

In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons Jr., Circuit Court Judge

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Docket Case No. 2018-CP-23-00883  
Appellate Case No. 2019-001518

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**RECEIVED**  
JUN 10 2020  
SC Court of Appeals

Laurel Grove, LLC, . . . . . Respondent,

vs.

Frances Lee Farmer Sullivan, Marcus Lynn Farmer, Nelson Eugene Farmer, Peaches Shawn Farmer, John Anthony Pelzer, Thomas Farmer, Tara Smith, the Heirs of Kimberly Bean, L'Kita Brown, Margaret Lois Brown, Robert Brown and Willie Brown as officers, directors, and/or shareholders of the Holy Temple of God Faith Healing Church, Estate of Lula Mae Knox, Shirley Miller, Norma Williams, Juanita Smith, Evelyn Byrd, James Brown, Norman Smith, Robert Smith, Catherine Stroble, Sharon Brown, the Greenville County Tax Collector, John Doe representing any and all known and unknown heirs of the following individuals who may claim an interest in the Property: Willie R. Brown a/k/a Willie Ruth Brown a/k/a Willie Lee Farmer Brown a/k/a Willie Lee Wilson, Robert R. Brown a/k/a Robert Russell Brown a/k/a Robert Russell Roland Brown, Mary Elizabeth Farmer Crudup, Nelson Farmer, Donnie Rae Farmer, Richard Earle Farmer, Nazeae Jefferson a/k/a Zeon Jefferson, Annie Ruth Farmer Pelzer, Willie Rufus Farmer, Kimberly Bean, Lula Mae Knox, Theodore Byrd, Michael Jerome Smith, and as Defendants whose names are unknown claiming any right, title estate, interest in, or lien upon the real estate described in the Complaint herein, any known adults, their heirs and assigns and all other persons, firms or corporations entitle to claim under by or through the above-named Defendants, being as a class designated as Richard Roe, and any unknown infants or persons under disability being a class designated as Jane Doe, Defendants.  
Of Whom, Juanita Smith, Evelyn Byrd, Shirley Miller, and Sharon Brown are the Appellants.

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APPELLANTS' FINAL BRIEF

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**STATEMENT OF THE ISSUES ON APPEAL**

- 1. IS IT AN ABUSE OF JUDICIAL DISCRETION TO ORDER THE 3 ACRES OF LAND TO BE SOLD AS A WHOLE?**
- 2. WHETHER THE COURT COMMITTED REVERSIBLE ERROR BY VIOLATING SECITION 15-61-400 (D) AFTER ORDERING THE 3 ACRES OF LAND TO BE SOLD?**
- 3. WHETHER JUDGE SIMMONS ABUSED HIS JUDICAL DISCRETIONARY POWER BY REMAINING ON THIS CASE AFTER HAVING BEEN ASKED TO RECUSE HIMSELF?**
- 4. IS IT AN ABUSE OF JUDICIAL DISCRETION TO CONTINUE COURT AFTER HOWARD DIXON, APPRAISER HIRED BY SOME OF THE DEFENDANTS, WAS UNABLE TO BE AT THE HEARING ON JUNE 29, 2019 BECAUSE OF AN ENGAGEMENT OUTSIDE OF THIS COUNTRY?**
- 5. WHETHER JUDGE SIMMONS HAD A DUTY TO STOP ATTORNEY AIMEE LEARY FROM INTERFERING WITH THE COURT ORDERED APPAISAL OF THE 3 ACRES OF LAND?**

## STATEMENT OF THE CASE

This matter is before the Court on the appeal of Juanita Smith, Evelyn Byrd, Shirley Miller, and Sharon Brown (hereinafter "Appellants") from the decision of the Honorable Charles B. Simmons Jr. dated August 9, 15, 2018 Laurel Grove LLC, respondent, filed a summons and complaint against the appellants and several other people. (R. pp. 20-32). Thereafter, on April 6, 2018, the appellants filed an answer to the respondent's summons and complaint (R. pp. 33-34). On February 19, 2019, Greenville County Tax Collector filed an answer to the respondent's summons and complaint.

On September 6, 2019 , Juanita Smith, Evelyn Byrd, Shirley Miller, and Sharon Brown filed an appeal with this court.

Laurel Grove requested and was granted a judicial sale of a property, located at Anderson Ridge Road in Greer S.C., owned by the appellants and others. (R. p. 31, line 14; R.p. 17, line 21-p. 18 , line 12). Many of the defendants were opposed to the judicial sale of the 3 acres of land located at Anderson Ridge Road.

Additionally, many of the defendants wanted the property to be partitioned in kind. (R.p. 89, lines 4-11). Appellants appraisal for the 3 acres of land indicates a value of \$165,000. However, Judge Simmons accepts the court appointed appraiser's value of \$100,000. Throughout the court appointed appraiser inquiry of the value of the three acres of land, Attorney Aimee Leary interfered with the court appointed appraiser process and upon information and belief influenced the appraisers' value of the land. (R.p. 120; R.p. 122). Judge Simmons, upon information and belief, had a duty to stop the respondent's attorney, Aimee Leary, from interfering with the court appointed appraisal of the 3 acres of land (R. p. 126, lines 7-12).

## **STANDARD OF REVIEW**

South Carolina Code of Laws Chapter 61 establish the standards against which the lower court's order must be reviewed. The court is being asked to look at whether the trial court exceeded bounds of reason thereby abusing its discretionary power. When upon belief, it can be fairly said that no judge would reasonably make the same order/decision under the same circumstances. *Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 215, 321 S.E.2d 179, 182 (Ct. App 1984). *Roberson v. Roberson* 359 S.C. 384, 389, 597 S.E.2d 840, 842 (Ct. App. 2004);

## ARGUMENT

### **I. IS IT AN ABUSE OF JUDICIAL DISCRETION TO ORDER THE 3 ACRES OF LAND TO BE SOLD AS A WHOLE?**

The appellants contend that it was an abuse of judicial discretion to order the 3 acres of land to be sold as a whole. Appellants' appraiser, Dixon Howard (Howard), was unable to be in court on July 29, 2019 to testify to the whether the land should be partition in kind instead of being sold as a whole. The court favors partition in kind when it can be fairly so made without injury to any other parties in interest. *Smith v. Pearson*, 210 S.C. 524, 43 S.E. 2d 479 (1947).

Mr. Howard sent the following e-mail to the court : "Hello Karen, I received the subpoena to be in court on July 29 to testify for the appraisal report that my company completed on Anderson Ridge Road. Unfortunately, I have a prior engagement to be out of the country in El Salvador from July 26 until August 3. Would it be possible to either reschedule this court date, or have my appraiser partner Dave testify for the land appraiser?"

The court responded to Mr. Howard in the following way: "Good morning, Please see e-mail below from Mr. Howard. Per Judge Simmons, if no one objects to Mr. Howard's partner "testify" on his behalf the hearing set for July 29th at 10:00 will move forward." Mr. Howard sent Dave Batson to testify in response to the court response.

Judge Simmons abused his discretionary power by not rescheduling the hearing to another date when Mr. Howard would be available to attend. Instead of postponing the hearing on July 29, 2019, Judge Simmons states the following: "Mr. Batson, who is not yet a licensed appraiser, testified that his opinion of the value of the parcel was \$165,000. No report of Mr. Batson was introduced. Mr. Batson also shared concerns about the feasibility of the parcel be divided into shares as small as 0.025. " (R.p. 15, lines 20-22).

Appellants feels that a manifest injustice has occurred. Appellants were denied the opportunity to have our licensed appraiser, Dixon Howard, at the hearing on July 29, 2019. Therefore, Judge Simmons' August 9, 2019 order should be vacated in its entirety.

**2. WHETHER THE COURT COMMITTED REVERSIBLE ERROR BY VIOLATING SECTION 15-61-400 (D) AFTER ORDERING THE 3 ACRES OF LAND TO BE SOLD?**

Judge Simmons states on page 6 of his August 9, 2019 order the following: "If the parcel is not under contract to the highest and best offer as determined by the realtor, and in accordance with 15-61-400, within 90 days of the listing, then the parcel shall be sold with no minimum price at the next available monthly Greenville County Courthouse auction and in accordance with the usual and customary terms and condition of said sale.

Judge Simmons ruled around January 2019 that the 3 acres of land would be auctioned off on May 6, 2019. After being told we would appeal this decision to auction the property off on May 6, 2019, Judge Simmons sent out a letter dated March 25, 2019 indicating that some issues need to be addressed and resolved. (R.p. 36). After appellant responded to Judge Simmons' March 25, 2019 letter, I guess he decided not to go ahead with auctioning the property off on May 6, 2019. (R.pp. 38 - 43).

It appears that Judge Simmons was already set on seeing how he could favor the Respondent by putting the land up for auction so the respondent could pay very little for the 3 acres of land.

Judge Simmons ignores the fact that he cannot order the land sold at a public auction if it is not under contract within 90 days of the listing without holding a hearing and considering other alternatives. Section 15-61-400 states, " If the broker appointed under subsection (B) does not obtain an offer to purchase for at least the determination of value, the court, after a hearing, may: (1.) approve the highest outstanding offer, if any; (2.) redetermine the value of the property and order that the property continue to be offered for an additional time; or (3.) order that the property be sold by sealed bids or at an auction.

Judge Simmons appears to be setting the appellants up for a disaster if the property does not go under contract within 90 days. He was asked to recuse himself from this case. Laurel Grove is being literally handed the opportunity to get this property for a low price at an auction. Why would Laurel Grove pay the appellants a fair market value for the land when Judge Simmons has set it up where they can sit back and wait for auctioning of the property. The appellants loss complete confidence in Judge Simmons along time ago. Now he refuses to look at other alternatives and give the appellants their hearing if the 3 acres of land does not sell. The appellants are being robbed of entitlements given to us by our legislature.

The appellants feel that a manifest injustice has occurred and requests that this court vacate Judge Simmons' August 9, 2019 order in its entirety.

**3. WHETHER JUDGE SIMMONS ABUSED HIS JUDICIAL DISCRETIONARY POWER BY REMAINING ON THIS CASE AFTER HAVING BEEN ASKED TO RECUSE HIMSELF?**

Judge Simmons was asked to recuse himself from this case. (R.p. 45, lines 11-13). He abused his discretionary power by remaining on this case after having been asked to recuse himself. Many of the defendants felt that Judge Simmons was hostile and did not want to go before him. He even ordered that the property be auctioned off on May 6, 2019 during one of the hearings prior to the property ever being considered for a open-market sale as mandated by section 15-61-400. Judge Simmons appeared to not have the appellants' interests at heart at all. Appellants counted on having an impartial judge, however that was not the case here.

The appellants feel that we were denied a right to an impartial judge and that a manifest injustice has occurred. Therefore the appellants contend that Judge Simmon's August 9, 2019 order should be vacated in its entirety.

**4. IS IT AN ABUSE OF JUDICIAL DISCRETION TO CONTINUE COURT AFTER HOWARD DIXON, APPRAISER HIRED BY SOME OF THE DEFENDANTS, WAS UNABLE TO BE AT THE HEARING ON JUNE 29, 2019 BECAUSE OF AN ENGAGEMENT OUTSIDE OF THIS COUNTRY?**

Dixon Howard, appellants' appraiser, was served with a subpoena (by the appellants) to be in court on July 29, 2019. (R.p. 48-49). Judge Simmons excused Dixon Howard from appearing for court on July 29, 2019. Therefore court should have been postponed to another date. This would have eliminated Judge Simmons from being able to disqualify David Bates, the gentleman Dixon Howard sent in his place to testify for the appellants on July 29, 2019 during the hearing.

Judge Simmons abused his discretionary power by not rescheduling the hearing to another date when Mr. Howard would be available to attend. Instead of postponing the hearing on July 29, 2019, Judge Simmons holds the hearing and states the following in his court order: "Mr. Batson, who is not yet a licensed appraiser, testified that his opinion of the value of the parcel was \$165,000. No report of Mr. Batson was introduced. Mr. Batson also shared concerns about the feasibility of the parcel be divided into shares as small as 0.025. " (R.p. 15, lines 20-22).

Appellants were denied by Judge Simmons the opportunity to have our licensed appraiser, Dixon Howard, in court on July 29, 2019. Appellants' subpoena upon Dixon Howard should have been enforced, if court on July 29, 2019 was not going to be postponed to a later date.

A manifest injustice has been perpetrated upon the appellants. Therefore, appellants request that Judge Simmons' August 9, 2019 order be dismissed in its entirety.

**5. WHETHER JUDGE SIMMONS HAD A DUTY TO STOP ATTORNEY AIMEE LEARY FROM INTERFERING WITH THE COURT ORDERED APPRAISAL OF THE 3 ACRES OF LAND?**

Appellants were denied the opportunity to have a fair appraisal done by a court appointed appraiser. Judge Simmons should have ordered a new appraisal given that he failed to stop Aimee Leary from interfering with the court ordered appraisal. (R.p. 120; R.p. 122).

A manifest injustice has occurred and Judge Simmons August 9, 2019 order should be vacated in its entirety.

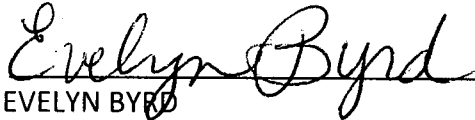
## CONCLUSION

The lower court's order dated August 9, 2019, should be reversed upon the grounds that the lower court clearly abused its discretionary powers and failed to follow state law in this matter. The case should then be remanded to the lower court and restored to the active trial roster.



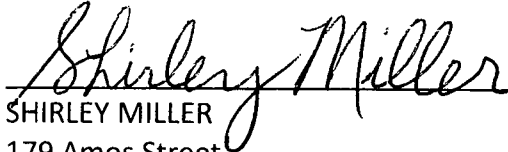
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June 5, 2020

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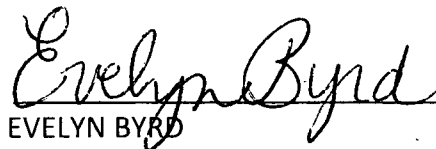
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This is to certify that Appellants' Final Brief complies with Rule 211(b) SCACR.




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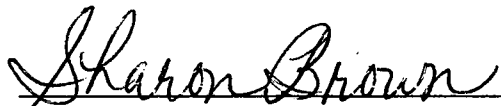
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This is to certify that Appellants' Final Brief complies with Rule 211(b) SCACR.

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JUN 10 2020

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