

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

**RECEIVED**

AUG 27 2021

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.

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**APPELLANT'S FINAL REPLY BRIEF**

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August 23, 2021

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**I. DID THE SPECIAL REFEREE ABUSE HIS DISCRETION IN FAILURE TO AWARDED ATTORNEY FEES TO THE APPELLANT?**

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## TABLE OF AUTHORITIES

Rule 71(d)(3), SCRPC

S. C. Code Ann. Section 15-61-110

## STATEMENT OF UNDISPUTED FACTS

As noted by the Respondent in his brief:

“Rule 71(d)(3), SCRPC 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 interest, **as may be equitable** (emphasis added).”

All the defaulting heirs (everybody but the Respondent Bronco Bostick) have, by their failure to answer, have admitted the allegations of the Complaint. Among these are that she expended almost \$14,000.00 of her funds, (this is prior to the actual trial of the case, and would be subject to any additional expense) so that the vast majority of the heirs who put nothing into the action ended up with title to the land for free. (It is pretty obvious that Sarah Howell is “the little red hen” of the Bostick family.) She went into this action owning an uncontested one-half undivided interest in 10 acres. After deeding her interest to the other family members in their 5 acres, she did not receive a deed to her five acres. (The plat that Bronco Bostick had made May 11, 2004. (Exhibit 53) The plat for Sarah Bostick Howell, by the same surveyor, was prepared June 28, 2004 (Exhibit 54) The Appellant’s plat shows where here land lies in relation to the property she had deeded to her siblings. There is nothing in the record that shows this was done gratuitously or by no request from her siblings. The Respondent, Bronco Bostick, by his answer admitted that Sarah Bostick Howell had the May 4, 1999, survey prepared by the surveyor and recorded. This was attached to the deed that gave Bronco his undivided 5 acres. It is also worthy of note that in his answer, Bronco Bostick did not dispute the cause of action of Sarah Bostick Howell that the property be sold and a division of the proceeds be made. (Exhibit 20)

Under Rule 71(b)(3) there is nothing more than abuse of discretion for the Special Referee to allow all the heirs, including all those in default, to gather the fruits of her labor and contribute nothing to what she expended which benefited all of them.

It is clear from the deed (Exhibit 40) that (prepared by this writer) that the late Ollie Bostick thought he was and intended to convey all of his interest in the 50 acres owned by his father, the late Ollie Bostick:

Sarah Bostick Howell and Bronco Bostick, their heirs and assigns forever, all my 1/5 undivided interest in the following described property:

“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.

This being the same property conveyed to Jason C. Richardson to my father, Ollie Bostick, by deed recorded March 18, 1919 in Deed Book 3 at Page 598 I the Office of the Clerk of Courts for Jasper County, South Carolina.”

At the time this conveyance was made, September 21, 1982, there had no action brought much less even a judicial determination that Lawrence Bostick had ousted all of his siblings. Thus from the plain wording from the deed, he was conveying all that he owned to these two children. It was only after bringing and maintenance of the action by Sarah Howell was there a judicial determination that Lawrence Bostick had ousted all of his brothers and sisters and in fact owned title to the entire 50 acres.

Again, the Special Referee's Order goes to the benefit of the brothers and sisters who hadn't even filed an answer much less contributed any funds or otherwise assisted in the maintenance of this action.

We, in our Designation of Matter, included Bronco Bostick's response to our Motion to Reconsider. Even the sole Respondent, Bronco Bostick, has admitted that the other siblings should contribute to the cost of the action that benefitted them (exhibit 38).

The lack of a record of the hearing is a sword that cuts both ways:

“On or about May 17, 2004, Sarah Bostick Howell, without request from any other heir of Lawrence Bostick, executed a deed to the following: Gladys M. B. Williams, Bronco Bostick, Lawrence Bostick, Jr., Lewis Bostick, Rodgers Bostick, Larry Bostick, Roamell Bostick and Terrell B. Bostick for 5 acres of land shown in Deed Book 296 at Page 73.”

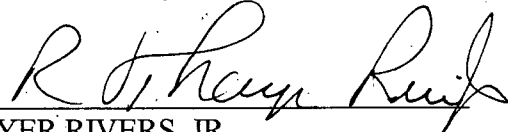
There is nothing in the record to uphold that she gratuitously gave a deed to her siblings without any agreement to receive one back. The fact that the plats were done in the same month by the same surveyor is very telling as to the intent of the parties in regard to the division of the property. The record itself has nothing to sustain the Special Referee's finding that this was done out of the goodness of her heart and not without any anticipation of receiving her one-half of the ten acres conveyed by their father.

**CONCLUSION**

For the foregoing reasons, the Appellate respectfully submits that this matter should be reversed and sent back to the Special Referee to award an appropriate attorney fee, make a division of the premises and issue the requisite deeds to the appropriate parties.

Respectfully submitted,

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