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CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: December 22, 2009
Decided: January 20, 2010

Crystal E. Long
5821 W. Geronimo Street
Chandler, AZ 85226

Michael F. McGroerty
Michael F. McGroerty P.A.
110 N. Pine Street
Seaford, Delaware 19973

Re: *Hitchens, et al. v. Hastings, et al.*
Civil Action No. 808-MG

Dear Ms. Long and Counsel:

I have reviewed your letters to the Court and all evidence relating to the exceptions Ms. Long took to Master Glasscock's Final Report. For reasons outlined below, I find that Ms. Long is entitled to take those exceptions, despite Mr. Hastings's argument to the contrary. I am not, however, persuaded by Ms. Long's exceptions. After conducting a *de novo* review of the evidence in question, I uphold Master Glasscock's Final Report in its entirety and instruct Master Glasscock to proceed with the partition of the commonly-held property.

In support of the argument that Ms. Long is not entitled to take exceptions to the Final Report, Mr. Hastings asserts the following chain of causality: Ms. Long failed to order a transcript of the Draft Report; Ms. Long therefore did not take a valid exception to the Draft Report;[1] and Ms. Long therefore is not entitled to take an exception to the Final Report.[2] Mr. Hastings appears to ignore, however,

[1] *See* Ct. Ch. R. 144(a)(1) (noting that when, as is the case here, the draft report was "entered into the record from the bench….any party taking exception to the draft report *shall* order a transcript of the report from the record….") (emphasis added).
[2] *See* Ct. Ch. R. 144(a)(1) (indicating that "[i]f the Master files a draft report, the only exceptions which may be filed to the final report are those which were filed to the draft report and disallowed, plus exceptions to any changes from the draft report made in the final report.").

Master Glasscock's letter dated October 28, 2009. In that letter, Master Glasscock allowed Ms. Long's exceptions to the Draft Report but held that the bench report of August 13, 2009 (which was the Draft Report) adequately addressed the issues of law and fact that constituted Ms. Long's exceptions.[3] There were, therefore, exceptions filed to the Draft Report that were disallowed, and Ms. Long can thus, per Rule 144, take exceptions to the Final Report.

Mr. Hastings makes an additional argument for why Ms. Long should not be permitted to take exceptions to the Final Report. This argument relates to Rule 144's timing requirements. Unfortunately, Mr. Hastings has mischaracterized those timing requirements. Rule 144 requires a party to file a *notice* of exception to a draft report within seven days of the date of that draft report. Contrary to Mr. Hastings's assertions, Rule 144 does *not* require the *exceptions themselves* to be filed within seven days. Here, Ms. Long filed a notice of exceptions to the Draft Report on August 20, 2009, which is seven days after Master Glasscock's August 13, 2009 oral bench report (which was the Draft Report). Thus, Ms. Long made a timely filing of notice of exceptions to the Draft Report. Mr. Hastings also mischaracterizes the timing requirements relating to exceptions to final reports. Rule 144 requires a party to file a notice of exception to a final report within seven days of *receiving notice* that the final report has been filed, *not within seven days of the date of the report itself.* Because Ms. Long resides in Arizona and because the Court sent notice of the October 28, 2009 Final Report to her via standard letter mail, I believe Ms. Long's November 6, 2009 filing of a notice of exceptions is within the seven-day window described in Rule 144. Assuming the Court sent Ms. Long this notice on October 28, 2009 (the same date of the Final Report itself) and not after one or two days of administrative processing, and assuming a letter takes two or three days to travel via normal mail from Delaware to Arizona, I conclude Ms. Long filed her notice within seven days of receiving notice of the Final Report. The assumptions I describe are conservative and reasonable ones; any changes in

[3] Master Glasscock disallowed the exceptions on their merits, and declined to examine the issue of their timeliness given that he had already disallowed them. As I discuss below, the exceptions were not untimely so far as Mr. Hastings appears to argue. Regardless of whether they were timely, however, I believe Master Glasscock has the discretion to examine and dismiss exceptions on their merits rather than rely on an analysis of their timeliness or the impact of a party not having ordered a copy of the transcript, even if that decision alters the contours of Rule 144 in a given case and creates for a litigant a right to further appeal that otherwise would not exist.

them likely would only favor Ms. Long.[4] Therefore, I find that Ms. Long made timely exceptions to the Final Report.

Having found that Ms. Long is entitled to take exception to the Final Report and that her exceptions were timely, I now turn to assess whether she is correct that Master Glasscock erred in finding fact or applying law. Ms. Long argues that Master Glasscock erred in finding that Mr. Hastings proved that he had met the requirements of adverse possession of TMP 231-13-10 parcel B (or, Parcel B), and in finding that no accounting is required in the matter of TMP 231-12-153 (or, Tax Parcel 153). I believe Master Glasscock was correct with both findings.

Regarding the issue of Parcel B, Master Glasscock determined that Mr. Hastings met the requirements of adverse possession. Ms. Long contests this, on the basis that Mr. Hastings did not provide evidence that renters were on site at Parcel B before 1987 and, thus, that the twenty-year period of adverse possession was not met. Ms. Long errs, however, in relying only on evidence relating to renters. I have reviewed Mr. Hastings's testimony relating to the many non-renters who occupied Parcel B throughout the 1960s and 1970s. Rather than summarize the lengthy, colorful story of the history of Parcel B and its occupants, I will be very brief in saying that I agree fully with Master Glasscock that the trial evidence, in total and beyond only that relating to renters, amply demonstrates the meeting of the requirements of adverse possession. I also note that I do not believe any sharing of payments between Mr. Hastings and Norman Hastings, during the time a Mr. Burton was living on and paying any rents on Parcel B, disrupts the ownership of Mr. Hastings via adverse possession or establishes any kind of new ownership interest for anyone else.

Regarding the issue of Tax Parcel 153, Master Glasscock determined that the commonly-held property for which Ms. Long seeks an accounting was not in fact the property that was covered under a sales contract between defendants and Marian Sanders, who is not a party in this action. Master Glasscock noted that evidence showed tax maps of the area do not accurately reflect the properties as actually held, and that Ms. Long was relying on those inaccurate tax maps in requesting an accounting of funds received by defendants per the sales contract. That is, Ms. Long was seeking accounting for a property in which she had no ownership entitlement. Ms. Long asserts in her exceptions that Mr. Hastings failed to provide proof that Ms. Sanders did not pay for and live on Tax Parcel 153. Ms.

[4] For example, if a letter takes more than three days to travel from Delaware to Arizona, then Ms. Long filed her exceptions to the Final Report even more quickly than Rule 144 required.

Long misunderstands the burden of proof, however. It is her burden to prove two things: that Ms. Sanders lived on and paid for property, and that the property Ms. Sanders lived on and paid for was the property that was commonly held by the parties in this action. Ms. Long has failed to meet her burden. After reviewing the testimony at trial and the many maps and documents provided to the Court, I reach the same conclusion as Master Glasscock: that the commonly-held property is not the property on which Ms. Sanders lived and for which Ms. Sanders paid, regardless of the number 153 that was attached to that property in the sales contract (a number relating to a parcel that itself may not be entirely that held in common, given the lengthy discrepancies between the various maps, deeds, and memories formed over the years). Accordingly, Ms. Long is not entitled to any accounting related to that property.

The Court denies petitioners' request for sanctions and attorney's fees.

With the Court having addressed in full Ms. Long's exceptions to the Final Report, Master Glasscock is instructed to proceed with the partition of the commonly-held property.

IT IS SO ORDERED.

Very truly yours,

William B. Chandler III

WBCIII:bjt