

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SHARON R. KINLEY, : NO. 03-02,129  
Appellant :  
 : CIVIL ACTION - EQUITY  
vs. :  
 :  
GARY R. KINLEY, :  
Appellee :

OPINION IN SUPPORT OF ORDER OF SEPTEMBER 14, 2005,  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

Appellant appeals from this Court’s Order of September 14, 2005, which granted her request for partition of real property and awarded her a certain sum, either as a payment from Appellee or from the proceeds of sale of the property. In her Statement of Matters Complained of on Appeal, Appellant challenges the Court’s award for several reasons.

First, Appellant claims the Court “erred in its application of 23 Pa.C.S. § 3507(a)”. Apparently, Appellant is complaining of the Court’s failure to apply this section, which provides as follows:

Whenever married persons holding property as tenants by entireties are divorced, they shall, except as otherwise provided by an order made under this chapter, thereafter hold the property as tenants in common of equal one-half shares in value, and either of them may bring an action against the other to have the property sold and the proceeds divided between them.

23 Pa.C.S. § 3507(a)(emphasis added). Appellant was not awarded one-half the value of the property under this section for the simple reason that the Court believes the matter had been removed from its purview as the parties’ rights had been “otherwise provided [for] by an order made under [Chapter 35 of Title 23].” As noted in this Court’s opinion in support of the Order of Partition,<sup>1</sup> there had been a previous judicial determination that although titled in joint names, because of an ante-nuptial agreement the property was not marital property subject to

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1 The relevant facts involved in this matter and the Court’s reasons for the award may be found in the opinion of September 14, 2005, and will not be repeated herein.

equitable distribution.<sup>2</sup> Allowing Appellant to nevertheless proceed against Appellee under Section 3507 would, in effect, nullify that determination. The Court therefore respectfully suggests its failure to apply the section was not error.<sup>3</sup>

Next, Appellant alleges error in the Court's consideration of Appellee's contribution of pre-conveyance equity in making the award, arguing such is not included in the credits allowed under Rule 1570(a)(5). That section of the rule speaks to credits or charges in favor of or against a party's interest, however, and the Court believes contribution of equity is properly considered in establishing such interest to begin with, rather than in the context of a credit. See Bohn v. Fund of \$1230.10, 116 A.2d 266 (Pa. Super. 1955) (tenants in common are presumed to hold equal shares in the property, but this presumption may be rebutted by competent evidence). Thus, the Court gave Appellee a larger interest in the property by partitioning only the post-conveyance equity. Credits were not considered as it appeared any credit for taxes and insurance, etc. would have been offset by rental value, not to mention the lack of clarity of the evidence on the issue.

Finally, Appellant contends "the award to Plaintiff/Appellant should have been equal to one-half of the fair market value of the property at the time of separation, and not based upon some percentage of the current fair market value." The Court assumes Appellant is referring to an appraisal of the property performed by one James J. Berrigan, apparently for the purpose of refinancing the mortgage, on May 26, 1999, approximately one year prior to separation. This appraisal had been submitted to the Court by counsel for Appellant following the settlement conference held on July 7, 2005. Such was not introduced into evidence at the hearing on March 4, 2005, and the record had not been reopened. The Court therefore did not consider that appraisal and believes its reliance instead on the appraisal performed after the hearing by Carl Nolan, at the Court's request, was appropriate.<sup>4</sup>

As none of Appellant's contentions of error appear to this Court to have merit, it is

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<sup>2</sup> See Opinion and Order of the Honorable Clinton W. Smith, President Judge, dated June 23, 2003, entered to Lycoming County No. 00-21,617.

<sup>3</sup> The Court notes further that Appellant has not sought to apply Section 3507 until she raised such in her Statement of Matters Complained of on Appeal. In her pre-trial statement filed prior to the hearing, Appellant indicated her legal theory of liability was that of "Civil Partition pursuant to Pa.R.C.P. Rule 1560-1568", and indeed, that is the theory referenced in the original Complaint. At the hearing on March 4, 2005, Section 3507 was not mentioned.

respectfully suggested that the Order of Partition be affirmed.

Dated: October 26, 2005

Respectfully Submitted,

Dudley N. Anderson, Judge

cc: Christian Frey, Esquire  
Gary Kinley, 148 Bucks Road, Williamsport, PA 7701  
Gary Weber, Esq.  
Hon. Dudley Anderson

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4 It is noted the appointment of an independent appraiser was agreed upon by the parties following the hearing.