

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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ON WRIT OF CERTIORARI TO THE COURT OF APPEALS NOV 24 2014

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

S.C. Supreme Court

O. Davie Burgdorf, Master-in-Equity

Appellate Case No. 2013-001505

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents,

v.

Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Petitioner.

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STATEMENT OF ISSUES

- I. **Did the Court of Appeals err in determining that the USDA payments were property of the Petitioner's father's estate and that the Petitioner is liable to the estate for having received them?**

- II. **If that decision was not error, did the Court of Appeals err in then determining that the Respondent's right to sue for those payments was not barred by the statute of limitations?**

- III. **If that decision was not error, did the Court of Appeals err in then determining that the master-in-equity's decision to offset the judgment against the Petitioner by his right to inherit from the estate as his father's devisee was error?**

- IV. **Did the Court of Appeals err in determining that S.C. Code Ann. § 15-61-25 does not apply to this case?**

STATEMENT OF THE CASE

This action concerns rural land in the vicinity of the town of North, South Carolina, that was owned by Atn Burns Livingston, who died in 1999 and was the father of Respondent (hereinafter “Emma”) and Petitioner (hereinafter “Clyde”). (App. p. 169.) After Atn Livingston died, Emma and Clyde were appointed as the co-personal representatives of his estate (hereinafter “the Estate”). (App. p. 169.) Emma and Clyde are the sole and equal devisees of their father and, thus, the only two owners of the land at issue in this case. (App. p. 172.)

In the year 2000, Clyde applied for farm operator status for the land subject of this case with the United States Department of Agriculture and was from then until 2008 paid \$29,902.00 in USDA subsidy payments as a farm operator. (App. p. 169.) The payments were made to Clyde as the farm operator or producer under the contract with the USDA. (App. p. 321.) Neither the USDA nor Clyde contracted for the payments to be made to the Estate. (App. pp. 321, 349-75, 405-32.)

The probate court removed Clyde as co-personal representative of the estate, on the grounds that he and Emma could not cooperate as co-personal representatives, on January 18, 2002. (App. pp. 169-72, 380-81.) From then until the present day, Emma has been the sole personal representative of the Estate. (App. p. 170.)

This case, filed on May 30, 2006, is primarily a partition action by Emma against Clyde and others, but it includes a number of non-partition claims as well. (App. pp. 184-209.) The other parties are named because of judgment liens they have or may claim against Clyde. (App. pp. 169, 172, 185-89.)

The case was filed in the Orangeburg County Probate Court and was removed to the Court of Common Pleas by order of Probate Judge Pandora Jones-Glover filed April 12, 2007. (App. pp. 174-76.) The case was referred on August 19, 2008, to the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County, by the consent of all non-defaulting parties. (App. pp. 178-83.)

On January 21, 2009, pursuant to S.C. Code Ann. § 15-61-25, Clyde served notice of his interest in purchasing the property subject of this case. (App. p. 402.) Two days later, Emma served a motion “for an Order denying the Defendant, Clyde B. Livingston, of any right to purchase the real property being the subject matter of this action pursuant to the rights granted to a ‘non-petitioning joint tenant’ by S.C. Code Ann. §15-61-25[.]” (App. p. 215.) This motion was heard on February 11, 2009. (App. p. 249 ln. 1 through p. 274 ln. 7.)

Through a written order filed June 8, 2009¹, the master denied Emma’s motion and ruled on several other matters, including Clyde’s motion for a scheduling order. (App. pp. 157-64.) Because “this action presents numerous issues in which the various parties have varying degrees of interest and involvement[.]” the master trifurcated the action, providing for separate trials of “1) the non-partition and non-lien issues between [Emma] and [Clyde] (i.e., the issues between [Emma] and [Clyde] other than issues in which the Court must decide whether a lien exists upon the real property subject of this action and claims in which the Court must decide the extent, duration, or priority of a claimed lien upon the real property subject of this action), 2) the issues in this action that concern the validity, priority, extent, and

¹ The clerk of court’s office incorrectly clock-stamped the order with the date July 8, 2009, which seems to have been just a simple mistake in setting the clock-stamp machine. (App. p. 157.)

amount of the alleged liens (or other disputed property interests), and 3) the issues as to the disposition of the real property in this action or the disposition of the funds paid into the Court in accordance with S.C. Code Ann. § 15-61-25.” (App. pp. 160-61, 162-64.) Emma served a motion to reconsider the ruling on her motion to deny Clyde his rights under S.C. Code Ann. § 15-61-25. (App. pp. 221-25.) This appeal arises from the denial of Emma’s motion and the master’s denial of the motion to reconsider, as well as his decision following the bench trial he held on March 24, 2010, of the non-partition and non-lien claims between Emma and Clyde. (App. pp. 165-68.)

The claims in this action that fell into the appropriate category to be tried on March 24, 2010, were Emma’s claim for recovery on two notes given by Clyde and Emma’s claim that Clyde had misappropriated estate property by receiving \$29,902.00 in USDA subsidy payments as a farm operator with regard to the real property subject of this action. (App. p. 169.) Before the commencement of the trial, Emma withdrew the claims on the notes. (App. p. 169, p. 278 ln. 16-21.) The master then heard Clyde’s previously served and filed motion for summary judgment on Emma’s remaining claim against him concerning the USDA payments, but the master deferred ruling on that motion until after hearing the evidence at trial. (App. pp. 169, 172-73, 226-246, p. 278 ln. 1, 4-9, p. 282 ln. 18-25, p. 283 ln. 1 through p. 293 ln. 10.)

The claim of alleged misappropriation of USDA payments was the sole subject of the trial. (App. p. 169.) Emma testified and introduced USDA records and

a summary of the benefit amounts paid as exhibits, then rested her case. (App. p. 293 ln. 12 through p. 314 ln. 14.)

Emma testified that in April of 2002 – after she had become the sole personal representative of the estate – she received a letter from the USDA about Clyde being a farm operator with regard to the land at issue and “that was the first [she] knew about it that farm service agency type payments [were] involved at all.” (App. p. 170, p. 296 ln. 9-12, 16-19.) She testified that she “asked around in the community what that could possibly mean” and then contacted the USDA and inquired with that agency about Clyde’s status as a farm operator of the land. (App. p. 170, p. 296 ln. 24 through p. 297 ln. 1-5.) According to her testimony, that was when the USDA’s Orangeburg Farm Services Agency office informed her that Clyde was and had been receiving the farm subsidy payments. (App. p. 170, p. 297 ln. 4-7.) Emma testified that she got “some copies and things from them at that time.” (App. p. 297 ln. 7-8.)

In connection with being the personal representative of the estate, Emma was represented by an attorney at the time she said she discovered Clyde had been receiving farm subsidy payments. (App. p. 170, p. 297 ln. 9-11, p. 309 ln. 15-17.) She brought the information about Clyde receiving the USDA payments to her lawyer’s attention and talked with her lawyer about “how should that be handled and how should we proceed.” (App. p. 170, p. 297 ln. 9-13.) Her attorney began a dialogue about the payments with the lawyer who represented Clyde at the time. (App. p. 297 ln. 13-24.) Despite the fact that in April of 2002 Emma knew about Clyde receiving the USDA payments and even engaged an attorney to address the situation, she did not bring suit (this action) on the claim concerning the USDA

payments until May 30, 2006, over four years later. (App. pp. 170, 184-193, p. 296 ln. 9-12, 16-19, 24, 25, p. 297 ln. 1-24.)

On behalf of the estate, Emma applied for farm subsidy payments in 2008 and has received them since. (App. p. 170, p. 293 ln. 4-5.) No evidence was offered to the effect that she was prevented from making that application at any time. (App. p. 293 ln. 11 through p. 314 ln. 14.)

Clyde testified that he and Emma had agreed that he would rent the land from her on the same terms as the previous tenant had rented the land from the decedent. (App. p. 170, p. 317 ln. 13-24, p. 319 ln. 8-12, 19-25, p. 321 ln. 6-8.) He testified that the decedent's tenant had been a farm operator of the land and had collected the USDA farm subsidy benefits himself. (App. p. 170, p. 324 ln. 4-11.)

All the testimony and USDA documents admitted at the trial were to the effect that the USDA paid Clyde the farm subsidy payments because he had a contract with the USDA's Commodity Credit Corporation under which the USDA was obligated to make the payments to him by virtue of Clyde's status as a producer/farm operator. (App. p. 293 ln. 11 through p. 314 ln. 14, p. 317 ln. 10 through p. 324 ln. 12, p. 324 ln. 24 through p. 325 ln. 24, pp. 349-75.) The estate had no contract with the USDA until 2008, and it was not a party to the USDA's contract with Clyde. (App. p. 14, p. 157 ln. 4-5.) As Clyde testified on cross-examination, the USDA payments "were not estate funds. They were paid to a farm operator. Me." (App. p. 321 ln. 22-23.)

Clyde moved for an involuntary nonsuit on the grounds that the USDA payments were not property of the estate and that the statute of limitations in S.C. Code Ann. § 15-3-530 would bar the claim in any event. (App. p. 170, p. 314 ln. 15

through p. 317 ln. 4.) The master deferred ruling on this motion and requested that Clyde present his case. (App. p. 170, p. 317 ln. 5.) Clyde testified, and Emma was again called as a reply witness. (App. p. 317 ln. 10 through p. 325 ln. 24.) Counsel and the master discussed some of the issues, and the master requested that counsel for both Emma and Clyde submit proposed orders. (App. p. 326 ln. 6 through p. 340 ln. 5.)

In an order filed November 17, 2010, the master granted Clyde's motions for summary judgment and involuntary nonsuit in part and denied them in part. (App. pp. 172-73.) The master concluded that the USDA payments were part of the Estate and found Clyde liable for receiving them; however, he limited Emma's recovery to \$11,690.00. (App. pp. 171, 172.) The master concluded that "[t]he statute of limitations limits the plaintiff's recovery, on behalf of the estate, to the USDA payments that were made within three years before this action was commenced[.]" noting that "[f]rom 2003 forward, [Clyde] was paid \$23,380.00 in farm subsidy benefits. Accordingly, the recoverable portion of [Emma]'s claim concerns this \$23,380.00." (App. p. 171.) The master also concluded that, since Clyde is the devisee entitled to one half of the estate, Emma's recovery had to be further reduced by half because of the impact of S.C. Code Ann. § 62-3-619, the executor de son tort statute, which "provides that recovery by an estate is limited by the principle that the tortfeasor is entitled to an offset for the amount he is or was supposed to receive from the estate of the property that has come into his possession." (App. pp. 171-72.) The master denied Emma's request for prejudgment interest because she did not plead that prejudgment interest should be awarded. (App. p. 172.)

The master ordered Clyde to pay \$11,690.00 to the Estate of Atn Burns Livingston within 30 days of his counsel's receipt of a clocked copy of the order, ruling that, if Clyde did not do so, the order would constitute a judgment against him and in favor of the estate in the amount of \$11,690.00. (App. p. 173.) The master made no ruling as to the nature of the cause of action that was tried or whether it was legal or equitable. (App. pp. 168-73.) Clyde and Emma both appealed.

The Court of Appeals affirmed as to all issues raised by Clyde and reversed as to two issues raised by Emma. (App. pp. 2, 4, 7, 9, 11.) The Court of Appeals published its opinion. Estate of Livingston v. Livingston, 404 S.C. 137, 744 S.E.2d 203 (Ct. App. 2013). The Court of Appeals concluded that the USDA payments were part of the land and that the Estate was entitled to them, reasoning that “[b]ecause Emma retained the authority over the estate as the PR, the property did not pass to Clyde despite his status as a named heir in the will.” (App. pp. 4, 7.) The Court of Appeals also held that the statute of limitations did not bar Emma's claim, as Clyde had argued it did, and further held that the master should not have offset the award against Clyde. (App. pp. 7-9, 11.) The Court of Appeals also held that S.C. Code Ann. § 15-61-25 was not applicable to the instant partition action because this action was initiated pursuant to S.C. Code Ann. § 62-3-911 of the Probate Code. (App. pp. 9-11.)

Clyde petitioned for rehearing or rehearing *en banc*. (App. pp. 13-23.) The Court of Appeals requested a return by Emma to the petition, which she submitted. (App. pp. 24-31.) Clyde replied to that return. (App. pp. 32-37.) The Court of Appeals denied the petition by summary order. (App. pp. 38-40.)

Clyde petitioned this Court to grant a writ of certiorari in this case, presenting the questions noted in the statement of issues at the beginning of this brief. (Petition for Writ of Certiorari.) Emma served a return opposing the petition. (Memorandum in Opposition to Petition for Writ of Certiorari.) Clyde served a reply to that return. (Reply to Respondent's Return to Petition for Writ of Certiorari.)

This Court granted Clyde's petition, stating that the grant is "to review the Court of Appeals' decision in Estate of Livingston v. Livingston, 404 S.C. 137, 744 S.E.2d 203 (Ct. App. 2013)." (Order Granting Certiorari.) As the Court did not specify that the petition was granted as to some of the questions presented but not others, this brief is directed to each of the questions presented in the petition.

STANDARD OF REVIEW

This Court reviews all questions of law *de novo*. Verenes v. Alvanos, 387 S.C. 11, 15, 690 S.E.2d 771, 772-73 (2010) ("appellate court may decide questions of law with no particular deference to the trial court"). It is the standard for review of the trial court's factual findings, not its legal conclusions, that depends on whether the underlying action is at law or in equity. Fesmire v. Digh, 385 S.C. 296, 683 S.E.2d 803, 807 (Ct. App. 2009). "Statutory interpretation is a question of law subject to *de novo* review." Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010). "The determination of legislative intent is a matter of law." City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 543 S.E.2d 538, 540 (2001).

Summary judgment should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. E.g.,

Shelton v. LS&K, Inc., 374 S.C. 294, 297, 648 S.E.2d 307 (Ct. App. 2007). In reviewing the record, the Court views all the properly cognizable evidence in the light most favorable to the nonmoving party. Dawkins v. Fields, 354 S.C. 58, 67-68, 580 S.E.2d 433 (2003); Shelton, 374 S.C. at 297. Where the nonmoving party bears the burden of proof on a claim in the case, it must provide the Court with evidence showing that there is a genuine issue of material fact with regard to each of the elements of its claim. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68 (2007). Rule 56, SCRPC, “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.” Id. at 357 (internal quotation marks omitted, ellipsis in original). “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Baughman v. AT&T, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991).

Though there is not much case law concerning the appellate standard of review on appeal from the grant of a motion for involuntary nonsuit, it appears that the appellate court applies the same standard as does the trial court, much the same as with review of decisions on motions for a directed verdict, J.N.O.V., or summary judgment. See Johnson v. J.P. Stevens & Co., Inc., 308 S.C. 116, 118, 417 S.E.2d 527 529 (1992) (seeming to apply this analysis, without discussion of standard); Ex parte USAA: Smith v. Moore, 365 S.C. 50, 614 S.E.2d 652, 653 (Ct. App. 2005) (“[b]ecause a dismissal [under Rule 41(b)] has the same effect as summary judgment, the standard for summary judgment applies”).

“In an action at law tried without a jury, the trial judge’s findings have the force and effect of a jury verdict upon the issues and are conclusive on appeal when supported by competent evidence.” Mathis v. Brown & Brown of S.C., Inc., 389 S.C. 299, 307, 698 S.E.2d 773, 777 (2010). Accordingly, in an appeal from the results of a bench trial of an action at law, an appellate court can correct errors of law but “will not disturb the trial court’s findings of fact unless no evidence reasonably supports the findings.” Branche Builders, Inc. v. Coggins, 386 S.C. 43, 47, 686 S.E.2d 200, 202 (Ct. App. 2009). In an appeal from a judge’s decision in an equitable action, the appellate court is free to find the facts according to its own view of the preponderance of evidence. Zimmerman v. Marsh, 365 S.C. 383, 618 S.E.2d 898, 900 (2005); Johnson v. Arbabi, 355 S.C. 64, 584 S.E.2d 113, 115 (2003); Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); SunTrust v. Bryant, 392 S.C. 264, 267, 708 S.E.2d 821, 822-23 (Ct. App. 2011).

ARGUMENT

Basically, what happened in this case is that Clyde inherited a half interest in farmland from his father and then contracted with the USDA to be paid subsidy benefits for operating a farm on that land. For Clyde receiving the money that the USDA contracted to pay him, his sister, who also happens to be the personal representative of their father’s estate, sued him. (She also sued him for partition and on other claims, as noted above.) Despite there being no provision in any agreement between Clyde and the USDA for Clyde’s father’s estate to get paid any of the benefits, the master-in-equity ordered Clyde to pay the Estate \$11,690.00, half of the money that the USDA paid him under the contract for farm operation.

On appeal, the Court of Appeals effectively doubled the amount Clyde was ordered to pay the estate, finding that the master should not have offset the amount by Clyde's right to inherit and remanding the case. The Court of Appeals also reversed the master's finding that Clyde has a right to purchase the property under S.C. Code Ann. § 15-61-25 (which specifically states that it applies to partition actions among heirs and devisees and nowhere says it excludes partition actions under the Probate Code), ruling that the statute did not apply to this case because the partition claim was brought pursuant to the Probate Code.

Reasons that this Court's reversal of the Court of Appeals' decision is proper and needed may be summarized as follows:

- a) The Court of Appeals' decision in this case is the first and only reported opinion of any South Carolina appellate court that has decided any issue under or otherwise discusses S.C. Code Ann. § 15-61-25, a statute that took effect on May 25, 2006, and that alters the procedure for the disposition of partition actions. By its terms, this statute created new rights and can operate to affect the substantive outcome of partition cases. The Court of Appeals' interpretation of this statute and its decision that the statute does not apply in this case contravenes the plain terms of S.C. Code Ann. § 15-61-25 as well as long-established principles of statutory construction. Rather than effectuating the intent of the General Assembly, the Court of Appeals' decision frustrates it.
- b) The South Carolina Probate Code explicitly provides in S.C. Code Ann. § 62-3-101 that, upon a decedent's death, title to his realty passes

immediately to the decedent's heirs or devisees. This is entirely consistent with precedent of this Court, which held the same thing, that predates the adoption of the Probate Code. This has long been settled law, or at least it was until the Court of Appeals issued its opinion in this case. The Court of Appeals decided that title to the land at issue in this case passed at Atn Livingston's death to Emma as personal representative of his estate instead of to his devisees, Emma (individually) and Clyde. The Court of Appeals' decision in this case is in direct conflict with controlling statutory law and this Court's precedent.

- c) The Court of Appeals' decision in this case determined what appears to be the novel issue under South Carolina law of whether payments by the United States Department of Agriculture to a person under a contract which pays that person for operating a farm are personal property of the payee under the contract or inhere in the land being farmed as a part of the property owned by the titleholder of the land. There is neither logical reason nor authority to support the position that such payments are anything other than the personal property of the payee, yet the Court of Appeals determined that such payments are part of the land.
- d) The Court of Appeals applied a continuing nuisance or renewal-of-tortious-activity analysis to its decision-making process concerning the application of the statute of limitations in this case; however, the only purported basis for concluding that Clyde had acted unlawfully toward the Estate did not exist at the times that the Court of Appeals concluded that

his actions constituted new wrongs for which new rights of action by Emma accrued against him. Neither Emma, the lower court, nor the Court of Appeals stated any authority, factual or legal, to support a finding that Clyde committed any unlawful act toward the Estate by submitting renewal paperwork for his farm operator status in 2003, 2004, 2005, 2006, or 2007. The Court of Appeals' decision, perhaps unintentionally, seems to alter basic substantive legal principles (and the precedent of this Court's decisions) concerning whether a tort may be committed where there exists no duty for the purported tortfeasor to breach.

- e) As the Court of Appeals noted, it appears that no South Carolina reported appellate opinion has dealt with the application of the statute of limitations to the receipt of USDA payments in this context.
- f) The Court of Appeals' decision that the master-in-equity erred in offsetting the amount of the judgment against Clyde in light of Clyde's right to inherit as his father's devisee hinges upon what seems to be the Court of Appeals' perception that the master should have made assumptions based on things that were not in the evidence that was before him. This contravenes well-settled legal principles. Cases are supposed to be decided on the basis of evidence, not speculation.

The case that is before this Court is about questions of law. There is no factual dispute that is material to the outcome of this appeal. The questions in this case are about what the law says the facts mean.

Further, if the Court decides the issue presented as Issue I in this brief's statement of issues in favor of Clyde, Issues II and III become academic. Issue IV, however, can stand alone, and its resolution does not depend on how the Court deals with Issues I, II, and III.

I. The Court of Appeals' holding that the Estate owns the land in question contravenes this Court's precedent and statutory law.

The Court of Appeals seemed to assume that the USDA payments were a part of the land and that, somehow, that made the payments part of the Estate. The Court of Appeals erred on both of those points.

As part of its reasoning that the USDA payments at issue belonged to the Estate, the Court of Appeals reasoned that because Emma “retained the authority over the estate as the [personal representative], the property did not pass to Clyde despite his status as a named heir in the will.” (App. p. 7.) This is an illogical statement. *Authority* (or, more properly, *power*) and *title* are different concepts, different things. The Court of Appeals has equated the proverbial apples and oranges, and its conclusion contravenes both statutory law and existing precedent of this Court. If the Court of Appeals' decision stands, it threatens to undermine a well-settled, established principle of real estate law, one on which attorneys for countless South Carolinians rely in real estate matters.

While the Court of Appeals correctly noted that S.C. Code Ann. § 62-3-101 provides that, upon a decedent's death, title to his realty passes to the decedent's heirs or devisees, the Court of Appeals then undertook to strip that statute of its meaning by stating that “the property did not pass to Clyde despite his status as a named heir in the will.” (App. p. 7.) Further, the Probate Code sections cited by the Court of

Appeals for the proposition that title to realty passes to the personal representative until the estate is no longer being administered do not stand for that proposition; rather, they deal with *powers* a personal representative has with respect to land. (App. pp. 5-7.) The sections of the Probate Code cited by the Court of Appeals do nothing to undo the operation of S.C. Code Ann. § 62-3-101. This brief examines each of those Probate Code sections.

Section 62-3-709 of the Probate Code provides a personal representative with the power to take “possession or control of” real property a decedent owned when, “in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration.” It deals with the *power* of the personal representative to take *possession* or *control* of real property, not with the personal representative taking or receiving *ownership* of the property. The personal representative’s power is to invade the real estate in furtherance of administration of the estate. It is something akin to a lien on the realty. See Black’s Law Dictionary 419 (2d pocket ed. 2001) (defining “lien” as “[a] legal right or interest that a creditor has in another’s property, lasting usu[ally] until a debt or duty that it secures is satisfied”). Further, there is no evidence in the record that, during the time Clyde received USDA payments, Emma had taken possession or control of the real estate at issue or had made a request or attempt to do so.

Section 62-3-711(a) of the Probate Code also addresses the powers of a personal representative, not ownership of anything by an estate or personal representative. Specifically, it addresses the personal representative’s “power over title to property *of the estate*[,]” S.C. Code Ann. § 62-3-711(a) (emphasis added). As

S.C. Code Ann. § 62-3-101 states, real property a decedent owned during his life is not property of his estate but, rather, property of his heirs or devisees. In any event, all this statute speaks to is a personal representative's power, not ownership of anything.

Section 62-1-201(33) of the Probate Code simply defines the term "property" as used in the Probate Code and nowhere purports to vest a personal representative with ownership of anything. This statute does not bolster the Court of Appeals' reasoning.

Sections 62-3-709 and 62-3-711 also address the personal representative's power, possession, and control and nowhere purport to vest ownership of realty in a personal representative or a decedent's estate.

Ownership of realty (i.e., title to real estate) that had been owned by a decedent is addressed by S.C. Code Ann. § 62-3-101 and existing precedent of this Court. The decisions of this Court bind the Court of Appeals as precedents. S.C. Const. Art. V, § 9; Daniels v. City of Goose Creek, 314 S.C. 494, 497, 431 S.E.2d 256, 260 (Ct. App. 1993). This Court has stated the following:

By the common law, and under the statutes in most of the states, the title to real property vests in the heir or heirs immediately on the death of the intestate, subject in most jurisdictions, as in South Carolina, to the exercise of such special powers as may be conferred upon the administrator by statute, such as the right to sell for payment of debts. A different rule prevails with reference to personal property. Title to real estate cannot remain in abeyance; it must be vested in someone. When, therefore, a person seized of real estate dies intestate, the title to such estate vests at once in his heirs, if he leaves any.

Carter v. Wroten, 187 S.C. 432, 198 S.E. 13, 15 (1938) (internal citations omitted). Per this Court, the highest court in this state, an estate *cannot* hold legal title to land. Taylor v. Jennings, 233 S.C. 600, 607, 106 S.E.2d 391, 395-96 (1958); Fischer v. Bennett, 202 S.C. 534, 25 S.E.2d 746, 748 (1943); Carter, 198 S.E. at 16. The adoption of the Probate Code did not change this; indeed, the section of the Probate Code that speaks to this issue, S.C. Code Ann. § 62-3-101, is expressly consistent with it. While the Court of Appeals paid lip service to the validity of this principle, it then rendered a decision on this issue that is entirely based upon a repudiation of it. The Court of Appeals' pronouncement that the law is such that "[b]ecause Emma retained the authority over the estate as the PR, the property did not pass to Clyde despite his status as a named heir in the will" is diametrically opposed to what both the Probate Code and this Court's opinions unequivocally state the law is. (App. pp. 4, 7.) Under the South Carolina Constitution, this result cannot stand, as it is repugnant to precedent of this Court. S.C. Const. Art. V, § 9.

Devisees who inherit real property, like Clyde and Emma, are tenants in common. See State v. Singley, 392 S.C. 270, 275-76, 709 S.E.2d 603, 606 (2011); Watson v. Little, 224 S.C. 359, 364-65, 79 S.E.2d 384, 387 (1953). It is well settled in South Carolina that each tenant in common in property has the right to the possession of the whole of the land. E.g., Horne v. Cox, 237 S.C. 41, 44, 115 S.E.2d 513, 515 (1960); Watson, 224 S.C. at 364; Knotts v. Joiner, 217 S.C. 99, 102, 59 S.E.2d 850, 851 (1950); Wells v. Coursey, 197 S.C. 483, 15 S.E.2d 752, 755 (1941). The use of the property by one of the cotenants is entirely consistent with the existence of the tenancy in common and a recognition of the rights of the other

cotenants. Horne, 237 S.C. at 44. Absent ouster, a cotenant does not owe his fellow cotenants anything for his use of the property, since using the land is something he has every right to do. See Parker v. Shecut, 359 S.C. 143, 597 S.E.2d 793, 797 (2004); Horne, 237 S.C. at 44; Watson, 224 S.C. at 364; Knotts, 217 S.C. at 102; Wells, 15 S.E.2d at 755. As an owner of the land he inherited from his father, Clyde had every right to farm it and make contracts concerning his use of it.

Though this is not explained in the opinion, it seems from the Court of Appeals' opinion that the Court of Appeals sees the right to receive USDA subsidy payments as a profit of land ownership, i.e., a right inherent in land ownership. (Clyde disagrees with this position, as further discussed below.) For example, the Court of Appeals stated that Clyde "suggests he is a cotenant entitled to possess the whole of the land, which includes the USDA benefits."² (App. p. 4.) This Court has addressed the question of whether those who inherit real property are immediately entitled to the land's rents and profits, and this Court held that rights to rents and profits pass to heirs or devisees along with the land at the moment the decedent dies. Burkhalter v. Townsend, 160 S.C. 134, 158 S.E. 221, 223 (1931). Accordingly, even if the right to receive the USDA payments were a right that inhered in the real estate, which it is not, it would belong to Clyde as a tenant in common, not to the Estate. Id.

Title is the status of ownership. Cf. Stokes v. Murray, 102 S.C. 395, 401, 87 S.E. 71 (1915) (discussion embracing concepts of actual title as opposed to "paper title"). Nowhere do any of the Probate Code sections cited by the Court of Appeals purport to vest a personal representative of an estate with title to land the estate's

² The Court of Appeals engaged in many mischaracterizations of Clyde's arguments. Clyde never argued that the USDA benefits are a part of the land, but he did point out that he is a cotenant of the land involved in the underlying case, with the right to full use of the land. (App. pp. 57, 142-43.)

decendent owned. Indeed, to conclude they do (as the Court of Appeals did) would render meaningless the specific statute that addresses this point, S.C. Code Ann. § 62-3-101.

The Court of Appeals' decision is in conflict with, and threatens to undermine, the plain meaning of this statute and this Court's precedent. Real estate closing attorneys have relied for at least the better part of a century on the established principle that title to land passes immediately to a person's heirs or devisees at the moment he dies, as an estate cannot hold title to land. Taylor, 233 S.C. at 607; Fischer, 25 S.E.2d at 748; Carter, 198 S.E. at 16. It is incumbent upon this Court to return the law in this area to the settled, landed place it occupied before the Court of Appeals' opinion in this case cast it into a sea of doubt.

II. Clyde's contract with the USDA provided only for Clyde, the farm operator, to receive the payments, not for the Estate to receive them.

Clyde's contract with the USDA's Commodity Credit Corporation, the contract under which he was paid the subsidy benefits, provided that "THIS CONTRACT TO PARTICIPATE is entered into between the Commodity Credit Corporation (CCC) and the undersigned producers[.]" identified as "CLYDE B LIVINGSTON[.]" (App. pp. 354, 359, 363, 369, 372.) The contract is plainly with the person identified as the "producer" and is for the producer to perform services, i.e., to do what is required of him to comply with the subsidy program's terms and governing regulations. (App. pp. 354, 359, 363, 369, 372.)

Clyde had no duty to secure a farm operator contract for the estate. Even when he was co-personal representative, Clyde's fiduciary duty, along with Emma's,

was “to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and [the Probate] [C]ode, as expeditiously and efficiently as is consistent with the best interests of the estate.” S.C. Code Ann. § 62-3-703(a). This does not mean Clyde had a duty to refrain from farming his own land and collecting USDA payments as a farm operator.

“The term ‘personal property,’ in its broadest legal significance, includes all property that is not real property.” Colonial Life & Acc. Ins. Co. v. S.C. Tax Commn., 233 S.C. 129, 150, 103 S.E.2d 908, 918 (1958). The term “personal property” has been held to embrace contractual rights to receive money, such as “shares or deposits in building and loan associations, and municipal bonds[.]” Id.

The payments Clyde received from the USDA were simply his personal property. While Clyde may have signed documents with the USDA on behalf of himself and the Estate, the contract was for Clyde, not the Estate, to be paid the USDA payments. (App. pp. 349-75.) No one in this case, including the Court of Appeals, has suggested otherwise. Ordinarily, the only parties who have any rights under a contract are the promisor and the promisee. See Professional Bankers Corp. v. Floyd, 285 S.C. 607, 612, 331 S.E.2d 362 (Ct. App. 1985). The only parties who were in the positions of promisor and promisee under the contract were Clyde and the USDA. (App. pp. 349-75.) Clyde’s contract with the USDA was not a third-party contract for the benefit of the estate; thus, this general principle applies here. Cf. id. The USDA’s obligation to pay Clyde money was based solely on its contract with him as a farm operator, a contract for him to perform services. (App. pp. 349-75.) The estate was not a party to that contract and had no interest in the payments. (App.

pp. 349-75.) If the Clyde-USDA contract had been breached or was even fraudulently entered into, any claims or rights that would arise thereby would run between Clyde and the USDA, not anyone else. (App. p. 249 ln. 2-9.) The Estate would simply be a passive observer to such a dispute, with no interest in its outcome. Indeed, the “lease statement” Clyde signed with the USDA states that, if he has made a misrepresentation to the USDA, he “must *refund* all PFC payments received[.]” (App. p. 349.) It does not say that he is to pay them to the owner of the land on which he operated the farm. The word “refund” means “to give back (money, etc.); repay.” Webster’s New World Dictionary and Thesaurus 520 (1996). Since Clyde never got the USDA subsidy money from the Estate, he could not refund it to the Estate.

If A enters into a contract with B to pay B, even if that contract were expressly based on the assumption or representation that B owns some piece of land, if it is later determined that C owns the land, that does not mean that the money A paid B now belongs to C. That flawed logic, however, is precisely the reasoning the Court of Appeals applied in this case.

The Court of Appeals misunderstood what the nature of the USDA payments was. They were payments to Clyde for farm operation. Neither Emma, the lower court, nor the Court of Appeals ever stated any authority, factual or legal, to the contrary. Accordingly, the Court of Appeals’ opinion fails to explain *why* it is that the court concluded that the USDA payments were property of the Estate. That is because they were not.

III. The Court of Appeals' opinion conflates renewal of Clyde's contract with the USDA with an unlawful act of Clyde toward the Estate.

The Court of Appeals, in deciding that the statute of limitations did not bar Emma's claim, decided that "because each application with the USDA was for a fixed duration, it required a separate renewal each year and the benefit was contingent upon an offer and acceptance by the USDA. Therefore, the master properly determined that statute of limitations was not an absolute bar on Emma's rights to collect a portion of the USDA benefits." (App. p. 9.)

The Court of Appeals seemed to analogize this case to Knight v. State Farm Mut. Auto Ins. Co., 297 S.C. 20, 374 S.E.2d 520 (Ct. App. 1988), citing that case for the general rule in the insurance context that "the renewal of a policy of insurance for a fixed term is in effect a new contract[.]" seeming to equate each renewal of Clyde's contract with the USDA with an independent breach of a duty by Clyde to the Estate. (App. pp. 8-9.) The insurance context, however, is not analogous to the situation in this case. In the insurance context addressed in Knight, the important relation between the parties, the insurer-insured relationship, exists in the same way each time the policy is renewed. 297 S.C. at 522. The parties' duties to each other consequently remain the same at each renewal.

The duty purportedly breached by Clyde in this case, though, was not a duty owed to the party with which he contracted, the USDA; rather, what the lower court (and, by affirming the master, the Court of Appeals) ruled that Clyde breached was his duty to the Estate as its co-personal representative. (App. pp. 8-9, 171.) At the time of the renewals that the Court of Appeals decided were new breaches of that

duty, however, Clyde did not have that duty anymore. (App. p. 9.) He was no longer a personal representative of the Estate. (App. pp. 169, 380-81.)

The only act Clyde did with regard to contracting for and receiving USDA payments that the lower court found gave rise to liability was that “[w]hen [Clyde] entered into his agreement with the USDA, he breached his duty to the estate as co-personal representative” because Clyde “occupied dual roles” (as an individual and a co-personal representative) when he made that agreement. (App. p. 171.) Clyde was removed as personal representative of the Estate by court order in 2002. (App. pp. 169, 380-81.) Accordingly, at no time during the three years preceding this filing of this action did Clyde have *any* duty to the Estate or Emma; he was not a personal representative of the Estate. Clyde did *not* “occup[y] dual roles” when he submitted renewal paperwork for his farm operator status in 2003, 2004, 2005, 2006, or 2007.

While the master’s order does not clarify whether he found that Clyde’s contracting to receive the benefits was a conversion, a breach of fiduciary duty, both, or something else, the three-year statute of limitations bars Emma’s claim altogether, regardless of which of these labels is placed on it. See Verenes, 387 S.C. at 17 (breach of fiduciary duty); Moore v. Weinberg, 383 S.C. 583, 589, 681 S.E.2d 875, 878 (2009) (“[c]onversion is defined as the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner’s rights”); S.C. Code Ann. § 15-3-530. That is because Clyde could not have breached his duty to the Estate as personal representative at any point within the three-year limitation period of S.C. Code Ann. § 15-3-530 before this action was brought; he was not a personal representative of the estate during that

time. Under the principles of tort law, “[t]he key inquiry is what duty, if any, is owed by the tort-feasor[.]” Andrade v. Johnson, 356 S.C. 238, 588 S.E.2d 588, 592 (2003).

Neither Emma, the lower court, nor the Court of Appeals stated any authority, factual or legal, to support a finding that Clyde committed any unlawful act toward the Estate by submitting renewal paperwork for his farm operator status in 2003, 2004, 2005, 2006, or 2007. The discovery rule is not in play here, as Emma knew about Clyde receiving the USDA benefits since 2002, four years before this action was brought. Even assuming, for the sake of argument, that Clyde violated his duty to the Estate as personal representative in his dealings with the USDA *while he was co-personal representative of the Estate*, he could not have violated that duty after he was removed as co-personal representative of the Estate. He no longer had the duty.

IV. The Court of Appeals’ analysis of the *executor de son tort* statute overlooked that Emma never presented any evidence that the Estate has any claims to pay or expenses related to administration.

The Court of Appeals’ opinion states that “Section 62-3-902 of the South Carolina Code (2009) specifically states the order of abatement in which testamentary gifts are reduced to pay debts or other claims against the estate. By allowing Clyde to retain one-half of the value of the estate benefits, the master ignored the plain language of the abatement statute and completely disregarded the possibility that the assets of the estate were insufficient to pay all debts, claims, and devises.” (App. p. 11.)

Emma never presented to the lower court any evidence that the Estate has any claims or expenses to pay. Our law requires that cases be decided upon a factual record composed of evidence, not possibilities. See Trivelas v. S.C. Dept. of

Transportation, 348 S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001) (arguments of counsel are not evidence); Higgins v. MUSC, 326 S.C. 592, 599 S.E.2d 269, 272 (Ct. App. 1997) (same); Historic Charleston Foundation v. Krawcheck, 313 S.C. 500, 508 n. 7, 443 S.E.2d 401, 406 n. 7 (Ct. App. 1994) (same); Gilmore v. Ivey, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct. App. 1986) (same). Further, “the appellate court will not consider any fact which does not appear in the Record on Appeal.” Rule 210(h), SCACR.

In the absence of evidence that such claims or expenses exist, it would be proper for the lower court to offset any judgment against Clyde in the Estate’s favor by taking into account that Clyde is entitled to a distribution of half of all the Estate’s assets. The Court of Appeals reversed the master on this point on the basis of conjecture, not the record. It is improper for an appellate court to decide a case based on an assumption that evidence exists that does not appear in the record. See Rule 210(h), SCACR; Spreeuw v. Barker, 385 S.C. 45, 682 S.E.2d 843, 854 (Ct. App. 2009). This Court should correct the Court of Appeals’ misstep in this regard.

V. The Court of Appeals’ analysis of the interplay between S.C. Code Ann. § 15-61-25 and S.C. Code Ann. § 62-3-911 runs counter to this Court’s precedent concerning statutory interpretation.

Shortly before this action was brought, S.C. Code Ann. § 15-61-25 took effect. It provides as follows:

- (A) For the purposes of this section, "joint tenants and tenants in common" include heirs or devisees. Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning joint tenants or tenants in common who are interested in purchasing the property to

notify the court of that interest no later than ten days prior to the date set for the trial of the case. The nonpetitioning joint tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not.

- (B) In the circumstances described in subsection (A) of this section, and in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers, as the court shall approve, appointed for that purpose by the court. The appraisers appointed pursuant to this section shall make their report in writing to the court within thirty days after their appointment. The costs of the appraisers appointed pursuant to this section shall be taxed as a part of the cost of court to those seeking to purchase the interests of the joint tenants or tenants in common petitioning to sell their interest in the property described in the petition for partition.
- (C) In the event that the petitioning joint tenants or tenants in common object to the value of the interests as determined by the appointed appraisers, those joint tenants or tenants in common shall have ten days from the date of filing of the report to file written notice of objection to the report and request a hearing before the court on the value. An evidentiary hearing limited to the proposed valuation of the interests of the petitioning joint tenants or tenants in common shall be conducted, and an order as to the valuation of the interests of the petitioning joint tenants or tenants in common shall be issued.
- (D) After the valuation of the interest in property is completed as provided in subsection (B) or (C) of this section, the nonpetitioning joint tenants or tenants in common seeking to purchase the interests of those filing the petition shall have forty-five days to pay into the court the price set as the value of those interests to be purchased. Upon the payment and approval of it by the court, the court shall execute and deliver or cause to be

executed and delivered the proper instruments transferring title to the purchasers.

- (E) In the event that the nonpetitioning joint tenants or tenants in common fail to pay the purchase price as provided in subsection (D) of this section, the court shall proceed according to its traditional practices in partition sales.

S.C. Code Ann. § 15-61-25.

This statute provides for a procedure through which a cotenant who is a defendant in a partition action may invoke a valuation and buy-out process that gives that tenant the right to purchase the property from the other cotenants. Id. If the cotenant invoking the process does not purchase the property, the partition action proceeds according to traditional partition practice. Id.

The Court of Appeals held as follows:

Because the action remains primarily an action governed by the probate code, we find the probate code should have continued to be applied after the removal to the master. Waddell v. Kahdy, 309 S.C. 1, 4, 419 S.E.2d 783, 785 (1992)]. Furthermore, because a partition statute is provided in the probate code, the master should have relied upon that statute in addressing the partition issue. Capco of Summerville, Inc. v. J.H. Gayle Constr. Co., 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006) (“Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.”).

(App. p. 11.)

The Court of Appeals’ decision appears to assume that because the Probate Code applies to this partition action, S.C. Code Ann. § 15-61-25 does not. Rather

than effectuating the will of the legislature, the Court of Appeals' opinion frustrates it.

Waddell does not say that the Probate Code *and no other law* is applicable in an action removed from the probate court. 309 S.C. at 4. The language in question from Waddell is as follows:

Sister's contention that the trial court erred in refusing to change venue from Horry County, the place of Mary's domicile, to Florence County, where Sister resides, is without merit. The trial judge held that venue was controlled by S.C. Code Ann. § 62-1-303 and § 62-3-201 of the probate code. Sister claims that S.C. Code Ann. § 15-7-30 (1976) controls. We disagree. This action was originated in Probate Court. The record does not reveal how the action was transferred to the Circuit Court. We assume, for the purpose of this opinion, that the action was removed pursuant to S.C. Code Ann. § 62-1-302 (1991).

When the legislature provided a mechanism to remove certain cases from Probate Court to Circuit Court, they did not specify which venue statute would apply after removal. Because the action remains primarily an action governed by the Probate Code, we hold that the §§ 62-1-303 and 62-3-201 continue to govern in cases removed to the Circuit Court under § 62-1-302(c) (1991).

Id.

This is a far cry from a holding to the effect that a case's origination in probate court makes law generally applicable to civil cases of that type inapplicable because the case was brought under the Probate Code. Rather, Waddell dealt with a situation in which the venue statutes there at issue could not be reconciled; thus, the Probate Code venue statutes had to be followed. 309 S.C. at 4. This is consistent with S.C. Code Ann. § 62-1-103, which provides that “[u]nless *displaced* by the

particular provisions of this [Probate] Code, the principles of law and equity supplement its provisions.” (Emphasis added.) Because they were incompatible, the Probate Code venue statutes at issue in Waddell had displaced S.C. Code Ann. § 15-7-30. 309 S.C. at 4.

Here the situation is different. Unlike the directly conflicting venue statutes in Waddell, S.C. Code Ann. §§ 15-61-25 and 62-3-911 are not incompatible. If the buyout under S.C. Code Ann. § 15-61-25 does not occur after the process is invoked in a partition action brought pursuant to the Probate Code, then the disposition of the action simply reverts to the ordinary method of resolution for probate court partitions, i.e., under S.C. Code Ann. § 62-3-911. S.C. Code Ann. § 15-61-25(E). The same would occur in a partition action brought in circuit court. Id.

Simply because a court determines that the Probate Code governs in this partition action does not mean that S.C. Code Ann. § 15-61-25 does not apply. The plain words of S.C. Code Ann. § 15-61-25 make it applicable to “a petition for partition of property owned by joint tenants or tenants in common.” S.C. Code Ann. § 15-61-25(A). No distinction is made between petitions for partition brought pursuant to the Probate Code and those brought otherwise. Id. In fact, the statute specifically states that “[f]or the purposes of this section, ‘joint tenants and tenants in common’ include heirs and devisees.” Id. The statute unambiguously says it applies to “a petition for partition of property owned by joint tenants or tenants in common[,]” including property of heirs and devisees. S.C. Code Ann. § 15-61-25(A).

“When a statute’s terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its

literal meaning.” Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). When a court interprets a statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” Id. at 499. “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. If a statute’s language is plain, unambiguous, and conveys a clear meaning[,] the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 580 S.E.2d 100, 105 (2003) (internal citation and quotation marks omitted). Only “[w]here the language of a statute is doubtful or uncertain in meaning” can a court look outside the words of the statute. Timmons v. S.C. Tricentennial Commn., 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970). A court “must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous, for the General Assembly obviously intended the statute to have some efficacy, or the legislature would not have enacted it into law.” CFRE, LLC v. Greenville County Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (internal citation and quotation marks omitted).

The terms of S.C. Code Ann. § 15-61-25 are clear: the statute applies to any “petition for partition of property owned by joint tenants or tenants in common.” S.C. Code Ann. § 15-61-25(A). Accordingly, it applies equally to partition actions brought in the probate court and those brought in the circuit court.

When a person dies, his real property devolves to those to whom it is devised by his last will. S.C. Code Ann. § 62-3-101; Taylor, 233 S.C. at 607; Fischer, 25 S.E.2d at 748; Carter, 198 S.E. at 15. Devisees who inherit real property, like Clyde

and Emma, are tenants in common. See Singley, 392 S.C. at 275-76; Watson, 224 S.C. at 364-65. Emma brought the instant suit seeking partition and is thus the petitioner, so Clyde, a devisee of Atn Burns Livingston, is a “nonpetitioning joint tenant[] or tenant[] in common” who may invoke the buyout process under S.C. Code Ann. § 15-61-25.

The Court of Appeals’ decision contradicts this Court’s precedent concerning statutory interpretation. “Generally, specific laws prevail over general laws, and later legislation takes precedence over earlier legislation.” Langley v. Pierce, 313 S.C. 401, 403, 438 S.E.2d 242, 243 (1993); State v. Sullivan, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993) (same). Where there is a conflict between statutes, the more recent and specific legislation controls. Porter v. S.C. Pub. Serv. Comm’n., 327 S.C. 220, 224 n. 3, 489 S.E.2d 467, 469 n. 3 (1997).

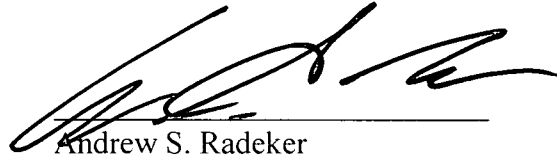
Here, between S.C. Code Ann. §§ 15-61-25 and 62-3-911, § 15-61-25 is the more specific statute, and it is certainly the more recent. There is no fundamental conflict between the Probate Code and S.C. Code Ann. § 15-61-25, as the Court of Appeals apparently perceived. Just like S.C. Code Ann. § 15-61-25 slightly altered the partition action disposition rubric in ordinary partition actions brought in circuit court, so it also slightly altered the disposition rubric for partition actions under the Probate Code. By the plain terms of the statute, that is what it was supposed to do. “Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” Capco of Summerville, 368 S.C. at 142.

“Courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” Denny’s, Inc. v. Cake, 364 F.3d 521, 530 (4th Cir. 2004). If the General Assembly meant to exempt partition actions under the Probate Code from the application of this statute, it would have been a simple matter for the statute simply to say so. The General Assembly chose not to make that distinction. The Court of Appeals erred in writing that exemption into S.C. Code Ann. § 15-61-25. This Court should reverse the Court of Appeals and hold that, as the plain language of the statute provides, S.C. Code Ann. § 15-61-25 applies equally to partition actions whether brought in probate court or circuit court.

CONCLUSION

The published opinion issued by the Court of Appeals in this case is at odds with existing precedent of this Court in several respects. Furthermore, as the Court of Appeals noted in its opinion, no appellate case in this state before the instant one has addressed S.C. Code Ann. § 15-61-25, nor has any South Carolina case directly discussed USDA benefits and the statute of limitations in this context. (App. pp. 8, 11.) Also, the Court of Appeals’ decision makes something that was once clear – that title to realty passes immediately to a decedent’s heirs or devisees upon death – now unclear, and its opinion casts into uncertainty something upon which lawyers in real estate matters could previously rely without hesitation. This Court should reverse the Court of Appeals, undo the decisions that court made in favor of Emma, reinstitute the master’s ruling that Clyde can avail himself in this action of the process under S.C. Code Ann § 15-61-25, and provide Clyde with the relief he sought from the Court of Appeals.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'A. S. Radeker', is written over a horizontal line.

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November 24, 2014

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. Supreme Court

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Appellate Case No. 2013-001505

In re: Estate of Atn Burns Livingston.

Emma Lou Livingston Martin as Personal Representative
of the Estate of Atn Burns Livingston and
Emma Lou Livingston Martin,.....Respondents,

v.

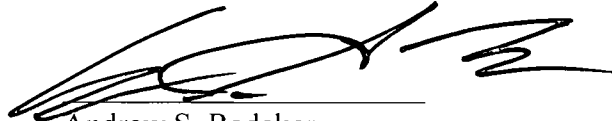
Clyde B. Livingston; Miller Communications, Inc.; Citibank
South Dakota, N.A.; Branch Banking and Trust Company
of South Carolina; and American First Federal, Inc.; Defendants,

Of whom Clyde B. Livingston is.....Petitioner.

PROOF OF SERVICE

I certify that I served the brief of petitioner on counsel for the Respondents by
depositing a copy of it on the date shown below in the United States Mail, postage
prepaid, addressed as follows:

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November 24, 2014

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S.C. Supreme Court

VIA HAND DELIVERY

The Hon. Daniel E. Shearouse
Clerk of Court, Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

RE: In re: Estate of Atn Burns Livingston
Emma Lou Martin, etc. v. Clyde B. Livingston, et al.
Appellate Case No. 2013-001505

Dear Mr. Shearouse:

Enclosed herewith for filing are an original and 16 copies of the petitioner's brief in the above-referenced case, along with an original and one copy of the proof of service for the same. Also enclosed are the required 13 additional copies of the appendix. By copy of this letter, I am serving opposing counsel with the petitioner's brief.

Kindly file these documents and return a file-stamped copy of the brief and proof of service to the bearer of this letter. Thank you for your attention to this matter. Of course, if you or your staff have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am,

Very truly yours,
HARRISON & RADEKER, P.A.


Andrew S. Radeker

ASR/

Enclosures

cc: Richard B. Ness, Esq.