

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JAN 19 2016

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

SC Court of Appeals

Ellis B. Drew, Master in Equity

Case No. 2014-CP-37-00143
Appellate Case No.: 2015-001860

Polly A. Thompson, Respondent,

v.

Cathy J. Swicegood,Appellant.

Respondent Polly A. Thompson's Return in Opposition
to Appellant's Motion to Stay Appeal

Respondent, Polly A. Thompson, by and through undersigned counsel, hereby opposes Appellant's Motion to Stay Appeal filed with this Court on January 4, 2016 for the reasons set forth in the attached memorandum.

Respectfully submitted,

Margaret A. Chamberlain

Margaret A. Chamberlain (SC Bar # 015226)

CHAMBERLAIN LAW FIRM, LLC

600 Pettigru Street

Greenville, South Carolina 29601

Telephone: (864) 250-0505

Facsimile: (864) 271-8097

ATTORNEY FOR RESPONDENT

Polly A. Thompson

January 14, 2016

Other Counsel of Record:

Mr. John G. Reckenbeil
Post Office Box 1633
Spartanburg, South Carolina 29304
(864) 582-1633
Counsel for Appellant

Mr. J. Falkner Wilkes
114 Whitsett Street
Greenville, South Carolina 29601
(864) 282- 1292
Counsel for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Ellis B. Drew, Master in Equity

Case No. 2014-CP-37-00143
Appellate Case No.: 2015-001860

Polly A. Thompson, Respondent,

v.

Cathy J. Swicegood, Appellant,

Memorandum in Support of Respondent Polly Thompson's Return

Respondent, Polly Thompson, respectfully submits this Memorandum in support of her Return in Opposition to Appellant's Motion to Stay Appeal filed with this Court on January 4, 2016.

Appellant's argument that the circuit court's jurisdiction hinges upon the parties' marital status is devoid of merit. Whether these parties are married or are not is irrelevant to the issue of jurisdiction to hear partition actions. The circuit court has jurisdiction to hear partition actions between married couples just as it does for non-married individuals. South Carolina law on this issue is clear. "The court of common pleas has jurisdiction in **all** cases of real and personal estates held in joint tenancy or in common to make partition in kind or by allotment" S.C. Code Ann. § 15-61-50 (2014) (emphasis added). Additionally, "**All** joint tenants and tenants in common who hold, jointly or in common, . . . shall be compellable to make severance and

partition of all such lands, tenements and hereditaments.” S.C. Code Ann. §15-61-10 (2014) (emphasis added); *See also Smith v. Rucker*, 357 S.C. 532, 537, 593 S.E.2d 497 (S.C. App., 2004) (Holding that husband and wife’s deed created a joint tenancy with rights of survivorship, thus the property was subject to partition under § 15-61-10).

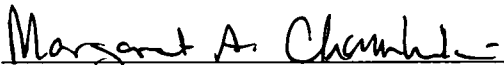
A partition action “is not marital litigation, and thus is not within the jurisdiction of the family court.” *Gilley v. Gilley*, 327 S.C. 8, 1, 488 S.E.2d 310,311 (S.C. 1996) (*quoting Eichor v. Eichor*, 290 S.C. 484, 351 S.E.2d 353 (S.C. App., 1986)). “The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked.” *Gilley v. Gilley*, 327 S.C. at 1, 488 S.E.2d at 311 (*quoting Gardner v. Gardner*, 253 S.C. 296, 170 S.E.2d 372 (1969)). Thus, jurisdiction of the court is “based on the status of the case **at the time of filing**.” *Gilley*, 327 S.C. at 11, 488 S.E.2d at 311 (emphasis added). “If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached.” *Id.* (holding husband’s subsequent filing of a family court action did not divest the circuit court of its jurisdiction over wife’s partition action). Just as in the *Gilley* case, the partition action in this case was filed **before** the family court action. Appellant’s subsequent filing in family court did not strip the circuit court of subject matter jurisdiction.

Jurisdiction was proper in the circuit court regardless of the outcome of Appellant’s pending family court appeal because at the time Respondent filed her Petition for Partition and Ouster there was no family court action pending. Respondent filed her petition on March 11, 2014, and Appellant subsequently filed her Complaint with family court on March 13, 2014. (Copies of which are attached.) On April 23, 2014, Appellant filed a Motion to Dismiss or in the Alternative Stay the Proceedings with the circuit court. (Copies of which are attached.)

In its Order denying Appellant's motion, the circuit court held that as in *Gilley*, the court's jurisdiction attached at the time Respondent filed her partition action on March 11, 2014, and Appellant's subsequent filing with family court did not divest the Court of its jurisdiction. (A copy of which is attached.) The court further held, "that although the Family Court case which is now in appeal is a case of first impression, it is not an exception to this Court's jurisdiction." Because the circuit court's jurisdiction attached at the time Respondent filed her partition action, even if there were to be a ruling that the parties are married, such a ruling cannot divest the circuit court of its jurisdiction.

For these reasons, Respondent, Polly Thompson, respectfully contends that Appellant's Motion to Stay the Appeal should be denied.

Respectfully submitted,


Margaret A. Chamberlain (SC Bar # 015226)
CHAMBERLAIN LAW FIRM, LLC
600 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864) 250-0505
Facsimile: (864) 271-8097
ATTORNEY FOR RESPONDENT
Polly Thompson

January 14, 2016

Other Counsel of Record:

Mr. John G. Reckenbeil
Post Office Box 1633
Spartanburg, South Carolina 29304
(864) 582-1633
Counsel for Appellant

Mr. J. Falkner Wilkes
114 Whitsett Street
Greenville, South Carolina 29601
(864) 282-1292
Counsel for Appellant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Polly Thompson,)
)
 Petitioner,)
)
 v.)
)
 Cathy Swicegood and)
 Wells Fargo,)
)
 Respondents)

IN THE COURT OF COMMON PLEAS
 THE TENTH JUDICIAL CIRCUIT

2014- CP-37- 00143

PETITION
 (Partition, Ouster and Accounting)
 (Non-Jury)

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2014 MAR 11 AM 11:05

The Petitioner would respectfully show unto the Court the following:

FOR A FIRST CAUSE OF ACTION
 (Partition by Allotment)

1. Petitioner, Polly Thompson, is a citizen and resident of Greenville County, South Carolina.
2. Respondent Cathy Swicegood is a citizen and resident of Oconee County, South Carolina.
3. Respondent Wells Fargo is a corporation organized and existing under the laws of South Carolina.
4. This Court has jurisdiction over the parties and subject matter of this action. Venue is proper in this action pursuant to S.C. Code Ann. § 15-7-10.
5. Petitioner and Respondent Swicegood are owners of real property located in the State of South Carolina, County of Oconee, known as 505 West Sheffield Drive, Westminister, South Carolina.
6. Petitioner and Respondent Swicegood are also the owners of real property located in the State of South Carolina, County of Beaufort, known as 85 Folly Field Road, Hilton Head, South Carolina.

7. The titles to the properties are held by Petitioner and Respondent Swicegood as joint tenants.

8. Respondent Wells Fargo holds a mortgage lien interest on both properties described above. The promissory notes to both properties are solely in Petitioner's name.

9. Petitioner is informed and believes she is entitled to partition by allotment of the above-described properties, or in the alternative, she is entitled to a partition by private sale with the proceeds being equitably divided.

10. Petitioner alleges and believes that she is entitled to have such partition made in proportion to the amount of the parties' contributions to the properties.

11. Petitioner is informed and believes the properties cannot be reasonably partitioned in kind.

12. Petitioner requests that this Court dispense with the writ of partition as it would be unreasonably expensive to require it in this case.

13. Petitioner alleges she made the down payment on both properties, and has paid all mortgage payments, taxes, association fees, regime fees, as well as other considerable expenditures to the benefit of both properties. Petitioner has not been reimbursed by Defendant Swicegood her expenditures.

14. Petitioner is informed and believes that her contributions to both properties far exceed the amount of equity in the properties. For this reason, Petitioner believes it would be fair and equitable for this Court to grant her sole ownership and title to both properties.

15. Petitioner alleges that Defendant Swicegood necessitated the bringing of these actions. Therefore, Petitioner alleges that she is entitled to a Court Order directing Defendant Swicegood to pay Petitioner's attorney's fees and costs.

FOR A SECOND CAUSE OF ACTION
(Ouster and Accounting)

16. Paragraphs 1 through 15 are hereby incorporated by reference.
17. Petitioner alleges that Defendant Swicegood has wrongfully dispossessed Petitioner of and denied her access to the Oconee County property located at 505 West Sheffield Drive, Westminster, South Carolina.
18. Petitioner alleges that on or before January 26, 2014, Respondent Swicegood changed the locks on the Oconee County Property without providing Petitioner with notice or a means to access the property.
19. On January 28, 2014, Petitioner requested the keys and access code from Respondent Swicegood, but as of the date of this Petition has not received them.
20. Petitioner is informed and believes that she is entitled to an Order of this Court requiring Respondent Swicegood to provide Petitioner with the keys and access code to the Oconee County property so that Petitioner may access the property.
21. Respondent Swicegood has occupied the property to the exclusion of Petitioner without payments of any rent or reimbursement of Petitioner's expenditures.
22. Petitioner is informed and believes that she is entitled to an accounting for payments of rents for the exclusive use of the property by Respondent Swicegood and reimbursement for any costs Petitioner has incurred in the preservation of the property.
23. Petitioner request that this Court determine any amounts due to Petitioner from Respondent Swicegood and that Defendant Swicegood be ordered to pay that amount to Petitioner.
24. Petitioner alleges that Defendant Swicegood necessitated the bringing of this action. Therefore, Petitioner alleges that she is entitled to a Court Order directing Defendant Swicegood to pay Petitioner's attorney's fees and costs.

WHEREFORE, Petitioner, prays for the following relief:

1. For a Court Order partitioning the above-described real estate by allotment and granting Petitioner sole ownership and title to both properties; or in the alternative, partition by private sale with the proceeds being equitably divided in proportion to the parties' contributions;
2. For a Court Order dispensing with the writ of partition;
3. For a Court Order requiring Defendant Swicegood provide Petitioner with the keys and access code to the Oconee County property so that Petitioner may access the property;
4. For an accounting of amounts due to Petitioner from Respondent Swicegood;
5. For a Court Order requiring Defendant Swicegood to pay Petitioner's attorney's fees and costs; and
6. For such other relief as this Court finds just and equitable.

Margaret A. Chamberlain

Margaret A. Chamberlain (SC Bar # 0015226)

Melissa H. Moore (SC Bar # 101315)

CHAMBERLAIN LAW FIRM, LLC

600 Pettigru Street

Greenville, South Carolina 29601

Telephone (864) 250-0505

Facsimile (864) 271-8097

ATTORNEYS FOR PETITIONER

Greenville, South Carolina

March 10, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)
)
Polly Thompson,)
)
Petitioner,)
)
v.)
)
Cathy Swicegood and)
Wells Fargo,)
)
Respondents.)

IN THE COURT OF COMMON PLEAS
THE TENTH JUDICIAL CIRCUIT

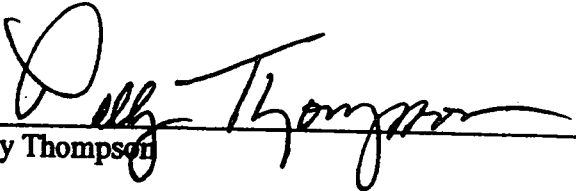
2014- CP-37-00143

VERIFICATION


2014 MAR 11 A 11:05

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

PERSONALLY APPEARED before me Polly Thompson, who, after being duly sworn, states that she is the Petitioner in this action; that she has read the statements contained in the foregoing *Petition*, and the same are true and correct of her own knowledge, and as to those statements made upon information and belief, she believes them to be true.


Polly Thompson

SWORN to before me this
10th day of March, 2014.


Notary Public for South Carolina
My Commission Expires: 10-19-2014

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Cathy J. Swicegood,)

Plaintiff,)

vs.)

Polly A. Thompson,)

Defendant.)

IN THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT

FILED CLERK OF COURT
GREENVILLE, S.C.
2014 MAR 13 A 11:50

2014-DR-23- 1184

FAMILY COURT

COMPLAINT

Plaintiff complaining of the above-named Defendant would respectfully show unto this Honorable Court as follows:

1. That the Plaintiff and Defendant are both citizens and residents of the County of Greenville, State of South Carolina, have been for more than one (1) year prior to the commencement of this action. That this Court has jurisdiction over the Parties and subject matter herein, and venue is proper.

2. That both the Plaintiff and Defendant are female and are natural born citizens of the United States of America. No children have been born of this marriage and none are expected from this marriage. Neither Plaintiff nor Defendant are related to each other by blood or adoption.

3. Plaintiff and Defendant are both over sixteen (16) years of age and have been the sole domestic partner of each other for the last thirteen (13) years during which time neither were married to any other parties.

4. The issues raised in this Complaint are within the jurisdiction of this Court pursuant to South Carolina Code Annotated § 20-1-510 which grants this Court exclusive jurisdiction to hear

and determine the validity of marriages.

5. Plaintiff and Defendant have no other barriers to marriage except for South Carolina Code Annotated § 20-1-15 which deems same sex marriages *void ab initio*.¹

6. There is currently an allegation of justifiable or actual controversy between the parties which have adverse interest in this matter.

7. Both Plaintiff and Defendant have cohabitated at 14 Woodhedge Court in Mauldin, South Carolina, located in Greenville County, for the last thirteen (13) years until December 10, 2013 when the Defendant informed Plaintiff she wanted to separate.

8. Plaintiff and Defendant agreed to be married while cohabitating and held themselves out to their friends, family and the public as a married couple. (See Exhibit A - Expression of endearment to Plaintiff regarding their marriage).

9. As a result of the foregoing, the parties' friends, families and community considered Plaintiff and Defendant to be married.

10. Plaintiff and Defendant exchanged and wore wedding rings; they currently own real property together as joint tenants with the right of survivorship; both Plaintiff and Defendant are devisees in each other's wills; and they also shared a joint banking account. (See Exhibit B (Lake House) and Exhibit C (Hilton Head) – Titles to Real Property; and Exhibit D – joint BB&T banking account of parties).

11. That Plaintiff was twice allowed to be placed on Defendant's employment based health insurance as a domestic partner/qualified beneficiary and is currently a beneficiary of

¹ A copy of the summons and complaint has been mailed to the South Carolina Attorney General in accordance with the South Carolina Rules of Civil Procedure 4(d)(4)(B) When Unconstitutionality of a Statute is Asserted. Plaintiff asserts that S.C. Code Ann. § 20-1-10 and § 20-1-15 Persons who may marry and ban on same sex marriage is unconstitutional.

Defendant's retirement account and the sole devisee of Defendant's will. (See Exhibit E – IRA).

12. Plaintiff is informed and believes she is entitled to an Order confirming that the parties were married spouses and that a common law marriage has existed between the parties.

13. That during the course of the marriage, various difficulties have arisen culminating in a separation of the Parties on or about December 10, 2013, whereby the parties have been living separate and apart and, that by reason thereof, the Plaintiff would request that this Court recognize the separation of the Parties.

14. The Plaintiff is informed, alleges, and believes that she is entitled to an Order equitably dividing all marital property, both pendente lite and permanently.

15. The Plaintiff would show unto the Court that the Parties do not have comparable incomes and Plaintiff if not capable of supporting herself independently of the other, and given the length of this common law marriage believes that the Defendant should award to the Plaintiff alimony, both pendente lite and permanently.

16. That the Plaintiff has incurred substantial attorney's fees for the bringing of this action and she is informed, alleges, and believes that should the Defendant contest any portion of this action that she is entitled to an award from the Defendant of attorney's fees and costs, both pendente lite and permanently.

17. Plaintiff is informed and believes that she is entitled to an Order restraining and enjoining the Defendant from harassing, intimidating, threatening, or engaging in any acts of violence towards her, both pendente lite and permanently.

18. The Plaintiff is informed, alleges, and believes that she is entitled to a discovery Order during the pendency of this action.

19. Plaintiff is informed and believes that until such time as the marital property is equitably divided that the Plaintiff should be temporarily awarded sole possession of the "Lake House Property" and Defendant be required to be responsible for the mortgage, taxes, insurance, maintenance, and other associated costs.

20. Plaintiff is informed and believes the Defendant should remain in the marital home, 14 Woodhedge Court, and be solely responsible for the mortgage, taxes, insurance, maintenance, and other associated costs. In the event the Defendant does not wish to remain in the marital home located at 14 Woodhedge Court, Plaintiff is informed, alleges, and believes that the marital home should be placed on the market for sale immediately with a licensed real estate agent in a commercially reasonable manner at a price to be agreed upon by the Parties, or at a price recommended by a licensed real estate appraiser. In this instance, the Plaintiff believes that Defendant should be responsible for all costs and actions for the same until such time as the home is sold.

21. The Plaintiff is informed, alleges, and believes that she should be entitled to the use of her personal property currently in her possession as well as her automobile, and that Plaintiff should be responsible for the taxes, liens, maintenance, and other related cost associated therewith.

22. Plaintiff is informed, alleges, and believes that the Defendant should be temporarily awarded the possession and use of her personal items and automobile, and she should be responsible for the taxes, liens, maintenance, and other related cost associated therewith.

23. The Plaintiff is informed, alleges, and believes that she is entitled to an Order restraining and enjoining the Defendant from disposing, encumbering, or liquidating the marital assets in any manner whatsoever, both *pendente lite* and permanently.

24. That this action is brought in good faith by and between the Parties without fraud or collusion for the purpose of obtaining a decree of separate support and maintenance.

WHEREFORE, having set forth her Complaint the Plaintiff prays as follows:

1. For an Order decreeing the existence of common law marriage between the Parties²;
2. For the Court to recognize the separation of the Parties;
3. For the Court to grant Plaintiff a decree of Separate Support and Maintenance;
4. That all marital property be equitably divided, both *pendente lite* and permanently;
5. For an award of attorney's fees and costs for the bringing of this action should the Defendant contest any portion of this action, both *pendente lite* and permanently;
6. For an Order of Discovery, both *pendente lite* and permanently;
7. For a restraining Order restraining and enjoining the Defendant from bothering, harassing, intimidating, threatening, or engaging in any acts of violence against her, both *pendente lite* and permanently;
8. For the Court to follow the suggestion of the Plaintiff with regard to the marital home, properties and the Parties' personal possessions and automobiles;
9. For the Plaintiff to be awarded alimony, both *pendente lite* and permanently;
10. For a restraining Order restraining and enjoining the Defendant from disposing, encumbering, or liquidating the marital assets in any manner whatsoever, both *pendente lite* and permanently; and

² See Exhibit F – Plaintiff needs a “Qualifying Event” so that she can be able to remain on Defendant’s employment based health coverage.

11. For such other and further relief as the Court may deem just and proper.

LAW OFFICE OF JOHN G. RECKENBEIL, LLC

John G. Reckenbeil

John G. Reckenbeil
215 Magnolia Street (29306)
P.O. Box 1633
Spartanburg, SC 29304
(864) 582-5472
Fax (864) 582-7280
john@johnreckenbeillaw.com

ATTORNEY FOR PLAINTIFF

March 13, 2014
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
)
)
Cathy J. Swicegood)
) Plaintiff,)
)
) vs.)
)
Polly A. Thompson)
) Defendant.)

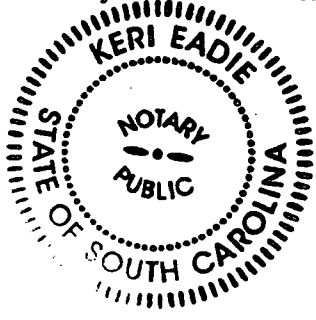
IN THE FAMILY COURT
THIRTEENTH JUDICIAL CIRCUIT
FILED CLERK OF COURT
GREENVILLE, S.C.
2014 MAR 13 A 11:50
FAMILY COURT

Docket No. **2014-DR-23-1184**

I, Cathy Swicegood, appearing first before the Notary Public, state that I am the Plaintiff/ Defendant) in this matter. I have read the attached (Complaint/ Answer/ Counterclaim) and know or believe the contents and allegations are true to the best of my knowledge, except for those matters stated which are alleged on information and belief.

Sworn to before me this
13th day of March, 2014
Keri Eadie
Notary Public of South Carolina
My Commission expires: 8/28/22

Cathy J. Swicegood
(Plaintiff/ Defendant)



STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Polly Thompson,)
)
 Petitioner,)
)
 v.)
)
 Cathy Swicegood and Wells Fargo,)
)
 Respondents.)
 _____)

IN THE COURT OF COMMON PLEAS
 THE TENTH JUDICIAL CIRCUIT

**MOTION TO DISMISS OR IN THE
 ALTERNATIVE, MOTION TO
 STAY PROCEEDINGS**

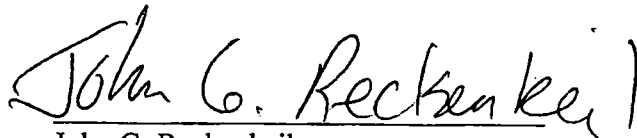
2014-CP-37-00143

The Respondent, Cathy Swicegood, through her undersigned counsel, hereby moves this Honorable Court pursuant to Rule 12 (b)(8) of the South Carolina Rules of Civil Procedure to dismiss Plaintiff's Lis Pendens and petition as another action is pending between the same parties and the same claim (see Exhibit #1) in the Family Court of Greenville County.

Respondent Swicegood respectfully submits that this Court lacks the proper remedial and adjudication powers for the facts and circumstances that have occurred between the parties in the last thirteen (13) years (see Exhibit 2). The Respondent is seeking an order from the Family Court that the parties are in fact married by common law under South Carolina; and therefore, this case is better suited for the Family Court. In a Petitioner Action for Partition, Ouster, and Accounting, this Court is called upon to remove Cathy Swicegood from the residence she agreed to reside in after she was "quasi-evicted" from the marital home after cohabitation there with Petitioner for more than thirteen (13) years. Cathy Swicegood spent great efforts to make her current residence in Oconee County a "lake home" for her to share with her spouse, Ms. Thompson. For this Court to demand Cathy Swicegood to sell her home would be an irreparable harm, which once done could never be undone. Furthermore, the Family Court is the only Court in our state that is empowered by the laws of South

Carolina to handle the holistic bond that the Petitioner and Respondent shared for thirteen (13) years. The Master in Equity does not consider the economic dependency that has resulted from the roles assumed during the marriage nor does a Master in Equity consider any vested special equity in marital property that one spouse may accrue.

For these reasons, Respondent Cathy Swicegood respectfully requests that this Court enter an Order granting Respondent's Motion to Dismiss, dismissing the action in its entirety without prejudice, as this case is better suited for the Family Court of the Thirteenth Judicial Circuit.



John G. Reckenbeil
215 Magnolia Street
Post Office Box 1633
Spartanburg, SC 29304
Phone: (864) 582-5472
Fax: (864) 582-7280
john@johnreckenbeillaw.com

ATTORNEY FOR RESPONDENT
CATHY SWICEGOOD

Dated: April 16, 2014
Spartanburg, South Carolina

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
IN THE COURT OF COMMON PLEAS
THE TENTH JUDICIAL CIRCUIT

2014 OCT 16 PM 3 33

Polly Thompson,)
)
Petitioner,)
)
v.)
)
Cathy Swicegood,)
)
)
Respondent.)

2014- CP-37-00143

**ORDER DENYING RESPONDENT
SWICEGOOD'S MOTION TO DISMISS
OR IN THE ALTERNATIVE STAY
THE PROCEEDINGS**

Date of Hearing: June 23, 2014
Presiding Judge: The Honorable J. Cordell Maddox, Jr.
Attorney for Petitioner: Ms. Margaret A. Chamberlain
Attorney for Respondent: Mr. John G. Reckenbeil
Court Reporter: Ms. Renee Tollison

This matter came before the Court pursuant to Respondent Cathy Swicegood's Motion to Dismiss or in the Alternative Stay the Proceedings filed with this Court on April 23, 2014. A hearing took place on June 23, 2014. Petitioner, Polly Thompson ("Petitioner"), was not present at the hearing, but was represented by her attorney, Margaret A. Chamberlain of the Greenville County Bar. Respondent, Cathy Swicegood ("Respondent"), was present at the hearing with her attorney, John G. Reckenbeil, of the Spartanburg County Bar.

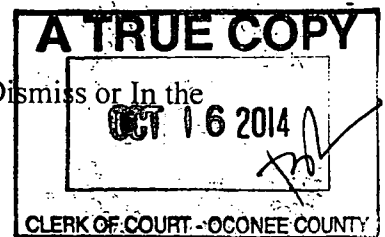
Respondent moved to dismiss Petitioner's Petition for Partition and Ouster pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure, or in the alternative stay the proceedings. Respondent stated that there is a family court action pending to determine if the parties are common law married, and that family court is better suited to handle the property issues between the parties. (The family court dismissed the case, but Respondent has appealed the ruling.) In the alternative, Respondent argued that should this Court not grant the motion to

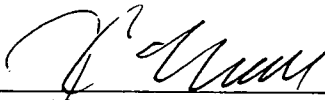
dismiss, it should stay the proceedings until the Court of Appeals makes a ruling as to the family court action. Petitioner contends that Respondent's motion must be denied because this Court's jurisdiction attached when she filed her Petition for Partition and Ouster on March 11, 2014, and that Respondent's subsequent filing of a family-court action two days later did not remove that jurisdiction.

Having considered the arguments of the attorneys, this Court finds it has jurisdiction over the subject matter of this action. "The general rule is that jurisdiction of a court depends upon the state of affairs existing at the time it is invoked. *Gardner v. Gardner*, 253 S.C. 296, 170 S.E.2d 372 (1969). "If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Id.* "Accordingly, the circuit court properly maintained jurisdiction based on the status of the case at the time of filing." *Id.* This Court, therefore, finds that jurisdiction attached at the time Petitioner filed her partition action on March 11, 2014, and Respondent Swicegood's subsequent filing of her family-court action did not remove jurisdiction from this Court. Furthermore, this Court finds that although the family-court case which is now on appeal is one of first impression, it is not an exception to this Court's jurisdiction. There is no just cause for granting a stay of these proceedings.

It is therefore ORDERED that Respondent Swicegood's Motion to Dismiss or In the Alternative Stay the Proceedings is denied.

IT IS SO ORDERED.




The Honorable J. Cordell Maddox, Jr.
Tenth Judicial Circuit Judge

Oconee, South Carolina
~~October~~
~~September~~ 9, 2014

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 OCT 16 PM 3 34

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-37-0143

POLLY THOMPSON

CATHY SWICEGOOD

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: MARGARET A. CHAMBERLAIN

Attorney for : Plaintiff Defendant

Self-Represented Litigant

2014 OCT 16 PM 3 33

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.

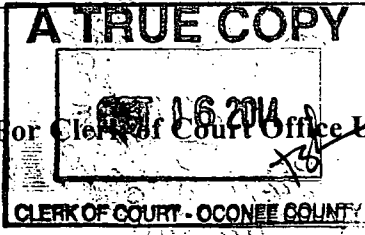
Circuit Court Judge

Judge Code

2131

Date

10/9/14



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Ellis B. Drew, Master in Equity

Case No. 2014-CP-37-00143
Appellate Case No.: 2015-001860

RECEIVED
JAN 19 2016
SC Court of Appeals

Polly A. Thompson, Respondent,

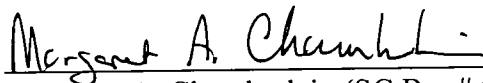
v.

Cathy J. Swicegood, Appellant.

PROOF OF SERVICE

I certify that I have served RESPONDENT POLLY THOMPSON'S RETURN IN OPPOSITION TO APPELLANT'S MOTION TO STAY APPEAL and MEMORANDUM IN SUPPORT OF RESPONDENT'S RETURN on the attorneys for the Appellant, by depositing said document in the United States Mail, with adequate postage affixed, on January ____, 2016, to the attorneys of record listed on page two.

Respectfully submitted,



Margaret A. Chamberlain (SC Bar # 015226)
CHAMBERLAIN LAW FIRM, LLC
600 Pettigru Street
Greenville, South Carolina 29601
Telephone: (864) 250-0505
Facsimile: (864) 271-8097
ATTORNEY FOR RESPONDENT
POLLY THOMPSON

January 14, 2016

Other Counsel of Record:

Mr. John G. Reckenbeil
Post Office Box 1633
Spartanburg, South Carolina 29304
(864) 582-1633
Counsel for Appellant

Mr. J. Falkner Wilkes
114 Whitsett Street
Greenville, South Carolina 29601
(864) 282- 1292
Counsel for Appellant

Chamberlain Law Firm LLC

Margaret A. Chamberlain
Attorney at Law

Melissa H. Moore
Attorney at Law

January 14, 2016

RECEIVED
JAN 19 2016
SC Court of Appeals

By Certified Mail

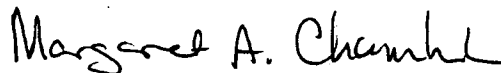
The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Polly Thompson v. Cathy Swicegood*
Appellate Case No.: 2015-001860

Dear Ms. Kitchings:

With this letter, I am enclosing the original and six (6) copies of *Respondent Polly Thompson's Return in Opposition to Appellant's Motion to Stay Appeal, Memorandum in Support of Respondent Polly Thompson's Return*, and *Proof of Service* in this case. If you need anything further, please do not hesitate to contact me. I appreciate your assistance.

Sincerely yours,



Margaret A. Chamberlain

cc: Other Counsel of Record:

Mr. John G. Reckenbeil
Post Office Box 1633
Spartanburg, South Carolina 29304
(864) 582-1633
Counsel for Appellant

Mr. J. Falkner Wilkes
114 Whitsett Street
Greenville, South Carolina 29601
(864) 282-1292
Counsel for Appellant