

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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August 4, 2012

Jason C. Powell, Esq.
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824 Market Street, Suite 1000
PO Box 1351
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Reverend Candy Miles
305 Lincoln Drive
Chestertown, MD 21620

RE: In the Matter of the Real Estate of Patricia Miles Proffitt v. Candy Miles,
Individually and as the Administratrix of the Estate of James T. Miles
C.A. No. 5592-MA

Dear Counsel and Reverend Miles:

This action came before me on a Petition for Partition of a property known as 4703 Mermaid Boulevard, Wilmington, Delaware (the "Property"). The Property now has been sold, and the net proceeds are being held for distribution by the Trustee, Donald L. Gouge, Jr., Esquire.¹ Pending before me is a claim against the proceeds of the sale by Petitioner Patricia

¹ Trustee's Return of Sale was filed on June 26, 2012, and provides the Court with three different proposed orders for distribution in light of the pending fee application. DI 30.

Miles Proffitt for attorney's fees and costs in the amount of \$13,989.19.² This is my draft report denying the request for attorney's fees for the reasons set forth below.

The Property previously had been owned by Pearl E. Miles, who died intestate on February 1, 1992, survived by a husband, Grant James Miles, and six children. One of Pearl's children, James T. Miles, subsequently died on April 6, 2001 and was survived by his wife, Petitioner Patricia Miles Proffitt. On December 13, 2007, Grant James Miles died, and was survived by his daughter, Respondent Candy Miles, three sons, and four grandchildren who were the issue of another son who had predeceased Grant James Miles. According to the partition petition, the three sons and four grandchildren of Grant James Miles had conveyed their respective interests in the Property to Candy Miles (hereinafter "Miles") solely for the purpose of acquiring financing to make improvements to the Property to obtain a higher sales price. In her petition, Proffitt alleged that she had inherited a life estate in one-sixth of the Property upon the death of her husband, and that the parties had been unable to agree on purchasing her interest or listing the Property for sale.

At the Rule to Show Cause hearing on September 14, 2010, Miles argued that she needed more time to make improvements to the Property, but claimed that she had no intention of cheating her former sister-in-law out of anything to which she was entitled. Because I was unsure whether Proffitt had any property interest in the Property under the laws of intestate succession, *see* 12 Del. C. §§ 501 *et seq.*, I asked counsel to provide me with a legal memorandum explaining the basis of Proffitt's claim of ownership, which was filed on October 12, 2010.³ On December 17, 2010, I issued a draft report in which I recommended dismissal of

² Petition for Payment of Counsel Fees and Costs filed May 31, 2012. DI 27.

³ *See* Letter from Jason Powell, Esquire. DI 8.

the partition petition.⁴ After exceptions were filed and briefed, I withdrew my draft report and issued a final report on September 20, 2011, in which I concluded that Proffitt had inherited an interest in the Property from her husband which ripened into a present life estate in an undivided one-sixth of the Property upon the death of Grant James Miles.⁵ I also concluded that Miles held an undivided five-sixths of the Property in fee simple, and a remainder interest in the remaining undivided one-sixth of the Property. Since Proffitt and Miles were co-tenants, Proffitt was entitled to seek partition. No exceptions were taken to my final report, which was approved by Order of the Court dated October 6, 2011.⁶ A trustee was appointed on October 7, 2011,⁷ and a contract for sale of the Property was pending when Proffitt filed her request for attorney's fees on May 31, 2012.

Proffitt now argues that her attorney's fees should be paid from the proceeds of the sale because she has expended substantial fees and costs in this matter in having to respond to Miles' objections and to establish her interest in the property. Furthermore, she claims that her efforts will ultimately benefit the remaining owners of the Property because, but for her efforts, the Property would not have been sold. Miles objects to Proffitt's attorney's fees and costs being paid out of the proceeds from the sale of the Property, arguing that she had acted with integrity throughout the proceedings and had cooperated fully with the court-appointed trustee. In reply, Proffitt argues that she had reached out to Miles on several occasions to settle this matter, with no success, and accuses Miles of frustrating her efforts.

In Delaware, the normal rule is that each party bears the burden of paying the fees of his or her own counsel, and that the shifting of attorney's fees occurs only in a few circumstances.

⁴ DI 12.

⁵ DI 17.

⁶ DI 18.

⁷ DI 21.

See Reagan v. Randell, 2002 WL 1402233 (Del. Ch. June 21, 2002). These circumstances are: (1) cases where fees are authorized by statute; (2) cases where the applicant creates a common fund or non-monetary benefit for the benefit of others; (3) cases where the underlying (pre-litigation) conduct of the losing party was so egregious as to justify an award of attorney's fees as an element of damages; and (4) cases where the court finds that the litigation was brought in bad faith or that a party's bad faith conduct increased the costs of litigation. *Id.* at *3 (citing *Arbitrium (Cayman Islands) Handels AG v. Johnston*, 705 A.2d 255 (Del. Ch. 1977)).

Proffitt relies on the common benefit exception to the above rule, and cites *In re Mayer*, 1977 WL 23815 (Del. Ch. June 9, 1977), a case when the Court allowed payment of petitioner's counsel fees from the proceeds of a partition sale. However, as Proffitt herself has observed, *Mayer* not only involved an action to clear title to the property against claims of ownership by third parties, but also required considerable genealogical research to be undertaken by petitioner's counsel to determine the next of kin who had an interest in the property that was the subject of the partition action. The circumstances in this case are totally inapposite. Here, there were no adverse claims to title by third parties. The occupants of the Property were Miles' three brothers who had conveyed their legal title to Miles for a limited purpose. Proffitt only had the burden of establishing her own interest in the Property to the Court's satisfaction, which is a burden any petitioner in a partition action has to bear.

The common benefit exception comes into play when a group realizes a benefit, which benefit, absent one person's efforts, would not exist. *See Moore v. Davis*, 2011 WL 3890534 (Del. Ch. Aug. 29, 2011). Under those circumstances, it is fair to spread the costs of producing that benefit among the group that has received the benefit. In *Mayer*, the next of kin who benefited from the petitioner's efforts had been unaware that they even had an interest in the

property that was the subject of the quiet title and partition action; the next of kin would have realized a double windfall if petitioner's attorney's fees and costs had not been spread among the group. In a typical partition action, however, a forced sale results in the co-tenants exchanging an asset of equal value, i.e., the co-tenants exchange an undivided fractional ownership in the property for a corresponding fractional interest in the net value of the property upon sale. The result is a wash and, therefore, no benefit to the group results from a petitioner's actions in a typical partition case. *See Moore*, Master's Report at * 2, *supra*. This case is no different than the typical partition case, except for the fact that Proffitt held only a life estate in an undivided fractional interest in the Property. No common benefit has been accomplished for the co-tenants; therefore, application of the common benefit exceptions is not warranted in this case.

Proffitt's remaining arguments concern Miles' alleged lack of cooperation and frustration of Proffitt's efforts, and rely on facts outside of the record, i.e., prior to the onset of litigation or after the Rule to Show Cause hearing when the parties attempted to resolve their differences privately. However, even if I accept the facts most favorable to Proffitt, she has not demonstrated bad faith on the part of Miles, *see, e.g., Reagan*, mem. op. at *3, *supra* (where the defendant in bad faith has forced the plaintiff to bring the lawsuit to enforce a legal claim that the defendant knew was valid, "a conclusion that a plaintiff acted in 'bad faith' requires the Court to find conduct so fraudulent, frivolous, vexatious, wanton or oppressive as to amount to egregiousness.") (quoting *Arbitrium*, 705 A.2d at 232)), or any of the other exception to the rule that each side bears her own fees and costs.

Based on the foregoing reasons, I recommend that Proffitt's request for her attorney's fees and costs to be paid out of the net proceeds of the sale of the Property should be denied.

When this draft report becomes final, the proposed order of distribution showing zero dollars (\$0) to be paid to Jason C. Powell, Esquire shall be granted.

Very Truly Yours,

/s/ Kim E. Ayvazian

Kim E. Ayvazian
Master in Chancery

KEA/kekz

cc: Register in Chancery
Donald L. Gouge, Jr.