

Franklin County Legal Journal  
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Socks and Conley v. Golden

CHARLES E. SOCKS and FAYE E. CONLEY, Plaintiffs,  
v. DEBORAH K. GOLDEN and RONALD E. GOLDEN, Defendants  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Fulton County Branch  
Civil Action, No. 231-2001

*Partition; Report of Master; Private Sale Between Parties; Petition to Open Record*

1. Where the other party is not prejudiced, it is within the discretion of the court to allow a party to reopen his case to present important evidence, to prevent injustice, or for other good reason.
2. A petition to reopen in order to receive additional, or after-discovered, evidence, should be granted where the evidence is (1) new, (2) not obtainable at trial with the exercise of due diligence, (3) relevant and non-cumulative, (4) not for the purposes of impeachment, and (5) likely to compel a different result.
3. When reviewing the Master's Report, the Court must determine if the Master's factual findings are supported by competent evidence, whether the Master committed an error of law, or whether the Master abused his discretion.

Appearances:

Andrew J. Benchoff, Esq., *Counsel for Plaintiffs*

Donald L. Kornfield, Esq., *Counsel for Plaintiffs*

Stanley J. Kerlin, Esq., *Counsel for Defendants*

George S. Glen, Esq., *Master in Partition*

OPINION SUR Pa.R.A.P. 1925(a)

Walsh, J., July 13, 2005

Plaintiffs appeal from the Order of Court dated May 5, 2005 and the Decree dated May 5, 2005. The Order of that date denies Plaintiffs' motion for a stay, denies Plaintiffs' motion to reopen the record and schedule an evidentiary hearing, and denies all of the exceptions to the Master's report raised by Plaintiffs. That Decree of that date confirms the report of the Master in its entirety, orders conveyance of the subject land by Plaintiffs to Defendants for a specified consideration, apportions the costs, and directs the parties to make payment. According to the language in the Decree, the Decree became final on May 16, 2005, ten (10) days after its date.

A. Background

On September 5, 2001, Plaintiffs commenced this action by filing a Complaint in Partition, which sought partition of approximately 157.18 acres of real estate located in Bethel Township, Fulton County.[1] Defendants responded with the filing of an Answer and New Matter on January 22, 2002. Plaintiffs then filed a Petition to Order Partition and on February 26, 2002, the Court signed an Order directing that the subject real property be partitioned as follows: one-third (1/3) to Plaintiff Faye E. Conley and Plaintiff Charles E. Socks, one-third (1/3) to Defendant Deborah K. Golden, and one-third (1/3) to Defendant Deborah K. Golden and Defendant Ronald E. Golden.

Upon Plaintiffs' request, on March 12, 2002, the Court ordered a preliminary conference to be held on May 21, 2002. As a result of the preliminary conference, the Court, on June 4, 2002, ordered, among other things, that George S. Glen, Esq. be appointed Master and that the Master determine whether the subject real property could be divided without prejudice to or spoiling of the whole, in accordance with Pennsylvania Rule of Civil Procedure 1560. It appears from the record that after the filing of this Order that the parties negotiated with each other and came close to settlement. However, settlement negotiations ultimately failed and the parties continued with the partition action.

On or about March 30, 2004, Plaintiffs' counsel, who had been representing Plaintiffs since the inception of the litigation, sought leave of court to withdraw from his representation. A Rule was issued upon Plaintiffs to show cause why Plaintiffs' counsel should not be allowed to withdraw. Plaintiffs' counsel subsequently withdrew by Praecipe with the consent of Plaintiffs on April 20, 2004.

A hearing before the Master was scheduled for September 9, 2004. The Master gave the parties notice of said hearing on July 6, 2004. By letter of that same date, the Master informed the parties that he would seek a stenographer for the hearing and he encouraged Plaintiffs to seek the advice and counsel of an attorney to assist them at the hearing. The Master also advised Plaintiffs that he would not entertain a motion for a continuance of the September 9, 2004 hearing date. On September 9, 2004, the Master held the hearing as planned; Plaintiffs proceeded without counsel.[2]

On November 2, 2004, the Master issued his preliminary notice to the parties in the form of a letter. By that letter, the Master informed the parties of his opinion: that the property is not capable of division without prejudice. Further, the Master's letter gave notice to the parties of the Master's impending exposure of the subject real property to private sale confined to the parties to be held on December 2, 2004. Defendants, through a November 10, 2004 letter from their counsel, responded to the Master's November 2, 2004 letter and requested that the property be awarded to them at its valuation fixed by the Court.

On February 16, 2005, Andrew J. Benchoff, Esq. and Donald L. Kornfield, Esq. entered appearances on behalf of Plaintiffs. On March 15, 2005, Plaintiffs petitioned the Court to re-open the record and to schedule a new hearing before the Master and on March 22, 2005, the Court issued a Rule to Show Cause on Defendants upon consideration of Plaintiffs' Petition.

The Master filed a Notice of Filing Report of Master on March 31, 2005. With this Notice, the Master gave the parties notice that he had filed his report with the Court of Common Pleas of the 39th Judicial District, Fulton County Branch, on March 31, 2005 and that the report would become final unless exceptions were filed within ten (10) days.

On April 6, 2005, through their counsel, Plaintiffs filed a Motion to Stay Proceedings, seeking a stay until their Petition to re-open the record and to schedule a hearing was decided by the Court. Two days later, Plaintiffs filed their Exceptions to the report of the Master. Defendants responded to the Rule on Plaintiffs' Petition to re-open the record on April 18, 2005 and on April 27, 2005, the Court issued an Order setting Plaintiffs' Petition for a hearing on May 3, 2005. Hearing was held on that date.

By Order dated May 5, 2005, the Court denied Plaintiffs' Motion to Stay the Proceedings, denied Plaintiffs' Petition to re-open the record and to schedule an evidentiary hearing, and overruled and denied Plaintiffs' Exceptions to the Master's Report. Also, by Decree dated May 5, 2005, the Court confirmed the Master's Report in its entirety, ordered that the undivided one-third (1/3) interest of Plaintiffs be conveyed to Defendants upon payment of \$110,000, apportioned the costs,

and directed the parties to make payment. The Decree stated that it would become final in ten (10) days unless appealed.

The Master filed a second report on May 18, 2005, making the same conclusion he had made in his first report: that the property cannot be divided without prejudice to or spoiling the whole. Plaintiffs filed Post-Trial Motions on May 24, 2005 and the Court denied those motions by Order dated June 7, 2005. On June 9, 2005, Plaintiffs appealed from the Court's Order of May 5, 2005 and the Court's Decree of May 5, 2005.[3] The next day the Court ordered Plaintiffs to file a concise statement of matters complained of on appeal and Plaintiffs timely did so on June 16, 2005.

## B. Analysis

Plaintiffs raise the following issues on appeal:

"Plaintiffs believe that this Honorable Court erred in denying Petitioners' Petition to Re-Open the Record and Schedule Hearing and erred in denying Petitioners' Exceptions to Report of Master in its May 5, 2005 Order of Court because there was insufficient evidence of record to make factual determinations and reach legal conclusions as to whether the property was capable of division without prejudice to or spoiling the whole and as to the fair market value of the property."

and

"Plaintiffs believe that this Honorable Court erred in ordering that the property be conveyed to Defendants on condition that Defendants pay to Plaintiffs the sum of \$110,000.00 in its May 2, 2005 Decree of Court because there was insufficient evidence of record to make factual determinations and reach legal conclusions as to whether the property was capable of division without prejudice to or spoiling the whole and as to the fair market value of the property."

Plaintiffs' Statement of Matters Complained of on Appeal ¶¶ 8 and 9. Plaintiffs preserved these matters for appeal by virtue of their Post-Trial Motions. We will address each issue in turn.[4]

### **1. Whether the Court erred in denying Plaintiffs' Petition to Re-Open Record and Schedule Hearing.**

Proceedings to open judgments are within the sound discretion of the court. Roche v. Rankin, 176 A.2d 668, 672 (Pa. 1962). Those proceedings are essentially equitable in nature and they are governed by equitable principles. Morrisville Shopping Center v. Sun Ray Drug Co., 112 A.2d 183 (Pa. 1955). Such relief is of grace and not of right. Roche, 176 A.2d at 672. Where the other party is not prejudiced, it is within the discretion of the court to allow a party to reopen his case to present important evidence, to prevent injustice, or for other good reason. Somerset Mack Sales & Service, Inc. v. Bracken, 23 Pa. D. & C.3d 394, 398 n.2 (Pa.Com.Pl. 1981). See also Commonwealth v. Evans, 410 A.2d 1213 (Pa. 1980); In re J.E.F., 409 A.2d 1165 (Pa. 1979).

In their Petition, Plaintiffs failed to state what important evidence they would present, what injustice would be prevented, or what other good cause would be served by reopening the record. Plaintiffs merely state that reopening the record would allow them "to introduce additional evidence on the issue of division of the subject real estate without spoiling the whole." Plaintiffs' Petition, ¶ 25. Further, a petition to reopen in order to receive additional, or after-discovered, evidence, should be granted where the evidence is (1) new, (2) not obtainable at trial with the exercise of due diligence, (3) relevant and non-cumulative, (4) not for the purposes of impeachment, and (5) likely to compel a different result. Hydro-Flex, Inc. v. Alter Bolt Co., Inc., 296 A.2d 874, 877 (Pa.Super. 1972). Here, Plaintiffs' additional evidence does not appear to be new and it is clear that it is evidence which Plaintiffs could have obtained for trial with the exercise of due diligence. Therefore, we denied Plaintiffs' Petition.

In addition, Plaintiffs were advised of their right to counsel and encouraged to engage counsel

prior to the September 9, 2004 hearing.[5] They knowingly and voluntarily chose to proceed *pro se*. They made this decision after having agreed to allow their prior counsel withdraw his appearance, though their prior counsel had instituted the litigation on their behalf and had managed the litigation for them for a period of years. It appears to the Court that Plaintiffs now have counsel and are seeking to re-litigate -- with the aid of their new counsel -- the exact issues that were before the Master at the hearing on September 9, 2004. Plaintiffs failed to argue that reopening the record would allow them to present important evidence, would prevent injustice, or any other good reason. We are constrained to do what, in our discretion, is equitable. Since Plaintiffs were afforded a fair opportunity to litigate these issues and they have failed to present the Court with any averment or argument as to important evidence they could present or an injustice they could prevent by reopening the record, we denied their Petition.

**2. Whether the Court, in its May 5, 2005 Order, erred in denying Plaintiffs' Exceptions to the Master's Report on the basis that:**

**a. there was insufficient evidence of record to make factual determinations and to reach legal conclusions as to whether the property was capable of division without prejudice to or spoiling the whole; and**

**b. there was insufficient evidence of record to make factual determinations and to reach legal conclusions as to the fair market value of the subject real property.**

When reviewing the Master's Report, the Court must determine if the Master's factual findings are supported by competent evidence, whether the Master committed an error of law, or whether the Master abused his discretion. See Alderfer v. Pendergraft, 448 A.2d 601, 603 (Pa.Super. 1982). The record supports the Master's findings and conclusions that the subject real property is not capable of division without prejudice to or spoiling the whole. Plaintiff Faye Conley testified that the most productive use of the subject real property was a beef farm. R. at 17. Defendant Deborah Golden testified that over the past ten (10) years "running cattle" has been the use of the subject real property. R. at 23. She also testified that the current condition of the subject real property best renders its most productive use for cattle purposes. R. at 24. Defendant Ronald Golden testified that the subject real property cannot be divided because the basic use of the land is for beef cattle and dividing the subject real property would make it impossible to use the subject real property for beef cattle. R. at 32-33. Mr. Barlow, an expert witness, testified accordingly. In fact, Mr. Barlow testified that the only foreseeable practicable use of the subject real property is as a farm for beef cattle. R. at 45-46. Defendant Ronald Golden also testified that the "proper use" of the subject real property is to raise cattle and that to divide or partition the property would lessen the value of the remaining parcel. R. at 35. There is no evidence in the record that dividing the subject real property will not prejudice it or that dividing the subject real property will not spoil it; no party to the proceeding and no expert offered a plan for partition. The Master had sufficient competent evidence on which to base his factual determination and his legal conclusion that dividing the subject real property would spoil it or prejudice it.

Likewise, the Master had sufficient competent evidence upon which to determine the fair market value of the subject real property. The Master commissioned Thomas R. Donahue to conduct an appraisal of the subject real property. Mr. Donahue completed the appraisal on January 27, 2005 and he concluded that the subject real property has a fair market value of \$330,000.00. See Appraisal Report (also referred to in the Master's Report as Exhibit E). The record contains no conflicting estimate of the fair market value of the subject real property.

**3. Whether the Court erred, in its May 5, 2005 Decree, in ordering that the property be conveyed to Defendants on the condition that Defendants pay to Plaintiffs the sum of \$110,000 on the basis that:**

**a. there was insufficient evidence to make factual determinations and to reach legal conclusions as to whether the subject real property was capable of division without prejudice to or spoiling the whole; and**

**b. there was insufficient evidence to make factual determinations and to reach legal conclusions as to the fair market value of the property.**

See Number 2, *supra*.

C. Conclusion

For the reasons set forth above, we believe we have committed no error of law and respectfully urge the Superior Court to affirm our judgment.

ORDER OF COURT

July 13, 2005, the Clerk of Courts is directed to transmit the record of these proceedings along with this Opinion and Order to the Superior Court.

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[1] The subject real property is described in Fulton County Deed Book 228 at page 606, Fulton County Deed Book 232 at page 311, and Fulton County Deed Book 235 at page 484.

[2] Before proceeding with the hearing, the Master questioned Plaintiffs about their intention to proceed without the assistance of counsel. See R. at 3-4. See also Note 5 *infra*.

[3] On July 6, 2005, Plaintiffs filed a motion to make a June 10, 2005 rule to show cause absolute, which would stay the sale and set a security amount. As of this date, this motion remains undecided.

[4] We have broken each paragraph into its subparts so that we can easily and fully address each issue raised. The Court supplied the wording of the subparts.

[5] For example, the following exchange occurred at the September 9, 2004 hearing:

Master: Also, I want to place on the record the fact that both Charles Socks and Faye Conley have been

advised by me for a number of months that it would be wise to have counsel on their behalf, and it is correct that you folks, having been advised of that for the last several months, wish to proceed on your own today?

Conley: Yes.

Master: Mr. Socks?

Socks: Yes.

R. at 4-5.