

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 STEPHANIE M. MCDEW a/k/a )  
 STEPHANIE MCDEW )  
 SCHOUMACHER, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 )  
 FRIEDA P. MCDEW a/k/a FRIEDA, )  
 MCDEW SHORTER, )  
 )  
 Defendant, )  
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 )  
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IN THE COURT OF COMMON PLEAS  
 CIVIL ACTION NO.:16-CP-07-02274

ORDER

**RECEIVED**  
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 SC Court of Appeals

This matter came before me for trial on the merits on March 18, 2019. The Plaintiff, Stephanie M. McDew a/k/a Stephanie McDew Schoumacher, hereinafter referred to as “Mrs. Schoumacher” filed an action against the Defendant Frieda P. McDew a/k/a Frieda McDew Shorter, hereinafter referred to as “Mrs. Shorter”.

This matter arises out of a dispute over property deeded to the parties from their parents by deed dated May 14, 1979. The subject property consists of Lots 16, 18 and 20 of the Bradley Beach Subdivision on Hilton Head Island. (A legal description of the property is set forth in Plaintiff’s Complaint). A family vacation home is located on Lot 18.

The Plaintiff’s Complaint was filed as a non jury action and alleged as a first cause of action “Declaratory Judgment – Ownership Under Deed”. Plaintiff sought damages in the form of costs of this action under this cause of action. The Plaintiff’s second cause of action sought Injunctive Relief - seeking an order restraining and

enjoining Defendant from preventing the Plaintiff from having access to the subject property. Plaintiff's third cause of action set forth a claim for nuisance alleging the Defendant has unreasonably interfered with Plaintiff's use and enjoyment of the House and property and such interference creates an unlawful nuisance. Plaintiff claimed actual, nominal, compensatory and punitive damages under this cause of action. Plaintiff's fourth cause of action sought a Declaratory Judgment that defendant's actions over the years estops Defendant from claiming ownership of the subject property and further seeks a declaratory judgment that Plaintiff is an owner of the subject property, that her heirs and assigns have an interest in the subject property and sought judgment for the costs of this action. Plaintiff amended her Complaint to allege a fifth cause of action for Ouster Damages / Trespass. Plaintiff sought damages constituting a portion of the reasonable rental value of the House and Property as well as actual and punitive damages.

Defendant filed an Answer and Counterclaim denying allegations set forth in the Complaint and alleged a cause of action for Adverse Possession and also sought recovery of monies expended to preserve the property by way of a claim for Quantum Meruit. Defendant subsequently filed an Answer to the Amended Complaint denying all allegations set forth in the Amended Complaint. Plaintiff filed a Reply to Defendants Counterclaim denying allegations set forth therein.

During the course of the litigation the parties entered into a Consent Order stating in part:

The Parties agree that Ms. Stephanie M. McDew shall have exclusive use of the property for the month of October 2017 and that Frieda P. McDew shall have exclusive use of the property for the month of November 2017. Thereafter, each party's exclusive monthly use of the property shall rotate until this matter is resolved, however, by written agreement signed by the parties they may exchange months.

This Order shall remain in effect until such time as the parties enter into a shared use agreement or a subsequent Order of this Court is issued with respect to use of the subject property.

The trial of this matter took place on March 18, 2019. The Court heard testimony from the Plaintiff Stephanie McDew Schoumacher and the Plaintiff's witnesses Henri Kirsten and Edgar "Ned" Gay. The Defendant, Frieda McDew Shorter testified and submitted deposition testimony of Carla Nettles and Donald Brashear.

#### **FINDINGS OF FACT**

After hearing the testimony in court reviewing the exhibits and reading deposition testimony submitted by Defendant, I hereby make the following findings of fact. The Plaintiff alleged that Defendants actions with regard to the property constituted ouster. I hereby find that Defendant's actions did not constitute ouster. The Plaintiff alleged that the defendant would not provide her with a set of keys and told her she was going to change the locks. The testimony revealed that both sisters had been given a set of keys by their mother. The Plaintiff testified that she in fact had a set of keys and attempted to use them one time over the course of many years to enter the house and the key would not open the lock. The Defendant testified that she never changed the locks on the home. Carla Nettles, was hired by the Defendant to clean the home and testified that the lock was stuck requiring her to spray a lubricant into the lock to get the key to work, She further testified that she has cleaned many near ocean homes and due to the salt air conditions a sticking lock is a common occurrence. The Defendant further testified that the security code had also never been changed since her mother was alive and presented

evidence to that effect. Based upon the testimony I conclude that the defendant never changed the locks on the residence. The Plaintiff testified that she has lived in the Washington, DC area for the past twenty years.

The Defendant testified that she has lived in Savannah, Georgia since retiring in 1996. The Defendant further testified that she would drive to Hilton Head to inspect the residence approximately once a month and perhaps stay for a weekend. She also testified that she usually spent one week in the summer with family at the subject residence. As such, the Plaintiff was free to use or enter the house whenever she saw fit. The Defendant never occupied the house for any substantial length of time and, in fact, never barred the Plaintiff from entering the residence. Other than the one occasion when the Plaintiff attempted to use her key to gain access to the house, the Plaintiff never tried to enter the residence. The Plaintiff presented no evidence that the Defendant acted in a way that would obstruct the Plaintiff from accessing the residence.

#### LEGAL CONCLUSIONS

Regarding the Plaintiff's first cause of action to determine Ownership under the deed. I find that the parties are Tenants in Common with equal rights and responsibilities with respect to the subject property.

The Plaintiff's second cause of action sought injunctive providing her access to the subject residence. As the parties entered into Consent Order regarding the use of the residence, and that Consent Order is still in effect. As such, both parties are allowed equal access and control of the property.

Plaintiff's third cause of action set forth a claim for nuisance alleging the Defendant has unreasonably interfered with Plaintiff's use and enjoyment of the House

and property and such interference creates an unlawful nuisance. I conclude that the Plaintiff did not present sufficient evidence to constitute nuisance and, therefore Plaintiff's claim for nuisance is denied.

Plaintiff's fourth cause of action sought a Declaratory Judgment that defendant's actions over the years estops Defendant from claiming ownership of the subject property and further seeks a declaratory judgment that Plaintiff is an owner of the subject property, that her heirs and assigns have an interest in the subject property and sought judgment for the costs of this action. I find that the parties are Tenants in Common with equal rights and responsibilities with respect to the subject property. I deny Plaintiff's claims seeking costs of this action under this cause of action by way of this claim.

The Plaintiff's fifth cause of action was for ouster claiming that defendants actions restricted Plaintiff's access and use of the subject property. I hereby conclude that insufficient evidence was presented by the Plaintiff to conclude that the Defendant's actions constituted ouster. Plaintiff's claim of ouster is, therefore, denied.

The Defendant filed a Counterclaim for Adverse Possession. The Defendant did not present sufficient evidence to support a finding of adverse possession and, therefore, Defendant's claim for adverse possession is denied.

I further find for the Defendant and award Plaintiff to pay one half of the carrying costs / expenses on the subject property. The parties stipulated that the total expenses paid by Frieda McDew Shorter between 2007 through 2018 were \$134,770.45. This amount does not include expenses paid by Frieda McDew Shorter in 2019. The parties also stipulated that Frieda McDew Shorter was in the 15% tax bracket for the tax years 2009 through 2017. The only year Frieda McDew Shorter claimed a deduction for the

subject property was 2017, when she paid property taxes in the amount of \$4,315.39. The net tax benefit to Mrs. Shorter was roughly 15% of \$4,315.39, or \$647.30. Had Plaintiff paid one half of the 2017 taxes Mrs. McDew's tax benefit would be reduced by half the benefit, or \$323.65. As this Order requires the Plaintiff to pay to the Defendant one half of the 2017 property taxes and arguably the Plaintiff is entitled to a credit for one half of the tax benefit taken by Defendant. As such, the judgment will be reduced by one half of the total deduction taken by Mrs. Shorter on her 2017 tax return, that being \$323.65. Frieda McDew Shorter did not claim a deduction in any year other than 2017, therefore, no other reductions to the judgment are necessary.

I hereby award a judgment in the amount of \$67,385.22 in favor of the Defendant. Judgment amount shall be a lien in favor of the Defendant on Plaintiff's one half interest of the property. Plaintiff shall have 180 days to pay the total judgment amount due and thereafter, her one half of the house shall be advertised and sold at Master's auction, with the Defendant allowed to credit bid the total amount due. Assuming no sale, the parties shall hereafter divide all costs equally and shall enter a shared use agreement. In the event the parties cannot agree to a shared use agreement, a mediator shall be hired, with costs divided, to assist in that matter. If the Mediator is unsuccessful, this Court retains jurisdiction to create said shared use arrangement. Both parties shall bear their own costs of litigation in this matter.

**IT IS SO ORDERED**

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Marvin H. Dukes, III  
Master In Equity, Beaufort County

This \_\_\_ day of August, 2019  
Beaufort, South Carolina