

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appellate Case No. 2021-000017

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Gordon G. Cooper, Circuit Court Judge

Case No. 2020-CP-11-00040

Yvonne J. Robinson

Respondent,

v.

Donray Curtis Jones, Cynthia
Denise Jones, Emma Kelly
Washington, and Troy Eliazer
Washington

Appellants.

APPELLANTS' INITIAL REPLY BRIEF

April 25, 2021

Donray & Cynthia Jones
125 Hudnut Drive
Pacolet, SC 29372

Troy & Emma Washington
118 Hudnut Drive
Pacolet, SC 29372

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ARGUMENT

1. DID THE TRIAL COURT ERR IN PROCEEDING TO PARTITION THE PROPERTY IN KIND, PURSUANT TO STATUTE?

The Respondent argues that the special referee has jurisdiction to make a partition in kind or by allotment according to S.C. Code §15-61-50. That same statute also gives the referee jurisdiction to partition by sale, if a partition in kind would be injurious to any of the parties in interest. The question is not whether the master-in-equity had the jurisdiction to make a decision in this case. The question is, did the judge follow the law in making the decision?

The Respondent filed a complaint with the court petitioning that the subject property be partitioned in kind or that, alternatively, a reformation of the warranty deed be granted. The deed lists the Appellants as joint tenants of said property, having a collective two-thirds interest, with Rights of Survivorship, in consideration of \$16,000 paid to the Respondent. Upon review of the Respondent’s complaint and the attached exhibits, the master-in-equity ruled that the applicable law that must be followed for this case is set forth in S.C. Code §15-61-25. The language of this statute does not provide for either a partition in kind, or a reformation of the warranty deed. It does, however, provide for a partition sale, with the first right of refusal afforded to the Appellants as non-petitioning tenants. The Judge was within his jurisdiction to make this decision.

The Respondent argues that the Appellants’ reliance on S.C. Code §15-61-25 is incorrect due to the fact that the amended complaint in this matter sought to partition the property in kind,

not sell it. Regardless of what the Respondent sought after, the law governs the actions that must be taken for the partition. In this case, the judge ordered that the applicable law is S.C. Code § 15-61-25. The appellants should reasonably be able to rely on the law ordered by the Judge prior to trial. Further, at no point before or during the hearing did the Respondent or her counsel file any objection to the Judge's ruling concerning the applicable law to be followed.

The Respondent cites a number of cases that show the favorability the Court has shown previously toward partition in kind. However, all of the cases cited in the Respondent's reply predate the current partition law. Title 15, Chapter 61 (Partition) was amended in May 2006 by the SC General Assembly in Act Number 302. It is entitled "an act to amend Chapter 61, Title 15, Code of Laws of South Carolina, 1976, by adding section 15-61-25, relating to partitions, so as to give one or more of the joint tenants or tenants in common the right of first refusal to purchase the subject property before its judicial partition." This bill was signed into law on May 25, 2006 and is applicable to all petitions for partition filed after that date. This amendment gives joint tenants the right to purchase the subject property before any partition takes place. Again, the appellants are correct to rely on the current applicable law, as stated in S.C. Code § 15-61-25.

The Respondent argues that the Appellants did not "take steps necessary to protect their rights." This is untrue. It is acknowledged by all parties and the Master-in-Equity that the Appellants submitted to the Court a statement of their desire to purchase the Respondent's interest in the subject property they jointly own. This letter was sent to exercise their right of first refusal. This statement was timely filed, at least 10 days prior to the trial date, as required in S.C. Code §15-61-25 (a).

At trial, the judge ordered both parties to take 30 days to agree to a purchase price for the Respondent's interest. Nothing else was to be considered. During that time period, the

Appellants wrote a letter to the Respondent, asking for a fair price for her interest in the property. The Respondent, indicating her willingness to sell, replied with a “non-negotiable” purchase price of \$72,000, which expressly included her interest in the land and her personal property, particularly her non-detitled mobile home.

In the Appellants’ reply letter to the Respondent, the Appellants reiterated that the judge ordered a price for the Respondent’s interest be determined, not a price for her mobile home. The Appellants are under no obligation to purchase the Respondent’s mobile home. Again the opportunity was extended for the Respondent to set a price for her interest. (Reply letter, Interest). No response was received. Thus, there was no other recourse but to let the Court make a decision on the value, based on applicable law.

S.C Code §15-61-25 (B) states that given a timely notification to the Court of the non-petitioning parties desire to purchase the petitioning party’s interest, if the parties cannot agree on the value of the interest to be sold, the Court shall approve and appoint competent appraisers to determine the value of the interest to be sold. Since the parties could not agree on a purchase price, this is what the Court should have done as the next step in the procedure. But instead of appointing an appraiser to determine the value of the subject interest, the Judge ordered a partition in kind. This action does not fit the procedure set forth in the applicable statute.

The Appellants were not granted another opportunity to address the Judge prior to the final order, as there was no follow-up hearing. The judge e-filed an order and ended the case. The judge’s order states that the decision to partition in kind was made pursuant to the survey the Respondent submitted. A survey is not a statute; rulings should be based on applicable law. The applicable law, as stated by the master-in-equity, is SC Code §15-61-25. This statute does not allow a partition in kind simply because the parties cannot agree to a purchase price of the

interest to be sold. The Judge acknowledged the applicable law prior to trial, but then did not follow the prescribed law. There is no legal basis for dismissing the Appellants' right to first refusal and ordering a partition in kind instead.

2. WAS THE TRIAL COURT REQUIRED TO ORDER AN APPRAISAL PRIOR TO PARTITION?

The Respondent argues that the Appellants "did not try to get an appraiser appointed or find any value for the portion of the property they wanted to purchase." However, negotiation attempts must precede a court-appointed appraisal. S.C. Code §15-61-25(B), the applicable law in this case, states "... in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers, as the court shall approve, appointed for that purpose by the court." There is a clear procedure to be followed. First, the non-petitioning tenants notify the Court of their desire to purchase the petitioning tenant's interest in the property. Then, if no agreement can be made as to the purchase price of the interest, it is the Court's duty to appoint an appraiser to determine the value. Appointment of a non-interested appraiser by the Court would promote a fair determination of the value.

The Respondent's counsel was to inform the Judge if an agreement was not made concerning the purchase price of the Respondent's interest. (Tr, 40-41). The Appellants were not privy to the communications sent to the Judge by the Respondent concerning our inability to reach an agreement within the 30 days allotted. The Respondent argues the Appellants "never formally asked for any formal appointment of appraisers," but there was no other opportunity for the Appellants to address the Judge again as there was no follow-up hearing. The Appellants'

understanding was that there would be a hearing on November 12, as the Judge's words at trial were, "So the end is, November 12 that I will make a ruling on the petitioner's request for partition." (Tr, 39) "Then I will see you soon." (Tr, 45). That did not happen, as the Judge e-filed an order without another hearing.

3. DID THE COURT ERR IN APPORTIONING COSTS AND ATTORNEY'S FEES TO ALL PARTIES, INCLUDING THE APPELLANTS?

At trial, Appellant Cynthia Jones presented copies of a text message dated Sept. 23, 2019 in which the Respondent said "I have had the property surveyed for the one-third I own in preparation to sell, which includes into part of the big garden." She made it clear that it was her intent to sell "the one-third I own," even having the property surveyed to portray how she wanted the land divided up so that she could sell her portion. The Respondent's intent to sell is also reflected in the \$72,000 price she quoted the Appellants for her interest and her non-detitled mobile home during the negotiation process.

After the survey was recorded, the Respondent secured Counsel to send a letter to the Appellants asking them to sign new deeds to reflect a physical division of the property into three parts. The Appellants replied they desired the property and deed to remain as purchased.

When the Respondent filed a complaint in January 2020, it included instructions that required the Appellants to respond in 30 days or else the Respondent would ask the Court for the remedy prescribed in her complaint. Again the Appellants timely replied that they did not agree to physically divide the land, and that they wanted to keep their interests in the property. After all, that is what they paid \$16,000 for. A partition in kind would be inequitable to them because each appellant couple would lose legal access and rights to two-thirds of the property and the

storage building they now own.

Later, the Respondent filed a petition for partition with the Court. That was her choice. There were other legal options that she and her Counsel could have pursued without going to Court. As a joint tenant, the Respondent could have legally given away or sold her interest to anyone she chose, including the Appellants, without court involvement. That would have effectively disbanded the joint tenancy with the Appellants. This would also have eliminated costly attorney fees and court costs.

The Judge reviewed the Respondent's complaint and ruled that the applicable law in this case orders a partition sale, with the first right of refusal, as dictated in S.C. Code §15-61-25. All non-petitioning owners must be given the opportunity to purchase the property before the court takes action. The Appellants informed the Court of their desire to purchase the Respondent's interest before the trial. At this point, seeing that the cited law did not provide for a partition in kind or a reformation of deed, the Respondent could have chosen to just sell her interest and avoid an unnecessary trial and unnecessary costs. The Respondent nor her counsel ever objected to the validity of the applicable law.

The Respondent is responsible for her own attorney's fees. The Appellants did not benefit in any way from the Respondent's attorney and should not be penalized for exercising the rights given them by law to protect their legal interests. The Appellants have not done anything wrong nor caused the Respondent to have Attorney fees. The Appellants were summoned to come to court; they did not file a petition. These actions were all done by the Respondent. At any point, before the Appellants filed their answer to the amended complaint, this matter could have been settled out of court. Therefore, the costs of these legal proceedings belong solely to the Respondent. There was no common benefit received from the Respondent's attorney.

At the end of this trial, the Judge's ruling effectively causes the Appellants to lose their purchased interests in their land, be denied their right to first refusal, accept a much smaller tract of land without compensation for their \$16,000 consideration in the entire property, and for this privilege, they must also pay the Respondent's attorney. How can it be fair for the Appellants to pay attorney fees in a case where the judge misapplied the law and thereby ruled in their disfavor?

Further, in his final order, the judge concluded attorney fees and costs in this action were pursuant to SC Code §16-51-110 and granted the Respondent's request for attorney fees and costs. This fictitious code does not exist anywhere in the SC Code of Laws; therefore, it cannot serve as a legal basis for the Judge's decision. In the Respondent's brief, the Respondent argues the Judge was correct in assessing attorney's fees against the Appellants in this case pursuant to S.C. Code § 61-11-110. This code, also, is not found anywhere in the SC Code of Laws. Accordingly, neither the Judge nor the Respondent have presented any valid statute that substantiates the Appellants having to pay the Respondent's attorney fees or costs.

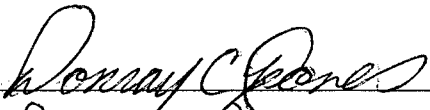
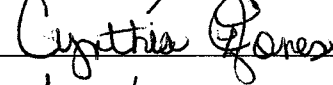
CONCLUSION

For the reasons stated, the Trial Court's entire order should be reversed and remanded with instructions for a court-ordered appraisal to determine the value of the Respondent's interest, so that the appellants can exercise their right to first refusal, and not to award the Respondent any attorney fees or costs for this case or the costs associated with this appeal.

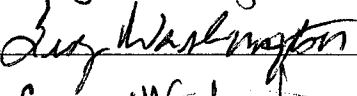
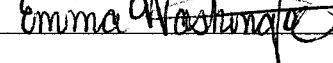
Respectfully submitted,

April 25, 2021

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SC Court of Appeals

Appellate Case No. 2021-000017

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Gordon G. Cooper, Circuit Court Judge

Case No. 2020-CP-11-00040

Yvonne J. Robinson

Respondent,

v.

Donray Curtis Jones, Cynthia
Denise Jones, Emma Kelly
Washington, and Troy Eliazer
Washington

Appellants.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellants and the Designation of Matter to be included in the record on appeal on Yvonne Robinson by depositing a copy of it in the United States mail, postage prepaid, on April 26, 2021, addressed to her attorney of record, Scott F. Talley, 134 Oakland Avenue, Spartanburg, SC 29302.

April 26, 2021

p.p. 

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SC Court of Appeals

April 26, 2021

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Yvonne J. Robinson, Respondent, v. Donray Curtis Jones, Cynthia
Denise Jones, Emma Kelly Washington, and Troy Eliazer Washington,
Appellants; Appellate Case No. 2021-000017

Dear Ms. Kitchings:

Enclosed for filing is an original and one (1) copy of the Initial Reply
Brief of the Appellants, Designation of Matter to be included in the Record on
Appeal, and proof of service of the above-referenced.

Sincerely,

p.p.



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