

NORTH CAROLINA )  
 )  
STOKES COUNTY )

IN THE GENERAL COURT OF JUSTICE  
DISTRICT COURT DIVISION  
09 SP 187

BRENDA DIANE MARSH, single,  
Individually and as Co-Administrator  
of the Estate of Kenneth Albert Marsh;  
BRIDGET M. SMITH, divorced,  
individually and as Co-Administrator  
of the Estate of Kenneth Albert Marsh  
and REBECCA P. MARSH, divorced

Petitioners,

v.

BRANDON K. MARSH, single;  
ALLEGACY FEDERAL CREDIT  
UNION; and BLANCO, TACKBERRY  
COMBS AND MATAMOROS, PA  
Trustee of the Deed of Trust in  
Book 0480 Page 2090  
Stokes County Registry  
and Revolving Credit of Deed of  
Trust in Book 0482 Page 1175  
Stokes County Registry

Respondents.

ORDER  
FOR SALE OF REAL ESTATE  
TO MAKE ASSETS,  
PARTITION OF LAND TO BE SOLD  
AND  
APPOINTMENT OF COMMISSIONERS

THIS CAUSE coming before the Honorable Jason Tuttle, Clerk of Superior Court of Stokes County, North Carolina, upon a Petition filed August 4, 2009 for a Sale of Real Estate to Make Assets to pay for debts for the ESTATE OF KENNETH ALBERT MARSH, Partition of Land to Be Sold and for the Appointment of Commissioners, and it appearing to the Court that all of the Respondents have been duly served with Summonses and copies of the Petition; that the time for answering has expired and that no Respondent has filed an Answer; that the Petitioners are represented by Wesley Bailey, Esquire of the firm of Bailey & Thomas PA; that the Court has received no notice of appearance filed by any attorney on behalf of any of the Respondents; and that it appearing to the Court that the partition of the real property by sale to create assets to pay debts of the estate and the partition of the land to be sold should be made along with the appointment of the Commissioners by the court should be granted.

That the Court, based on the pleadings and the verified statements signed by BRENDA DIANE MARSH, BRIDGET MARSH SMITH and REBECCA P. MARSH, make the following:

## FINDINGS OF FACT

### I.

That the Petitioners, BRENDA DIANE MARSH is a citizen and residence of Stokes County North Carolina and that BRIDGET MARSH SMITH is a citizen and resident of Forsyth County North Carolina.

### II.

That the Petitioners, BRENDA DIANE MARSH and BRIDGET MARSH SMITH are the duly appointed and acting Co-Administrators of the Estate of KENNETH ALBERT MARSH having been duly appointed by the Clerk of Superior Court of Stokes County, North Carolina, on May 2, 2008.

### III.

That the Petitioner, REBECCA P. MARSH, is divorced and is a citizen and resident of Stokes County, North Carolina.

### IV.

That the Respondent, BRANDON K. MARSH, is single and is a citizen and resident of Cleveland County, North Carolina.

### V.

That the Respondent ALLEGACY FEDERAL CREDIT UNION is a Federal Credit Union organized and existing under the laws of the United State of America with offices in Forsyth County, North Carolina and is the *cestui que trust* of the Deeds of Trust for which the Respondent BLANCO, TACKABERY COMBS AND MATAMOROS, PA, is the Trustee of the Deed of Trust in Book 0480 Page 2090 Stokes County Registry and Revolving Credit Deed of Trust in Book 0482 Page 1175 Stokes County Registry.

### VI.

That on the 15<sup>th</sup> day of August 1983, the now deceased, Kenneth Albert Marsh and the Petitioner, Rebecca P. Marsh, were married and acquired certain real property by deed which was recorded in the Stokes County Register of Deeds, Book 283, page 840 thru 841, said property being more specifically described as follows:

BEING all of Lot No. 11 as shown on a recorded plat entitled "OAK POINTE" as developed by The Fortis Corporation, said map being drawn by Otis A. Jones Surveying Co., Inc., and recorded in Plat Book 5, Page 13, in the Office of the Register of Deeds of Stokes County, North Carolina, to which reference is hereby make for a more complete description, which currently has the address of 1560 Twin Oaks Drive, King, North Carolina.

The above described property is subject to the restrictive covenants as recorded in Deed Book 270, Page 583, in the Office of the Register of Deeds of Stokes County, North Carolina.

VII.

That on the 12<sup>th</sup> day of March, 2007, the now deceased, Kenneth Albert Marsh, and the Petitioner, Rebecca P. Marsh, were divorced in Stokes County, North Carolina.

VIII.

That on the 9<sup>th</sup> day of January, 2003, the deceased, Kenneth Albert Marsh, executed a Note to Allegacy Federal Credit Union, which was secured by a Deed of Trust which was duly recorded in the Stokes County Registry, Book 0480 Page 2090, which security interest in property was signed by the deceased, Kenneth Albert Marsh. The Petitioner, Rebecca P. Marsh, signed the Deed of Trust but did not sign the Note.

IX.

That on the 5<sup>th</sup> day of February, 2003, the deceased, Kenneth Albert Marsh, executed a Loanliner Home Equity Plan Credit Agreement with Allegacy Federal Credit Union, which was secured by a Revolving Credit Deed of Trust which was duly recorded in Stokes County Registry, Book 0482 Page 1175, which security interest in property was signed by the deceased, Kenneth Albert Marsh. The Petitioner, Rebecca P. Marsh, signed the Revolving Credit Deed of Trust but did not sign the Loanliner Home Equity Plan Credit Agreement.

X.

That the deceased, Kenneth Albert Marsh had three children, namely, Bridget Marsh Smith, Brenda Diane Marsh and Brandon K. Marsh, who were the sole heirs of the deceased, Kenneth Albert Marsh, who died on March 23, 2008.

XI.

That the assets in the estate as of June 1, 2009, consist of personal property as follows:

Allegacy Estate checking account	\$ 684.44
Allegacy Estate Saving account	\$ 2,653.27
Allegacy Personal Saving account	\$ 3,279.70
Allegacy Money Market Fund	\$ 11.35
Allegacy CD	\$ 4,010.72
Allegacy CD	\$10,719.73

and real estate with a tax value of \$109,600. However, due to the condition of the property, it is doubtful that the property is worth this amount and the deceased only owned one-half undivided interest in said property. The Petitioner, Rebecca P. Marsh, being the owner of the other one-half interest. There are outstanding debts against the property referred to Item VI of above as of July 6, 2009, as follows:

Allegacy Federal Credit Union – First Mortgage	\$38,751.54
Allegacy Federal Credit Union – Equity Line	\$18,145.72

totaling \$56,897.26, of which the estate would be responsible. In addition, there will be administration charges including court cost, administrator commissions and attorney fees.

XII.

That in addition to the amounts on the Deeds of Trust of \$56,897.26, there are unpaid debts outstanding in the estate of approximately \$38,131.12, among which are as follows:

Hayworth-Miller Funeral Home	\$ 9,240.78
Internal Revenue Service—2007	\$15,104.00
NC Department of Revenue—2007	\$ 2,210.00
Salem Chest Specialist	\$ 910.00
Piedmont Triad Anesthesia	\$ 2,559.00
Bank of America	\$ 6,558.39
Stokes EMS	\$ 607.00
Forsyth Medical Group	\$ 405.00
Winston-Salem Dental Care	\$ 50.00
FIA Card Services	\$ 6,486.95

XIII.

That the real property is of such a nature and kind, being a lot which contains a single family dwelling, that it cannot be partitioned in kind and therefore must be partitioned by sale, that the ESTATE OF KENNETH ALBERT MARSH, is entitled to one-half of the proceeds of the sale and Rebecca P. Marsh is entitled to one-half of the proceeds of the sale, both shares however, being subject equally to payment of one-half of the Deeds of Trust and one-half of the cost of the proceeding, including the cost of the sale.

XIV.

That it is in the best interest of the administration of the estate that the estate's one-half interest in the real estate be sold and the proceeds of the sale be used first to pay Allegacy Federal Credit Union and the cost of the sale and that one-half of the remainder be paid to the estate to be used in its administration and that Rebecca P. Marsh is entitled to the remaining one-half. That the remainder balance be applied to any outstanding taxes and against debts.

BASED ON THE FOREGOING FINDINGS OF FACT THE COURT MAKES THE FOLLOWING CONCLUSIONS OF LAW:

1. That the real estate described is a single family dwelling residential building of which an actual partition of the property cannot be made.

2. That Brenda Diane Mash and Bridgett Marsh Smith, Co-Administrators of the ESTATE OF KENNETH ALBERT MARSH, have the authority to petition the Court for partition by sale in order to make assets to pay debts of the ESTATE OF KENNETH ALBERT MARSH, who died on March 23, 2008, intestate. be sold at public auction and the proceeds distributed amongst various debtors under the authority granted in Clark v. Carolina Homes, 128 S.E. 20, 189 N.C. 703, which held that . . . "Probate jurisdiction includes the power to decree partition, when necessary to settle the estate" . . .

THEREFORE, BASED UPON THE FOREGOING FINDINGS OF FACT AND CONCLUSION OF LAW, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

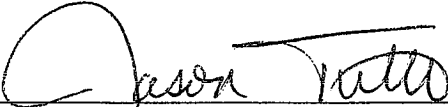
1. That Brenda Diane Marsh and Bridget Marsh Smith be appointed as Commissioners to conduct a sale of the property described below, pursuant to N. C. G. S. § 28A-17-1, et seq.;

BEING all of Lot No. 11 as shown on a recorded plat entitled "OAK POINTE" as developed by The Fortis Corporation, said map being drawn by Otis A. Jones Surveying Co., Inc., and recorded in Plat Book 5, Page 13, in the Office of the Register of Deeds of Stokes County, North Carolina, to which reference is hereby make for a more complete description, which currently has the address of 1560 Twin Oaks Drive, King, North Carolina.

The above described property is subject to the restrictive covenants as recorded in Deed Book 270, Page 583, in the Office of the Register of Deeds of Stokes County, North Carolina.

2. That after providing for the payment of the amounts due secured by the Deeds of Trust, taxes and cost of sale, as provided by law, disbursing one-half to the Estate of Kenneth Albert Marsh and the remainder one-half to Rebecca P. Marsh; and
3. That the jurisdiction of this matter is retained by the Court.

This the 7 day of OCT, 2009.

  
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The Honorable Jason Tuttle  
Clerk of Superior Court  
Stokes County