

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

805 DE 2013

No. 549 AP of ~~2014~~

Control No. ~~144164~~

141963

Estate of MARIAN BURRELL, Deceased

OPINION SUR APPEAL

OVERTON, J.

Pamela Burrell and Ricardo Burrell have filed an appeal of this Court's July 17, 2015 Decree awarding Rodney Burrell a total of \$10,154.59, comprised of his one-fifth share of the proceeds of the sale of 3847 North 17th Street, Philadelphia, PA 19140, his one-fifth share of the \$6,000.00 distributed to non-beneficiaries under the Will, and his one-fifth share of the remaining balance in the estate account after distribution, plus simple interest. Additionally, Pamela Burrell and Ricardo Burrell appeal the Court's decision to deny their claim for legal expenses that were incurred in the ejectment action filed on April 5, 2012.

Facts

Marian Burrell died testate on December 2, 2011. (Petition for Citation). She was survived by her five children Ricardo Burrell, Pamela Burrell, Rodney Burrell, Courtney Burrell, and Mandel Burrell. (Exhibit P-1). Decedent's Will named Ricardo Burrell and Pamela Burrell as co-executors. (Exhibit P-1). Decedent's Will left the residuary of the estate to her children in equal shares. (Exhibit P-1).

On March 17, 2012, there was an Agreement of Sale to sell the 17th Street property for \$53,000.00. (Exhibit P-3). On April 6, 2012, pursuant to Section 13(B)(2) of the Agreement of



Sale, Ricardo Burrell and Pamela Burrell agreed to the buyer's termination of sale and agreed to return the buyer's \$1,000.00 deposit. (Exhibit P-4/Exhibit R-1). On February 13, 2013, the 17th Street property sold for \$39,482.37. (Exhibit P-6).

The First and Final Account indicates that Rodney Burrell was paid a \$10,297.17 disbursement from the Estate of Marian Burrell. (Exhibit P-2).

On June 24, 2014, Rodney Burrell filed a petition seeking to have Ricardo Burrell and Pamela Burrell file an Accounting and show cause why he was not entitled to his 20% share of the proceeds from the sale of 3847 North 17th Street, Philadelphia, PA 19140. (Petition for Citation). In response, Ricardo Burrell and Pamela Burrell asserted that Rodney Burrell's share was exhausted by the legal fees they paid to evict him from the 17th Street property. (Answer to Petition for Citation).

The Court held a hearing and received testimony on July 14, 2015.

At the hearing, Rodney Burrell presented two witnesses. Rodney Burrell's first witness was his brother, Ricardo Burrell, who was called on cross-examination. He testified that as co-executor he along with Pamela Burrell disbursed \$3,000.00 each to Noah Burrell and Shirley Johnson, despite the fact that they were not included in the Will. (N.T. 07/14/15, 9:21-10:14). He also testified that Part 10 of the Will¹ allowed him to disinherit a beneficiary under the Will. (N.T. 07/14/15, 12:22-13:9). He admitted that while his brother Rodney Burrell contested the sale of the 17th Street property, he had not formally contested the Will. (N.T. 07/14/15, 13:10-16). He testified that Rodney Burrell only received approximately \$10,000.00 and did not receive his share of the proceeds from the sale because "he contested the sale of the house, that's why we lost the first sale." (N.T. 07/14/15, 15:10-16:13). Ricardo Burrell further testified that

¹ Part 10 of the Will entitled "No-Contest Provision" states: "If any beneficiary under this will contests this will or any of its provisions, any share or interest in my estate given to the contesting beneficiary under this will is revoked and shall be disposed of as if that contesting beneficiary had not survived me." (Exhibit P-1).

on March 23, 2012, he changed the locks to the property and prevented Rodney Burrell's entry by not giving him a key. (N.T. 07/14/15, 28:9-21).

Furthermore, Ricardo Burrell asserted that the initial Agreement of Sale was not finalized because Rodney Burrell "created false documents, [hung] several signs in the windows trying to discourage the seller and neighbors, [and] created a Burrell trust fund where he was the only recipient of it." (N.T. 07/14/15, 41:4-12). However, he added that because he lived in Washington, D.C., he did not see the signs in person, only in pictures. (N.T. 07/14/15, 43:2-44:15). Additionally, he stated that he and Pamela Burrell had to file an ejectment action "[b]ecause that was the only way we could resell the house." (N.T. 07/14/15, 44:23-24). He added that they needed Rodney Burrell to be removed from the property in order to sell it. (N.T. 07/14/15, 45:4-5).

Rodney Burrell also testified. He testified that he moved back into the 17th Street property in 2009 after he lived in Atlanta, Georgia for a period of time. (N.T. 07/14/15, 53:24-54:23). He testified that before the ejectment action was filed, he was never asked to move out. (N.T. 07/14/15, 57:20-22). He further stated that he was locked out by his brother on March 23, 2012. (N.T. 07/14/15, 59:5). He elaborated that he found out the locks had been changed after his brother Courtney Burrell called him and indicated that his belongings would be left on the porch that same day if he did not come and retrieve them. (N.T. 07/14/15, 59:17-25). He stated that he had to change the locks again on March 29, 2012 to regain entry to the property. (N.T. 07/14/15, 60:1-5). He also testified that before the property was put on the market for sale, a number of family members came into the home and took many of the items contained inside. (N.T. 07/14/15, 60:6-25). He added that while this occurred, the police were called, but that the police declined to take action because it was a civil dispute. (N.T. 07/14/15, 61:1-3). He said

originally, he was in agreement to sell the house, but it was not until the incident when the police were called that he began to oppose the sale. (N.T. 07/14/15, 55:23-56:1; 75:1-3)

Additionally, regarding the sale of the property, Rodney Burrell testified that he allowed a lockbox to be placed on the front door to allow the real estate agent and potential buyers to tour the property. (N.T. 07/14/15, 67:2-23). He stated that during the time the property was listed for sale, he had not prevented potential buyers from inspecting the property. (N.T. 07/14/15, 68:6-9). He testified that he did not remove the real estate sale signs from the property. (N.T. 07/14/15, 70:11-20). He added that he did post a sign in the window to deter criminal activity of those who may have thought the house did not have anyone living in it. (N.T. 07/14/15, 68:10-69:23). He also testified that after the sale of the house occurred on February 13, 2013, he did not receive any money. (N.T. 07/14/15, 63:11-12). Finally, he stated that there was no agreement between his siblings to give \$3,000.00 each to Noah Burrell and Shirley Johnson. (N.T. 07/14/15, 65:19-21).

In Ricardo Burrell and Pamela Burrell's case-in-chief, both Ricardo Burrell and Pamela Burrell testified. Pamela Burrell testified that all of the siblings were in agreement that the 17th Street property should be sold. (N.T. 07/14/15, 87:15-19). She also stated that she and Ricardo Burrell ultimately decided to file an ejectment action because of outstanding utility bills. (N.T. 07/14/15, 90:7-16). She also testified that as a result of the ejectment action legal fees were incurred in the amount of \$6,720.28. (N.T. 07/14/15, 94:23-95:1). With regard to the two \$3,000.00 disbursements, she also stated that she and her brother felt that, as executors, they could give their aunt and uncle "thank you" gifts in the amount of \$3,000.00 each because they had been there "through thick and thin." (N.T. 07/14/15, 97:18-24). She verified that after the distributions, \$2,416.00 remained in the Estate, but that \$1,500.00 was used to retain an attorney

on June 25, 2014. (N.T. 07/14/15, 98:7-11). She stated that Rodney Burrell had received \$10,000.00 on December 31, 2012 after she divided her mother's insurance policy between her siblings. (N.T. 07/14/15, 102:8-103:23). She also testified that she agreed with Ricardo that the No-Contest Provision of the Will prohibited Rodney Burrell from taking his share of the proceeds of the sale of the property. (N.T. 07/14/15, 101:20-23). Despite this, she admitted that no court gave her the authority to disinherit her brother. (N.T. 07/14/15, 113:21-24).

Lastly, Ricardo Burrell briefly testified on direct examination. He stated that on March 30, 2012, he and his cousin were unable to gain access to the property because Rodney Burrell had changed the locks. (N.T. 07/14/15, 116:23-25). He also admitted that when he previously changed the locks, he did not provide Rodney Burrell with a key. (N.T. 07/14/15, 116:5-9). He also testified that when the real estate agent sent him the termination of the Agreement of Sale document, he did not question his realtor about why he had to sign it. (N.T. 07/14/15, 119:8-20).

Procedural History

On June 23, 2014, Rodney Burrell filed a Petition for Citation seeking to have Ricardo Burrell and Pamela Burrell file an Accounting and show cause why he was not entitled to his 20% share of the proceeds from the sale of 3847 North 17th Street, Philadelphia, PA 19140. On October 3, 2014, Ricardo Burrell and Pamela Burrell filed an Answer stating that Rodney Burrell's share of the Estate was exhausted by the legal fees that were paid to eject him from the property. A hearing was held on July 14, 2015 and the Court issued a Decree with its findings on July 17, 2015. A Notice of Appeal was timely filed on August 14, 2015.

Statements of Matters Complained of on Appeal were requested and properly tendered on October 2, 2015. Respondents raised the following issues in their Statement of Matters Complained of on Appeal pursuant to Pa. R.A.P. 1925(b):

1. Trial Court erred in prohibiting testimony which would have explained Respondents' need to file an action for ejectment against the Petitioner.
2. Trial Court erred in deciding that the Respondent's changing the locks on the estate property was an illegal lockout. In fact the Respondents took the necessary steps to secure the property, in light of the Petitioner's continued efforts to frustrate the sale of the estate property.
3. Trial Court ignored the fact that Petitioner's actions caused the original sale agreement of \$53,000 to be terminated. This resulted in a \$14,000 loss, which should have been attributed to the Petitioner.
4. Trial Court reasoned that the Petitioner's actions created a chain of events which led to the filing of a formal ejectment. However, an ejectment was filed and subsequently granted, due to the Petitioner's refusal to participate in the sales process and his unlawful occupation of the estate property.
5. Trial Court erred in refusing to charge the Petitioner for legal fees spent in the ejectment process. Record showed the need for the ejectment filing was solely due to the actions of the Petitioner.

Discussion

A. The Court Heard Sufficient Testimony Regarding the Executors' Reasons for Filing the Ejectment Action

Ricardo Burrell and Pamela Burrell (hereinafter "Appellants") assert that the Court did not allow testimony that would have explained their reasons for filing the ejectment. On the contrary, the Court specifically heard from Pamela Burrell that the ejectment action was filed as

a result of unpaid utility bills. (N.T. 07/14/15, 90:7-16). The Court also heard testimony from Ricardo Burrell that the ejectment action was filed “[b]ecause that was the only way [Appellants] could resell the house.” (N.T. 07/14/15, 44:23-24). Ricardo Burrell elaborated that they needed Rodney Burrell (hereinafter “Appellee”) to be removed from the property in order to sell it. (N.T. 07/14/15, 45:4-5). The Court also heard testimony from Ricardo Burrell that Appellee had [hung] several signs in the windows trying to discourage the realtor and that Appellee had prevented the realtor from accessing the house to show it. (N.T. 07/14/15, 41:8-20).

It is well-settled that “[a]dmission of evidence is within the sound discretion of the trial court.” *Am. Future Sys., Inc. v. BBB*, 872 A.2d 1202, 1212 (Pa. Super. 2005) *aff’d sub nom. Am. Future Sys., Inc. v. Better Bus. Bureau of E. Pennsylvania*, 923 A.2d 389 (Pa. 2007). With respect to any objections made during trial, the Court made proper rulings based on the Rules of Evidence and in no way abused its discretion. Therefore, this claim is without merit.

B. Appellants Illegally Evicted Rodney Burrell from the Premises

Appellee was locked out of the 17th Street property on March 23, 2012 without any formal judicial proceedings. (N.T. 07/14/15, 59:1-60:5). It is well-settled that “Ejectment is a possessory action only, and can succeed only if the plaintiff is out of possession, and if he has a present right to immediate possession.” *Wells Fargo Bank, N.A. v. Long*, 934 A.2d 76, 79 (Pa. Super. 2007) (quoting *Brennan v. Shore Brothers, Inc.*, 110 A.2d 401, 402 (Pa. 1955)). While Appellee was eventually ejected from the property and ultimately left the property on December 18, 2012 (N.T. 07/14/15, 134:5-11), the Court finds that prior to the commencement of the ejectment action on April 5, 2012, Appellants engaged in “self-help eviction.” (Exhibit P-8).

An eviction is an act by a landlord or a third person that interferes with a tenant's possessory right to the demised premises. *Kuriger v. Cramer*, 498 A.2d 1331, 1338 (Pa. Super.

1985); *see also Oakford v. Nixon*, 35 A. 588, 589 (Pa. 1896). Furthermore, “self-help eviction” can be defined as any action taken by the landlord other than judicial process, which serves to evict or has the tendency to evict a tenant. *Lenair v. Campbell*, 31 Pa. D. & C.3d 237, 240 (Pa. Com. Pl. 1984). Such acts include barring entry by the tenant [or] removing the tenant's personal property. *Id.* Self-help evictions are impermissible as a matter of law. *Id.*

Here, on March 23, 2012, Appellants locked Appellee out of the 17th Street property without first engaging in any judicial proceeding. (N.T. 07/14/15, 59:1-60:5). Additionally, they did not provide Appellee with a key. (N.T. 07/14/15, 116:5-9). As a result, this Court did not err when finding that Appellants had impermissibly violated Appellant’s rights when Appellants engaged in self-help eviction. Therefore this claim is without merit.

C. There Was Insufficient Evidence to Prove that Appellee Caused the Buyer to Terminate the Agreement of Sale

Appellants assert that Appellee caused the buyer to terminate the agreement of Sale. This claim is without merit. Ricardo Burrell testified that the buyer did qualify for the mortgage to buy the home, but that she was “discouraged through harassment.” (N.T. 07/14/15, 33:17-19). However, beyond this statement, the Court found that there was insufficient evidence to prove by clear and convincing evidence that Rodney Burrell was the cause of the termination of the initial Agreement of Sale. Furthermore, the Court finds that the Notice of Termination of Agreement of Sale signed by both Appellants cited Paragraph 13(B)(2) of the Agreement of Sale, and not Appellee, as the reason the buyer terminated the Agreement of Sale². (Exhibit P-4/Exhibit R-1).

² In the section entitled “Inspection Contingency,” Section 13(B)(2) states: “Except as stated in Paragraph 13(C), if the result of any Inspection elected in Paragraph 12(C) is unsatisfactory to the Buyer, buyer will, within the stated Contingency Period...[t]erminate this Agreement by written notice to Seller with all deposit monies returned to the Buyer according to the terms of Paragraph 23 of this Agreement.” (Exhibit P-3). The Court notes that the home inspection was not admitted into evidence.

Accordingly, while the Court acknowledges that the property ultimately sold for \$39,482.37 as opposed to the \$53,000.00 indicated in the initial Agreement of Sale, this Court declines to attribute this difference in sale price to Appellee without evidence beyond mere conjecture that he had caused the termination of the sale. Therefore, the Court did not err in finding that there was insufficient evidence to prove that Appellee caused the dissolution of the sale.

D. Appellants' Actions Precipitated the Need for Formal Ejectment

Appellants assert that the Court erred when it found their actions precipitated the need for formal ejectment. Appellants state that the Court's finding was not in accord with the fact that the ejectment action was successful due to Appellee's "refusal to participate in the sales process and his unlawful occupation of the estate property." (1925(b) Statement). This claim is without merit.

As previously stated, Appellants first improperly locked Appellee out of the 17th Street property without Court approval on March 23, 2012. (N.T. 07/14/15, 28:9-19). As a result of this, Appellee then changed the locks a second time on March 29, 2012. (N.T. 07/14/15, 60:2-5). Additionally, the Court heard credible testimony that in the days before the ejectment action was filed, the police were called during an incident when family members removed most of the personal property from the home. (N.T. 07/14/15, 61:1-3). Appellee also stated that he only opposed the sale after the police were called to the home. (N.T. 07/14/15, 55:23-56:1; 75:1-3). Only following these events did Appellants file the ejectment action on April 5, 2012. (Exhibit P-8). It is clear from the record that starting on March 23, 2012 a chain of events occurred in close proximity that culminated in Appellants' filing of the ejectment action.

This Court further notes that the specific findings of the ejectment action were not included in the record. Accordingly, the Court did not consider them.

Furthermore, as far as Appellee's refusal to participate in the sales process, Appellee testified that he allowed a lockbox to be placed on the front door to allow people to tour the property. (N.T. 07/14/15, 67:5-23). When asked directly if he had ever prevented potential buyers from inspecting the property, Appellee stated that he had not. (N.T. 07/14/15, 68:6-9). He also stated he never removed the real estate sale signs from the property. (N.T. 07/14/15, 70:11-20). The Court finds Appellants did not introduce clear and convincing evidence that Appellee had in any way thwarted the sales process from the time the property was placed on the market until the property was sold on February 13, 2013. Therefore, this claim is without merit.

E. Appellants Were Not Entitled to Legal Fees for the Ejectment Action Because They Had Unclean Hands

The Court properly denied Appellants' claim for legal fees that were incurred in the ejectment action because of the equitable doctrine of unclean hands. "The doctrine of unclean hands is derived from the unwillingness of a court to give relief to a suitor who has conducted himself [or herself] so as to offend the moral sensibilities of the judge." *Lucey v. W.C.A.B. (Vy-Cal Plastics PMA Group)*, 732 A.2d 1201, 1204 (Pa. 1999); *In re Estate of Pedrick*, 482 A.2d 215, 222 (Pa. 1984). "[W]hile equity does not demand that its suitors shall have led blameless lives as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue." *Pedrick*, 482 A.2d at 222.

This Court finds that because Appellants illegally changed the locks to the property on March 23, 2012, they acted with unclean hands when they filed the ejectment action thirteen days later. Specifically, this Court finds that Appellants' ejectment action was filed as a result of the conflict that ensued after they illegally evicted Appellee. Therefore, this Court did not err in


declining to award Appellants with their attorney's fees for the ejectment action. This claim is without merit.

Conclusion

Based on the record, the Appellants failed to prove by clear and convincing evidence that Appellee caused the first Agreement of Sale to be terminated. In addition, due to the illegal March 23, 2012 self-help eviction and the subsequent improper withholding of the proceeds of the sale of the 17th Street property, this Court's order dated July 17, 2015 should be **AFFIRMED.**

BY THE COURT:

Date: 1/6/16



OVERTON, J.

George Gossett Jr., Esquire
Demetrius Parrish, Esquire