

IN THE CHANCERY COURT OF DESOTO COUNTY, MISSISSIPPI

IN RE: ESTATE OF WILLIE JAMES GRAY,
DECEASED

NO. 80-5-386
NO. 80-9-685

DECREE ORDERING PARTITION OF LAND
IN KIND, ACCEPTANCE OF INSURANCE
SETTLEMENT, AND ALLOWANCE OF SOLICITOR'S
FEEES

This cause came on to be heard upon the sworn Amended Petition of Robert Baptist, Jr., Administrator Cum Testamento Annexo of the estate of Willie James Gray, deceased, praying for a partition of land, acceptance of insurance settlement, and allowance of attorney fees. The Court finds, with concurrence of all the parties, and upon proof, that:

1. By deed dated October 30, 1930, and recorded in Deed Book 23 at page 15, Callie Phillips conveyed to Jim Gaulding and wife, Ella Gaulding (as tenants in common), the following property:

The west half of the following 100 acres of land: 92 acres in the northwest corner of the northwest quarter of Section 4, T2, R7W, described as beginning at the northwest corner of said Section 4; thence south on the section line 26 chains (1716 feet) to a stake; thence east var. 7° 10' 35 chains and 38 links (2335 feet) to a stake; thence north var. 6° 35' 26 chains (1716 feet) to a stake in the north line of said Section 4; thence west on said section line var. 7° 35 chains and 8 links (2315 feet) to the beginning. Also 8 acres on the east side of the northeast quarter of Section 5, T2, R7W, and being the same 8 acres described in a deed from W.B. Bridgforth to Martha Stewart, dated August 7, 1980, and recorded in Book 3, page 69.

2. On December 8, 1930, Jim Gaulding and Ella Gaulding executed a joint will. On February 10, 1942, Jim Gaulding died, leaving

Filed 4th day of Feb, 1982

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his wife and five children (apparently, by an earlier marriage):

George Gaulding
Savannah Partee
Frances Miller
Julius Bennett
Curtis Gaulding

3. The joint will was admitted to probate by Order entered March 13, 1942, Cause No. 6537; however, for reasons not evident, Ella Gaulding declined to join in the petition for probate. J.F. Conger was appointed Administrator C.T.A. The will referred to the 50 acres described above, and the pertinent part of the will states as follows:

Upon the death of either one of us, the said Jim Gaulding or his wife, Ella Gaulding, we desire and direct that the above tract of land be divided ***** by a line running east and west through said fifty (50) acres so that 25 acres will be in the north half and 25 acres will be in the south half.

If I, Jim Gaulding, should die before my wife, Ella Gaulding, dies, then in that event I give devise (sic) and bequeath to my said wife, Ella Gaulding, the north half of said twenty five acres, to be hers free from any claim of any of my heirs, and I give, devise and bequeath the south half of said fifty acres to my children.

The result of the will and its probate gave Ella Gaulding sole title to the north 25 acres, and a questionable interest in the south 25 acres. On September 18, 1942, a Petition for Sale of Lands for a division (Cause No. 6585) was filed by the five children of Jim Gaulding against Ella Gaulding. In the meantime, Ella Gaulding married Willie James Gray on September 20, 1942 (Book 29, p. 381). The marriage license reflects "Ella Golden."

4. By Commissioner's Deed dated May 10, 1943, (Deed Book 30, p. 537), James Gray and Ella (Gaulding) Gray were conveyed the south 25 acres of the land described in the will of Jim Gaulding. (See Deed

Book 23, p. 15). File Jacket No. 6585 is missing, but see Minute Book 17, pages 514, 515.

5. On September 28, 1943, a decree was entered discharging J.F. Conger as Administrator C.T.A.
6. For the next several years, Willie James Gray and Ella Gray sold off various parts of the 50 acres. Ella Gray died in 1978, leaving as her only heirs and next of kin, her husband, Willie James Gray, and two daughters, Beatrice Walton and Mary Evans. A third child, Izoner Mosley, died in 1965 without issue. No estate was opened for Ella Gray.
7. Willie James Gray, who had a fixed place of residence in DeSoto County, Mississippi, died testate on April 30, 1980. His last will and testament was duly admitted to probate in the Chancery Court of DeSoto County, Mississippi. Letters of Administration CTA were issued on May 30, 1980, to Robert Baptist, Jr. Said last will and testament named Alice Banks McCrackin as sole beneficiary.
8. A summons by publication for unknown heirs of Ella Gray and Willie James Gray was duly run according to law in the DeSoto County Tribune, a newspaper having a general circulation in DeSoto County, Mississippi, as evidenced by proof of publication filed in this cause.
9. After the above described summons by publication had been run according to law, no person or persons answered or appeared, claiming to be an heir at law and/or beneficiary of Ella Gray, deceased, and/or Willie James Gray, deceased.

10. On September 3, 1981, a decree was entered that Willie James Gray (deceased), Beatrice Walton and Mary Evans were recognized as the sole and only heirs at law of Ella Gray, deceased, and that they, or their respective heirs and assigns, be placed in possession of the estate of said Ella Gray and/or Willie James Gray, as their respective interests may appear.
11. At the time of his death, Willie James Gray (the deceased), and Mary Evans and Beatrice Walton, were the owners in fee, as tenants in common, of the remainder of the aforesaid 50 acre tract in DeSoto County, Mississippi, and more particularly described as follows:

Beginning at a point on the west line of Section 4; Township 2 South; Range 7 West; said point being 392.11 feet south of the northwest corner of said section, said point being the southwest corner of the Edmondson tract; thence north $87^{\circ} 18'$ east 557.20 feet along the south line of the Edmondson tract to the northeast corner of the Gray tract; thence south $3^{\circ} 19'$ east 536.2 feet along the west line of the Edmondson tract to the northeast corner of the Pannel lot; thence south $83^{\circ} 28'$ west 130.75 feet to the northwest corner of the Pannel tract; thence south $0^{\circ} 29'$ west 48.5 feet to the northeast corner of lot 3 of the Gray Subdivision; thence south $87^{\circ} 37'$ west 422.61 feet along the north line of said lot 3 to a point in the west line of section 4; thence north $3^{\circ} 24'$ west 591.04 feet along said section line to the point of beginning and containing 7.4 acres more or less. All bearings are magnetic.

12. The estate of Willie James Gray (the deceased), Mary Evans and Beatrice Walton had an undivided interest in said real property which is as follows:
- (a) Willie James Gray (the deceased) had a $2/3$ interest in the remainder of the south 25 acres, and a $1/3$ interest in the remainder of the north 25 acres.
 - (b) Beatrice Walton and Mary Evans each had a $1/6$ interest in the remainder of the south 25 acres and a $1/3$ interest in the remainder of the north 25 acres.

A Memorandum of Status is on file in this cause. Joe Frank Lauderdale, Civil Engineer, has surveyed said 7.4 acres. Said

survey shows the portion of said 7.4 acres which was part of the south 25 acres and the north 25 acres, respectively, to wit, 1.26 acres and 6.14 acres. Therefore, the estate of Willie James Gray (the deceased), Beatrice Walton and Mary Evans have the following undivided interests in said 7.4 acres, to wit:

(a) Willie James Gray (deceased)			
(south 1.26 a. x 66.67%)	.84 a.		
(north 6.14 a. x 33.33%)	2.04 a.		
			<u>2.88 a.</u>
			39%
(b) Mary Evans			
(south 1.26 a. x 33.33% ÷ 2)	.21 a.		
(north 6.14 a. x 33.33%)	2.05 a.		
			<u>2.26 a.</u>
			30.5%
(c) Beatrice Walton			
(south 1.26 a. x 33.33% ÷ 2)	.21 a.		
(north 6.14 a. x 33.33%)	2.05 a.		
			<u>2.26 a.</u>
			30.5%

- 13. There are no liens or encumbrances thereon appearing of record except a Bill for Specific Performance filed by Allen E. Riley, Chancery Cause No. 80-9-685, affecting the south three acres of said real property. Said cause has been consolidated with the case at bar.
- 14. The said real property is capable of partition in the hereinabove proportions without resort to special commissioners. (Section 11-21-13, Mississippi Code of 1972).
- 15. Immediately preceding the death of Willie James Gray (the deceased), a house located on said real property sustained minor fire damage. The insurer, Interstate Fire Insurance Company, investigated and thereafter tendered a check for \$1,000.00 for the damages sustained.

16. The Petitioner retained the firm of Bonner & Birmingham, attorneys at law, to represent him in the handling of the estate of the deceased.
17. Said attorneys have expended considerable time and effort which was necessary to determine the extent, condition and respective interests of the said owners of the said real property, for the benefit of all said owners. A copy of the current statement of said attorneys for services to date was incorporated by reference in said Petition.
18. The total charges by said attorneys for services attributable to said real property, exclusive of those services for the estate of Willie James Gray are \$2,430.00, are reasonable and necessary, and should be prorated and allocated among the three interests of the respective owners as follows:

Willie James Gray estate (39% x \$2,430)	\$ 947.70
Beatrice Walton (30.5% x \$2,430)	\$ 741.15
Mary Evans (30.5% x \$2,430)	<u>\$ 741.15</u>
	\$2430.00

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that:

- A. The hereinabove described real property, consisting of 7.4 acres, be partitioned in kind as follows, pursuant to Sections 11-21-3 and 11-21-35, Mississippi Code of 1972:
- 1) To Beatrice Walton, the north 2.26 acres, with all improvements thereon, more particularly described as:

IN THE NORTHWEST QUARTER OF SECTION 4; TOWNSHIP 2 SOUTH;
RANGE 7 WEST; DESOTO COUNTY, MISSISSIPPI, more particularly
described as:

LOT 1

Beginning at the northwest corner of Section 4; Township 2 South; Range 7 West; thence south 392.11 feet along the west line of said section to the northwest corner of the Gray tract, said point being the point of beginning of the following lot: thence north $87^{\circ} 18'$ east 557.2 feet along the north line of the Gray tract to the northeast corner of said tract; thence south $3^{\circ} 19'$ east 159.7 feet along the east line of the Gray tract to a point; thence south $87^{\circ} 18'$ west 356.97 feet to a point; thence south $3^{\circ} 24'$ east 47.3 feet to a point; thence south $87^{\circ} 18'$ west 200.0 feet to a point in the west line of Section 4; thence north $3^{\circ} 24'$ west 207.0 feet to the point of beginning and containing 2.26 acres more or less. All bearings are magnetic.

- 2) To Mary Evans, the center 2.26 acres, with all improvements thereon, more particularly described as:

IN THE NORTHWEST QUARTER OF SECTION 4; TOWNSHIP 2 SOUTH;
RANGE 7 WEST; DESOTO COUNTY, MISSISSIPPI, more particularly
described as:

LOT 2

Beginning at the northwest corner of Section 4; Township 2 South; Range 7 West; thence south 599.11 feet along the west line of Section 4 to the southwest corner of lot 1 of the W.J. Gray Estate, said point being the point of beginning of the following lot: thence north $87^{\circ} 18'$ east 200 feet along the south line of lot 1 to a point; thence north $3^{\circ} 24'$ west 47.3 feet to a point; thence north $87^{\circ} 18'$ east 356.97 feet along the south line of said lot 1 to the southeast corner of lot 1; thence south $3^{\circ} 19'$ east 194.30 feet along the east line of the Gray tract to a point; thence south $87^{\circ} 18'$ west 556.69 feet to a point in the west line of Section 4; thence north $3^{\circ} 24'$ west 147.0 feet to the point of beginning and containing 2.26 acres more or less. All bearings are magnetic.

- 3) To Robert Baptist, Jr., Administrator of the estate of Willie James Gray (the deceased), the south 2.88 acres, with all improvements thereon, more particularly described as:

IN THE NORTHWEST QUARTER OF SECTION 4; TOWNSHIP 2 SOUTH;
RANGE 7 WEST; DESOTO COUNTY, MISSISSIPPI, more particularly
described as:

LOT 3

Beginning at the northwest corner of Section 4; Township 2 South, Range 7 West; thence south 746.11 feet along the west line of Section 4 to the southwest corner of lot 2 of the Gray Estate, said point being the point of beginning of the following lot: thence north 87° 18' east 556.69 feet along the south line of lot 2 to the southeast corner of said lot 2; thence south 3° 19' east 182.20 feet along the east line of the Gray tract to a point; thence south 83° 28' west 130.75 feet to the northwest corner of the Pannel tract; thence south 0° 29' west 48.5 feet to the northeast corner of the existing Gray Subdivision; thence south 87° 37' west 422.61 feet along the north line of the said subdivision to a point in the west line of Section 4; thence north 3° 24' west 237.04 feet to the point of beginning and containing 2.88 acres more or less. All bearings are magnetic. Subject, however, to any remaining debts of the estate of Willie James Gray (the deceased).

- B. The settlement tendered by Interstate Fire Insurance Company for \$1,000.00 be accepted as full settlement for all fire damage suffered by said property, and deposited with the Chancery Clerk.
- C. The statement for services rendered by Bonner & Birmingham, attorneys at law, in the sum of \$2,430.00, be approved as reasonable, and may be impressed as an attorney's lien by said attorneys upon said property within thirty (30) days of the entry of this decree, proportioned as above described pursuant to Section 11-21-31, Mississippi Code of 1972; subject, however, to a prorated reduction for credit of said fire insurance proceeds which shall be payable to said attorneys by the Chancery Clerk:

- (1) Beatrice Walton \$741.15 - \$305 = \$436.15
- (2) Mary Evans \$741.15 - \$305 + \$436.15
- (3) Alice Banks McCrackin \$947.70 - \$390 = \$557.70
(estate of Willie James Gray)

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~~D. The encumbrance of the hereinabove described Bill for Specific Performance be limited to that south 2.88 acres.~~

~~D.~~ All court costs be assessed to said owners proratably.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Decree be recorded in the land records of conveyances of the Chancery Clerk's Office of DeSoto County, Mississippi, pursuant to Section 11-21-37, Mississippi Code of 1972.

ORDERED, ADJUDGED AND DECREED this the 21st day of January, 1982.

Thomas M. Baker
CHANCELLOR

APPROVED:

Drue D. Birmingham, Jr.
DRUE D. BIRMINGHAM, JR., Attorney
for Estate of Willie James Gray
and Mary Evans

John Zizmann
JOHN ZIZMANN, Attorney for
Beatrice Walton

William W. Ballard
WILLIAM W. BALLARD, Attorney for
Allen E. Riley

STATE OF MISSISSIPPI, DESOTO COUNTY

I certify that the within instrument was filed for record at 9 o'clock 50 minutes A.M. 10 day of Feb 1982, and that the same has been recorded in Book 157 Page 505 records of WARRANTY DEEDS of said County.

Witness my hand and seal this the 11 day of Feb 1982.

Fee 10.50 pd. *H. M. [Signature]* Clerk