

Adams County Legal Journal

Vol. 57

August 14, 2015

No. 14, pp. 28-33

IN THIS ISSUE

LINDA M. GOETZ V. MICHAEL A. WILLIAMS
AND ANN WILLIAMS



**Benefit
from local,
experienced
advisors with
only your
goals in mind.**

Christy Settle
Trust Officer

Karen Arthur
Senior Trust Officer

Mark Bernier, CFA
Investment Officer

Debra Little, ChFC®
Trust Officer

**Contact a local Trust Officer today and
start building a solid future.**

Karen Arthur
Senior Trust Officer
717.339.5062
karthur@acnb.com

Christy Settle
Trust Officer
717.339.5058
csettle@acnb.com

Debra Little, ChFC®
Trust Officer
717.339.5218
dlittle@acnb.com



Not FDIC-Insured • May Lose Value • Not Bank Guaranteed • Not a Deposit • Not insured by any federal government entity

ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

Designated for the Publication of Court and other Legal Notices. Published weekly by Adams County Bar Association,
John W. Phillips, Esq., Editor and Business Manager.

Business Office – 117 BALTIMORE STREET, ROOM 305, GETTYSBURG, PA 17325-2313. Telephone: (717) 334-1553

Copyright© 1959 by Wm. W. Gaunt & Sons, Inc., for Adams County Bar Association, Gettysburg, PA 17325.

All rights reserved.

LINDA M. GOETZ V. MICHAEL A. WILLIAMS
AND ANN WILLIAMS

1. In an action to quiet title, the burden of proof is on the plaintiff to establish their right by a fair preponderance of the evidence.
2. The trial court, as finder of fact, is free to believe all, part, or none of the evidence presented and is entitled to determine the credibility of witnesses after having the opportunity to have seen and heard the evidence presented.
3. The trial court's decision in a quiet title action should not be reversed absent a capricious disregard of the evidence.
4. Pennsylvania law is clear that a finder of fact is free to accept all, none, or part of the testimony of any witness.
5. Pennsylvania law is unwavering that the trial court has broad discretion in determining the relevancy of evidence at trial and the exercise of the court's discretion should not be overturned absent an abuse of that discretion.
6. For the former testimony to be admissible, the testimony must be at a proceeding at which the party against whom it is seeking to be admitted had participated.
7. As the testimony upon which the master's findings were entered, it would clearly have been inadmissible in the current proceeding. It is incredulous to suggest that the finding itself is somehow admissible.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, CIVIL 13-S-610, LINDA M. GOETZ V.
MICHAEL A. WILLIAMS AND ANN WILLIAMS

Wayne F. Shade, Esq., Attorney for Plaintiff
Gary E. Hartman, Esq., Attorney for Defendant

George, J., July 1, 2015

OPINION

Appellant, Linda M. Goetz, appeals this Court's Order dated December 15, 2014, entering judgment in favor of the Appellee, Michael A. Williams, on Appellant's Complaint to quiet title. In her Concise Statement of Errors Complained of on Appeal, Appellant raises 19 separate issues. See *Kanter v. Epstein*, 866 A.2d 394 (Pa. Super. 2004) (voluminous concise statement impedes the ability of the court to ascertain real issues on appeal). In order to address the issues in logical fashion, they will be discussed in the context of three general claims:

1. The trial court made findings of fact which were unsupported by the record;
2. The trial court erred in failing to conclude that enforcement of the mortgage at issue was precluded by the doctrine of custodia Jegis; and
3. The trial court erred in failing to admit documents from Appellant's divorce proceeding to which Appellee was not a party.

Prior to addressing the legal issues, the factual history will be briefly summarized.

Appellant was married to the Appellee's uncle, Robert Goetz. On March 21, 2005, Appellant initiated a divorce proceeding against her husband. At the time of initiation of the divorce litigation, Appellant and her husband owned a 10-acre lot located at 3380 Chambersburg Road, Adams County, Pennsylvania. The divorce litigation was lengthy, complex, and contentious. During the course of the litigation, Appellant obtained an award for alimony pendente lite, counsel fees, and expenses in an approximate amount of \$57,497. In December of 2008, Appellant and her husband, who were both represented by counsel, executed a \$25,000 mortgage on the 10-acre lot to Appellee, Michael A Williams, in exchange for Appellee providing \$25,000 to Robert Goetz. Although Appellant and her husband agreed that the proceeds from the mortgage would be used to satisfy the alimony pendente lite judgment, inexplicably, Appellant permitted the Williams' funds to be transferred solely to her husband rather than jointly to the parties. Perhaps predictably, Appellant's husband did not use the Williams' proceeds to satisfy the alimony pendente lite judgment. Although divorce proceedings have now been concluded with the

Appellant's husband being ordered to satisfy the mortgage to Williams, the mortgage has not been satisfied and remains as an encumbrance on the 10-acre lot. Appellant initiated an action to quiet title seeking to void the mortgage. In her Complaint, she alleges fraud on the part of Appellee claiming that he has received payment in satisfaction of the mortgage obligation. At hearing, she attempted to establish that Robert Goetz repaid Appellee the \$25,000 through convoluted purchases at a subsequent auction of her marital property held on April 18, 2009. She currently appeals this Court's Order dismissing her Complaint to quiet title.

An action to quiet title is not a proceeding in equity but rather is an action at law created by statute available to persons seeking to establish or to clear title to lands or interests therein. *Kister v. Com. By and Through Pennsylvania Fish Com'n*, 465 A.2d 1333 (Pa. Cmwlth. 1983). An action to quiet title may be brought "to compel an adverse party to file, record, cancel, surrender or satisfy of record ... any document, obligation or deed affecting any right, lien, title or interest in land." Pa. R.C.P. 1061(b)(3). In an action to quiet title, the burden of proof is on the plaintiff to establish their right by a fair preponderance of the evidence. *Poffenberger v. Goldstein*, 776 A.2d 1037 (Pa. Cmwlth. 2001). Thus, the party seeking to quiet title has the burden of presenting proof that is clear, precise, and convincing in establishing they are entitled to the relief being sought. *Muzzey v. Benjeski*, 204 A.2d 274 (Pa. 1964).

Appellant's first allegation of error takes issue with two findings made by the Court: (1) that there was no credible evidence that Appellee personally received any equipment from property purchased at the April 18, 2009 auction; and (2) that there was no credible evidence that Robert Goetz paid any amounts to Appellee as reimbursement for the loan proceeds underlying the mortgage at issue. In examining this issue, it is important to focus on the context of the actual findings being challenged. More specifically, the challenged findings are not affirmative findings of the establishment of a fact but, to the contrary, are findings of the lack of presentation of any credible evidence toward the establishment of the conclusion being sought by Appellant. This distinction is important as the trial court, as finder of fact, is free to believe all, part, or none of the evidence presented and is entitled to determine the credibility of witnesses after having the

opportunity to have seen and heard the evidence presented. *Smith v. Smith*, 904 A.2d 15, 20 (Pa. Super. 2006). In this regard, the trial court's decision in a quiet title action should not be reversed absent a capricious disregard of the evidence. *Dellach v. DeNinno*, 862 A.2d 117 (Pa. Super. 2004), appeal denied, 882 A.2d 479 (Pa. 2005).

Initially, Appellant points to stipulations of fact entered by the parties arguing the trial court ignored agreed upon facts. The fallacy of the argument, however, is that it is based on an interpretation of the stipulations as she would like them to read rather than a literal interpretation of the stipulations as presented.¹ A reading of the actual stipulations filed of record is not contrary to any findings of fact adopted by the Court.

Importantly, the finding of fact challenged by Appellant has support in the record as Appellee testified to the same. See Trial Transcript, pg. 57-60. As previously mentioned, Pennsylvania law is clear that a finder of fact is free to accept all, none, or part of the testimony of any witness. *Smith*, 904 A.2d at 20, *supra*. Appellant's dissatisfaction with the Court's findings of fact is nothing more than an argument that the Court should accept portions of the contradictory evidence which Appellant believes to be true rather than the testimony the Court ultimately accepted.

Undoubtedly, a reading of the entire record reveals contradictory testimony in various proceedings on the part of Appellee. However, whether the contradictions are intentional misrepresentations or rather spawned by a miscomprehension of what was intended to be asked as compared to what was intended to be answered remains unclear. What is clear however in Appellant's argument is her relentless challenge to Appellee's credibility while, at the same time, asking the Court to accept certain portions of his testimony as true. Even, *arguendo*, rejecting the testimony of Appellee as entirely incredible, the Court's finding of a lack of evidence in support of the Appellant's claim remains factu-

¹ For instance, in her Brief, Appellant references stipulation # 30 as reading: "Plaintiff's Exhibit 7 is an accurate copy of the list of twenty-six items that were purchased by [Appellee] on bid # 60 at the public auction of marital assets in the Goetz divorce on April 18, 2009." The actual stipulation reads, however: "[Plaintiff's Exhibit 7] is an accurate copy of the list of twenty-six items that were purchased on bid# 60 at the public auction of marital assets in the Goetz divorce case on April 18, 2009." Thus, Appellant imputes language that Appellee "purchased" items at bid # 60 where no such language existed in the stipulation and despite clear contrary evidence in the record that Robert Goetz purchased items on bid #60.

ally correct in light of the record. Accordingly, this claim is not a basis for relief.

In her second issue, Appellant claims the mortgage is defeated under the legal theory of *custodia legis*. This Court's Order and Opinion dated November 15, 2013 adequately addresses the issue and therefore no further discussion is necessary. Rather, your undersigned incorporates herein the Order and Opinion dated November 15, 2013.

Appellant's final challenge relates to the trial court's exclusion of evidence at trial. Appellant complains the trial court improperly excluded the master's reports entered in the Goetz divorce action. Specifically, Appellant sought to introduce an alleged finding by the divorce master that Robert Goetz and Appellee were involved in transactions aimed at camouflaging a paper trail of any income from the transactions received by Robert Goetz. Appellant also sought to introduce portions of a master's report which allegedly recommended Robert Goetz be responsible in the divorce proceeding for the balance of the mortgage which is the subject of this litigation. Both claims are meritless.

Pennsylvania law is unwavering that the trial court has broad discretion in determining the relevancy of evidence at trial and the exercise of the court's discretion should not be overturned absent an abuse of that discretion. *Phillips v. Locke*, 86 A.3d 906 (Pa. Super. 2014). Initially, Appellant attempted at hearing to introduce findings entered in other litigation to which Appellee was not a party and did not have the opportunity to present or cross-examine evidence. Undoubtedly, the testimony in the hearing at which the master made findings is not admissible in the current proceeding. Pennsylvania Rule of Evidence 804(b)(1) requires that before such testimony is admissible as an exception to the hearsay rule, the former testimony must currently be offered against the party who had an opportunity and similar motive to develop the testimony by direct, cross-, or redirect examination. *Id.* Thus, for the former testimony to be admissible, the testimony must be at a proceeding at which the party against whom it is seeking to be admitted had participated. *Miles v. Sweeney*, 623 A.2d 407 (Pa. Cmwlth. 1993); *Estate of Keefauver*, 518 A.2d 1263 (Pa. Super. 1986). As the testimony upon which the master's findings were entered it would clearly have been inadmissible in the current proceeding. It is incredulous to suggest that the finding itself is somehow admissible.

To the contrary, admission of the master's finding would have created significant due process issues. Under these circumstances, the evidence was properly precluded as irrelevant and prejudicial under Pennsylvania Rule of Evidence 403 (related to the exclusion of unfairly prejudicial relevant evidence).

Appellant's Complaint concerning the Court's preclusion of the master's recommendation concerning responsibility for the mortgage is equally meritless. The underlying fact which Appellant was attempting to introduce, i.e. Robert Goetz was ordered in the divorce action to pay the outstanding subject mortgage, was admitted as a stipulation. See Stipulation of Fact No. 37. Efforts of Appellant to introduce the actual master's report were properly precluded as cumulative evidence. See Pa. R. Ev. 403 (permitting the preclusion of cumulative relevant evidence). Moreover, despite the stipulation, the relevance of the evidence, if any, is very minimal as Appellant herself concedes that the order imposing liability for the mortgage on Robert Goetz in the divorce proceeding, of which Appellee was not a party, has no impact on Appellee's ability to pursue collection of the mortgage against the mortgagees.

For the foregoing reasons, it is respectfully requested that the Court's entry of judgment be affirmed.

BY THE COURT:

DATE FILED: July 1, 2015

Michael A. George
President Judge

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**ESTATE OF DELORES M. KRESS, DEC'D**

Late of Mount Pleasant, Gettysburg, Adams County, Pennsylvania

Executors: Joanna M. Townsley, 275 Berwick Road, Abbottstown, PA 17301

Attorney: Larry W. Wolf, P.C., 215 Broadway, Hanover, PA 17331

ESTATE OF ROGER J. MCDANNELL, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executrix: Carole P. Eppley, a/k/a Carol Eppley, 500 Hunterstown-Hampton Road, New Oxford, PA 17350

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

ESTATE OF LUCY JOANNE SWAIM, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executor: David Michael Lee, 176 Pheasant Run Lane, Hanover, Pennsylvania 17331

SECOND PUBLICATION**ESTATE OF BRIAN JOSEPH BAMBERGER, DEC'D**

Late of Berwick Township, Adams County, Pennsylvania

Executor: Matthew David McCabe, 1015 Oak Drive, Westminster, MD 21158

ESTATE OF STANLEY ALBERT BUPP A/K/A STANLEY A. BUPP, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Executor/Administrator: Roger A. Bupp and Tracy Wolf

Attorney: Vicky Ann Trimmer, Daley Zucker Meilton & Miner, LLC, 635 N. 12th Street, Suite 101, Lemoyne, PA 17043

ESTATE OF ELIZABETH R. LUCAS, DEC'D

Late of Straban Township, Adams County, Pennsylvania

Executor: John T Lucas Jr., 3702 Garand Road, Ellicott City, Maryland 21042

ESTATE OF CARL J. STEFFEN, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Personal Representatives: Joanne L. Cochran, c/o Donald L. Kornfield, Kornfield and Benchoff, LLP, 100 Walnut Street, Waynesboro, PA 17268

Attorney: Donald L. Kornfield, Kornfield and Benchoff, LLP, 100 Walnut Street, Waynesboro, PA 17268

THIRD PUBLICATION**ESTATE OF PRISCILLA A. DARROW, DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Executor: David Darrow, 51 Lynx Dr., Hanover, PA 17331

Attorney: Matthew L. Guthrie, Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF RHODA G. HARTZELL, A/K/A RHODA THOMPSON HARTZELL, DEC'D

Late of Borough of Gettysburg, Adams County, Pennsylvania

Administrator: Crosby L. Hartzell, 135 Redding Lane, Gettysburg, PA 17325

Attorney: David K. James, III, 234 Baltimore St., Gettysburg, PA 17325

ESTATE OF DANIEL C. MILLER, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Administratrix: Mary Ann Miller, 117 Lake Meade Drive, East Berlin, PA 17316

Attorney: David J. Lenox, Esquire, 8 Tristan Drive, Suite 3, Dillsburg, PA 17019

ESTATE OF DORIS ELIZABETH ROHRBAUGH, DEC'D

Late of Marion, McDowell County, North Carolina

Administrator: Paul M. Rohrbaugh

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

ESTATE OF STEPHEN J. SCHILLINBERG, A/K/A STEPHEN JOSEPH SCHILLINBERG, SR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrix: Deborah L. Schillenberg, 702 Moul Avenue, Hanover, PA 17331

Attorney: Peter R. Henninger, Jr., Esq., Jones & Henninger, P.C., 339 W. Governor Rd., Ste. 201, Hershey, PA 17033

ESTATE OF E. JANE WEHLER, A/K/A EVELYN JANE WEHLER, DEC'D

Late of New Oxford, Adams County, Pennsylvania

Co-Executors: Joan W. Yatsko, 42 Pebble Beach Drive, Linfield, PA 19468; Scott A. Wehler, 98 Meade Drive, Gettysburg, PA 17325

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

