

IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT  
SHELBY COUNTY, ALABAMA  
EQUITY DIVISION

501

CHARLES SMITH,  
Plaintiff

VS.

MILDRED VIRGINIA PHILLIPS SMITH,  
Defendant  
Counter Plaintiff

VS.

CHARLES SMITH, TOMMIS S. LEE  
and FRANK M. LEE,  
Defendants

CHARLES EASON SMITH,  
Third Party Plaintiff

VS.

GARY L. THOMPSON,  
Third Party Defendant

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Shelby Cnty Judge of Probate, AL  
12/13/1979 12:00:00 AM FILED/CERT

CIVIL ACTION NO. DR 78-118

MEMORANDUM OPINION

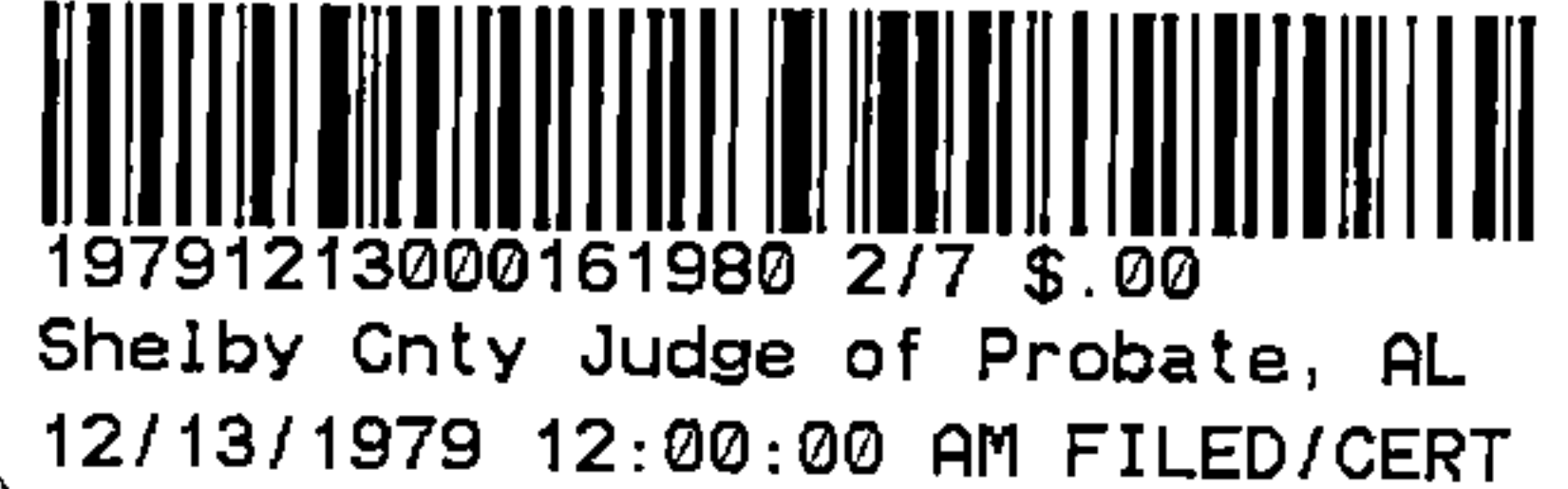
The instant controversy originated in a bill for divorce filed by the plaintiff, Charles Smith, against the defendant, Mildred Virginia Phillips Smith. A counterclaim by Mildred Smith alleged that Charles Smith was the equitable owner of the following real property:

The East Half of the NE 1/4 and the East 650 feet of the SW 1/4 of NE 1/4 of Section 35, Township 19 South, Range 3 West, minerals and mining rights excepted, less and except those portions thereof which have been heretofore conveyed.

ALSO: Part of W 1/4 of the SW 1/4 of the NE 1/4, Section 35, Township 19 South, Range 3 West, containing 15 acres, more or less. Shelby County, Alabama.

Tommie S. Lee and her husband, Frank M. Lee, the sister and brother-in-law of Charles Smith, were joined in the counterclaim as counter defendants. Mildred Smith alleged that the

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Lees held the above-described real property in trust for Charles Smith.

In his amended answer Charles Smith alleged that the property was acquired prior to the marriage between Charles Smith and Mildred Smith, and that Charles Eason Smith, the son of Charles Smith by a prior marriage, was, in fact, the equitable owner of the property. Charles Eason Smith was later added to this action as a third party plaintiff. In his amended answer Charles Smith also prayed for the Court to quiet title and partition in kind the above-described real property. Charles Smith further prayed for a declaration of rights regarding a promissory note, and for an attorney's fee.

In their amended answer to the counterclaim, Tommie S. Lee and Frank M. Lee alleged ownership of an undivided two-thirds interest in a portion of said property. They further alleged that they held title to the remaining undivided one-third of the property in trust as security for the payment of the promissory note hereinabove referred to. The Lees further alleged sole ownership of a fifteen (15) acre tract in the above-described property.

Charles Smith moved to sever the trial of the controversy surrounding the real property from the divorce trial proper, which motion was granted. The final judgment of divorce, as amended, vested title in Mildred Smith in certain other real property in the northwest and northeast quarter sections of the said Section 35, which property is not contested in this phase of the proceeding. In the said final judgment, the Court determined that Mildred Smith has no interest in any other properties owned by the plaintiff, Charles Smith.

#### FINDINGS OF FACT

In 1957, Charles Smith located and arranged the purchase of a tract of land of approximately one hundred (100) acres situated in Shelby County, Alabama, and described below:

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The East 1/2 of the NE 1/4 of Section 35, Township 19 South, Range 3 West. Mining and mineral rights excepted.

Also, the East 650 feet of the SW 1/4 of the NE 1/4 of Section 35, Township 19 South, Range 3 West. Mining and mineral rights excepted.

(This parcel is hereinafter referred to as the "Morros tract".)

Of the purchase price of Eight Thousand Dollars (\$8,000.00), Tommie S. Lee paid Two Thousand Dollars (\$2,000.00) cash, and her brothers, Charles Smith, Waymon Smith and Johnny Smith together paid Two Thousand Dollars (\$2,000.00) cash. A mortgage and note for Four Thousand Dollars (\$4,000.00) was also given, which had been satisfied by the three brothers prior to this action. At the time of this purchase, the deed placed title in Virginia D. Smith (wife of Charles Smith), Annie Laura Smith (wife of Waymon Smith), and Mary Lucille Smith (wife of Johnnie Smith). The intent of the purchasers was for each sibling to take a one-fourth undivided interest in the property. A memorandum dated September 15, 1958, and signed by the title holders, recites that in 1957 Tommie S. Lee and husband, Frank M. Lee, did purchase a one-fourth interest in the said property.

Virginia D. Smith, wife of Charles Smith, died intestate in January, 1960, survived by her only child, Charles Eason Smith, and her widower, Charles Smith.

Charles Smith also located and arranged the purchase of another parcel of approximately fifteen (15) acres, adjacent to the above-described one hundred (100) acre tract. On February 26, 1964, Tommie S. Lee and Frank M. Lee purchased the property in Shelby County, Alabama, described below:

Commence at a point on the North line of the SW 1/4 of NE 1/4 of Section 35, Township 19 South, Range 3 West, which is 650 feet West of the NE corner of said quarter-quarter section and run South, parallel with the East line of said quarter-quarter section, and along the West line of property presently owned by Virginia D. Smith, Annie Laura Smith and Mary Lucille Smith, a distance of 160



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feet to the point of beginning; thence continue South, parallel with the East line of said quarter-quarter section and along said Smith property line, a distance of 1160 feet to a point on the South line of said quarter-quarter section; thence run West along the South line of said quarter-quarter section, a distance of 670 feet to the SW corner of said quarter-quarter section; thence run North along the West line of said quarter-quarter section, a distance of 720 feet to a point; thence run in a Northeasterly direction 860 feet more or less to point of beginning, mineral and mining rights excepted.

Seller grants easement to both sides of property described above through his property.

(This parcel is hereinafter referred to as the "Murphy tract".)

The deed recites a consideration of Fifteen Hundred Dollars (\$1,500.00), which was paid by the Lees. The deed placed title in Tommie S. Lee and Frank M. Lee.

In 1964 Charles Smith and Charles Eason Smith borrowed Five Thousand Dollars (\$5,000.00) from Tommie S. Lee and Frank M. Lee, and jointly executed a promissory note to the Lees for Five Thousand Dollars (\$5,000.00), said note bearing six percent (6%) interest, and dated April 7, 1964. On the reverse side of this note is a memorandum, signed by Charles Smith and Charles Eason Smith, which describes a one-fourth interest in the Morros tract "held in security of sum of note until paid in full". This note is still outstanding with accrued interest.

On January 22, 1965, Tommie S. Lee and Frank M. Lee purchased the one-fourth undivided interest in the Morros tract from Mary Lucille Smith and husband, Johnnie Smith, for Two Thousand Dollars (\$2,000.00).

On June 26, 1970, the Lees conveyed to Annie Laura Smith and husband, Waymon Smith, approximately twenty-five (25) acres of the Morros tract. This transaction was intended to describe and convey in kind Annie Laura Smith's one-fourth interest in the Morros tract.

In a letter signed by the Lees and dated March 9, 1973, there is a record of a proposed division of the

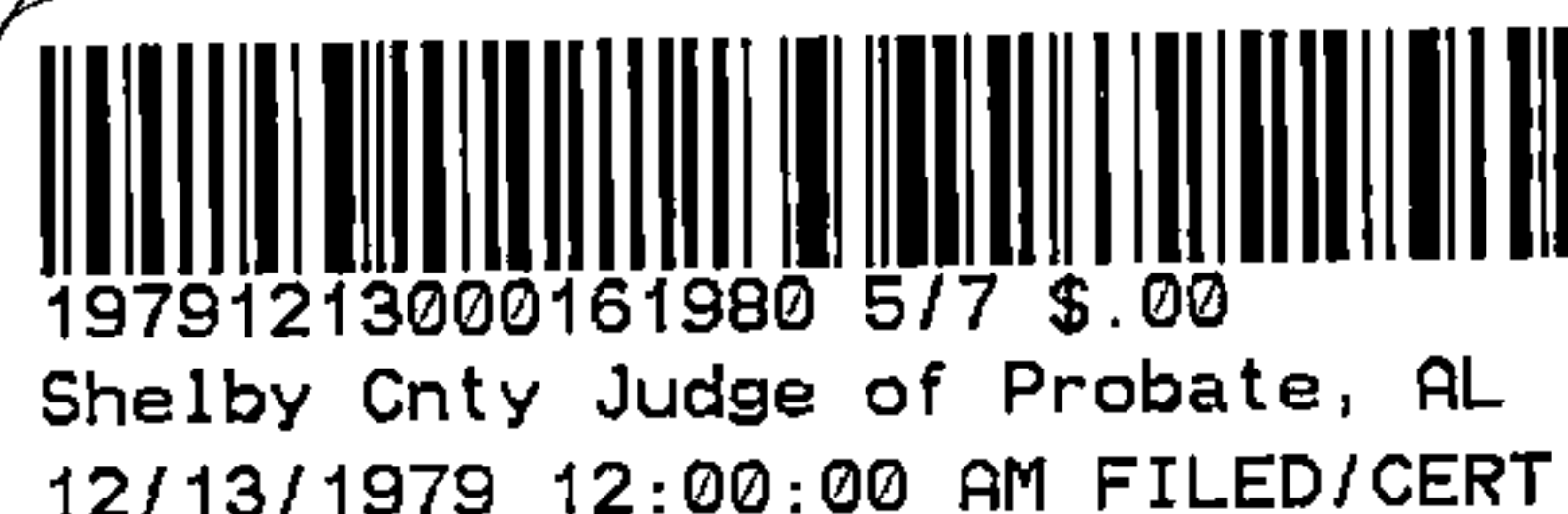
remainder of the Morros tract. Enclosed with the letter were several proposed deeds, which would have conveyed approximately fifty (50) acres to the Lees and twenty-five (25) acres to Charles Smith. Due to differences and disagreements among the parties, the deeds were never executed.

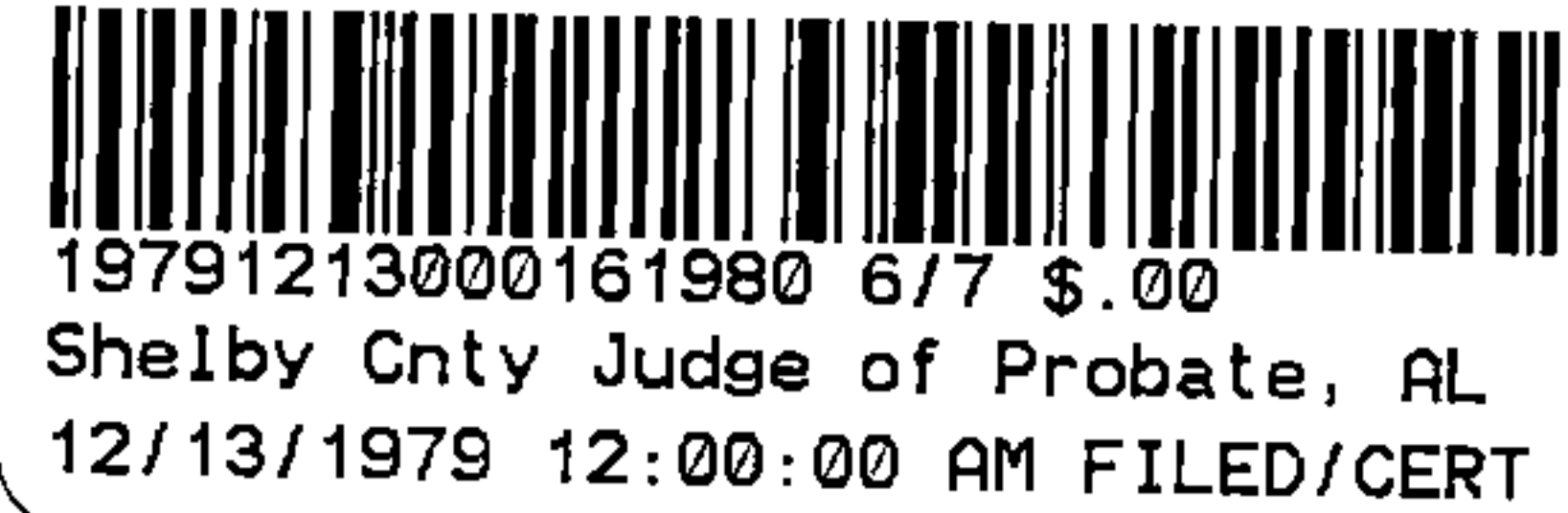
Since 1957 Charles Smith has rendered valuable services to the members of his family in that he found and acquired said tracts of land for the benefit of himself and other members of his family; he has rendered valuable services to the property as a whole in that he has planted pine seedlings on said property; he has managed said property; he has surveyed said property; he has supervised the payment of taxes on said property. On one occasion, at his own expense, he surveyed the said property for a lake site in his efforts to enhance the value of the property. Charles Smith has negotiated for the sale of the said property; he has spent actual time of approximately one year in and about the management of said property without the aid or assistance of any other members of the family.

Charles Smith has lived in Shelby County and Jefferson County since 1957, and has been constantly available to manage the said property. Since 1957, the Lees have lived in Atlanta, Georgia. The property is adjacent to the Riverchase planned community in Shelby County. Largely through the efforts of Charles Smith, there have been negotiations to sell the property for between eight and nine thousand dollars per acre. (Rule 54b ARCP. The Court finds and determines that there is no just reason for delay of judgment as hereinafter rendered and the Court expressly directs entry of said judgment in this cause.)

CONCLUSIONS OF LAW

Considering first the fifteen (15) acre Murphy tract, the Court concludes that it is owned solely by Tommie S. Lee and Frank M. Lee. The Lees paid all the consideration for the property and the parcel has always been separately defined.





When Virginia D. Smith died intestate in 1960, her undivided one-fourth interest in the one hundred (100) acre Morros tract descended to her only child, Charles Eason Smith, subject to a life estate in her widower, Charles Smith.

The memorandum on the reverse side of the promissory note executed on April 7, 1964, is legally insufficient as a conveyance or as a mortgage. Nevertheless, all the parties fully intended that the one-fourth undivided interest of Charles Smith and Charles Eason Smith be held by the Lees as security for the payment of the note. The Court concludes that the note is payable and due. The parties have stipulated that the principal and unpaid interest due as of February 21, 1979, equals Seven Thousand Nine Hundred Thirteen and 62/100 Dollars (\$7,913.62). Charles Smith and Charles Eason Smith should formalize the security interest by executing a mortgage to the Lees on the property awarded to them in the attached Order.

The Court concludes that all necessary parties are before the Court and that a partition in kind of the remaining portion of the Morros tract is appropriate. The proposed partition of 1973 will be followed as an equitable method to partition the property. The result will be that the Lees will get approximately fifty (50) acres, or one-half of the Morros tract. This represents Tommie S. Lee's original one-fourth interest and the one-fourth interest purchased from Mary Lucille Smith and Johnnie Smith. Charles Smith and Charles Eason Smith will get approximately twenty-five (25) acres, which represents the one-fourth undivided interest they inherited from Virginia D. Smith.

Charles Smith brought this action to quiet title, and his efforts and the services of his attorney have led to this decision, which increases the marketability of the

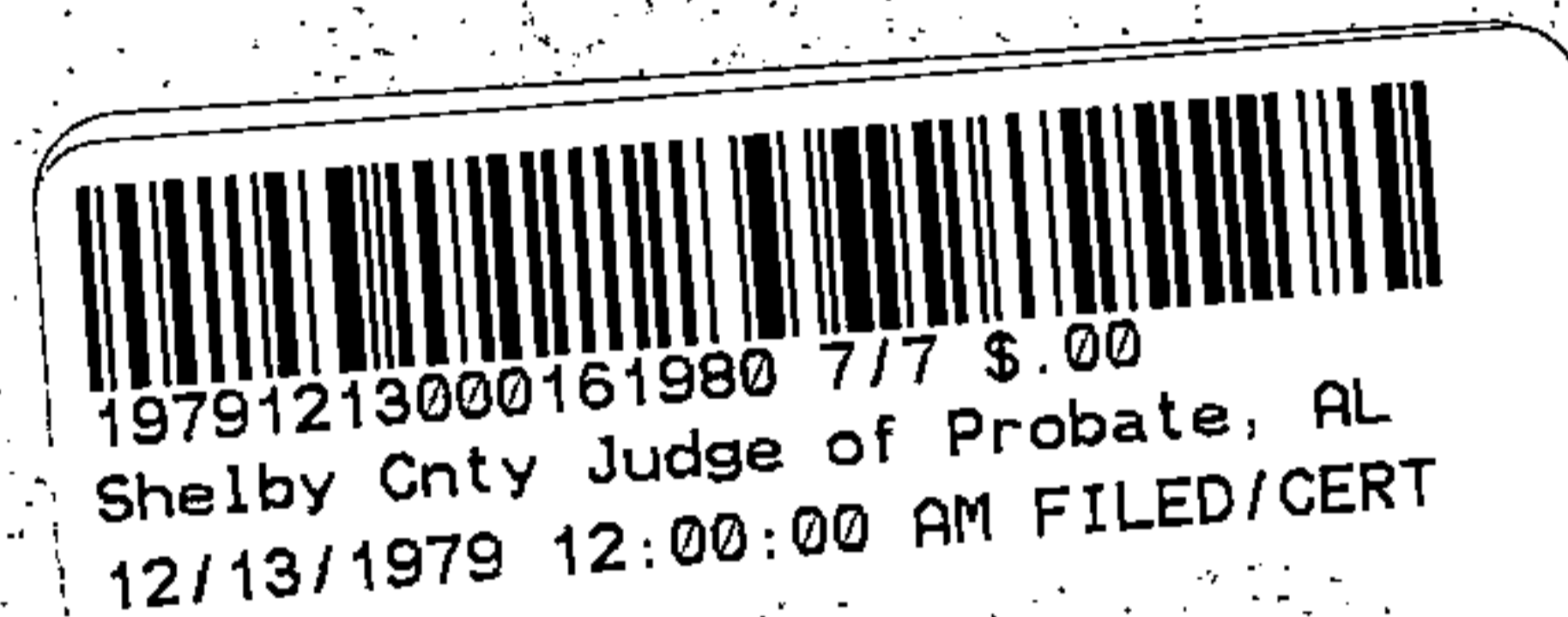
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property by defining the present state of the title. It is the Court's conclusion that the services of Charles Smith's attorney have increased the value of the whole property, and that it would be inequitable for Charles Smith to pay the whole fee. Therefore, the Court ascertains that Charles Smith's attorney is due a reasonable attorney's fee of Six Thousand Dollars (\$6,000.00), for which a lien shall attach to the several parts described in the Order. See Ala. Code, §34-3-60 (1975).

This 12<sup>TH</sup> day of March, 1979.

James H. Sharbutt  
James H. Sharbutt, Circuit Judge

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STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1979 DEC 13 PM 2:26

Thomas A. Snowdon, Jr.  
JUDGE OF PROBATE

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FILED IN OFFICE, This the 12<sup>th</sup> day  
of March, 1979

Kyle Lane

Register Circuit Court of  
Shelby County, Alabama