THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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.

FINAL BRIEF OF APPELLANTS

Donray & Cynthia Jones
125 Hudnut Drive
Pacolet, SC 29372

Troy & Emma Washington
118 Hudnut Drive
Pacolet, SC 29372

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY DISMISSING THE APPELLANTS' RIGHT TO FIRST REFUSAL, TREATING IT AS ONLY AN OPTION?

2. DID THE TRIAL COURT ERR BY NOT ORDERING AN APPRAISAL, PRIOR TO PARTITION, TO DETERMINE THE VALUE OF THE INTEREST TO BE SOLD?

3. DID THE TRIAL COURT ERR IN ORDERING A PARTITION IN KIND?

4. DID THE TRIAL COURT ERR IN AWARDING ATTORNEY'S FEES TO THE RESPONDENT?

STATEMENT OF THE CASE

On January 16, 2020, Yvonne Robinson (Respondent) filed a complaint in which she sought a partition in kind of a 3.84 acre tract of land that she owns jointly with Donray Jones, Cynthia Jones, Emma Washington, and Troy Washington (Appellants). Ms. Robinson requested the subject property to be partitioned pursuant to a survey she had drawn up two months earlier, on November 7, 2019. She also requested that the Court set aside the Warranty Deed which records that she sold a two-third interest in the entire property to the appellants. On February 2, the appellants mailed a written answer to Ms. Robinson's attorney, expressing that they did not agree to physically divide the land. This matter was referred to the master-in-equity, Honorable Gordon G. Cooper. A partition action was filed by the Court on February 24, 2020, subject to the provisions of South Carolina Code §15-61-25. The appellants received notice that a hearing would be held on June 9, 2020. On May 29, 2020, the appellants filed a notice with the Court of their interest to purchase the respondent's one-third interest in the subject property. The hearing was subsequently postponed until October 13, 2020 due to the pandemic.

At the hearing, the judge ordered that the parties take 30 days to try to work out the matter among themselves as to the respondent's one-third interest in the land. If the parties could not come to a resolution, the Court would have to make a decision based on the applicable law. The parties were unable to agree on a purchase price of the interest within the 30 days. There was no final hearing; the Court simply e-filed a judgment on December 4, 2020. The court ordered that the land be partitioned in kind. The Court also ordered the appellants to pay a collective two-thirds of the respondent's attorney fees. On December 30, 2020 the appellants timely served the Notice of Appeal on the respondent's attorney and filed it with the trial court.

FACTS

This case is about a 3.84 acre tract of land located in Cherokee County, SC. (R. 20, L.19). Ms. Robinson (Respondent), along with Donray Jones, Cynthia Jones, Emma Washington, and Troy Washington (Appellants) own this property together. (R.52-53). They all wanted land out in the country. (R.29, L.3) This property had three septic tanks, a well, a large storage/shop building, and plenty of land for gardening. They agreed to purchase it together. (R.30, L.3 and R.33, L 4-5).

Since they were purchasing the land together, each party was responsible for one-third of the $24,000 cost. (R.26, L.25 and R.27, L.1). The Joneses and the Washingtons needed time to secure their portion of the purchase price, which was $8000 each. (R. 28, L. 9-13 and R. 29, L.8-10). In September 2014, Ms. Robinson paid the full purchase price of $24,000 for the land upfront, with the agreement that the Joneses and the Washingtons would pay back $16,000, their share of the purchase price. (R. 29, L. 8-10 and R. 30, L.4-5) The Joneses and the Washingtons began to make installment payments until the debt was paid. (R. 29, L. 9-10)

Because there were three septic tanks already on the property, each party could move a mobile home onto the land and live on it if they chose. (R. 24, L. 11-13) The Washingtons were the first to live on the land, moving a mobile home onto the property in December 2014. The Joneses placed a mobile home on the land and started living there in September 2015. Ms. Robinson also placed a mobile home on the land but did not permanently move into it until 2018. (R. 21, L. 16-17; R. 23, L. 21-24; R.24, L. 5-6) The mobile homes were arranged to allow everyone access to a tank. This arrangement of the mobile homes did not physically divide the land into three parts. None of these mobile homes are de-titled. (R. 40, L.12-13; R. 44, L.16-17).

In the spring of 2016, the appellants paid off their balance to Ms. Robinson. Ms.

Robinson, Mr. Jones, and Mrs. Washington all went to Hyde Law Firm on April 21, 2016 to have a new property deed drawn up to show all of the joint owners. (R. 22, Ln. 2-4; R. 33, L.11-13; R.52-53)

Before Ms. Robinson signed the new deed, much discussion was held with the lawyer to make sure everyone understood and agreed to a joint tenancy. (R. 31, L. 21-25; R.32, L. 6-11; R.33, L. 20-24; R. 34, L. 1-23). The deed would not split the land up into thirds or give each party a separate parcel. It gave each party a one-third interest in the land. Ms. Robinson signed the deed acknowledging that, in consideration of $16,000, she had sold an undivided one-third interest to the Washingtons and an undivided one-third interest to the Joneses in the entire 3.84 acres. (R.52-53) The wording of the warranty deed conclusively creates a joint tenancy. S.C. Code § 27-7-40. The Washingtons and the Joneses are listed as joint tenants with the Rights of Survivorship and not as Tenants in Common.

It is of significance that the deed Ms. Robinson signed describes the parcel of land as "**all** that certain piece, parcel or lot of land…known as 3.84 acres… as shown on the plat prepared… 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". (R.52-53) This survey is the reference that was used to provide a more particular description of the real property. The deed does not purport to partition the land into separate parcels. It reflects that the parties would have equal ownership of the 3.84 acre parcel.

From the time the land was purchased in 2014, the tenants have shared in the expenses of preparing and maintaining it. There has always been one property bill for the parcel. When the property bill comes, Ms. Robinson, the Washingtons, and the Joneses each contribute one-third of the payment. (R.25, L.11-22; R.35, L. 5-7). This was the arrangement even before the

Washingtons and Joneses were added to the deed.

The property itself has been shared since 2014. The storage/shop building in the middle of the property is shared by all tenants. (R.38, L.7-8).The land is shared and maintained by all tenants, including a huge garden area that they cleared, fertilized, planted, and fenced together. (R.38, L.4-6).There is also a well centered on the property. (R. 38, L.18-19). All of the joint owners have access and rights to all parts of the property. (R.38, L.15-17).

On September 23, 2019, Ms. Robinson sent a text message to the apellants stating "I have had the property surveyed for the one-third I own in preparation to sell, which includes into part of the big garden." (R.42, Ln. 17-24) This is how the appellants first learned that Ms. Robinson desired to split up the land to sell it. Because the land is owned jointly, the only way she could do this is if the land was physically partitioned and the desired section awarded to her. It is significant to note that the portion that Ms. Robinson is requesting for herself (R.55, parcel B) includes the storage/shop building, the shared garden, and the well. (R. 38, Ln. 4-6,7-8, 18-19)

Ms. Robinson had a survey performed without the appellants' knowledge, in which the surveyors drew a plat to show the property as three different parcels. (R.35, L.19-25; R.36, L.1-6). This survey was recorded on November 7, 2019 with the Cherokee County Register of Deeds. This survey, however, does not change how the land is owned, per the registered deed. It simply shows how Ms. Robinson wishes it to be divided.(R.46, L.24-25; R.47, L.1-7; R.55).

On January 16, 2020, Ms. Robinson filed a complaint in which she sought a partition in kind of the land. She also requested that the Court set aside the Warranty Deed that records that she sold a two-third interest in the property to the appellants. She argued that the deed was "erroneous" and did not reflect her understanding of what she was signing. (R.17, #5, #7) Ms. Robinson prayed the Court that the "Plaintiff (herself) be ordered to sign new deeds in

accordance with the survey" from November 2019. (R.18, #3). On February 2, 2020 the appellants mailed a letter to Ms. Robinson's attorney, expressing that they didn't agree to physically divide the land and wanted to keep their purchased interests in the property. (R.50).

This matter was referred to the master-in-equity, Honorable Gordon G. Cooper. Accordingly, a partition action order was filed by the Court on February 24, 2020, subject to the provisions of South Carolina Code §15-61-25. (R. 1-4). This code details the procedure that must be followed for all petitions for partition filed after May 25, 2006.

The appellants received notice that a hearing would be held on June 9, 2020. On May 29, 2020, the appellants timely filed a notice with the Court of their interest to purchase the respondent's one-third interest in the subject property. (R. 19).The hearing was subsequently postponed until October 13, 2020 due to COVID social distancing requirements.

At the hearing on October 13, the judge ordered that the parties take 30 days to try to work out the matter among themselves as to the respondent's one-third interest in the land. (R. 5-6). If the parties could not come to a resolution, the Court would have to make a decision based on the applicable law. (R.10, 1st par.). The parties were unable to agree on a purchase price of the interest within the 30 days. (R.10, 1st par.) There was no follow-up hearing; the Court's judgment was e-filed on December 4, 2020. (R. 7-14) The court ordered that the land be partitioned in kind pursuant to the recent survey. The Court also ordered the appellants to pay a collective two-thirds of the respondent's attorney fees and costs. (R. 11-12, #1-4)). On December 30, 2020 the appellants timely served the Notice of Appeal on the respondent's attorney and filed it with the trial court.

ARGUMENTS

I. THE TRIAL COURT ERRED BY DISMISSING THE APPELLANTS' RIGHT TO FIRST REFUSAL, TREATING IT AS ONLY AN OPTION.

Prior to the hearing, the Court filed an order stating that this partition action was subject to the provisions of S.C. Code § 15-61-25. (R.1,2)) This code reads: "Upon the filing of a partition for petition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case. The nonpetitioning join tenants or tenants in common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not." S.C. Code §15-61-25 (A). The code clearly provides that, prior to partition, a joint tenant has first right of refusal to purchase the property.

After receiving the Court's order of partition, the appellants filed a proper and timely notice to the court of their desire to purchase the respondent's interest in the land. (R.19). During testimony, the appellants reiterated to the Judge that they had complied with the requirement to inform the Court of their interest in purchasing Ms. Robinson's interest.(R.39, L.25-R.40, L.1-2) . The Judge acknowledged that he had seen the filing. (R.42, L.24-25; R.43, L.1-2). Later, when the judge was reminded again of the wording of the deed and that the appellants had already given notice of their desire to purchase Ms. Robinson's interest, the Judge's reply was "Well, I want y'all to just think about that and don't go on the record with that and get me involved in that part. But when a partition action is filed, something has got to happen at the end of it." (R.47, L.10-20). The appellants agree that "something has got to happen at the end of it." However, there is a process that must be followed by law. When listing what his

options were for settling this case, the Judge said: "This is called an action for a partition of property. In a case such as this, where you got everybody owning a piece, one of the co-owners, no matter what -- a lot of times it happens in families and whatever, business partner -- somebody doesn't want to be in the same group anymore. And if they can't agree as to how it's going to be done, any one of the owners can file a partition action. And that's what this is, to either have, one, the property sold on the open market. I don't think y'all want to do that...Or I can divide it up. And have it divided up in kind, which everybody gets a piece of the pie." (R.36, L.19-25-R.37, L.1-7).

The judge treated the appellants' right to first refusal as only an option. Judge Cooper: "The other option is prior to all of this is if Ms. Robinson wants to sell, that negotiations be entered into for the purchase of her interest in the property. That's an option."(R. 41, L24-25- R.42, L.1-2). The applicable code does not define the first "right" of refusal as optional; it is a legal right. In addition, it is not dependent upon if the petitioning tenant "wants" to sell her interest to the nonpetitioning tenants. This right becomes enforceable "upon the filing of a petition for partition of real property owned by joint tenants or tenants in common." S.C. Code § 15-61-25, (A).

Without dispute, jointly-owned property is subject to partition. However, the appellants should have been allowed to exercise their legal right of first refusal to purchase the property, prior to partition. In addition, the law states that if the nonpetitioning tenants fail to timely pay the determined purchase price of the interest, the court shall proceed according to its traditional practices in partition sales. S.C. Code § 15-61-25, (E). The law does not provide for a partition in kind in this code, only a partition sale. Further, no partition sale can take place if the nonpetitioning tenants exercise the first right of refusal. It is exercised "prior" to partition. The

trial court erred by dismissing the appellants' right to first refusal, prior to partition.

II. THE TRIAL COURT ERRED BY NOT ORDERING AN APPRAISAL, PRIOR TO PARTITION, TO DETERMINE THE VALUE OF THE INTEREST TO BE SOLD.

The judge's order at the end of the hearing was that the parties take 30 days to try to work out the matter among themselves as to the respondent's one-third interest in the land. Ms. Washington asked the judge to clarify what he meant by that.

MS. WASHINGTON: Just to make sure I understand what we are doing, so between today and November 12, what you are saying is that we come together and agree on a purchase price of her interest?

JUDGE COOPER: Well, basically that's it. (R.45, L.4-8)

When questioned as to how to arrive at a purchase price, the judge left it at the parties' discretion.

MS. WASHINGTON: The figure that we come up with, is it just something that we agree to, or is it based --

JUDGE COOPER: I don't care what you sell it for. If y'all can negotiate something, a price, and everybody is agreeable to it, that's great.

MS. WASHINGTON: Okay.

JUDGE COOPER: It has nothing to do with anything. So I am not setting any guidelines. It's just business folks, arriving at a figure as to what works. Okay?

MS. WASHINGTON: Yes. (R. 48, L.14-25)

The judge was extending an opportunity to all the joint owners to decide on a price of

Ms. Robinson's interest without there being a ruling from the Court. That was the only thing to be considered for the next 30 days.

JUDGE COOPER: Mr. Talley, what I am going to do in this case is I am going to step back -- not step back -- but put this matter in kind of a nonruling status for 30 days. And that's something I just made up, but I want to make sure that Ms. Robinson and the parties cannot agree as to a purchase price from Ms. Robinson's interest if she wants to sell. So I am going to leave it for 30 days, where that can be the only matter to be considered for 30 days. (R.43, L.14-22).

The Washingtons and the Joneses had no issue with the direction the Judge was taking, since the law says joint tenants have first right of refusal once a petition for partition is filed. They agreed to working out a fair price with Ms. Robinson.

On October 25 the appellants sent a letter to Ms. Robinson, seeking a fair price for her interest. (R.56) However, Ms. Robinson did not want to negotiate a price for her interest in the land only, but for her interest along with her mobile home. (R.57). The appellants were not interested in purchasing her mobile home, which has nothing to do with the interest in the land. (R.58)

When the parties could not agree to a purchase price of the respondent's interest, the court failed to follow the applicable law, which requires a court-ordered appraisal of the land to determine the value of the interest to be sold. SC Code §15-61-25 (B). This is the remedy the law provides. Upon completion of the appraisal, the appellants should have been allowed to purchase the interest at its appraised value. South Carolina Code §15-61-25, (D). Upon the payment and the approval of it by the Court, the Court should have executed and delivered the proper instruments transferring title to the appellants. South Carolina Code §15-61-25 (B).

The judge did not follow the applicable law, but instead chose to order a partition in kind based on Ms. Robinson's survey. (R. 11, #1). There was no law stated that allows for that.

III. THE TRIAL COURT ERRED IN ORDERING A PARTITION IN KIND.

The respondent sought a partition in kind, a remedy which is not applicable in this case. By definition, a partition in kind is "the division of heirs' property into physically distinct and separately titled parcels." South Carolina Code §15-61-320 (9). But, the subject property in this case is not heirs' property. The appellants were each deeded a one-third interest in the property in total consideration of $16,000 paid to the respondent. (R.52-53)

The judge erred when he ordered a partition in kind. By ordering a physical partition, the appellants lose their purchased interest in the storage/shop building and the well. The respondent becomes the sole owner of both. (R.55) This would add value to her parcel only, which is an unequitable distribution. In addition, the respondent becomes the sole owner of the large garden that all the owners share. The expenses necessary to fertilize, till, plant, and fence this space have been shared by everyone.

Since each tenant purchased a 1/3 interest in the entire property, a partition in kind would effectively take away each tenant's right and access to 2/3 of the property. (R.55) This ruling is deleterious to the appellants' interest in the land and goes against the applicable law which gives the appellants first right of refusal, prior to a partition.

IV. THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES AND COURT COSTS TO THE RESPONDENT.

Ms. Robinson could have legally sold or given away her one-third interest in the property without getting the courts involved. This would have effectually ended the joint tenancy. The

reason this action was commenced is because the respondent desired, rather, a partition in kind, a remedy the law does not allow her to do independently. After the respondent filed her petition for partition, the Judge sent an order dictating the applicable law for this case, which gives the joint owners first right of refusal prior to partition. The appellants gave notice of their intent to purchase the subject interest more than four months prior to the October 13, 2020 trial date. Ms. Robinson had ample time to work out a resolution with the appellants without a trial or court costs. However, since she did not seek the remedy the law offered, the trial took place and she was represented and invoiced by her chosen Counsel. This is through no fault of the appellants. Thus, no attorney's fees should have been awarded.

Further, the judge did not give any valid legal reason for awarding the attorney's fees and costs. In his final order, the judge concluded attorney fees and costs in this action were pursuant to SC Code §16-51-110. (R.11, #9). Based on this "finding of fact", the Judge 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 a decision. For these reasons, the judge erred in ordering a reward for attorney's fees and 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.

Respectfully submitted,

June 16, 2021

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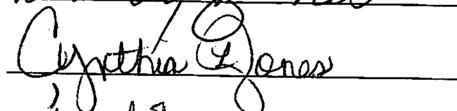

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