

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: ESTATE OF : ORPHANS' COURT DIVISION
:
BETTY McKERNAN COYLE, :
:
Deceased : NO. 41-09-0466

OPINION AND ORDER

Betty McKernan Coyle died on August 24, 2009 at the age of 82 leaving six children: Bonnie Ryan, Elizabeth Regan, Gerald McKernan, Byron McKernan, James McKernan and Jeffrey McKernan.

Prior to her death, she had executed a Last Will and Testament dated December 3, 2008. Her sons Jeffrey and James were named Co-executors.

In her Last Will and Testament, the decedent directed that her personal property be divided equally among her children as they agreed. She further divided the remainder of her estate in equal shares to her children.

Among the estate assets is approximately fifteen (15) acres of land located in Woodward Township with an address of 1210 Yerger Road, Linden, PA 17744. On the property is a ranch style home that was built in 1996. The Pennsylvania Department of Revenue Inheritance Tax Return lists the value of the property as of the date of death as \$166,633.00.

On November 2, 2011, Co-executor James McKernan filed a Petition to Compel Co-executor Jeffrey McKernan to execute a Real Estate Listing Agreement providing for a sale of the real estate by public auction. Subsequently on December 9,

2011, beneficiary Gerald McKernan filed a Petition to Remove James McKernan as Co-executor. This petition sought to appoint a neutral third party to serve as executor, to enjoin the estate from marketing and selling the real estate, and to compel the estate to accept his offer to purchase the real estate. A hearing on both Petitions was held before the Court on January 13, 2012.¹

David Williams, a licensed realtor with Kimble, Coldwell Banker of Williamsport first testified on behalf of Petitioner James McKernan. He conducted a Comparative Market Analysis of the property at the request of James McKernan.

He explained that a Comparative Market Analysis is a “better estimate” of the fair market value of the property. Comparing his market analysis to the three estate appraisals that were done on the property, he concluded that his market analysis would better reflect the true value of the property if it were placed for public sale.

His anticipated selling price based upon conveying all of the subsurface rights (oil, gas and mineral rights) was between \$270,000.00 and \$280,000.00. He recommended that the marketing price be \$289,000.00.

Retaining the subsurface rights would result, in his professional opinion, in a sale price of \$215,000.00 to \$225,000.00. Retaining 50% of the

¹ At the hearing, James McKernan was represented by Norman Lubin, Jeffrey McKernan was represented by Craig Harris, Gerald McKernan was represented by C. Rocco Rosamilia III, and Bonnie Ryan was represented by Paul Ryan. The remaining beneficiaries, Elizabeth Regan and Byron McKernan participated without counsel. An extensive conference between the parties and their counsel took place after which the parties engaged in further negotiations, but, unfortunately, these negotiations failed to

subsurface rights would result in a sale price of between \$245,000.00 and \$250,000.00.

He estimated that the value of the subsurface rights was approximately \$50,000.00 but was careful to note that estimating the value of such subsurface rights is guess work and speculation. For example, he noted that the oil and gas companies are no longer exploring leases in the area and that the future prospects are uncertain at best.

He recommended that in order to get the best price for the property that it be listed for a public sale with the reserve set at \$260,000.00 plus the 6% buyer's premium.

On cross-examination, he acknowledged that the reserve could be set at \$275,000.00 plus the 6% buyer's premium but that this would result in an overall sales price of \$291,000.00 and "may eliminate some prospective buyers."

Counsel for Bonnie Ryan admitted a true and correct copy of the comparable market analysis into evidence as Ryan Exhibit 1.

Gerald McKernan next testified on his behalf. He indicated that he made an offer to purchase the property for \$226,000.00 with the oil and gas rights being retained by the beneficiaries and being placed and administered through a trust. He noted that his offer of \$226,000.00 was in fact higher than the upper range as set forth in the Comparative Market Analysis with all of the subsurface rights being

culminate in an agreement.

retained for the beneficiaries. With respect to the administration of the trust, he acknowledged that while all of the siblings did not agree, the trust could be set up and administered by an elected trustee.

The parties stipulated that James McKernan had offered \$275,000.00 “outright” for the property which would include all of the subsurface rights. He also make an alternate offer of \$240,000.00 with him retaining 40% of the mineral rights and the remaining 60% of the mineral rights being split amongst all of the beneficiaries including himself.

Jeff McKernan testified very briefly. He noted that recently the beneficiaries had met and all of the beneficiaries except James McKernan agreed that the mineral rights would be retained in equal shares by the beneficiaries.

In addressing the respective Petitions, the Court must determine what is in the best interest of the estate and what most accurately reflects the intent of the Decedent. See In re Estate of Penrose, 486 Pa. 9, 12, 403 A.2d 982, 983 (1979)(“it was for the court to determine whether the proposed sale was in the best interests of the beneficiaries under the decedent’s will”); Spring’s Estate, 216 Pa. 529, 533, 66 A. 110, 112 (1907)(“It is a primary rule of our cases to give effect to the intention of the testator...”).

Unfortunately, the Will is silent as to how a dispute between the Co-executors is to be resolved. The decedent clearly wanted her property to pass in equal shares to her six children. With respect to her personal property, decedent clearly

spelled out that if the beneficiaries did not agree as to the disposition of the property, it was to be sold and the proceeds were to be divided equally.

The sad, but all too common, reality with the family is that while they may have agreed to a disposition of the personal property, they have been unable to reach any agreement with respect to the real property. When the Court first addressed with the parties their respective positions, it appeared that they were equally divided. By the end of the hearing, it appeared that the parties were even further divided into three different “camps.”

As all of the parties concede, a meeting of the minds is impossible. Despite extensive negotiations, a consensus could not be reached and the parties have abrogated their right to decide their economic future by filing the Petitions and asking the Court to decide.

An even sadder reality is that it is evident to the Court that there is little if any chance that the parties will be able to resolve their differences in the future or ever be able to work together toward a common goal. This reality significantly limits the options for the Court. There is no perfect solution. Not unexpectedly, each beneficiary wishes to maximize their financial gain. Indeed, the Court heard no evidence whatsoever that the property held any sentimental value. The dispute centers on the prospective value of the oil and gas rights and who is willing to take a risk with respect to such.

Retaining the oil and gas rights may be a viable alternative and may

result in a higher monetary return to the beneficiaries in the future. There are, however, two major problems with retaining the rights. First, any return is speculative. There are no offers, there is little, if any, gas exploration in the area, and the parties do not have a signed lease. Secondly, and perhaps determinatively, placing the oil and gas rights in a trust will only result in increased, and perhaps perpetual, adversity and litigation. The parties' inability to reach a consensus now is a clear predictor of their inability to reach a consensus in the future.

The best option in light of the circumstances is to place the property, including all of the subsurface rights, for sale. While there is one firm offer for \$275,000.00, this is below the upper end of the "anticipated selling price" as set forth in the market analysis and well below the "recommended marketing price" also as set forth the market analysis summary.

In order to maximize the beneficiaries' potential return, it is the Court's opinion that the best option would be to list the property for sale with a floor of \$280,000.00 plus the buyer's premium. With a buyer's premium of 6%, the sale price would need to be \$296,000.00 This figure is not significantly higher than the recommended "marketing price" of \$289,000.00, and a likely result given the competitive nature of a public auction, the fact that at least two of the beneficiaries wish to purchase the property, and that in general the market for subsurface rights is high.

While the Court recognizes that this may eliminate even more than

“some” buyers, the Court sees no risk in attempting this disposition. The parties appear to be interested in one thing and one thing only: maximizing their financial return. If the property is listed as set forth and fails to sell, the parties are in no worse of a financial position.

While a neutral third party executor appears to have some merit, the Court is hopeful that this decision will dispose of any outstanding contested issues. Moreover, the Court is optimistic that the directives set forth in the foregoing Order will provide sufficient parameters to enable the property to be sold and the proceeds to be distributed without further resort to court intervention.

ORDER

AND NOW, this ____ day of February 2012, following a hearing and argument, the Court grants in part the Petition of Co-executor James McKernan to compel joinder of Co-executor Jeffrey McKernan. The Co-executors are directed to execute a Real Estate Listing Agreement, providing for sale by public auction with David Williams of Coldwell Banker Real Estate and any necessary documents to effectuate any sale of the property. The terms of the public auction will require that the property not be sold for any amount less than \$280,000.00 (floor) plus the buyer’s premium of 6%.

The Petition of Gerald McKernan to remove James McKernan as Co-executor of the estate is denied as is the Petition of Gerald McKernan to compel the estate to sell the property to Petitioner per the terms of Petitioner’s offer. The Petition

to enjoin the estate is denied as moot.

By The Court,

Marc F. Lovecchio, Judge

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