

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

C. STEPHEN BENNETT, Special Referee

Case Number 2014-CP-27-222
Appellate Case No. 2020-001700

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SC Court of Appeals

Sarah Bostick Howell, Appellant, v.

The Heirs and Distributees of Ollie Bostick; The Heirs and Distributees of Sarah Bostick; The Heirs and 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,

Of Whom Bronco Bostick is the Respondent.

FINAL BRIEF

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August 23, 2021

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Richardson v. Atlantic Coast Lumber Corp., 93 S.C. 254, 258, 75 S.E. 371, 372 (1912)

SCRCP Rule 71(b)(3)

STATEMENT OF ISSUES ON APPEAL

- I. **DOES THE EVIDENCE TAKEN AS A WHOLE ESTABLISH THAT THE PLAINTIFF HAD PROVEN HER CASE AS PLED?**

- 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 FEES AND COSTS?**

STATEMENT OF THE CASE

This action is for the partition of real estate. The Appellant, Sarah Howell, filed her Complaint alleging that she and the other siblings were the heirs of the Estate of Lawrence Bostick and his father, Ollie Bostick. She thereafter listed the family tree as well as the adjoining landowners. She further plead that Lawrence Bostick conveyed all of his interest in the property to Sarah Bostick Howell and Bronco Bostick by a deed. She further alleged that she had a plat of the 50 acres prepared at her expense. She additionally alleged that Lawrence Bostick and his heirs had satisfied all of the requisites to show an ouster of all the other family members and that the premises were solely owned by Lawrence Bostick. She additionally alleged 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. She gave a deed to Bronco Bostick for his 5 acres but a deed to her was not forthcoming. She thereafter filed suit.

She further requested that title be quieted, that she be given a deed to her portion and that the balance of the property be sold. She further requested an award of attorney fees and costs pursuant to the statute.

STATEMENT OF FACTS

The Appellant pled the heirs of Lawrence Bostick and a showing of an ouster of the heirs of the grandfather, Ollie Bostick, and his decedents other than the immediate heirs of his son, Lawrence Bostick. Lawrence Bostick issued a deed to Sarah Bostick Howell and Bronco Bostick in 1982.

Sarah Bostick Howell and Bronco Bostick, their heirs and assigns all of my undivided interest in the following described property. Thereafter there was a description of the 50 acre tract.

The Court ruled that Lawrence Bostick and his heirs had ousted all of the other family members. She further in her motion to reconsider asked the court to rule as that the deed from Lawrence Bostick conveyed the entire 50 acres to the Plaintiff and her brother Bronco Bostick

under the After-Acquired Property Doctrine. The initial Order of the Special Referee established that Sarah Howell had put \$13,632.00 into surveying the premises in question and attorney fees for the initial prosecution of the action. The Special Referee denied making an award for both fees and expenses and any fees and expenses that were owed after the initial filing of the Complaint. The Special Referee ruled that she was entitled to the 5 acres which she complained of in her complaint, but denied any further relief and left the 40 acres as a tenancy in common for all of the siblings. The Special Referee arguably abused his discretion in not making an award of fees and costs to the Plaintiff, Sarah Bostick Howell.

The Plaintiff, among other things asked for a determination of the ouster of the family members, save for herself and siblings, to the 50 acre parcel. She further requested that after deducting the 10 acres (5 acres to Bronco Bostick and 5 acres to Sarah Howell) that the balance of the property be sold and the funds be distributed by the Court. Pursuant to Rule 71(b)(3), she requested an award of attorney fees and costs. Such was denied by the Special Master. According to the Complaint of the Plaintiff, all of the Defendants, save for Bronco Bostick, Rogers Bostick and Larry Bostick, filed no responsive pleadings. The Defendant Larry Bostick filed an Answer after an Affidavit of Default was filed. The holding of the Special Referee in his Order of the Special Master, Paragraph 2, established that all the Defendants, save for Rogers and Bronco, were in default. No appeal has been taken from that Order.

By suffering a default, the defaulting party is deemed to have admitted the truth to the Plaintiff's allegations and to have conceded liability. (Roche v. Young Brothers, Inc. of Florence, 504 SE2d 311, 332 SC 75 (1998)).

Thus, by not contesting the action, all of the heirs save for Bronco and Rogers, have conceded all of the allegations of the complaint including the family tree, the history of the property, the sums expended by the Plaintiff, Sarah Bostick Howell, as well as the requested relief. The Answer by the Defendant Rogers Bostick basically says that he doesn't think that she is his sister and therefore does not have the authority to bring this action. There was no such finding by

the Special Referee. The Answer of Bronco Bostick admitted a lot of the Complaint but denied the request for relief that the 40 acre parcel be put into the heirs of Lawrence Bostick.

There is no doubt that the action initiated by the Plaintiff, Sarah Bostick Howell, inured to the benefit of all the heirs. Then ended up owning a 1/5 interest in 40 acres that had been deeded by their father to other siblings, leaving them with nothing. They came out of this as joint tenants in 40 acres. This being even though they did not ask for nor pay anything as a contribution toward that.

It is clear from the evidence that Sarah was the little red hen on the Bostick family. She had the property surveyed, obtained the services of an attorney to clear the title, and sought title to the five acres that should have been hers without objection right off the bat. This was with her bearing all the costs of all the actions while at the same time awarding interest in land to defaulting Defendants who had not even asked for it. This was a clear abuse of discretion.

ARGUMENT AND CITATION OF AUTHORITY

I. DOES THE EVIDENCE TAKEN AS A WHOLE ESTABLISH THAT THE PLAINTIFF HAD PROVEN HER CASE AS PLEAD?

As noted above, only two of the heirs filed responsive pleadings that was recognized by the court. The Answer of the Defendant Rogers Bostick basically took issue with whether or not she was even his sister, but did not actually address the merits of the case. The Answer of Bronco Bostick put the Plaintiff to her normal and customary duty of proving of her case but added nothing else to the action. The Special Referee's report basically adopts as findings, her action as to the family tree and the present ownership of the property. He agreed that she had proven ouster of the collateral heirs and that she and her siblings were the only parties in interest. It was error by the Special Referee's Order not to recognize that she and her brother Rogers actually owned the balance of the premises under the After -Acquired Property Doctrine and the fees and costs were made. The Special Referee ruled in a prior action between that the Appellant and her brother, Bronco, owned the 10 acres (Paragraph 3), thus establishing her title to the 5 acre parcel.

Based upon the foregoing, it is clear that she established all of the facts pled in her action and that the two not picked up by the Special Referee, the payment of fees and the award of the title to the premises, were against the evidence put forward. For the above reason, the Appellant avers that she had proven the allegations of the Complaint.

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

At the time of the 1982 deed from Lawrence Bostick to Sarah Bostick Howell and Bronco Bostick, he believed he owned a 1/5 interest in the property. It is also clear from reading the deed that he intended to give to these two children his entire interest in the premises. Only after the prosecution of this action, did the law recognize that his action had ripened into a fee simple title to all of the 50 acres. In the Motion to Reconsider the attorney for the Appellant put forward the proposition that the Special Referee should have used the After-Acquired Property Doctrine to establish that the owners of the balance of the 50 acres are the same grantees in the deed from their father. Further, the prior order (Paragraph 2) established that the deed did not convey fee simple to the entire premises was because at that the ownership by Lawrence Bostick of the entire premises had not been established. That 100% ownership was established in the present order.

Corbin v. Carlin, 620 S.E2d 745, 366 S.C. 187 (S.C, 2005) citing Richardson v. Atlantic Coast Lumber Corp., 93 S.C. 254, 258, 75 S.E. 371, 372 (1912) (“The principle is settled beyond controversy in this state that if a grantor conveys land, with the usual covenants of warranty, to which at that time he has no title, but afterwards acquired a title, he is estopped from claiming that he did not have a title at the time of the sale; and the after-acquired title inures to the benefit of his grantee.”) The trial court’s determination that Corbin acquired Tract B through the doctrine of after-acquired property has not been appealed, and it is there for the law of the case.

The record is clear that at the time Lawrence Bostick made this conveyance he thought he owned 1/5 of the 50 acres but he was conveying to his 2 children his entire interest in the premises.

As a result of the actions of Sarah Bostick Howell, the Appellant, this ripened into fee simple title to the entire premises.

The Order also ignores her prayer for relief which was that the premises be sold and monies divided. This would leave her with one-half of the proceeds of the sale and her siblings with the other half. As no one filed an answer that objected to her prayer for relief, the actions of the Special Master in ignoring it constitutes reversible error.

CONCLUSION

The Appellate respectfully submits that this matter should be reversed and sent to the Special Referee to make a ruling, including attorney fees and ownership of the premises and percentages thereof in accordance with the positions raised in this brief.

Respectfully submitted,

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