

RECEIVED

Jul 23 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Circuit Court

---

APPEAL FROM ORANGEBURG COUNTY PROBATE COURT

Judge Pandora Jones-Glover, Orangeburg County

---

Case No. 2016-CP-38-00460  
Probate Court No. 2015-ES-38-00105

---

Lyle Wilson Fairey, Jr.

Appellant,

v.

Joy A. Gillespie, as Personal Representative  
of the Estate of Martha Ann Fairey Gillespie,

Respondent.

---

DENIED

---

Russell A. Blanchard, IV, of Williams & Williams  
of Orangeburg, South Carolina, for Appellant.

Robert F. McCurry, Jr., of Horger, Barnwell & Reid, LLP  
of Orangeburg, South Carolina, for Respondent.

---

This is an appeal from the decision of the Probate Judge of Orangeburg County dated February 26, 2016. The Appellant filed a Motion to Reconsider which was also heard by the Probate Judge of Orangeburg County and denied on April 11, 2016. This Appeal followed. It was heard by me on July 31, 2019.

At issue is the ownership of a 9.7 acre tract of land on Till Road in Orangeburg County. The Appellant claims it is his, while the Respondent claims it was owned by Martha Ann Fairey Gillespie, decedent, at the time of her death. I agree that the property was owned in fee simple by Martha Ann Fairey Gillespie at the time of her death and became part of her estate. The appeal of Appellant is denied.

---

## FACTS OF THE CASE

---

Catharine Inabinet Fairey died testate on July 21, 2003 and her estate was probated in the Orangeburg County Probate Court in File No. 2003-ES-38-00416. At the time she created her Will, she owned four tracts of land which had been surveyed and platted. Two tracts were devised in fee simple to her son, the Appellant, and two tracts were to be devised to her daughter, Martha Ann Fairey Gillespie, with certain conditions. One of those two tracts was later conveyed to Martha during the life of Catharine and the 9.7 acre tract remained in Catharine's name until her death.

Item Third of the Last Will and Testament of Catharine Inabinet Fairey is that item that speaks to the 9.7 acre tract, and it states as follows:

THIRD: I give and devise unto my daughter, Martha Ann Fairey Gillespie, subject to the following conditions, for and during the term of her natural life and after her death to my grandson, Mark Allen Gillespie, if he shall survive her, the real estate described below. If my said daughter shall die and at the time of her death be married to Henry L. Gillespie and not survived by Mark Allen Gillespie, I give and devise said real estate unto my son, Lyle Wilson Fairey, Jr. If during my daughter's lifetime she shall become the widow of Henry L. Gillespie, then I direct that this gift of real estate to my said daughter shall be in fee simple. ...

Upon the death of Martha Ann Fairey Gillespie, probated in File No. 2015-ES-38-00105, Appellant claimed ownership of the subject tract.

---

## ANALYSIS

---

This Third Item of Catharine's Last Will and Testament has several conditions, only one of which is applicable in this case. The first condition in the first sentence indicates that if Martha's son Mark survives Martha, then Mark is the remainderman. This condition did not occur because Mark predeceased Martha.

The next condition is in the second sentence. It states that at the time of Martha's death, if she is married to Henry and is not survived by Mark, then the remainder interest goes to Appellant. This condition also did not occur because Henry Gillespie, Martha's husband, died prior to Martha. This condition also fails.

The third condition in the third sentence does apply and controls this case. It states that if during Martha's lifetime she becomes the widow of Henry L. Gillespie, then the real estate devise to Martha becomes fee simple. Because Henry died during Martha's life, she became his widow, this condition did occur and it is determinative – the 9.7 acre tract of the real estate from Catharine became owned by Martha in fee simple.

Appellant argues that, based upon language in deed of distribution from Catharine's estate, the Appellant should have become the remainderman upon the death of Martha. In the instant case, the language in the deed of distribution is clearly different from the language in the Last Will and Testament of Catharine Inabinet Fairey, and some language from the Will is missing. Therefore, because title to real estate is devised pursuant to the language in the Will, there can be no reliance upon the language in a deed of distribution unless its language mirrors that of the language in the Will. Clearly here, the Deed of Distribution is deficient and improper, and does not control the title to the real estate. Title is controlled by the language in the Will.

Appellant also argues that Martha, upon the death of her husband Henry, had some duty to file documentation to confirm that her devise became fee simple. Martha however, had no duty to perform any act to further establish the title granted to her in the Last Will and Testament.

It is also noteworthy that the subject Deed of Distribution of the estate of Catharine was prepared under the direction of the Appellant, who was the Personal Representative of Catharine's estate. Any errors made in the Deed of Distribution while under the direction of the Appellant cannot inure to the benefit of the Appellant, and he is estopped from any claim that he should benefit from said errors.

---

CONCLUSION

---

For the foregoing reasons, I hold that the Order of the Probate Court, both initially and in the Probate Court's denial of Appellant's Motion for Reconsideration was proper. Accordingly, the appeal of the Appellant is DENIED.

AND IT IS SO ORDERED.

---

James B. Jackson, Jr.  
Special Circuit Court Judge  
of the First Judicial Circuit



Orangeburg Common Pleas

**Case Caption:** Lyle Wilson Fairey Jr VS Martha A. F Gillespie

**Case Number:** 2016CP3800460

**Type:** Order/Other

So Ordered

James B. Jackson, Jr. 3077 Master in Equity