"The decision to appoint a receiver or not to is generally a matter of discretion, but it is a judicial discretion whose abuse will be corrected upon appeal..."

The Court also held: "Taking our conclusions in Lindenfelser and DeLuca together, we believe the modern rule to be that where husband and wife are separated but not divorced and where one of them is excluded from the exercise or enjoyment of rights inherent in an estate held by the entireties, an accounting of property so held may be ordered and the property or proceeds divided equally between them." (Pages 534, 535) See also *Shapiro v. Shapiro*, 424 Pa. 120, 137 (1966).

In the case at bar, the petitioner has established her entireties interest in the income producing property, her exclusion from the benefits of those properties, and the imminent threat of their loss via Sheriff's Sale. We fail to perceive any difference between threatened physical loss or destruction of property, and its loss at Sheriff's Sale. In our judgment the petitioner is entitled at this stage of the proceedings to have a receiver appointed to collect the rents from all of the entireties real estate and apply the same to those debts of the parties which presently threaten the parties' real estate.

ORDER OF COURT

NOW, this 14th day of November, 1979, John F. Nelson, Esq., is appointed Receiver to collect all rents from all rental properties owned by the parties as tenants by the entireties; to establish a separate checking account as such Receiver; to pay the necessary operating expenses of said rental properties; each month to apply the remaining balance of the rents received to those debts of the parties which in the judgment of the Receiver should receive priority of payment. The Receiver is authorized to confer with counsel for the parties and counsel for the judgment and lien creditors to establish a program for proportionate payments of the net rentals received by the Receiver.

Upon request of counsel for either of the parties or the lien creditors the Court will set the amount of a surety bond to be posted by the Receiver. Costs of the same to be paid from the rentals received.

Exceptions are granted to the parties.

COMMONWEALTH v. EVERTS, C.P. Fulton County Branch, No. 47 of 1978

Criminal Law - Pennsylvania School Code - Unexcused Absences

1. In order for a defendant to be guilty of the compulsory attendance provisions of the School Code the school district must show an unexcused absence followed by a notice thereof to the defendant and an unexcused absence after receipt of said notice.

2. The poor condition of the private lane is not a defense under the Compulsory School Law in that it is the parents' responsibility to arrange transportation to a public road.

Gary D. Wilt, District Attorney, Counsel for the Commonwealth

Lawrence C. Zeger, Esq., Counsel for the Defendants

OPINION AND VERDICT

KELLER, J., September 27, 1979:

The defendants, Stanley and Betty L. Everts, are the mother and father of Dorothy Everts and Kimberly Everts. During the 1977-1978 school year Dorothy Everts was in third grade at the Warfordsburg Elementary School, and Kimberly Everts was in eighth grade at the Southern Fulton High School. The defendents, their daughters and Dorothy Esta Everts, paternal grandmother of the children, reside on a rural route in Big Cove, Tannery, Fulton County, Pennsylvania.

The daughters of the defendants had a substantial number of unexcused absences from their respective schools. Pursuant to applicable provisions of the School Code notices were sent to the parents, including certified mail notices, which were not picked up by the defendants. Prosecutions for violation of the School Code were initiated pursuant to law. On April 17, 1978 hearing on the charges was held before the Honorable J. Pierce Gordon, District Justice of the Peace. The defendants were found guilty of violation of the Pennsylvania Public School Code as to their daughter, Dorothy, on February 9, 10 and 21, 1978, and to their daughter, Kimberly, on February 9 and 10, 1978. Sentence was imposed by the District Justice and the defendants appealed to this court.

The trial de novo was held on May 1, 1979. Counsel for the defendants and the District Attorney have submitted briefs and the matter is ripe for disposition.

FINDINGS OF FACT

1. Dorothy Everts was absent from school on February 9, 10 and 21, 1978.

2. Kimberly Everts was absent from school on February 9 and 10, 1978.

3. The excuses for the absences here in question given by the defendants or one of them stated that the roads were closed due to snow or ice.

4. The home of the children is between one half mile and one mile distant from the township road on a private lane. The intersection of the township road with the private lane is approximately one mile to the school bus stop at the state road.

5. The paternal grandmother testified that both children were sick on February 9, 1978. The father-defendant testified that he thought both his daughters were sick on February 9, and 10, 1978. The mother-defendant testified that part of the time on February 9 and 10, 1978 both of her daughters were sick.

6. The excuses presented by the defendant-mother to the school for February 9 and/or 9 and 10, 1978 made no mention of illness.

7. No evidence was introduced that any effort was made by the defendants to secure a doctor's excuse evidencing that the daughters of the defendants had been sick on either or both dates.

8. On the dates in question the condition of the private lane was very bad for travel, but the paternal grandmother, father and mother contradicted each other as to whether the road was altogether impassable for vehicular traffic. It was possible to walk out the private lane, for each of the adults did walk out at least once and perhaps on all three days.

9. Father-defendant testified that the township road was not impassable all of the time, and he could get in and out of that road on February 9 and 10, 1978.

10. The paternal grandmother testified that the defendant-parents would park their car on the township road in bad weather; walk from their home to the end of the private lane and drive their car from there to wherever they were going.

11. The mother-defendant testified that she did not remember whether she worked on the days here in question or not; that she would leave her automobile at the township road when the lane was impassable and walk to and from her home, and then drive to her place of employment.

12. Neither of the children were called to testify.

13. The father-defendant was engaged in a dispute with the Township Supervisors over the Supervisors' failure to plow the township road. He had advised the elementary principal of Southern Fulton School District and stated at a School Board meeting that he would keep his children home if the Supervisors did not plow the road.

14. The paternal grandmother testified to a contract she had with the Southern Fulton School District to transport her two granddaughters from their home across the private lane and the township road to the school bus stop at the state road, and she was paid $2.50 per day for each school day.

DISCUSSION

Section, 1326 of the School Code; Act of 1949, March 10, P.L. 30, Art. XIII, Section 1327; 24 P.S. 13-1327 provides:

> "Every child of compulsory school age having a legal residence in this Commonwealth ... is required to attend a day school in which the subjects and activities prescribed by the standards of the State Board of Education are taught in the English language."

"Compulsory school age" is defined in Section 1326 of the said Act as "The period of a child's life from the time the child's parents elect to have the child enter school, which shall not be later than age of eight years, until the age of seventeen years."

Section 1333 of the Act provides:

> "Every parent ... who shall fail to comply with the provisions of this Act regarding compulsory attendance shall on summary conviction thereof be sentenced to pay a fine for the benefit of the school district in which such offending person resides not exceeding Two Dollars ($2.00) for the first offense and not exceeding Five Dollars ($5.00) for each succeeding offense, together with costs, and in default of the payment of such fine and costs the person so offending shall be sent to the county jail for a period not exceeding five (5) days...
>
> "Before any proceedings are instituted against any parent ... for failure to comply with the provisions of this Act, the district superintendent, attendance officer, or secretary of the board of school directors, shall give the offending person three (3) days written notice of such violation. If, after such notice

has been given, the provisions of this act regarding compulsory attendance are again violated by the person so notified, at any time during the term of compulsory attendance, such person, so again offending, shall be liable under the provisions of this section without further notice."

Section 1362 of the Act provides:

"The free transportation of pupils, as required or authorized by this Act, or any other Act, may be furnished by using either school conveyances, private conveyances, or electric railways, or other common carriers, when the total distance which any pupil must travel by the public highway to or from school, in addition to such transportation, does not exceed one and one-half miles, and when stations or other proper shelters are provided for the use of such pupils where needed, and when the highway, road or traffic conditions are not such that walking on the shoulder of the road where there are no sidewalks constitutes a hazard to the safety of the child, as so certified by the Bureau of Traffic Safety..."

The defendants in this case have not questioned the legal sufficiency of the notices given them by the attendance officer for the Southern Fulton School District, and they have not challenged the evidence of the Commonwealth that Dorothy was absent from school on February 9, 10 and 21, 1978, and Kimberly was absent on February 9 and 10, 1978.

In *Commonwealth v. Grace*, 48 D&C 2d 331, 334 (1969), the Honorable John A. MacPhail concluded:

"It would seem then, that in order for a defendant to be guilty of a violation with which he is here charged, two things must be shown by the school district; (1) an unexcused absence followed by a notice thereof to defendant, and (2) and unexcused absence after receipt of said notice."

In the case at bar, the evidence introduced by the Commonwealth established beyond a reasonable doubt that both children had had prior unexcused absences; that notices were given to the defendants as prescribed by law; and thereafter Dorothy had her three unexcused absences and Kimberly had her two unexcused absences. Thus, the Commonwealth established the requisite elements for conviction of the defendants for violation of the compulsory attendance law of the School Code of Pennsylvania.

By way of defense evidence was introduced that both girls were too sick February 9th and 10th to attend school. However, we find this defense without any merit for the excuses presented to the school district made no mention of such illness; the testimony of the parent as to the illness of their daughters on the dates in question was equivocal and no evidence was introduced of any effort by the defendants to secure a doctor's excuse evidencing the alleged illnesses.

A major defensive effort was to establish that the absences of the defendants' daughters should be excused on the days in question because of the condition of the private lane, and possibly of the township road leading to the school bus stop at the state road. We have no difficulty in concluding that the condition of the private lane was quite bad and perhaps may have been impassable for vehicular traffic. However, it appears that one or both of the defendants walked out the private lane to the township road, and the township road was not impassable for vehicular use.

In *Commonwealth v. Benton Township School District*, 277 Pa. 13, 15 (1923), the Supreme Court construed the language of the Public School Code of 1921, which was similar to Section 1362, supra, in the following language:

"Where, by the terms of this Act, any distance is specified between the residence of any pupil and any public school to be attended by him, or any transportation as provided for within or beyond any particular distance, in computing such distance no allowance shall be made for the distance that the dwelling house of the pupil is situated off the public highway. All such distances shall be computed from the school building to which the pupil has been assigned, by the highway to the nearest point where a private way or private road connects the dwelling house of the pupil with said highway:..." See also *Commonwealth v. Bingham*, 14 D&C 385 (1930).

We, therefore, conclude the distance from the children's home via the private lane to the township road should not be considered under the language of Section 3162, supra. Consequently, the responsibility for the transportation of the children to the township road via the private lane was upon the parents and evidence of the condition of that lane did not establish a defense under the compulsory school law.

VERDICT

NOW, this 27th day of September, 1979, the Court finds Stanley Everts and Betty L. Everts guilty of violation of Section

1333 of the Public School Code of 1949:

(a) as to Dorothy Everts for illegal absences from school on February 9, 10 and 21, 1978;

(b) as to Kimberly Everts for illegal absences from school on February 9 and 10, 1978.

Defendants shall appear before the Court on the call of the District Attorney for sentencing.

MOUSE v. VALLEY BANK AND TRUST COMPANY, C. P. Franklin County Branch, Eq. D. Vol. 7, Page 193

Equity - Consideration for Agreement - Adequate Remedy at Law - PA. R.C.P. 3118(a)

1. Where a bank agrees to release lien on a car title in exchange for lien placed on another car, the dealer in placing the lien on the second car suffered a detriment which can be consideration for a contract.

2. While replevin lies for a title to an automobile, a law court cannot also order specific performance of the satisfaction of a lien noted on the title.

3. Pa. R.C.P. 3118(a)(6) gives the court the right, after judgment has been entered, to grant such relief as is necessary to aid in execution. However, the rule aims to preserve the status quo for the judgment creditor.

4. Where the status quo is a certificate of title encumbered by a lien, removal of the lien requires affirmative action to change the status quo and equity is the appropriate forum.

Barbara B. Townsend, Esq., Attorney for Plaintiff

Jan G. Sulcove, Esq., Attorney for Defendant

OPINION AND ORDER

EPPINGER, P.J., October 23, 1979:

Plaintiff, William M. Mouse, is a used car dealer (dealer). A customer wanted to buy a 1973 Grand Prix from him. The customer was going to trade a 1976 Fiat even up but there was an encumbrance on the Fiat in favor of the Valley Bank & Trust Company, defendant (bank). The dealer spoke to a representative of the bank and received a promise that the bank would release the lien on the customer's Fiat in exchange for a lien on the Grand Prix.

The certificate of title to the Grand Prix was transferred to the customer and an encumbrance was placed on it by the bank, but then the bank never released the lien on the Fiat. Subsequently the dealer sold the Fiat, agreeing that a title to the Fiat free of any encumbrance would be given to the buyer. And now the buyer of the Fiat is insisting on the title and the bank refused to satisfy the lien and surrender the title. This is an action in equity to compel the bank to do so. The Grand Prix has already been sold at sheriff sale and apparently the bank is trying to recoup a loss out of the Fiat.

The bank demurred to the dealer's complaint, contending (1) that the agreement that the bank would release the lien on the Fiat is unenforceable for want of consideration and (2) that the dealer has an adequate remedy at law, suggesting that the remedy is replevin.

There are two agreements here. One is the agreement between the customer and the bank that he would pay the bank the loan for which the encumbrance was entered on the title to the Fiat. The other was between the dealer and the bank and that was that in exchange for the dealer's entering an encumbrance on the Grand Prix, the bank would release the lien on the Fiat. In this latter agreement the dealer entered the lien on the Grand Prix and thereby suffered a detriment. Consideration may be a detriment to the promisee as well as a benefit to the promisor. *Third National Bank and Trust Company of Scranton v. Rodgers*, 330 Pa. 523, 198 A. 320 (1938).

If, as the bank contends, there was no contract, the substance of which was that the bank would have a valid lien on the Grand Prix, then by what authority did the bank sell the Grand Prix? The bank cannot acknowledge the agreement to the extent that it is benefitted and then decline to perform on its promise. See, e.g., *Orndoff et al. v. Consumers Fuel Co., et al.*, 308 Pa. 165, 172-73, 162 A. 431, 433 (1932). See generally P.L.E. Estoppel Sect. 84.

"Replevin lies for personal property only. It may be used for such items of personalty as stock certificates, papers, deeds, or insurance policies, and money, if it can be specifically identified." P.L.E. Replevin Sect. 2. We conclude, therefore, that replevin lies for a title to an automobile. If that was the sole issue, obtaining the certificate of title, then the dealer would have an adequate remedy at law. But ultimately the dealer wants the title transferred to him free and clear of all encumbrances. The least the bank would be required to do, in addition to surrendering the title, would be to satisfy the lien. The