

**Statutory Impacts of Heir Property:  
An Examination of Appellate and Macon County Court Cases**

Janice F. Dyer  
Auburn University

Janice F. Dyer  
202 Comer Hall  
Auburn University, AL 36849-5406  
Phone: (334) 844-5631  
Fax: (334) 844-5639  
Email: [frewjan@auburn.edu](mailto:frewjan@auburn.edu)

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**Abstract**

Heir property, land held communally by heirs of someone who has died intestate, is subject to a number of economic disadvantages, including court-ordered sale of the land. While there is a substantial amount of literature available on the potential legal ramifications of partition sales of heir property (mainly in academic law journals), there is little quantitative evidence of the impacts of such actions. This study examines the characteristics and outcomes of 12 partition actions filed in Macon County's Circuit Court during a 10-year period. Information was also collected from a legal database of records from Alabama appellate courts. These state-level cases highlight some of the recurring issues heir property owners face. Research findings reveal who is most likely to benefit from partition actions and the costs heirs are often forced to pay.

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When a landowner dies intestate (without a probated will), state law regulates what happens to the property, which usually gets passed as an undivided unit to the decedent's heirs. Because there is no right of survivorship, with each passing generation that dies without a will, the property becomes further fractionalized and the number of co-owners increases as the size of each new interest decreases. Oftentimes only one or a handful of heirs remain on the land, paying taxes and maintaining the property. Yet these co-owners hold no more legal claim to the land than those living several states away with no concern, or even knowledge, of the property. This form of property ownership (legally known as "tenancy in common") is especially common among rural African Americans. For a number of reasons, generations of black landowners have died without wills, leaving large amounts of land under "clouded" titles. Because land deeds remain under deceased landowners' names (instead of reflecting the nature of the ownership structure), it is difficult to track how much land is held as heir property.

This study examines legal actions pertaining to heir property with a focus on one Black Belt county in Alabama. Information was collected from newspaper classifieds, a legal database of appellate court records, and the Macon County Circuit Court for a ten-year period from 1998 to 2007. Using lessons learned while conducting earlier research in North Carolina as a guideline, I set out to answer questions about the impact of sales of heir property in one of the poorest counties in Alabama.

### **Study Background**

In summer 2007, the UNC Center for Civil Rights organized a research project to examine whether state laws regarding partition sales (court-ordered sales brought about by a co-owner) of heir property put minority landowners at a disadvantage. According to an internal memo drafted by a law student in charge of coordinating the research trips, the project was in response to a request made by state lawmakers who were seeking support for House Bill 1588, which would reform North Carolina's partition laws. During a week-long span in July 2007, I helped six other scholars collect data; data was collected on more than 300 partition case files (spanning eight years) in 13 counties. Following my limited examination of partition cases in four of those counties, I drew a number of conclusions:

- In small towns the commissioner was usually the lawyer for the petitioner (if the defendants, called "respondents" in North Carolina, had representation, that lawyer would act as commissioner as well).
- Attorneys' and commissioners' fees varied greatly and weren't always proportional to the sale amount or complexity of the legal action.
- Case files rarely state the property size or type (whether forestland, farmland, residential).
- There were often disagreements over who would be responsible for paying for the costs of the sale and whether the sale should be private or public.

- Properties were rarely partitioned (divided) fully “in kind” – if it was at all physically partitioned, it was usually only the petitioner’s interest that was carved out, with the remaining interests held as an undivided unit by the respondents.
- Often, in objections to petitions, respondents state they have paid the taxes and upkeep costs for the property, but rarely did they provide proof of expenses incurred (receipts, photos, etc.). In the few cases where they did provide proof, they were usually reimbursed for those costs.
- Of all the cases I reviewed, only one cited the intrinsic value of the property (the case was dismissed).
- Cases in which the respondents had legal representation had much higher rates of dismissal and physical partition than those cases in which they were without representation.

One purpose of this Alabama study is to see if the conclusions I made following my informal participation of research in North Carolina were consistent with how partition actions affect landowners in Alabama.

### **Legal and Economic Constraints**

Because it is collectively owned and lacks clear title, heir property formed through intestate succession is the source of numerous legal and bureaucratic problems. Owners cannot use the land as collateral for home mortgages or farming loans (Deaton, 2005; Tinubu and Hite, 1978). They are also usually ineligible for housing programs, such as Rural Development loans for repairs, and for other government programs that require clear title, like weatherization programs (Dyer, 2007; Graber, 1978a, 1978b). Co-owners may be unable to sell timber off their land (Dyer 2007). Loss of the land is perhaps the most significant consequence, either through tax sales or partition sales.

A co-owner may decide to have the land sold and does not need the consent of the other heirs before seeking such a sale. One or several co-owners can sue the remaining heirs, forcing a court-ordered sale of land (usually at a fraction of its true value) to the highest bidder. Family members who live on the land are often unable to out-bid others, such as developers (Brooks, 1979; Thomas et al., 2004). Proceeds are distributed among the co-owners according to their fractional interests, but only after the costs of conducting the sale and attorney fees are deducted (Thomas et al., 2004). In some cases, developers may purchase a distant relative’s share, then ask to have this share be sold – forcing the whole tract of land to be sold (Zabawa, 1991).

The constant possibility of partition sales, Zabawa (1991) states, hinders productivity of farms on heir property. Holding land under a “clouded” title may prevent farmers from improving the land for fear that other co-owners may decide to sell their shares and investments would be lost. Even when partition sales are sought by family members, it is usually family members who do not live on or near the property and do not have any ties to the land (Mitchell, 2001). Anecdotes and case studies usually reflect upon cases of involuntary partition sales, yet Mitchell (2005) questions how much black land loss has actually occurred as a result of such sales. Without data collected through empirical means, it’s difficult to ascertain whether these cases are truly representative or whether they are the exception. Based on a preliminary examination of land records for one resettlement project in North Carolina, Mitchell states: “[S]ome of those who are working to preserve black-owned land may have overestimated the degree to which partition sales have been a source of black land loss” (2005, p. 608).

## **Empirical Research of Heir Property**

Mitchell (2005) highlights problems with data available on heir property, and on partition sales specifically. He explains the implications of such data on policies and activist efforts, but acknowledges the challenges of empirical data collection and the need for interdisciplinary work. Because there is little data of any kind about partition sales, Mitchell says, most scholars rely on anecdotal evidence and generalized notions purported by advocacy organizations. Mitchell does note, however, that activist organizations are not in a position to do such in-depth research because of financial, time, and labor constraints. Yet, Mitchell says, that this lack of empirical data can have unintended consequences. Making claims relating to black land loss – without backing them up with empirical support – can lead to misallocation of important resources.

Mitchell criticizes legal scholars who base assumptions on only a handful of outdated cases, without explaining or justifying their data-collection methods. He says that without a more thorough understanding of the dynamics surrounding partition cases, the conclusions drawn by these scholars are unreliable. Mitchell calls on legal scholars to develop empirical research projects of their own, instead of recycling unsupported claims based on limited and out-of-date studies. Cases selected for published studies (for example, the AP’s “Torn From the Land” series and those cited by activist organizations) may not be representative of how partition actions affect most landowners. It is difficult to tell the manner and extent of authors’ approaches to the topic because methodology is often left unexplained and there is little empirical evidence to back up assertions. Mitchell hypothesizes that a number of cases of court-ordered sales of black-owned land may have evaded detection by legal scholars because parties have not continued litigation beyond trial courts (because of financial constraints). He states: “Although these cases may exist, for legal researchers who rely exclusively on top-down methods of data gathering for their research ... records of these cases are inaccessible because they exist only in local courthouses that tend to be located in small towns dotted across the rural South” (2005, p. 599).

### **Setting**

The Macon County Courthouse is located in one such “small town.” Macon County is considered part of Alabama’s Black Belt because of its high population of African Americans, and is plagued by many of the problems characteristic of the Black Belt – poverty, low education rates, high unemployment, and more. Table 1 demonstrates how this county compares to the rest of Alabama and the U.S. demographically. The table also demonstrates housing characteristics of the county. High rates of mobile homes and vacant homes are indicative of disinvestment, in general, and possibly of prevalence of heir property, specifically. Heir property is said to be prevalent in rural areas; Table 1 displays population and housing density, indicators of rurality. Heir property is also said to be largely an African American phenomenon. While courthouse records and legal classifieds do not specify races of the parties filing suit, I thought the likelihood of the cases being brought against African American families would be higher if I selected a study site with a high population of African Americans. Macon is comprised of 84.6% African Americans.

\*\*\*Place Table 1 Here\*\*\*

## Legal Database

### Methods

Because I knew my research of Circuit Court records of one small county would limit the kind of information I might collect on how partition statutes impact landowners throughout Alabama, a search of statewide cases offers a broader perspective. A legal database, while it cannot provide the level of detail that individual case files can, provides synopses of appellate court cases, highlighting those legal issues which may not be suitably settled at the county level or with existing state laws. For this research, cases heard during the previous 10 years in the Alabama Supreme Court and the Court of Civil Appeals were obtained through Campus Research (an online legal database powered by Westlaw).

Westlaw provides information on cases at the state level, such as those conducted in Alabama's Supreme Court or at the Court of Civil Appeals. Search terms used to obtain Alabama cases taking place during the last 10 years were "partition," "quiet title," "intestate," "suit for division," "homeplace," "fractional interests," and "heir property." The KeySearch feature of Westlaw (which creates a query for the user based on default terms and legal issues) yielded no additional cases. Once duplicate results from all the searches were accounted for, I had a total of 20 cases over the past 10 years in Alabama that appeared to be disputes over decisions regarding heir property.

### Descriptive Statistics

Many of the database records lacked basic information about the properties themselves. It is likely that this information, such as acreage and property value, was available in trial court proceedings, but not pertinent to the appellate court's decision. Table 2 displays statistics of available data for the appellate cases of the study. Acreage was reported in 11 cases and, on average, the properties were 55 acres, with a median of 20 acres. The median value of the properties reporting value was \$81,384. The number of parties in the cases varied, ranging from two to about 40. In many cases, individuals were not listed in the Westlaw document, for example, defendants may be listed as "John Doe, et al." On average, there were about 7 people listed as claimants in the cases (includes both plaintiffs and defendants). Only four cases listed both acreage and property value, yielding an average price per acre of \$1,316.

\*\*\*Place Table 2 Here\*\*\*

### Summary of Findings

Seven of the 20 cases were heard in the Alabama Supreme Court and 13 in the Alabama Court of Civil Appeals. All but one of the cases were originally appealed from county circuit courts. The exception was a case in which the plaintiffs were disputing whether the probate court had jurisdiction over partition actions (it does).

Despite the significant amount of legal academic literature devoted to the negative effects of partition sales, of the 20 cases reviewed, only five were appeals attempting to rescind court-ordered sales. Of those five cases, four sales were reversed. On the flip side, of the 20 cases,

there were five in which the appeals were attempting to reverse earlier court decisions that had barred or prevented sales. In all five cases, earlier court decisions were reversed, thus allowing petitions to sell the properties to go forth.

One of the most commonly debated issues was whether a claimant had adversely possessed the property. Another major issue was the amount of fees collected by attorneys and whether defendants should have their shares of the sale coffers reduced to help pay the plaintiffs' attorneys' fees. Other issues included disputes over procedural processes conveying ownership or ordering sales, rights to the property (like mineral, mining, fishing, and hunting), timing of notifications of intent to buy, stipulations of purchase agreements, public versus private sale of land, whether property could have been divided in-kind (instead of sold), sale price of the property, reimbursement of expenses (such as taxes, pest control, and home improvements), income from land benefitting only one owner, whether a partition-in-kind was equitable, statute of limitations on adverse possession claims, and claims of children born out-of-wedlock.

## **Courthouse Records**

### **Methods**

There is no way to systematically examine all partition sales cases at the county level without combing through every case file in both circuit and probate courts. Not only is this inefficient, but most courthouses will not grant someone free reign over records rooms. Instead, legal classifieds of local newspapers of record were used to identify cases that may be related to heir property. The Code of Alabama states that partitions must be announced in a local newspaper for three successive weeks. While not all lawsuits involving heir property would be attained this way, those suits seeking partition or sales of heir property should all be announced. Legal classifieds of *The Tuskegee News*, a weekly newspaper, were examined from 1998 to 2007. Noted were cases in which the defendants included the property itself and "heirs (or descendants) of ..." Those announcements included both partition and quiet title actions. Cases fell under a number of headings, including: "Legal Notice," "Notice of Sale for Division," "Notice of Hearing," "Appointment of Guardian Ad Litem," "Notice of Sale," "Re-Notice of Sale," and "Notice of Complaint to Quiet Title." For the 10-year period of this study, I came across 32 classified ads that appeared to pertain to heir property. Of these, 17 were announcements of sales and 2 were announcements of partition-in-kinds. Other classifieds included quiet title claims and announcements of guardian ad litem (lawyers appointed by courts to represent minors or unknown and missing heirs).

Legal classified announcements of court cases usually list the case number, but not always. For the purposes of this research, study cases were limited to those partition actions for which I had CV numbers (numbers for civil cases heard in the Circuit Court, where most partition sales cases take place). With CV numbers, case files were pulled at the Macon County Circuit Clerk's office, and notes taken on a number of variables for each partition case. Variables included acreage of property, size of each party's interest, payments to co-owners (if property is sold), location of parties, and attorney, commissioner, and court fees.

Circuit Courts in Alabama are trial courts with jurisdiction over a wide range of cases, including all felonies, civil actions exceeding \$10,000, domestic relations cases, juvenile cases, and civil matters between \$3,000 and \$10,000 (concurrently with the district court). Because of the high number of cases heard in this court, going through every case file was not an option, as

it had been in North Carolina, where partition actions are held in the Special Proceedings court. The legal classifieds of *The Tuskegee News* yielded file numbers for 12 partition cases taking place during a 10-year period. Though this research is limited to one small county, the findings of these cases can provide insight to how parties to partition suits may be affected and who is most likely to benefit from such legal actions.

## **Descriptive Statistics**

Table 3 displays descriptive statistics for the twelve partition cases conducted in Macon County Circuit Court between 1998 and 2007. The average acreage for parcels involved in the study cases was approximately 40, with a median acreage of about 20. Only four cases listed appraised values of the properties, which averaged around \$35,000. The number of defendants ranged from one to 40, with a mean of about 12. In most cases there was only one plaintiff.

\*\*\*Place Table 3 Here\*\*\*

## **Summary of Findings**

Table 4 displays ownership characteristics of properties involved in partition suits during the study period. More than half of the properties were located in incorporated sections of Macon County. Properties located in incorporated sections are likely to be valued higher on a per-acre basis than unincorporated parcels, and therefore may be more attractive subjects of partition actions.

Plaintiffs, on average, held about a 40% share in the land, in comparison to the average individual (not collective) interest of 10% by the defendants. This larger percentage held by the plaintiffs indicates that they may have more to gain from a sale of the land or that they may feel more entitled to a say in what happens to the land. Literature suggests that heirs who no longer live on or near the property are more likely to seek partition sales of the land. In the study cases, on average only slightly less than half of the plaintiffs lived in the state of Alabama (48%).

\*\*\*Place Table 4 Here\*\*\*

## **Case Outcomes**

Of the 12 study partition cases, two were dismissed or otherwise dropped, one resulted in the plaintiff purchasing the land at a public sale, one resulted in a defendant buying out the other shares, two resulted in the plaintiffs buying out the defendants' shares, four cases ended in public sales to someone outside the family, one in a private sale to someone outside the family (adjacent landowner), and only one resulted in a physical partition of the land. In three cases, defendants had lawyers. In two of those cases, the land was sold to someone outside the family. In the third case, the one defendant with the lawyer was able to buy out the shares of other heirs.

Table 5 displays the fees and payments associated with those cases that resulted in sales of the property (and provided dollar amounts in the case file). On average, the properties fetched \$34,050, with a median price of \$24,050. However, a number of fees are usually subtracted from the sale price prior to disbursement of co-owners' shares. These include fees paid to lawyers (for both plaintiffs and defendants), commissioners (1%), and guardian ad litem (\$200-

\$300). Filing fees also must be paid to the court, along with any case-related costs, such as classified ads, certified mailings, sale signs, property maintenance and repairs, surveys, appraisals, and title searches. Fee totals ranged from \$146 to about \$6000, with an average of about \$1,500. On average, attorneys for plaintiffs were paid \$3,691.25. In only three cases did defendants have lawyers; those lawyers received an average of \$4,116.67. Once all fees had been deducted from sale prices, plaintiffs, on average, received about \$4,300 each. Defendants individually received an average of about \$2,800. So, in most cases, the plaintiff took home the largest cut of proceeds, followed by attorneys, then defendants received the smallest portion of the proceeds.

\*\*\*Place Table 5 Here\*\*\*

### **Discussion**

There are several limitations to the research methods and the interpretation of results. Because there has been little effort to quantify the impact of heir property and partition sales (the author could not find any published reports), there is little upon which to base data collection methods.

### **Legal Database**

While the focus of the findings was at the county level, research of legal databases was restricted to the state level. Perhaps the reason only state-level cases were available for review using keyword searches is because precedents are rarely established at the county level. Yet by reviewing appellate court cases, evaluation is limited to situations in which the family could afford to attain counsel and appeal earlier decisions. This may rule out many cases that took place in Circuit Courts of low-income counties – notably those considered part of the Black Belt. State-level cases likely involve individuals that are not representative of those usually afflicted by problems associated with heir property – not only in terms of income level, but also location. Several of these cases occurred in places in more urban areas (like Montgomery) or in places with more tourism development (like Mobile and Baldwin counties). These cases may also differ from the norm because they are likely to involve situations for which there is no *modus operandi* or clear precedent.

Another drawback to reviewing database records is the lack of detailed information. Because heir property disputes are usually among family members, there are often contentious feelings, complex relationships, and intricate histories that would not reveal themselves in court documents. Also, historically, African Americans have been shown to be less trusting of legal professionals (Zabawa, 1991). This distrust of lawyers and the legal system may prevent families who have already had one unsatisfactory experience in trial court, from pursuing further litigation. These social and cultural dimensions, which would not appear in court records, highlight the need for qualitative methods of research into partition actions and other legal actions pertaining to heir property.

Yet, despite these issues, patterns revealed through an examination of state-level cases can highlight ways in which the law fails to meet landowner needs. These patterns can also help legal service organizations and scholars identify areas in need of special attention, training, funding, or outreach efforts.

## **Courthouse Records**

When relying on legal ads of newspapers to find partition cases, it is possible cases that may have entered the legal system differently were left out. For example, one local lawyer was involved in a case that started out as a timber theft case; one heir had sold timber from the property without paying the co-owners their shares of the profit. The case morphed into a partition case and the land was eventually sold through a private sale; it was never auctioned off or announced in the newspaper. This research method may also leave out cases in which either the plaintiffs or the defendants were able to secure a private sale of the land (in order to get more fair compensation or allow a family member to purchase the land without going against higher bidders).

Short of interviewing an exhaustive list of landowners and parties involved in lawsuits, reviewing case files contained in courthouse records rooms is perhaps the most objective way to investigate suits involving heir property. Most case files contain information on the same variables – acreage, number and locations of co-owners, and fees and payments related to property sales. Yet these case files do not reveal the unique histories, relationships, and socio-cultural environments of these properties and the families involved.

Mitchell (2005) notes the difficulty in conducting cross-disciplinary studies because data sets involved may be unfamiliar to researchers. Heir property is a dynamic topic and can entail issues found in multiple disciplines: geography, sociology, history, political science, anthropology, law, agriculture, economics, and more.

## **Conclusion**

Literature suggests that plaintiffs in partition actions often seek a sale of the property because for them the land holds no intrinsic significance. In past qualitative research, respondents have noted that plaintiffs in partition cases often have misguided notions about the worth of the land (especially if they live outside the region) and how much they stand to gain if it were sold (Dyer, 2007). Many are unaware of the amount of fees that are deducted from sale price. For defendants who do not want the land sold, they are especially hard-hit. Not only do they lose the land, but they are forced to pay the costs associated with the sale – even being held partially responsible for paying the plaintiff's lawyer. Research findings show that after the plaintiffs, the lawyers usually stand to gain the most financially from partition sales.

Reflecting back on conclusions drawn following research of North Carolina cases, there are some differences. In North Carolina, the lawyers served also as commissioners, in Alabama, the circuit judge served as commissioner. Perhaps the biggest difference between the states, though, is in fees paid to lawyers and commissioners. In Alabama, there appears more consistency in attorney fees – usually 10 to 15% of the sale price – and in commissioner fees, which in each case was 1% of the sale price. Despite this consistency, however, appellate records show that this is one of the more hotly-contested aspects of partition actions.

Statutory reform can help to make partition actions less of a burden on defendants who do not want the land sold. A group of lawyers, advocates, and academics from all over the country has formed to address heir property issues nationwide through development of model state legislation. The Heirs' Property Retention Coalition is working with the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Bar

Association to put a proposal forward that would help establish standards on issues such as buyout options and attorney fees.

As important as legislative action is, there needs to be a simultaneous push for education of landowners. Community outreach strategies need to be developed to disseminate information about the dangers of holding land in this capacity and about different, more stable forms of ownership (like limited liability companies or family land trusts). Mediation services to address family infighting are needed. Researchers have shown that family infighting is a significant barrier to settling heir property issues (Dyer, 2007; Rivers, 2006; Tinubu and Hite, 1978). Methods must be identified to encourage communication and reduce conflict. Legal education must be provided and landowners encouraged to be proactive in identifying and securing their assets. If families take steps to manage their land, secure more stable ownership forms, and protect future generations through estate planning, they can avoid the burden of partition actions and reverse land loss trends of rural African Americans.

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## Tables

Table 1. Profile of Study County Compared to Alabama and the U.S., 2000

Variable	Macon County	Alabama	United States
Population	24,105	4,447,100	281,421,906
African American population as % total	84.6	26	12.3
Families below poverty (%)	26.8	12.5	9.2
Less than H.S. education (%)	30	24.7	19.6
Population density per square mile	39.5	87.6	79.6
Mobile homes as % total	17	16.3	7.6
Vacant housing units as % total	15.8	11.5	9
Percent owner-occupied homes valued < \$50,000	31.9	19.2	9.9
Housing density per square mile	17.4	38.7	32.8

Source: U.S. Bureau of the Census

Table 2. Descriptive Statistics of Appellate Court Cases in Alabama, 1998-2007

	N	Minimum	Maximum	Mean	Median
Acres	11	1	168	54.79	20
Number of parties	20	2	40	7.6	5
Property value	8	\$11,500	\$2,875,200	\$520,238.12	\$81,384.50
Average price per acre	4	\$565	\$2,474	\$1,316.00	\$1,112.50

Table 3. Property Characteristics of Macon County Partition Actions

Variable	N	Minimum	Maximum	Mean	Median
Number of plaintiffs	12	1	4	1.42	1
Number of defendants	12	1	40	11.92	8
Acres	9	10.613	84.88	40.97	20.82
Value of property	4	\$6,750	\$83,000	\$35,113	\$25,350

Table 4. Characteristics of Heir Property Ownership in Macon County Partition Actions

Variable	N	Minimum	Maximum	Mean	Median
Average share of plaintiffs	10	2.50%	80.00%	39.36%	33.34%
Average share of defendants	10	2.50%	33.33%	10.39%	6.28%
Whether property is in incorporated section (0=no, 1=yes)	11	0	1	0.55	1
Percentage of plaintiffs located in AL	11	0%	100%	48%	25%

Table 5. Payments to Attorneys, Parties, and the Court of Macon County Partition Actions

Variable	N	Minimum	Maximum	Mean	Median
Sale price of property	8	\$10,000.00	\$112,000.00	\$34,050.00	\$24,050.00
Attorney fees - Plaintiff	8	\$1,000.00	\$9,600.01	\$3,691.25	\$2,640.00
Attorney fees - Defendant	3	\$2,250.00	\$7,200.01	\$4,116.67	\$2,900.00
Attorney fees - Guardian ad litem	4	\$200.00	\$300.00	\$250.00	\$250.00
Attorney fees - Total	8	\$1,200.00	\$16,800.00	\$4,478.75	\$2,250.00
Commissioner fees	6	\$100.00	\$1,120.00	\$345.67	\$203.00
Court fees	11	\$146.00	\$6,095.39	\$1,489.14	\$291.69
Average payment received by plaintiffs	6	\$908.74	\$8,854.90	\$4,299.03	\$3,711.88
Average payment received by defendants	8	\$490.92	\$10,515.18	\$2,806.01	\$1,147.28