

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM W. UNGARD,	:	
Plaintiff	:	DOCKET NO. 12-00,822
	:	CIVIL ACTION – LAW
vs.	:	
	:	
MELISSA A. UNGARD,	:	
Defendant	:	

OPINION AND ORDER

AND NOW, this 24th day of August, 2012, following hearing on Plaintiff’s Complaint in Replevin, the Court hereby enters the following Findings of Fact and Conclusions of Law, pursuant to Pa. R.C.P. 1038 and 1086.

I. Findings of Fact

1. Plaintiff William W. Ungard is an adult individual residing at 320 Center Street, Williamsport, Lycoming County, Pennsylvania.
2. Defendant Melissa A. Ungard is an adult individual residing at 5601 Bloomingrove Road, Cogan Station, Lycoming County, Pennsylvania.
3. On February 14, 1996, Plaintiff and Defendant married.
4. During the marriage, Plaintiff adopted Defendant’s daughter Courtney. In addition, during the marriage, Defendant had a child, McCoy. Plaintiff is not McCoy’s biological father.
5. In the summer of 2001, Plaintiff and Defendant separated. On March 23, 2009, Defendant filed a divorce action at Lycoming County Docket No. 09-20,369. The parties divorce was finalized on June 11, 2012.
6. In 2003, Plaintiff was injured while working at Stroehmann Bakeries. As a result of that accident, Plaintiff suffers from seizures and memory loss. Since the accident, Plaintiff

keeps a journal to remember his daily activities. Plaintiff writes in the journal a few times each week. Also, as a result of that injury, Plaintiff filed a worker's compensation claim petition. On August 10, 2004, Plaintiff settled his worker's compensation claim petition for \$119,000, after attorney's fees. Pl. Ex. A1. *See also* Pl. Ex. A6.

7. On September 23, 2004, Plaintiff purchased a 2004 16' x 80' Champion mobile home. Plaintiff purchased this mobile home with money that he received from the above-mentioned worker's compensation claim petition. Pl. Ex. A6. However, both of the parties' names appear on the title to the mobile home. Pl. Ex. B.
8. On September 27, 2004, Plaintiff placed this mobile home in Lot 26 of Carpenter's Park, located at 6235 N. Rte. 220 Highway, Linden, Lycoming County, Pennsylvania. To date, the mobile home is still on this lot in Carpenter's Park.
9. In September 2004, Plaintiff purchased the following items, in addition to others, to place in the mobile home: beds, an entertainment center, chests, headboards, a bed frame, tables, chairs, a nightstand, a sofa, a vacuum, a washer, a dryer, a television, and a television stand. Pl. Ex. F-H.
10. On October 8, 2004, Plaintiff spent his first night in his mobile home. Plaintiff primarily resided in the mobile home from October 2004 through November 2011. At a point in time, Plaintiff's mother resided in the mobile home with him. Defendant never lived in the mobile home. Plaintiff moved out of the mobile home in November 2011. He now lives on Center Street in the City of Williamsport.
11. On April 25, 2012, Plaintiff filed a Complaint in Replevin requesting the Court to order Defendant to cooperate in selling the home and finding that Plaintiff may receive the proceeds from the mobile home sale. Additionally, Plaintiff requested that Defendant

pay the costs of maintaining the mobile home until sale. On August 20, 2012, the Court held a hearing on the matter.

12. Plaintiff testified that he placed Defendant's name on the title to the mobile home because he did not have a will and he believed that by placing the Defendant's name on the title, he believed that she could sell the home in the event that he passed away. Plaintiff wanted Defendant to sell the mobile home in that instance so that the money could be given to the parties' children.
13. Plaintiff has paid the lot rent, insurance, utilities and real estate taxes associated with the mobile home since January 2005. Pl. Ex. C-C1.
14. Plaintiff testified that he agreed to split the proceeds of the mobile home sale with her after he paid off an outstanding loan. Plaintiff testified that Defendant wanted to split the proceeds without paying off the loan. Plaintiff testified that he no longer wants to split any proceeds. Defendant testified that Plaintiff agreed to split the proceeds of the mobile home sale with her.
15. Defendant testified that the parties purchased the mobile home together in 2004. Defendant testified that she bought pots, pans, plates, towels, pictures, and other furnishings for the mobile home in 2004. Plaintiff confirmed Defendant's testimony about purchasing towels and washcloths. Additionally, Defendant testified that she gave Plaintiff \$1,000 towards an oil bill. No proof was provided.
16. The Court finds Plaintiff's testimony to be credible.
17. The Court finds Defendant's testimony to be not credible.

II. Conclusions of Law

1. Section 3501 of the Divorce Code, 23 Pa. C.S. §§ 3101-3904, defines property that is marital and non-marital. Section 3501(a)(4) provides that marital property does not include “property acquired after final separation until the date of divorce, except for property acquired in exchange for marital assets.” *Id.*
2. Plaintiff’s worker’s compensation settlement is considered non-marital property because both the injury underlying the settlement and the distribution of the settlement proceeds were received while the parties were separated.
3. Likewise, the mobile home in question is non-marital property because it was acquired by Plaintiff with non-marital assets, i.e. the funds received from his worker’s compensation settlement.
4. Plaintiff’s claim was properly brought in replevin because the mobile home is non-marital property.
5. An action in replevin addresses the plaintiff’s title or right to possess an item of personal property. *Ford Motor Credit Co. v. Caiazzo*, 564 A.2d 931, 933 (Pa. Super. Ct. 1989); *Brandt v. Hershey*, 182 A.2d 219, 221 (Pa. Super. Ct. 1962). In a replevin action, the plaintiff must prove that he has the immediate and exclusive right to possess the property at the time that he commences the action. 564 A.2d at 933; 182 A.2d at 221-22. In proving an exclusive right to possession, plaintiff must prove a right to possession that excludes the defendant. 564 A.2d at 933.
6. A certificate of title should be considered in determining ownership, but is not conclusive evidence of ownership. *In Re: Petition of Hennessy*, 494 A.2d 853, 855 (Pa. Super. Ct.

1985); *Summers Estate*, 226 A.2d 197, 198 (Pa. 1967). A certificate of title establishes those with the right of possession. *Id.*

7. Plaintiff proved that he had the immediate and exclusive right to the mobile home. Plaintiff lived in the home from 2004 through 2011. Plaintiff provided evidence that he not only purchased the mobile home, but that he paid the lot rent, utility bills, taxes, and other expenses pertaining to the mobile home and the lot on which it sits. Additionally, Plaintiff provided evidence that he purchased living essentials to be used in the home, such as beds, chairs, a washer and dryer set, and the like.
8. Plaintiff provided competent evidence regarding why Defendant's name was placed on the title to the mobile home. This Court believes Plaintiff's reasoning and finds that the mere fact that Defendant's name was placed on the title does not lead to the conclusion that Defendant has an ownership interest in the property.
9. At the time that Plaintiff commenced the above-captioned action, Plaintiff had the immediate and exclusive right of possession of the mobile home.
10. In a replevin action, the Court may consider equity principles and invoke its equity powers. *Gemini Equipment Co. v. Pennsy Supply, Inc.*, 595 A.2d 1211, 1214 (Pa. Super. Ct. 1991); *Feaver v. Emery*, Lycoming County Docket Nos. 99-02,008 and 01-00,198 (Dec. 8, 2003). In particular, the Court may consider equity principles when determining whether the plaintiff sustained special damages pursuant to Pa. R.C.P. 1085(a)(1)-(2).
11. Plaintiff has not sustained any special damages in the above-captioned matter. Defendant has not withheld possession of the mobile home from Plaintiff; Defendant has merely refused to sign off on the title to the mobile home to facilitate in the sale of the home. Plaintiff did not provide evidence that established that he had any offers from potential

purchasers of the home during the time preceding this litigation. Therefore, the Court believes that no special damages have arisen.

12. However, the Court will invoke its equity powers and direct Defendant to sign off the title to the mobile home within ten (10) days of the date of this Opinion and Order.

ORDER

AND NOW, this 24th day of August, 2012, the Court finds that Plaintiff has the right to retain possession of the mobile home at issue in the above-captioned matter. Defendant shall sign off the title to the mobile home within ten (10) days; the parties should coordinate when and where this transaction will take place. Defendant shall have no share in the sale proceeds.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/abn

cc: Patricia Bowman, Esquire
Patricia Shipman, Esquire
Gary L. Weber, Esquire