

**COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

No. 454 DE 2007

ESTATE OF STANLEY T. SKALSKI, DECEASED

OPINION SUR DECREE

Stanley T. Skalski (“Decedent”) died intestate on August 8, 2006. The decedent was divorced at the time of his death, with no issue. The decedent’s brother, Julian Skalski (“Julian”), survived him.

On September 15, 2006, Letters of Administration were granted to Julian Skalski by the Register of Wills of Philadelphia County, Pennsylvania.¹

The instant litigation arises from Decedent’s 1987 divorce from his then wife, Caren Skalski (“Caren”). On September 2, 1987, a divorce Decree and Order was entered by the Philadelphia County Court of Common Pleas in the matter of Stanley T. Skalski v. Karen Michael Brerteon Skalski a/k/a Caren Skalski, February Term, 1984, No. 3156 (“Divorce Decree”).² The Decree and Order reads, in pertinent parts:

¹ A copy of the Letters of Administration appear as Exhibit P-1 in the Record in this matter.

² Exhibit P-2.

“Property located at 1939-1941 Spring Garden Street is awarded to Stanley T. Skalski.... Stanley T. Skalski owes Caren Skalski 40% of Spring Garden Street’s net equity equaling \$54,860.00. Stanley T. Skalski is responsible for the outstanding mortgage on Spring Garden Street.

“Properties located at 1051 Rosalie Street, 207 Greendale Street and 2210 Almond Street are awarded to Caren Skalski. Pursuant to the Master’s distribution percentages Caren Skalski owes Stanley T. Skalski 80% of Rosalie Street’s net equity and 60% of Almond Street’s net equity together equaling \$38,017.99. Caren Skalski is responsible for the outstanding mortgages on Rosalie Street, Greendale Street and Almond Street.

“The net amount that Stanley T. Skalski owes Caren Skalski as set forth above equals \$16,842.01.”

The Order further required that each party be responsible for their respective mortgages on the properties they received as a result of the order. It was further required that Stanley pay \$4,676.15 in cash to Caren and pay the \$27,000.00 liability on 2963-65 Amber Street. The Decree and Order goes on to state that within 60 days of its issuance, *“Stanley T. Skalski and Caren Skalski shall exchange deeds and consideration and otherwise implement this order as set forth above”* (emphasis supplied).

The parties, however, never complied with this final part of the order, as the deeds to the properties and the rents therefrom were never exchanged during the life of the Decedent.

That is not a lack of trying. In 1991, Caren filed a Petition to Compel Completion of the 1987 Order. On February 27, 1991, the Family Court Division entered an Order by Agreement providing that Decedent was to sign deeds to 2210 Almond Street, 1051 Rosalie Street and 207 Greendale Road over to Caren,

and that Decedent “collect rents and maintain the properties (Rosalie and Almond Streets) until transfer is made”. Caren in turn was required by the Order to sign the deed to 1939-1941 Spring Garden over to Decedent. The Order also provided that Decedent was to pay the remaining balance due on the mortgage on 207 Greendale Road in lieu of the payment required by the Decree and Order of September 2, 1987.³

Yet for fourteen years, neither party transferred any deeds, nor did they take any action to enforce the original 1987 Divorce Decree or the 1991 Order by Agreement.

In August of 2005, Caren filed a Petition for Contempt to Enforce Order and for Accounting, alleging that Stanley was in contempt for failure to execute the deeds. Stanley filed an Answer and a Counterclaim to Caren’s Petition, asserting the identical argument against Caren, claiming that she had failed to execute a deed transferring her interest in the Spring Garden properties and thus should likewise be held in contempt.⁴

On September 12, 2005, an Order of Agreement was entered requiring that the deeds to the properties be transferred in 30 days, in accordance with the distribution scheme of the 1987 Divorce Decree. The Order further required Decedent to provide a full accounting of all rents he received from the properties from September 27, 1991 through September 12, 2005, within 90 days of the

³ Exhibit P-3

⁴ Exhibits R-8 and P-36

Order. The Order stipulated that “the deeds will not be recorded until accounting has been received”.⁵

On March 1, 2006, Caren filed a Petition for Contempt to Enforce Order, seeking enforcement of the Orders of February 27, 1991 and September 12, 2005.

On July 5, 2006, the Honorable Doris Pechkuro of the Family Court entered an Order providing, “The Court finds that the transfer of deeds in question can be accomplished by authorizing the Prothonotary to do so. Matter is continued to 9/28/06 at 9:00am... before the Honorable Holly J. Ford”.⁶

Before this hearing could be held, on August 8, 2006, Stanley died, leaving all the properties in dispute jointly titled.

On February 28, 2007, Julian, acting as Administrator CTA for the Estate of Stanley Skalski, transferred the Rosalie Street, Greendale Road and Almond Street properties to Caren.⁷

On May 7, 2007, Julian filed a “Petition of Personal Representative to Enforce Court Order to Convey Real Estate to Decedent’s Estate”, seeking to compel Caren to deed the property located at 1939-1941 Spring Garden Street over to the Estate of Stanley T. Skalski, as per the instructions of the 1987 Divorce Decree. Julian alleged in the Petition that Caren should be required to

⁵ Exhibit R-4.

⁶ Exhibit R-8

⁷ Exhibits R-5, R-6, R-7.

pay damages, including attorney's fees, suffered by the Estate as a result of her alleged refusal to comply with the original Divorce Decree of 1987.

On June 1, 2007, this Court awarded the Citation and directed Caren Skalski to show cause why the Court should not grant the relief as requested by the Estate of Stanley Skalski.

On July 20, 2007, Caren filed an "Answer to Petition of Personal Representative to Enforce Court Order to Convey Real Estate to Decedent's Estate with New Matter and Counterclaim". In her Answer, Caren asserts that she is the co-owner, as the tenant-in-common, of the Spring Garden Properties. She claims that she is entitled to an accounting and payment of one-half of all proceeds received by Decedent and Petitioner from 1051 Rosalie Street, 2210 Almond Street, 1939 Spring Garden Street and 1941 Spring Garden Street. Additionally, Caren argues that she is entitled to damages for Decedent's failure to pay Real Estate taxes and failure to maintain the properties.

On July 27, 2007, Caren sold the Almond Street property for a gross price of \$81,500. On December 2, 2007, Caren sold the Rosalie Street property for \$60,000. She has retained ownership of the Greendale Street property as her home.

On January 4, 2008, Julian responded to Caren's Answer and filed a Reply to New Matter, Answer to Counterclaim and New Matter to Counterclaim.

On July 2, 2008, Caren filed Counter-Reply to Julian's New Matter to Counterclaim, requesting that the Court provide her with the relief as requested in her Counterclaim.

On July 10, 2009, this Court entered an Order approving the sale of the premises at 1939 and 1941 Spring Garden Street, and further requiring the "after the payment of all closing costs and other deductions necessary to deliver good and marketable title to the Buyers", the net proceeds of the sale of both properties be placed in "an interest bearing, restricted Escrow Account, from which no funds may be released except upon Decree of this Court".

On November 20, 2008, the Spring Garden properties were sold by Julian for a gross price of \$1,187,500. The net proceeds, amounting to \$931,412.38, have been placed in the Escrow account as required by the July 10th Order, pending the outcome of this litigation.

On July 13, 2009, at a Hearing held on the Pleadings in this matter, this Court heard the testimony of Julian Skalski, Caren Skalski and Stanley Skalski, Jr., the son of the Decedent. Denise A. Kuestner, Esquire, counsel for Julian Skalski offered thirty-six exhibits into evidence as "P-1" through "P-36". Robert W. Costigan, Esquire, counsel for Caren Skalski, offered ten exhibits as "R-1" through "R-10".

Having considered the testimony and the record before me, I find that the Divorce Decree of 1987, and the distribution of assets delineated therein, should be given full faith and credit by this Court. As such, I find that Caren Skalski is the

sole owner of the properties located at 1051 Rosalie Street, 2210 Almond Street and 207 Greendale Road as the Estate of Stanley Skalski is the sole owner of properties located at 1939 and 1941 Spring Garden Street. The escrowed monies, earned from the sale of the Spring Garden are therefore the sole and separate property of the Estate of Stanley Skalski, also known as Stanley Thomas Skalski, Deceased.

The law specifically dictates that once the divorce decree has been entered, the “right of the spouse to the distribution of marital property and other economic claims where these matters have been properly put in issue before the death of the spouse, is vested”. Pastuszek v. Pastuszek, 346 Pa. Super. 416, 425 (1985). The Pennsylvania Superior Court has held that there is no conflict between this rule and the provisions of any statute dealing with the estates of decedents. Id. Thus, some property may “become an asset of the decedent's estate and shall be treated by the personal representative as any other estate asset”. Id.

Furthermore, when a divorce decree directs one spouse to transfer, at some future time, his or her interests in a former marital property to the other spouse, the transferor spouse is stripped of any equitable interest he or she may have had in the property as of the time the divorce decree is issued. In Re: Janet M. Denillo v. Iron and Glass Bank, 309 B.R. 866, 871 (2004).

Thus Caren Skalski has no cognizable claim to the property rights vested as matter of law in the 1987 Divorce Decree, as said decree specifically awards

the Spring Garden properties to the Decedent and the Almond Street, Rosalie Street and Greendale Street properties to Caren. Moreover, no appeal was ever filed to said decree, only subsequent petitions by Caren to enforce it. Thus Caren's claims that she is now entitled to a fifty percent interest in each of the respective properties must be denied, as the Decree of 1987 stands and will not be relitigated at this time. Caren is therefore 'stripped of any interest' she may have held in the Spring Garden properties, and any monies earned therefrom, as the Decedent's estate is 'stripped of any interest' it may have held in the Rosalie, Almond or Greendale properties.

In addition to her claim to the Spring Garden properties, Caren asserts that she is entitled to an accounting and payment of one-half of all proceeds received by Decedent from 1051 Rosalie Street, 2210 Almond Street, 1939 Spring Garden Street and 1941 Spring Garden Street. She further alleges that in addition to the fair market rentals from the properties, she is entitled to damages for Decedent's failure to pay Real Estate taxes and failure to maintain the properties. Having addressed her claims to the Spring Garden Street properties above, we will address her claims stemming from Almond Street and Rosalie Street.

The property located at 2210 Almond Street was occupied by a tenant named Mary Phillips from 1977 until her death in 2004. Ms. Phillips paid approximately \$200.00 per month in rent.⁸ Julian Skalski testified before this Court that Ms. Phillip's daughter occupied the premises for a short time after her mother's death, but was eventually evicted, leaving the property vacant, and at

⁸ Exhibit P-21.

such time the Decedent sent Caren the keys to the property in an effect to turn the property over to her. N.T. 41. The property remained vacant from the time of the eviction until Decedent's death in 2006.

In 1984, around the time of the initial divorce proceedings, the Decedent filed an inventory and appraisal list with the Court, listing the Skalski's marital assets, the cost of the asset on the day of acquisition, the current value of the asset and the amount of any lien on the property. The inventory listed the property on Almond Street as having an initial value of \$4,000.00, a current value (in 1984) of \$17,000.00 and an outstanding mortgage in the amount of \$6,949.82.

The Divorce Decree from 1987, given full faith and credit by this Court, dictates that Caren was responsible for the mortgage on the Almond Street property. Julian Skalski, however, testified that the Decedent paid off the mortgage on the Almond Street property, N.T. 56, and that the record of such payment was included in the accounting filed.

As stated above, the income earned from renting the property amounted to merely \$200.00 a month. The property was vacant in the years leading up the Decedent's death. The property was in fact vacant at the time the deed to the Almond street property was transferred to Caren Skalski on February 28, 2007.⁹ Caren subsequently sold the property on July 27, 2008 for \$81,500.00.¹⁰ The outstanding real estate taxes due and owing at that time amounted to \$7,458.02.¹¹

⁹ Exhibit R-7.

¹⁰ Exhibit P-8.

¹¹ Exhibit P-9.

In her brief, Caren claims, however, that she only received a net gain of \$16,821.06 from the sale of the Almond Street property.

The property located at 1051 Rosalie Street was a two apartment row house, the second floor apartment being where the Decedent resided from 1995 until his death in 2006. The Skalski's purchased the property in 1969 for \$21,000.¹² The value of the property in 1984 was \$35,000, with a mortgage due and owing in the amount of \$5,975.47. After the title to the property was transferred to Caren in 2007, she sold it for \$60,000.00. She claims she received a net of only \$12,216.00.

According to Julian Skalski, in 1995, at the time the Decedent moved into the property, the house was vacant and in disrepair. N.T. 38. There was no heat, no water, the basement had been flooded and the kitchen appliances were out of date. N.T. 38, 45. Upon his arrival, the Decedent made significant improvements to the property in order to make it habitable. N.T. 46. These improvements included repairing the pipes and plumbing, clearing out the flooding in the basement, repairing the heating system and turning on the water. Furthermore, Julian Skalski testified that the Decedent made payments on the mortgage and paid the real estate taxes on the property amounting to \$10,048.00. N.T. 50, 51.

The Decedent did receive rental income from the first floor apartment of the Rosalie Street property during his life, and also derived from said property the benefit of residing there from 1995 until his death in 2006. Decedent rented the first floor of the property from 1986 until 1999 for \$300.00 per month.¹³ Decedent

¹² Exhibit P-25.

¹³ Exhibit P-22.

then increased the rent for the years 1999-2002 to \$375.00 per year.¹⁴ From 2002 until the Decedent's death in 2006, the first floor apartment was rented at a rate of \$450.00 per year.¹⁵

It is clear that the Decedent received rental income from both the Almond Street and the Rosalie Street properties. At issue, therefore, is whether the Decedent's income from said properties offsets the amounts he expended in order to pay the mortgages, taxes and repairs for each respective property.

Julian, as Administrator of the Decedent's Estate, prepared two accounting memorandums, as seen in the Record as Exhibit P-29 and Exhibit P-30, both of which delineate the various expenses and incomes received from the Rosalie and Almond Street properties from 1987 until 2008. N.T. 47. According to Julian, these accountings were prepared using the "leases and the receipts for the utilities and the checkbooks and ledgers and repair receipts", organized by year. N.T. 47. Exhibit P-29 shows the amount of rents actually received from the two properties, whereas Exhibit P-30 takes into account the rent that Rosalie Street would have generated had the Decedent paid fair market rent. N.T. 47. The rental amount used to show the Decedent's share mirrors the amounts paid for the first floor rental, taking into account rental increases. N.T. 47.

Both Exhibit P-29 and P-30 demonstrate that the Decedent did in fact receive rental income from the Rosalie and Almond Street properties. Exhibit P-29 provides that the actual amount received by Decedent in rental income amounts

¹⁴ Exhibit P-22.

¹⁵ Exhibit P-22.

to \$65,425.00. Exhibit P-30 reveals that had the Decedent paid fair market value rent for his second floor apartment on Rosalie Street, the amount earned on the properties would have amounted to \$110,675.00.

The expenses proffered by both Exhibit P-29 and P-30, consist of expenses paid by the Decedent for the paint, repairs, mortgage payments, plumbing, utility payments and water payments for Rosalie and Almond Street. Although Divorce Decree specifically provided that Caren was responsible for the remaining mortgages on both the properties, the Decedent actually paid off both mortgages. Thus the expense amount to \$95,444.28.

Therefore considering what the Decedent actually received in rent under Exhibit P-25, the properties operated at a loss of \$30,019.28. However, considering what the Decedent gained by residing at Rosalie Street rent-free for several years, the properties would be considered to have operated at a “profit” of \$15,230.72.

Yet in addition to the \$95,444.28 of expenses paid by the Decedent, the Decedent also made several payments toward the mortgage, utility bills and real estate taxes of the Greendale property, a property inhabited by his ex-wife from the time of the divorce until present. In fact, the payments made by the Decedent with respect to the Greendale property amount to \$23,734.08.¹⁶

It has been proven that the Decedent made payments towards the mortgages of all his ex-wife’s properties, despite the fact that Caren was required

¹⁶ Exhibit P-32.

by the divorce decree to make these payments. Furthermore, it has been established that the Decedent made substantial repairs to the Rosalie Street property during his residence there. The Decedent made several utility and tax payments on all of Caren's properties as well. Despite these payments by the Decedent towards these properties, Caren pocketed the entire net proceeds¹⁷ from the sale of both Rosalie and Almond Street.

Hence this Court finds that despite the Decedent's unrealized "profit" of \$15,230.72, Caren Skalski has been fully compensated for her interest in the proceeds of the properties now titled in her name alone. This Court further finds that considering the Record establishes that the Decedent repaired the properties and made tax payments towards them, Caren's additional claims regarding the Decedent's failure to pay taxes and maintain the properties is found to be without merit.

BY THE COURT,

O'Keefe, Adm. J.

¹⁷ Caren received a net of \$12,216.00 from the sale of the Rosalie Street property and \$16,821.06 from the sale of the Almond Street property.