

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

JENNIE JO COX, et al.,

Plaintiff,

VS.

PERRY EUGENE COX, JR.,

Defendant.

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CASE NUMBER: CV-2016-900052



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FINAL ORDER

This cause came on to be heard before the undersigned on October 14, 2022 for a pretrial conference. Before the Court were various motions *in limine* filed by the parties as well as proposed jury instructions. After a lengthy colloquy between the Court and counsel for the parties, the Court indicated that it was inclined to exercise its discretion and grant the Defendant's motion *in limine* seeking to exclude testimony concerning the Defendant's false statements in his domestic relations case and his bankruptcy case which took place in 1998 and 1999 respectively which was the basis of Judge Bostick's Order of March 7, 2017. Said Order, *inter alia*, had dissolved the 1986 written partnership agreement between the Defendant and his father retroactively to 1999 based upon the principle of judicial estoppel. At the conclusion of the hearing, the parties agreed to submit the case to the Court for a legal determination of the remaining issues embraced in Count Two of Plaintiffs' Complaint based upon stipulated facts rather than to proceed with a jury trial. Whereupon, the parties submitted a joint stipulation, attached as Exhibit A, of facts in open court which is attached hereto and incorporated herein by reference. The parties have since jointly moved to dismiss the remaining counts in the Complaint leaving the existence *vel non* of a partnership between the Decedent and the Defendant at the

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Date: 06/10/2024
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Mary E. Harris, Circuit Clerk
Shelby County, Alabama
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time of Decedent's death and the ownership of the real property and equipment that form the partnership assets as the sole issues to be determined by the Court.

Based upon the joint stipulation of facts, the Court hereby makes the following findings of fact and conclusions of law:

- (a) Count Two of Plaintiffs' Complaint is an action for declaratory judgment seeking a declaration that the Plaintiffs are the owners of the property previously held by the partnership known as "Country Hills Estate" and a declaration that the Defendant has no ownership rights therein.
- (b) The Defendant, as a defense to the Complaint, denies that the Estate is the sole owner of the former partnership assets and contends that he has an ownership interest in the partnership assets as a result of an express or implied partnership formed or revived after 2005. As a consequence, thereof, the Defendant contends that he has an undivided one-half interest in the partnership assets.
- (c) The core issue to be determined by the Court, as identified by the Alabama Supreme Court in its opinion of June 21, 2019, is the ownership of the partnership assets. (d) Although the partnership known as Country Hills Estate was dissolved in 1999 by operation of law unbeknownst to the partners, the Decedent and the Defendant resumed the normal operation of the Partnership from approximately 2005 until the Decedent's death in 2013 as though nothing had happened.
- (e) The Decedent and the Defendant formed an implied equal partnership during the period between 2005 and the Decedent's death in 2013.



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(f) As a result, the Court finds that the real estate and equipment situated thereon is partnership property. Therefore, the partnership property is currently owned one-half by the Defendant individually and one-half by the Decedent's estate.

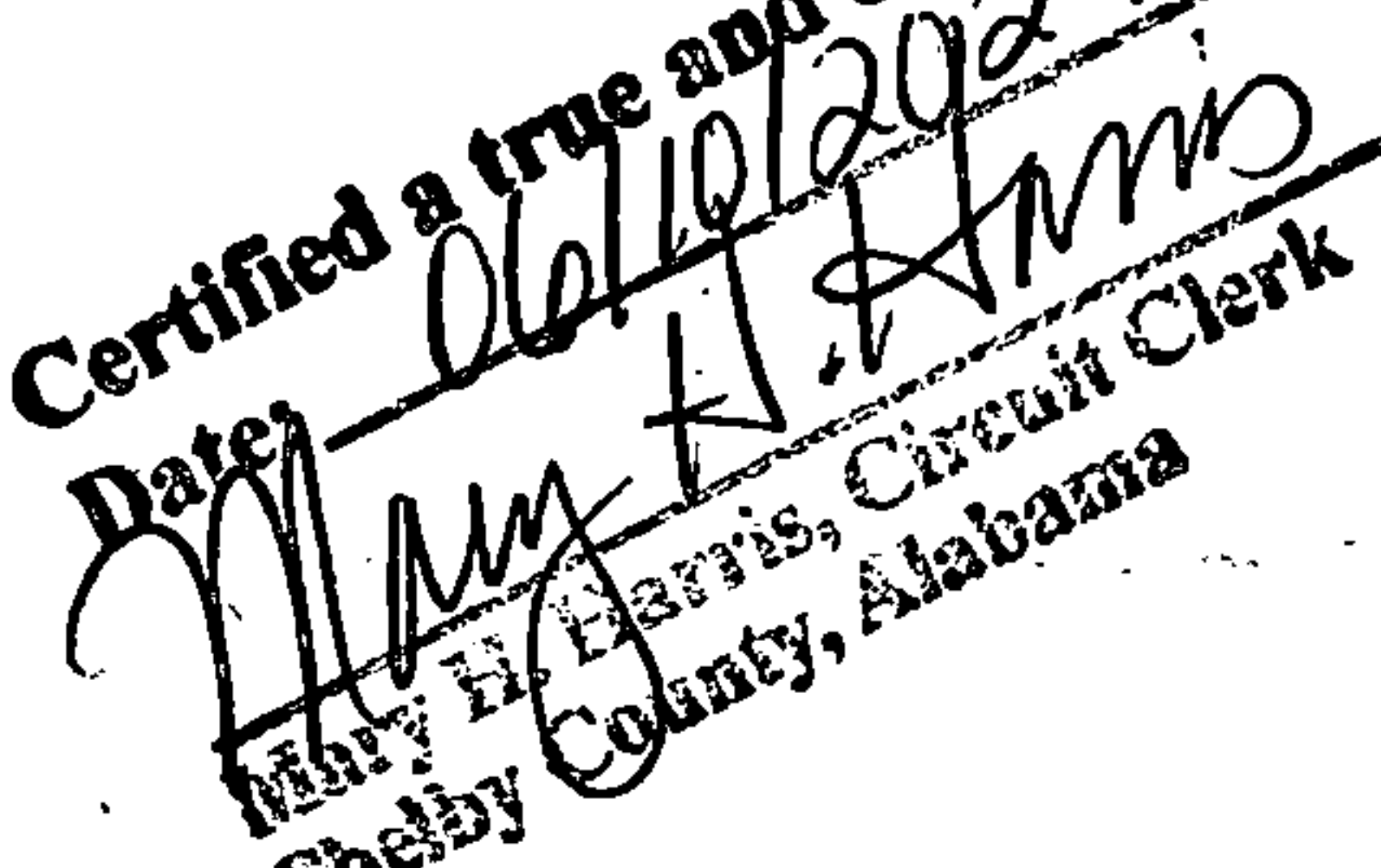
In accordance with the above findings of fact and conclusions of law, the Court hereby enters judgment in favor of the Defendant and against the Plaintiffs.

All other relief requested by either party is hereby denied.

Costs of this action are hereby taxed as paid.

DONE and ORDERED this the 13th day of February 2023.


Lara M. Alvis
Circuit Judge

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EXHIBIT "A"

The parties stipulate that if a trial were held, the evidence would show as follows:

- a. Perry Cox, Jr. ("Defendant Cox") and Perry Cox, Sr. ("Decedent") entered into a written agreement to form Country Hills Partnership on June 1, 1986.
- b. The real property that the parties have referred as the Farm is comprised of six parcels. The first parcel was acquired by Country Hills Partnership on January 17, 1989; the second parcel was acquired by Country Hills Partnership on July 19, 1990; the third parcel was acquired by Country Hills Partnership on July 16, 1990; the fourth parcel was acquired by Country Hills Partnership on July 23, 1991; the fifth parcel was acquired by Country Hills Partnership on February 10, 1993; the sixth parcel was acquired by Decedent himself on December 1, 1995.
- c. The parties stipulate to all facts and rulings set forth in Judge William Bostick's Order [Doc. 57, March 13, 2017].
- d. Defendant Cox and Decedent did not know that Country Hills Partnership had been rendered null and void as of January 1999.
- e. Following the divorce and bankruptcy of Defendant Cox, Defendant Cox and Decedent continued to operate the Country Hills Partnership until Decedent's death in 2013. Defendant Cox would testify that, from 2005 until 2013, Defendant Cox contributed time and money in furtherance of the Partnership business.
- f. After Country Hills Partnership was formed in 1986 and continuing until Decedent's death in 2013:
 - i. Country Hills Partnership filed tax returns identifying Defendant Cox and Decedent as the only two partners.
 - ii. Country Hills Partnership's tax returns reflected an employee identification number of 63-0949023 and a "Date business started" of June 1, 1986.
 - iii. Country Hills Partnership purchased and sold livestock and equipment.
 - iv. Defendant Cox and Decedent publicly held themselves out to be partners.
- g. Decedent did not make any effort to wind up the affairs of the Country Hills Partnership.
- h. The 1986 written partnership agreement was the only partnership agreement that ever existed between Defendant Cox and Decedent.
- i. In 2008, Defendant Cox and Decedent executed a deed providing that "We, Perry E. Cox, Sr.; and Perry E. Cox, Jr., (herein referred to as GRANTOR, whether one or more), grant, bargain, sell and convey unto COUNTRY HILLS ESTATE, a General Partnership - Perry E. Cox, Sr.; Perry E. Cox, Jr. (herein referred to as



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GRANTEE, whether one or more)" the six parcels of land that the parties have described as the Farm.

- j. The 2008 deed was recorded in Probate Court.
- k. Decedent died in March 2013.
- l. Defendant Cox did not file a claim in Probate Court setting out any rights regarding a partnership agreement, whether written, oral, or implied, between Defendant Cox and Decedent.

These stipulations should not be construed as a consent to judgment by either party.

IN THE SUPREME COURT OF ALABAMA



April 30, 2024

SC-2023-0221

Jennie Jo Cox Parrish, Debra Cox McCurdy, and Shirley Cox Wise, as co-executors of the Estate of Perry Eugene Cox, Sr., deceased v. Perry Eugene Cox, Jr. (Appeal from Shelby Circuit Court: CV-16-900052).

CERTIFICATE OF JUDGMENT

WHEREAS, the appeal in the above-styled cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on April 12, 2024:

Affirmed. No Opinion. Stewart, J. -- Parker, C.J., and Wise, Sellers, and Cook, JJ., concur.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Megan B. Rhodebeck, certify that this is the record of the judgment of the Court, witness my hand and seal.

Megan B. Rhodebeck

Clerk of Court,
Supreme Court of Alabama

Certified a true and correct copy

Date: 06/10/2024

Mary H. Harris KTH
Mary H. Harris, Circuit Clerk
Shelby County, Alabama