

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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

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

The current appeal arises out of this Court’s October 11, 2011 Order denying Defendant’s Motion to Remand to Master for Determination of Credit Due to Orwig for Disproportionate Contribution. Defendant has appealed this matter twice before to the Superior Court. Due to the appellate history in this matter, this Court notes the procedural background that is appropriate for the purposes of this appeal:

1. December 19, 2006: This Court entered an order in this matter that appointed a Master to determine how partition should be accomplished.
2. November 10, 2008: The Master filed a report finding each party contributed equally towards expenses, taxes, improvements on the land, improvements on the cabin, closing costs, and mortgage payments.
3. August 7, 2009: This Court entered an order that affirmed the Master’s findings of November 10, 2008 and other supplemental filings.
4. September 3, 2009: Defendant appealed this Court’s August 7, 2009 Order.
5. April 21, 2010: The Superior Court issued an opinion that affirmed all aspects of this Court’s August 7, 2009 Order, with the exception of two limited issues: 1) the parties’

respective interests in Parcel 147, and 2) the order directing a public sale. *Winner v. Orwig* (No. 1631 MDA 2009, filed Apr. 21, 2010).

6. October 19, 2010: This Court entered an order on this remand issues after holding a non-jury trial. In particular, this Court held that “[t]he issue of credits is not before this Court pursuant to the Superior Court’s Order of April 21, 2010.”
7. November 17, 2010: Defendant appealed this Court’s October 19, 2010 Order.
8. August 24, 2010: The Superior Court filed a memorandum opinion affirming this Court’s October 19, 2010 Order. *Winner v. Orwig* (No. 1870 MDA 2010, filed Aug. 24, 2011).

In its latest memorandum opinion in this matter, the Superior Court noted:

[w]e conclude that Appellant’s claims regarding monetary contributions to, and profits from, the property are issues of financial accounting that are incidental to the order for partition of the land.... Such incidental issues of financial accounting are not before us in this appeal from the trial court’s October 19, 2010 order, which was limited on remand solely to a determination of the parties’ proportional interests in Parcel 147, and the ordering of a private sale of the land.

*Id.* at 17. Despite this language, on September 27, 2011, Defendant filed a Motion to Remand to Master for Determination of Credit Due Orwig for Disproportionate Contribution. By order dated October 4, 2011, this Court scheduled an argument on this motion for October 7, 2011. On October 5, 2011, Plaintiff filed his response to Defendant’s motion. On October 7, 2011, this Court heard oral arguments on this motion. By order dated October 11, 2011, this Court denied Defendant’s motion because the credit issues were finalized and not preserved on appeal. *Id.*

On November 23, 2011, Defendant filed his Notice of Appeal. In Defendant’s Concise Statement of Matters Complained of on Appeal, Defendant raises the same issues that were addressed by this Court in its Opinion and Order dated October 11, 2011. For purposes of this

appeal, this Court relies upon its Opinion and Order dated October 11, 2011, and this Court respectfully requests affirmation of its Order.

BY THE COURT,

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard A. Gray, J.

RAG/abn

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