

IN THE COURT OF COMMON PLEAS OF  
LYCOMING COUNTY, PA

DAN WINNER,	:	
	Plaintiff	:
	:	NO: 05-00927
vs.	:	
	:	
MARK ORWIG,	:	CIVIL ACTION
	Defendant	:

**OPINION**

**Findings of Fact:**

1. The Defendant, Mark Orwig, owns land in Susquehanna Township and Bastress Township, Lycoming County, Pennsylvania, known as Tax Parcel 63-388-148.04 (hereinafter “Parcel 148”).

2. In early 1990 the Defendant approached the Plaintiff, Dan Winner, and a third party, Ira C. Getchen, Jr. (hereinafter “Getchen”) with a proposal to collectively purchase a landlocked parcel of land adjacent to Parcel 148 located in Susquehanna Township and Bastress Township, Lycoming County, Pennsylvania (hereinafter “Parcel 147”).

3. On March 27, 1990, the parties and Getchen purchased Parcel 147 and, for various reasons, placed title to the premises in the names of the Plaintiff and Getchen only.

4. Each party in some manner contributed to the purchase price, improvement and maintenance of Parcel 147.

5. Timber was harvested from Parcel 147, and \$38,000.00 from timber sales was used to pay down the mortgage and other costs.

6. On September 14, 1991, Getchen withdrew all interest in the co-venture and deeded his titled interest in Parcel 147 solely to Winner.

7. By 2001, the parties' relationship had deteriorated and a dispute over the occupancy, use and ownership of Parcel 147 developed.

8. On April 3, 2001, the Plaintiff, Dan Winner, instituted a legal action against the Defendant, Mark Orwig, at Lycoming County Docket No. 01-00528.

9. On March 7, 2002, the trial court entered a verdict determining that the Defendant, Mark Orwig, was a co-owner of Parcel 147. No appeal from this Order was taken.

10. On May 20, 2005, the Plaintiff filed a civil complaint against the Defendant in law and equity requesting alternatively an accounting, a partition, and/or an injunction.

11. After a preliminary conference, an order was entered directing the appointment of a master to determine how the partition should be accomplished and to address the issues of valuation of the land, proportionate division, contributions and improvements as well as easement rights running with Parcel 147 to Parcel 148.

12. Hearings were held before the Master and on November 10, 2008 the Master filed a report finding that Parcel 147 was not capable of division without prejudice; that he was unable to determine the value of the real estate; that each Party owned a 50% share of the property; that Orwig's monthly \$200.00 payments were a form of rental for his use of the real estate; that an easement of right-of-way to Parcel

147 across Parcel 148 should be equitably implied subject to acquisition of rights across third party lands; and that each party contributed equally toward expenses, taxes, improvements on the land, improvements on the cabin, closing costs, and mortgage payments.

13. Both parties filed numerous exceptions to the report and on January 13, 2009 this Court remanded to the Master for additional findings on the issues raised in the exceptions.

14. Following an additional hearing, the Master filed supplementary findings and conclusions of law in which he found that the fair market value of Parcel 147 was \$215,254.27, the fair market value of a skidder was \$11,500.00; that both of the parties held a 50% interest in the assets; that neither party contributed disproportionately to the acquisition of the property; and that an easement across Parcel 148 was intended by the parties.

15. Both parties filed exceptions to the supplemental findings and conclusions and on August 7, 2009 this Court entered an Order affirming the findings and conclusions of the Master with the exception of those pertaining to the easement right-of-way. In accordance with agreement of counsel for the parties, this Court also directed that the parcel be put up for public sale.

16. On September 3, 2009 the Defendant, Mark Orwig filed an appeal of this Court's Order of August 7, 2009 with the Superior Court. On September 16, 2009 Dan Winner filed a Notice of Appeal.

17. On April 21, 2010 the Superior Court issued an Order which affirmed all aspects of this Court's Order with the exception of two limited issues – the parties' respective interests in Parcel 147 and the order directing a public sale.

18. In issuing this ruling, the Superior Court held:

For all the foregoing reasons, we vacate the portion of the trial court's order of August 7, 2009 that finds that the Parties each have a 50% interest in Parcel 147 as well as that portion of the order that directs a public sale of the property. We remand this matter for proceedings consistent with this memorandum. In all other aspects, the order is affirmed.

19. On October 14, 2010 a non-jury trial was held on the issues remanded to this Court.

20. During trial, the Plaintiff testified that Winner and Getchen, and their respective spouses, executed a mortgage in favor of Williamsport National Bank in the amount of Sixty Thousand Dollars (\$60,000.00) to secure a loan to purchase Parcel 147.

21. On December 21, 1990, Winner sold a parcel of property he acquired from Orwig to Laurie Butters for Thirteen Thousand Dollars (\$13,000.00).

22. The funds from this sale were a contribution by Orwig to the purchase of Parcel 147.

23. The parties applied the net return from the sale of timber, or \$38,000.00 to the mortgage on Parcel 147 held by Williamsport National Bank.

24. On December 21, 1990, Winner and Getchen refinanced the Sixty Thousand Dollar (\$60,000.00) mortgage with a mortgage in the amount of Twenty-seven Thousand Seven Hundred Three and 70/100 (\$27,703.70).

25. On September 14, 1991, Getchen removed himself from the partnership and debt obligation and conveyed his interest in Parcel 147 to Dan Winner for One Dollar (\$1.00).

26. Getchen gave no writing, nor any evidence, indicating an intent to transfer his interest equally to Winner and Orwig.

27. Getchen is now deceased.

28. Winner took over Getchen's Note obligation, and on January 23, 1992 the Twenty-seven Thousand Seven Hundred Three Dollar (\$27,703.00) mortgage was refinanced with Williamsport National Bank with a loan and mortgage in the amount of Fourteen Thousand Six Hundred Dollars (\$14,600.00). This refinance had a final "balloon" payment due on January 23, 1997. The mortgage and note were both solely in the name of Daniel J. Winner.

29. Winner paid off the balloon payment with a new loan in his own name, and in doing so, he borrowed that amount and additional money (for his own use) on June 26, 1997.

30. The 1997 refinance, which was a lien on Parcel 147, was paid off in full by Winner and "satisfied" on July 23, 2002.

31. Winner paid all of the interest for the loans on the subject property following Getchen's transfer of the property to him.

32. From approximately 1994 to 2008, Orwig paid the taxes on the subject premises in the annual face amount of Two Hundred Thirty-four and 48/100 (\$234.48).

33 Money earned by Orwig from leasing the ground to hunters and selling firewood from the tract was applied to the taxes owed.

34 From sometime in 1992 when Orwig established residence on Parcel 147 he paid Winner the sum of \$200.00 per month for a total of \$9,200.00.

35 Throughout the time period from 1992 to the present Orwig has lived on the property rent free.

36 During portions of that time, Winner was excluded from the property.

37 Based upon a dispute that developed between the parties, Dan Winner approached Mark Orwig while he was eating lunch at the Crippled Bear in approximately June of 1992 and gave him a piece of paper which indicated a “buy out” price for the property which was based on a 50% division of the property.

**Conclusions of Law:**

1. The only issues on remand from the Superior Court are the parties respective percentage interests in the property and the form of sale.
2. By Order dated March 7, 2002 the Court, in another action, held that Mark Orwig was “an owner” of Parcel 147, based upon the agreement of Dan Winner, Ira Getchen and Mark Orwig, to all three purchase the property.
3. Ira Getchen sold his ownership interest to Dan Winner on September 14, 1991.
4. Ira Getchen executed a deed on September 14, 1991 transferring the property solely to Daniel J. Winner.
5. All subsequent mortgages and notes relating to Parcel 147 were signed solely by Daniel J. Winner.

6. Mr. Winner testified that it was his belief that he owned  $\frac{2}{3}$  of Parcel 147.
7. This Court found the testimony of Dan Winner to be credible.
8. The written documents, notes, mortgages and deeds all indicate that Dan Winner received Ira Getchen's share of Parcel 147.
9. Although Dan Winner gave Mr. Orwig a piece of paper at the Crippled Bear that identified a "buy out" price based upon a 50% division of the property, this constituted a settlement offer based upon the dispute that had developed between the parties.
10. Dan Winner is a two-third ( $\frac{2}{3}$ ) owner of the Parcel 147 and Mark Orwig is a one-third ( $\frac{1}{3}$ ) owner.
11. The issue of credits is not before this Court pursuant to the Superior Court's Order of April 21, 2010.
12. Pa.R.C.P. 1563 provides that property not capable of division without prejudice shall be offered for private sale confined to the parties.

**ORDER**

AND NOW, this 19<sup>th</sup> day of October, 2010, this Court finds that Dan Winner is a two-third (2/3) owner and Mark Orwig is a one-third (1/3) owner of tax parcel 63-399-147 located in Susquehanna Township and Bastress Township in Lycoming County, Pennsylvania. The property shall be offered for sale in accordance with Pa.R.C.P. 1563, 1566 - 1568.

BY THE COURT,

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Richard A. Gray, J.

cc: Scott T. Williams, Esquire  
Marc Drier, Esquire  
Gary Weber, Esquire