

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SUSANE E. STEGEMEIER and	§
DIANE E. MULROONEY,	§
	§ No. 616, 1999
Plaintiffs Below-	§
Appellants,	§
	§ Court Below—Court of Chancery
v.	§ of the State of Delaware,
	§ in and for New Castle County,
ANNE M. MAGNESS, individually	§ C.A. No. 12845
and as the CO-ADMINISTRATOR OF	§
THE ESTATE OF A. GRAY	§
MAGNESS, Deceased, and DONALD	§
L. MAGNESS, individually and as	§
TESTAMENTARY TRUSTEE	§
UNDER THE WILL OF A. GRAY	§
MAGNESS, Deceased,	§
	§
Defendants Below-	§
Appellees.	§

Submitted: February 18, 2000

Decided: February 28, 2000

Before **VEASEY**, Chief Justice, **WALSH**, and **HARTNETT**, Justices.

ORDER

This 28th day of February 2000, upon consideration of the appellants' opening brief and the appellees' motion to affirm, it appears to the Court that:

(1) The plaintiffs-appellants, Susane E. Stegemeier and Diane E. Mulrooney (collectively "Plaintiffs"), filed this appeal from the Court of Chancery's decision entering judgment in favor of the defendants, Anne M. Magness, co-

administrator of the estate of A. Gray Magness, and Donald L. Magness, testamentary trustee (collectively “Defendants”). The Plaintiffs, as the remaindermen of a residuary trust under their father’s will, brought an action alleging that the Defendants had breached their fiduciary duties in the form of self-dealing.

(2) In a post-trial opinion, dated January 6, 1998, the Court of Chancery, applying corporate law principles, found that Defendants had not breached their fiduciary duty. *Stegemeier v. Magness*, Del. Ch., C.A. No. 12845, 1998 WL 8851, (Jan 07, 1998). On appeal, however, this Court reversed on the grounds that trust law applied and that the burden of persuasion was on Defendants, rather than on Plaintiffs. *Stegemeier v. Magness*, Del. Supr., 728 A.2d 557 (1999). This Court then remanded the matter for a determination whether Defendants paid fair market value for certain property at issue. *Id.* at 566-67.

(3) On remand, the case was submitted on the basis of the original trial record. By Memorandum Opinion, dated November 23, 1999, the Court of Chancery held that Defendants had proven that they had paid fair market value for the lots in question. *Stegemeier v. Magness*, Del. Ch., C.A. No. 12845, 1999 WL 1083874 (Nov 23, 1999). The Court of Chancery viewed the remand instructions

with respect to its fair value determination to be somewhat ambiguous on the issue of whether it should apply a “clear and convincing evidence” or “preponderance of the evidence” standard of proof. For this reason, the court analyzed the facts of the case under both standards and held that Defendants had proven fair value even under the higher evidentiary standard of clear and convincing evidence.

(4) Upon a careful review of the record, we are satisfied that the Court of Chancery's conclusion that Defendants paid fair market value for the property at issue is legally correct. To the extent that the court's decision in favor of Defendants turns on factual determinations, particularly those involving credibility and competing expert witness testimony, we conclude that its findings are clearly supported by the evidence. While it may be argued that it was not necessary for the Court of Chancery to apply the clear and convincing evidence standard, we make no holding with regard to the appropriate standard by which a respondent must prove fairness since proof under the higher standard necessarily satisfies the lower standard.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery be, and the same hereby is, AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh
Justice