

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BETTY LOCKHART

APPELLANT

VS.

NO. 2010-CA-01705

RICHARD COLLINS, ET AL

APPELLEES

**ON APPEAL FROM THE CHANCERY COURT
OF MONROE COUNTY MISSISSIPPI**

**APPEAL BRIEF OF APPELLANT
BETTY LOCKHART**

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

Betty Lockhart	-	Appellant
Richard Collins	-	Appellee
Peggy Collins	-	Appellee
Bolin Hamilton	-	Appellee
Orlene Hamilton	-	Appellee
Carter Dobbs, Jr.	-	Attorney for Appellant
Martha Bost Stegall	-	Attorney for Appellees
Honorable Jacqueline Estes Mask	-	Trial Judge



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I. APPELLANT'S STATEMENT OF THE ISSUES

ISSUE1: THAT THE TRIAL COURT ERRED IN RULING THAT § 11-21-1, MISSISSIPPI CODE OF 1972, AS AMENDED, APPLIES TO THIS CASE AND PREVENTS PARTITION, WHEN THE PARTITION PROCEEDING IS NOT BETWEEN SPOUSES, BUT RATHER WHEN TWO DEFENDANT SPOUSES, OPPOSED TO THE PLAINTIFF IN THE PARTITION PROCEEDING, ARE THE OWNERS OF A FRACTIONAL INTEREST IN THE LAND SOUGHT TO BE PARTITED.

II. STANDARD OF REVIEW

The standard of review by this Court in this cause is *de novo*, because the appeal involves an interpretation of a statute, and is, therefore, a question of law. *Autrey v. Parson*, 864 So. 2d 294, 295 (¶4) (Miss. Ct. App. 2003).

III. APPELLANT'S STATEMENT OF THE CASE

(A) NATURE OF THE CASE.

This appeal involves one single issue, and that issue is where there is a partition of land case filed pursuant to § 11-21-3, Mississippi Code of 1972, as amended, whether partition is prohibited when the partition proceeding is not *between* spouses, but rather when two Defendant spouses, opposed to the Plaintiff in the partition proceeding, are the owners of a fractional life estate interest in the land sought to be partited.

(B) COURSE OF THE PROCEEDINGS AND DISPOSITION IN THE COURT
BELOW.

Plaintiff/ Appellant in this cause will be referred to as "Lockhart." Defendants/ Appellants will be referred to as "Collins/Hamilton." Appellant Betty Lockhart filed a Complaint To Partition Land in Monroe County Chancery Court against Appellees Richard Collins and wife, Peggy Collins, and Bolin Hamilton and wife, Orene Hamilton, alleging that she was the owner of an undivided one-fourth (1/4) life estate interest in 160 acres of land in Monroe County, that Appellees Bolin and Orene Hamilton were the owners of the other undivided three-fourth's (3/4) life estate interest and that Appellees Richard and Peggy Collins were the owners of the remainder interest in said land. Appellees Collins/Hamilton filed their Answer and Defenses, denying that Lockhart had any interest in the property, alleging that she had abandoned any homestead interest and denying that she had standing to bring a partition proceeding. Collins/Hamilton filed a Motion To Dismiss Plaintiff's Complaint And Motion For Summary Judgment On Defendant's Counterclaim With Supporting Authority.

The case was tried, and on July 6, 2010 the trial Court entered a Memorandum Opinion and Order Partially Granting Motion To Dismiss Plaintiff's Complaint And Motion For Summary Judgment On Defendants' Counterclaim.

Lockhart filed a Motion To Alter Or Amend Judgment And Motion For Findings Of Fact And Conclusions Of Law, and on September 15, 2010 the Court entered an Order Addressing Post-Trial Motions.

The Court determined that Lockhart was the owner of an undivided one-fourth (1/4) life estate interest; that Appellees Bolin Hamilton and wife, Orene Hamilton, were the owners of the other three-fourth's (3/4) undivided life estate interest; and that Appellees Richard Collins and wife, Peggy Collins, were the owners of the remainder interest in said property. This finding by the trial Court was based upon the stipulation of the parties at trial and upon the terms of an Agreed Order in this case dated September 5, 2009.

The trial Judge ruled, pursuant to the provisions of §11-21-3, Mississippi Code of 1972, as amended, that Lockhart had standing to invoke the statutory right to partition. However, the Court then on to rule that Lockhart is barred from partition because Appellees Bolin and Orene Hamilton continued to maintain the property as their homestead, citing as authority § 11-21-1, Mississippi Code of 1972, which provides for partition of property by agreement of the co-owners, specifically basing her ruling on the 2009 amendment to this statute, which provides:

(2) Homestead property exempted from execution that is owned by spouses shall be subject to partition pursuant to the provisions of this section only, and not otherwise.

The Court held that since Appellees Bolin and Orene Hamilton were spouses, the property could be partited only “by agreement, which shall be evidenced by writing, signed by the parties....” Appellees Bolin and Orene Hamilton had not agreed in writing, but in fact had by their Answer in this case objected to the partition.

It is from this Memorandum Opinion And Order and Order Addressing Post-Trial Motions that Lockhart has filed her appeal to this Court.

(C) STATEMENT OF FACTS RELEVANT TO THE ISSUES PRESENTED FOR REVIEW.

(1) This case involves 160 acres of land in Monroe County, Mississippi. W. E. Lockhart and Bolin Hamilton acquired this property as tenants in common by Warranty Deed dated September 3, 1947. (R. 62; R. E. 8)

(2) The Last Will and Testament of W. E. Lockhart was probated in 1990. This Will devised W. E. Lockhart's undivided one-half (1/2) interest, in equal shares, to his children, J. C. Lockhart, who was the husband of Appellant Betty Lockhart, and to Orene Hamilton. (R. 62; R. E. 8) The title of this property was then held as follows:

Bolin Hamilton	undivided one-half (1/2) interest
Orene Hamilton	undivided one-fourth (1/4) interest
J. C. Lockhart	undivided one-fourth (1/4) interest

(3) J. C. Lockhart, joined by his wife, Appellant Betty Lockhart, conveyed his interest to his son, Joel C. Lockhart, by Warranty Deed dated February 20, 1990, recorded as Instrument No. 20072186. This conveyance reserved therein a life estate in J. C. Lockhart and his wife, Appellant Betty Lockhart. (R. 62-63; R. E. 8-9)

(4) Appellees Bolin Hamilton and Orene Hamilton conveyed their three-fourth's (3/4) interest in this property to Appellee Peggy Collins by a Quitclaim Deed With A Reservation Of Life Estate dated August 17, 2007. Bolin and Orene Hamilton reserved a life estate in their combined three-fourth's (3/4) interest in this property by the terms of this conveyance. (R. 60; R. E. 6)

(5) Joel C. Lockhart conveyed his undivided one-fourth (1/4) interest in said property to Appellees Richard G. Collins and wife, Peggy Collins, by a Quitclaim Deed dated May 13, 2008. (R. 60-61; R. E. 6-7) This conveyance states that the Deed is expressly subject to:

Whatever interest, if any, that is owned by Betty C. Lockhart as a result of the life estate provisions contained in that certain Deed recorded in the Monroe County, Mississippi land records as Instrument 20072186.

(6) On May 13, 2008, Peggy Collins executed a Quitclaim Deed to the subject property to Richard G. Collins and wife, Peggy Collins, as “joint tenants with the entirety with right of survivorship and not as tenants in common,” which conveyance was also expressly subject to the aforesaid life estate interest of Appellee Betty Lockhart. (R. 60-61; R. E. 6-7)

(7) Appellant Betty Lockhart’s husband, J. C. Lockhart, died before the partition suit was filed. (R. 61; R. E. 7)

(8) The parties stipulated at trial, (R. 63; R. E. 9) the terms of an Agreed Order in this cause dated September 5, 2009 states, and the trial Court in its Opinion and Judgment determined that:

- (A) Lockhart was the owner of an undivided one-fourth (1/4) life estate interest in the 160 acres of land in question; (R. 61, 64; R. E. 7, 10)
- (B) Appellees Bolin Hamilton and wife, Orene Hamilton, were the owners of a three-fourth’s (3/4) undivided life estate interest; and (R. 60; R. E. 6)
- (C) Appellees Richard Collins and wife, Peggy Collins, were the owners of the remainder interest in said property. (R. 60-61; R. E. 6-7)

(9) The trial Judge ruled, pursuant to the provisions of §11-21-3, Mississippi Code of 1972, as amended, that Lockhart had standing to invoke the statutory right to partition. (R. 69; R. E. 15) However, the Court then went on to rule that Lockhart is barred from partition (R. 70-71; R. E. 16-17) because Appellees Bolin and Orene Hamilton continued to maintain the property as their homestead, citing as authority § 11-21-1, Mississippi Code of 1972, which provides for partition of property by agreement of the co-owners, specifically basing her ruling on the 2009 amendment to this statute, which provides:

(2) Homestead property exempted from execution that is owned by spouses shall be subject to partition pursuant to the provisions of this section only, and not otherwise.

(10) The Court held that since Appellees Bolin and Orene Hamilton were spouses, the property could be partited only “by agreement, which shall be evidenced by a writing, signed by the parties....” Appellees Bolin and Orene Hamilton had not agreed in writing, but in fact had by their Answer in this case objected to the partition.

IV. SUMMARY OF APPELLANT’S ARGUMENT

ISSUE I: THAT THE TRIAL COURT ERRED IN RULING THAT § 11-21-1, MISSISSIPPI CODE OF 1972, AS AMENDED, APPLIES TO THIS CASE AND PREVENTS PARTITION, WHEN THE PARTITION PROCEEDING IS NOT BETWEEN SPOUSES, BUT RATHER WHEN TWO DEFENDANT SPOUSES, OPPOSED TO THE PLAINTIFF IN THE PARTITION PROCEEDING, ARE THE OWNERS OF A FRACTIONAL INTEREST IN THE LAND SOUGHT TO BE PARTITED.

The 2009 amendment to § 11-21-1, Mississippi Code of 1972, as amended, states that property “ owned by spouses” shall be subject to partition only by written agreement. The statute is plain on its face, in that it only applies to a partition proceeding *between* spouses.

If in fact there is any ambiguity in the statute, the intent of this legislation is that, in a suit between a husband and wife, neither can force partition of homestead property, and that it does not prohibit partition when two Defendant spouses, opposed to the Plaintiff in the partition proceeding, are the owners of a fractional homestead interest in the land to be partited.

The honorable trial Judge was in error in ruling that if two of the Defendants in a partition suit were married, then this statute prohibits partition except by agreement.

V. APPELLANT’S ARGUMENT

ISSUE1: THAT THE TRIAL COURT ERRED IN RULING THAT § 11-21-1, MISSISSIPPI CODE OF 1972, AS AMENDED, APPLIES TO THIS CASE AND PREVENTS PARTITION, WHEN THE PARTITION PROCEEDING IS NOT BETWEEN SPOUSES, BUT RATHER WHEN TWO DEFENDANT SPOUSES, OPPOSED TO THE PLAINTIFF IN THE PARTITION PROCEEDING, ARE THE OWNERS OF A FRACTIONAL INTEREST IN THE LAND SOUGHT TO BE PARTITED.

The statute that is in question in this case, § 11-21-1, Mississippi Code of 1972, as amended, is as follows:

**§ 11-21-1. Partition by agreement and by arbitration;
partition of homestead property.**

- (1) Partition of land held by adult joint tenants, tenants in common, and coparceners, may be made agreement, which shall be evidenced by a writing, signed by the parties, and containing a description of the particular part allotted to each, and recorded

in the office of the clerk of the chancery court of the proper county or counties, and shall be binding and conclusive on the parties. They may also bind themselves by written agreement to submit the partition to the arbitrament of one or more persons to be chosen by them, and to abide the partition made by the arbitrators and the articles of submission; and the written award shall be recorded in the office of the clerk of the chancery court of the proper county or counties, and shall be final and conclusive between the parties, unless made or procured by fraud.

- (2) Homestead property exempted from execution that is owned by spouses shall be subject to partition pursuant to the provisions of the section only, and not otherwise.

The trial Court ruled, in interpreting this statute in this case, that if two of the Defendants in a partition case were married and claimed a fractional interest in the property as their homestead, then the statute prohibits partition except by agreement. The honorable trial Judge was in error in this ruling. The meaning of the statute is plain on its face; that the prohibition of partition by agreement applies only when the litigation is *between* spouses. When a statute is plain on its face there is no room for statutory construction. *Harrison v. State*, 800 So. 2d 1134, 1137 (Miss. 2001).

If this honorable Court determines that there is ambiguity in the meaning of this partition statute, then it is still abundantly clear that the prohibition of partition applies only when the litigation is *between* spouses, and not when two of the Defendants in the litigation own a fractional homestead right and are also spouses.

Prior to the year 2009, the law in Mississippi was that in domestic relations litigation, one spouse could force the other from the marital home of the parties by filing and prosecuting a partition proceeding. *Trigg v. Trigg*, 498 So. 2d 334 (Miss. 1986). This case obviously opened the door to inequitable situations that a trial Court could have difficulty dealing with. The Supreme Court in *Trigg*, at page 336, stated:

The prospect of one spouse leaving the homestead and without termination of the marital relationship forcing the other who remains in the homestead to a partition sale is not without its capacity to disturb us.

In 2009, the legislature addressed the concerns raised by the Supreme Court in *Trigg*, and amended § 11-21-1, Mississippi Code of 1972, to provide that when “Homestead property exempt from execution that is owned by spouses shall be subject to partition....” the partition shall only be by written agreement, and not otherwise.

The plain and obvious intent of this statute is that when a husband and wife have a home, neither can force the other from the home by a partition proceeding in court. It is not the intention of this statute, as ruled by the trial Court in the case at bar, that when two of the Defendants in a partition proceeding happen to be spouses, that partition is prohibited except by written agreement.

Insight into the legislative intent of this 2009 amendment to the statute is contained in the description of this legislation found in Chapter 517 of the 2009 General Laws of Mississippi, which gives the history of the amendment to § 11-23-1. The description of this legislation found

at the beginning of Chapter 517 of the General Laws of Mississippi is “Partition; not available for homestead property between spouses.” A copy of Chapter 517 of the 2009 General Laws of Mississippi is attached as Appendix “A” to this Brief. This description of this legislation makes clear the intent of the amendment as applying when the partition litigation is *between* spouses, and not when two Defendants in the litigation happen to be married.

The Mississippi Supreme Court has repeatedly held that “The rule is well established by the judiciary in this country that where there is ambiguity in a statute under consideration, the title to the act may be resorted to as an aid to ascertain the legislative intent.” *Aikerson v. State*, 274 So.2d 124, 128 (Miss. 1973); *Giles v. Friendly Finance Company of Biloxi*, 185 So.2d 659, 662, (Miss. 1966). The Supreme Court in *Bellew v. Dedeaux*, 126 So.2d 249, 251 (Miss. 1961) held that “if there is any uncertainty in the body of an act, the title may be resorted to for the purpose of ascertaining legislative intent and of relieving the ambiguity.” The Mississippi Supreme Court in *Bailey v. Montgomery Ward & Co.*, 76 So.2d 813, 816 (Miss. 1955), held that:


It is well-established that the headlines or lead lines in the state-wide privilege tax act constitute a part of the statute and are not ordinary titles.

Both the plain reading of this statute and the analysis of its ambiguity, if any, lead to the conclusion that the trial Judge was in error in not ruling that the prohibition of partition by agreement applies only with the litigation is *between* spouses.

VI. CONCLUSION

For the reasons set out above, this Court should render a decision reversing the ruling of the Chancellor prohibiting the partition of the land in this case, and remanding the case to the lower Court for further proceedings pursuant to Lockhart's Compliant For Partition.

Respectfully submitted,



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APPENDIX

**Mississippi Legislature
2009 Regular Session**

House Bill 887

Chapter 517

Description: Partition; not available for homestead property between spouses.

Background Information:

Disposition: Law

Deadline: General Bill/Constitutional Amendment

Revenue: No

Vote type required: Majority

Effective date: July 1, 2009

Chapter Number: 517

History of Actions:

- 1 01/19 (H) Referred To Judiciary A
- 2 02/03 (H) Title Suff Do Pass Comm Sub
- 3 02/10 (H) Committee Substitute Adopted
- 4 02/10 (H) Passed {Vote}
- 5 02/12 (H) Transmitted To Senate
- 6 02/12 (S) Referred To Judiciary, Division A
- 7 02/24 (S) Title Suff Do Pass As Amended
- 8 03/05 (S) Amended
- 9 03/05 (S) Passed As Amended {Vote}
- 10 03/06 (S) Returned For Concurrence
- 11 03/11 (H) Decline to Concur/Invite Conf
- 12 03/17 (H) Conferees Named Blackmon, Cockerham, Clark
- 13 03/18 (S) Conferees Named Fillingane, Dickerson, Gordon
- 14 03/26 (S) Conference Report Filed
- 15 03/26 (H) Conference Report Filed
- 16 03/30 (H) Conference Report Adopted {Vote}
- 17 03/30 (S) Conference Report Adopted {Vote}
- 18 04/02 (H) Enrolled Bill Signed
- 19 04/02 (S) Enrolled Bill Signed
- 20 04/13 Approved by Governor



Amendments:

  [S] Committee Amendment No 1 **Adopted** Voice Vote

  Amendment Report for House Bill No. 887

2009 GENERAL LAWS OF MISSISSIPPI, CH 517

Conference Reports:

 |  Conference Report

Code Section: A 011-0021-0001

— Additional Information —

House Committee: Judiciary A

Senate Committee: Judiciary, Division A

Principal Author: Blackmon

2009 GENERAL LAWS OF MISSISSIPPI, CH 517

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2009

By: Representative Blackmon

To: Judiciary A

HOUSE BILL NO. 887
(As Sent to Governor)

AN ACT TO AMEND SECTION 11-21-1, MISSISSIPPI CODE OF 1972, TO PROHIBIT PARTITION OF HOMESTEAD PROPERTY UNDER CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 11-21-1, Mississippi Code of 1972, is amended as follows:

11-21-1. (1) Partition of land held by adult joint tenants, tenants in common, and coparceners, may be made by agreement, which shall be evidenced by a writing, signed by the parties, and containing a description of the particular part allotted to each, and recorded in the office of the clerk of the chancery court of the proper county or counties, and shall be binding and conclusive on the parties. They may also bind themselves by written agreement to submit the partition to the arbitrament of one or more persons to be chosen by them, and to abide the partition made by the arbitrators and the articles of submission; and the written award shall be recorded in the office of the clerk of the chancery court of the proper county or counties, and shall be final and conclusive between the parties, unless made or procured by fraud.

(2) Homestead property exempted from execution that is owned by spouses shall be subject to partition pursuant to the provisions of this section only, and not otherwise.

SECTION 2. This act shall take effect and be in force from and after July 1, 2009, and shall apply to all cases pending or filed on or after July 1, 2009.

CERTIFICATE OF SERVICE

I, Carter Dobbs, Jr., attorney for the Appellant, do hereby certify that I have, on this the 25th day of May, 2011, mailed by United States mail, postage pre-paid, a true and correct copy of the above and foregoing Appellant's Brief to Honorable Jacqueline Estes Mask, Chancery Court Judge, at her usual mailing address of Post Office Box 7395, Tupelo, Mississippi 38802, to Honorable Martha Bost Stegall, attorney for the Appellees, at her usual mailing address of Mitchell, McNutt & Sams, Post Office Box 7120, Tupelo, Mississippi 38802-7120 and an original and three copies to Honorable Kathy Gillis, Supreme Court Clerk of Mississippi, at her usual mailing address of Post Office Box 249, Jackson, Mississippi 39205-0249.


CARTER DOBBS, JR.