

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

LUCINDA M. BUCH,	:	NO. 07-00,942
Plaintiff	:	
	:	
vs.	:	
	:	CIVIL ACTION - LAW
STEPHEN R. BAKER,	:	
Defendant	:	Final Order in Partition

OPINION AND ORDER

This action in Partition was commenced May 2, 2007, requesting the Court to divide the parties’ property in Washington Township, Lycoming County. The property, consisting of approximately 34 acres,¹ was acquired in 1962 while Plaintiff and Defendant were married. The parties were subsequently divorced May 3, 1976 but did not address the property in their divorce as they anticipated retaining it together and leaving it to their children. That understanding apparently became unraveled when Mr. Baker remarried and built a home on a portion of the property without consultation with Mrs. Buch.

The matter came to trial in October 2008 and at that time, the parties reached an agreement that (1) the property should be divided based on value alone and without consideration of the contribution of either party, including the house built and financed by Mr. Baker, such that each party would be awarded property worth 50% of the total value, and (2) the house and its yard should be retained by Mr. Baker. The parties rejected the notion of either paying a sum of money to the other to equalize the award. In order to effectuate the agreement, the parties agreed to the appointment of George Girio, a local real estate appraiser, to undertake an appraisal of sorts, “to provide the Court with several options for partitioning the property in such a manner that each party will receive equal market value.” Order of November 14, 2008. It was anticipated that a site view would then be conducted and the court would make a final decision based on Mr. Girio’s appraisal.

1 The 34 acres is net of 6.20 acres after conveyance by the parties to Charles and Grace Roupp in 1967.

The matter took an unexpected twist at that point. The court received a letter from Mr. Girio in April 2009 in which he indicated that he had inspected the property and met with counsel, but that he was waiting to complete the process because Mr. Baker was stating that he believed he owned more property than was shown in the survey. This turned into a border dispute between Mr. Baker and his neighbor to the west, Glenn Drick. The Court was asked to stay this proceeding while Mr. Baker contested an action to quiet title brought by Mr. Drick.² After several years, the matter was settled and Mr. Drick ceded 2.8 acres to Mr. Baker in the form of two small parcels which bordered the Buch/Baker property.

After several changes in counsel, the matter surfaced on this court's docket in the fall of 2012. Medical issues and the fact that both parties reside out of state during the winter months pushed the matter into the spring of 2013. A hearing was finally held May 8, 2013, but as Mr. Girio was unavailable that date, his testimony was rescheduled and, after several continuances, finally heard October 7, 2013. A site view was conducted by the court on October 31, 2013, and closing arguments heard December 20, 2013. The matter is now ripe for decision.

Unfortunately, Mr. Girio did not provide the court with "several options" but with only one option.³ Because of the parties' agreement that Mr. Baker retain the house and its surrounding lot, in order to divide the property into parcels of equal value, Mr. Girio divided the property into three parcels. Mr. Baker's portion would be the center portion, and Ms. Buch would be awarded the parcel on either side of that. Such a division is problematic, however, as such may encounter subdivision difficulty; the northern parcel, although containing over 23 acres, is wet and there is some question as to whether it would properly perk. Further, the separateness of the two parcels to be awarded to Ms. Buch makes maintenance more difficult. Considering that not all of the land is equally valued, however, and considering the presence of the house, the court agrees with Mr. Girio that the vast majority of the land must necessarily be awarded to Ms. Buch.

Therefore, the court will accept the basic premise of the Girio recommendation, but modify it slightly to account for the above concerns. Rather than three parcels, the court will direct that the property be reconfigured into two parcels, by attaching the southern portion

² Ms. Buch expressed no interest in contesting the action to quiet title and has stated repeatedly that she would make no claim against any additional property acquired through that action.

³ At the hearing on October 7, 2013, the court marked this document as "Girio 1".

(approximately 4 acres) to the northern portion (23.431 acres) by providing for a strip of land along the western boundary of the center portion. This strip of land is to be bounded on the west by Spring Creek and on the east by the eastern berm of the old canal that runs adjacent to Spring Creek. The center portion will be awarded to Mr. Baker and the northern and southern portions, as connected by the strip of land, will be awarded to Ms. Buch.

By including the connecting strip of land with the portion to be awarded to Ms. Buch, the green-shaded rectangle as shown on Girio 1 will be made narrower (from east to west). An equal amount of land (the same acreage as constitutes the strip) is therefore to be added to Mr. Baker's portion by expanding the northern boundary of the center portion in a rectangular fashion. In addition, to account for the 2.8 acres received by Mr. Baker from Mr. Drick,⁴ that rectangle is to be further expanded to the north such that the 2.8 acres is included therein. The court has attached hereto a drawing which demonstrates the court's intent, as Exhibit "A".

Finally, a right-of-use for access to the creek shall be granted in favor of Mr. and Mrs. Baker across the connecting strip of land. This right-of-use shall be personal and shall not run with the land.

ORDER

And Now, this 25th day of February, 2014, for the foregoing reasons, partition of the subject property shall be as described herein and shown on Exhibit "A", attached hereto. The parties shall engage a mutually agreeable surveyor to execute the above-directed plan, and shall share the cost of such equally. Mr. Langdon is requested to initiate the subdivision work and prepare the deed; that cost shall also be shared equally.

By the Court,

cc: J. Howard Langdon, Esq.
Kristine Waltz, Esq.

Dudley N. Anderson, Judge

⁴ These parcels are on the western boundary of the northern portion of the land which is to be awarded to Ms. Buch. The parties agreed that the exact land need not be awarded to Mr. Baker, that instead the court could substitute other land so as to make it contiguous.