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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

C. Stephen Bennett, Special Referee

Appellate Case No.: 2020-001700

Sarah Bostick Howell, ...Appellant,

v.

The Heirs and Distributees of Ollie Bostick; The Heirs and Distributees of Sarah Bostick; The Heirs and Distributees of Janie Bostick; The Heirs and Distributees of Joe Bostick; The Heirs and Distributees of Margie B. Graves; The Heirs and Distributees of Johnny Bostick; The Heirs and Distributees of Freddie Bostick; The Heirs and Distributees of Ollie Bostick, Jr.; The Heirs and Distributees of Mamie B. Lucas; The Heirs and Distributees of Lawrence Bostick; Bronco Bostick; Gladys B. Williams; Lewis Bostick; Larry Bostick; Roamell Bostick; Lawrence Bostick Jr.; Rodger Bostick; Terell Bostick; and Three T Farm, LLC; Flatp SSF Timber, LLC; and Carl Polite, as adjoining Landowners; and all other heirs at law, devisees, or persons unknown, claiming by, under, or through any of the above-named persons, John Doe and Mary Roe, being fictitious names designating a class of persons, or a legal entity, infants, incompetents, persons in the Armed Forces of the United States of America, in any, known or unknown, who may be an heir, devisee, legatee, issue, alienee, administrator, executor, creditor, successor or assign having any right, title, interest, estate described in the Complaint herein, ...Defendants,

And

Of Whom Bronco Bostick is the ....Respondent.

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STATEMENT OF ISSUES ON APPEAL

I. **TO THE EXTENT THAT APPELLANT'S FIRST ISSUE STATEMENT ENCOMPASSES A REQUEST FOR PARTITION, HAS APPELLANT PROPERLY STATED AND PRESERVED THE ISSUE OF WHETHER THE REMAINING FORTY-ACRE BALANCE OF THE SUBJECT PROPERTY SHOULD HAVE BEEN PARTITIONED OR SOLD?**

II. **DID THE SPECIAL REFEREE ERR IN NOT AWARDING THE 40 ACRES TO THE PLAINTIFF AND HER BROTHER UNDER THE AFTER ACQUIRED PROPERTY DOCTRINE?**

III. **DID THE SPECIAL REFEREE ERR IN NOT AWARDING ATTORNEY'S FEES AND COSTS?**

COUNTER STATEMENT OF THE CASE

On May 14, 2014, the Appellant, Sarah Bostick Howell, filed this action in the Court of Common Pleas to quiet title to a fifty-acre family property located in Jasper County. (R. pp. 20-26). In her Complaint, Sarah alleged that she and one of her brothers, Bronco Bostick, had each been conveyed title to and an undivided interest in the subject property by a September 22, 1982 deed,[1] and that in contemplation of the future partial partition of the property, she had deeded her five-acre interest in the land to her siblings and a nephew (R. p. 24 ¶ 21; R. p. 40; R. p. 48). Sarah further alleged that this action was taken in exchange for the expected execution of a deed from her siblings to herself of a specific divided five-acre parcel that had been delineated in a plat prepared at Howell's request. (R. p. 24 ¶ 22; R. p. 54). According to Sarah's Complaint, the subsequent deed was never executed. (*Id.*). The Complaint requested that the Circuit Court issue an Order confirming title to the specific five-acre parcel depicted in the plat in Sarah's name and a deed transferring the five-acre parcel in fee simple to Sarah. (R. p. 26 ¶ d.).

The Complaint also alleges that Sarah and Bronco's late father, Lawrence Bostick, along with themselves and their siblings, had exercised complete control over the entire fifty-acre property for over thirty years, to the exclusion of other heirs of Lawrence's father, Ollie Bostick.[2] (R. p. 24 ¶ 19). In consideration of this allegation, the Complaint also requested that the Circuit

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[1] The deed, which has been designated for inclusion in the record, grants Sarah Bostick Howell and Bronco Bostick ***a one-fifth undivided interest in the fifty-acre property***. Howell appears to acknowledge this in her Initial Brief, which describes that "she and her brother Bronco each had a plat made of 5 acres ***being half of the premises initially deeded to them by their father***." (Appellant's Initial Br. at 1) (emphasis added). Although the premise that both Sarah and Bronco had outright title to specific 5 acre parcels of the property is flawed, the statement recognizes that both siblings were only conveyed an undivided interest in 5 acres of the subject property by the 1982 deed.

[2] Ollie Bostick appears to have been the original owner of the subject property, which then eventually passed to his descendants through gift, devise, or inheritance. (R. p. 40) ("This being the same property conveyed by Jason C. Richardson to my father, Ollie Bostick).

Court (1) establish the heirs and their respective interests in the subject property and (2) confirm that Sarah, Bronco, ***and their siblings*** were the rightful owners in fee simple of the entirety of the remaining forty-acre balance of the subject property through adverse possession. (R. pp. 25-26 ¶¶ a.-c.). Finally, the Complaint asked the Circuit Court to either partition the property in kind or, in the alternative, authorize a sale of the property with proceeds to be divided amongst Sarah, Bronco, and their siblings, with costs and attorney's fees to be apportioned amongst the parties benefiting from the sale. (R. p. 26 ¶¶ c.-d.).

Only three of the Defendants, Bronco, Rodgers Bostick, and Larry Bostick, answered Howell's Complaint. (R. pp. 27-33). On May 19, 2015, the Circuit Court appointed Judge C. Stephen Bennett as Special Referee over the action for all purposes. On November 1, 2017, the Special Referee conducted a hearing that was attended by Sarah, Bronco, and their attorneys. (R. p. 2). Rodgers and Larry also appeared pro se, and several other members of the Bostick family attended the hearing as well. (*Id.*). A transcript and exhibits from the hearing were never filed and have not been made part of the record or designated as matter to be included in the Record on Appeal.

On June 4, 2018, the Special Referee filed a Report and Order. The Special Referee made the following findings and conclusions of law that are pertinent to this appeal: (1) that a deed recorded in the Office of the Clerk of Court for Jasper County on September 22, 1982, transferred a one-fifth (ten-acre) undivided interest in the subject property to Sarah and Bronco in exchange for $1696.86, and did not transfer the entirety of the fifty-acre property to the two siblings; (2) that the heirs of Lawrence Bostick, namely Sarah, Bronco, and their siblings, were jointly entitled to undivided interests in the remaining forty acres of the subject property under a theory of adverse possession, against all other heirs who may have had an interest in the

property, (3) that the May 17, 2004 Deed from Sarah to her siblings was executed by Sarah without request from any of her siblings, and (4) that the five-acre parcel delineated in the plat created at Sarah's request was to be partially partitioned and granted to Sarah in fee simple, as she had expended money for her benefit in the action, including attorney's fees and costs.[3] (R. pp. 4-7). The Special Referee did not partition or order a sale of the remainder of the property, but did provide that if it was necessary to do so at a later date, that fees and costs would be borne equally by all of the parties. (R. p. 8).

On June 7, 2018, Sarah filed a Motion for Reconsideration. (R. pp. 36-37). The Motion contended that it was an abuse of discretion for the Special Referee not to award attorney's fees and costs to Sarah, and that he erred in finding that the 1982 deed did not convey an interest in the entire fifty-acres of the property under the after-acquired property doctrine. The Motion does not explain how it was an abuse of discretion for the Special Referee to refrain from awarding attorney's fees, nor does it explain how the after-acquired property doctrine would apply to Special Referee's decision. It is noteworthy that the Motion does not ask the Special Referee to reconsider his decision not to partition or authorize a sale of the remaining balance of the property, upon which Sarah's request for a reasonable attorney's fee was based.[4] It is also noteworthy that nowhere in Sarah's Complaint did she ask for relief in the form of a determination that the entirety of the fifty-acre property was conveyed to her and Bronco by the 1982 deed. Since the record is devoid of a transcript, there is also no evidence in the record that Sarah ever raised the after-acquired property doctrine as an argument prior to her Motion for

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[3] The Special Referee's June 4, 2018 Report and Order also makes extensive and uncontested findings as to the family tree of Ollie Bostick, the original owner of the subject property, including his lineal descendants who potentially had an ownership interest in the subject property.

[4] In her Complaint, Howell asks for a reasonable attorney's fee of ten percent of the gross sale proceeds of the subject property. (R. p. 26 ¶ d).

Reconsideration. This is tacitly acknowledged by Sarah in her Initial Brief, which states that she "***in her motion to reconsider*** asked the court to rule as that [sic] the deed from Lawrence Bostick conveyed the entire 50 acres to the Plaintiff and her brother Bronco Bostick under the After-Acquired Property Doctrine." (Appellant's Initial Br. at 1-2) (emphasis added).

On July 3, 2018, Bronco filed a memorandum in opposition to Sarah's Motion for Reconsideration. (R. pp. 38-39). On July 22, 2019, the Special Referee denied the motion. (R. p. 9). This was followed by a Supplemental and Final Order from the Special Referee on November 24, 2020, in which the Special Referee issued deeds to the parties in accordance with his prior Report and Order. (R. pp. 10-11). This appeal followed on December 11, 2020.

COUNTER STATEMENT OF THE FACTS

This appeal arises from a disagreement amongst the Bostick family as to the ownership of a tract of land that had been occupied by the family since the days of the parties' paternal grandfather, Ollie Bostick.[5] The particular tract of land comprises roughly fifty-acres in rural Jasper County and is located on a lonely stretch of S.C. Highway 262 between Robertville and Pineland.[6] (R. p. 52). In 1952 Ollie passed away, after which title to the property seems to have passed undivided to his eight children in an apparent tenancy in common. (R. p. 3). Thereafter, three of Ollie's children, Joe, Johnny, and Ollie Jr., passed away intestate with no spouse or

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[5] The transcript and exhibits from the November 14, 2017 hearing have not been filed or preserved in the court below. Thus, Respondent relies on the pleadings, motions, and orders filed in this action, including the findings and conclusions of the Special Referee, as well as plats and deeds recorded with the office of the Clerk of Court of Jasper County, to reconstruct a narrative of the events giving rise to this appeal. It is unavoidable that this narrative will contain certain contentions that are in dispute and/or are inferred from the filings in the underlying action.

[6] Robertville is notable for being the birthplace of Henry Martyn Robert, founder of Robert's Rules of Order.

children, leaving the remaining five children each the holders of an undivided one-fifth interest in the subject property.[7] (R. pp. 3-4).

The timeframe is unclear from the record, but sometime after Ollie's passing, one of his children, Lawrence Bostick, and his descendants began exercising exclusive dominion, control, and possession over the entirety of the subject property. (R. pp. 4-5). By 1982, Lawrence had exercised (perhaps unknowingly) such exclusive dominion and control over the subject property that he was the sole owner of the subject property, although this had not been judicially recognized. (R. p. 6). On September 22, 1982, Lawrence recorded a deed with the Clerk of Court for the Court of Common Pleas for Jasper County conveying his "one-fifth undivided interest" in the subject property, a total of ten acres, to Sarah and Bronco in exchange for $1,696.86. (R. p. 40). Lawrence passed in 1990, leaving as his sole heirs at law eight children: Bronco, Gladys Williams, Lewis, Larry, Roamell, Rodgers, Sarah, and Lawrence Jr. (R. p. 4).

On April 20, 2004, Bronco recorded a deed conveying title to his one-half undivided interest in his father's one-fifth undivided interest in the subject property to himself, his siblings (with the exception of Sarah), and a nephew. (R. pp. 44-47). Subsequently, on May 17, 2004, without request from her siblings Sarah recorded a deed conveying title to her one-half undivided interest in her father's one-fifth undivided interest to her siblings and the same nephew. (R. p. 5; R. pp. 48-51). The filings and record in this matter do not contain any evidence of the motive behind these deeds outside of Sarah's allegations in her Complaint and a perfunctory statement in the Special Referee's Report and Order that the May 17, 2004 Deed from Sarah to her siblings and nephew was performed without request from any other heir of Lawrence. (R. pp. 5, 24-25).

[7] Joe, Johnny, and Ollie Jr. passed away in 1963, 1965, and 1965, respectively.

On June 28, 2004, Sarah had a plat for a five-acre parcel of the subject property prepared. (R. p. 54). The Special Referee's Report and Order documents that this was likely done by Sarah in an attempt to save the parcel in her name only. (R. pp. 5-6). Sarah testified at the November 1, 2017 hearing that she and her daughter had mobile homes located on the parcel and that she had made improvements to a pond located on the parcel as well. (R. p. 5). Sarah has alleged in her Complaint that the May 17, 2004 deed and subsequent preparation of the plat was done in contemplation of her siblings and nephew conveying to her an exclusive interest in the five acres upon which the mobile homes and pond were located. This conveyance allegedly never occurred. (R. p. 24 ¶ 22).

ARGUMENTS

In her Initial Brief, Appellant proposes three issues on appeal. The first issue statement asks the Court whether the evidence taken as a whole establishes that she has proved her case as pled in the Complaint. The South Carolina Appellate Court Rules provide that each issue statement "shall be concise and direct as to each issue . . . ." Rule 208(b)(1)(B), SCACR. Broad general statements may be disregarded by the Court. *Id.*; *see Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (finding an issue on appeal not concise when no reference to statute or standard was listed), *abrogated on other grounds by Repko v. Cnty. of Georgetown*, 424 S.C. 494, 818 S.E.2d 743 (2018). "Every ground of appeal ought to be so distinctly stated that the reviewing court may at once see the point which it is called upon to decide without having to 'grope in the dark' to ascertain the precise point at issue." *Forest Dunes Assocs. v. Club Carib, Inc.*, 301 S.C. 87, 89, 390 S.E.2d 368, 370 (Ct. App. 1990) (citation omitted). Moreover, separate issues should be set forth and argued separately. *State v. Burroughs*, 328 S.C. 489, 496 n.3, 492 S.E.2d 408, 411 n.3 (Ct. App. 1997).

Appellant's first issue statement is precisely the type of broad, general statement that should be disregarded by the Court. In it, she asks the Court to nonspecifically review multiple issues and requests for relief encapsulated within her Complaint, including several issues she separately addresses in her second and third statements of the issues on appeal. However, since her first broad issue statement arguably encompasses the specific issue of whether a partition or sale of the forty-acre balance of the subject property should have been granted by the Special Referee, the point will be briefly addressed in addition to her second and third issue statements, although in doing so Respondent does not concede that the issue is suitable for review.

I. Appellant has not Properly Presented and Preserved the Issue of Whether the Remaining Forty-Acre Balance of the Subject Property Should have been Partitioned or Sold.

As an initial, threshold matter, this argument has not been preserved for review by Appellant. "Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal." Rule 208(b)(1)(B); *Jones*, 387 S.C. at 346, 692 S.E.2d at 903. All issues must be presented and argued in the initial briefs. *See McClurg v. Deaton*, 395 S.C. 85, 87 n.2, 716 S.E.2d 887, 888 n.2 (2011) ("It is axiomatic that an issue cannot be raised for the first time in a reply brief."). An issue must be raised ***by the appellant*** to be preserved for review. *Tupper v. Dorchester Cnty.*, 326 S.C. 318, 324 n.3, 487 S.E.2d 187, 190 n.3 (1997).

"More simply put, appellate courts in this state, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked." *Langley v. Boyter*, 284 S.C. 162, 181, 325 S.E.2d 550, 561 (Ct. App. 1984). No new arguments may be made in the final brief. Rule 211(b), SCACR. Vitally, an issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory manner without supporting authority. *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106 n.3, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993).

Nowhere in her entire first argument does Appellant cite any authority or evidence supporting that she had proven her case as pled with regard to any of the relief requested by her Complaint. Importantly, nowhere in her Initial Brief's first argument does Appellant contend that the Special Referee should have partitioned the forty-acre balance of the subject property.[8] *See Jinks v. Richland Cnty.*, 355 S.C. 341, 344 n.3, 585 S.E.2d 281, 283 n.3 (2003) (finding issue on appeal abandoned issue because the party failed to argue the issue in the body of the brief); *Langehans v. Smith*, 347 S.C. 348, 352, 554 S.E.2d 681, 683 (Ct. App. 2001) (noting the failure to argue an issue precludes appellate review). Appellant did not claim in her Motion for Reconsideration that the subject property should have been partitioned or sold. Instead, Appellant conclusively argues that it was error for the Special Referee not to recognize that she and Respondent were the sole owners of the forty-acre balance of the property under the after-acquired property doctrine. (Appellant's Initial Br. at 3).

Appellant does include a brief statement at the end of her Initial Brief contending that it was error for the Special Referee to ignore her request to sell the remainder of the subject property (but not the 5 acres Appellant claimed was hers in fee simple in her Complaint). However, her only argument as to why the Special Referee was in error is that "no one filed an answer that objected to her prayer for relief." (Appellant's Initial Br. at 5). This is patently false, as the Answer of Respondent asserts that "any matter not hereinafter specifically admitted, denied or qualified is denied and strict proof is demanded thereof." (R. p. 27). Respondent did not specifically address Appellant's prayer for relief, thus, it was denied.

Appellant makes no argument in her Initial Brief as to why a private or judicial sale would have been the most equitable result of her action to quiet title, and the party seeking a

[8] Arguably, the Special Referee did order a partial partition of the property in granting Appellant a clear, divided interest in 5 acres of the subject property containing a home and pond. (R. p. 7).

partition by sale carries the burden of proof. *Zimmerman v. Marsh*, 365 S.C. 383, 387, 618 S.E.2d 898, 900 (2005). Since Appellant has not cited any evidence or authority to support of her contention that it was error for the Special Referee not to authorize a sale of the property, and has only presented a short, conclusory, and invalid argument, the issue should be deemed abandoned on appeal.

In sum, Appellant cites to no evidence in the record or authority to support her arguments under her first stated issue. Therefore, the Court should decline to review her arguments under her first stated issue, including any potential implications they may have as to the partition and sale of the forty-acre balance, as they have been made in a broad, general, and conclusory fashion without specific arguments, proper evidentiary support, or citation to authority. Simply put, Appellant's first issue statement and argument, and any implications they may have, have not been properly presented to the Court or preserved for the Court's review.

II. The Special Referee did not Err in Declining to Award the Forty-Acre Balance Solely to Appellant and Respondent Under the After-Acquired Property Doctrine.

Appellant argues that the 1982 deed from Lawrence Bostick to Appellant and Respondent conveyed a one-half undivided interest in the entire fifty-acre property to each party. In support of this proposition, Appellant relies on the after-acquired property doctrine. Appellant's argument fails for two reasons: (1) Appellant's argument misapplies the after acquired property doctrine, and (2) under the plain language of the 1982 deed, it only conveyed a one-fifth undivided interest in the subject property to Appellant and Respondent. Additionally, the Court should decline to entertain Appellant's arguments under issue preservation rules.[9] *See Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 186, 512 S.E.2d 123, 129 (Ct. App.

[9] Appellant's first documented reference to the after-acquired property doctrine appears in her Motion for Reconsideration.

1999) ("[B]ecause the transcript of the proceedings below is omitted from the record, it appears the first time [the appellant] made this argument was in its Rule 59(e) motion for reconsideration. Accordingly, this issue is not properly preserved for our review.").

A. Standard of review.

"The construction of a clear and unambiguous deed is a question of law for the court." *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987). The interpretation of a deed is an equitable matter. *Penza v. Pendleton Station*, 404 S.C. 198, 204, 743 S.E.2d 850, 853 (Ct. App. 2013). In an action in equity referred to a special referee for final judgment with direct appeal to the Court of Appeals, the Court may determine facts in accordance with its own view of the preponderance of the evidence. *See, e.g., Fox v. Moultrie*, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008); *Friarsgate, Inc. v. First Fed. Sav. & Loan Ass'n of S.C.*, 317 S.C. 452, 456, 454 S.E.2d 901, 904 (Ct. App. 1995). However, the Court is not required to disregard the Special Referee's findings, as he was in the better position to assess the evidence and the witnesses' credibility. *See Fox*, 379 S.C. at 613, 666 S.E.2d at 917; *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001); *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App 2009). Moreover, Appellant is not relieved of her burden of convincing the Court the Special Referee committed error in his findings. *Bell*, 385 S.C. at 373, 684 S.E.2d at 204.

B. The after-acquired property doctrine is an estoppel doctrine and cannot be used to enforce Appellant's interpretation of the terms of the 1982 deed.

Appellant claims that the Special Referee erred in declining to apply the after-acquired property doctrine to establish that Appellant and Respondent were the sole holders of one-half undivided interests in the entire fifty-acres of the subject property. However, Appellant's argument misconstrues the doctrine.

> The doctrine of estoppel by deed is never extended beyond what is called for by the plain terms used by the grantor. A grantor generally is estopped to assert an after-acquired title only where such assertion would involve a denial that the conveyance passed the interest or estate which it purported to pass.

23 Am. Jur. *Deeds* § 279 (2d ed. 2021). Further, the doctrine does not apply to quitclaim deeds. *See Carkuff v. Balmer*, 795 N.W.2d 303, 307 (N.D. 2011) ("After-acquired title by the grantor will not, as a general rule, inure to the benefit of the grantee under a quitclaim deed."); *Ellingstad v. State, Dep't of Nat. Res.*, 979 P.2d 1000, 1006 (Alaska 1999) (noting that quitclaim deeds normally do not transfer after-acquired interests or after-acquired title.); *Dowse v. Kammerman*, 122 Utah 85, 87, 246 P.2d 881, 882 (Utah 1952) ("A quitclaim deed does not raise an estoppel as to an after acquired title."). "[I]f a grantor conveys land, ***with the usual covenants of warranty***, to which at that time he has no title, but afterwards acquires a title, he is estopped from claiming that he did not have title at the time of the sale; and the after-acquired title inures to the benefit of his grantee." *Richardson v. Atl. Coast Lumber Corp.*, 93 S.C. 254, 75 S.E. 371, 372 (1912) (emphasis added).

The uncontested finding of the Special Referee was that the 1982 deed from Lawrence to Appellant and Respondent was a quitclaim deed. (R. p. 6). This finding was not disputed by Appellant in her Motion for Reconsideration or in her Initial Brief. Since Appellant has not contested that the 1982 deed is not a quitclaim deed, she is precluded from challenging the ruling on appeal and it is now the law of the case. *Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997). As noted above, the after-acquired property doctrine does not apply to quitclaim deeds.

Additionally, a grantor is only estopped by the doctrine when he denies that the conveyance passed the interest which it purported to pass. Here, the 1982 deed by its terms purported to pass only Lawrence's "one-fifth undivided interest" in the subject property. (R. p.

40). Appellant and Respondent both received one-half of a one-fifth undivided interest in the subject property. (R. p. 6). As the grantor has not attempted to deny that the 1982 deed conveyed the interests which it explicitly and in detail describes, Appellant is precluded from raising the doctrine to attack the findings and conclusions of the Special Referee. This only makes sense, as the doctrine is an estoppel doctrine, and is created to act as a shield, and not as a sword. *See Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 345, 415 S.E.2d 384, 388 (1992) (stating that estoppel is to be invoked as a shield, and not as an offensive weapon).

Nor did the 1982 deed convey land in which the grantor did not have title. Appellant has not made any arguments or introduced any evidence that Lawrence did not in fact have title to his one-fifth undivided interest in the subject property at the time he conveyed it to Appellant and Respondent. Since (1) it is the uncontested finding of the Special Referee that the 1982 deed was a quitclaim deed, (2) the deed only purported to convey Lawrence's one-fifth undivided interest in the subject property, (3) Lawrence as the grantor never denied that the deed conveyed such an interest to Appellant and Respondent, and (4) Appellant never introduced evidence that Lawrence did not in fact hold title to the conveyed interest at the time of the 1982 deed, it was not error for the Special Referee to decline to apply the after-acquired property doctrine to the facts before him.

C. The plain language of the 1982 deed only conveys a one-fifth interest in the subject property.

The Special Referee properly found that the 1982 deed to Appellant and Respondent conveyed only a one-fifth interest in the entire subject property. "[T]he determination of whether language in a deed is ambiguous is a question of law. The language in a deed is ambiguous if it is reasonably susceptible to more than one interpretation." *Penza*, 198 S.C. at 204, 743 S.E.2d at 853. "One of the first canons of construction of a deed is that the intention of the grantor must be

ascertained and effectuated if no settled rule of law is contravened." *Bennett v. Investors Title Ins. Co.*, 370 S.C. 578, 590, 635 S.E.2d 649, 655 (Ct. App. 2006). "[O]nce a contract or agreement is before the court for interpretation, the main concern of the court is to give effect to the intention of the parties." *Williams v. Teran, Inc.*, 266 S.C. 55, 59, 221 S.E.2d 526, 528 (1976).

The plain language of the deed itself states that, in exchange for $1,696.86, Lawrence conveyed to

> Sarah Bostick Howell and Bronco Bostick, their heirs and assigns, forever, all my ***one-fifth undivided interest*** in the following described property, to-wit:
>
> ALL that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Jasper, near Pineland, containing 50 acres, more or less, being bounded on the North by lands, now or formerly, of Bascomb, East by lands, now or formerly, of Polite, on the South by a Public Road leading from Robertville to Gillisonville and on the West by lands, now or formerly, of the Pineland Club.

(R. p. 40) (emphasis added). Clearly, by its terms the deed only purported to exchange an undivided interest in one-fifth of the fifty-acres of subject property.

Whether the grantor was aware at the time that he could have held title to the entire property through adverse possession or was ignorant of the possibility has no bearing on the outcome of an interpretation of the deed. If he knew that he held title to the entire fifty-acres, then he would have clearly stated he was conveying his interest in the entire property, if that was his intention. If he did not know that he potentially held title to the entire subject property, then he could not have intended to convey it in exchange for $1,696.86. Since the plain terms of the deed only convey a one-fifth interest in the subject property, it was not error for the Special Referee to refuse to award the remainder of the property to Appellant and Respondent, as the

after-acquired property doctrine is never extended beyond what is called for by the plain terms of the deed.

III. <u>The Special Referee did not Err in Declining to Award Attorney's Fees and Costs to Appellant.</u>

Although Appellant has presented the Court with the issue of whether the Special Referee should have awarded attorney's fees and costs in her Statement of Issues, she has failed to make and abandoned any arguments in support of her contention in the body of her brief. "Generally, attorney's fees are not recoverable unless authorized by contract or statute." *Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, 230, 647 S.E.2d 488, 495 (Ct. App. 2007). Appellant has not cited a statute or pointed to any evidence in the record of a contract authorizing the award of attorney's fees as a form of relief for her action. Appellant has informed the Court in her Statement of Facts that she asked for the balance of the subject property to be sold and attorney's fees awarded pursuant to Rule 71(d)(3), SCRCP.

> Attorneys fees and costs ***may*** be awarded the attorney for any party(s) from any common fund generated by the partition to the extent that attorney's efforts benefited all parties; otherwise, his fee shall be paid by the party(s) he represents or from the party(s) share(s) only. The court ***may*** order the payment of costs from the proceeds of sale of the common property or ***may*** equitably assess the costs against shares of the parties.

Rule 71(d)(3), SCRCP (emphasis added).

Rule 71(d)(3), SCRCP and S.C. Code Ann. section 15-61-110 describe the procedure for the assessment of attorney's fees in a partition action. S.C. Code Ann. section 15-61-110 also authorizes that a court ***may*** fix attorneys' fees in partition proceedings and assess them against any or all of the parties in interest, as may be equitable. S.C. Code Ann. § 15-61-110. The Court has previously determined that this is "a matter within the circuit court's discretion, the exercise of which will not be disturbed absent a showing of abuse thereof." *S & W Corp. of Inman v.*

Wells, 283 S.C. 218, 220, 321 S.E.2d 183, 185 (Ct. App. 1984). Appellant has not argued or explained how the Special Referee's decision not to award or assess attorney's fees was an error of law or based on a factual conclusion lacking evidentiary support. *See, e.g., Wilson v. Dallas*, 403 S.C. 411, 425, 743 S.E.2d 746, 754 (2013) ("An abuse of discretion occurs when . . . there is no evidentiary support for the court's factual conclusions.").

The Special Referee, in his discretion, decided that in light of the fact that Appellant was being given clear title to an exclusive interest in a five-acre parcel, while the remainder of the heirs only possessed undivided interests in the remainder of the property, it was equitable that she would be responsible for bearing her own costs and attorney's fees. (R. pp. 7-8). Appellant only gave up her undivided one-tenth (one-half of one-fifth) interest in the five acres delineated in the May 13, 2004, plat in exchange for exclusive possession of the five acres delineated in the November 23, 2020 plat. (R. p. 48; R. pp. 53-54). As previously noted, Appellant has not cited any evidence or authority or made a valid argument as to why the remainder of the subject property should have been sold with a reasonable attorney's fee assessed from the gross sale proceeds. Regardless, since Appellant has failed to make any arguments as to why the Special Referee erred pertaining to the issue of attorney's fees and costs, the issue has been abandoned and is not suitable for review.

CONCLUSION

Appellant has abandoned or failed to preserve each of the issues she raises for the Court's review, or argued them in a short, general, and conclusory manner. For the foregoing reasons, the Respondent respectfully requests that the Court affirm the June 4, 2018, and November 24, 2020, Orders of the Special Referee.

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH
& DETRICK, P.A.

August 4, 2021
Hampton, South Carolina

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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

C. Stephen Bennett, Special Referee

Appellate Case No.: 2020-001700

Sarah Bostick Howell, ...Appellant,

v.

The Heirs and Distributees of Ollie Bostick; The Heirs and Distributees of Sarah Bostick; The Heirs and Distributees of Janie Bostick; The Heirs and Distributees of Joe Bostick; The Heirs and Distributees of Margie B. Graves; The Heirs and Distributees of Johnny Bostick; The Heirs and Distributees of Freddie Bostick; The Heirs and Distributees of Ollie Bostick, Jr.; The Heirs and Distributees of Mamie B. Lucas; The Heirs and Distributees of Lawrence Bostick; Bronco Bostick; Gladys B. Williams; Lewis Bostick; Larry Bostick; Roamell Bostick; Lawrence Bostick Jr.; Rodger Bostick; Terell Bostick; and Three T Farm, LLC; Flatp SSF Timber, LLC; and Carl Polite, as adjoining Landowners; and all other heirs at law, devisees, or persons unknown, claiming by, under, or through any of the above-named persons, John Doe and Mary Roe, being fictitious names designating a class of persons, or a legal entity, infants, incompetents, persons in the Armed Forces of the United States of America, in any, known or unknown, who may be an heir, devisee, legatee, issue, alienee, administrator, executor, creditor, successor or assign having any right, title, interest, estate described in the Complaint herein, ...Defendants,

And

Of Whom Bronco Bostick is the ....Respondent.

CERTIFICATE OF COUNSEL

The Undersigned hereby certifies that the Final Brief complies with Rule 211(b), SCACR.

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