

KATIE MARMARA,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	LYCOMING COUNTY, PENNSYLVANIA
vs.	:	CIVIL ACTION – LAW-PARTITION
WILLIAM B. FOREST, JR. and	:	NO. 06-01,381
NANCY GIBSON,	:	OPINION
Defendants	:	

OPINION AND ORDER

The Court will only briefly recap the basic facts for the sake of brevity.

This is a partition action between Plaintiff, Katie Marmara, and Defendant, William B. Forest, Jr. Plaintiff seeks to partition real estate purchased by the parties in June 2005 for \$126,500. The real estate is known as 8546 Rose Valley Road, Trout Run, Pennsylvania. The property was deeded unto Plaintiff and Defendant as joint tenants with the right of survivorship.

The Court, by Order dated March 8, 2007, granted leave to intervene to Nancy Gibson, Mother of William B. Forest, Jr. Sometime prior to the closing on the property Defendant Gibson claims to have made loans totaling \$26,000 to Plaintiff and Defendant to help purchase the property. Plaintiff and Defendant took a mortgage in favor of Wells Fargo Bank, N.A. in the amount of \$113,850 at the time of purchase. Defendant Gibson is seeking repayment of the \$26,000 and/or an equitable interest in the aforementioned property.

Mr. Forest and Ms. Marmara were boyfriend-girlfriend at the time they purchased the property. They lived together in the home after they purchased the home in June 2005. The home is a two-bedroom home with a large living room, large kitchen, screened-in

porch, two garages, one in the basement and one on the top level. The property has a shed on site on about 3 acres of land. N.T. Master's Hearing at p. 28.

At the time of the purchase of the property Ms. Marmara and Mr. Forest were contemplating marriage. N.T., p. 38. However, the relationship between Ms. Marmara and Mr. Forest did not work out and Ms. Marmara moved out of the residence around April or May 2006. Ms. Marmara's complaint in the partition was filed in July 2006.

The Court appointed Fred Holland, Esquire, to serve as Master in Partition by Order dated July 17, 2007.

The Master was given authority by the Court to decide all the issues between Ms. Marmara, Mr. Forest and Ms. Gibson. *See also*, the Court's Order of March 12, 2007 where the Court reviewed several of these issues.

The Master held an evidentiary hearing giving all parties the right to testify and call witnesses on October 30, 2007. A transcript has been prepared of this hearing. The Master, pursuant to Pa. R. Civ. Pro. 1569, prepared a written report deciding all the issues presented and the Master gave written notice to the parties of his intent to file the report along with a proposed order on or about January 2, 2008. Counsel for Mr. Forest and Ms. Gibson, Jarrett Smith, Esquire, received the report on January 4, 2008. Attorney Smith filed written exceptions to the report on January 22, 2008. Pa. R.Civ.Pro. 1569 indicates that exceptions are to be filed within "ten days after notice of the filing of the report." The exceptions were untimely filed pursuant to Rule 1569 and the Court, by Order of February 6, 2008,¹ denied the exceptions as being untimely filed.

¹ The Order mistakenly refers to the date as Feb. 6, 2007, instead of the correct date of Feb. 6, 2008.

On or about Feb. 13, 2008, Attorney Smith, counsel for Defendants Forest and Gibson, filed a Motion for Reconsideration of the court's denial of their exceptions asking the Court to allow reconsideration of the exceptions despite the untimely filing. The Court heard argument on the request for reconsideration on May 21, 2008.

The Court will vacate its Order of February 6, 2008, denying the exceptions as untimely filed. In fairness to the litigants the Court will not decide the merits based on inadvertent oversight on the part of Plaintiff's counsel. The Court also believes it still has jurisdiction over this matter.

Defendant's Exceptions

The Defendants in their exceptions basically raise four issues in exception to the report of the Master. The Court will briefly discuss these issues.

Defendant Gibson complains that the Master erred in finding that the \$26,000² she provided to the parties to help them purchase the home was a gift and was not a loan. The Master thoroughly discusses this issue in pages 2-5 of his report. The Court finds no error in the Master's findings. Ms. Gibson produced no written document evidencing that this money was a loan for which Plaintiff would have responsibility to pay back. Certainly, if Ms. Gibson wanted to establish the transaction was a loan she would have prepared a note with the terms of the loan or at least some written document with the parties establishing the transaction as a loan. In fact, Ms. Gibson testified before the Master that she and her son had most of the conversations about this money. *See*, N.T., p. 94. Ms. Gibson acknowledged Plaintiff never

² The actual amount of money provided by Ms. Gibson was \$26,300.

made a written commitment to pay back the money but testified, “I would have assumed that they would pay me back.” N.T., p. 94.

Both Defendant Gibson and Defendant Forest acknowledged that Plaintiff and Defendant would not have qualified for the loan from the mortgage lender if this money was a loan. *See*, Ms. Gibson’s testimony, N.T., p. 95; Mr. Forest’s testimony, N.T., p. 136.

The Court also agrees with the Master’s finding at page 5 of his report that the money provided by Ms. Gibson was a conditional gift, given in contemplation of marriage. While Plaintiff and Defendant Forest were considering marriage at the time of the purchase of the property, the evidence does not establish a firm commitment which prompted the purchase of the property. As noted by the master the presentation of an engagement ring did not occur until after the parties moved into the property. *See*, Master’s Report, page 5, N.T., p. 113.

The exceptions next raise the issue of whether the Master erred in failing to credit Defendant Forest for mortgage and upkeep payments he made at the home after Ms. Marmara moved out in April or May of 2006.

The master, in fact, did consider this contribution by Mr. Forest. *See*, discussion pages 5 & 6. However, the Master also found that the Plaintiff was owed rental payments from Defendant for the time from April 2006 onward as she did not live in the property from this time after she obtained a Protection From Abuse Order against Mr. Forest. The Master determined that Defendant Forest owed Plaintiff \$550 per month for rent and that Plaintiff owed Mr. Forest \$550 per month as her contribution for mortgage, taxes and upkeep of the property. The Master then found that;

This creates, in essence, a wash or offset of any monies or credits due to either Plaintiff or Defendant Forest.

Master's Report, page 6.

The third issue raised by Defendant Forest is that the Master erred in finding the valuation of the home as \$126,500. The Master found the value of the home to be \$126,500, the price the parties paid for the home when they purchased it in June 2005. Mr. Forest, with stipulation of Plaintiff, submitted a stipulated appraisal of the property as of May 2007, which appraisal was paid for by Mr. Forest, which appraisal set the fair market value of the property as \$114,000 as of May 2007.

The Master rejected the \$114,000 appraisal finding noting the appraisal for the property as listed on the HUD in June 2005 was \$126,500. Plaintiff testified they made some improvements to the property since she and Defendant cohabitated in the property. *See*, Testimony of Plaintiff Marmara re valuation of the home. N.T., pp. 28-30.

The Master noted in his report that he did not believe the real estate would have depreciated from \$126,500 to \$114,000 from June 2005 to May 2007. *See*, Report, page 7.

The Master is not bound to accept the credibility of any witness or any report submitted by either of the parties. The Court believes this was an issue of fact to be decided by the master and the Court would not overturn his finding. While we have no expertise in real estate it is difficult to believe that a house in Rose Valley would depreciate over \$10,000 in an approximately two-year period.

The final issue raised by Defendant Forest is that the Master erred as a matter of law in requiring Defendant Forest to continue making mortgage, tax and upkeep payments on the home, without contribution from Plaintiff. This issue is basically the same issue as discussed previously concerning the offset of rental payment owed to Plaintiff and contribution

owed to Defendant Forest for his payment of mortgage, taxes and upkeep of the home. Since the rental payment owed to Plaintiff is offset by the mortgage and other payments made by Defendant Forest on the home it is only logical that Defendant Forest would continue to make these payments until the home is sold or Plaintiff's interest in the house is satisfied.

Accordingly, the Court finds no errors made by the Master in his comprehensive report made after hearing testimony of all the parties. In light of this the following Order is entered.

ORDER

AND NOW, this ____ day of July, 2008, the Court DENIES Plaintiff's Motion to Strike Exceptions and DENIES Defendant's Exceptions. In accordance with the Master's Report and Proposed Order, it is ORDERED and DIRECTED that the parties execute a listing agreement with a mutually agreeable realtor for the property at 8546 Rose Valley Road, Trout Run, PA seeking to sell the property for the price as indicated in the Master's report filed on January 2, 2008 and to proceed in good faith to effectuate the sale of the property. In the event that either or both Defendants wish to purchase Plaintiff's interest in the property as set forth in the Master's Report, either or both of them shall give written notice to Plaintiff's lawyer of that fact no later than August 15, 2008, and shall proceed to complete the purchase by August 29, 2008. In the event neither Defendant gives such notice or completes the purchase, then the listing of the property shall be accomplished on or before August 29, 2008. Defendant Forest shall continue to make timely payments on the mortgage and taxes, shall keep the property insured, and shall perform maintenance necessary to kept the property in at least the condition existing as of December 31, 2007. In the event of a sale to a third party, the net proceeds of the

sale shall be shared equally by Plaintiff and Defendant Forest. In the event that a sale of the property can only be accomplished with additional funds from the seller, Plaintiff and Defendant Forest shall contribute equally to accomplish the sale.

By the Court,

Kenneth D. Brown, P.J.

cc: Jarett R. Smith, Esquire
Matthew J. Zeigler, Esquire
File Copy
Gary L. Weber, Esquire