

Adams County Legal Journal

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LISA A. GEBHART V. STEVEN A. GEBHART



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IN THE COURT OF
COMMON PLEAS OF
ADAMS COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW
NO. 15-S-1171
NOTICE OF ACTION IN MORTGAGE
FORECLOSURE

Bank of America, N.A., c/o Reverse Mortgage Solutions, Plaintiff vs. Vivian Luckenbaugh a/k/a Vivian M. Luckenbaugh, Individually and as a Known Heir of Albert Luckenbaugh a/k/a Albert L. Luckenbaugh, Sr., Debra C. Eyer-Scott, Known Heir of Albert Luckenbaugh a/k/a Albert L. Luckenbaugh, Sr., Albert L. Luckenbaugh, Jr., Known Heir of Albert Luckenbaugh a/k/a Albert L. Luckenbaugh, Sr. and Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest From or Under Albert Luckenbaugh a/k/a Albert L. Luckenbaugh, Sr., Defendants
TO: Unknown Heirs, Successors, Assigns and All Persons, Firms or Associations Claiming Right, Title or Interest From or Under Albert Luckenbaugh a/k/a Albert L. Luckenbaugh, Sr., Defendant(s), whose last known address is 474 Hershey Heights Road, Hanover, PA 17331.

AMENDED COMPLAINT IN
MORTGAGE FORECLOSURE

You are hereby notified that Plaintiff, Bank of America, N.A., c/o Reverse Mortgage Solutions, has filed an Amended Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of Adams County, Pennsylvania, docketed to NO. 15-S-1171, wherein Plaintiff seeks to foreclose on the mortgage secured on your property located, 474 Hershey Heights Road, Hanover, PA 17331, whereupon your property would be sold by the Sheriff of Adams County.

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in the notice above, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are

warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH THE INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE. LAWYERS REFERRAL SERVICE, Adams County Court Admin., Adams County Courthouse, Gettysburg, PA 17325, 717.337.9846. Udren Law Offices, P.C., Attys. For Plaintiff, 111 Woodcrest Rd., Ste. 200, Cherry Hill, NJ 08003, 856.669.5400.

9/23

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982-295 (54 Pa. C.S. 311), the undersigned entity(ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately, July 18, 2016, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of Yellow Rose Weavings, with its principal place of business at 101 Hillcrest Rd., Fayetteville, PA 17222. The names and addresses of the persons owning or interested in said business are Marie A. Fitzgerald, residing at 101 Hillcrest Rd., Fayetteville, PA 17222. The character or nature of the business is handmade woven baskets and other woven items.

9/23

LISA A. GEBHART V. STEVEN A. GEBHART

1. The divorce master is no longer required to file the transcript from the master's hearing. It is the responsibility of an appellant to order all transcripts necessary to resolve the issues appellant has raised. If there is a cross-appeal, the cross-appellant shares this responsibility. Any issue which cannot be resolved due to an incomplete record may be waived.

2. When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review.

3. The Divorce Code does not require a specific date for calculating the value of marital assets and debts. The Court has within its discretion to adopt a date for valuation which best works economic justice between the parties. Additionally, the same date may not work economic justice for all assets.

4. It is within a trial court's discretion to decide how heavily to weigh each of the statutory factors. The facts of each case determine how the court weighs each factor. There is no presumption that an equitable distribution will yield an equal division of property.

5. Because the Divorce Code does not specify a method for the valuation of assets, a court may accept all, none, or portions of the testimony regarding the true and correct value of property or may instead use its own method of valuation.

6. When equitably dividing marital property, a trial court must consider the tax liabilities associated with each asset to be divided, regardless of whether those liabilities are immediate and certain. In the instant case, then, it was proper for the Master to consider the tax ramifications associated with the assets to be distributed between the parties.

7. The purpose of an award of counsel fees in a divorce action is to promote justice by ensuring that dependent spouse may defend the action without being disadvantaged financially. Counsel fees are awarded on a case-by-case basis. The court considers a variety of factors in making this decision, including payor's ability to pay, the requesting party's financial resources, the value of the services rendered, and the property received in equitable distribution.

8. This Court has the discretion to include a grant of rental value of marital property in an equitable distribution order.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL, No. 10-S-642, LISA A. GEBHART V.
STEVEN A. GEBHART.

Patrick W. Quinn, Esq., Attorney for Plaintiff

Todd A. King, Esq., Attorney for Defendant

Simpson, J., August 19, 2016

OPINION PURSUANT TO Pa.R.A.P. 1925(a)

Defendant/Appellant Steven A. Gebhart (“Husband”) appeals and Plaintiff/Appellee Lisa A. Gebhart, n/k/a Lisa A. Harner (“Wife”) cross appeals from the Divorce Decree entered on May 23, 2016 which incorporates portions of the Master’s Report and Recommendation and the Court’s December 22, 2015 Order revising portions of said Master’s Report. This Opinion pertains to both Husband’s Appeal, Superior Court Case # 1014 MDA 2016, and Wife’s Cross-Appeal, Superior Court Case # 1089 MDA 2016.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The parties were married on September 24, 1994. Wife filed a Divorce Complaint on April 15, 2010, which was served on Husband on April 17, 2010 by Certified Mail. On November 3, 2011, Wife filed a Motion for the Appointment of Master. By Order of Court dated November 9, 2011, a Master was appointed with respect to the claims of Divorce, Alimony, Distribution of Property, Counsel Fees, and Costs and Expenses.

A Master’s Hearing was held on May 6, 2015, at which time Wife withdrew her claim for Alimony. The hearing concluded on June 30, 2015. The Master requested submission of Post-Hearing Memoranda, which were filed by Wife on July 31, 2015 and by Husband on August 3, 2015. The Master’s Report and Recommendation, which was prepared without a transcript of the proceedings, was filed on September 18, 2015.

The Master recommended that Wife receive 65% of the net marital estate and that Husband receive 35% of the net marital estate. The Master recommended that each party pay their respective counsel fees and that the parties share the costs associated with the Master’s Hearing. Master’s Report at 24. The Master determined the parties’ date of separation to be April 17, 2010, which is when Wife filed for divorce and served Husband. Master’s Report at 4. The parties did not have any of the marital property professionally appraised, so the Master derived the properties’ values by multiplying the Adams County tax assessed values by the Pennsylvania Common Level Ratio factor in effect at the time of the Master’s Hearing, which was 0.82. Master’s Report at 6.

The Master determined the value of and distributed the property as follows:

| | |
|------------------------------|-----------------------|
| Gross Marital Estate: | \$1,495,497.00 |
| Marital Debt | \$1,114,971.00 |
| Net Marital Estate | \$ 380,526.00 |

Wife's Distribution:

| | |
|---|---------------------|
| Pre-distributive share of 275 West Crestview | \$50,916.00 |
| Increase in marital value of Freedom Township land | \$162,125.00 |
| Life insurance | \$3,628.00 |
| Wife's Vehicle | \$7,331.00 |
| Cash payment | \$23,342.00 |
| TOTAL | \$247,342.00 |

Husband's Distribution:

| | |
|--|---------------------|
| Increase in value of pre-marital home | \$28,674.00 |
| All remaining assets, holding Wife harmless from all associated debts | \$104,510.00 |
| TOTAL | \$133,184.00 |

On October 8, 2015, Wife filed Objections and Exceptions to Master's Report and Recommendation. Oral Arguments on Wife's Objections and Exceptions were held on December 17, 2015. The Court issued an Order on December 22, 2015 that granted three of the Wife's Exceptions and denied the rest. In its Order, the Court ruled that the value of marital debt associated with Wheatland Acres, one of the marital properties, should have been determined as of 2012 (date when Wife was released from liability for that debt) instead of utilizing the date of the Master's Hearing. This decreased the marital debt from \$1,114,971.00 to \$748,128.00 and increased the net estate from \$380,526.00 to \$747,369.00. Therefore, Wife's 65% of the estate increased to \$485,789.00, which meant that Husband owed her a cash payment of \$262,509.00.

Husband filed a Motion for Reconsideration of the December 22, 2015 Order. Reconsideration was granted by the Court on January 22, 2016.¹ The Motion for Reconsideration was denied on May 23,

¹ The Honorable Robert G. Bigham (now Senior Judge) presided over this matter until it was re-signed by the President Judge to the undersigned by Order of Court dated March 30, 2016.

2016 and this Court entered a Divorce Decree that incorporated the Master's Report and Recommendation and the December 22, 2015 Order of Court revising said Master's Report. On June 21, 2016, Husband timely filed his Notice of Appeal of the Decree of Divorce dated May 23, 2016. Wife timely filed her Notice of Cross-Appeal on July 5, 2016. Husband timely filed his Statement of Matters Complained of on Appeal on July 18, 2016 and Wife timely filed hers on July 28, 2016.

MATTERS COMPLAINED OF ON APPEAL

Husband has filed nine matters in his Statement of Matters Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b):

1. The Court of Common Pleas abused its discretion by entering an Order of Equitable Distribution, and a Divorce Decree that incorporated that Order without the benefit of either in court testimony or a transcript of the record before the divorce master.
2. The Court of Common Pleas committed an error in calculating the marital estate.
3. The Court of Common Pleas committed an error in calculating the marital debts.
4. The Court of Common Pleas committed an error in awarding Wife \$485,789.00 as a result of incorrectly calculating the marital debts and consequently the net marital estate.
5. The Court of Common Pleas was incorrect in using separate points in time for calculating the value of Wheatland Acres as an asset and the liabilities associated with Wheatland Acres.
6. The Court of Common Pleas was incorrect in stating that Wife was released by the bank from any liability on Wheatland Acres in 2012.
7. The Trial Court was incorrect in its statements contained in the Order dated December 22, 2015, Paragraph 5, where it calculated the debt associated with Wheatland Acres at \$605,946.00 at the time of separation, and it being \$321,827.00 at the time of the master's report. Additionally, the Court of Common Pleas was incorrect in stating that two years of the debt amounted to \$128,730.00.

8. The Court of Common Pleas was incorrect in stating that only \$128,730.00 would be the appropriate amount of debt attributable to Wheatland Acres in using it in the calculation of the net marital estate.
9. The Court of Common Pleas was incorrect and made an unjust and unfair award to Wife by giving her 65% of the net marital estate based on only a few factors being in her favor, and Wife has a college education and makes no efforts to support herself. The error is only amplified by the fact that the net marital estate calculation disregarded a marital debt that Husband is still responsible for and will still have to pay. This result is Husband is responsible for paying Wife over \$240,000.00, plus paying back a marital debt of similar value, without any credit for it in the calculation of the marital estate. Essentially, Husband is penalized twice, and Wife rewarded twice.

Wife has filed eleven errors in her Concise Statement of Errors Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b):

1. The Trial Court erred when it did not conclude that the Gross Marital Assets subject to equitable distribution are \$1,614,417.40 and that the Gross Marital Debts are \$619,398.00, thus making the Net Marital Estate for distribution between the parties \$995,019.40.
2. The Trial Court erred in awarding Wife a mere 65% of the net marital estate though the Master found only one unknown and incalculable statutory factor to favor Husband and five absolutely known and factual statutory factors to favor Wife.
3. The Trial Court erred by failing to conclude that there was no marital value attributable to Wife's non-marital property in Freedom Township, PA; in applying the incorrect assessed value to the property; and by incorrectly and inconsistently concluding that this asset increased significantly in value between the time it was acquired and the date of separation and incorrectly concluding that Husband's Wheatland Acres property lost significant value during a substantially similar time period.
4. The Trial Court erred by failing to at all account for or include non-marital gifts as assets possessed and able to be utilized by Husband, thereby affecting the overall distribution scheme.

5. The Trial Court erred by failing to conclude that the Husband's Wheatland Acres assets presents no actual or real loss to Husband in that any monies paid on debts associated with Wheatland Acres are expenses on taxes and/or the debt is in constant forbearance.
6. The Trial Court erred by including any of Husband's Wheatland Acres debt in calculating the net marital estate subject to equitable distribution and by concluding that Husband will eventually have to pay taxes on depreciated values and losses that he has carried over.
7. The Trial Court erred through concluding that there was no testimony regarding any marital property set apart to either of the parties and additionally failing to account for the non-marital property that each party possesses and by failing to consider this statutory factor when this factor heavily weighs in Wife's favor and against Husband.
8. The Trial Court erred by concluding that the tax and expense statutory factor weighs in Husband's favor as a statutory factor when the actual amount to possibly be paid is unknown and the actual effect is unknown, particularly when Husband enjoys a significant tax benefit by perpetually carrying over losses and depreciating expenses and continually keeps the debt in forbearance.
9. The Trial Court erred in failing to award Wife reasonable attorney's fees and costs and expenses in this matter and incorrectly stating that an award of spousal support is made for bringing or defending against a lawsuit.
10. The Trial Court erred in failing to require Husband to turn over specific items of personal property as requested.
11. The Trial Court erred in failing to consider or award fair rental value for Husband's rental properties throughout the duration of this matter.

Continued to next issue (9/30/2016)

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION

(No Estate Notices Submitted)

SECOND PUBLICATION**ESTATE OF DONALD W. FAIR, DEC'D**

Late of Oxford Township, Adams County, Pennsylvania

Executrix: C. Dee Wells, 995 Red Rock Road, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq., Campbell & White, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF DOLORES M. KUHN, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Patricia A. Smith, 98 Cheetah Drive, Hanover, Pennsylvania 17331

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

ESTATE OF NADINE C. MILLER, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: Marlin Croft, 1762 Sinsheim Road, Spring Grove, PA 17362

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF MABEL S. REED, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Crystal Dawn Matthews, 65 Ju Dan Court, York Springs, Pennsylvania 17372

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

ESTATE OF CHESTER W. STINE, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Linda K. Stine, 1715 West 7th Street, Apt. #1, Frederick, Maryland 21702

Attorney: Elinor Albright Rebert, Esq., 515 Carlisle Street, Hanover, Pennsylvania 17331

ESTATE OF ANN D. TIEDEMANN, DEC'D

Late of the Borough of Carroll Valley, Adams County, Pennsylvania

Ann T. Piatak, 676 Meyers Lane, Paradise, CA 95969

Attorney: John J. Murphy III, Esq., Patrono & Murphy, LLC, 28 West Middle Street, Gettysburg, PA 17325

THIRD PUBLICATION**ESTATE OF JILL L. BECKER, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executor: Bobby E. Wolfe Jr., 330 Lincoln Way East, New Oxford, PA 17350

ESTATE OF PAULINE VIRGINIA BOLANDER a/k/a PAULINE V. BOLANDER, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: William C. Brown, P.O. Box 2421, Pine, AZ 85544

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street, Gettysburg, PA 17325

ESTATE OF WAYNE A. CARR, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Administratrix: Billie C. Carr, 20305 Downes Road, Parkton, MD 21120

Attorney: Clayton A. Lingg, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

ESTATE OF DONALD E. CHRISTY, SR. a/k/a DONALD E. CHRISTY, DEC'D

Late of Mount Joy Township, Adams County, Pennsylvania

Jacqueline M. Christy, 985 Johnson Drive, Gettysburg, PA 17325

Attorney: Henry O. Heiser, III, Esq., 104 Baltimore Street, Gettysburg, PA 17325

ESTATE OF KAJSA C. COOK, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Attorney: Jeffery M. Cook, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ANNA E. GILBERT, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Jamie L. Weaver, 901 Osborne Parkway, Forest Hill, MD 21050

Attorney: Robert L. McQuaide, Esq., Suite 204, 18 Carlisle Street, Gettysburg, PA 17325

ESTATE OF MARY E. GROFT, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Co-Executors: Gerald R. Groft, 136 Conewago Drive, Hanover, PA 17331; Jeanne M. Fradiska, 200 Country By-Way, York, PA 17402

Attorney: David C. Smith, Esq., 754 Edgegrove Road, Hanover, PA 17331

ESTATE OF EILEEN R. HARVEY, DEC'D

Late of the Borough of Bonneauville, Adams County, Pennsylvania

Co-Executors: Ruth Elizabeth Harvey, 6831 Woodcrest Road, New Market, MD 21774; Matthew Robert Harvey, 280 Calvary Field Road, Gettysburg, PA 17325

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

ESTATE OF WILLIE C. JONES, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Administratrix: Mary B. Livingston, c/o Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

ESTATE OF JAMES WILLIAM KERSHNER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Co-Administrators: Christine E. Kershner-Teichman; Jennifer K. Treas, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

