

FORM 4

RECEIVED

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-38-596

MAR 11 2015

Franklin D. Thomas

Valerie A. Webster

SC Court of Appeals

PLAINTIFF(S)

Charles E. Webster
DEFENDANT(S)

Submitted by: Lawrence Keitt, Esquire	Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

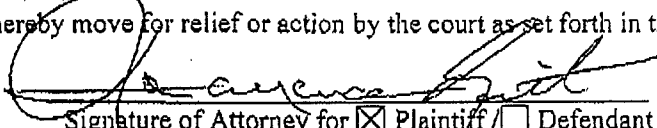
[Signature]
Circuit Court Judge

MIE

3011
Judge Code Date Feb 11, 2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
Frankline D. Thomas)
 Plaintiff,)
 vs.)
Valerie A. Webster, ect., al)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIRST JUDICIAL CIRCUIT
 CASE NO.: 2014-CP-38-00596
 MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

Plaintiff's Attorney: Lawrence Keitt, Esq., Bar No. 3341 Address: P. O. Box 811, Orangeburg SC 29116 Phone: 803.531.2379 Fax 803.534.2897 E-mail: lkparalegal@sc.rr.com Other:	Defendant's Attorney: Zipporah Sumpter, Esq., Bar No. _____ Address: P. O. Box 732 Orangeburg, SC 29116 Phone: 803. 536-1895 Fax _____ E-mail: _____ Other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: I Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	
February 11, 2015 Date submitted	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input checked="" type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: Andrea Taylor <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2014-CP-38-596

IN THE MATTER OF)
Annie Mae McDonald)
)

Franklin D. Thomas,)
)

Plaintiff,)
)

-vs-)
)

Valerie A. Webster, Individually and)
as Co-Personal Representative of)
the Estate of Annie Mae McDonald,)
and Charles E. Webster, Jr., Individually)
and as Co-Personal Representative of)
the Estate of Annie Mae McDonald,)

Defendants.)
)

FINAL ORDER

FILED FOR RECORD
WANDA B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2015 FEB 11 P 3:31

RECEIVED
MAR 11 2015
SC Court of Appeals

Trial Date: January 7, 2015
Trial Judge: James B. Jackson
Attorney for Plaintiff: Lawrence Keitt, Esquire
Attorney for Defendants: Zipporah Sumpter, Esquire
Court Reporter: Andrea Taylor

PROCEDURAL HISTORY

This matter appears before Court on the Summons and Complaint of the Plaintiff which was filed in the Probate Court for Orangeburg County on September 12, 2013. This Court finds that by Order of the Probate Court dated December 31, 2013 this matter was transferred to the Court of Common Pleas for Orangeburg County pursuant to section 62-1-302(6)(b)(2) of the South Carolina Code of laws as amended, which requires any matters in Probate Court involving a trial on title to or an interest in real property to be tried in the Court of Common Pleas.

Wanda B. Clark
CLERK OF COURT
ORANGEBURG, SC

FRM

This Court further finds that all pleadings have been filed and served in this matter. Further, this matter appears before this Court by Order of Reference with Finality entered August 18, 2014 signed by the Clerk of this Court and with the consent of the parties.

Also, this Court finds that at the call of this case for trial, all of the parties and their counsel appeared before this Court. Thus, the Court concluded that it is reasonable that the matter be heard.

JURISDICTION

This Court finds that the Plaintiff is a citizen and resident of the County of Orangeburg, State of South Carolina and has been such for more than one year prior to the filing of this action. The Court also finds that the Estate of Annie Mae McDonald is currently being probated in the Probate Court of Orangeburg County. Further, the house and land at issue herein are located within this County and State. Also, that the named Defendants are Co-Personal Representatives of the Estate of Annie Mae McDonald, having been duly appointed by the Probate Court for Orangeburg County.

Thus, this Court finds and concludes that this Court has in personum jurisdiction of the parties and subject matter involved herein. Further, that venue is proper in this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony and the documentary evidence admitted by this Court during the trial, this Court finds and concludes as follows:

This Court finds that at the pretrial of this matter the Defendant made a Motion in limine to deny the Plaintiff the right to testify because Ms. Annie Mae McDonald is deceased and the Plaintiff's testimony regarding any discussions or agreements he might have had with Ms.

McDonald would be barred by the South Carolina Dead Man's Statute found at section 19-11-20 of the South Carolina Code of Laws as amended.

This Court finds that the Plaintiff in response to the Defendant's motion in limine argued that pursuant to Rule 8(c) of the South Carolina Rules of Civil Procedure, the Defendant's Motion was in fact an affirmative defense which was required to have been pled by the Defendants in their Answer to the Complaint of the Plaintiff. Further, they did not plead this as a defense and are now barred from raising it at trial.

This Court finds that the Dead Man's Statute in pertinent part states the following: "...no assignor of anything in controversy in the action shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased, insane or lunatic as a witness against a party then prosecuting or defending the action as executor, administrator, heir-at-law, next of kin, assignee, legatee, devisee or survivor of such deceased person or as assignee or committee of such insane person or lunatic, when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness or the interest previously owned or represented by him..."

Thus, in this case this Court finds that both the Plaintiff and the Defendants are barred as a matter of law from testifying about their understanding of what the decedent might have agreed to or thought but are free to testify about their own acts and understandings in this matter. Thus, this Court concludes that it is reasonable that the Defendant's Motion be denied.

This Court finds that it is undisputed that the Plaintiff and the decedent, Annie Mae McDonald, the mother of the Defendant, Valerie Webster and mother in law of the co-Defendant Charles Webster, purchased a house located at 109-11 205 Street in St. Albany, New York on December 23, 1997 and lived together in this house until it was sold in 2006.

This Court further finds that the Plaintiff and Ms. McDonald were living together before the purchase of the property. Further, that initially Ms. McDonald purchased the property singularly but a few months after this purchase the property was refinanced and the parties jointly secured a mortgage on the property and the property was titled in the names of both Mr. Thomas and Ms. McDonald.

This Court finds from the testimony of Mrs. Valerie Webster that it was she who advised her mother that it would be advantageous financially to her to refinance the property following her initial purchase of the property. The Plaintiff testified that he was already retired when he and Ms. McDonald started living together in New York. Further, his retirement income was used to pay the mortgage on the home in New York.

This Court also finds that the Plaintiff and Ms. McDonald sold their home in New York on December 27, 2006 netting a profit of \$221,315.75 from the sale of this property. Further, that thereafter the property located at 1191 Sawyer Street in Orangeburg, South Carolina was purchased solely in the name of Ms. McDonald on January 8, 2007. Further, that Ms. McDonald did not attend the closing on this property but the Plaintiff did attend the closing and had in his possession a Specific Power of Attorney given to him by Ms. McDonald, authorizing the Plaintiff to sign Ms. McDonald's name on any documents which might have required her signature at the closing held in Orangeburg, South Carolina.

The purchase price for the property at 1191 Sawyer Street is shown in the deed to have been one hundred and fifty-two thousand and no/100 (\$152,000.00) dollars.

This court also finds and concludes that given the fact that the closing on the property in Orangeburg, South Carolina was two weeks after the sale of the parties jointly owned property in

New York, it is reasonable to infer that the source of the funds used to purchase the Orangeburg property was the proceeds of the sale of the jointly owned property in New York.

This Court further finds from the testimony of the decedent's daughter, Ms. Valerie Webster that when Ms. McDonald and the Plaintiff relocated to South Carolina from New York they brought a great deal of furniture and other personal property with them to the house purchased on Sawyer Street in Orangeburg, South Carolina.

This Court finds that while the Plaintiff has alleged a common law marriage existed between himself and Ms. McDonald, the Plaintiff only presented one witness who testified that when he met the Plaintiff and Ms. McDonald, after they relocated to Orangeburg, South Carolina the Plaintiff introduced Ms. McDonald as his wife. Further, while one of the defense witnesses initially testified that she met Ms. McDonald and her husband when they moved from New York she later testified that she never heard Ms. McDonald refer to herself as Mrs. Thomas or to Mr. Thomas as her husband.

This Court also finds that although there was testimony by the Plaintiff that the parties had a joint bank account, no records from such an account were introduced into evidence, nor did the parties file joint tax returns indicating an intent to be married. Further, and most tellingly, in response to the Court's inquiry the Plaintiff testified that he and Ms. McDonald did not have a formal marriage ceremony because they had both been previously married and neither wanted to go through that again.

Thus, based upon the foregoing this Court finds and concludes that the Plaintiff has presented insufficient evidence to establish a common law marriage. Under the law of this State in order to prove the existence of a common law marriage, the party alleging the marriage must prove by a preponderance of the evidence that both parties had the capacity to enter into a

marriage; that both parties intended to be married and that both parties held themselves out to the public as husband and wife. See Callen v. Callen, 365 S.C. 618, 620 SE2d 59 (S.C. 2005). In the matter before this Court there is no evidence Ms. McDonald held herself out to the general public as the wife of the Plaintiff or took any action which exhibited an intent to have been married to the Plaintiff.

This Court further finds and concludes however that the Plaintiff has carried his burden in establishing a constructive trust having been created in the purchase of the house located at 1191 Sawyer Street Orangeburg, South Carolina. An action to declare a constructive trust is an action sounding in equity. In order to establish a constructive trust the evidence must be clear and definite. See Whitmire v. Adams, 273 S.C. 453, 257 SE2d. 160 (1979). Our Supreme Court held the following in the case of SSI Medical Services v Cox, 301 S.C. at 500, 392 SE2d at 793-94 "A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it where money has been paid by accident, mistake of fact, fraud or has been acquired through a breach of trust or the violation of a fiduciary duty."

In this case the Plaintiff and Ms. McDonald jointly owned a house in New York which was sold in December of 2006. The majority of the proceeds from this sale was used to purchase the home located at 1191 Sawyer Street in Orangeburg, South Carolina less than two weeks later. The Plaintiff attended the closing for this sale on behalf of himself and as agent for Ms. McDonald. Immediately thereafter the Plaintiff and Ms. McDonald relocated from New York to the house purchased in Orangeburg with their joint funds and lived together in this house until Ms. McDonald died in July of 2013. It was only following the death of Ms. McDonald did the

Plaintiff discover that the house purchased using the joint funds of the parties was titled solely in Ms. McDonald's name.

Thus, this Court finds and concludes that it was by mistake that the title to the property in Orangeburg was placed solely in Ms. McDonald's name. The parties had jointly purchased the house in New York and the Plaintiff's income was the primary funds used to pay the mortgage on this property. The proceeds from the sale was made payable to both the Plaintiff and Ms. McDonald. Ms. McDonald, using the proceeds of the sale of the New York property then send one hundred and fifty three thousand and no/100 (\$153,000.00) dollars and the Plaintiff with a Specific Power of Attorney giving the Plaintiff the authority to sign her name on any document needed to close on the house in Orangeburg, to Orangeburg for the closing. The only reasonable inference from this fact is the Plaintiff would be expected to sign both he and Ms. McDonald's name to any closing documents. There has been no evidence presented that either were required to sign anything at the closing in Orangeburg.

Thus, this Court finds and concludes that the Plaintiff is a one half owner of the house located at 1191 Sawyer Street in Orangeburg, South Carolina. Further, this Court finds that it is reasonable that Mr. Thomas be shown on the Deed of Distribution from the Orangeburg County Probate Court as a one half owner of the house and all of the furnishings brought from New York by the parties.

This Court also finds that it is reasonable that Mr. Thomas be allowed to move into the property at 1191 Sawyer Street provided that if he elects to do so he shall assume full responsibility for the payment of all of the expenses of the house including taxes, home owners insurance and utility service.

This Court finds that the defendants have requested contribution from the Plaintiff for the repairs, maintenance and upkeep of the property since he was put out of the property shortly after Ms. McDonald's death in July of 2013. This Court finds that the Plaintiff was prevented from re-entering and using the property by the Defendants. Further, the Defendants have failed to present any independent evidence of these alleged cost to this Court. Thus, this Court finds and concludes that it is reasonable that the Defendants request be denied.

IT IS THEREFORE ORDERED that the Plaintiff be and hereby is granted a one half undivided interest in the house, land and furnishings brought into the house from New York located at 1191 Sawyer Street in Orangeburg, South Carolina.

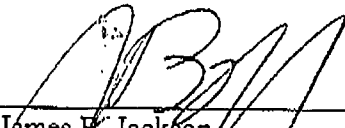
IT IS FURTHER ORDERED that the Personal Representatives be and hereby are ordered to list the Plaintiff as a one half owner of the house and land located at 1191 Sawyer Street in Orangeburg South Carolina on the Deed of Distribution from the Estate of Annie Mae McDonald.

IT IS FURTHERED ORDERED that the Plaintiff be and hereby is granted the right to immediately move into the house at 1191 Sawyer Street in Orangeburg, South Carolina, provided however, that if he moves into the house he shall be exclusively responsible for the payment of all expenses of the house including taxes, home owners insurance and utility cost.

IT IS FURTHER ORDERED that this matter be and hereby is remanded to the Orangeburg County Probate Court for further proceedings.

AND IT IS SO ORDERED this 11th day of February, 2015.

Orangeburg, SC


James B. Jackson
Master in Equity for Orangeburg County