

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MIDLAND FUNDING,
Plaintiff

vs.

RUTH M. MAHAFFEY,
Defendant

: NO. 11 - 00,717

:

: CIVIL ACTION - LAW

:

:

: Motion to Strike

: Judgment Lien

OPINION AND ORDER

Before the Court is a Motion to Strike Judgment Lien filed by Raymond Mahaffey on December 1, 2011. Argument was heard February 7, 2012.¹

Raymond Mahaffey and Ruth Mahaffey, Defendant herein, were divorced by decree dated June 12, 2009. That decree incorporated a Marital Property Settlement Agreement dated May 26, 2009, which provided that the parties' marital residence at 322 Mahaffey Hollow Road, Linden, Pennsylvania, was to be conveyed to Mr. Mahaffey. Defendant was to execute a deed but so far has not done so. Mr. Mahaffey was to refinance the property in order to remove Defendant's name from the mortgage, but in an attempt to do so, discovered that on April 29, 2011, a judgment had been entered in the instant case and, by operation of law, had placed a lien on the property. Mr. Mahaffey now seeks to remove that lien, citing Franz v. Franz, 972 A.2d 525 (Pa. Super. 2009).

The Franzes were divorced by decree dated February 5, 2008, which decree incorporated their property settlement agreement of January 29, 2008. Mr. Franz was awarded the marital residence but the transfer had not yet occurred when, on February 19, 2008, Mrs. Franz' former counsel obtained a judgment against her in the collection action (for unpaid legal fees) he had filed previously and filed a notice of judgment lien against her real property. In response to Mr. Franz' motion, the court struck the lien. The Superior Court affirmed the lower court's action, holding that the property in question "was held *in custodia legis* pending the deed conveyance into Husband's name." Id. at 528. While acknowledging that upon entry of the decree the property was no longer held as tenants by the entirety but, rather, as tenants in

common and thus subject to attachment by liens against a single tenant, since the property was the subject of a court-ordered transfer, until that transfer took place, the property was considered in the custody of the court and not subject to attachment. Id.

The instant case is controlled by Franz. Accordingly, the court will enter the following:

ORDER

AND NOW, this 8th day of February 2012, for the foregoing reasons, the motion to strike judgment lien is hereby GRANTED. The lien against 332 Mahaffey Hollow Road, Linden, Pennsylvania 17744, based upon the judgment entered in this matter on April 29, 2011, is hereby STRICKEN.

The Prothonotary is directed to correct the docketing of the instant motion to reflect that it is a “Motion to Strike Judgment Lien”,² and to docket the instant Order as “Order Striking Judgment Lien”.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Rebecca Reinhardt, Esq.
Ruth Mahaffey, 405 Front Street, Linden, PA 17744
Neil Sarker, Esq., Burton Neil & Associates, P.C.
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Gary Weber, Esq.
Hon. Dudley Anderson
Prothonotary
No. 08 – 20,628

¹ Although served with notice of the argument, no one appeared on behalf of Midland Funding.

² While correcting the docketing, the three entries of “Motion to Strike Judgment” should be corrected to reflect only one filing - that on December 1, 2011 - as the Court sees no other filings which would justify the multiple entries on the docket.