THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph Strickland, Master-In-Equity

---

Case No. 2009-CP-40-07385

---

Gregory Brown

Plaintiff - Respondent,

v.

Willie Brown, Jr., Charles Brown, Joe Brown, Nellie Brown Boyd, Vivian Brown Dowdy, First Federal, and First Financial Holdings, Inc.

Defendants



Of Whom

Willie Brown, Jr., Charles Brown, Joe Brown, Nellie Brown Boyd, Vivian Brown Dowdy are the

Appellants.

---

# BRIEF OF RESPONDENT

---

John E. Schmidt, III
Melissa J. Copeland
Schmidt & Copeland LLC
1291 Main Street, Suite 1100
Columbia, SC 29201
803.748.1342 (phone)
803.748.1210 (fax)

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES



STATUTES



RULES

## STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER ERR BY ORDERING THE TRACTS OF LAND THAT ARE SUBJECT OF THIS ACTION SOLD AT PUBLIC AUCTION RATHER THAN ISSUING A WRIT OF PARTITION PURSUANT TO RULE 71(f) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE TO DETERMINE IF THE TRACTS COULD BE DIVIDED EQUALLY?

2. DID THE MASTER ERR BY FAILING TO INCLUDE IN THE ACCOUNTING BETWEEN THE PARTIES ALL CONTRIBUTIONS MADE BY APPELLANTS TO RESPONDENT, ALL FUNDS RECEIVED BY RESPONDENT OR SHOULD HAVE BEEN RECEIVED BY RESPONDENT FROM THIRD PARTY SOURCES WHILE SERVING AS PERSONAL REPRESENTATIVE, AND THE VALUE OF ALL PERSONAL PROPERTY OF THE ESTATE CONVERTED BY RESPONDENT TO HIS OWN USE?

3. DID THE MASTER ERR IN AWARDING ATTORNEY FEES TO THE RESPONDENT FOR BRINGING THIS ACTION?

## STATEMENT OF THE CASE

This action was filed on October 15, 2009 in which Plaintiff sought the following relief:

a) Partition of the Property in kind;
b) Payment of the costs of the action, including Plaintiff's attorneys fees, be distributed between the parties in equal part, with such additional shares of the Property to be granted to Plaintiff as may be necessary to make him whole with respect to the expenses of the Property he has paid for maintenance of the Property in order to sustain its value for all parties;
c) An award to Plaintiff of the amounts due to him by Defendants which he incurred to the benefit of Defendants in order to maintain the property and service the mortgage on it;
d) Such other and further relief as the Court may deem just and proper.

(R., p. 22). The Plaintiff amended his Complaint to change his first item of requested relief as follows:

a) Partition of the Property in kind or by sale, as the Court may deem equitable and just;

(R., p. 27) The remaining requested relief did not change. This matter was referred to the

Master-in-Equity by Order of Reference dated November 19, 2010 and evidentiary hearings were held on February 22, 2011 and May 3, 2011. The Master issued his Order on August 11, 2011. Appellants moved for reconsideration and a hearing was held on that motion on November 1, 2011. The Master issued the Order on the motion for reconsideration on November 18, 2011.

## FACTS

The Respondent, Gregory Brown, and the Defendants, Willie Brown, Jr., Charles Brown, Joe Brown, Nellie Brown Boyd and Vivian Brown Dowdy ("Appellants") are all heirs of Willie Brown, Sr. Willie Brown, Sr. died on June 15, 2005. On September 11, 2006, the Respondent and Appellants were deeded an undivided one-sixth (1/6) interest in properties located at Dry Branch Road (hereinafter "Dry Branch Property") and Clarkson Road (hereinafter "Clarkson Property") collectively referred to herein as the "Property." The land was deeded to the Respondent and Appellants pursuant to Deeds of Distribution dated September 11, 2006. (R., p. 308-311). The final order of the Probate Court closing the Estate was issued on February 5, 2008.

Gregory Brown testified that he personally paid all expenses associated with the properties from the dates of the Deeds of Distribution to present and that he personally paid the mortgage from May 2005 to present in order to keep the mortgage from going into default. (R., p. 54, line 14 – p. 55, line 18; p. 56, line 12 – p.57, line 12). Gregory Brown testified that he informed the Appellants that he was paying the bills associated with the Property and from time to time, he provided them records of such payments and provided them with estimates of their share of the expenses for reimbursement. (R., p. 108, line 18 –109, line 9).

Gregory Brown presented testimony and documentary evidence to support that he had incurred the following expenses for maintaining the Property:

| **Taxes** | | |
|---|---|---|
| Richland County Treasurer | Dry Branch Property Taxes | |
| | 2006 | 124.98 |
| | 2007 | 135.69 |
| | 2008 | 137.53 |
| | 2009 | 138.46 |
| | 2010 | 141.58 |
| | Total | **678.24** |
| | | |
| Richland County Treasurer | Clarkson Property Taxes | |
| | 2006 | 805.44 |
| | 2007 | 978.05 |
| | 2008 | 1058.75 |
| | 2009 | 1071.89 |
| | 2010 | 585.65 |
| | Total | **4,499.78** |
| | | |
| **Mortgage Payments** | | |
| First Federal Mortgage | | |
| | **2005** | |
| | May 9 | 278.06 |
| | August 22 | 266.10 |
| | October 7 | 266.10 |
| | November 8 | 266.10 |
| | November 8 | 266.10 |
| | **2005 Total** | **1,342.46** |
| | **2006** | |
| | January 4 | 266.10 |
| | February 6 | 300.00 |
| | February 28 | 300.00 |
| | April 5 | 300.00 |
| | May 15 | 270.15 |
| | June 2 | 300.00 |
| | July 10 | 300.00 |
| | August 4 | 300.00 |
| | September 6 | 600.00 |
| | October 2 | 270.15 |
| | November 1 | 300.00 |
| | December 1 | 267.82 |
| | **2006 Total** | **3,774.22** |

| | | |
|---|---|---|
| | **2007** | |
| | January 2 | 267.82 |
| | February 1 | 300.00 |
| | March 1 | 300.00 |
| | April 2 | 300.00 |
| | May 1 | 300.00 |
| | May 31 | 300.00 |
| | July 2 | 300.00 |
| | August 2 | 300.00 |
| | September 7 | 300.00 |
| | October 1 | 300.00 |
| | November 5 | 300.00 |
| | November 30 | 300.00 |
| | December 31 | 300.00 |
| | **2007 Total** | **3,867.82** |
| | **2008** | |
| | January 31 | 300.00 |
| | February 28 | 300.00 |
| | April 1 | 300.00 |
| | May 6 | 300.00 |
| | June 2 | 300.00 |
| | June 30 | 300.00 |
| | September 2 | 300.00 |
| | September 30 | 300.00 |
| | October 31 | 300.00 |
| | December 1 | 300.00 |
| | **2008 Total** | **3,000.00** |
| | **2009** | |
| | January 2 | 300.00 |
| | February 2 | 300.00 |
| | February 27 | 300.00 |
| | March 27 | 300.00 |
| | April 28 | 300.00 |
| | May 29 | 300.00 |
| | June 29 | 300.00 |
| | July 28 | 300.00 |
| | August 28 | 300.00 |
| | September 30 | 300.00 |
| | November 2 | 300.00 |
| | December 1 | 300.00 |
| | December 31 | 300.00 |
| | **2009 Total** | **3,900.00** |
| | **2010** | |
| | January 29 | 300.00 |

| | | |
|---|---|---|
| | March 1 | 300.00 |
| | March 31 | 300.00 |
| | May 3 | 300.00 |
| | June 1 | 300.00 |
| | July 1 | 300.00 |
| | August 2 | 300.00 |
| | September 1 | 300.00 |
| | October 5 | 300.00 |
| | November 2 | 300.00 |
| | December 3 | 300.00 |
| | **2010 Total** | **3,300.00** |
| | **2011** | |
| | January 3 | 300.00 |
| | February 3 | 300.00 |
| | **2011 through February 2011 Total** | **600.00** |
| | | |
| **Electricity** | | |
| Tri-County Electric Service | June 2005 | 233.53[1] |
| | **Total Electric** | **233.53** |

(R., p. 270-307 and p. 50, line 10 – p. 58, line 17).

Gregory Brown presented testimony that he had incurred the following expenses for maintaining the Property:

| | | |
|---|---|---|
| **Electricity** | | |
| Tri-County Electric Service | Electric Service October 2007-April 2009 | 777.00 |
| | Electric Service April 2009-December 2009 | 344.00 |
| | Electric Service | 212.03 |
| | Electric Service | 65.81 |
| | Electric Service | 432.00 |

[1] Plaintiff's Exhibit 2 shows a payment for electric service in the amount of $237.53. However, the only electric bill attached to the expenses chart is in the amount of $233.53 for electric service from 5/18/05-6/16/05 with an after due date payment of $237.03. (R., p. 270 and 281). The lower court presumed that the proper amount in the chart should have been $233.53 and therefore included this amount in its Order. (R., pp. 6-7).

| | | |
|---|---|---|
| | **Total Electric** | **1,830.84**[2] |
| | | |
| Property Maintenance | **Grass and Other Total** | **4,000.00** |
| | | |

(R., p. 50, line 10 – p. 58, line 17) Plaintiff testified that he incurred costs for keeping the grass cut and maintaining the Property and charged a yearly service fee for the work in maintaining the Property. (R., p. 270 and p. 114, lines 15-23).

Appellant Charles Brown testified that it was his belief that it was not necessary to have electricity on at the house other than to have a security light. (R., p. 179, line 7-14). However, Gregory Brown testified that he believed it was necessary to have electricity on at the Property to prevent theft and to have lights available at the residence if any family members needed to go into the residence. Gregory Brown testified that none of the Appellants ever requested that the power be turned off. (R., p. 80, line 17 – p. 82, line 13). After weighing the testimony of these witnesses, and evaluating their demeanor and other factors, the Master elected to accept the testimony of Gregory Brown as credible.

Gregory Brown testified that as of February 22, 2011, he had incurred legal fees of $9,507.30 from February 2010 through December 2010 in prosecuting this partition action. (R., p. 270 and p. 58, lines 12-16). On June 17, 2011, Plaintiff's counsel submitted

---

[2] Between the electric expenses submitted by testimony and documentation, Respondent testified that he incurred $2,064.37 in electrical expenses. (R., p. 270 and p. 50, line 10 – p. 58, line 17). The lower court found that the only electric bill submitted pre-dated the Deeds of Distribution and that three of the items on the chart for the electrical expenses are undated. The lower court found that the dated totals for October 2007 through December 2009 show that the average monthly bill was $41.51 ($1121 divided by 27 months). The lower court founds that if that monthly average ($41.51) is multiplied by the months since the Deeds of Distribution were issued (58 months), the total electric bill would be $2,407.58. (R.,p. 7).

an Affidavit stating that the total fees and costs incurred by Plaintiff beginning in February 2010 (including the $9507.30 which had been incurred as of the first hearing in February 2011) in this action were $21,503.33, which consisted of 72 hours at an average rate of $282.00 per hour and total costs were $995.33. The Master reviewed the factors for consideration in the award of attorney's fees, all of which were evidenced plainly by the record of the proceedings as well as by the Affidavit of counsel. (R., p. 7, 8, 10, 17 and pp. 329-334).

Appellant Vivian Brown Dowdy submitted a chart that appeared to include income and expenses from the Estate of Willie Brown, Sr. (R., p. 312 and 327). However, Ms. Dowdy testified that the numbers on her chart were just estimates (R., p. 133, lines 2-14) and the evidence showed that, for example, the amounts she included in her chart as income for scrap metal were never actually received by either the Respondent or Appellants. (R., p. 210, line 22 – p. 212, line 3). Ms. Dowdy specifically testified that she felt it was "fair" to just assume that Mr. Gregory Brown was paid the money. (R., p. 166, lines 5-22).

The only testimony from both sides was that the Probate Court required that the Respondent and Appellant reach an agreement on the distribution of the real estate. (R., p. 64, lines 2-8; p. 128, line 18 – p. 129, line 22). Further, in 2007, when the Plaintiff attempted to conduct a lottery in an effort to amicably divide the Property, the Appellants received advice, through counsel, that a lottery could not be accomplished without agreement from everyone named on the Deed of Distribution, and such agreement was never achieved. (R., p. 193, line 19 – p. 194, line 20). Further, the Plaintiff testified that the Dry Branch Property was landlocked and only has road access pursuant to an

easement and therefore, the county would not allow him to subdivide such a property without Court involvement. (R., p. 218, line 8 – p. 219, line 2).

In accordance with the Probate Court's instructions, the Respondent and Appellants entered into a Private Family Agreement whereby they all agreed to the following:

1. Identifying all personal property of the estate.
2. Liquidating personal property to satisfy claims and debts of the estate.
3. **That the parties intend to liquidate, if necessary, real property to satisfy any outstanding debts or claims of the estate not satisfied after liquidation of personal property.**
4. Thereafter the parties will seek to divide the real property in kind.
5. **That the parties understand and realize that each heir has the right to institute an action in partition should the real property cannot [sic] be equitably divided.**

(R., pp. 265-269)(emphasis added).

It was undisputed that on November 30, 2007, Willie Brown, Jr., Charles Brown, Joe Brown, and Vivian Brown Dowdy each signed Receipts and Releases filed in the Probate Court stating that they received their share of the estate and "In consideration of the distribution, the undersigned releases and forever discharges the Personal Representative(s) and the Estate from any and all rights and claims, which the undersigned may have against the Personal Representative(s) and the Estate and waives notice of right to demand a hearing on all accountings, proposal for distribution and petition for settlement." (R., p. 261-264). The Master in Equity took judicial notice of those public record filings, (R., p. 9), and permitted counsel for Appellants to raise any matter related thereto by way of motion, holding a hearing on the matter and others on

November 1, 2011. (R., p.15-16).

The final Probate Order closing the Estate was issued on February 5, 2008. (R., p. 317). The parties have never been able to agree on the division of real property and the payment and reimbursement of expenses associated with the real property. There was no testimony as to the value of the Property. There was testimony and evidence that Cox & Dinkins had performed a rough sketch dividing the Property into six portions, but the Plaintiff and Family Defendants could never reach an agreement to go forward with such a division and therefore, no survey was every performed to show the true feasibility of dividing the Property. (R., p. 318-319 and p. 76, line 22 – p. 77, line 7; p. 78, lines 4-24).

## ARGUMENTS

### STANDARD OF REVIEW

"In an action in equity, the appellate court may resolve questions of fact in accordance with its own view of the preponderance of the evidence." *Fesmire v. Digh*, 385 S.C. 296, 683 S.E.2d 803 (Ct. App. 2009). "However, this broad scope of review does not require this Court to disregard the findings at trial or to ignore the fact that the master was in a better position to assess the credibility of the witnesses." *Id.* (citing *Laughon v. O'Braitis,* 360 S.C. 520, 524–25, 602 S.E.2d 108, 111 (Ct.App.2004)).

The awarding of attorneys' fees under S.C. Code Ann. § 15-61-110 is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *Laughon v. O'Braitis,* 360 S.C. 520, 524–25, 602 S.E.2d 108, 111 (Ct.App.2004); *S&W Corp. of Inman v. Wells*, 283 S.C. 218, 321 S.E.2d 183 (Ct App. 1984).

### I. THE MASTER DID NOT ERR BY ORDERING THE TRACTS OF LAND THAT ARE SUBJECT OF THIS ACTION SOLD AT PUBLIC AUCTION RATHER THAN ISSUING A WRIT OF PARTITION PURSUANT TO RULE 71(f) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE TO DETERMINE IF THE TRACTS COULD BE DIVIDED EQUALLY.

#### A. Rule 71(f) does not require the issuance of a Writ, where in the Court's judgment, as here, such a writ would involve unnecessary expense.

Rule 71(f) of the South Carolina Rules of Civil Procedure states as follows:

> **(1) Writs of Partition.** Writs of partition shall be issued and directed to five persons. Two of such persons shall be nominated by the plaintiff, two by the defendant and the fifth by the officer issuing the writ, and in cases when the defendant fails to appear or answer the plaintiff shall nominate three persons and the officer two. The writ shall command them, or a majority of them, within one month thereafter, fairly and impartially, according to the best of their judgment, to make partition of the premises described in the complaint among the parties entitled thereto, according to their several rights.

**(2) Oath of Commissioners.** Before acting under such writ of partition the commissioners therein named shall be duly sworn for the purpose of complying with the command of the writ.

**(3) Return by Commissioners When Property Cannot Be Divided in Kind.** When the estate or property cannot, in the opinion of the commissioners, be fairly and equally divided between the parties interested therein without manifest injury to them, or some one of them, they shall make a special return of the whole property and the value thereof, truly appraised, and certify their opinion to the court whether it will be most for the benefit of all parties to deliver over to one or more of the parties interested therein the property which cannot be fairly divided, upon the payment of a sum of money to be assessed by the commissioners, or to sell the property at public auction, and the court shall proceed to consider and determine the same.

**(4) Allotment or Sale.** If it shall appear to the court that it will be for the benefit of all parties interested in the estate or property that it should be vested in one or more of the persons entitled to a portion of it, on the payment of a sum of money assessed as provided in Rule 71(f)(3), the court shall determine accordingly, and the person or persons, on the payment of the consideration money, shall be vested with the estate so adjudged to such person or persons. But if it shall appear to the court that it would be more for the interest of the parties interested in the estate or property that it should be sold and the proceeds of sale be divided among them, then the court shall direct a sale to be made upon such terms as the court shall deem right.

**(5) Partition or Sale Without Writ.** *Nothing in this Rule shall be construed to affect the power of the court to dispense with the issuing of a writ of partition when, in the judgment of the court, it would involve unnecessary expense to issue such writ. And the court may in all proceedings in partition, without recourse to such writ, determine by means of testimony taken before the proper officer and reported to the court whether a partition in kind among the parties be practicable or expedient and, when such partition cannot be fairly and equally made, may order a sale of the property and a division of the proceeds according to the rights of the parties.*

Rule 71(f), SCRCP (emphasis added). Here, the Court ruled, in its judgment, that the issuance of a writ would involve unnecessary expense. (R., pp. 14-15). The Court's decision is bolstered by

the fact that the parties had not been able to agree on the payment of any expenses related to the Property going back to 2005 and that the Respondent had solely paid such expenses to prevent waste and foreclosure, which were in excess of $30,000 and continuing. (R., p. 11, p. 54, line 14 – p. 55, line 18; p. 56, line 12- p. 58, line 12; p. 108, line 18 – p. 109, line 9). This Court should affirm the lower court's decision that a writ of partition would involve unnecessary expense.

B. There was sufficient evidence to support the Court's finding that a partition in kind was not practicable and expedient.

Partition in kind is favored when it can be fairly made without injury to the parties. Thus, the party seeking a partition by sale carries the burden of proof to show that partition in kind is not practicable or expedient. See *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989); *Smith v. Pearson*, 210 S.C. 524, 43 S.E.2d 479 (1947). Here, there was ample evidence to support that partition in kind was not practicable or expedient. There was evidence in the record from which the lower court found that valuation and partition in kind was rendered highly difficult in view of the facts that: a large tract of the property in question is landlocked with access by an exclusive easement making all but one of the parcels created by a subdivision unmarketable and undevelopable; because all but one would lack a legal access; the tract on Dry Branch tract (Weston) is landlocked; evidence that the county would not approve land that is landlocked to be subdivided, which evidence was admitted without objection. (R., p. 8). Based on this evidence, the Court found that partition in kind was not practicable or expedient. (R., p.12). The Court did allow the parties additional time to agree to a partition in kind:

> ...the Property shall be partitioned by sale 30 days from the date of this Order unless the parties agree in writing prior to that date on a partition in kind, which takes into account the amounts to be paid under this Order.

(R., p. 12). Here, the evidence was clear that even when confronted with the imminent partition

by sale, the Appellants were not interested in stepping up to make payments towards the ongoing expenses of these properties but instead were willing to just sit back and complain while letting Respondent bear the sole financial burden of keeping the property from waste and foreclosure. Adding the extra time and expense of issuing a Writ would continue to financially burden Respondent, while being completely unproductive, given that the largest tract was landlocked and could not be partitioned in kind. Moreover, the lack of expedience is bolstered by the facts that the non-landlocked tract contains improvements complicating partition in kind; the Appellants have refused to contribute to the cost of maintaining the property, and if the property were divided in kind, a lawsuit for contribution by Respondent as against the non-paying Appellants would be inevitable, likely resulting in the ultimate sale of the parcels in any event. The law does not require futile acts. See *Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000). The Court should affirm the Order of the lower court awarding partition by judicial sale.

II. THE MASTER DID NOT ERR BY FAILING TO INCLUDE IN THE ACCOUNTING BETWEEN THE PARTIES ALL CONTRIBUTIONS MADE BY APPELLANTS TO RESPONDENT, ALL FUNDS RECEIVED BY RESPONDENT OR SHOULD HAVE BEEN RECEIVED BY RESPONDENT FROM THIRD PARTY SOURCES WHILE SERVING AS PERSONAL REPRESENTATIVE, AND THE VALUE OF ALL PERSONAL PROPERTY OF THE ESTATE CONVERTED BY RESPONDENT TO HIS OWN USE.

A. The contributions made by Appellants were related to the settled probate estate and were therefore not a proper issue for revival and consideration in this partition action.

"The South Carolina Probate Code confers exclusive original jurisdiction to the probate court over all subject matter related to estates of decedents." *Anderson v. Anderson*, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989)(citing S.C. Code Ann. § 62-1-302 (1987)). In *Anderson*, the Supreme Court held that "[t]he parties' claims relating to their father's estate are clearly matters for the probate court. As the lower court lacked jurisdiction over the subject matter of

this portion of the action, this portion of the action should be dismissed without prejudice." *Id.* Here, Appellants contend that they made certain payments to Respondent during the process of the probate of the estate of their father, Willie Brown Sr., which should be "counted" as partial payments toward the amounts which Respondent expended on the real property here. Appellants contend they desired an accounting not just of the real estate expenses in partition, but also of the probate estate. However, in addition to the fact that Respondent disagreed with Appellants' characterization of the use of the monies during the final and concluded probate process, the Court below properly found that these payments and activities related to personal property of the estate of Willie Brown, Sr. (as opposed to the real estate at issue before the Master in Equity), were made as a part of the probate process, and were handled to final and binding conclusion under the direction of the Probate Court. (R., p. 12). Such matters are under the exclusive jurisdiction of the Probate Code pursuant to S.C. Code Ann. § 62-1-302 and therefore the Master-in-Equity lacked subject matter jurisdiction over those matters. Accordingly, the lower court did not address further these matters raised by Appellants

B. The Appellants released all claims regarding accountings in the Probate Court and therefore that issue was not properly before the Master-In-Equity here.

The Court further noted that the Willie Brown, Jr., Charles Brown, Joe Brown, and Vivian Brown Dowdy each executed binding documents in which each "releases and forever discharges the Personal Representative and the Estate from any and all rights and claims" and "waives notice of right to demand a hearing on all accountings." (R., p. 261-264). Given that the Appellants had signed a release in Probate Court releasing Respondent from all claims as Personal Representative, they could not properly raise those claims in this partition action and the lower court properly disregarded such assertions. In the August 11, 2011 Order the Court took judicial notice of the Release from the Probate Court. (R., p. 9). This order was a proper

matter for judicial notice. *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984). Appellants were given an opportunity to be heard about this matter on November 1, 2011 during the hearing on Appellants Rule 59(e) Motion, which is appropriate under Rule 201(e), SCRE. At that hearing, the lower court found that Appellants did not present any convincing reason why the matter was not a proper subject of judicial notice. (R., p. 16). Thus, plainly these matters are further barred by the doctrines of release, waiver, *res judicata*, and collateral estoppel as well.

C. Even if the probate accounting matter were properly before the Court, Appellants failed to present credible evidence that the accounting was not proper.

Appellant, Vivian Brown Dowdy submitted a chart before the lower court that appeared to include income and expenses from the Estate of Willie Brown, Sr. (R., p. 312 and 327). However, Ms. Dowdy herself testified that the numbers on her chart were just estimates (R., p. 133, lines 2-14). Further, the evidence showed that the amounts included as income for scrap metal were never actually received by either the Respondent or Appellants. (R., p. 210, line 22 – p. 212, line 3).

Appellants also contend that the Court erred in not "charging" the Respondent as part of the accounting with items of personal property of the Estate of Willie Brown, on the premise that the personal property had been converted by Respondent. However, upon hearing the testimony and evaluating the testimony as well as the credibility of the witnesses, the Court below properly found that the evidence did not support this claim of Appellants; furthermore, the lower Court found that such claims relate to personal property and an estate, and not to the partition of real estate before the lower court.

III. THE MASTER DID NOT ERR IN AWARDING ATTORNEY FEES TO THE RESPONDENT FOR BRINGING THIS ACTION.

Under S.C. Code Ann. § 15-61-110, a court may fix the attorneys' fees in all partition

proceedings, and may, as equitable, assess such fees against any or all of the parties in interest. In this case, the lower court assessed an equal amount of the Respondent's total awarded attorneys fees and costs as against each of the siblings. In support of that award, the lower court found that the law allows such fees; the parties had agreed in writing that if a partition arrangement could not be agreed on, any of them could resort to court for partition; here, the Respondent was incurring all of the ongoing out of pocket costs for the maintenance of the Property; the partition was needed and the issues could not reasonably be resolved without such partition; and each party benefited from the actual partition of the property. (R., p. 11). The Court also received and reviewed the relevant information related to the award of fees as was provided in the Affidavit of counsel. Appellants contended that the Court erred in award an attorneys' fee of $21,503.33. However, the record submitted at the hearing did support the fee award, and subsequent charges were properly documented. Appellants did not point to any reason why the amount of time or the actual fee rate or charges were not appropriate, as had been found by the lower court. Appellants also contended that "most of the time Plaintiff's counsel spent in this matter was due in large part due to the fault of the Plaintiff," however, the lower court did not agree with that conclusion, after a review of the evidence and after full assessment of the credibility of the witnesses.

Appellants claimed that the lower court erred in awarding the Respondent's attorneys' fees in the amount of $21,503.33 by failing to make explicit findings regarding: The nature, extent and difficulty of the legal services rendered; the time and labor necessarily devoted to the case; the professional standing of counsel; the contingency of compensation; the fee customarily charged in the locality for similar services; and the beneficial results obtained. However, Under S.C. Code Ann. § 15-61-110, the lower court may fix the attorneys' fees in all partition

proceedings, and may, as equitable, assess such fees against any or all of the parties in interest. In this case, the lower court ordered and assessed an equal amount of the Respondent's total attorneys fees as against each of the siblings, as such was equitable, giving the reasons for such conclusion. Although the governing statute on partition authorizes the fee and expense award as ordered, the lower court did find that, having given due consideration of the factors set forth above, the evidence did in fact fully support the fee award as Ordered, based on the evidence presented. (R., pp. 17-18).

## CONCLUSION

For the reasons stated, this Court should affirm the Order of the Master-In-Equity.

Respectfully Submitted,

July 23, 2012

Melissa J. Copeland

John E. Schmidt, III
Melissa J. Copeland
Schmidt & Copeland LLC
1201 Main Street, Suite 1100
Columbia, SC 29201
803.748.1342 (phone)
803.748.1210 (fax)

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph Strickland, Master-In-Equity

---

Case No. 2009-CP-40-07385

---

Gregory Brown

Plaintiff - Respondent,

v.

Willie Brown, Jr., Charles Brown, Joe Brown, Nellie Brown Boyd, Vivian Brown Dowdy, First Federal, and First Financial Holdings, Inc.

Defendants

Of Whom

Willie Brown, Jr., Charles Brown, Joe Brown, Nellie Brown Boyd, Vivian Brown Dowdy are the

Appellants.

---

CERTIFICATE OF COUNSEL

---

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

July 23, 2012

Melissa J. Copeland

John E. Schmidt, III
Melissa J. Copeland
Schmidt & Copeland LLC
1201 Main Street, Suite 1100
Columbia, SC 29201
803.748.1342 (phone)
803.748.1210 (fax)

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

---

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph Strickland, Master-In-Equity

---

Case No. 2009-CP-40-07385

---



Gregory Brown

Plaintiff - Respondent,

v.

Willie Brown, Jr., Charles Brown, Joe Brown, Nellie Brown Boyd, Vivian Brown Dowdy, First Federal, and First Financial Holdings, Inc.

Defendants

Of Whom

Willie Brown, Jr., Charles Brown, Joe Brown, Nellie Brown Boyd, Vivian Brown Dowdy are the

Appellants.

---

PROOF OF SERVICE

---

I certify that I have served the Respondent's Final Brief on Appellants by hand deliverying a copy of it on July 23, 2012, addressed to their attorney of record, Gerald D. Jowers, 1802 Sumter Street, Columbia, SC 29201.

July 23, 2012

Melissa J. Copeland

John E. Schmidt, III
Melissa J. Copeland
Schmidt & Copeland LLC
1201 Main Street, Suite 1100
Columbia, SC 29201
803.748.1342 (phone)
803.748.1210 (fax)

ATTORNEYS FOR RESPONDENT