

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

PAUL GUZICK, :
Plaintiff :
 :
Vs. : No. 13-1599
 :
GAIL GUZICK, :
Defendant :

Arlen R. Day, III, Esquire Counsel for Plaintiff
Carole J. Walbert, Esquire Counsel for Defendant

MEMORANDUM OPINION

Matika, J. - April , 2014

Before the Court is a Petition filed by Plaintiff titled "Plaintiff's Motion for Injunctive Relief." In this motion Plaintiff requests this Court to enjoin the Defendant from committing further waste upon the subject property, 292 Boulder Oak Drive, Palmerton, Pennsylvania, and allow him, Plaintiff, to take the necessary action to preserve this marital asset. Moreover, if Defendant fails to bring the mortgage, home equity line of credit, real estate taxes, and utility bills current, Plaintiff requests that the Court issue an order allowing him to bring these bills current and grant him possession of the home and award him all equity in this real estate as his distributive share as a consequence of Defendant's actions.

The Court held a hearing on Plaintiff's petition on March 24, 2014. Based upon the testimony presented at the hearing and

legal memorandums in support of each party's respective position the Court makes the following:¹

FINDINGS OF FACTS

1. Husband vacated the marital residence located at 292 Boulder Oak Drive, Palmerton, PA., on or about August 7, 2013.
2. By agreement of the parties, Wife enjoyed exclusive possession of the marital residence since October 2, 2013.
3. The marital residence is subject to a mortgage which is now in foreclosure due to non-payment.
4. Both Husband and Wife are obligated on this mortgage.
5. Both Parties desire to sell the marital residence as part of the equitable distribution claim in this divorce action.
6. Wife will be vacating the premises on or before April 30, 2014.
7. Husband desires to move back into the marital residence and attempt to satisfy the deficiencies on the mortgage, thereby bringing the mortgage out of foreclosure.
8. Both Parties are currently employed full time.

¹ Defendant, on March 2, 2014, filed what she titled to be a cross motion, although in actuality it is a counter motion, requesting that the Court order Plaintiff to make the necessary payments of a camper jointly owned by the parties and also to advertise the sale of this camper. However, at the hearing, Defendant withdrew on the record her motion.

9. Despite Wife's exclusive possession of the marital residence, there were no discussions or agreements between the Parties as to who would be responsible for debts related to the marital residence.
10. The only other significant asset of the marriage is a camper.
11. Both Parties contributed non-marital monies to the construction of the marital residence.
12. Husband desires to utilize a realtor from Lehigh County to market the real estate for sale.
13. Wife desires to utilize a realtor from the Palmerton area to market the real estate for sale.
14. The amount delinquent on the mortgage is approximately Six Thousand Dollars (\$6,000.00).

CONCLUSIONS OF LAW

1. Pursuant to 23 Pa.C.S.A. §3323(f),

"in all matrimonial causes, the court shall have full equity power and jurisdiction and may issue injunctions or other orders which are necessary to protect the interests of the parties or to effectuate the purposes of this part and may grant such other relief or remedy as equity and justice require against either party or against any third person over whom the court has jurisdiction and who is involved in or concerned with the disposition of the cause" (emphasis ours).
2. Husband's request, in asking the Court to award him all equity in the marital residence should he bring the

mortgage current, and as a consequence of Plaintiff's failure to pay this debt seeks an inequity in terms of the equitable distribution of the marital estate, in light of such things as the fact that some of the equity in this residence is Wife's non-marital equity and, other than a camper, the home is the only other significant asset of the marriage. Further, it would be patently unfair to give Husband all the equity in this asset. See *Prol v. Prol*, 935 A.2d 547 (Pa. Super. Ct. 2007).

3. Husband shall be entitled to move back into this residence on or after April 30, 2014 based upon Wife's acknowledgement that she will be moving out on or before that date.
4. Should Husband cure the default on the mortgage, he shall receive an appropriate credit.
5. The property should immediately be listed for sale.
6. There was no evidence presented on Husband's claim for Attorney fees.
7. Both Parties are under a legal obligation to pay the mortgage on this marital residence.

Accordingly, this Court issues the following Order:

