

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SHARON R. KINLEY,	:	NO. 03-02,129
Plaintiff	:	
	:	CIVIL ACTION - EQUITY
vs.	:	
	:	
GARY R. KINLEY,	:	
Defendant	:	Partition

OPINION AND ORDER

Plaintiff has brought the instant action in partition with respect to the real estate located at 148 Bucks Road, Williamsport, Pennsylvania, the residence of Defendant. The parties had been married but divorced in 2003. The property served as their marital residence. The property was owned prior to the marriage by Defendant alone but during the marriage, Defendant transferred the property into joint names with Plaintiff. Because of an ante-nuptial agreement, the property was not subject to equitable distribution. Upon divorce, the parties became tenants in common and Plaintiff now seeks an award equal to her interest in the property.

A hearing on the Complaint in Partition was held on March 4, 2005. At the conclusion of the hearing, and at the suggestion of the Court, the parties agreed to participate in mediation in an effort to resolve the matter amicably. That process was not successful, however, and based on an agreement also reached with the parties at the conclusion of the March 4 hearing, by Order dated May 20, 2005, the Court appointed Carl Nolan to appraise the property. That appraisal was completed June 9, 2005, and the Court, in one final attempt to allow the parties to resolve the matter themselves, then scheduled a further conference for July 7, 2005. Settlement was not reached at that time, but it did appear to the Court that some important information had not been presented at the hearing. Therefore, by Order dated July 19, 2005, the Court directed Plaintiff to produce certain documentation. Plaintiff did provide the Court with further information on August 11, 2005, and Defendant also provided the Court with documentation, on August 10, 2005. The matter is now ripe for decision.

The following findings of fact are considered relevant:

1. The property has a current fair market value of \$82,800.00.
2. At the time of the parties' separation, the mortgage balance was \$27,000.00.¹
3. At the time of the parties' marriage, the property had a fair market value of \$70,000.00 and the mortgage balance was \$50,000.00.
4. The property was deeded into joint names approximately seven months after marriage. It is estimated that the balance on the mortgage decreased by approximately \$2,500.00 in those seven months.
5. During the marriage, the parties contributed equally to the increase in value of the property.
6. Since separation, only Defendant has paid the mortgage, taxes and insurance; Plaintiff has not contributed to these expenses.

The Court begins its analysis by noting that the testimony offered by the parties was not particularly helpful in allowing for any specific determination of the relative contributions made by the parties toward the equity in the property during their marriage. It appears, however, that both parties worked on the house, and both contributed financially, through the contribution of marital funds. Therefore, the Court will equally divide the equity which was accumulated during the parties' marriage. Defendant did provide sufficient evidence of his initial contribution: the ante-nuptial agreement sets forth the equity seven months prior to that time, \$20,000.00, and the Court estimates an increase in that figure to \$22,500.00, based on Defendant's payment of the mortgage in the interim.

In calculating the equity to be divided, the Court will use the current fair market value in order for Plaintiff to share in any increase in market value since separation. The Court will use the mortgage balance at separation, however, in order for Defendant to be given full credit for any increase in equity based on reduction of the mortgage since separation, since Plaintiff has not contributed to such. The Court does recognize the mortgage was refinanced to pay off

¹ The Court has rounded certain values for ease of calculation, and also because some of the values are estimates.

a car loan, but since the car and the attached loan were marital property and thus subject to equitable distribution, that fact is of no consequence in the instant action.

Accordingly, deducting the \$27,000.00 mortgage balance at separation, from the current fair market value of \$82,800.00, results in equity of \$55,800.00. Subtracting Defendant's initial contribution of \$22,500.00 results in equity to be divided of \$33,300.00. Plaintiff is thus entitled to an award of \$16,650.00.

ORDER

AND NOW, this 14th day of September 2005, for the foregoing reasons, Plaintiff's request for partition is hereby granted. Defendant shall, within twenty (20) days of this date, notify Plaintiff's counsel of his intention to either sell the property or pay to Plaintiff the sum awarded herein. Should Defendant choose to sell the property, he shall, within thirty (30) days of the date of notification, provide to Plaintiff's counsel verification that the property has been listed for sale with a reputable broker or agent. Upon completion of the sale (at closing), Plaintiff shall be paid a sum calculated by deducting from the sales price any commission, transfer taxes, document preparation fees and the mortgage balance at separation, of \$27,000, as well as the \$22,500 initial contribution to equity, and then dividing the remainder in half. Should Defendant choose to keep the property, he shall pay the sum awarded herein to Plaintiff within forty-five (45) days of the date of notification.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Christian Frey, Esquire
Gary Kinley, 148 Bucks Road, Williamsport, PA 7701

Gary Weber, Esq.
Hon. Dudley Anderson