay a
15 rather large amount of money, over thirty-five thousand
16 dollars (\$35,000.00) to her mother's estate, Jewel's
17 Estate, claiming that Jewel's Estate had covered
18 expenses in her final days...

19 MS. ERVIN: Your Honor, I would object. We're
20 getting into something that's not before the Court it's
21 a different estate.

22 JUDGE: All right. Quickly on that...

23 MR. JOHNSON: It's a different estate, Your Honor,
24 but it certainly deals with the issue of attorney's
25 fees.

1 JUDGE: Go right ahead; but, you know, shorten it
2 if you can.

3 MR. BYRD: I -- I'll do my best, Your Honor. I
4 understand. I appreciate your patience. The only
5 point of bringing that up is that, at this time, Mr.
6 McDonald was insisting that I agree to pay over money
7 from the daughter's estate to the mother's estate as a
8 reimbursement. In fact, the mother's estate was really
9 a testamentary trust, whose language specifically said
10 that it -- it existed only to care for the daughter,
11 and to care for -- and to pay for her expenses to the
12 extent that they exceed -- exceeded her income. For an
13 extended period, while this was debated, and Mr.
14 McDonald has in the last month or two (2) apparently
15 abandoned that demand, although he's never given me any
16 notice of that fact, he resisted the disbursal of these
17 timber proceeds. More than one (1) of my cousins, Joan
18 Rutledge and her daughter, the Stanton boys, and I all
19 insisted that this money should be disbursed
20 immediately.

21 MS. ERVIN: Your Honor, everybody but him I would
22 say is hearsay. Any insistence they have...

23 JUDGE: So the record...

24 MS. ERVIN: ...they're not here to testify.

25 JUDGE: So the record would reflect.

1 MR. BYRD: And that's -- that's the end of my
2 point about this, Your Honor, in reference to the
3 location of the fifty-seven thousand dollars
4 (\$57,000.00, and why they have not been disbursed.
5 I'll say one (1) last thing. Mr. McDonald and his
6 Georgia attorney, Mr. Hall, has, very recently, filed
7 in the Probate Court of Mitchell County, Georgia, a
8 purported final accounting of the assets of the Estate
9 of Betty Byrd. They did this without notice to me,
10 without consultation to me, and they proposed to divide
11 the timber proceeds pursuant to Georgia Law, leaving
12 out my Klettner and Larsen cousins entirely of any
13 share in the timber proceeds. And, as I said with
14 respect to the land, diminishing the shares, that I
15 think are appropriate, belonging to Mrs. Crump and Mr.
16 McDonald; and I believe incorrectly giving me and Joan
17 Gary and the Stanton boys a higher percentage than we
18 deserve. All of this hinges on that issue of
19 characterization of the money. Is it personal
20 property? In which case it's divided five (5) ways
21 under Georgia Law; or is it an aspect of real property,
22 as I contend, and divided under South Carolina Law.

23 JUDGE: All right, Mr. Johnson.

24 QUESTIONS BY MR. JOHNSON CONTINUES:

25 Q: Mr. Byrd, are you satisfied with the heirs

1 that are listed in the S. W. Byrd Estate?

2 A: I believe the identities of the heirs are
3 correct. Yes.

4 Q: Okay. And you don't know of any other heirs,
5 any other possible heirs to the S. W. Byrd Estate?

6 A: I -- I do not know of any. I do not believe
7 any others exist.

8 MR. JOHNSON: Okay. Thank you. (INDICATES HE HAS
9 NOTHING FURTHER)

10 JUDGE: Ms. Ervin?

11 MS. ERVIN: All right.

12 QUESTIONS TO MR. BYRD BY MS. ERVIN:

13 Q: Mr. Byrd you said you went to Law School
14 eventually. Is that correct?

15 A: Yes.

16 Q: And you worked for a Federal Judge?

17 A: Yes.

18 Q: So, were you ever in private practice in
19 South Carolina?

20 A: Well -- I'm hesitating -- not in abroad
21 sense. Before I placed myself under the category
22 called "inactive status" on the bar list -- still
23 remaining a member of the bar. I briefly, after the
24 Judge's death and after my ceasing to be a federal
25 employee, I did certain legal matters for two (2)

1 friends. That's as precise an answer as I can give.
2 If, if you're speaking about practice like -- like your
3 practice, or like Mr. Johnson's. No. I have not been.

4 Q: Did you ever actually practice in the Probate
5 Court in the State of South Carolina?

6 A: No.

7 A: Okay. I believe you have testified, or isn't
8 true that your testimony shows, in and of itself, that
9 there is a dispute by attorneys, including yourself, as
10 to whether this is personal or real estate; the timber
11 money?

12 A: Well, I clearly stated that I disagree
13 that...

14 Q: Right. That was my question.

15 A: ...that the characterization of these funds,
16 as personal property is correct.

17 Q: I understand that.

18 A: In all other respects, I believe the chart to
19 be correct. I do not take issue -- if Mr. McDonald, as
20 he says, indicates -- he believes two point zero four
21 percent (2.04%) to be his share, I take him at his
22 word.

23 Q: No. I'm talking about you have accused Mr.
24 McDonald of breaching his fiduciary duty by not
25 distributing funds, that there is currently an ongoing

1 dispute over the percentage of ownership. Is that not
2 correct?

3 A: There has never been a dispute about the
4 ownership of these funds, until very recently when, in
5 this unilateral filing in the Mitchell County Probate
6 Court, Mr. McDonald and his attorney attempted to
7 divide these funds up and give them only to the five
8 (5) Georgia defined heirs. Prior to that...

9 Q: If...

10 A: I'll be through in a moment. I'm sorry
11 you're so frustrated...

12 MR. JOHNSON: Please let him finish.

13 A: Prior to that, there had been no dispute
14 over, Billy Tyson, Mr. -- the attorney selected by Mr.
15 McDonald, his characterization in the original filings
16 with the Mitchell County Court, that personal property
17 went to the Georgia heirs and that real property went
18 to the South Carolina heirs. There had never been a
19 contention prior to these filings within the last two
20 (2) months in Georgia, that the timber proceeds were
21 personal property. Mr. Tyson never said that, Mr.
22 McDonald never said that, no other attorney ever said
23 that.

24 Q: Isn't it true that when originally John Scott
25 prepared these lists, he -- he distributed it as

1 personal property pursuant to Georgia Law?

2 A: John Scott made three (3) calculations. The
3 first two (2) were incorrect. I told him so, and he
4 revised them. The ultimate calculation, which I
5 believe you have, is, to my way of thinking, correct;
6 except for the dispute he and I personally have about
7 this characterization of personal versus real property.

8 Q: Well, if you have several attorneys who are
9 disputing how to classify something, how can anyone
10 distribute money while that is an ongoing dispute
11 without breaching the fiduciary duty to somebody?

12 A: Your timing is entirely deceptive. There has
13 never been such a dispute. At the time, 2008 when
14 these funds were received, no attorney, nor did Mr.
15 McDonald, have any dispute about the way they were
16 divided. No such claim was submitted to me, and no
17 such claim was made by me.

18 Q: Isn't it true that there is a dispute now?

19 A: (NODS HEAD) That's why we're here.

20 Q: Oh. It's a good thing they weren't
21 distributed, isn't it?

22 A: No. It's not a good thing they weren't
23 distributed. It was appropriate to distribute them at
24 that time, because they were directly the proceeds --
25 directly the property of the beneficiaries under South

1 Carolina Law. They are -- they are not a part of the
2 C. E. -- I'm sorry -- the Betty Byrd Estate.

3 Q: Wouldn't you agree that that's up to a Judge
4 to make that determination; rather than you
5 unilaterally?

6 A: It is absolutely up to the Court to do that.

7 Q: Okay.

8 A: It is my duty, as you well know, as a
9 Co-administrator to protect the interests of the
10 beneficiaries. I'm attempting to do that.

11 Q: I understand that; but, the money is still
12 there, so it can be distributed to whoever the Court
13 finds owns the money. Is that not correct?

14 A: Yeah. That's certainly true.

15 Q: Okay.

16 A. Uh-huh.

17 Q: So, nobody has been harmed?

18 A: I quite disagree. You neglect the time value
19 of money. You neglect the fact that Mr. McDonald knew
20 that my cousin Joan Rutledge Gary was in ill health, in
21 financial distress, that her daughter repeatedly
22 appealed to Mr. McDonald to join with me in releasing
23 these...

24 MS. ERVIN: Your Honor, this is all hearsay to me.
25 I would object.

1 MR. Johnson: Your Honor, he should be allowed to
2 answer the question.

3 MR. BYRD: I was present when these things were
4 expressed.

5 JUDGE: We could -- and it would -- that of course
6 would be hearsay; but, there's no jury here.

7 MS. ERVIN: That's all the questions I have, Your
8 Honor.

9 JUDGE: All right. Mr. Johnson, anything further?

10 MR. JOHNSON: That's all. Thank you.

11 JUDGE: All right. Ms. Erv -- I mean, Ms.
12 Brigman?

13 MS. BRIGMAN: (INDICATES THAT SHE HAD NOTHING TO
14 ASK)

15 JUDGE: I was about to say Ms. Ervin again. Go
16 right ahead, Mr. Byrd. Thank you so much.

17 MR. BYRD: Yes, Sir. (STEPS DOWN FROM THE WITNESS
18 STAND)

19 JUDGE: Next witness, please.

20 MR. JOHNSON: That's it, Your Honor.

21 JUDGE: All right.

22 MR. JOHNSON: Of course, on these issues. Your
23 Honor, I would request -- if -- unless Ms. Ervin has
24 anything further.

25 MS. ERVIN: Go ahead. I'm fine.

1 MR. JOHNSON: I would request that we adjourn, and
2 reschedule a hearing, which will enable us to obtain an
3 appraisal and a timber cruise on the property in
4 question; and then -- it does not appear that the
5 parties are going to be able to agree. Then we would
6 come back to Court, and ask that the Court determine
7 the fair market value of Mr. McDonald's interest.

8 JUDGE: All right. Now, I'm not saying going to
9 say that I'll do it; but, I need some particulars, of
10 course, Mr. Johnson. What was agreed earlier between
11 the parties as to the payment of anything, as far as...

12 MR. JOHNSON: Nothing.

13 JUDGE: Nothing?

14 MR. JOHNSON: Nothing.

15 JUDGE: Nothing has yet been agreed as far as
16 anything about the appraisal or the cruise. Right?

17 MR. JOHNSON: That's correct, Your Honor. I
18 suggested we share the cost, fifty/fifty (50/50); but
19 they didn't agree.

20 JUDGE: Now, does that mean that I must decide
21 today -- if I agree to let this occur, do I have to
22 decide today who's going to pay these people that are
23 going to get in the midst of this?

24 MR. JOHNSON: Excuse me. Pay the people that are
25 what?

1 JUDGE: In other words, who's going to pay the --
2 would I have to agree today as to who was going to pay
3 the timber people and the appraisal people?

4 MR. JOHNSON: No, Sir. I think...

5 MS. ERVIN: I think the timber people up in the
6 cruiser would appreciate it, Your Honor.

7 JUDGE: That's why I'm...

8 MR. JOHNSON: We are going to pay that. We
9 voluntarily agreed to do that.

10 JUDGE: To do that, pending any Court...

11 MR. JOHNSON: Yes, Sir.

12 JUDGE: ...determination later...

13 MR. JOHNSON: Yes, Sir.

14 JUDGE: ...if I agree to do this? And you
15 think...

16 MR. JOHNSON: (NODS HEAD)

17 JUDGE: And you say that if the Court would agree
18 to let that occur, that then you think you all can get
19 it even -- not that I blame everything on the holiday
20 season; but do you think you can do that before January
21 the 1st?

22 MR. JOHNSON: Not before January the 1st...

23 JUDGE: No?

24 MR. JOHNSON: ...but shortly there after. I -- I
25 got the impression that these people were ready to go,

1 and that they would need about two (2) weeks.

2 JUDGE: I guess they're like everybody else in the
3 country, they need some work.

4 MR. JOHNSON: Yes, Sir. And so, it -- it may be
5 after the first of the year, but I would -- just wanted
6 to alert the Court, rather than adjourn, lets just come
7 back after we get an appraisal and timber cruise, and
8 see where we are.

9 JUDGE: How much, approximately, Mr. Johnson, are
10 we talking about for something like that? ckck

11 MR. JOHNSON: About -- it was eight hundred
12 dollars (\$800.00) plus the timber cruise on S. W. Byrd.
13 We are also going to go ahead and -- I think we will
14 probably go ahead and obtain a -- an appraisal on the
15 C.E. Byrd Estate. They're both eight hundred dollars
16 (\$800.00) for the appraisal...

17 JUDGE: Plus the timbe?

18 MR. JOHNSON: ...plus the timber, and I don't...

19 JUDGE: Which would be? What would you think? Do
20 you all know?

21 MR. JOHNSON: (SPEAKING TO HIS CLIENT) I thought
22 that the eight hundred (\$800.00) was for the appraisal
23 (INAUDIBLE) -- (THEN SPEAKING TO THE COURT) I think it
24 would be somewhere in that range.

25 MS. BRIGMAN: I have no -- I'm the wrong one (1)

1 to ask.

2 JUDGE: It's always good not to get in other folks
3 business.

4 MS. BRIGMAN: I don't mind...

5 ALL: (CHUCKLES)

6 MS. BRIGMAN: I not mind getting in their
7 business, I just don't know the answer to that
8 question.

9 JUDGE: All right. That's Mr. Johnson's stand in
10 the matter. Ms. Ervin?

11 MR. JOHNSON: Your -- your -- Your Honor...

12 JUDGE: Yes, sir?

13 MR. JOHNSON: ... may I point out one (1) thing?

14 JUDGE: Yes, Sir.

15 MR. JOHNSON: I think an issue that will come up
16 is, "Can the Petitioner force us to sell the entire
17 track?" He owns two percent (2%). Can a two (2) -
18 can an individual with two percent (2%) force the other
19 remaining ninety-eight percent (98%) to sell the
20 property?

21 JUDGE: And you're -- now, let me ask you, if we
22 get -- if we get into that, let me just ask this too;
23 if, indeed, that is an issue -- it hadn't been pled yet
24 -- and if it had been pled, or you find some way to get
25 around having not plead it, would indeed, this occur

1 also -- we could have a determination of that, in your
2 opinion, early in January?

3 MR. JOHNSON: No, Sir. If -- if -- if I need to
4 re-plead, I'll go back and amends to do that.

5 JUDGE: Well...

6 MR. JOHNSON: I think...

7 JUDGE: ...let me ask you this; is it in the
8 pleadings now, that -- have you all contended that he
9 does not, as a two point zero four percent (2.04%), by
10 one (1) calculation owner, does not have the right to
11 force the sale?

12 MR. JOHNSON: That's going to be our position.

13 JUDGE: Ms. Ervin?

14 MS. ERVIN: Your Honor, I think the Statute in
15 South Carolina is fairly clear, under 15-61-110, any
16 owner can partition among joint tenants. There's
17 nothing about how much they own; how much they have to
18 own; whether they have to be a majority share holder.
19 I think that's just putting this off even further. We
20 would object to his suggestion.

21 JUDGE: Let me ask...

22 MS. ERVIN: They were given their notice; they did
23 not follow up with it; they could have had the
24 appraisal done.

25 JUDGE: Let me ask this; I want to put it in the

1 right way. What is your opinion? Say that -- and I -
2 this, of course, is just hypothetical. Say that these
3 people here want to keep their, the farm that they own
4 a great percentage of; and they decide to offer Mr.
5 McDonald, your client, for his two point zero four
6 percent (2.04%), or whatever, minute percentage. Say
7 the farm is worth a million dollars (\$1,000,000.00) --
8 I'm not saying it is -- and for his two percent (2%)
9 they offer him one hundred thousand dollars
10 (\$100,000.00). Should he be able to force them to sell
11 what they want to keep together and go through that
12 exercise, if they are willing to pay him far in excess
13 of what his percentage is worth?

14 MS. ERVIN: I think if they had followed the
15 Statute, and made an offer in a timely fashion, you
16 might have a point. But, at this point, they've missed
17 that chance. They didn't make an offer, there's
18 nothing in writing to pay him anything. Basically,
19 they kept wanting him to bid against himself to give
20 them an amount, rather than make an offer; and I think
21 the Statutes clear. Any Co-tenant, regardless of their
22 percentage ownership, can compel the sale.

23 MR. JOHNSON: (STANDS UP, INDICATING THAT HE WANTS
24 TO ADDRESS THE COURT)

25 JUDGE: Yes, Sir?

1 MR. JOHNSON: \ Again, I would remind the Court, we
2 did try to make an offer; we didn't have an appraisal
3 to trade property -- some property from the C. E. Byrd
4 Estate...

5 JUDGE: But she says you did not do that in a
6 timely manner, and what does concern me a little bit is
7 that the thing of his ability to force the sale by --
8 you all did not Answer...

9 MS. ERVIN: It's not pled, Your Honor.

10 JUDGE: ...and Counterclaim as far as any
11 Pleadings as that -- as far as that is concerned.
12 Clearly -- let me say this, clearly I don't need to
13 make any decision on this matter right this minute...

14 MR. JOHNSON: No, Sir. Your Honor.

15 JUDGE: ...because I've got to -- you all have got
16 me, now, in a position that I have to look at a good
17 many things; which is my job. But now, this perhaps is
18 not -- that shouldn't be said, but I'm going to say it
19 anyway. Different sides have got different problems in
20 this particular matter. It seems to me that one (1) of
21 the problems, maybe, that Mr. McDonald has -- and I'm
22 saying it is, because I've got to look at it. Here he
23 owns two percents (2%) of something and he's going to
24 force the rest to go through a large sale. I'm not
25 saying that that may be a problem, but it may be. I

1 haven't looked at it. But, then you all got some
2 problem about not having pled that ability, too. But,
3 this is a case here, that it seems to me, that all the
4 family dynamics are concerned, and I know how that can
5 be; that there should be some resolution of it somehow.
6 Because no matter, it seems, what I do, one (1) side or
7 the other are probably going to appeal my decision.
8 Then in South Carolina, the wait is long as far as
9 decisions on appeals, as we all know. And the lawyers
10 -- now, Mr. Johnson's a personal friend of mine, Ms.
11 Ervin's a personal friend of mine, Ms. Brigman, a
12 personal friend of mine; although she hated to say that
13 one (1) time not too long ago.

14 ALL: (CHUCKLES)

15 JUDGE: But anyway, you got good lawyers; but,
16 they cost good money; and I'm all for lawyers making
17 money; but this is something that really needs to be
18 settled, if possible. Now, if it's impossible, we'll
19 all go through the motions and time involved. But, the
20 time -- the trouble about the time is, the intentions
21 are -- are even further heightened as far as, not only
22 this estate but the C. E. Byrd Estate, and then we on
23 to some more; and I don't see where it very much does
24 anybody any good, but the lawyers. But, I'll look at
25 it. Now, please let me -- if you don't mind, let me

1 have a week.

2 MR. JOHNSON: (STANDS UP, INDICATING THAT HE WANT
3 TO ADDRESS THE COURT)

4 JUDGE: I usually don't like to have a week to do
5 something, but I've got to take a little time to look
6 at this. Mr. Johnson, you want to say something?

7 MR. JOHNSON: What are you going to -- what is
8 your -- what are your intentions? Your Honor, a week
9 seems extremely reasonable. I mean, I don't know how
10 you can...

11 JUDGE: Well, what I thought I would do by the end
12 of -- this is -- well, this is Wednesday. Let me have
13 nine (9) days; until next -- from this Friday a week.
14 But, then I will let -- I may have to do -- number one
15 (1) I may have to do my own order. But, I may ask
16 whether you all, whoever I decide -- and it may be
17 something -- it may be a case in which one (2) side
18 gets something and the other does too; and I just don't
19 know yet. I just don't know. But, it would -- I will
20 let each of you all know something by next Friday;
21 which will December the 14th. However, please, as
22 officers of the Court, tell me that you'll try your
23 best to get this compromised and settled, if possible.
24 Because we dealing with a bad situation, and nobody's
25 going to win before its over; except the lawyers and

1 the Court fees, and the Court Reporter fees, and all.

2 MR. JOHNSON: Your Honor, I just feel like my

3 clients -- Mr. McDonald, has a fairly insignificant

4 interest in this real estate. He's simply using this

5 as a bargaining tool, as a matter to coerce us into

6 doing something that they shouldn't be required to do.

7 MS. ERVIN: Your Honor, I would object.

8 MR. JOHNSON: Now, if he can do it...

9 JUDGE: And, of course, the record will show that

10 the - there's no jury here, and I understand all of

11 these points, and quite frankly, I've got to look at

12 all of this. And I certainly will, that's my job; but,

13 if you all please will try.

14 MR. JOHNSON: I think Ms. Ervin will agree.

15 JUDGE: You all would agree to try. What did you

16 say, Mr. Johnson, about the "trying"?

17 MR. JOHNSON: I think I tried. I think I tried.

18 I mean, I think I made a good -- and I will continue to

19 do that.

20 JUDGE: Oh. I know that you will, if you tell;

21 and I know Ms. Ervin will, if she tells me; and I --

22 this is something that nobody's going to be satisfied

23 with, if I have to Rule; and please try you all. Not

24 just to make it easier for me at Christmas time.

25 Thank...

1 MR. JOHNSON: Your Honor, may I, before we go...

2 JUDGE: Please, Mr. Johnson.

3 MR. JOHNSON: ...I would like to -- now, I think

4 it would be appropriate to Amend my Counterclaim and

5 the C.E. Byrd Claim to...

6 JUDGE: Wait a minute, Ms. Ervin? Mr. Johnson

7 is...

8 MS. ERVIN: What?

9 JUDGE: ...Mr. -- Cely, Mr. Johnson is attempting

10 to...

11 MR. JOHNSON: I failed to conclude in my

12 Counterclaim, although I thought, since it had already

13 been pled in S. W. Byrd case, that I didn't need to

14 plead it in the C.E. Byrd case, that I also include a

15 cause of action to determine the heirs in the C.E.

16 Byrd, and go through appointing a Guardian Ad Litem for

17 the unknown heirs and that sort of thing. I would like

18 to proceed with that and I would like the Court's

19 permission to Amend my Counterclaim to that effect.

20 JUDGE: That would be in the -- would that not be

21 in judicial economy, as best interest? I mean, who

22 would be -- why would that be to the detriment of

23 anyone?

24 MS. ERVIN: I don't think it would, Your Honor.

25 JUDGE: Ms. Ervin?

1 MS. ERVIN: I just think you need to give
2 sufficient notice.
3 JUDGE: Ms. Brigman?
4 MS. BRIGMAN: I would like to state, that, like
5 Mr. Johnson said, appoint a guardian, publish notice,
6 make sure that the proper parties receive notice. I
7 don't have a problem with amending pleadings here;
8 rather than making them to file a whole new action.
9 That's fine, as long as proper notice is given.
10 JUDGE: I think that would be fine.
11 MS. ERVIN: I would only object if he's going to
12 try to put off ours, until he gets his done.
13 MR. JOHNSON: Not at all. Not at all.
14 MS. ERVIN: But other than that, I think you are
15 absolutely correct.
16 JUDGE: Then granted.
17 MR. JOHNSON: Thank you, Your Honor.
18 JUDGE: Thank you all so very much -- so very
19 much.
20 (THE HEARING CONCLUDED AT APPROXIMATELY 4:20 P.M.)
21
22
23
24
25

1 STATE OF SOUTH CAROLINA)
2)
3 COUNTY OF SUMTER)

CERTIFICATION

4 I, Kenneth S. McDonald, a Federally Certified
5 Verbatim Court Reporter and Notary Public in and for
6 the State of South Carolina, do hereby certify that the
7 foregoing proceedings were taken by me and thereafter
8 reduced to typewriting under my supervision; that the
9 93 pages contain a full, true, and correct
10 transcription of all the proceedings; that I am not kin
11 to any parties of this cause of action, nor am I
12 interested in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 and seal this 12th day of July, 2013.

15
16 ORIGINAL SIGNED
17 KENNETH S. McDONALD

18 My Commission Expires 12-22-18
19
20
21
22
23
24
25

State of South Carolina)
County of Darlington)

In the Court of Common Pleas
Fourth Judicial Circuit
2013-CP-16-00431

E. Butler McDonald,
Plaintiff,

Vs.

Wilkins Byrd, et al,
Defendants.

Transcript of Record

October 7, 2013

Darlington, South Carolina

B e f o r e:

The Honorable J. Michael Baxley, Judge

A p p e a r a n c e s:

Brown W. Johnson, Esquire
Attorney for the Defendant

Gena P. Ervin,
Attorney for the Plaintiff

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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-- NO EXHIBITS ENTERED --

1 THE COURT: All right. Now we are in the matter of an
2 appeal. This is -- comes from the S.W. Byrd -- that's B-
3 y-r-d -- Estate appeal from the Darlington County Probate
4 Court. And Counsel, let's let everyone introduce
5 themselves. Mr. -- Mr. Johnson, you are the appellant,
6 and so I'd be glad to hear from you.

7 MR. JOHNSON: May it please the Court, Your Honor.
8 Brown Johnson. May I use the podium?

9 THE COURT: You may. And let's just for the moment
10 introduce ourselves for the record so our court reporter -
11 - make sure we -- our record will be clear.

12 MR. JOHNSON: I'm Brown Johnson. I represent Wilkins
13 Byrd and the other appellants in this appeal from the
14 Probate Court.

15 THE COURT: All right. And then, Ms. Ervin?

16 MS. ERVIN: Yes, Your Honor. My name is Gena Phillips
17 Ervin, and I represent E. Butler McDonald, the -- I guess
18 he was the petitioner/respondent in this matter.

19 THE COURT: All right. Thank you. And let me just
20 state for the record that I know Mr. Wilkins Byrd. He is
21 an attorney. He has, of course, not practiced here in
22 Darlington County, but grew up in the Hartsville area.
23 And I have known him because he was the same age as one of
24 my brothers.

25 And obviously, living in Hartsville community, know

1 many of the heirs, whose names I see listed on the -- who
2 would be members of the Byrd family, who would be parties
3 of interest in this.

4 It would not affect the way that I would rule, but I
5 just simply wish to disclose it. And if any party wishes
6 to respond to that or motion for recusal, I'll be glad to
7 hear from you. Mr. Johnson?

8 MR. JOHNSON: No, sir.

9 THE COURT: All right. And Ms. ---

10 MS. ERVIN: No, sir, Your Honor.

11 THE COURT: --- Ervin?

12 MS. ERVIN: Darlington's a small town.

13 THE COURT: Well, that's true, it is. All right.

14 (To Mr. Johnson) Then you are the moving party. I've
15 received briefs from both sides of this argument. So I'll
16 be glad to hear from you now.

17 MR. JOHNSON: May it please the Court, Your Honor. I
18 represent the appellants in this appeal from Darlington
19 County Probate Court, which arises out of a partition
20 action brought by the respondent, Butler McDonald.

21 Mr. McDonald commenced this partition action in April
22 of 2012, seeking partition of a tract of land located in
23 Darlington County, known as the "S. W. Byrd farm."

24 This tract of land consists of approximately 240
25 acres. It's located about five miles from downtown City

1 of Hartsville. It consists of open fields and pine
2 forests.

3 I think it's significant and important to note the S.
4 W. Byrd farm is adjacent to another tract of land known as
5 the "C. E. Byrd farm."

6 Your Honor, if I may just to orient the Court, the S.
7 W. Byrd farm (using demonstrative aide) -- this is Rolling
8 Road, which is off of Highway 15, the main route to
9 Society Hill from Hartsville. The S. W. Byrd farm is here
10 (indicates.) Mr. McDonald brought this partition action
11 of this farm.

12 In response to his partition action, we -- same
13 parties -- brought a partition action of the C. E. Byrd
14 farm, which is adjacent, contiguous to the S. W. Byrd
15 farm.

16 The same parties own both the S. W. Byrd farm and the
17 C. E. Byrd farm, but in different percentages of
18 ownership. I will comment on that later.

19 Your Honor, the -- Mr. McDonald owns 2 percent of the
20 S. W. Byrd farm. He brought this partition action, and
21 pursuant to the code section, he gave us the right or
22 issued us a right of first refusal.

23 We are appealing from the order of the Probate Court,
24 which orders the sale by public auction of the S. W. Byrd
25 farm. The grounds for our appeal are many.

1 First of all, Your Honor, we contend that the Court
2 erred by denying the appellants the right to purchase the
3 respondent's minority interest of approximately 2 percent,
4 pursuant to Section 15-61-25 of the code.

5 Now, that section is sometimes referred to as "the
6 right of first refusal statute." Ms. Ervin -- after the
7 case was brought, a hearing was scheduled in -- on
8 December the 5th. We, the appellants, had expressed
9 interest in purchasing Mr. Byrd -- excuse me -- Mr.
10 McDonald's 2 percent interest early on.

11 The obvious solution here -- I submit, a partition
12 action is a equitable proceeding. What is fair? What is
13 reasonable to all parties?

14 The obvious solution here is for my clients, the
15 Byrds, to purchase Mr. McDonald's approximate 2 percent
16 interest.

17 In the adjacent farm, the C. E. Byrd farm, in which
18 Mr. McDonald owns over 40 percent and my clients own about
19 12.5 percent, the obvious solution is for my clients to
20 purchase his 2 percent interest, and for him to purchase
21 our 12.5 interest.

22 Now, it's safe to say that these parties do not get
23 along. They have been in litigation against each other in
24 the Betty Byrd estate in Georgia for years. The obvious
25 solution is for the parties to buy each other out. And

1 since this is an equitable proceeding, we submit that that
2 should happen however it comes about.

3 But Your Honor, our grounds for appealing the order to
4 sell the property by public auction is based on the
5 Statute 15-61-25. After the hearing was set, Ms. Byrd
6 [sic] sent us the right of first refusal, at that point,
7 we did not have an appraisal of the property.

8 Having expressed interest in buying the property, I
9 requested that we continue the December 5 hearing, and --
10 and the parties agreed for the appointment or agreed on an
11 appraisal. The parties would split the expenses of an
12 appraisal, and we'd buy each other out. That, I
13 respectfully submit, is the right thing to do.

14 Now, Mr. McDonald objected to that. He objected to
15 that, he would not agree to a continuance, and I have
16 noted that prior to the hearing, within days of the
17 hearing, I said, "Let's continue this thing. Let's get an
18 appraisal. And let's -- let's see if we can settle this
19 thing."

20 They objected to it -- objected to it, but I got --
21 was of the impression that they were amenable to the
22 appointment of an appraiser.

23 When we went to the hearing on December the 5, Mr.
24 McDonald said this, "You failed to make an offer. You
25 failed to make an offer pursuant to Section 15-61-25 of

1 the code, and you no longer have the right to purchase my
2 interest. The property will be sold by public auction.
3 Although I only own 2 percent, I can force my 98 percent
4 owners to sell this property, which has been in the Byrd
5 line for over 200 years."

6 So that -- the question then -- one question for this
7 Court: Can a minority owner force the majority to sell
8 the property if they don't make an offer under 15-61-25?

9 Mr. McDonald took the position that the appellants no
10 longer had the right to purchase his interest because
11 appellants had not submitted an offer to purchase no later
12 -- I'm quoting from the statute (as read): "... no later
13 than 10 days prior to the date set for the trial of the
14 case."

15 Now, keep in mind, we had long expressed interest in
16 buying his property. We had approached them about -- even
17 suggested a -- an appraiser, someone by the name of Mr.
18 Lofton (phonetic) was suggested to do the appraisal. They
19 would have nothing to do with it, have no part of it.

20 So we go to the hearing, thinking that they're going
21 to agree to an appraiser, and then they say, "No. You
22 didn't make an offer. You have waived your right to buy
23 the property. You cannot -- we can force you -- even
24 though we own just 2 percent, we can force you to sell the
25 property by public auction."

1 Your Honor, I respectfully submit there is no evidence
2 -- no -- not only is there no evidence to support such a
3 position, it's contrary to the statute, it's contrary to
4 the principals of an equitable proceeding of doing what's
5 fair and doing what's reasonable for all parties. The
6 word "waiver" does not appear in the statute. There's no
7 case law that would support such a position.

8 So -- and we raised that question during the hearing.
9 I moved to adjourn the hearing, asked that we appoint --
10 the Court appoint a -- an appraiser, and then we come back
11 if we can't settle the case after we get an appraiser.
12 Mr. McDonald refused.

13 Here is the position -- I'm reading from page 70, if I
14 may, Your Honor, from the transcript of the record (as
15 read): "Your Honor, if you'd look, the file will show
16 that on November 8, that I served everybody the order, and
17 letters to notify tenants in common, the right of first
18 refusal. They had -- the statute requires that they make
19 an offer 10 days before the hearing. They had until
20 November 21. Noone has actually made an offer -- offer.
21 I don't believe my client should -- plus, they want
22 clients's share -- to share in the expense of the
23 appraisal and the timber crews. They are the ones who are
24 interested in perhaps purchasing a piece of the property.
25 I don't believe they have complied with the statute, nor

1 that we should have to pay cost to help them figure out
2 what they want to offer."

3 Now again, the appellates asked to adjourn the hearing
4 and obtain an appraisal. Mr. McDonald objected.

5 They -- at the bottom of the page, Ms. Ervin responds
6 (as read): "Your Honor, they could have done that in the
7 last three weeks, and if they -- they'd look at sections"
8 -- I think she means 15-61-25 -- "it provides that if you
9 can't agree, you know, if they had made an offer and
10 turned it down because we would not agree on a value, then
11 the Court could have -- could have -- I'm sorry -- then
12 the Court would appraise -- would appoint more than one
13 appraiser and tax the cost to the person seeking to
14 purchase the property. It's on Section 15-61-25."

15 Your Honor, the -- the -- we took the position that a
16 minority interest holder should not be allowed to force
17 the majority owners into selling their property. Mr.
18 McDonald, regardless of his amount of ownership, simply
19 states that he can make us sell the property against our
20 will.

21 Also, Your Honor, Ms. Ervin stated -- and I'm quoting
22 off -- this is on page 8 of the memorandum (as read): "I
23 think if they had followed the statute and made an offer
24 in a timely fashion, you might have a point. But at this
25 point, they've missed that chance. They didn't make an

1 offer, there's nothing in writing to pay him anything.
2 Basically, they kept waiting, wanting him to bid against
3 himself to give them an amount, rather than make an offer.
4 I think the statutes are clear. Any co-tender -- co-
5 tenant, regardless of their percentage of ownership, can
6 compel the sale."

7 Your Honor, we contend that's not the law. The
8 statute itself addresses that question. If I may direct
9 the Court's attention to the last sentence in paragraph A
10 of Section 15-61-25 which states as follows (as read):
11 "The non-petitioning joint tenants or tenants in common
12 shall be allowed to purchase the interest in the property,
13 as provided in this section, whether default has been
14 entered against them or not."

15 Your Honor, the statute addresses that question. It
16 addresses this situation, and it clearly states that a
17 minority interest holder cannot force the majority to sell
18 a piece of property against that will -- against their
19 will.

20 The statute clearly states the appellates have the
21 right to purchase the property, notwithstanding their
22 compliance with the statute. We did not submit an offer,
23 a firm offer. We expressed, "We will buy your property.
24 Let's get an appraisal." "No."

25 And then we go to the hearing thinking they're going

1 to agree to an appraisal. They changed their position and
2 say, "You've waived your right. You don't have the right
3 to purchase the property because you didn't make an offer
4 within 10 -- 10 days."

5 I respectfully submit that that provision in the
6 statute still gives us the right to purchase the property.

7 Your Honor, going onto our second grounds, we contend
8 the Probate Court erred by holding no interested party had
9 provided respondent's attorney of their wish to purchase
10 the property on or before November 21, 2012. Now, that's
11 about two weeks before the hearing.

12 The line from the order says -- this is the top of
13 page 9 of the memorandum (as read): "Based on the
14 testimony at the hearing, no interested party had notified
15 Ms. Ervin of their wish to purchase the same."

16 Your Honor, I set forth in detail, verbatim,
17 correspondence, letters between myself and Ms. Ervin about
18 our interest to purchase the property. As early as
19 September 21, 2012, I wrote Ms. Ervin and stated as
20 follows (as read): "Butler McDonald owns approximately 2
21 percent of the S. W. Byrd farm. Do you think you would
22 consider my client buying his interest? If we agree on a
23 value of the estate, I may be able to find enough buyers
24 to buy his interest. Please give this some thought."

25 We continue on. Ms. Ervin wrote back and said that

1 Mr. McDonald was amenable to that if we would pay his
2 attorney fees. So we bickered back and forth.

3 And then on -- in November (as read): "I would
4 appreciate Mr. McDonald submitting a settlement demand for
5 his interest in the property, pursuant to Section 15-61-
6 25. I look forward to hearing from you."

7 And the correspondence continues. As -- as late as
8 November 14, 2012, I wrote Ms. Ervin and stated (as read):
9 "I would like to discuss with you an appraisal of the
10 property. I would appreciate your giving me a call."

11 On November 26, approximate -- less than two weeks
12 before the hearing, I proposed (as read): "I propose we
13 use J.P. Lofton (phonetic) Company for appraisals on both
14 the S. W. Byrd tract and the C. E. Byrd tract." And I go
15 on to tell them what the price is.

16 On November 28, I wrote and said this -- I suggested
17 to her by letter (as read): "We recommend to our clients
18 -- I suggest we recommend to our clients a continuance of
19 the December 5 hearing, and try to reach an agreement on
20 an appraiser and someone to do the timber crew."

21 November 30, Ms. Ervin writes back in her letter --
22 and I've underlined the second portion there in which she
23 first states she's not agreeing or he's not agreeing to a
24 continuance. And then she says (as read): "He is of the
25 opinion that we should go forward with the hearing, and

1 the Court should determine who will appraise the property
2 and who would be reasonable -- who would be responsible
3 for the payment of the same if such an appraiser is
4 necessary."

5 So it seemed to me that they were amenable to having
6 someone appraise the property. But we go to the hearing
7 less than a week later, and they say, no, you've waived
8 your right.

9 Your Honor, there's no authority for that, and we --
10 again the Court committed error by holding that noone
11 expressed an interest in buying their 2 percent.

12 Your Honor, my next grounds for appeal, beginning on
13 page 12 of the memorandum (as read): "The Probate Court
14 erred in holding partition of the property by allotment is
15 not practical, and therefore, the property is to be sold
16 by auction. The order appealed from provides partition of
17 the property, described in paragraph 4, by physical
18 partition is impractical, and therefore, should be sold at
19 auction."

20 Your Honor, it's well established in South Carolina
21 that partition by allotment, that is, dividing the
22 property up and deeding it to the various owners, is
23 preferred over judicial sale of a property. And I cite
24 there, "A partition action is an equitable action. A
25 partition procedure must be fair and equitable to all

1 parties in the action."

2 Now, since partition by allotment on dividing the
3 property up is preferred, then the party seeking a
4 judicial sale, a sale at the courthouse steps, partition
5 by allotment is statutorially preferred over judicial sale
6 of the property. Further, the party seeking a partition
7 by sale carries the burden of proof to show that partition
8 by allotment is not practical or expedient.

9 Your Honor, I direct the Court's attention, we contend
10 that Mr. McDonald presented no evidence, no evidence that
11 the property cannot be divided by allotment. I submit
12 there's no evidence, and I -- and I cite what was said at
13 the hearing about this on page 16 of the memorandum.

14 In the case at hand, Mr. McDonald presented no
15 evidence which would justify a sale by auction. The
16 transcript of record, beginning on page 19, line 22,
17 includes the following. This is questions from Ms. Ervin
18 (as read): "Okay. And you have also requested the Court
19 partition the property; is that correct?"

20 Answer: "Yes, ma'am."

21 Question: "In your opinion, is the property capable
22 of being divided in kinds, so that each person with an
23 interest gets a little piece?"

24 Answer: "I -- I don't think so."

25 Question: "Okay."

1 Answer: "I could be wrong, but I don't think so."

2 "And you would request that the -- you're requesting
3 the Court sell it."

4 Answer: "I request it."

5 "So you wish it be done by public or private sale, or
6 -- or do you care?"

7 "Public sale."

8 Question: "Public sale?"

9 Answer: "In front of the courthouse."

10 Your Honor, this is not evidence. Just to say "I
11 don't think the property can be divided by allotment or by
12 dividing it up," that's not evidence. That's just a self-
13 serving statement which is not supported by the record.

14 And consider the property. Consider the property, I
15 respectfully submit. This is a property, it's a rural
16 tract of land located five miles outside of the city. It
17 consists of open fields and pine woods. Why can't it be
18 partitioned? If it were a house, a residence, on a lot,
19 one house on one lot, then it would be difficult to
20 divide. But this is acreage, open fields and -- and pine
21 forests.

22 So Your Honor, when -- but there is no evidence
23 supporting the Court's conclusion that the property could
24 not be sold or could not be partitioned by allotment.

25 Your Honor, the Probate Court also erred, we contend,

1 in determining percentages of ownership of the property
2 based on a partnership among tenants in common, in that no
3 partnership existed.

4 Now, the order appealed from set forth the percentages
5 of ownership. That, we contend, is in error. Years ago,
6 one of -- one of the parties got a lawyer to -- to give
7 him an opinion -- to give the owners an opinion regarding
8 the amount of ownership. The lawyer did that, and he
9 based those percentages on a partnership.

10 Now, Ms. Betty Byrd lived here in Darlington -- the
11 property, of course, is -- was in -- is in Darlington
12 County -- when her health failed. She went to live in a
13 nursery home -- a nursing home in Camilla, Georgia. So at
14 the time of her death, she was a resident and citizen of
15 Georgia.

16 There was reference to a chart, which was done by a
17 Mr. Scott, concerning the ownership, and he based the
18 percentages of ownership on a partnership. So it passed
19 as personal property under Georgia law.

20 Well, we -- first of all, we contend there is no
21 partnership, there never was a partnership, and the -- the
22 parties have sued each other for years over the Betty Byrd
23 estate in Georgia.

24 Simply to hold that this was a partnership is wrong.
25 That real estate in -- in Darlington County passes under

1 South Carolina law, not Georgia partnership law. Your
2 Honor, we submit that that is in error.

3 Now, the effect of that is -- the effect of that is --
4 as I point this out -- is my clients, the Byrds -- their
5 interest is reduced, for all the property in question came
6 from Betty Byrd, from her estate. Mr. McDonald's interest
7 came from Betty Byrd; the Byrds's interest came from Betty
8 Byrd.

9 If it passes under South Carolina law, which it
10 should, my clients receive less. They receive less; Mr.
11 McDonald receives more. But it's in error. It ought to
12 be right, but two of the Byrds are left out completely
13 under this personal property analysis, which is simply
14 wrong.

15 I cited the -- the -- the authority there. The fact
16 that the parties own the property together does not make a
17 partnership. It's well-established law in this state that
18 the law -- property passes as determined by the law of the
19 situs. South Carolina law, South Carolina law. I cite
20 those cases on the top of -- on the bottom of page 18 (as
21 read): "Testimony's -- I was talking about Mr. Byrd's
22 testimony, who explained why the property ought to pass
23 under South Carolina law -- "He did this, in spite of the
24 fact that it's against his interest, in that it decreases
25 his share and increases the share of Mr. McDonald.

1 "Real estate passes -- real estate descends according
2 to the law of where the land lies."

3 And I cited a case there. I also cited a statute:
4 Section 62-3-101 of the Probate Court, which provides (as
5 read): "Real estate devolves to the heirs of an intestate
6 at the time of death is controlled by South Carolina law."

7 Your Honor, also we contend that the Probate Court
8 erred by ruling that Mr. McDonald is entitled to a
9 reasonable attorney fee and cost of his action -- cost of
10 this action. The statute under -- under partition of
11 property is Section 15-61-110. It says that (as read):
12 "The Court of Common Pleas has a lot of discretion in
13 awarding attorney fees. Common Pleas may fix attorney
14 fees and all petition proceedings as may be equitable."

15 I -- I respectfully submit that the key is equitable,
16 what's equitable, what's fair.

17 In this case, in spite of the fact that we tried to
18 get Mr. McDonald to agree to share in the expenses of the
19 appraisal and timber crews, when he refused to do so,
20 after the hearing of December 5, my clients stepped
21 forward, hired an appraiser, hired a timber crew, got
22 both. After obtaining an appraisal and a timber crew, we
23 submitted an offer, a buy-out offer to Mr. McDonald based
24 on his percentage of ownership and based on the appraisal
25 that we paid for. He didn't respond. No response at all.

1 When he didn't respond, we then said, "Okay. We will
2 deed you your 2 percent, your approximate 2 percent
3 interest in the S. W. Byrd farm, and we will let you tell
4 us where you want it."

5 (Using demonstrative aid) Now, the C. E. Byrd farm is
6 adjacent. We would give him his interest, plenty of road
7 frontage here. He could have it right in this corner
8 (indicates.) He owns about over 40 percent of the C. E.
9 Byrd farm. So it would certainly be to his advantage to
10 have a piece of property adjacent to the C. E. Byrd farm.

11 Still no response. And the reason he's -- didn't do
12 that is -- is apparent. He's not -- he wasn't interested
13 in money. He didn't counteroffer or didn't say, "Well, I
14 -- I would like you to buy my interest, but your price is
15 too low."

16 When we offered to deed him a tract of land, he didn't
17 respond to that. Why? Because he wants to use his 2
18 percent to force my clients to sell their property.
19 There's litigation in Georgia. He's using that as a
20 bargaining tool; either that, or simple spite.

21 Your Honor, I respectfully submit, and I have cited
22 the cases where our courts have refused to award attorney
23 fees where there's inequitable behavior on one party or
24 the other.

25 Based on this, does Mr. McDonald -- should he be

1 awarded attorney fees? I respectfully submit that what he
2 has done, bringing this suit and then trying to use his 2
3 percent to force a sale of the property, is inequitable
4 and not fair and contrary to our law. And respectfully
5 submit the parties should be on their own as far as
6 attorney fees are concerned.

7 Your Honor, in -- in the last two pages of my
8 memorandum -- last three pages, I've summarized everything
9 there. I respect -- respectfully submit that the law is
10 clear. Someone with 2 -- with a 2 percent interest cannot
11 force the other 98 percent to sell their property. You
12 still have the right to buy that property. It's the
13 equitable and fair thing to do.

14 I request that the Court reverse the order of the
15 Probate Court, and -- and if possible, appoint an
16 appraiser and let the Court decide on the value. The two
17 parties can buy each other out. That's the only
18 reasonable thing to do. Thank you.

19 THE COURT: Counsel, let me ask a question, if I may:
20 Mr. Johnson, who -- who would pay for the cost and
21 expenses of a partition by allotment? What -- what would
22 you propose in that regard?

23 Because there -- first of all, it's more than just
24 dividing the property based on percentages. It can't just
25 be an undivided interest. You gotta have everybody have a

1 particular parcel, and certain parties own one part and
2 then -- one percentage and one -- some own another
3 percentage. Even though you may dispute the exact
4 percentages, there are different -- differing percentages.

5 You gotta get ingress and egress to all those folks,
6 so you're going to have to have a survey of some sort and
7 lay it out in a -- almost as if you're planning a
8 subdivision, not quite, but to that effect.

9 Who -- who would bear that cost under your plan to
10 partition by allotment?

11 MR. JOHNSON: Well, Your Honor, I think that all the
12 parties should bear their own share that it -- we -- we
13 would arrive at some equitable manner to -- to do that.
14 I'm not sure how it would be done, but all the parties
15 should equally share in the expenses, and there will be
16 expenses. I think they all ought to share.

17 THE COURT: All right. Thank you.

18 MR. JOHNSON: Thank you.

19 THE COURT: And Ms. Ervin, in reply?

20 MS. ERVIN: Yes, Your Honor. And before I forget, in
21 answer to that question, I don't think you could make them
22 equally bear the cost because they don't have an equal
23 interest in the property; and I don't know that a 40
24 percent interest holder should pay the same price as a 2
25 percent interest holder. I think there are a lot of real

1 problems trying to actually divide this property.

2 However, I did give you a memo and I apologize it was
3 late today, and my assistant was out sick this weekend.

4 So ...

5 THE COURT: That's all right.

6 MS. ERVIN: Unfortunately, I typed it myself, and I --
7 I have no idea whether there's spelling errors, or if you
8 would just overlook that. I apologize.

9 But I would like to start out by agreeing that this is
10 an appeal to determine the heirs of S. W. Byrd and the
11 partition of certain property. He ordered it done by
12 sale.

13 I would like to first point out to the Court that a
14 lot of the issues in the appellants's memorandum and the
15 grounds for appeal were not raised before the Court, and
16 are not decided by the Court. And many more were -- he
17 was including potential settlement conversations, which
18 aren't admissible under Rule 408 of the South Carolina
19 Rules of Evidence.

20 So I would suggest they should not be -- they should
21 just be dismissed, should not be looked at at all.

22 But we did -- as he said, I filed originally the
23 summons lis pendens and petition to determine heirs and
24 partition in April of 2012. We went through the normal
25 procedure about a guardian ad litem, publish notice, had a

1 -- moved before the Court pursuant to 15-61-25 in October,
2 October 31 of 2012, for an order to notify them of their
3 rights to first refusal.

4 This statute itself is very new in South Carolina.
5 There is no law, so you know, I would take exception to
6 the fact that Mr. Johnson knows exactly what the statute
7 says, because there is no case law. You may be making new
8 law here today.

9 The -- that 16 -- 15-61-25, nobody really knows. It
10 just says "notify them." So I asked -- petitioned the
11 Court; said this is what I propose to do: Send them a
12 letter; it specifically states they have to give us notice
13 within 10 days before the hearing; gave them that notice.

14 There was -- and we never did receive a written offer.
15 Most everything he has mentioned, like I said, were
16 settlement offers, and it was well before that time period
17 or well after that time period.

18 I had one letter from him, within that time period.
19 And he -- basically, that letter consisted of him telling
20 me he didn't think I'd done it right. I hadn't done the
21 notice right, and to tell him how much we wanted. There
22 was never an official offer to purchase property made
23 during the time period.

24 And -- and -- and he wanted my client to say, "
25 This is what I'll take for it." And then that,

1 apparently, is his idea of a contract. There was never a
2 meeting of the minds. There was never even an offer --
3 there was never an offer, period, to do -- for them to do
4 anything during the time period.

5 He further alleges that the statute allows him to
6 purchase the property, even if they failed to comply with
7 Subsection A. Well, Subsection A talks about -- based on
8 what he -- he read to the Court, it says (as read): "The
9 non-petitioning joint tenants or tenants in common are
10 allowed to purchase the property whether or not default
11 has been entered against them."

12 I always take the position that you would use the term
13 "default" in the normal sense of the word: They haven't
14 pled. That's not the case here. They were -- I think
15 that means I have to give them notice whether they've
16 answered or not. And if you read -- if you take it in
17 it's normal -- normal English, which is what you do,
18 that's what it says.

19 Whether they had -- hired an attorney or not, I had to
20 give them notice they had the right to do it. They then
21 have that certain period of time within which to reply.

22 You never even get to whether or not you need an
23 appraiser unless you meet the requirements of A and you've
24 made an offer. If you go to B, then it says (as read):
25 "If they've made an offer and they can't reach an

1 agreement as to price, then the Court may appoint one or
2 more appraisers, with the expense to be borne by the
3 purchasing party."

4 So the fact that he makes a big deal about the fact
5 that he paid for the appraisal, that's what the statute
6 requires anyway.

7 But we never got to the point of disagreeing about
8 price because he never made an offer. All he said is
9 "can't we work this out."

10 And I do not -- and I -- I would also take the
11 position there is nothing in the partition statute that
12 says you have to have a certain interest to require a
13 partition action. That is -- that is strictly enforced.
14 Any owner of any percentage has a right to ask the
15 property be partitioned at any time. He never pled the
16 fact that he could buy an interest in the property. The
17 statute -- the language of the statute itself is they have
18 a right to purchase the property. It doesn't say you can
19 purchase merely an interest.

20 That was -- the Court pointed out to him in the
21 transcript on page 85 and 86 (as read): "How are you
22 going to get around the fact that you never pled this?"
23 There was no motion in front of him; it was not in their
24 answer. That was something he brought up for the first
25 time. It wasn't before the Court properly.

1 (Brief pause.)

2 MS. ERVIN: Excuse me, Your Honor.

3 The third allegation that they've made was that the
4 Court erred in ordering the property to be partitioned by
5 sale. And I agree with him this is an equitable action,
6 and then -- and your Court does have the ability to make
7 it's own findings of fact. But the cases also say you're
8 not required to discard the findings of the trial judge
9 who saw and heard the witnesses, and was in a better
10 position to judge their credibility.

11 There was testimony from my client, who knows the
12 property as well as anybody, that it would be hard to
13 partition. You've got -- and I can't remember the exact
14 number of heirs -- but a good many who have an interest.
15 You've got some open land, you've got some timber. I
16 don't know how much road frontage. I have no idea whether
17 that's even accurate or not.

18 I don't know that you can physically divide it. You -
19 - everybody's got a different interest. You're going to
20 have to take into consideration that part of it's crop,
21 part of it is timber. How do you value that so that each
22 person gets a piece that is an equal value? It's not
23 equal acreage or percentage acreage, it's equal value
24 based on percentages. I think it would be very difficult
25 and very expensive.

1 The easiest thing to do would be to sell the property.
2 I think that was -- there was testimony to that effect in
3 the hearing. I take the position that that met and meets
4 our burden of proof, which then shifted to the appellants
5 to show that it could be divided in kind.

6 They made no argument at all about that, and there was
7 no testimony at all that it could be divided and how it
8 could be divided on their behalf.

9 The appellant also argues that the Court erred by
10 determining ownership interest based on the partnership.
11 But if you read the order, there is never a mention of
12 partnership. In the letters and the things the Court
13 relied on there was no mention of partnership.

14 I think Mr. Johnson keeps bringing -- Mr. Johnson
15 keeps bringing in the C. E. Byrd estate, which was not
16 before the Court. None of this was before the Court. You
17 can't go by the C. E. Byrd estate, and I think that may be
18 what confuses them about the partnership interest. But
19 the Court made no mention of partnership or personal
20 property. It just determined the ownership interest of S.
21 W. Byrd.

22 And if you look at the transcript, on page 75 and 76,
23 as a result of a question from me to Mr. Wilkins Byrd, he
24 admits the list of heirs is complete and he knows of no
25 other heirs. So based on testimony, it was -- it was

1 correct and complete.

2 The appellants also argued that there was an error in
3 awarding attorney fees, which the statute allows at the
4 Court's discretion. They kept alleging to the Court that
5 the respondent wasn't entitled to it because of
6 inequitable conduct. But there was never any inequitable
7 conduct shown by anything that had anything to do with
8 this particular action.

9 They tried to go back 10 years and bring up things
10 they said were inequitable, when in fact, everything they
11 accused my client of, he was a personal representative
12 with one other person, Wilkins Byrd, and they had to act
13 jointly. So one couldn't be inequitable and one
14 equitable. Can't work that way if you gotta work
15 together.

16 But there was no inequitable conduct on his part.
17 There's nothing in the statute that says you have to have
18 a reason other than "I don't want to own property with
19 these people any more," to file a partition action. That
20 in and of itself is not inequitable and would not --
21 should not provide that he's not entitled to attorney
22 fees.

23 But based on that, I would just take the position that
24 he hasn't -- none of his arguments are really admissible
25 and can't be used to record -- to reverse a proper order

1 of the Probate Court.

2 THE COURT: Counsel, let -- let me ask you, if I may:
3 Are the parties, the two principal parties here, still co-
4 personal representatives of the estate of Betty Byrd in
5 Georgia?

6 MS. ERVIN: It is, Your Honor. And that's an on-going
7 state, and they keep bringing that up. But I would take
8 the position South Carolina doesn't have any jurisdiction
9 over that. There is an on-going, open case in Georgia.

10 THE COURT: Right. Well, I ---

11 MS. ERVIN: And we're dealing with S. E. Byrd [sic.]
12 But yeah. They're still co-personal representatives.

13 THE COURT: Okay. Well, I ask that to ask this: Is
14 there not some global settlement potential for this entire
15 -- I know we're here on one particular issue and that --
16 and that's what the jurisdiction of this Court is. But is
17 there not some avenue for a global settlement?

18 MS. ERVIN: We have tried, Your Honor. I think my
19 client, at this point, is just tired of it.

20 And he also, in fairness to him, would -- he has a
21 daughter who is dealing with her force -- fourth bout of
22 breast cancer and is not doing well. This is the least of
23 his worries, Your Honor.

24 THE COURT: I see. It's ---

25 MS. ERVIN: She lives with him. He and his wife take

1 care of her. And that takes care of most of his time,
2 because she's on pretty bad chemo.

3 THE COURT: And where does -- where does Mr. McDonald
4 live?

5 MS. ERVIN: Georgia, Marietta.

6 THE COURT: Is he from Darlington County?

7 MS. ERVIN: I don't -- I -- I assume his family was.

8 THE COURT: Very good. Thank you for your argument.

9 And then Mr. Johnson, you are the appellant, so we'll
10 let you reply if you wish.

11 MR. JOHNSON: Just briefly, Your Honor. We're not
12 asking that the property -- the Byrds don't want to sell
13 the property.

14 THE COURT: Right.

15 MR. JOHNSON: The Byrds don't want to sell it. We
16 just want Mr. McDonald's 2 percent interest. And that's
17 the thing to do, and I'm sure he would like to get rid of
18 us, get out -- and -- and out of the C. E. Byrd case
19 property with our 12 percent. That's the global
20 settlement.

21 Now, the problem is still going on in litigation, but
22 it does involve South Carolina law because this is where
23 the real estate is.

24 And we don't contend that there was any discussion
25 about a partnership, but the percentages arrived at by the

1 Court are based on -- on this chart that the lawyer did,
2 that was not introduced into evidence, that divided the
3 property as if it were a partnership. And there was no
4 partnership. That's simply wrong. That property should -
5 - the real estate should be divided by South Carolina law,
6 not Georgia law as personal property. And again, it's to
7 the detriment of my clients and to the benefit of Mr.
8 McDonald.

9 But we don't want to -- we're not pretending that'll
10 keep the cost down. Just get -- get him out of the 2
11 percent. We want to treat him fairly, equitably. We can
12 give him land or we can give him money. That -- that's
13 all we want. We don't want to sell or partition the
14 entire 240 acres among the Byrd cousins. Thank you.

15 THE COURT: And -- and -- and Mr. Johnson, is -- has
16 there ever been "we'll pay you 'X' dollars" offer made?

17 MR. JOHNSON: Yes, sir. Yes, sir. We sent it before
18 the order came out. Before the order came out, we sent
19 them -- we got our appraisal. Based on that, we came up
20 with a number and sent it to them. No response.

21 And then we said, "We'll give you a piece of land if
22 you're not interested in money." Yes, sir.

23 We sent them an offer before the order came out.

24 Now, it was not within 10 days of the hearing. I
25 confess that.

1 THE COURT: Okay. And you said that a lot of this may
2 be to vex or I think you -- the term you used was perhaps
3 "for spite." But would -- wouldn't this be just equally
4 damaging to -- to the prevailing party here? Because if
5 you assume you're going to sell this at public auction,
6 it's going to diminish the value, everybody's going to
7 take a hit, including -- although he's only taking a 2
8 percent hit, he's going to take a reduction himself, is he
9 not?

10 MR. JOHNSON: Yes, sir. But we'll -- we'll certainly
11 -- but he's the one that asked for the partition action,
12 and so -- but we will compensate him, either by land or
13 money. If he doesn't want to sell, we'll just --

14 THE COURT: Okay. Well, let's do this: This is --
15 this is a -- somewhat novel. And I would like to have the
16 benefit of reviewing your memorandum now, in light of the
17 arguments presented here, and simply take this matter
18 under advisement and rule at a later time, after I've had
19 a chance to give it some thought and reflection.

20 And first of all, is there objection to that from
21 either side?

22 MS. ERVIN: No, Your Honor.

23 MR. JOHNSON: No, Your Honor.

24 THE COURT: Okay. Are we under some sort of a -- not
25 that I'm going to delay needlessly, but is there some

1 deadline of some sort or ---

2 MS. ERVIN: Not that I'm aware of.

3 THE COURT: --- taxes due or some other event getting
4 ready to occur that's a trigger for something else to
5 happen here?

6 MR. JOHNSON: No, sir, Your Honor.

7 THE COURT: Okay. Well, then let me just simply take
8 this appeal under advisement, and after having had an
9 opportunity to review, I will be back in touch with the
10 parties through counsel. All right.

11 MR. JOHNSON: Thank you, Your Honor.

12 THE COURT: Have -- have a good day everyone.

13

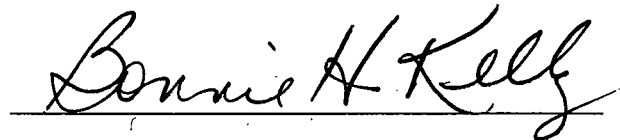
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-- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court, for Darlington County, South Carolina, on the 7th day of October, 2013.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

A handwritten signature in cursive script that reads "Bonnie H. Kelly". The signature is written in dark ink and is positioned above a horizontal line.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

March 26, 2014