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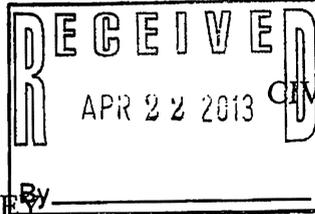
IN THE FAMILY COURT OF GREENBRIER COUNTY, WEST VIRGINIA

IN RE: THE MARRIAGE OF

ROSS W. STANLEY,
PETITIONER

AND

CAROLYN HAYNES STANLEY,
RESPONDENT



CIVIL ACTION NUMBER: 12-D-65

TO: MARTHA J. FLESHMAN
COUNSEL FOR PETITIONER
P.O. BOX 366
UNION, WV 24983

J. MICHAEL ANDERSON
COUNSEL FOR RESPONDENT
702 MAIN STREET
RAINELLE, WV 25962

ORDER

This action originally came on for hearing on September 19, 2012, before the Court, Family Court Judge, David M. Sanders presiding, upon the Petition for Divorce. The Petitioner appeared in person represented by Martha J. Fleshman. The Respondent appeared in person represented by J. Michael Anderson. The court requested that the parties brief the issue of the applicability and effect of West Virginia Code § 43-1-2 to the facts of this case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. The Court retained jurisdiction of the parties and the subject matter to resolve the issues of spousal support and equitable distribution.
2. The wife acquired a sole interest in a parcel of real estate pursuant to the divorce between her and her previous husband.
3. The petitioner argues that he contributed to the mortgage payoff and improvements to property owned by the wife prior to the marriage and husband wants credit for

those expenditures.

4. The petitioner further argues that, pursuant to West Virginia Code § 43-1-2 the wife's transfer of ownership of the real property owned by wife before the marriage was non-compliant for lack of notice to her spouse and that the petitioner should now have a full marital interest in the property.
5. The court has reviewed the briefs filed by the parties and the relevant case law.
6. The stipulated facts are as follows: (a) Wife, in a 1995 divorce, acquired sole title to real estate acquired by her and her then husband in 1989 (b) The real estate at the time of that divorce was encumbered by a \$70,000.00 lien. (C) Wife transferred her interest to her children in 2011 and retained a life estate to herself.(d) Respondent did not notify petitioner of that transfer of interest.(e) Petitioner in this action contributed \$30,000.00 to the reduction of the debt against the real estate and made some improvements to the real estate.
7. It should be noted at the outset that West Virginia Code § 43-1-2 is primarily a succession related statute devised to allow the legislature the do away with dower and curtesy and yet preserve some protection to the non-titled spouse from having a property interested conveyed away without notice and lots of protection to a bona fide purchaser since it transfers the liability for an unreleased dower claim to the titled spouse rather than the purchaser.
8. West Virginia Code § 43-1-2 states that "Any married person who conveys any interest in real estate shall notify his or her spouse prior to or within thirty days of the time of the conveyance **if the conveyance involves an interest in real estate to**

which dower would have attached if the conveyance had been made prior to the date of the enactment of this statute”.

9. The intent of the statute is stated pretty concisely in Rosier as “*Intent of statute, which requires any married person who conveys an interest in real estate to notify his or her spouse prior to or within 30 days of the time of the conveyance if the conveyance involves any interest in real estate to which dower would have attached, is to make certain that transfers of real estate holdings solely in one spouse's name are known to the other spouse. Rosier v. Rosier, 2010, 705 S.E.2d 595, 227 W.Va. 88. Dower And Curtesy 44.*
10. The remedy for non notification is also pretty clearly set forth in the statute as “*d) When a married person fails to comply with the notification requirements of this section, then in the event of a subsequent divorce within five years of said conveyance, the value of the real estate conveyed, as determined at the time of the conveyance, shall be deemed a part of the conveyancer's marital property for purposes of determining equitable distribution or awards of support, notwithstanding that any consideration for said interest in the real estate may already be included in the marital property.*
11. The petitioner, as argued by the respondent, had no right to object to the transfer at the time it was made, being a transfer of respondent’s separate property and, once the property was transferred, had the parties not divorced the petitioner would have had no dower claim since respondent would not have owned the property at the time of her death.

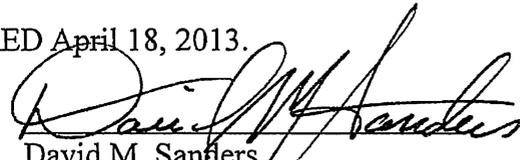
12. If the respondent had not transferred her interest in the real estate to her children the petitioner would have no rights or interest in the property other than a credit for his contribution to reduce the debt and half the increase in value of the property due to any improvements made during the marriage.
13. The respondent argues that the statute is not a mechanism devised to convert separate property into marital property but that appears to be just exactly what the very plain language of the statute does.
14. Respondent also argues that West Virginia Code § 43-1-2 was meant to refer only to property acquired during the marriage and, since the property in this case was not acquired during the marriage, the statute should not apply. The problem is that no authorities are cited to support that argument.
15. Whether it was the intention of the legislature to create a mechanism that could convert separate property to marital property is a question best decided by a reviewing court rather than a trial court though it seems a rather severe punishment for a simple oversight of which most people would not be aware.

WHEREFORE, the Family Court Judge of the Family Court of Greenbrier County, West Virginia, does ORDER and ADJUDGE as follows:

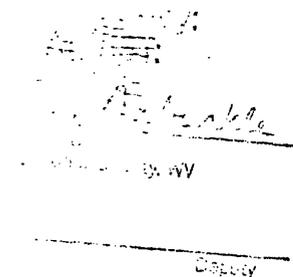
1. The value of the real estate , at the time of the conveyance , owned by respondent and conveyed to her children will be included in the marital estate..
2. This is a final order and any party aggrieved by this order may take appeal to the circuit court or both parties may take an appeal directly to the supreme court of appeals.

3. The Petition for appeal to the circuit court shall be within thirty days after the entry of this final order. The Petition for appeal to the supreme court shall be within fourteen days after the entry of the final order, by both parties filing either jointly or separately a notice of intent to appeal and waiver of right to appeal to the circuit court.
4. The Clerk of the Circuit Court shall mail a certified copy of this Order to the parties or to counsel of record.

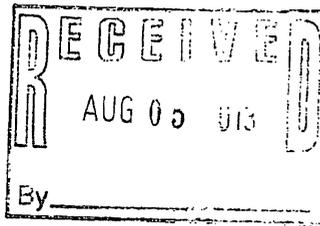
ENTERED April 18, 2013.


David M. Sanders
Family Court Judge

CIRCUIT COURT GREENEER CO., W.VA.
FILED
APR 19 2013
LOUVONNE ARBUCKLE, CLERK



Deputy



IN THE CIRCUIT COURT OF GREENBRIER COUNTY, WEST VIRGINIA

IN RE: THE MARRIAGE OF

ROSS STANLEY,
Petitioner,

v.

Civil Action No. 12-D-65

CAROLYN HAYNES STANLEY,
Respondent.

ORDER

On July 30, 2013, the Circuit Court of Greenbrier County held a hearing in the current matter. The Petitioner appeared in person, and represented by Martha J. Fleshman. The Respondent appeared in person, and represented by J. Michael Anderson. The Family Court requested the parties brief the issue of the applicability and effect of West Virginia Code § 43-1-2. The Circuit Court reviewed the record and video of the hearing, grants the appeal by the Respondent, reverses the Family Court order and remands to the matter for further hearing with instructions.

Standard of Review

With respect to a Family Court appeal to Circuit Court, the Circuit Court is given authority to either grant or deny the appeal, with or without a hearing. "As soon as practical after the last day a response to a petition for appeal is filed, if any, the circuit court shall enter an order granting or refusing the petition for appeal." Family Court Rule 31(a). See also, W. Va. Code § 51-2A-14(a).

If the Circuit Court agrees to consider a Petition for Appeal, West Virginia Code § 51-2A-14(b) provides that the circuit court may only consider the record, which consists

of the recording of the Family Court hearing and the exhibits, together with all documents filed in the proceeding. W. Va. Code § 51-2A-14(b). In reviewing a family court appeal, “[t]he circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard.” W. Va. Code § 51-2A-14(c).

Findings of Fact

1. In its order dated April 18, 2013, the Family Court of Greenbrier County made certain findings of fact.
2. The parties bifurcated the divorce proceeding, the Court granted the parties a divorce, and retained jurisdiction to resolve the issues of spousal support and equitable distribution.
3. The parties were duly and legally married in Greenbrier County, West Virginia, on July 3, 1997.
4. The Family Court found the stipulated facts are as follows: (a) Wife, in a 1995 divorce, acquired sole title to real estate acquired by her and her then husband in 1989. (b) The real estate at the time of that divorce was encumbered by a \$70,000.00 lien. (c.) Wife transferred her interest to her children in 2011, and retained a life estate to herself. (d) Respondent did not notify the Petitioner of that transfer of interest. (e) Petitioner in this action contributed \$30,000.00 to the reduction of debt against the real estate and made some improvements to the real estate.

5. West Virginia Code § 43-1-2 states “Any married person who conveys any interest in real estate shall notify his or her spouse prior to or within thirty days of the time of conveyance “ if the conveyance involves an interest in real estate to which dower would have attached if the conveyance had been made prior to the date of enactment of this statute.”
6. The Family Court ordered “The value of the real estate, at the time of conveyance, owned by the Respondent and conveyed to her children will be included in the marital estate.”

Conclusions of Law

1. In reviewing a family court appeal, “[t]he circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard.” W. Va. Code § 51-2A-14(c).
2. W. Va. Code § 42-3-1 was created as an inheritance mechanism for spouse whose decedent died domiciled in this state not for the purpose of equitable distribution of separate property.
3. The Legislature abolished both dower and curtesy pursuant to the enactment of West Virginia Code § 43-1-1 in 1992, the parties were married in 1997.
4. The Petitioner had no dower or curtesy interest in the Respondent’s the real estate acquired prior to their marriage “which would have attached if the conveyance had been made prior to the date of the enactment of this statute.”

The Petitioner fails to meet the condition enumerated in Virginia Code § 43-1-2

(b). The Respondent had no duty to notify the Petitioner of the conveyance because the parties were not married prior to the enactment of the statute and dower and curtesy were abolished prior to their marriage.

5. The Family Court's application of the law to the facts is an abuse of discretion.
6. The Family Court is a court of limited jurisdiction and permitted to exercise jurisdiction over those matters enumerated in Virginia Code § 51-2A-2. The Family Court has jurisdiction over "All proceeding for property distribution brought under article seven [§§ 48-7-101 et seq.], chapter forty-eight of this code;"
7. The Family Court is without jurisdiction to resolve matters relating to West Virginia Code § 43-1-1 et seq.

Discussion

The Respondent asserts one ground for appeal from the final order that the Family Court of Greenbrier County "erred in finding the entire value of the farm should be part of the marital estate." W. Va. Code § 42-3-1 was not enacted for the purpose of the division of separate property. The petitioner does not have dower or curtesy rights in the Respondent's separate property. The rights of dower and curtesy were abolished five years before the parties were married and the Family Court is without jurisdiction to act regarding this statute. The Family Court's application of the law to the facts is an abuse of discretion.

It is therefore **ORDERED** that;

1. The petition for appeal is **GRANTED**.
2. The final order entered by the Family Court of Greenbrier County which ordered "The value of the real estate, at the time of conveyance, owned by the Respondent and conveyed to her children will be included in the marital estate." is reversed.
3. The value of the real estate, at the time of conveyance, owned by the Respondent, and conveyed to her children, is the Respondent's separate property for the purpose of equitable distribution.
4. This civil action is **REMANDED** to the Family Court for the distribution of the real estate acquired by the Respondent prior to the marriage, pursuant to West Virginia Code § 48-7-101 et seq.
5. This is a **FINAL ORDER** disposing of the Respondent's Petition for Appeal.

The Clerk of the Court is hereby **ORDERED** to forward a copy of this Order to the counsel for parties at their respective addresses of record and a copy to the Family Court Judge.

Entered this 30th day of July, 2013



Joseph C. Pomponio, Jr.
Circuit Court Judge

CIRCUIT COURT GREENBRIER CO., W. VA.
FILED
AUG 02 2013
LOUVINE ARBUCKLE, CLERK

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Louvine Arbuckle
Greenbrier County, W.V.

By _____