

No. 35528 – *Barbara Renner and John Renner v. Edgar L. Bonner and Hazel E. Bonner, Melissa Cox Felske, Rosemary Lang, Brian Trunk, Michael Trunk, Ryan J. Renner, and David Renner*

**FILED**

**May 2, 2011**

released at 3:00 p.m.  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Ketchum, J., concurring:

As this case demonstrates, West Virginia’s statute relating to the partition of land is inartfully written and very confusing. Our cases applying that partition statute have done little to clarify the situation, and have left our partition law a “tangled mass of weeds.” *O’Dell v. Stegall*, \_\_\_ W.Va. \_\_\_, \_\_\_, 703 S.E.2d 561, 570 (2010). This Court should, in the near future, endeavor to refine and realign the meaning of the concepts underlying our partition jurisprudence to meet modern-day realities, and to provide West Virginia’s lawyers and lay people with guidance on how to fairly and easily resolve partition suits. *See, e.g., O’Dell, supra* (refining and updating the law of prescriptive easements); *Cobb v. Daugherty*, 225 W.Va. 435, 441, 693 S.E.2d 800, 806 (2010) (refining and updating the law of implied easements); *Somon v. Murphy Fabrication & Erection Co.*, 160 W.Va. 84, 232 S.E.2d 524 (1977) (refining and updating the law of adverse possession). In the meantime, any lawyer handling a partition suit should study a scholarly law review article that attempts to bring clarity to the darkness that is “the current state of partition law in West Virginia.” John Mark Huff, Note, “Chop It Up or Sell It Off: An Examination of the Evolution of West Virginia’s Partition Statute,” 111 W.Va.L.Rev. 169 (2008).

In the case *sub judice*, I believe that the trial court, on remand, should give careful attention to appellants' "landlocked" allegation. The appellants contend that they own a parcel of land that borders the property sought to be divided or sold. They claim their parcel will be landlocked if they are compelled to sell their one-ninth (1/9) interest in the property the appellees are requesting the Court to sell. The Court must determine if the appellants' interest will be prejudiced by a sale.

If the property *is* found to be partitionable, then the appellants' ownership of the adjoining parcel still *must* be considered. A cotenant owning adjoining land "is entitled to have his share allotted to him out of that part of the land adjoining his other lands only when it can be done without injury to the interests of his cotenants[.]" *Henrie v. Johnson*, 28 W.Va. 190 (1886); *Loudin v. Cunningham*, 82 W.Va. 453, 96 S.E. 59 (1918); *Garlow v. Murphy*, 111 W.Va. 611, 163 S.E. 436 (1932).

I concur with the majority's opinion.