

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Lee County  
Court of Common Pleas

Haigh Porter, Special Referee

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Case No. 2010-CP-31-195

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Cecil L. Josey, Jr.,

Respondent,

v.

Stanley D. Josey, Courtney Gamble,  
Spencer Josey, Elizabeth Ann Geddings,  
Cecil L. Josey, Jr. as Trustee of  
the Josey Family Trust,

Defendants,

Of Whom Stanley D. Josey is the

Appellant,

And of whom Courtney Gamble,  
Spencer Josey, Elizabeth Ann Geddings,  
Cecil L. Josey, Jr. as Trustee of  
the Josey Family Trust, are

Respondents.

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**RETURN TO PETITION FOR WRIT OF SUPERSEDEAS  
ON BEHALF OF RESPONDENT CECIL L. JOSEY, JR.**

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## Introduction

This partition action involves property jointly owned by surviving members of the family of the late C. Wofford Josey, including a note and mortgage, three parcels of real property (Britton Farm, a fertilizer plant, and 32.98 acres<sup>1</sup> with 9 buildings and sheds”), and a considerable number of items of personal property consisting of vintage automobiles along with parts and tools in the buildings/sheds on the 32 acres. Wofford left the property to his two sons, Stanley and Cecil, as tenants in common with equal shares. However, Cecil has since died and his 50% is now held by the Josey Family Trust (46%) and his four children (1% each): Cecil L. Josey, Jr., Spencer Josey, Courtney Gamble, and Elizabeth Ann Geddings. Cecil Jr. (“Rainey”) is the Trustee and the four children are the beneficiaries of the Josey Family Trust (collectively referred to as “Cecil’s Heirs”).

Rainey, in his individual capacity, brought this action for partition. The Special Referee ordered partition in kind, dividing the property and awarding certain items of personal property and real property to the parties. Stanley received the note and mortgage, Britton Farm, the Fertilizer Plant, the eight vintage automobiles and a specified portion of the parts and tools. Cecil’s Heirs received the 32 acres and all the parts and tools not otherwise allocated to Stanley.

The Special Referee’s order gave Stanley 180 days to remove his personal property from the 32 acres and set forth specific requirements regarding the logistics of the removal, including advance notice and time scheduling restrictions. The Special

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<sup>1</sup> Throughout this litigation, this parcel has been referred to as “the 32 acres” or “the 32 acre tract.” For continuity, the Respondent will also use that reference.

Referee specifically ordered that: “Stanley shall not enter the property except on those dates and times designated for removal of the items of personal property.” (App.<sup>2</sup> 48; Amended Order, p. 6.)

Stanley filed a notice of appeal with the Court of Appeals and made a motion in the trial court for a stay pending appeal. (App. 52; Motion, filed August 18, 2011.)

Rainey Josey also made a motion in the trial court to amend the order, seeking additional restrictions on Stanley’s ability to enter upon the 32 acres for the single purpose of removing his personal property because Stanley had been coming on the 32 acres causing trouble and disruption, but not removing any of the personal property items he received under the partition both in non-compliance with the Amended Order. (App. 54; Motion to Amend Order, 9/13/11.)

The Special Referee denied Stanley’s motion for a stay due to the problems and friction between Stanley and the other parties. While the Special Referee also denied Rainey’s motion to amend his order, however, he did clarify the intent of his order: “The only purpose for this Defendant, Stanley D. Josey, to enter upon the 32 acres was for the removal of personal property awarded to him. His access to this property awarded to the remaining properties should be limited to such removal of personal property. ... (I)ntent of the Order was for Mr. Stanley Josey to have the right to remove items of personal property as designated at specific times and the only purpose for him going on the 32 acres subject to this partition suit was for the removal of his personal property awarded him pursuant to the above referenced Orders.” (App. 77; Order, filed 3/21/12, pp. 2-3.)

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<sup>2</sup> The Respondents/Trust Defendants are submitting a separate Return with an Appendix which contains relevant parts of the record below. As a matter of efficiency and economy, this Respondent will be referencing the trial documents in that Appendix.

Appellant Stanley Josey now seeks a supersedeas to allow him to leave his personal property in the buildings on the 32 acres and to allow him daily access to that property during the pendency of this appeal. Respondent Rainey Josey respectfully implores the Court to deny the petition for the reasons that Stanley has repeatedly used his access to harass the Respondents and disturb the peace, which even led to physical assault on one occasion, and for such other such reasons as will be shown below.

### **Procedural History**

This action was commenced by Cecil L. Josey, Jr. (“Rainey”) with the filing of a summons and complaint on September 30, 2010, seeking a partition in kind of certain parcels of land and personal property he jointly owns with the Defendants. The jointly owned property at issue consists of a note and mortgage, three parcels of real property (Britton Farm, a fertilizer plant, and 32.98 acres<sup>3</sup> with nine buildings and sheds”), and a considerable number of items of personal property consisting of eight vintage automobiles along with parts and tools in the buildings/sheds on the 32 acres.

The individual Defendants are surviving heirs of the late C.J. “Wofford” Josey, who bequeathed and devised the subject property jointly to his sons Stanley and Cecil (now deceased). Stanley Josey owns a 50% interest in the property; and Cecil’s half is now held by the Josey Family Trust (46%) and his four children, Plaintiff Rainey (1%), and Defendants Spencer Josey (1%), Elizabeth Ann Geddings (1%) and Courtney Gamble (1%) – “Cecil’s Heirs.”

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<sup>3</sup> Throughout this litigation, this parcel has been referred to as “the 32 acres.” For continuity, the Respondent will also use that reference.

By that complaint, the Defendants/joint owners were given notice of their rights to purchase the property pursuant to S.C. Code Ann. § 15-61-25, which provides that when a joint tenant files petition for partition, the nonpetitioning joint tenants have a right of first refusal to purchase the interests in the property. (App. 1; Summons and Complaint.)

Stanley Josey filed an answer and counter-claim. (App. 8; Answer and Counterclaim, filed 10/2010.) Stanley requested that the Court equitably divide the personal property (¶ 8) and two of the parcels of land -- the Britton Farms and the Fertilizer Plant (¶ 9). However, Stanley gave notice that he wanted to purchase the 32 acres (¶10.). Stanley also counterclaimed for a declaration that he holds an easement over a paved driveway to the 32 acres, which is located on land personally owned by Rainey Josey, and he sought injunctive relief to prevent Rainey from obstructing his right of ingress and egress. Stanley thereafter filed an amended answer, counterclaim and cross-claim, adding claims of false imprisonment, malicious prosecution, and abuse of process based on allegations that the Plaintiff and Co-Defendants had filed warrants against him for malicious injury to property and trespass. (App. 15; Amended Answer, dated 12/13/10.)

Rainey filed a reply to the counterclaim on January 14, 2011, denying the allegations and giving notice that he is willing to purchase Stanley's interest in the 32 acres. (App. 24; Reply.) The Trust and the other individual owners, Spencer, Courtney, and Elizabeth Ann ("the Trust Defendants"), filed an Answer and Reply to the cross in which they gave notice that they will purchase the interest of Rainey and Stanley in the 32 acres (¶18). (App. 27; Answer & Reply, filed 3/8/11.)

On motion of the Plaintiff Rainey Josey and by agreement of the other parties, the matter was referred to the Honorable Haigh Porter, as Special Referee, to enter a final judgment. The matter came before the Special Referee for a trial on the merits on April 26, 2011. Thereafter, the Special Referee declined to grant any of the non-petitioning parties the right to purchase, determined that a public sale would create chaos, and held that the assets could be fairly and equitably divided. The Special Referee ordered partition in kind, dividing the property and awarding certain items of personal property and real property to the parties. Stanley received the note and mortgage, Britton Farm, the Fertilizer Plant, all the eight vintage automobiles and a specified portion of the parts and tools. Cecil's Heirs received the 32 acres and all the parts and tools not otherwise allocated to Stanley. (App. 30; Order, filed 7/7/11.)

The Special Referee's order gave Stanley 180 days to remove his personal property from the 32 acres and set forth specific requirements regarding the logistics of the removal, including advance notice and time limits. The Special Referee specifically ordered that: "Stanley shall not enter the property except on those dates and times designated for removal of the items of personal property." (App. 35; Order, p. 6.)

Stanley served a Rule 59 motion for a new trial on July 14, 2011, and subsequently filed an "Addendum" to supplement his Rule 59 motion on July 19, 2011. (App. 39, 41; Motion, Addendum) The Special Referee filed an amended order on August 9, 2011, which made no substantive changes and denied Stanley's motion to alter the partition in kind or the division of the properties; although the Amended Order did restart the 180 day period for Stanley to remove his property from the 32 acres. (App. 43; Amended Order.)

Stanley filed a notice of appeal with the Court of Appeals and made a motion in the trial court for a stay pending appeal. (App. 52; Motion, filed 8/18/11.) Rainey Josey also made a motion in the trial court to amend the order on September 13, 2011, seeking additional restrictions on Stanley's ability to enter upon the 32 acres for the single purpose of removing his personal property because Stanley had been coming on the 32 acres causing trouble, but not removing any of the personal property items he received under the partition. (App. 54; Motion to Amend Order, 9/13/11.)

The Special Referee denied Stanley's motion for a stay due to the problems and friction between Stanley and the other parties. The Special Referee was also denied Rainey's motion, however, he did clarify the intent of his order: "The only purpose for this Defendant, Stanley D. Josey, to enter upon the 32 acres was for the removal of personal property awarded to him. His access to this property awarded to the remaining properties should be limited to such removal of personal property. ... (I)ntent of the Order was for Mr. Stanley Josey to have the right to remove items of personal property as designated at specific times and the only purpose for him going on the 32 acres subject to this partition suit was for the removal of his personal property awarded him pursuant to the above referenced Orders." (App. 79; Order, filed 3/21/12, p.3.)

## **Background Facts**

### ***The People and the Properties***

Wofford Josey died November 4, 1998, survived by his two sons, Cecil and Stanley. He left considerable properties to his sons, which included the properties subject to the partition act:

1. Note and Mortgage due Josey Marital Trust<sup>4</sup> with outstanding principal and accumulated payments with an appraised value of \$19,376;
2. Britton Farm consisting of 30 acres of wooded upland in southeast Lee County appraised at \$38,000<sup>5</sup>;
3. Fertilizer plant consisting of 4.6 acres on Harris Street in Bishopville appraised at \$30,000<sup>6</sup>;
4. 32.98 acres appraised at \$65,960 (\$2,000 per acre) with nine (9) buildings/sheds separately appraised at \$61,000<sup>7</sup>;
5. Vintage Automobiles, including<sup>8</sup>
  - a 1922 Velie appraised at \$20,000,
  - a 1926 Essix appraised at \$2,500
  - a 1966 Ford appraised at \$1,500,
  - a 1924 Nash appraised at \$2,500,

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<sup>4</sup> This relates to property that Wofford sold and self-financed. The note and mortgage were held by the Josey Marital Trust created by Wofford. Stanley and Cecil were the beneficiaries and Rainey was named the trustee; Cecil's half went to his Josey Family Trust. (App. 179; Tr. 101.) Under the Special Referee's order, Stanley becomes the sole beneficiary of the Josey Marital Trust and can elect himself as trustee. (App. 34; Order, p. 5.)

<sup>5</sup>The appraisals of the three parcels of real property were provided by professionals agreed upon by all parties. (App. 383-406; Plaintiff's Ex. 1-3.) Stanley did not object to the appraisals at trial. (App. 317; Tr. 239, ll. 22.) Stanley does not challenge the valuations on appeal.

<sup>6</sup>This property was previously used as a fertilizer plant, but it is not currently operational. (App. 400; Plaintiff's Ex. 2.)

<sup>7</sup>(App. 406; Plaintiff's Ex. 3.)

<sup>8</sup> Stanley he does not challenge the valuations on appeal.

- a 1919 Model T. Truck appraised at \$2,500,
  - a 1960 MGA appraised at \$2,500,
  - a 1928 Studebaker appraised at \$2,500; and
  - a 1922 Jewett appraised at \$3,500; and
6. Parts and Tools appraised at \$45,900.<sup>9</sup> (See App. 51; Plaintiff's Ex. 30, attached to Order.)

Cecil conveyed his half to his Josey Family Trust, the beneficiaries of which are his four children. (App. 125; Tr. 47.) The Trust conveyed 1% to each of the four children outright. (App. 125; Tr. 47.)

As the Special Referee noted, "(t)he real bone of contention is whether the 32.8 acre parcel should be partitioned, allotted or sold." (App. 32; Order, p. 3.) The 32 acres – located on Elliott Highway in the City of Lynchburg in Lee County abuts 8.4 acres owned personally by Rainey Josey where he makes his home. Rainey's home tract was originally part of the joint property Stanley and Cecil inherited from Wofford, but Rainey purchased the property from Stanley<sup>10</sup> and the Trust in 2001. (App. 108-09; Tr. 29-30.) Wofford had purchased the property in 1954 and then several years later, built the house where Stanley and Cecil were raised during the latter part of their childhood until they were grown and left home. (App. 214; Tr. 136.)

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<sup>9</sup> The appraisal of the parts and tools was prepared by Rainey with the assistance of Spencer. (App. 49; Plaintiff's Ex. 28.) Stanley did not introduce any appraisals to challenge the valuations; and he does not challenge the valuations on appeal. The Court noted that the Plaintiff's Exhibit 30 contains a math error - the total is \$45,900, not \$34,000. (App. 32; Order, p. 3.) There are also other items of personal property located in these buildings owned by various of the parties individually. (App. 50; Plaintiff's Ex. 29, as attached to the Order.)

<sup>10</sup> Rainey paid Stanley \$60,000 for his ½ interest. (App. 325; Tr. 247.)

The 32 acres also abuts 3.5 acres, which Wofford had given directly to Cecil in 1994, who it turn deeded it to the Josey Family Trust in 2001. The house on this tract is where Cecil's children were raised and where their mother still lives. (App. 105-06, 111, 129; Tr. 27-28, 32, 51.)

As identified in the appraisal, the nine (9) buildings and sheds on the 32 acres consist of:

1. 40 x 80 woodsided shed/enclosure with a tin roof;
2. 26 x 41 covered shed with a tin roof
3. 36 x 41 enclosed with a shed
4. 27 x 60 workshop with concrete floor and aluminum roof;
5. 21 x 101 car storage with 10 door metal frame;
6. 40 x 60 workshop with steel frame;
7. 32 x 90 enclosed with rear shed CCB/Wood
8. 36x 60 Hoover building; and
9. Two-story cabin 2150+ square feet.<sup>11</sup> (App. 406; Plaintiff's Ex. 3.)

Of the nine (9) buildings, 1, 3, 4, 5, and 9 receive electricity from Rainey's home meter; buildings 6, 7, and 8 have a separate power meter, however, the electric bill was paid by the Stoney Run Farms partnership until it dissolved, and now it is paid by the Josey Family Trust. All the buildings draw water from a well located on Rainey's home tract. (App. 133; Tr. 55.)

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<sup>11</sup>Rainey and Spencer helped their grandfather, Wofford, build that cabin. (App. 220; Tr. 142.)

In addition to the jointly-owned vintage automobiles listed above, the nine buildings<sup>12</sup> are full of car parts and equipment of all kinds accumulated over the years of the family's long ago farming operations to the car restoration business as well as various household items that ended up in storage out there. Plaintiff's Ex. 28, which is attached to the Order, represents Rainey and Spencer's attempt to list big items (more than \$500) and groups other items based on type and location. (App. 49.) The Special Referee actually visited the property and was "awestruck" by the great quantity and the magnitude of any attempt to appraise them by item. One might compare the property to what can be seen on the currently popular cable TV shows "American Pickers" on A&E.

In addition to the jointly-owned personal property, which is the subject of this partition action, the parties stored their individually owned property in these buildings and on the 32 acres. For example, Rainey has various farming and yard maintenance equipment and tools and each of Cecil's children as well as Stanley have their own vintage automobiles. The individually owned items are listed on Plaintiff's Exhibit 29 which is also attached to the Order. (App. 50.)

Wofford had also formed a family partnership, Stoney Run Farms, the partners in which included Wofford, his sons Stanley and Cecil, and his grandchildren/Cecil's four children.<sup>13</sup> (App. 102; Tr. 24.) While this partnership is not the subject of this partition action, certain facts regarding those properties and the dissolution of the partnership are relevant to Stanley's claims of unfairness. When the Stoney Run partnership was

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<sup>12</sup> Some of the jointly-owned property is also located in two buildings on Rainey's home property and are listed on the inventory/appraisal.

<sup>13</sup> Stanley does not have any children.

dissolved and the assets were distributed in 2010, Stanley received 181 acres (“the Brown Home Place”) which surrounds the home Wofford gave him<sup>14</sup> along with 1000+/- acres of farmland, timberland and bottomland (“the Georgia Pacific tract”). (App. 117-22; 38-43.)

### ***The Family Dissension***

Family dissension over the jointly owned property began in 2006. The buildings were deteriorating and Stanley would not contribute to the upkeep on the properties.<sup>15</sup> (App. 141-42; Tr. 63-64.) Over the next several years, the parties still were communicating, getting the properties appraised, and trying to separate assets until things began to deteriorate in 2009, after an incident when Stanley and his wife trespassed into Rainey’s office on his privately owned land. Rainey confronted them, words were exchanged, and Stanley assaulted Rainey. (App. 145; Tr. 67.) No police report was made; however, Stanley does not deny the incident happened. Stanley and his wife both testified that he grabbed Rainey by the collar, although they deny that Stanley actually grabbed Rainey by the throat. (App. 299, 340-41; Tr. 221, ll. 23-25; Tr.262-63.)

The problems continued in January of 2010, when Stanley started turning on radios at the cabin at full volume and leaving them on day and night. He claims that he

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<sup>14</sup> Wofford deeded the land to Stanley for his home on the same day he deeded the 3.5 acres to Cecil. (App. 113; Tr. 34.)

<sup>15</sup> When Rainey wanted to build a dock at the cabin, Stanley refused to contribute, so Rainey built and paid for it personally. The roof on Building One was rotten and Rainey paid to have it replaced. Rainey bought a lawn mower and maintains the yards around the buildings himself. Rainey also bought two (2) air conditioners for the cabin. (App. 165-66, 168; Tr. 87-88, 90.) Stanley admitted that he did not want to put his money into those properties: “When I invested my money, I wanted it to be on my things, yes sir.” (App. 320; Tr. 242, ll. 6-7.)

was doing it to scare the squirrels away because he supposedly has a soft spot for wildlife and he did not want to shoot the squirrels. (App. 266-69; Tr. 188-191.) However, the noise was particularly problematic because of the proximity of the cabin to Rainey's house (90 yards) and his mother's house (60 yards), but Stanley did not care about disturbing his family in their homes. (App. 148, 266-67; Tr. 70, 188-89.) Rainey would unplug the radios, and Stanley would immediately return and plug them in. (App. 154; Tr. 76.) This was particularly disruptive to Mrs. Josey whose home is closest to the cabin. (App. 240-41; Tr. 162-63.) Finally, Rainey just turned the electricity to the cabin off.<sup>16</sup> (App. 155-56; Tr. 77-78.)

Other problems included Stanley trespassing on Rainey's property to use the asphalt driveway. The driveway is located on the 8.44 acres that Stanley and the Trust sold to Rainey in 2001. The paved portion of the driveway runs from the road to Rainey's carport and then becomes a little dirt road goes over to the cabin. (App. 216; Tr. 138.) For many of the years after Rainey bought and moved there, Stanley most often would use the north access to the buildings on a dirt road shared with their neighbor.<sup>17</sup> (App. 214-17; Tr. 136-39.) However, when the troubles escalated, Stanley started driving fast up and down his driveway so Rainey issued a no trespassing notice to

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<sup>16</sup> Rainey notified Stanley's attorney of his intent to do so, and he did turn the power on with notified that Stanley wanted to use the cabin. (App. 155-56; Tr. 77-78.)

<sup>17</sup> The first half of the dirt road in on the Defendant's property and the second half in on the property of Ms. Richardson. (App. 217; Tr. 139.) Ms. Richardson has never restricted access to her half. (App. 217; Tr. 139.) Stanley admits in his Petition for Supersedeas that this has been the primary road used by the Josey family for many years.

Stanley to stay off his land and the tract owned by the Trust where their mother lives. (App. 157-58; Tr. 79-80.)

Stanley claims that he automatically retained an easement across that driveway when he sold his half interest to Rainey in 2001: “I didn’t think when Rainey bought that property that that easement would go away. I thought once an easement, always an easement is the way I thought things worked. Just because you buy a piece of property where a man’s been going up and down it for fifty (50) years, that doesn’t cut him off from going in and out of it.”<sup>18</sup> (App. 286-87, 325; Tr. 208, l. 20 – 209, l. 1; 247, ll. 1-14.). Stanley asserted a counterclaim to determine his right to an easement, which was not addressed or ruled upon in the Order. And although Stanley raised the easement issue in his Motion for a New Trial, the Amended Order still does not address the issue. However, Stanley has not raised any issue on appeal regarding the easement.

Eventually the situation became so difficult, that Rainey installed cameras on his house to monitor the property and document Stanley’s trespassing. (App. 158-59; Tr. 80-81.) After Rainey issued the no trespass notice, Stanley would drive his truck right up to the property line at night and just shine his headlights at the house, which disturbed Rainey’s children sleeping. (App. 159-60; Tr. 81-82.) Sometimes Stanley would do this everyday or night when he was mad about something. (App. 160-61; 82-83.) Stanley also resorted to other harassing conduct; as examples, he would park his boat in one of the sheds to block access by the other co-owners, and he has stacked materials in such a way as to block Rainey’s access to his own farm equipment. (App. 164-65; Tr. 86-87.)

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<sup>18</sup> Stanley testified that he would be needing to widen the paved driveway because he intends on farming and he will need to get the tractors out. (App. 279; Tr. 201.)

The harassment took an even more personal and physical nature in August 2010 when Stanley disassembled part of the children's tree house and destroyed azaleas in Rainey's own yard<sup>19</sup>. (App. 161-62; Tr. 83-84.) That event prompted Rainey to call the police and Stanley was charged with malicious injury to personal property and trespassing. (App. 161; Tr. 83.) A courtesy summons was also issued to Stanley for trespassing (hunting) on property formerly part of the Stoney Run Farms, but now owned by the Josey Family Trust, in October 2010.<sup>20</sup> (App. 163; Tr. 85.) The Record Clerk from the Lee County Sheriff's office testified that they had eight (8) incident reports of calls to the property in one year (4/30/10 – 4/10/11). (App. 413, 272; Plaintiff's Ex. 4 – Incident Reports; Tr. 194.)

At one point, Rainey recorded Stanley standing on the property line on his backyard yelling profanity, cussing and threatening. (App. 202; Tr. 124.) Rainey became concerned for the safety of his family so he approached the Sheriff and then took that recording to a Lee County Magistrate who issued a mutual restraining order.<sup>21</sup> (App. 183-202-03; Tr. 105, 124-25.) Rainey's wife also testified that she feared for her family's safety, and recounted an incident in the summer of 2010 when Stanley let strangers use the cabin without even telling them. These strangers were shirtless and

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<sup>19</sup> Stanley admitted that he cut the azaleas, although he characterizes it as "trimming" them so he could drive down Rainey's driveway without scratching his vehicles. (App. 295; Tr. 217.) He also admitted that he took down a zipline attached to the treehouse, but his excuse was that it was hitting the roof of his truck when he drove down Rainey's driveway. (App. 296; Tr. 218.) Stanley insists that it was his right to do so because of the alleged easement he had retained. (App. 296-98; Tr. 218-20.)

<sup>20</sup> Courtney and Spencer reported Stanley to the DNR. (App. 354, 374; Tr. 276, 296.)

<sup>21</sup> A previous effort to obtain a restraining order had been denied because Rainey did not have sufficient evidence. (App. 182, 201-02; Tr. 104, 123-24.)

shooting bow and arrows on the property right next to the children's play area. (App. 226-27; Tr. 148-49.) On another occasion, Stanley called ranting and raving, yelling and threatening Rainey's wife, to the point that she had to lock herself and her children in the house in fear. (App. 228-29; Tr. 150-51.)

Mrs. Josey, the Respondent's mother, testified to another occasion in the summer of 2010 when she observed Stanley in a temper, raising and shaking what appeared to be pipe; he was on the jointly owned property, but she still was afraid for her personal safety and the safety of Rainey's family. (App. 243-44; Tr. 165-66.) Stanley admitted that he was frustrated that Rainey was taking a picture/video of him, and took a rubber hose and beat on a metal table in one of the buildings. (App. 299; Tr. 221.)

Fear of Stanley's erratic behavior has greatly affected Rainey's family to the point that his children have to restrict their outdoor activities around their own home.<sup>22</sup> (App. 234-35; Tr. 156-57.) And, while most of the problems and confrontations have involved Rainey because he lives there, Spencer and Courtney testified how they also have been affected. Courtney no longer use to the cabin for family outings, as she once did, because she wants to avoid the trouble. (App. 350; Tr. 272.) Spencer has an antique automobile that he is working on, and someone – suspected to be Stanley, had dismantled some of the parts and scattered them around in different buildings, some of which are not replaceable and as of yet remain lost. (App. 265-68; Tr. 287-290.)

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<sup>22</sup> The negative impact on Rainey's family can even be seen in the testimony of Stanley's wife who complained about Rainey's dogs running loose and his children playing in their own backyard: (ROA 339; Tr. 261.)

### ***Stanley's Post-trial Harassment***

Evidence submitted during the post-trial motions establish that Stanley's harassment continued after the trial. During the 180 days following entry of the order directing him to remove his personal property from the 32 acres, Stanley's attorney notified Rainey's attorney that Stanley would be on the property for days and weeks at a time: July 20-22, July 27-29, August 3-6, August 9-12, August 16-19, August 23-26, August 30-31, all of September 2011. (App. 62; Affidavit of Rainey Josey, Ex. 2 – attorney letters.)

Spencer had installed video cameras on the 32 acre property and Stanley was documented entering onto the property on numerous occasions, for relatively short periods of time,<sup>23</sup> but he removed very little, if any of his property. (App. 67; Affidavit of Rainey Josey, Ex. 3 - calendar.) The video cameras also recorded Stanley making lewd, obscene and vulgar gestures towards the cameras; covering the cameras to hide what he was doing while in the buildings; ripping down posted signs “camera surveillance in progress;” and using tools and equipment which were awarded to the Trust Defendants. (App. 75; Affidavit of Spencer Josey; Tr. 249.)

In addition, even though the Order only allowed Stanley access to the 32 acres to remove his personal property, Stanley had the audacity to try and claim the right to use the cabin, by posting a calendar in the cabin marking off for days/weeks at a time in the fall and winter of 2011 for his exclusive use, namely: September 9-17, 23-25, 2011; October 1-7, 22-23, 29-30, 2011; November 4-5, 23-26, 29-30, 2011, December 1-3, December 23-25, 2011. (App. 71; Affidavit of Rainey Josey, Ex. 4 – cabin calendar.)

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<sup>23</sup> Ranging from 5 minutes to very rarely more than 1 hour.

Hearing all this evidence in addition to that presented at trial, the Special Referee refused to grant Stanley's request for a stay, and made it abundantly clear that Stanley was only allowed on the 32 acres to remove his property during that 180-day period. At the conclusion of that hearing on October 10, 2011, Stanley's counsel advised the Special Referee that their appellate counsel was working on a motion to the Appellate Court to seek relief. (App. 486; 10/10/11 Tr. 33:14-22.) However, Stanley only made his petition in August 2012.

Meanwhile, Stanley's bad conduct has continued. As evidenced, by the attached affidavit of Rainey Josey, less than a month after the hearing, on November 7, 2011, his children, ages 14, 12, & 9, had the day off from school and were at home alone. Rainey received a call at work from his 14-year-old daughter who was upset and told him that she had been outside by herself when Stanley Josey parked his truck on the 32 acres approximately 30 yards from their property and he began shouting & cursing in the direction of the house. Rainey's daughter became so frightened she locked herself in the house with her two brothers and then called her father. Rainey called the Sheriff's Department and they sent out a Deputy, but Stanley had already left before Rainey got home and before the Deputy arrived. (Ex. A; Affidavit of Rainey Josey with incident report – attached hereto.)

After the incident on November 7, 2011, Rainey's attorney spoke with Stanley Josey's attorney, Blake Hewitt, about Stanley's out of control behavior; and Stanley not to come back on the property unaccompanied since that time. As of February 6, 2012, the 180-period expired and Stanley has not returned to the 32 acres.

In the spring of 2012, Stanley asked to retrieve his boat (which was never part of the joint property).<sup>24</sup> By communication between the attorneys, Rainey agreed to pull the boat out of the shed and park it on the north access road adjacent to the asphalt driveway and Stanley came and retrieved it. Thereafter, Stanley's attorney has made repeated attempts through counsel for access to return his boat to the 32 acres. For example, by letter dated April 25, 2012, Stanley requested access to return his boat on May 2, 2012, and he even had the nerve to ask for access to pick it back up on May 11, 2012. Rainey has refused to allow Stanley to use the 32 acres as his personal boat storage. (Ex. A; Affidavit of Rainey Josey.)

## **DISCUSSION**

### **Exceptions to the Automatic Stay**

The general rule under Rule 241(a), SCACR, the filing of the Notice of Appeal automatically stays the order on appeal. However, the Special Referee's order falls within exceptions to the general rule found in Rule 241(b). To the extent that the Special Referee ordered the division and delivery of the personal property (the cars and parts/tools), it falls with the exception in Rule 241(b)(2): "Judgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150." To the extent that the Special Referee ordered the division of the parcels of real property, it falls within the exception in Rule 241(b)(4): "Judgments directing the sale or delivery of possession of real property as provided in S.C. Code Ann. § 18-9-170.

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<sup>24</sup> Stanley's boat was always stored at his home until this disagreement started. Then, sometime in 2010, he began parking it on the 32 acres adjacent to Rainey's house. At one point he stored it in building 7, Cecil's main shop. He then began storing his boat in building 6, the farm shop, intentionally blocking access to Rainey's personal farm equipment Rainey had stored in this building. (Ex. A; Affidavit of Rainey Josey.)

Also, to the extent that the Special Referee directed that Stanley was restricted from coming onto the 32 acres except to remove his property within the 180 day period, it amounts to the granting of an injunction or restraining order that falls within the exception of Rule 241(b)(8): “An appeal from an order granting an injunction or temporary restraining order.”

Rule 241(c) provides a procedure for an appellant to seek a writ of supersedeas where an exception to the automatic stay applies. Under Rule 241(c)(2), provides the appropriate standard for such petition: “In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.”

Stanley has not challenged the Special Referee’s decision to award him Britton Farms and the Fertilizer Plant. Nor has he challenged the division of the personal property. His challenge is to the part of the award that gives the 32 acres to Cecil’s Heirs because he wants to buy the 32 acres with the nine buildings or have it divided so that he can maintain his personal property in some, if not all, of the buildings.

Stanley has been awarded the personal property and given more than ample time to retrieve it, but his request to this Court is that he be allowed to leave his property on the 32 acres because (1) he cannot afford to move it and (2) it would be “nonsensical” to force him to move it all because if he wins the appeal in which event he might not have to move it at all. In point of fact, Stanley has not moved his personal property (with the exception of his boat) and the Respondents have not moved to compel him to remove any of it. However, this is not all Stanley is requesting. The very real problem is that

Stanley wants to have regular/daily access (30 hours per week between 7 am-7pm) to his personal property on the 32 acres during the pendency of this appeal.

Respondent Rainey Josey respectfully submits that Appellant Stanley Josey has not made the required showing that such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot. Essentially, Stanley is complaining that he cannot afford to move his belongings and store them, but he needs access to maintain his cars and store his farm equipment – neither of which affect jurisdiction or threatened to moot any issue raised on appeal.

Respondent further maintains that that Stanley's conduct was proven to the satisfaction of the Special Referee that he cannot be allowed such regular access to the 32 acres because of his history of violent, abusive, and harassing behavior towards Respondents, and in particular, this Respondent. Nothing Stanley has submitted with his Petition counter balances that evidence or disproves the wisdom of the Special Referee's conclusion that Stanley must be restricted from the 32 acres to maintain the peace.

**A. The Limited Scope of the Issues Preserved at Trial and Contested on Appeal**

The Special Referee's partition order and amended order gave Stanley a specified portion of the parts and tools and the eight antique vehicles and gave him 180 days to remove his property. Stanley has not raised any issue on appeal about restricted use or the timetable for removal of his property. In addition, the Special Referee's order of March 12, 2012, Order, restricting his access to the 32 acres for the sole purpose of removing his personal property has not been appealed.

Respondent will also submit that Stanley has not preserved his challenge to the unfairness of giving him part of the personal property and making him move it and store

it elsewhere. In particular, Stanley never made any effort to quantify the expense of moving the personal property or finding/building new storage. Nor did Stanley ever ask the Court to make any adjustment in the division to factor in his expenses. Rather, Stanley's argument of "unfairness" at trial was that, in his personal viewpoint, he is entitled to, and deserves, the 32 acres, or at least half of it, because he is the solely surviving son:

First of all, I am the last surviving son in my family; my whole family is gone. I'm sixty (60) years old. I've recently retired and I'm – I'm too old to start over. I'm too old – to build new buildings, start all of that over again, and I'm already established back there. And there's a fair way to divide that land back there so we both get expansion room, we both getting buildings, we both get a pond. There's a fair way to do it." (App. 292; Tr. 214, l. 24 – 215, l. 7.)

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I want what's fair, and when they started this with me and when I decided, I said, "Well, since I'm the last son, if anybody is to buy anything out back there, it should be the son, not the nieces and nephews." In my book, the way things work – it's like wild animals respect the pecking order. You've got your mothers and your fathers, you've got your sons and your daughters, and then you've got your nieces and nephews. And they don't jump ahead. They should respect me and at least see that. But they have never respected me." (App. 294; Tr.216, ll. 3-12.)

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Q. Your testimony is simply that you've got to have some part of the thirty-two (32) acres?

A. I think I deserve it. I'm a son. I'm the last son. They're nieces and nephews. I think the son should deserve half of that back there. I sure do." \*\*\*\* Yes, because I have plans for back there. I'm retired and I want to use it. I want to fish, and I want to – I want to enjoy my antique cars. I want to use them. Sure." (App. 317-18; Tr. 239, l. 25 – 240, l.11.)

In his Rule 59 motion, Stanley did not specify any grounds at all, but simply stated: “for reasons to be set out at a hearing on the instant motion.” (App. 39; Motion for New Trial.) He subsequently filed an addendum with several specified grounds:

1. The purchase of the property by a non-petitioning co-tenant.
2. The lack of a ruling in regards to Stanley Josey’s request for declaratory judgment in regards to the easement, and
3. The Court’s decision in regards to the causes of actions relating to criminal charges brought against Stanley Josey by the Plaintiff and co-Defendants. (App. 41; Addendum.)

Although Stanley did not specify any ground regarding the expense of moving and storing the personal property, he did make a belated attempt to raise the issue during his oral argument at the motion hearing. (App. 443, 8.2.11 Tr. 11.) Respondent maintains, however, that any issue was not preserved because it was untimely and lacked any evidentiary basis because Stanley never proffered even an estimate of his anticipated expenses. (See more detailed argument on issue preservation in Initial Respondent’s Brief, pp. 22-23.)

**B. Clarification of the Facts regarding Stanley’s Alleged Need to Access the 32 Acres**

Stanley claims that the 32 acres “is the base of the Josey family’s farming operation.” (Petition, p. 2.) However, the record will show that Wofford Josey had stopped farming long before his death, and simply rented land to others who actually farmed. The Stoney Run Farms partnership did not actively farm any of their land; rather, they only leased the land to others. Stanley claims that the Josey family had an extensive history of working on vintage/classic automobiles. Again, Stanley is

exaggerating, if not attempting to rewrite family history, because the record shows that Cecil ran the car business and Stanley worked for him.

Stanley avers in his affidavit that he operates a 1,500 acre farm and he needs to store his heavy farming equipment in the building and sheds, and complains that he is having to store his equipment on his own property exposed to the weather. However, Stanley admitted in his trial testimony that he retired 13 years ago when his father Wofford died, and he has been living off the income he receives from renting the farmland. He further testified that he had not worked on the farm since many years ago, and that he worked for Cecil from the 1970s until their father died and Cecil became ill. (App. 221, 303-06; Tr. 143, 225-28.)

Stanley avers his in Affidavit submitted with his Petition that he needs access to the 32 acres during the pendency of this appeal because his antique cars need preventative maintenance. Specifically, he avers that he needs to check and maintain the air pressure in the tires and polish the metal components on the cars at least weekly, and that he needs to have regular/daily access (30 hours per week between 7 am-7pm). However, Stanley's current "urgent" need to take care of his cars and the amount of time he supposed needs (30 hours a week between 7am -7pm) is rebutted by the evidence.

The evidence at trial shows that Stanley went almost a year without having access to the buildings and his antique cars. (App. 279; Tr. 201.) Since trial, Stanley has not been on the 32 acres since November 2011, and although the Special Referee issued his order denying him a stay in March 2012, he has waited for five month to file the Petition before the Court. During the post-trial time period in which Stanley had been granted 180 days of access to remove his personal property, surveillance showed that he rarely

spent more than an hour. For example, in July 2011, Stanley was on the property from Wednesday 7/20 to Friday 7/22, and Wednesday 7/27 – Friday 7/29 for periods of 15 minutes, 20 minutes, 30 minutes, 45 minutes. Another example is during September 2011, when Stanley was on the property everyday from Monday 9/12 to Sunday 9/18 for periods of 40 minutes, 3 minutes, 1 hour, 15 minutes, 33 minutes, 3 minutes, 4 minutes. (App. 62; Affidavit of Rainey Josey, Ex. 2.) These examples tend to show that Stanley does not need access to the 32 acres for 30 hours a week, and the amounts of time tend to dispute the believably that Stanley was actually working on his antique cars during his daily visits. Rather, they tend to show that Stanley was using his court-granted access just to harass the Respondents.

Stanley also complains that his boat is being damaged because Rainey will not let him return it to storage in one of the buildings. However, the evidence from Rainey Josey's affidavit establishes that Stanley historically had stored his boat at his own home, and he did not even begin storing his boat in one of the buildings on the 32 acres until the family dissension escalated in 2010.

**C. The Alleged Expenses of Moving and Storing Stanley's Personal Property and Stanley's Financial Resources**

Stanley claims that moving his property will require "substantial expenditure" and that he has no ability to store the property, and he claims that "he cannot afford to move it from the only place it has ever been stored." (Petition, p. 4.) However, Stanley's claims regarding the expenses are unsubstantiated and his claim that he cannot afford to pay those expenses is contradicted in the record at trial and as supplemented with this Return.

While Stanley complains about the expense, he has made no effort to quantify the expense. As to the claim that he cannot afford to move his property, the record shows that Stanley is a man of considerable wealth. He has the home his father gave him, the property he received when the Stoney Run Farms family partnership was dissolved and the two other properties he is receiving this partition action. As evidenced by the title search attached as Exhibit B, the County land and tax records evidence that Stanley owns the land his father gave him in 1994, which is valued for tax purposes (2011) at \$117,680 in addition to the properties he received from the Stoney Run Farms dissolution which are valued collectively at \$1,615,295, all of which is debt free. In addition, Stanley has received \$87,000 in property in this partition by the award to him of the note and mortgage, Britton Farm, and the Fertilizer Plant.

In addition, Stanley's claim that he lacks the financial resources to move and store his personal property is rebutted by his own testimony at the trial in this partition action. Namely, at trial, Stanley testified that he had arranged to obtain \$3.4 million overnight when he wanted to buy Cecil's children out of Stoney Run and all the joint property. (App. 277; Tr. 199:18-23.)

**D. Past Breaches of the Peace as Evidence of Potential Future Problems**

At trial, Stanley claimed that he could live peaceably with the Respondents if he were to be awarded all or part of the 32 acres. In the Petition at bar, he swears that he will "strictly abide" by any terms of access set by the Court. However, the proof in the evidence is that these parties cannot jointly own property or even co-exist as neighbors.

As recounted above, Stanley is facing criminal charges for malicious injury to Rainey's property, and trespassing on Rainey's property; as well as trespassing to hunt

on other property owned by the Respondents. The Sheriff's Department has been called out to Rainey's property on nine occasions. The County Magistrate had to issue a mutual restraining order. Stanley has been observed and recorded harassing the Respondents, their mother, and even to the point of frightening Rainey's children.

At the trial, the Special Referee noted that "it's pretty obvious from what the witness has said and what you stipulated these people don't get along." (App. 184; Tr. 106:21-23.) And, by the end of the trial, the Special Referee concluded: "I think it was made clear fairly early on in the first couple of hours that these parties owning this property together or adjacent to each other probably isn't in their best interest." (App. 382; Tr. 304:8-12.) The trial court acknowledged that there would be logistical problems with accomplishing the removal of the personal property allotted to Stanley and expressly urged the parties "to keep cool heads and remain civil." (App. 48; Amended Order, p. 5.) However, Stanley did not heed the Special Referee's admonishment, and his behavior since the trial has only reinforced the Special Referee's conclusion. Respondent submits that to allow Stanley access to the 32 acres for 30 hours a week will only create the opportunity for further harassment and lead to more calls to the Sheriff's Department.

**E. Access over the Private Driveway on Rainey's Property**

As described above that there are two access points to the 32 acres, an asphalt driveway across Rainey's land and a dirt road shared with the neighbor. In his order, the Special Referee directed that Stanley was to use the dirt road to access to remove his personal property. In this Petition, Stanley is requesting that he be allowed to use Rainey's driveway to access the 32 acres during the pendency of this appeal, arguing

that: “There is no principled reason why Stanley should be barred from continuing such use during the pendency of this appeal.” (Petition, p. 7.)

The “principled reason” is that the driveway is on Rainey’s land, and contrary to his assertion at trial, Stanley did not retain any legal easement to continue to use it after he sold his ½ interest to Rainey in 2001. While the dirt road is partially owned by a neighbor, Stanley admits that the Josey family has been using it for years<sup>25</sup> and he has not shown any evidence that the neighbor has made any effort to keep him off or restrict his use of that road. In contrast, Rainey did issue a no trespassing notice to Stanley.

#### CONCLUSION

The Special Referee’s order gave Stanley 180 days to remove his personal property from the 32 acres and set forth specific requirements regarding the logistics of the removal, including advance notice and time scheduling restrictions. The Special Referee specifically ordered that: “Stanley shall not enter the property except on those dates and times designated for removal of the items of personal property.” In spite of that order, Stanley repeatedly came upon the 32 acres for various reasons, including harassing the Respondents, but did not remove his property.

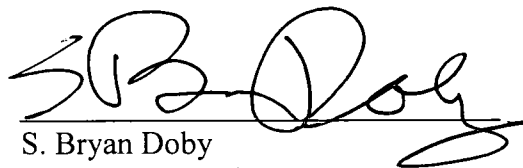
When Stanley’s motion for a stay, the Special Referee denied the motion based on the abundant evidence of the problems and friction between Stanley and the other parties. Respondent Rainey Josey respectfully submits that the Special Referee, with his knowledge of the evidence and the interaction of the parties, acted wisely in denying Stanley access, and requests that this Court deny the Petition for Supersedeas.

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<sup>25</sup> Stanley admitted that the neighbor has been sharing the road for years, dating back to when his father was still alive. (App. 302-03; Tr. 224-25.)

In the alternative, if the Court determines that Stanley Josey should be allowed access to the 32 acres pending appeal, Respondent would request that the matter be referred back to the Special Referee to determine the specific terms and conditions of any such access.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. Bryan Doby", written over a horizontal line.

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**October 1, 2012**

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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Appeal from Lee County  
Court of Common Pleas

Haigh Porter, Special Referee

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Case No. 2010-CP-31-195

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Cecil L. Josey, Jr.

Respondent,

v.

Stanley D. Josey, Courtney Gamble,  
Spencer Josey, Elizabeth Ann Geddings,  
Cecil L. Josey, Jr. as Trustee of the  
Josey Family Trust,

Defendants,

Of Whom Stanley D. Josey is the

Appellant,

And of whom Courtney Gamble,  
Spencer Josey, Elizabeth Ann Geddings,  
Cecil L. Josey, Jr., as Trustee of the  
Josey Family Trust, are

Respondents.

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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that she is a secretary with the law firm of Jennings & Jennings, P. A.; that copies of the RETURN TO PETITION FOR WRIT OF SUPERSEDEAS ON BEHALF OF RESPONDENT, CECIL L. JOSEY, JR. AND INITIAL BRIEF OF RESPONDENT, CECIL L. JOSEY, JR. were served in the foregoing action by depositing the same in the United States mail with sufficient postage affixed thereto and return address clearly

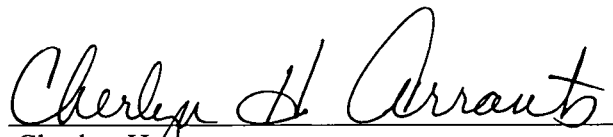
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