COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION

No. 51 DE of 2010
Control No. 153926

Estate of MARY GRIFFIN, Deceased

OPINION SUR APPEAL

OVERTON, J.

Eddie Griffin filed an appeal of this Court's Adjudication dated March 4, 2016 awarding Eddie Griffin and the Estate of Towanda McClendon each a fifty percent share of the proceeds of the sale of 1823 Catharine Street, Philadelphia, PA 19146 (hereinafter the "Property"). Specifically, Eddie Griffin and the Estate of Towanda McClendon are entitled to one-half of the fair market rental value of the Catharine Street property from 2005 to the present, or $76,693.42 each. After accounting for a $43,971.23 credit to Eddie Griffin for his share of taxes, maintenance, renovations, and repairs, $32,722.19 was payable to the Estate of Towanda McClendon by Eddie Griffin.[1]

Facts

Mary Griffin died intestate on January 28, 2001. (Pet. for Citation at 1). She was survived by her two children Eddie Griffin and Towanda McClendon. (*Id.* at 2). Letters of Administration were granted to Eddie Griffin on January 19, 2007. (*Id.* at 1).

[1] The Court learned of the passing of Eddie Griffin in the Philadelphia Daily News Weekend dated Sunday, April 17, 2016. The funeral announcement detailed that Eddie Griffin died on April 15, 2016. To the present knowledge of the Court, no estate has been raised nor has there been a suggestion of death filed with the Court.

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On January 8, 2010, Towanda McClendon filed a Petition for Citation seeking to remove Eddie Griffin as Administrator of the Estate of Mary Griffin, to order that an Accounting be filed and to retitle the Property. (*Id.*)

Eddie Griffin was removed as Administrator by this Court on April 18, 2011. (04/18/11 Decree). Letters of Administration, *de bonis non* were then granted to Jeffrey Hoffman. (09/11/12 Decree).

On August 26, 2011, Eddie Griffin filed a Counterclaim against Towanda McClendon/Complaint for Partition of Real Property stating that he should be awarded 100% of the Property in a partition action. (Griffin Counterclaim at 4).

On February 2, 2012, this Court set aside and declared null and void the Deed which purported to convey the Property from Eddie Griffin, Administrator of the Estate of Mary Griffin, to Eddie Griffin, a 52% interest with a right of survivorship to pass to Kadijah E. Spencer and Shariff N. Spencer, equally and a 48% (Non-Possessory) Interest to Towanda McClendon as Tenant in Common. (02/02/12 Deed Decree).

On February 22, 2012, Towanda McClendon died intestate with no issue, leaving Homer D. McClendon as her surviving spouse. Letters of Administration for the Estate of Towanda McClendon were granted to David Francisco, Esquire by the North Carolina Clerk of Court.

On September 11, 2012, the Court issued a Decree removing Mr. Hoffman as Administrator D.B.N. (09/11/12 Decree)[2]. On January 15, 2013, Letters of Administration, *de bonis non* were granted to Robert S. Esposito, Esquire. (Pet. For Adjudication/Stat. of Prop. Distrib. at 2).

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[2] The Court notes that this Decree is not found on the Docket, but as an attachment to the Petition for Adjudication/Statement of Proposed Distribution filed with the First and Final Account on February 12, 2013.

As Administrator, Mr. Esposito filed a First and Final Account of the Estate of Mary Griffin on February 12, 2013. (Adm. Esposito's First and Final Account). As stated, the Account showed that Eddie Griffin was to be credited $9,289.73 for taxes, $26,459.63 for renovations and repairs to the property, $35,555.00 for the labor costs of those renovations and repairs, and $32,722.47 for utilities paid for the Property. (Exhibit O-10).

On March 30, 2013, Eddie Griffin filed Objections stating that he should be awarded 100% of the Property. (03/30/13 Griffin Objections).

Robert S. Esposito, Esquire petitioned to withdraw as counsel and was removed as counsel for Eddie Griffin by the Honorable Joseph D. O'Keefe on July 31, 2013. (07/31/13 Decree).

The Court held a hearing and received testimony on the partition issue and the Objections to the Accounting[3] on November 24-25, 2015.

At the hearing, the Estate of Towanda McClendon presented two witnesses. The first witness was Richard M. Lam, an expert in real estate appraisal. There was a stipulation between counsel as to his qualifications as an expert. (N.T. 11/24/15, 17:12-22). He testified that the value of the Property at the time of the trial was $375,000.00. (N.T. 11/24/15, 18:8-13; 22:3-11); (Exhibit O-7). He then testified to the rental values of the Property starting in 2005. He stated that the rental value in 2005 was $900.00/month. (N.T. 11/24/15, 26:4-6); (Exhibit O-1). He stated that the rental value as of July 2008 was $1,000.00/month. (N.T. 11/24/15, 27:9-14); (Exhibit O-2). He then testified that the rental value in January 2012 was $1,600.00/month. (N.T. 11/24/15, 29:2-8); (Exhibit O-3). He stated that the rental value in January 2013 was

[3] According to the Court's Scheduling Decree, all documents were to be exchanged by counsel by October 6, 2015. (06/08/15 Decree). A Supplemental Accounting was filed on November 25, 2015. The Estate of Towanda McClendon objected to the use of that document at trial because it had not been submitted to opposing counsel by October 6, 2015 per this Court's scheduling decree. (N.T. 11/24/15, 13:13-15:20). Therefore, the Court only heard evidence on the First and Final Account filed on February 12, 2013.

$1,700.00/month. (N.T. 11/24/15, 30:10-17); (Exhibit O-4). He then said that the rental value in January 2014 was also $1,700.00/month. (N.T. 11/24/15, 30:20-31:5); (Exhibit O-5). Finally, he testified that the rental value as of August 2015 was $1,850.00/month. (N.T. 11/24/15, 31:10-21); (Exhibit O-6).

The Estate of Towanda McClendon's second witness was Administrator, Paul Esposito, who was called on cross-examination. He testified that he was never aware that Towanda McClendon ever disclaimed her interest in Decedent's Estate. (N.T. 11/24/15, 74:6-16). He also admitted that when he was preparing the First and Final Account, he did not have the Property appraised to establish its fair market value. (N.T. 11/24/15, 74:17-75:6). He testified that as of the filing of the First and Final Account, Eddie Griffin was living in the property with his spouse and not paying rent. (N.T. 11/24/15, 77:17-78:12). He also admitted that his First and Final Account did not include any offset for rent. (N.T. 11/24/15, 78:16-19). He further stated that Eddie Griffin had been paying the taxes on the property even before he was appointed as Administrator in 2007 to preserve the property. (N.T. 11/24/15, 82:8-14).

There was extensive testimony about the utilities detailed in the First and Final Account. Mr. Esposito stated that the First and Final Account did not seek a credit for basic usage charges. (N.T. 11/24/15, 87:22-25). He did state that a credit was being sought for the "service charge" and the "storm water charge" at $24.00 to $27.00 per month. (N.T. 11/24/15, 88:9-17). However, he admitted that $24.00 to $27.00 per month figure included usage amounts. (N.T. 11/24/15, 89:6-8). He conceded that many of the PECO bills that were detailed in the First and Final Account did not reflect that Eddie Griffin had been part of the LIHEAP Program from which he received credits for his electric bill, paying either nothing or a portion of the bill out of pocket. (N.T. 11/24/15, 99:8-102:17). He acknowledged that Eddie Griffin should not receive a credit for those bills. (N.T. 11/24/15, 127:14-18).

Mr. Esposito then testified about the some of the other costs detailed in the First and Final Account. He admitted that expenses for furniture were included in the First and Final Account. (N.T. 11/24/15,110:5-112:11). Reimbursement for damage to Eddie Griffin's personal property was also detailed in the First and Final Account. (N.T. 11/24/15, 114:12-115:14).

Mr. Esposito then testified about the section of the First and Final Account entitled "Necessary for the Preservation and Protection of the Real Estate." (N.T. 11/24/15, 127:25-128:2). He testified that $14,175.00 was paid for the purchase and installation of hardwood floors. (N.T. 11/24/15, 129:1-9). He said $1,200.00 was paid to run wire to mount a 42-inch flat screen television on the wall. (N.T. 11/24/15, 130:5-131:11). He added that $800.00 was spent for new ceramic tile in the kitchen. (N.T. 11/24/15, 131:23-132:8). He testified that $5,000.00 was spent to paint the inside of the house and to build a walk-in closet in the front closet. (N.T. 11/24/15, 134:4-24). He gave additional testimony about many of the other expenses detailed in the First and Final Account for renovations and the purchase of appliances. (N.T. 11/24/15, 135:14-146:21).

In Administrator Paul Esposito's case-in-chief, he presented four witnesses. First he presented James Minor to testify about what happened to the Decedent's personal property. (N.T. 11/24/15, 165:6-12). He stated that he witnessed Towanda McClendon take Decedent's jewelry and watches. (N.T. 11/24/15, 166:17-21). The Estate of Towanda McClendon then withdrew its objection to the First and Final Account that there had not been any personal property listed. (N.T. 11/24/15, 167:16-168:8).

Debbie Vasquez then testified to the carpentry work that she did for Eddie Griffin. (N.T. 11/24/15, 171:15-17). She stated that she did repair work on the roof surfaces of the Property. (N.T. 11/24/15, 174:15-25). She stated that she also worked on the interior of the property, as detailed in her affidavit, and that those repairs were necessary to preserve and protect the

property. (N.T. 11/24/15, 177:10-17; Exhibit R-2). She testified that she replaced the basement carpet, assisted in cementing the basement walls, built a closet because there were no closets in the Property and repainted the interior of the home. (N.T. 11/24/15, 178:13-180:5).

The Administrator's third witness was Cattrineia Griffin, the wife of Eddie Griffin. She stated that she had been living in the Property since January 2009. (N.T. 11/24/15, 183:11-13). She testified that she had witnessed Mr. Walter Whiteman perform work on the Property. (N.T. 11/24/15, 185:3-7). She stated that the gas dryer had to be removed from the basement to replace it with an electric dryer because electric dryers were less expensive to operate and ran more efficiently. (N.T. 11/24/15, 186:13-20; 188:5-8). She also testified that the Property had extensive water damage in the basement. (N.T. 11/24/15, 187:15-25). She added that there were lead pipes containing asbestos which had to be removed and replaced with copper piping. (N.T. 11/24/15, 188:25-192:15). She testified that the cabinets had to be refaced because they were cracked and had grease on them thus posing a fire risk. (N.T. 11/24/15, 192:18-193:8). Finally, she returned on November 25, 2015 to continue her testimony about the nature of the repairs performed on the Property. (N.T. 11/25/15, 24:1-55:8).

Lastly, Eddie Griffin testified. He stated that the initial inheritance tax return was filed with the assistance of his former counsel. (N.T. 11/25/15, 8:4-9:9). He also stated that the Commonwealth of Pennsylvania filled in the market value of $14,400.00 for the Property for him. (N.T. 11/25/15, 11:18-24). Appellant admitted that his sister was always entitled to a fifty percent share in the Property. (N.T. 11/25/15, 99:25-100:4). Despite that admission, he continued to question the Court about why the proceeds should be split in half. (N.T. 11/25/15, 101:9-11).

Finally, in Eddie Griffin's case-in-chief, he presented no witnesses to the Court. He submitted eight photographs into evidence. (Exhibits G-1 to G-8).

Procedural History

On January 8, 2010, Towanda McClendon filed a Petition for Citation to show cause why Eddie Griffin should not be ordered to file an Accounting of his administration of the Estate of Mary Griffin and why he should not be removed as Administrator of the Estate of Mary Griffin. The Petition for Citation stated that Eddie Griffin alleged he was the only child of Mary Griffin on his January 19, 2007 Petition for Probate and Grant of Letters to the Register of Wills. The Petition for Citation also alleged that on October 22, 2008, as Administrator of the Estate of Mary Griffin, Eddie Griffin had transferred Decedent's residence located at 1823 Catharine Street, Philadelphia, PA 19146 to "Eddie Griffin, a 52% interest with a right of survivorship to pass to Kadijah E. Spencer and Shariff N. Spencer equally and a 48% (Non-Possessory) interest to Towanda McClendon as tenants in common." On April 18, 2011, this Court removed Eddie Griffin as Administrator of the Estate of Mary Griffin. Also on April 18, 2011, in a separate decree, the Court appointed him as the guardian ad litem for his granddaughter Kadijah E. Spencer, a Minor. On July 6, 2011, this Court denied Eddie Griffin's Petition for Reconsideration of the Court's April 18, 2011 Decrees.

On August 26, 2011, Eddie Griffin filed a Counterclaim in the nature of a Complaint for Partition of Real Property against Towanda McClendon. The Counterclaim stated that based on *Swails v. Haberer*, No. CIV.A.02-7095, 2004 WL 1941245 (E.D. Pa. Aug. 30, 2004), he should be awarded sole ownership of the Property. After a hearing held on February 1, 2012, in a Decree dated February 2, 2012, this Court declared the Deed which purported to give a 52% interest with a right of survivorship to pass to Kadijah E. Spencer and Shariff N. Spencer equally and a 48% (Non-Possessory) interest to Towanda McClendon as tenants in common null and void and set aside the Deed.

After Towanda McClendon renounced her interest in being appointed Administratrix of the Estate of Mary Griffin, her attorney Jeffrey R. Hoffman, Esquire was appointed as Administrator D.B.N. to the Estate. On September 11, 2012, the Court issued a Decree removing Mr. Hoffman as Administrator D.B.N. and directed the Register of Wills to appoint Robert S. Esposito, Esquire, Eddie Griffin's attorney, as the Administrator D.B.N. for the Estate. The Court also instructed Mr. Esposito to file an Account by October 30, 2012 and appear for audit on December 3, 2012. However, the Register of Wills informed Mr. Esposito that his Petition for Appointment would not be granted until an estate was raised in North Carolina after Towanda McClendon's death on February 23, 2012. On January 15, 2013, Robert S. Esposito, Esquire was officially appointed as the successor Administrator D.B.N. for the Estate of Mary Griffin. An Account was filed on February 13, 2013, and Objections thereto were filed by Eddie Griffin on April 1, 2013.

On July 31, 2013, the Honorable Joseph D. O'Keefe granted the Petition of Robert S. Esposito, Esquire for Leave to Withdraw his Appearance as Counsel of Record for Respondent Eddie Griffin.

A hearing was held from November 24, 2015 to November 25, 2015 before the Honorable George W. Overton. On December 10, 2015, the Court issued a Decree with its findings and issued a separate Decree bearing the same date appointing a Master in Partition to oversee the partition of the Catharine Street property. Eddie Griffin filed Exceptions to the Court's December 10, 2015 Decrees on December 27, 2015. After a hearing on the Exceptions on January 27, 2016, the Exceptions were denied on January 28, 2016.

A Notice of Appeal was timely filed on February 12, 2016. Statements of Matters Complained of on Appeal were requested and properly tendered on February 26, 2016.

The Court confirmed the Amended Updated Account dated November 20, 2015 absolutely in its Adjudication dated March 4, 2016 and was docketed on March 7, 2016. The Court issued an Amended Adjudication on March 8, 2016. Exceptions were filed by Eddie Griffin to the Court's Adjudication dated March 4, 2016. These Exceptions were denied on March 22, 2016.

A second Notice of Appeal was timely filed on April 5, 2016 to the March 4, 2016 Adjudication of the Amended Updated Account.

Eddie Griffin raised the following issues in his Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b):

1. The Auditing Judge committed error of law in his decision not to apply the partition case methodology prescribed in the case of *Swails v. Haberer*, No. CIV.A.02-7095, 2004 WL 1941245, at *1 (E.D. Pa. Aug. 30, 2004), a partition case heard in the Eastern District of Pennsylvania in which substantive Pennsylvania law was applied. *Swails v. Haberer*, No. CIV.A.02-7095, 2004 WL 1941245, at *1 (E.D. Pa. Aug. 30, 2004), *as amended* (Sept. 9, 2004).
2. The Auditing Judge committed error of law in assigning a present value of $375,000.00 to the property instead of finding that the relevant value is $14,400.00 according to the *Swails v. Haberer* methodology described above.
3. The Auditing Judge committed error of law in entering a separate decree dated December 10, 2015 to appoint a Master in Partition.
4. The Auditing Judge committed error of law in directing that the net proceeds from the sale of the property by equally distributed to Respondent (50%) and to Towanda McClendon's Estate (50%).

5. It was error of law to order that $32,722.19 is payable by me to the Estate of Towanda McClendon for unpaid rental income.
6. The Auditing Judge committed error of law in excluding the bills and expenses I paid starting from 345 through the end which were included in the Administrator's Updated Account.
7. The Auditing Judge committed error of law in granting any part of Towanda's petition of January 8, 2010 due to the fraud, falsification to authorities, and forgery committed against the Register of Wills and against this Honorable Court by Attorneys Hoffman and Morrow, and possibly other members of their firm.
8. Taking away my home by the Court, forcing the sale of my home and forcing me to find another place to live constitute violations of my right, as a citizen of the United State, of due process of law under the 14th Amendment of the Constitution.

Discussion

A. The *Swails v. Haberer* Methodology Does Not Apply To The Instant Case

Eddie Griffin (hereinafter "Appellant") asserts that the Court did not apply the methodology employed in the *Swails v. Haberer* case to decide the instant matter. Because the Court finds this case to be non-binding, this claim is without merit.

The *Swails v. Haberer* case arose out of a property dispute between a plaintiff and defendant after the dissolution of their same-sex domestic partnership. *Swails v. Haberer*, No. CIV.A.02-7095, 2004 WL 1941245, at *1 (E.D. Pa. Aug. 30, 2004), *as amended* (Sept. 9, 2004). The home in question named the plaintiff and defendant as joint tenants with the right of survivorship. *Id.* The couple had jointly paid the mortgage payments, real estate taxes,

insurance, and maintenance expenses from June 1999 until their separation in January 2002. *Id.* at *4. After the separation, the defendant solely paid all of the expenses. *Id.*

The *Swails* court found that because the plaintiff had stopped contributing to expenses in January 2002, it was proper to use the fair market value of the home at the time of the separation to determine the parties' distributive shares. *Id.* at *6. The court then determined that each party was entitled to "half of the net value of the Residence." *Id.* at *7. After calculating the amount each party individually expended in relation to the property, the court found that "[e]ach party is entitled to a credit of half of their contribution to the Residence-related expenses." *Id.* After calculating the applicable credits to each party, the court found that because the plaintiff's distributive share had been entirely reduced by the credit owed to defendant, under principals of equitable distribution, the entirety of the property should be awarded to the defendant. *Id.*

Joint tenancy with the right of survivorship and tenancy in common are representative of two different kinds of property interests. *In re Estate of Quick*, 905 A.2d 474, 474 (Pa. 2006). When two people hold title as joint tenants with the right of survivorship, title vests equally in each person during his or her lifetimes, with sole ownership passing to the survivor at the death of the other person. *In re Parkhurst's Estate,* 167 A.2d 476, 478 (Pa. 1961). The interests of joint tenants must be equal. *In re Cochrane's Estate,* 20 A.2d 305, 307 (Pa. 1941). In contrast, when two people hold title as tenants in common, the co-tenants have separate and distinct titles. *Stewart v. Cummings,* 165 A. 544, 545 (Pa. Super. Ct. 1933). The interests of tenants in common may or may not be equal. *See Stover v. Stover*, 36 A. 921, 922 (Pa. 1897) (stating that tenants in common may hold unequal shares if shown by the facts).

The Court finds that *Swails v. Haberer* is inapposite to the instant case. *Swails* involves joint tenants with the right of survivorship who bought the property in question while in a domestic partnership. *Swails*, 2004 WL 1941245, at *1. The instant case involves two siblings

who were intestate heirs to their mother's real property as tenants in common. (Griffin Counterclaim at ¶ 7). The considerations of this case are entirely different because the context in which the property interests were created, as well as the interests themselves, are entirely different. *Swails* awards the property to the defendant in the context of equitable distribution after the dissolution of a same-sex partnership. More poignantly, *Swails* does not address partition actions where the share of partition proceeds is governed by the intestacy statute. Furthermore, the *Swails* decision was not reported in the federal reporter. As such, the Court finds *Swails* to be merely persuasive and not binding on the Court's analysis. Therefore, because *Swails* is readily distinguishable from the facts of this case, this claim is without merit.

B. Appellant Did Not Provide Expert Testimony To Support A Finding That The Property Was Worth $14,400.00 At The Time Of Decedent's Death

Appellant states that the Court erred by not finding the Property to be worth $14,400.00 at the time of Decedent's death. This claim is without merit.

Appellant argues that the value of the Property in January 2001 was $14,400.00. (1925(b) Statement at ¶ 2). The parties stipulated to the expert for real estate appraisal for the sale and rental value of the Property. (N.T. 11/24/15, 17:12-17). The real estate expert testified that as of September 2015, the Property was valued at $375,000.00. (N.T. 11/24/15, 18:8-13). At trial, the Administrator admitted that when preparing the Accounting an appraiser was not retained to determine the fair market value of the Property. (N.T. 11/24/15, 74:17-21). Neither Appellant nor Administrator provided any expert testimony to support the contention that the Property was valued at $14,400.00 in January 2001. (N.T. 11/24/15, 75:7-13). The Court notes that, pursuant to its December 10, 2015 Decree, the $32,722.19 Appellant owes to the Estate of Towanda McClendon reflects *only* the amount of unpaid rental income for 2005-2015 that was

due after accounting for the credit of $43,971.23 Appellant received for taxes, maintenance, renovations, and the repairs he made to the Property.

The Court's December 10, 2015 Decree makes no finding as to the value of the Property in January 2001 because no expert testimony was submitted in order support such a finding (N.T. 11/24/15, 75:7-13). Mr. Lam only testified to the Property's present fair market value of $375,000.00 and the fair market rental income values from 2005-2015 ranging from $900.00 to $1,850.00 per month. (N.T. 11/24/15, 18:8-13; 11/24/15, 25:17-32:1; *see also* Exhibits O-1 through O-6). The Court also noted its concern on the record that close to $100,000.00 in improvements was done on a property Appellant purportedly valued at $14,400.00. (N.T. 11/25/15, 95:6-96:3). Additionally, the value of the Property at the time of Decedent's death had no bearing on the equal intestate shares Appellant and his sister are entitled to under the intestacy statute. *See* 20 Pa.C.S. § 2104(2). Therefore, this claim is without merit.

C. The Court Did Not Err By Ordering Appellant's Requested Partition

Appellant alleges that the Court erred by entering a separate decree dated December 10, 2015 to appoint a Master in Partition. This claim is without merit.

Partition of real property is governed by the Rules of Civil Procedure. *See* Pa.R.C.P. 1551–75. "The purpose of partition is to afford those individuals who no longer wish to be owners the opportunity to divest themselves for a fair compensation." *Beall v. Hare,* 174 A.2d 847, 849 (Pa. 1961); *In re Kasych*, 614 A.2d 324, 327 (Pa. Super. Ct. 1992). Generally, owners of undivided interests in real property have an absolute right to partition. *Hyatt v. Hyatt,* 417 A.2d 726, 728 (Pa. Super. Ct. 1979). Property not capable of division without prejudice to or spoiling the whole may be sold at sold at public sale if so ordered by the court. Pa.R.C.P. 1568; 1572; *Kasych*, 614 A.2d at 327. "If the court determines that there shall be partition…after a

hearing or trial, the court shall enter an order directing partition which shall set forth the names of all the co-tenants and the nature and extent of their interests in the property." Pa.R.C.P. No. 1557. The Court may appoint a master to conduct the sale. Pa.R.C.P. No. 1558.

Here, Appellant exercised his right to request a partition of the Property in which he had a one-half interest. *See* Exhibit O-9. The Court notes that the request for partition was submitted by Appellant when he was still represented by Attorney Esposito. (Exhibit O-9). The instant partition action was initiated by Appellant in 2011. (Exhibit O-9). It is unclear to the Court why Appellant now objects to that same partition action. *See* 1925(b) Statement at ¶ 3. After the hearing, the court analyzed whether it was appropriate to divide the Property or if doing so would spoil the whole. *See* Pa.R.C.P. 1568. Upon consideration of the size of the Property, the Court finds that to divide it would be to spoil the whole, and the sale of the Property was ordered. (12/10/15 Decree). Pursuant to the Court's finding, the Court entered a separate decree appointing a Master on December 10, 2015 in accordance with Rule 1557. (12/10/15 Master Appointment Decree). Appellant does not provide any authority for his contention that the Court should not have entered a decree to appoint a Master in Partition to oversee the sale of the property. Therefore, this claim is without merit.

D. The Court Did Not Err By Awarding Fifty Percent of the Estate of Mary Griffin to Appellant Under Intestacy Laws

Appellant asserts that the Court erred by directing the net proceeds from the sale of the Property be equally distributed to Appellant and the Estate of Towanda McClendon. This claim is without merit.

It is well-settled that when a decedent dies without a surviving spouse, the entirety of the estate will pass to her issue. 20 Pa.C.S. § 2103(1). When the persons entitled to take under the

intestacy statute are of the same level of consanguinity, "they shall take in equal shares." 20 Pa.C.S. § 2104(2).

As previously stated, the Court partitioned the property pursuant to Appellant's Counterclaim for partition. (Exhibit O-9). Under the intestacy statute, the Court properly awarded the proceeds of the sale of the home to the issue of Mary Griffin in equal shares. Furthermore, Appellant admitted that his sister was always entitled to a fifty percent share in the property. (N.T. 11/25/15, 99:25-100:4). To the Administrator's knowledge, Towanda McClendon had not disclaimed her interest in her mother's estate. (N.T. 11/24/15, 74:6-16). Accordingly, the Court ordered that Appellant and the Estate of Towanda McClendon each receive fifty percent of the proceeds of the sale. Therefore, because the Court ordered distribution of the Estate of Mary Griffin in accordance with the intestacy statute, this claim is without merit.

E. The Court Did Not Err By Ordering Appellant To Pay Unpaid Rental Income

Appellant improperly asserts that the Court should have used the methodology in *Swails v. Haberer* and that the Property should have been solely awarded to him. However, as previously stated, the Court finds that *Swails v. Haberer* is inapposite to the instant case. Section 1 of the Act of 1895[4] is squarely on point because it governs partition of real estate between tenants in common. Therefore, this claim is without merit.

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[4] The Act of 1895 has not been suspended by the Pennsylvania Rules of Civil Procedure. Rule 1590 states:

> The rules governing partition of real property shall not be deemed to suspend or affect (1) Section 1 of the Act approved June 24, 1895, P.L. 237, 68 P.S. § 101.
> *Note:* This section provides that tenants in possession must deduct from their distributive share in partition that portion of the rental value to which co-tenants not in possession are entitled.

Pa.R.C.P. No. 1590.

Section 1 of the Act of June 24, 1895 establishes that a tenant in common must receive a proportionate share of the rental value when another tenant in common is in exclusive possession of the property in question. *Grubbs v. Dembec*, 418 A.2d 447, 450 (Pa. Super. Ct. 1980). It states:

> In all cases in which any real estate is now or shall be hereafter held by two or more persons as tenants in common, and one or more of said tenants shall have been or shall hereafter be in possession of said real estate, it shall be lawful for any one or more of said tenants in common, not in possession, to sue for and recover from such tenants in possession his or their proportionate part of the rental value of said real estate for the time such real estate shall have been in possession as aforesaid; and in case of partition of such real estate held in common as aforesaid, the parties in possession shall have deducted from their distributive shares of said real estate the rental value thereof to which their co-tenant or tenants are entitled.

68 Pa. Stat. Ann. § 101 (West 2016). This statute is "not automatically operative." *Hoog v. Diehl*, 3 A.2d 187, 189 (Pa. Super. Ct. 1938). The complaining party must satisfy two requirements before recovery of the fair rental value of the premises will be permitted: (1) she must show she is not in possession of the premises; and (2) she must show the remaining tenant in common occupies exclusive possession of the premises. *Sciotto v. Sciotto*, 288 A.2d 822, 823–24 (Pa. 1972). Exclusive possession means that "one tenant alone occupied the property and exercised the rights of an owner such as making repairs and changes to suit his convenience without consulting the others." *Id.* at 824.

Generally, when a cotenant makes improvements on the common property, equity will take this fact into consideration during the partition process and he will in some way be compensated for those improvements as long they are made in good faith and are of a "necessary and substantial nature, materially enhancing the value of the common property." 68 C.J.S. Partition, § 139(a), *see also Weiskircher v. Connelly,* 93 A. 1068 (Pa. 1915) (contribution allowed in partition action where "it was *necessary* to remodel, improve and alter the building

erected upon the land so conveyed to [the parties]." (emphasis in original)); and *Appeal of Kelsey,* 113 Pa. 119, 125, 5 A. 447, 449 (1886) (A tenant in common is "liable to his co-tenant for repairs absolutely necessary").

Appellant averred that Towanda McClendon had not lived in the Property since January 28, 2001. (Griffin Counterclaim, Ex. B). The exclusive possession element had been satisfied because the First and Final Account detailed the extensive repairs Appellant had done on the Property. Adm. Esposito's First and Final Account. The Court first determined how much rental income was owed to the Estate of Mary Griffin. Then the Court determined the credit Decedent's Estate owed to Appellant based on repairs detailed in the First and Final Account dated February 12, 2013.

The Administrator testified that he had no knowledge of Appellant ever paying rent for the time he resided there after Decedent's death. (N.T. 11/24/15, 78:5-12). Due to the six-year statute of limitations[5], the Estate of Towanda McClendon only sought rental reimbursement starting in August 2005. The Court requested that the Estate of Towanda McClendon submit a post-trial summation document detailing its position on the credit amount Decedent's Estate owed Appellant. In reaching the finding that Appellant owed the Estate of Towanda McClendon $43,971.23, the Court consulted the Estate of Towanda McClendon's Miscellaneous Entry dated December 2, 2015. The Court first determined that Appellant owed the Estate of Mary Griffin $153,386.84 for unpaid rent.[6] (12/10/15 Decree at ¶ 11). Appellant's one-half interest in the

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[5] The Estate of Towanda McClendon cites *Bednar v. Bednar* which states that "actions for contribution in a partition suit are subject to a six-year statute of limitations." *Bednar v. Bednar*, 688 A.2d 1200, 1204 (Pa. Super. Ct. 1997); (N.T. 11/25/15, 80:15-81:17).

[6] The Court concedes that the unpaid rental amount owed by Appellant according to Mr. Lam's testimony is $152,800.00 as detailed below. To the extent that the amount submitted by the Estate of Towanda McClendon is $586.84 more, neither the Administrator nor Appellant objected to this difference in a post-trial submission. Therefore, the Court finds this issue to be waived.

property awarded him a credit of $76,693.42 for the rental income collected by Decedent's Estate.

The Court then analyzed the credit owed to Appellant for taxes, repairs, and expenses. The First and Final Account dated February 12, 2013 states that Appellant is owed a credit for taxes, repairs, and renovations in the amount of $71,304.36. (Adm. Esposito's Post-Trial Submission, Attach. B) The Estate of Towanda McClendon objected to some of the expenses for which Appellant sought a credit. Here, the Administrator testified that many of the expenses listed in the accounting were for furniture, cosmetic improvements, and utility bill amounts that Appellant did not actually pay. (N.T. 11/24/15, 99:8-102:17; 114:12-115:14; 130:5-131:11; 134:4-24; 135:14-146:21).

No authority was provided to the Court to show that repainting the home, building a closet, installing an electric dryer and the like are "necessary" improvements within the meaning of the law. In the absence of such authority, the Court is unwilling to find that these enhancements, which appear to be essentially cosmetic in nature, constitute "necessary" improvements.

Therefore, this Court offset the rental income owed to the Estate of Mary Griffin by the amounts Appellant paid for necessary expenditures only based on the post-trial submissions from counsel. (12/10/15 Decree at ¶ 5). Therefore, this claim is without merit.

August 2005 – June 2008 @ $900.00/month		$ 31,500.00
July 2008 – December 2011 @ $1,000.00/month		$ 42,000.00
January 2012 – December 2012 @ $1,600.00/month		$ 19,200.00
January 2013 – July 2015 @ $1,700.00/month		$ 52,700.00
August 2015 – November 2015 @ $1,850.00/month		$ 7,400.00
	TOTAL:	$152,800.00

F. The Court Did Not Err By Only Considering Documents Admitted Into Evidence

Appellant alleges that the Court excluded the "bills and expenses I paid starting from 345 through the end which were included in the Administrator's Updated Account." (1925(b) Statement at ¶ 6). This claim is without merit.

The Court can only consider what is admitted into evidence. During the trial, Appellant acknowledged that the Court had not excluded any "monetary exhibits" before the close of Appellant's case-in-chief. (N.T. 11/25/15, 67:24-68:11). The only exhibits Appellant admitted into evidence were eight photographs. (Exhibits G-1 to G-8). The Court notes that it did consider the First and Final Account dated February 12, 2013 which was a summation of the 462 pages of materials provided by Eddie Griffin to aid in the preparation of the Account. (N.T. 11/24/15, 93:21-25). Additionally, there was a stipulation by and between counsel for the submission of pages 1-344 only which were to be cross-marked as Exhibit O-11/R-4. (N.T. 11/24/15, 162:14-19). Therefore, inasmuch as Appellant did not submit documentation of his expenses for the Court's consideration, his claim that the Court erroneously excluded them is without merit.

G. There Was Insufficient Evidence to Prove Fraud Against the Court by Attorney Hoffman and Attorney Morrow

Appellant claims that the Court erred by not denying the petition of Towanda McClendon dated January 2010 due to the "fraud, falsification to authorities, and forgery committed against the Register of Wills and against this Honorable Court by Attorneys Hoffman and Morrow." (1925(b) Statement at ¶ 7). This claim is without merit.

In order to prove fraud, a party must demonstrate by clear and convincing evidence: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge

of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. *Blumenstock v. Gibson,* 811 A.2d 1029, 1034 (Pa. Super. Ct. 2002) (quoting *Sewak v. Lockhart,* 699 A.2d 755, 759 (Pa. Super. Ct. 1997)). "Unsupported assertions and conclusory accusations cannot create genuine issues of material fact as to the existence of fraud." *Blumenstock,* 811 A.2d at 1034 (citing *Gruenwald v. Advanced Computer Applications, Inc.,* 730 A.2d 1004, 1014 (Pa. Super. Ct. 1999).

At trial, the Court was not presented with any evidence that Attorney Hoffman or Attorney Morrow committed fraud upon the Court. When Appellant asked the Administrator if he could inform the Court of the fraud that occurred when Attorney Hoffman was the Administrator of the Estate, the Court sustained the objection on the grounds of lack of relevance. (N.T. 11/24/15, 150:1-151:16). The Court also informed Appellant that the Administrator was not the appropriate witness to elicit such evidence. (N.T. 11/24/15, 155:9-17). In Appellant's case-in-chief, when the Court asked Appellant to indicate the relevance the evidence of alleged fraud, Appellant responded that "the relevance of it is he's not a trustworthy lawyer." (N.T. 11/25/15, 64:1-11). To the extent Appellant seeks to introduce evidence of fraud during Attorney Hoffman's time as Administrator of the Estate of Mary Griffin, Attorney Hoffman was removed as Administrator by this Court's Decree on September 11, 2012. (09/11/12 Decree). The Court declines to attribute fraud to Attorneys Hoffman and Morrow without evidence beyond mere conjecture that they had actually defrauded the Court. Therefore, the Court did not err in finding that there was insufficient evidence to prove that Attorneys Hoffman and Morrow committed fraud, and this claim is without merit.

H. Appellant's Due Process Rights Under The 14th Amendment Were Not Violated

Appellant also asserts that the Court violated due process of law under the 14th Amendment of the Constitution of the United States. (1925(b) Statement at ¶ 8). This claim is without merit.

The Fourteenth Amendment of the Constitution prohibits a state from depriving persons of their property without due process of law. U.S. Const. Amend. XIV, § 1. For substantive due process rights to attach there must first be the deprivation of a property right or other interest that is constitutionally protected. *Khan v. State Bd. of Auctioneer Examiners*, 842 A.2d 936, 946 (Pa. 2004). Some form of hearing is required before an individual is deprived of a property interest. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). To show a procedural due process violation, a party must not have had an opportunity to be heard at a meaningful time and in a meaningful manner. *Id.*

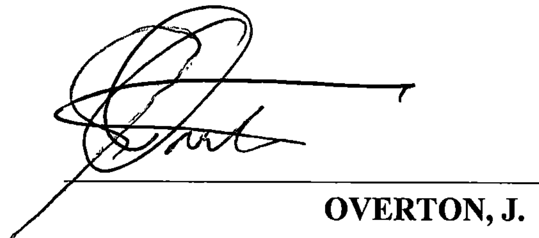
It is unclear whether Appellant is putting forth a procedural or substantive due process violation claim. However, under either claim, the Court did not deprive Appellant of his property interest, "force" the sale of Appellant's home, or "take away" his home in any capacity. (1925(b) Statement at ¶ 8). As stated in the Court's December 10, 2015 Decree, Appellant's fifty percent interest in the Property is intact, as he is entitled to split the proceeds of the sale of the Property evenly with his sister's estate. (12/10/15 Decree at ¶ 10). Again, Appellant himself requested that the Court initiate a partition action on August 26, 2011 in his Counterclaim for partition. (Griffin Counterclaim at 4). In terms of having an opportunity to be heard, after the initial Petition for Citation was filed by Towanda McClendon on January 8, 2010, there were numerous conferences and hearings held with the Court beginning in February 2011. (Docket at 1). There was also a two-day trial held to take evidence on whether the Court should order a

partition of the Property pursuant to Appellant's request and to address the objections to the First and Final Account. (12/10/15 Decree at 1). During that trial, Appellant testified and questioned witnesses. Therefore, the Court finds that Appellant in no way suffered a deprivation of his 14th Amendment due process rights. This claim is without merit.

Conclusion

Based on the record, Appellant's Counterclaim for partition, and the Objections Appellant and of the Estate of Towanda McClendon to the First and Final Account dated February 12, 2013, this Court's Adjudication dated March 4, 2016 should be **AFFIRMED**.

BY THE COURT:



Date: 8/15/16

OVERTON, J.

Robert S. Esposito, Esquire
Jeffrey R. Hoffman, Esquire
Jeffrey S. Feldman, Esquire
Mark Wayne Richardson, Esquire