

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS

Yvonne J. Robinson)
)
Plaintiff,)
)
vs.)
)
Donray Curtis Jones, Cynthia Denise Jones,)
Emma Kelly Washington and Troy Eliazer)
Washington,)
)
Defendants.)

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FINAL ORDER

SC Court of Appeals

Case No. 2020-CP-11-00040

This matter was before me for a final hearing on Tuesday, October 13, 2020 pursuant to an Order of Reference filed February 13, 2020. Said Order of Reference was to make appropriate findings of fact and conclusions of law with authority to enter a final judgment.

Plaintiff initially filed her Lis Pendens, Summons and Complaint on January 14, 2020. An Amended Complaint was properly filed on January 16, 2020. In her Amended Complaint, Plaintiff is seeking a partition, in kind, or in the alternative, a reformation of the Warranty Deed recorded in Deed Book 84, Page 1910, Cherokee County Register of Deeds. The subject property is more fully described as follows:

All that certain piece, parcel or lot of land lying, situate and being in the State of South Carolina, County of Cherokee, known as 3.84 acres, located on Union Highway and Hudnut Drive as shown on plat prepared for William L. Moss, Jessie Moss and Wesley A. Gordon by Lavender, Smith & Associates, Inc. dated March 7, 1994 and recorded in Book S-111, Page 6 of the Clerk's Office for Cherokee County, reference to which is made for the purpose of providing a more particular description of said real property.

DERIVATION: This being the same property conveyed to Emma Kelly Washington and Troy Eliazer Washington, as joint tenants with rights of survivorship and no as tenants in common and to Donray Curtis Jones and Cynthia Denise Jones as joint tenants with rights of survivorship and not as tenants in common by Warranty Deed from Yvonne J. Robinson recorded in Deed Book 84, Page 1910 on April 25, 2016 in

Office of the Register of Deeds for Cherokee County, South Carolina. See also, this being a fractional interest in the real property conveyed to Yvonne J. Robinson by deed of Lee's Interior Design, LLC dated September 3, 2014 and recorded on September 9, 2014 in Deed Book 71, Page 926 of the Office of the Register of Deeds for Cherokee County, South Carolina.

Defendants were served with the Lis Pendens, Amended Summons and Amended Complaint on or about January 21, 2020 as shown by the Affidavits of Service that were e-filed January 24, 2020. Defendants sent a letter to Plaintiff's counsel on February 2, 2020 as an answer to Plaintiff's Amended Complaint. Said letter was e-filed on October 12, 2020 in advance of this hearing. On May 29, 2020, Defendants filed another document with the Clerk of Court for Cherokee County indicating they wanted to purchase the 1/3 interest of the Plaintiff in the subject property.

On February 24, 2020, the Court filed its Order (Partition Action) which was also served on Defendants by counsel for the Plaintiff. Notice of the date, time and place of today's hearing was served upon the Defendants and e-filed with the Court. At the call of the case, Plaintiff was present with her attorney, Scott F. Talley, Esquire. All Defendants were also present in the courtroom and expressed their desire to proceed pro se in this matter. The Court questioned the Defendants about this matter and their understanding of these proceedings; the Defendants acknowledged understanding and their desire to represent themselves in this matter.

Plaintiff presented the Warranty Deed filed in Book 84, Page 1910, Cherokee County Register of Deeds. The parties agreed, via their testimony, that Plaintiff purchased the property and paid the purchase price for it on or about September 3, 2014. Defendants were to pay Plaintiff their share of the purchase price. The parties had agreed to buy land and put their homes on the land. At the time of purchase, Defendants did not have the funds to do so; Plaintiff therefore advanced the full purchase price. Plaintiff placed a home on the land, and both Defendant couples

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did so as well. In April 2016, Plaintiff signed a Deed to the Defendants. Plaintiff believed that said deed was conveying to each Defendant couple approximately 1/3 of the total property, specifically the 1/3 of the total property upon which their home was located. The Deed, previously referenced, did not do what Plaintiff thought it did; in fact, said Deed conveyed 1/3 interest in the property to each Defendant couple. Therefore, upon the Deed being recorded on April 25, 2016, the Plaintiff and all Defendants owned the entire property as tenants in common. This deed, recorded in Book 84, Page 1910, Cherokee County Register of Deeds, was entered into evidence.

Plaintiff, later realizing what the Deed actually did, had a survey prepared by Cole Land Surveying, LLC on October 15, 2019. The plat of said survey was approved by Cherokee County and recorded on November 7, 2019 in Plat Volume 117, Page 1304, Cherokee County Register of Deeds. This plat divided the property into Parcel A (approx.. 1.28 acres); Parcel B (approx.. 1.27 acres) and Parcel C (approx.. 1.28 acres). This plat is the basis for Plaintiff's request to partition the property in kind as set forth in said plat. Referring to the plat, Plaintiff resides on Parcel B. Defendants Troy Washington and Emma Kelly Washington reside on Parcel A and Defendants Donray Curtis Jones and Cynthia Denise Jones reside on Parcel C. In addition to asking for the partition of the subject property in kind, Plaintiff requested attorney's fees pursuant to SC Code 15-61-110. An Affidavit of Attorney's Fees was entered into evidence.

Defendants all denied that they intended to divide the property with Plaintiff as shown on the referenced plat. They all testified that they desired for the entire 3.84 acres tract to remain owned by all parties to this matter as tenants in common, even understanding that they could not sell their "share" or "portion" of the land without the consent of all other owners, including the Plaintiff.



At the close of testimony, the Court encouraged all parties to try to reach a resolution before it had to take make a decision based on the pleadings and law to be applied in this matter. The parties did not reach any resolution so this Order was issued.

Based on my review of the pleadings, the testimony and evidence presented at the hearing as well as the applicable law in South Carolina, I hereby make the following findings of fact:

1. Plaintiff is a resident of and domiciled in the State of South Carolina. Plaintiff is an owner of the subject property.
2. Defendants are residents of and domiciled in the County of Cherokee, State of South Carolina. Defendants are owners of the subject property by way of conveyances set forth in the derivation clause below.
3. Service of the Amended Summons and Complaint was proper.
4. The property which is the subject of this action is located in Cherokee County, South Carolina, and this Court has jurisdiction over the parties and subject matter.
5. All parties were given proper notice of the date, time and place of the final hearing.
6. At the time of the final hearing, the 3.84 acres tract of land is owned by Plaintiff with one-third (1/3) ownership; Defendants Donray Curtis Jones and Cynthia Denise Jones with one-third (1/3) ownership; and, Defendants Emma Kelly Washington and Troy Eliazer with one-third (1/3) ownership of the subject property as tenants in common based on the Deed recorded in Book 84, Page 1910, Cherokee County Register of Deeds.
7. Regardless of the parties intentions or understanding at the time said Deed was signed in 2016, pursuant to South Carolina law, Plaintiff is entitled to file this action and request the relief she seeks herein, partition in kind of the subject property.



8. No alternative partition in kind was offered by the Defendants in response to Plaintiff's request to partition the property as set forth in the October 2019 plat. While Defendants wished to purchase the Plaintiffs interest in the subject property, that was not agreed to by all parties.
9. I have considered all relevant factors required of me and the fee affidavit presented at the hearing by the Plaintiff regarding an award of attorneys fees and costs in an action such as this pursuant to SC Code 16-51-110. I find that each Defendant couple shall be responsible for 1/3 of the Plaintiff's fees and costs incurred in this matter. The total fee is \$3500, and the costs incurred are \$116.24.

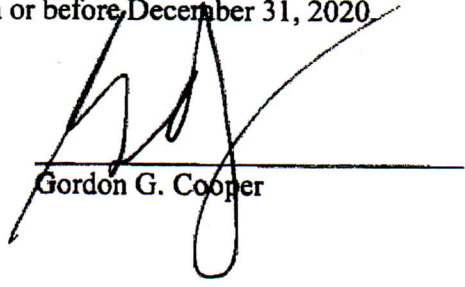
Based on these findings of fact, it is hereby ordered as follows:

1. The subject property be partitioned pursuant to the survey prepared by Cole Land Surveying recorded November 7, 2019 and attached hereto;
2. Upon filing of this Order in the Cherokee County Register of Deeds, the assessor's records and property records, for tax purposes, shall be amended to show:
Defendants Troy Washington and Emma Kelly Washington as owners of Parcel A as set forth on said plat (Grantor Yvonne J. Robinson, Grantees Troy Washington and Emma Kelly Washington); Plaintiff Yvonne J. Robinson as owner of Parcel B as set forth on said plat (Grantor Lee's Interior Design, LLC; Grantee Yvonne J. Robinson); and Defendants Donray Curtis Jones and Cynthia Denise Jones as owners of Parcel C as set forth on said plat (Grantor Yvonne J. Robinson; Grantees Donray Curtis Jones and Cynthia Denise Jones);

3. Each of the three parcels shall be issued a separate tax map number and be owned free of any claim by the party designated herein from claims of the other parties named herein; and
4. Plaintiffs request for attorneys fees and costs is hereby granted. Defendants Troy Washington and Emma Kelly Washington shall pay the amount of \$1205.41 as their 1/3 of the total fees/costs. Defendants Donray Curtis Jones and Cynthia Denise Jones shall pay the amount of \$1205.41 as their 1/3 of the total fees/costs. These amounts shall be paid directly to Plaintiff's counsel at his office, 134 Oakland Avenue, Spartanburg, South Carolina 29302 on or before December 31, 2020.

It is so ordered!

November 30, 2020



Gordon G. Cooper

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