

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

COUNTY OF ANDERSON)

Shannon Dean Howard,)

Case No.: 2017-CP-04-02258

Plaintiff)

v.)

Cheryl Rae Dodd Howard and
Glenn Dodd,)

Defendant.)

RECEIVED
ORDER
MAR 25 2019
SC Court of Appeals

PRESIDING JUDGE:
DATE OF HEARING:
PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:
COURT REPORTER:

R. SCOTT SPROUSE
OCTOBER 25, 2018
WILLIAM N. EPPS, III
ANGELA LANE
LISA SCOTT

This matter came before the Court for a bench trial in a dispute over items of personal property left at the former marital residence and adjacent property. The Plaintiff filed suit under a claim and delivery cause of action, also seeking compensatory damages. The Defendant denies the relief sought by the Plaintiff.

The Court heard testimony from witnesses and reviewed exhibits submitted by the parties at trial and now makes the following findings.

FINDINGS OF FACT

The parties are residents of Anderson County. The subject personal property was left on portions of real property situated in Anderson County, South Carolina. This Court has jurisdiction over the parties and subject matter. Venue is proper in Anderson County, South Carolina.

The Plaintiff is the ex-husband of the Defendant. The parties were in marital litigation which culminated in a Final Decree of Divorce entered on January 23, 2017 (Plaintiff's Exhibit 1). The Plaintiff prepared an extensive list of personal property that he claimed as non-marital. This property was left at the former marital residence after the Plaintiff vacated same. On page 8 of said decree, the Family Court took no action regarding the non-marital property stating

"34...There is little non-marital property of significant value. The Court accepts the values of property as set forth in Plaintiff's Exhibit 11 attached hereto and incorporated herein by reference. The items marked with an asterix (*) or described as having been acquired 'before' the parties' marriage, are the non-marital items contained in Exhibit 11. I find that the Family Court has no jurisdiction over the non-marital items listed in the exhibit."

The Plaintiff admitted the same list into evidence in this case. (Plaintiff's Exhibit 4). It is ten pages long and has numerous items of personal property listed with values claimed by the Plaintiff. The Plaintiff claims that the items on the list were left at the marital residence or adjacent property at the time of the parties' separation. The values are his estimate of the value of each item. He alleges that the total value of the items left at the former marital residence or adjacent property was \$87,782.00. The Plaintiff submitted a separate list (Plaintiff's Exhibit 6) of items that were not submitted to the Family Court. He alleges that he created this exhibit after "going back over the list." The Plaintiff alleges on Exhibit 6 that an additional \$20,435.00 worth of personal property was in the Defendants' possession.

The Plaintiff testified that he and the Defendant Howard's former marital home is bordered by a tract of land owned by the Defendant Glenn Dodd, who is the father of the Defendant Howard. Several storage/utility buildings sat on this piece of real property. The Plaintiff submitted numerous photographs of property items in dispute. He testified about several of those items. He

testified that some of the property was located in the storage buildings but some was on the ground outside. He testified that he "reworked" automobiles during the course of the parties' marriage, collecting a vast amount of parts and scrap metal in the process. He testified that "I can fix anything" and that people bring him inoperable machines "instead of hauling it off."

The Plaintiff testified that the Defendant Dodd put him on trespass notice. He further alleged that he came to the Clerk of Court's office to inquire as to his options once he received the decree from the Family Court. He contacted his attorney to have a letter written to Defendant's Howard's attorney about the personal property. The attorneys were unable to arrange a time for the Plaintiff to go inspect the premises to inventory the property. There was no testimony nor any explanation as to why this was not done or attempted during the nearly three year litigation between the parties in Family Court.

The Plaintiff pointed out a few specific pieces of property on each page of the list, several of which he photographed from the road in February 2018. He made photographs on two separate trips to view the property from the road (Plaintiff's Exhibits 2 and 3). The Plaintiff alleges that the Defendant disposed of large amounts of property between February 2018 and April of 2018. The Plaintiff claims that a number of items on the list were from his father's estate and have "a lot of sentimental value" to him.

The Plaintiff testified that he became concerned that the Defendants were disposing of his property. He became aware that a friend of the Defendant Dodd was in possession of two inoperable cars that had been his property. The Plaintiff went to the residence of Jimmy Sullivan, who had purchased what he described as "old junk cars" and car parts from the Defendant Dodd. It was established that \$300.00 was paid by Sullivan for the cars and parts for scrap.

The Defendant Howard, who has remarried and is now known as "Cheryl Dodd Wilson," testified that she was ordered by the Family Court to pay the Plaintiff for his share of the marital property. Lacking sufficient funds to pay the Plaintiff, the Defendant Howard was forced to sell the former marital home. This process required cleaning up the property. She testified that she did nothing to prevent the Plaintiff from removing his things, although she took no affirmative steps to facilitate the transfer. She testified that the Plaintiff did not ask to get his things. Communication between the parties is non-existent after what appears to have been a very contentious Family Court litigation. The Defendants testified that they wanted the Plaintiff to remove his things and that he would not do so.

The Court issued an Interim Order, requiring the Plaintiff to go to the real property in question, inventory any of his personal property items remaining, and remove same within thirty days. The Court further ordered that any personal property items not removed by the Plaintiff in that time period would be deemed abandoned. The Plaintiff submitted a list of items of property that he removed in accordance with the Interim Order. However, it is unclear what personal property was abandoned.

The Court reviewed numerous photographs submitted by the parties. The photographs show a wooded piece of real property littered with items. The photographs are taken at different times, although it appears as though this property has been in a littered, unmaintained state for a long period of time. An aerial photograph of the real property pertinent to this case (Defendant's Exhibit 6) shows the property to be a virtual junkyard. Animal carcasses and other degrading materials appear to make the real property a health hazard. The Defendant Howard testified that drug paraphernalia also was found on the property.

Efforts were made by both the Defendant Dodd and Lonnie Wilson, who married the Defendant Howard after he bought the home that is relevant to this case, to clean up the property. Both testified that they wanted the Plaintiff to remove his things, describing the disarray existing on the property. Wilson now owns the entire real property affected by this case, describing it as "two acres of junk." He testified that he gave away two boat hulls that were sitting outside. These boats appear to be a fiberglass boat and a "Cimarron" boat listed on Plaintiff's Exhibit 4. The Court would note that the pictures of those boats show hulls filled with dirt. Plants, leaves and small trees appear inside the boats as well. Based on the condition of the boats as shown in the pictures, the Court would be very surprised if either was seaworthy.

Applicable Law

The Plaintiff has the burden of proof in this action. Claim and delivery is an action for the recovery of specific personal property wrongfully taken or withheld from its rightful owner, with recovery of any damages resulting from the taking or possession of the property. S.C. Code Ann. § 15-69-10, et seq. The primary relief sought in claim and delivery is the return of possession of the specific property and only where the property is not recoverable, or recoverable in a state of repair of substantial value, may the value itself be awarded or recovered. Reynolds v. Philips, 72 S.C. 32, 51 S.E. 523, 524 (1905); Wilkins v. Willimon, 128 S.C. 509, 122 S.E. 503 (1924). The Plaintiff has sought monetary damages for any personal property belonging to him that was disposed of by the Defendants. Damages also must be proven by a preponderance of the evidence.

Conclusions

After considering fully the facts established at trial, the exhibits and the applicable law, I find that that the Plaintiff has proven by a preponderance of the evidence that the Defendants

disposed of some items of the Plaintiff's personal property. Due to the nature of the property, the total disarray of the area in which it was stored, and the passage of significant time between the time in which the Plaintiff vacated the former marital home and the filing of this lawsuit, the Court finds it impossible to make a determination on the exact items of property disposed of by the Defendants. It was proven by testimony that the Defendant Dodd sold junk cars to Jimmy Sullivan for \$300.00. The Defendants admitted having items hauled off from the property in an effort to clean up the area. However, the Court is unable to make any findings other than some items were disposed of by the Defendants.

In order to prove damages, the Plaintiff must establish a value for the items taken. The Family Court took into account the value of non-marital property owned by the parties in its determination of the issues of equitable division and alimony. The Family Court determined that the parties in this case had "little non-marital property of significant value." While a finding of the Family Court regarding valuation is not binding on this Court, it does reflect the difficulty in valuing a mass of discarded, broken and disassembled parts, tools, building materials and other mechanical items that were left out exposed to the elements for what appears to be years. I find the random values assigned to the items by the Plaintiff on his lists to not be credible, especially in light of the photographs of the items that were put into evidence. There was no basis for those values presented to the Court either by expert testimony or otherwise. They just appear to be numbers pulled out of the air by the Plaintiff. The Court finds it difficult to place any value on the items in dispute other than that of scrap. Undoubtedly, the vast collection of metal parts and other items would have some scrap value. However, no testimony was presented as to the weight of the metal in the items or what a scrapyard would pay for them. Neither was there any testimony regarding the cost of cleaning up the property and taking any value-less items, of which there

appeared to be many, to the landfill. The only value that was established by the evidence was \$300.00 scrap price for junk car bodies. The Plaintiff listed several inoperable junk cars in his Exhibit 4 which were designated by the Family Court as outside the jurisdiction of that body. These were four such vehicles included in that Exhibit----a 1984 or 1986 Pontiac Fiero, a 1967 Camaro, and two (2) 1964 GTOs. Based on the pictures submitted, the Court is unable to attribute any value to these vehicles other than the value of the other inoperable junk cars in evidence (\$300.00 per car). Therefore, the Court finds that the Plaintiff is entitled to a judgment against the Defendants in the amount of \$1,200.00. The Plaintiff has failed to prove by a preponderance of the evidence that he is entitled to any compensation for any other items of personal property left on the real property belonging to the Defendants.

WHEREFORE, the Court finds for the Plaintiff against the Defendants in an amount of \$1,200.00.

AND IT IS SO ORDERED.

R. Scott Sprouse, Judge

Walhalla, South Carolina

December __, 2018



Anderson Common Pleas

Case Caption: Shannon Dean Howard VS Cheryl Rae Dodd Howard , defendant, et al
Case Number: 2017CP0402258
Type: Order/Disposition Signed

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit