

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

KEITH AUTRY	:	
Plaintiff	:	JULY TERM, 2011
vs.	:	
	:	NO. 567
LISA V. YOUNG AUTRY	:	
Defendant	:	

FINDINGS OF FACT and CONCLUSIONS OF LAW
IN SUPPORT OF REFUSAL TO PARTITION

MASSIAH-JACKSON, J.

RECEIVED
NOV 13 2012
DAY FORWARD
N.ERICKSON

November 13th, 2012

Following a non-jury trial held November 7, 2012, this Court, pursuant to Rule 1038 of the Rules of Civil Procedure has determined:

FINDINGS OF FACT:

1. The premises at 7942 Bayard Street, Philadelphia, Pa. was purchased by Defendant-Lisa Young on December 17, 2003.
2. The Deed and Mortgage Loan for the property is in the name of Lisa Young.
3. Plaintiff-Keith Autry and Defendant-Lisa Young were married on July 31, 2004.
4. Both parties moved into the property. They have one child.
5. From 2003 through 2006 or 2007, Plaintiff-Keith Autry did try to pay one-half of mortgage and utilities. He contributed approximately \$1,000.00 toward the settlement costs.
6. Plaintiff-Keith Autry stated that he and his wife had an oral agreement that they would prepare, execute and record a new deed to put legal title in both names.
7. The parties, however, never prepared a new deed nor was title ever modified or changed from Lisa Young's ownership in fee simple. Ms. Young denies there was an agreement to transfer or share title.
8. Mr. Autry testified that he "never brought it up" and they did not discuss the title change after their marriage.
9. The parties separated on May 2, 2007, pursuant to a Protection From Abuse Order, No. 0704V7452.

10. Defendant-Lisa Young re-financed the Bayard Street property on March 13, 2008. The transaction was completed in her name alone.

11. On September 29, 2008, an Amended and Final Protection From Abuse Order held that Plaintiff-Keith Autry was “completely evicted and excluded” from the Bayard Street property for several reasons, including his failure to make any financial payments toward mortgage or expenses.

12. Mr. Autry testified that in 2007 he lost his employment, he did not complete his Masters Degree program, and, he was hospitalized.

13. Ms. Young testified that in 2007, Mr. Autry was shot in both legs and as a result suffered significant physical and psychological injuries.

14. Mr. Autry continues to suffer from psychological and emotional issues.

15. Following a two year separation, Lisa Young filed for divorce in 2009, at September Term, 2009. No. 8405.

16. Plaintiff-Keith Autry was aware of the divorce proceedings. He was not represented by counsel.

17. Because he requested economic relief by letter dated April 14, 2010, the Honorable Divorce Court advised him to file a counter-claim in order to “perfect his claim”. Mr. Autry failed to take any action.

18. The Decree in Divorce was entered on August 2, 2010.

CONCLUSIONS OF LAW:

The property at 7942 Bayard Street, Philadelphia, Pa. 19150 is owned by Lisa Young. The title to the property and the mortgage note are in her name.

Plaintiff-Keith Autry has filed this civil action for Partition. See, Rules 1551 et seq., Pennsylvania Rules of Civil Procedure; Am. Jur. 2d Cotenancy and Joint Ownership §32. Plaintiff asserts that the parties verbally agreed in 2003 or 2004, that they would transfer title to both names. He acknowledges that the transaction never took place, however, Mr. Autry asserts he is entitled to one-half interest in the Bayard Street property.

A party seeking to establish title to land by parol testimony must meet a very high burden. The Superior Court relied on well-established Pennsylvania common law and case law to hold that a plaintiff, such as Keith Autry, “must present evidence . . . that is direct, positive, express and unambiguous” expressly defining all of the contract and leave nothing to guesswork or subject to misinterpretation. See, Manley v. Manley, 357 A.2d 641 (Pa. Superior Ct. 1976) and cases cited at 645-646. That Court commented that the importance of the Statute of Frauds is particularly pressing when family relationships are at issue.

The Statute of Frauds, 33 Pa. C.S.A. §1, prohibits the creation of interests in any land by parol evidence. This is “particularly” true where a husband seeks to compel specific performance of such a contract by his wife. See, Brotman v. Brotman, 46 A.2d

175, 177 (Pa. 1946) where the Supreme Court commented that payments of repairs and mortgage installments does not take the case away from operation of the Statute of Frauds.

In Kadel v. McMonigle, 624 A.2d 1059 (Pa. Superior Ct. 1993), the plaintiff (ex-husband) asserted that an oral, pre-marital agreement permitted him to claim certain real property from defendant (ex-wife). The Superior Court relied on the Statute of Frauds to hold that parol evidence is not admissible to “alter, vary, add to, modify or contradict” a contract or deed which on its face transfers land in fee simple.

Under the circumstances present here, in the absence of a writing confirming the purported oral agreement, Plaintiff-Autry was unable to meet the high burden of proof to establish an agreement by the Defendant to transfer an interest in the Bayard Street property.

The Trial record reveals that by 2006 or 2007, Plaintiff’s financial contributions were sporadic; he failed to make contributions toward the mortgage or household expenses or repairs; and, significantly he took no action toward preparing a new deed. This Court concludes that the parties were not tenants by entireties while they were married and they are not tenants in common subsequent to their divorce. See, In re: Sale of Property, 657 A.2d 1386, 1387, fn1 (Commonwealth Ct. 1995).

Plaintiff-Autry's Complaint for Partition having been filed after his divorce, is based on a mistaken belief that he has a right of Partition. In Lombardo v. DeMarco, 504 A.2d 1256 (Pa. Superior Ct. 1985) and cases cited at 1260, the Appellate Court confirmed that generally Partition is an incident of a tenancy in common and is a matter of right. In this case, however, in the absence of a tenancy in common and where the Statute of Frauds precludes any modification of Defendant's title, there is no legal basis for Partition.

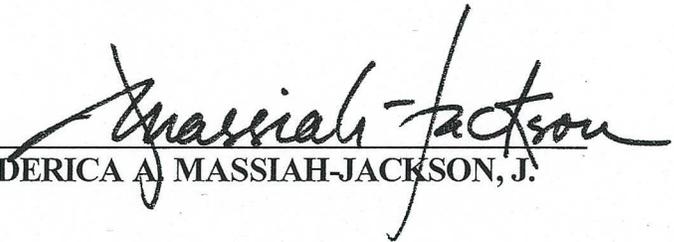
CONCLUSION:

After careful consideration of the evidence presented on November 7, 2012, and after review of the well-prepared memoranda and documents submitted by both counsel, this Court concludes that Lisa V. Young Autry owns 7942 Bayard Street, Philadelphia, Pa. Plaintiff-Keith Autry has been unable to establish that he has a legal or equitable right of Partition to that property.

BY THE COURT:

Date:

November 13, 2012


FREDERICA A. MASSIAH-JACKSON, J.