

LEGAL NOTICES, cont.

statement of proposed distribution and notice to the creditors of the Valley Bank and Trust Company executors of the last will and testament of Raymond G. McCleary, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

PENTZ First and final account, statement of proposed distribution and notice to the creditors of the Valley Bank and Trust Company executors of the estate of Helen R. Pentz, late of Fayetteville, Greene Township, Franklin County, Pennsylvania, deceased.

SWEGER First and final account, statement of proposed distribution and notice to the creditors of Winfred E. Hughes and R. Lucille O'Toole, executrices of the estate of Lulu R. Sweger, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

WARFIELD First and final account, statement of proposed distribution and notice to the creditors of Rudolf M. Wertime, executor of the estate of Ruth B. Warfield, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

MIDDLEKAUFF First and final account, statement of proposed distribution and notice to the creditors of William C. Middlekauff, executor of the estate of Mildred May Middlekauff, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle  
Clerk of Orphans' Court  
of Franklin County, Pa.

6-4, 6-11, 6-18, 6-25

RITZER VS. RITZER, C. P. Fulton County Branch, No. 285 of 1981-c

COMMONWEALTH VS. RITZER, C. P. Fulton County Branch,  
No. 285 of 1981-c

Partition - Tenancy by Entireties - Appropriation of Entireties property.

1. Generally, neither tenant can obtain partition of entireties property prior to divorce.
2. One spouse may not appropriate entireties property to the detriment of the other.
3. Where a single unit of entireties property is appropriated for a spouse's own use, all property of the parties held by the entireties is subject to partition, not merely the unit that has been improperly appropriated.

*William Bryan Lane, Esq.*, Counsel for Plaintiff

*Lawrence C. Zeger, Esq.*, Counsel for the Defendant

OPINION AND ORDER

KELLER, J. March 30, 1982:

This action in partition was commenced by the filing of a complaint in equity by the Fulton County National Bank and Trust Company, Guardian of the Estate of Marie P. Ritzert, an Incompetent, on September 11, 1981. An answer was filed on September 30, 1981, which essentially admitted all of the facts alleged in the complaint other than denying that the various checking and savings accounts were joint accounts, but rather tenancy by the entireties accounts, asserting that the defendant has not prevented the guardian from procuring funds for the estate of the incompetent, and there has been no proceeding to require the defendant to pay support. On December 22, 1981, counsel for the plaintiff and the defendant entered into stipulations of facts and law. The matter has been presented to the Court by counsel for disposition of the above-captioned matter on the basis of the pleadings and stipulations referred to, and without hearing or argument.

FINDINGS OF FACT

1. By decree dated March 30, 1981, Marie P. Ritzert was adjudicated an incompetent, and the Fulton County National Bank and Trust Company was appointed guardian of her es-

tate. The incompetent was a resident of Ayr Township, Fulton County, Penna., and her present mailing address is Pennknoll Village, R. D. 1, Box 227, Everett, Pa., 15537.

2. George Ritzert, the defendant, is a sui juris adult who resides in Ayr Township, Fulton County, Penna., with mailing address of R. D. 2, Box 53D, McConnellsburg, Pa., 17233.

3. Defendant and plaintiff are husband and wife.

4. Checking Account No. 52-33137 and Savings Account No. 11107 were opened at the First National Bank of McConnellsburg in the names of the defendant and Marie P. Ritzert, his wife, in March of 1975.

5. On or about April 1, 1981, the defendant withdrew \$1,012.00, being the entire balance of Checking Account No. 52-33137, and \$4,803.16, being the entire balance of Savings Account No. 11107, all without the consent of Marie P. Ritzert or her guardian.

6. The defendant deposited the said withdrawn funds in a checking account and savings account registered in his individual name at the First National Bank of McConnellsburg, Pa., thus appropriating said funds to his own personal use, and excluding the plaintiff from the possession, use and benefit of said withdrawn funds.

7. Prior to January 28, 1981, the defendant and Marie P. Ritzert, his wife, owned two savings accounts in their joint names at Walt Whitman Federal Savings, Huntington Station, New York.

8. On or about January 28, 1981, the defendant, without the consent of Marie P. Ritzert, his wife, closed both said accounts and deposited the funds withdrawn therefrom in the amount of \$22,046.57 in a savings account registered in his individual name in trust for Marie P. Ritzert at Walt Whitman Federal Savings located in Huntington Station, New York, thus excluding Marie P. Ritzert from possession, use and benefit of her just and proportionate share of the withdrawn funds.

9. At all times relevant the defendant and Marie P. Ritzert, his wife, have owned as tenants by the entirety the following described real estate:

ALL that certain tract or parcel of land lying and being situate in Ayr Township, Fulton County, Pennsylvania, and more par-

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## LEGAL NOTICES, cont.

209 Lincoln Way East  
Chambersburg, PA 17201  
Attorneys for Plaintiff  
6-4-82, 6-11-82, 6-18-82

### IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT PENNSYLVANIA ORPHANS' COURT DIVISION

The following list of Executors, Administrators and Guardian Accounts, Proposed Schedules of Distribution and Notice to Creditors and Reasons Why Distribution cannot be Proposed will be presented to the Court of Common Pleas of Franklin County, Pennsylvania, Orphans' Court Division for CONFIRMATION: July 1, 1982.

**BRECHBILL** First and final account, statement of proposed distribution and notice to the creditors of A. Henry Brechbill and Edwin G. Brechbill, executors of the estate of Alvin H. Brechbill, late of Guilford Township, Franklin County, Pennsylvania, deceased.

**BUTZ** First and final account, statement of proposed distribution and notice to the creditors of Joseph A. Butz, executor of the estate of Frank D. Butz, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

**LAYTON** First and final account, statement of proposed distribution and notice to the creditors of the Valley Bank and Trust Company, executors of the estate of Ethel V. Layton, late of Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

**LESHER** First and final account, statement of proposed distribution and notice to the creditors of Flo J. Rock and Nettie Jean Lockett executrices of the estate of Grace M. Leshner, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

**McCLEARY** First and final account, statement of proposed distribution and notice to the creditors of the Valley Bank and Trust Company executors of the last will and testament of Raymond G. McCleary, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

**PENTZ** First and final account, statement of proposed distribution and notice to the creditors of the Valley Bank and Trust Company executors of the estate of Helen R. Pentz, late of Fayetteville, Greene Township, Franklin County, Pennsylvania, deceased.

**SWEGER** First and final account, statement of proposed distribution and notice to the creditors of Winfred

## LEGAL NOTICES, cont.

E. Hughes and R. Lucille O'Toole, executrices of the estate of Lulu R. Sweger, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

**WARFIELD** First and final account, statement of proposed distribution and notice to the creditors of Rudolf M. Wertime, executor of the estate of Ruth B. Warfield, late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

**MIDDLEKAUFF** First and final account, statement of proposed distribution and notice to the creditors of William C. Middlekauff, executor of the estate of Mildred May Middlekauff, late of the Borough of Waynesboro, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle  
Clerk of Orphans' Court  
of Franklin County, Pa.

6-4, 6-11, 6-18, 6-25

### NOTICE

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Miscellaneous Docket Volume Y, Page 135

NOTICE IS HEREBY GIVEN that on May 27, 1982, the Petition of Colby Scott Johnson, a minor, by Dorothy C. Houpt, his guardian, was filed in the above-named Court, praying for a decree to change the name of said minor to Colby Scott Houpt.

The Court has fixed Thursday, the 8th day of July, 1982, at 1:30 P.M., in Court Room No. 3, as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

David S. Dickey  
Attorney at Law  
11 North Carlisle Street  
Greencastle, PA 17225

6-11, 6-18, 6-25, 7-2

ticularly described as follows:

BEGINNING at an iron pin a corner of Lot No. 6 on the north side of a 50-foot street; thence along the 50-foot street N 78 degrees 19' W 37.0 ft. to an iron pin; thence S 89 degrees 10' W 40.0 ft. to an iron pin; thence N. 35 degrees 35' W 34.6 ft. to an iron pin; thence along lands of the grantors N 6 degrees 41' E 126 ft. to an iron pin; thence along lands of Phylene Z. Mellott, et vir, S 83 degrees 19' E 100 ft. to an iron pin; thence along Lot No. 6 or lands of Gregory E. Garland, et ux, S 6 degrees 41' W 150 ft. to an iron pin; the place of beginning.

CONTAINING 0.335 acres as surveyed by A. M. Larsen September 9, 1974, and designated as Lot No. 5.

BEING the same land conveyed by E. W. Pyles and Inez Pyles, his wife, to George Ritzert and Marie Ritzert, his wife, by deed dated September 12, 1974, and recorded in Fulton County Deed Book 80, page 396.

TOGETHER with a five-room frame house and other fixtures thereon.

10. At all times here relevant the defendant and Marie P. Ritzert, his wife, owned as tenants by the entirety, household goods, furnishings, appliances and tools.

11. At all times here relevant the defendant and Marie P. Ritzert, his wife, owned as tenants by the entireties, 200 shares of Potomac Edison Power Company common stock evidenced by Certificates NC589315 and NC589316; each dated March 30, 1977.

12. At all times here relevant the defendant and Marie P. Ritzert, his wife, owned as tenants by the entireties, approximately 1607 shares of Putnam Income Fund, Inc., Account No. 41-07-4864-08.

### DISCUSSION

"Generally, neither tenant can obtain partition of entireties property prior to divorce. See *Shapiro v. Shapiro*, 25 Pa. 120, 224 A. 2d 164 (1966), overruled on other grounds, *Butler v. Butler*, 464 Pa. 522, 347 A. 2d 477 (1975); *Reifschneider v. Reifschneider*, 413 Pa. 342, 196 A. 2d 324 (1964); *Stemniski v. Stemniski*, 403 Pa. 38, 169 A. 2d 51 (1961). Nor may one spouse appropriate entireties property to the detriment of the other; the only appropriation permitted is one for the mutual

benefit of the tenants. *Shapiro v. Shapiro*, supra; *Berhalter v. Berhalter*, 315 Pa. 225, 173 A. 2d 172 (1934). Where one spouse appropriates entireties property to his or her own use and not for the mutual benefit of the tenants, a revocation of the estate may occur, for the appropriation may be construed as an offer of an agreement to destroy the estate; which will be deemed to be accepted where the other spouse sues for partition of the property. *Shapiro v. Shapiro*, supra; *Stemniski v. Stemniski*, supra; *Vento v. Vento*, 256 Pa. Super. 91, 389 A. 2d 615 (1978). Furthermore, where there has been an improper appropriation of a single unit of entireties property, all property of the parties held by the entireties is subject to partition, not merely the unit that has been improperly appropriated. *Vento v. Vento*, supra." *Gray v. Gray*, 275 Pa. Super. 131, 133, 134; 418 A. 2d 646 (1980). See also *Fascione v. Fascione*, 272 Pa. Super. 530, 416 A. 2d 1023 (1978). s,

On the basis of the above facts, stipulated to by counsel for the parties and the applicable law, there can be no doubt but that the withdrawal of all funds from the tenancy by the entireties checking and savings account constituted an offer to partition all of the assets owned by the defendant and Marie P. Ritzert, as tenant by the entireties and the filing of the complaint for partition constituted the acceptance of the offer. Therefore, an order of partition will be entered.

#### ORDER OF COURT

NOW, this 30th day of March, 1982, partition of all of the assets owned by George Ritzert and Marie P. Ritzert, his wife, as tenants by the entireties, is ordered with each party entitled to one-half of the same. The share of Marie P. Ritzert shall be paid over to the Fulton County National Bank and Trust Company, Guardian of her Estate. Partition shall proceed according to applicable law, and applicable Rules of Civil Procedure.

Costs shall be paid by the defendant.

Exceptions are granted the defendant.

COMMONWEALTH V. CHAMBERLAIN, C. P. Franklin County Branch, Civil Action, Vol. Y, Pg. 56

*Vehicle Code - Suspension of Driving Privileges - Bus Driver - Regulations of Penn DOT - Physical Exam - Irrebuttable presumption of Disability*

1. Where a bus driver's operating privilege is suspended due to his medical condition in accordance with Penn DOT regulations, an irrebuttable presumption of medical incompetency is created.
2. While irrebuttable presumptions are not favored in the law, they are not constitutionally invalid unless there is no rational relation to a legitimate legislative goal.
3. It is a privilege and not a right to operate a vehicle and as a privilege there is no strict constitutional protection.
4. There is a rational relationship between the presumption that an established medical history of a cardiovascular disease renders a person an unacceptable risk to drive a school bus and the legislative intent to assure safe transportation of school children.
5. The court does not have the legal authority or the medical expertise to substitute its judgement for that of Penn DOT's Medical Advisory Board.

*Forest N. Myers, Esq.*, Attorney for Respondent

*Francis P. Bach*, Assistant Counsel, Department of Transportation, Attorney for Respondent

#### OPINION AND ORDER

KELLER, J., March 30, 1982:

Prior to September 28, 1982, Ray G. Chamberlain (Chamberlain) was the holder of a Pennsylvania Department of Transportation Operator's Card No. S-59688 with school bus driver's operator's privileges pursuant to Sections 1504 and 1509 of the Motor Vehicle Code; 75 P.S. 1504 (c) and 75 P.S. 1509. On September 28, 1982, the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Traffic Safety (Commonwealth) mailed Chamberlain an official notification of withdrawal of motor vehicle privileges suspending indefinitely and until competency is established his school bus operator's privileges effective October 5, 1981. The reason given was "cardiovascular." Chamberlain's petition for an order setting aside the suspension of school bus operating privileges was presented on October 7, 1981, and an order entered the same date granting