

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PA

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

OPINION
Issued Pursuant to Pa.R.A.P. 1925(a)

This action involves ownership of a parcel of land located in Lycoming County, Pennsylvania. On April 3, 2001, the Plaintiff, Dan Winner, instituted a legal action against the Defendant, Mark Orwig, at Lycoming County Docket No. 01-00528. 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.¹

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. 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 the parcel of land, Parcel 147 to Parcel 148, land which was owned by the Defendant, Mark Orwig. Hearings were held before the Master and on November 10, 2008 the Master filed a report

¹ This Court notes that the Court Order of March 7, 2002 merely indicated that Mr. Orwig was “an” owner of the property at issue, but did not provide a ruling regarding Mr. Orwig’s respective share in the property at issue.

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.

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. 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. 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.

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.

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. 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.

On October 14, 2010 a non-jury trial was held on the issues remanded to this Court, and an Order was entered on October 19, 2010. On November 17, 2010, the Defendant filed a Notice of Appeal. In his Concise Statement of Errors Complained of on Appeal Mr. Orwig submits that this Court's Findings of Fact set forth in Paragraphs 26, 28, 31 and 36 were not supported by the evidence presented. Mr. Orwig also contends that this Court's conclusions set forth in Paragraphs 3, 6, 8 and 9, and this Court's conclusion that Mr. Orwig is a one-third owner of the property are not supported by the record.

This Court disagrees. Findings of Fact 26, 28 and 31 relate to the transfer of interest in land and payment of mortgage obligations related to land. In making its findings, this Court relied upon various documents introduced as exhibits at trial in addition to the testimony of Dan Winner, which this Court found to be credible. (N.T. 10/14/10, p. 28-32, 56-64, 80-81). Mr. Orwig also contends that this Court's Finding of Fact number 36 is not supported by the record in that Mr. Winner was not excluded from parcel 147, the parcel at issue in this lawsuit. Mr. Winner's testimony on this issue was as follows:

Q: Have you had access to the property since 2000?

A: No, I have not.

Q: What lead you to file for a partition in 2005?

A: Not being able to be in the property or get near it and I guess patience ran out.

(N.T. 10/14/10, p. 33).

Mr. Orwig similarly testified:

Q: Mr. Winner indicated that you are preventing him from setting foot on the property, I'm talking about title 147?

A: Correct.

Q: Are you preventing Mr. Winner from setting foot on parcel 147?

A: No, not at all. If he has to, he can get his own personal access. I never stopped him until 2002 when he started – when he started this against me.

(N.T. 10/14/10, p. 76).

Although Mr. Orwig also contends that this Court erred in conclusions reached regarding the transfer of land to Mr. Winner, and Mr. Winner's respective ownership of the land at issue, this Court disagrees. Conclusions reached were based upon this Court's Findings of Fact and this Court relies upon its Opinion and Order of October 19, 2010. This Court respectfully requesting affirmance of its October 19, 2010 Order.

BY THE COURT,

Date

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

Richard A. Gray, J.