

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2016-CP-45-00590

Cassandra Selph,)
)
Plaintiff,)

vs.)

Barbara Boatwright, Margaret S. Daniels,)
Individually and as Personal Representative)
of the Estate of Eli Selph, Eli Maurice)
Selph, and Dwayne Selph,)
)
Defendants.)

RECEIVED

Aug 09 2021

ORDER

SC Court of Appeals

Trial Judge: George M. McFaddin, Jr.
Trial Date: January 14, 2021
Plaintiff's Attorney: Bernard Mitchell Alter
Defendant's Attorney: (Margaret S. Daniels) Jerome P. Askins, III
Defendant's Attorney: (Dwayne Selph) Gary W. Crawford
Defendant's Attorney: (Eli Maurice Selph) Gregory B. Askins
Court Reporter: Frances B. Ray

This action was brought by Cassandra Selph for partition of real property located in Williamsburg County which had been owned by the Selph family. The parties attended a mediation conference on January 29, 2019, which resulted in a written Settlement Agreement signed by all parties and their attorneys. The Settlement Agreement incorporated a sketch which had been prepared by a surveyor retained by Ms. Selph's attorneys. The sketch showed the subject property to contain 52.53 acres and showed the manner in which the property was to be divided among Ms. Selph; the Defendant, Margaret S. Daniels – the aunt of the Plaintiff; and the Defendant, Dwayne Selph – the brother of the Plaintiff. The sketch also showed the dimensions of a lot located in the northeastern corner of the Selph property, commonly referred to as the "store lot", in which Margaret S. Daniels had no ownership interest. Located on the subject property was the home place of the parents of Ms. Daniels and the grandparents of Ms.

Selph and Dwayne Selph. At the mediation conference, the home place, including a lot of two (2) acres, was auctioned off between Ms. Selph and Ms. Daniels, the result of which was that Ms. Selph purchased the one-half interest of Ms. Daniels in the home place for \$41,000.00. The purchase price for Ms. Daniels' interest in the home place was to be paid to her on or before March 23, 2019, with a reduction of \$151.70 for revenue stamps on the deed, leaving a balance due of \$40,848.30. Evidently, this amount was placed in an escrow account with Ms. Selph's attorneys at some point, but it was never paid to Ms. Daniels. Ms. Selph refused to execute the deeds to effect the partition that had been agreed upon at the mediation conference. Ms. Daniels and Dwayne Selph each executed the deeds to the other parties and said deeds were delivered to Ms. Selph's attorneys. When Ms. Selph continued to refuse to execute the deeds to carry out the terms of the Settlement Agreement, her attorneys, Mr. O'Bryan and Mr. Reddeck, moved to be relieved as her counsel. The Defendants filed a motion to compel compliance with the Settlement Agreement by the Plaintiff, Ms. Selph. Subsequently, attorney Bernard Mitchell Alter of Brooklyn, New York, was substituted as counsel for the Plaintiff.

A hearing on the motion was heard by me via WebEx on January 14, 2021. Appearing in the virtual courtroom were Jerome P. Askins, III, attorney for the Defendant, Margaret S. Daniels; Gary W. Crawford, attorney for the Defendant, Dwayne Selph; and Bernard Mitchell Alter, attorney for the Plaintiff, Cassandra Selph. This hearing also dealt with a similar motion to enforce a Settlement Agreement in the related case of Cassandra Selph vs. Joshua Selph, et. al., Case No. 2016-CP-45-00588. Appearing in that case were William E. Jenkinson, III and J. Thomas Thompson, attorneys for the Defendant, Joshua Selph, and the estate of his deceased wife, Lynn A. Selph. Mr. Alter appeared for Ms. Selph. This Order pertains only to Case No. 2016-CP-45-00590.

The Defendants all joined in the motion to enforce the Settlement Agreement which provided for the manner of division of the real property and the sale of Ms. Daniels' interest in the home place to Ms. Selph. Additionally, Ms. Daniels requested an award of attorney's fees and costs as a result of Ms. Selph's refusal to comply with the Settlement Agreement. She also requested an award of interest at the

legal rate on the unpaid price for her one-half undivided ownership interest in the home place which was to have been paid by Ms. Selph by March 23, 2019. Ms. Daniels also requested reimbursement for Williamsburg County property taxes on the subject property which she had paid for 2019 and 2020. Ms. Selph contended that the terms of the Settlement Agreement were constantly changed by the other parties and her refusal to comply with the Settlement Agreement and effect the partition should be excused. She acknowledged her liability for part of the Williamsburg County property taxes paid by Ms. Daniels.

I have reviewed the record, including the affidavits filed on behalf of the Plaintiff and the Defendants. I also heard arguments by Mr. Askins and Mr. Alter. It appears that following the mediation, the actual survey of the property revealed that it contained 49.95 acres rather than 52.53 acres as shown on the sketch which the parties signed off on at the mediation. However, it appears that the respective tracts and acreage to be awarded to the parties were proportionately reduced and the plat used to prepare the partition deeds was substantially the same as the sketch attached to the Settlement Agreement. The plat, like the sketch, was prepared by the surveyor who had been hired by Ms. Selph's attorneys. There was also a minor change in the boundary lines between Ms. Selph and her brother, Dwayne Selph, but those changes did not affect the property allotted to Ms. Daniels. The deeds for the property going to each party were prepared by that party's attorney. Ms. Selph's attorneys prepared the deeds to be signed by the other parties for the property going to her, and they approved the deeds prepared by the attorneys for the other parties for the property going to them. Nonetheless, Ms. Selph refused to execute the deeds. It further appears that despite Ms. Selph's failure to pay the purchase price of Ms. Daniels' interest in the Selph home place, Ms. Selph took over the home place as if it were her own, to the exclusion of Ms. Daniels, even undertaking repairs and renovations. When Ms. Selph continued to refuse to execute the partition deeds, her attorneys filed a motion to be relieved as counsel, citing "a total and irreparable breakdown of the attorney/client relationship."

It is noteworthy that Mr. Alter, attorney for Ms. Selph, stated that his client is now ready to execute the deeds to complete the partition in accordance with the Settlement Agreement, but she does

not feel she should be required to pay attorney's fees or interest on the indebtedness to Ms. Daniels. She apparently concedes that she does owe for part of the property taxes that were paid by Ms. Daniels and that there will be additional costs in concluding the partition.

I make the following findings:

1. The Plaintiff, Cassandra Selph, willfully refused to comply with the terms of the Settlement Agreement entered into by the parties at the mediation conference on January 29, 2019, and her refusal to comply with the Settlement Agreement was without just cause. Mediation is an essential tool in the resolution of civil cases and the sanctity of the mediation process must be preserved.
2. The Settlement Agreement entered into by the parties and the South Carolina ADR Rules provide for an award of attorney's fees and costs in the event it becomes necessary for one or more parties to enforce the terms of a Settlement Agreement entered into at a mediation conference. The refusal of Ms. Selph to comply with the terms of the Settlement Agreement caused the other parties, particularly Ms. Daniels, to incur substantial additional attorney's fees and costs. I find that Margaret S. Daniels is entitled to recover reasonable attorney's fees and costs which were incurred as a result of the refusal of Ms. Selph to comply with the terms of the Settlement Agreement. The affidavit of Mr. Askins shows that he had expended 14.1 hours prior to the hearing on the motion and that a minimum of 3 additional hours would be required after the hearing to complete the partition in accordance with the Settlement Agreement. I find that the time spent for the hearing and the preparation and finalizing of the Order would reasonably require 4 additional hours. This would amount to a total of 21.1 hours at an hourly rate of \$250.00 per hour, a total of \$5,275.00. I find that the time expended and the amount of the fee is fair and reasonable given the nature and complexity of the matter, the experience of the attorney and the result obtained. In the event some complication or unforeseen circumstances arise which require additional work by her attorney, Ms. Daniels should have leave to request an additional award of attorney's fees and costs.

3. I find that Ms. Selph took over and exercised exclusive dominion and control over the Selph home place following the mediation conference as if it were her own, to the exclusion of Ms. Daniels. This was not disputed by Ms. Selph. Although the purchase price may have been placed in an escrow account, it was not delivered to Ms. Daniels. Money has a time value, and interest is not imposed merely as a penalty, but reflects the cost of money. Ms. Daniels is entitled to payment for her one-half ownership in the Selph home place plus interest thereon at the same rate as the legal rate for money decrees and judgments from March 23, 2019, until the indebtedness is paid. The legal rate of interest for money decrees and judgments is set in January of each year by the South Carolina Supreme Court based upon the prime rate published by the Wall Street Journal. It was 9.50% from March 31, 2019 through January 14, 2020; 8.75% from January 15, 2020 through January 14, 2021; and 7.25% from January 1, 2021 through January 15, 2022.

4. Ms. Daniels has paid the Williamsburg County property taxes on the subject property in the amount of \$1,959.61 for 2019 and \$1,966.13 for 2020. I find that one-half of the property taxes would have been her responsibility and the other one-half would have been the responsibility of Ms. Selph and Dwayne Selph.

I make the following conclusions of law:

1. Defendants' Motion To Compel compliance with the Settlement Agreement should be granted. The Plaintiff should be compelled to cooperate with the other parties and their attorneys in preparing deeds and other documents necessary or appropriate to carry out the terms of the Settlement Agreement, to promptly execute and deliver such deeds and documents, and to pay her fair share of any costs in having the partition plat approved by Williamsburg County Planning, and the plat and deeds recorded.
2. Ms. Daniels is entitled to recover from Ms. Selph attorney's fees of \$5,275.00 and costs of \$57.36 which were incurred as the result of the failure and refusal of Ms. Selph to comply with the terms of the Settlement Agreement. Said amount should be paid within a reasonable time.

3. Ms. Daniels is entitled to recover from Ms. Selph the purchase price of \$40,848.30 for her one-half interest in the Selph home place plus interest at the same rate as the legal rate for money decrees and judgments from March 23, 2019, through the date of payment. The purchase price plus interest through February 4, 2021, amounts to \$48,034.86, with a daily interest accrual thereafter at the rate of 7.25%, amounting to \$8.8725 per day. The indebtedness should be paid in full within a reasonable time.
4. Ms. Daniels is entitled to recover from Ms. Selph and Dwayne Selph their respective shares of the Williamsburg County property taxes for 2019 and 2020 which were paid by Ms. Daniels. Ms. Selph and Dwayne Selph together should promptly reimburse M. Daniels for one-half of the taxes paid by Ms. Daniels.
5. The sums payable by Ms. Selph to Ms. Daniels or her attorney should constitute a lien upon the interest of Ms. Selph in the Selph property until said indebtedness is paid in full.

Now therefore, it is

ORDERED that Cassandra Selph and her attorney cooperate with the Defendants, Margaret S. Daniels and Dwayne Selph, and their attorneys, to promptly carry out the terms of the Settlement Agreement entered into by the parties on January 29, 2019, with reference to the plat prepared by Kevin Wilson, PLS, showing 49.95 acres in the Selph property. They shall promptly prepare or arrange for the preparation of such deeds and documents as may be necessary or appropriate, Ms. Selph shall promptly execute such deeds or documents as may be necessary or appropriate, she shall promptly pay her proper share of any costs associated with the recording of the subject plat and deeds and she shall otherwise cooperate in concluding the partition of the subject property without undue delay. It is

FURTHER ORDERED that Cassandra Selph pay to Margaret S. Daniels or her attorney the sum of \$5,275.00 as reasonable attorney's fees incurred as a result of the failure and refusal of Ms. Selph to comply with the Settlement Agreement. Said sum shall be paid within forty-five (45) days of the filing of this Order. It is

FURTHER ORDERED that Cassandra Selph pay to Margaret S. Daniels or her attorney the sum of \$40,848.30 plus interest at the same rate as the legal rate for money decrees and judgments, from March 23, 2019, through the date of payment, amounting to \$48,034.86 plus interest after February 4, 2021, at the rate of 7.25% or \$8.8725 per day, until paid in full. Said payment shall be made within forty-five (45) days of the filing of this Order. It is

FURTHER ORDERED that Cassandra Selph and Dwayne Selph together pay to Margaret S. Daniels a sum equivalent to one-half of the Williamsburg County property taxes on the subject property for 2019 and 2020, amounting to \$1,962.87. Said amount shall be paid to Margaret S. Daniels or her attorney within forty-five (45) days of the date of filing of this Order. It is

FURTHER ORDERED that any indebtedness required to be paid by Cassandra Selph to Margaret S. Daniels or her attorney shall constitute liens upon her interest in the entire Selph property which is the subject of this action, including the home place, until paid in full. Upon receipt of payment of said sums, Margaret S. Daniels and/or her attorney shall promptly execute and deliver an appropriate receipt of payment to Cassandra Selph or her attorney. It is

FURTHER ORDERED that the parties and their attorneys cooperate and act diligently to have all deeds and documents promptly executed and delivered. Each party's attorney shall be responsible for the preparation of the deeds to his client. The deeds shall be circulated for execution and the executed deeds shall be promptly returned to Mr. Askins for recording. Each party shall have the opportunity to conduct such title examination as he or she feels is necessary or appropriate before the recording of such deeds. Each party shall promptly pay his or her share of the costs associated with the recording of the deeds and subdivision plat. The partition deeds shall not be recorded until all required payments to Ms. Daniels or her attorney have been made.

AND IT IS SO ORDERED.

_____, South Carolina
February ____, 2021.

George M. McFaddin, Circuit Court Judge



Williamsburg Common Pleas

Case Caption: Cassandra Selph VS Barbara Boatwright , defendant, et al

Case Number: 2016CP4500590

Type: Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759