

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000831-MR

KLINTON E. KELLEY, JR.

APPELLANT

v. APPEAL FROM CARLISLE CIRCUIT COURT
HONORABLE TIMOTHY A. LANGFORD, JUDGE
ACTION NO. 09-CI-00074

STEPHEN J. KELLEY AND
MELANIE W. KELLEY

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Klinton Kelley, Jr. appeals from a Carlisle Circuit Court judgment confirming the three commissioners' recommended property partition.

Klinton claims that the geographical remoteness of the parcels awarded to him

created an unfair and inequitable distribution. Finding no error in the circuit court judgment, we affirm.

When these proceedings began, Klinton and Steve and Melanie Kelly¹ were co-tenants of 1,690.79 acres of land located in Carlisle County. The property was divided into twenty-one parcels. In 2005, the property was valued at \$2,991,400. Steve and Melanie owned an undivided eighty percent interest in the property. Klinton owned an undivided twenty percent interest. While some of the parcels are adjacent to one another, they are not all contiguous with each other. The parcels are intermingled with parcels owned by other individuals. Steve and Melanie individually own adjacent parcels on which they reside. Klinton does not reside near the property.

On September 23, 2009, Steve and Melanie petitioned the Carlisle Circuit Court to appoint commissioners to equitably divide the property pursuant to KRS 381.135(4). The petition requested partition based upon the parties' inability to jointly manage the property. On November 17, 2009, Klinton responded to the petition and joined Steve and Melanie in their request. In his response, Klinton proposed that an equitable division would award him parcels 12, 17, and 21. These parcels are centrally located and run continuously to form one large parcel of land.

On January 26, 2010, the circuit court appointed three commissioners. On February 3, 2010, the commissioners partitioned the property and awarded Klinton parcels 2 (less 6 acres), 3, 6, 10, 11, and 19. Steve and Melanie were

¹ Steve and Melanie are Klinton's paternal uncle and aunt.

awarded parcels 1, 4, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 21, and 6 acres from parcel 2. Despite Klinton's objections, the Carlisle Circuit Court adopted the commissioners' partition recommendation. This appeal follows.

Kentucky law generally favors a fair and equitable partition in lieu of a sale of land. *Purcell v. Purcell*, 303 Ky. 478, 198 S.W.2d 43, 44-45 (1946).

Following a petition for partition, the court may order division and appoint three commissioners to divide the property. KRS 381.135(3) and (4). Following a circuit court appointment,

The commissioners shall equitably determine the allotment to the parties of their respective interest in the land. A registered land surveyor shall perform the actual survey of the land in accordance with the determination made by the commissioner, and prepare the descriptions of the land, including all related maps, plats, and documents, and he shall affix thereto his personal seal and signature, unless such actual survey and the resultant description, maps, plats, and documents pertaining to this land are already in existence. The commissioners shall make report thereof to the court, which may either confirm, set aside, or remand the report to the commissioners for correction.

KRS 381.135(6).

In order to equitably divide the property, the commissioners must consider the parties' interest in the property as well as their individual circumstances. As the former Court of Appeals stated, "[t]he equitable rule is to lay off a portion to each cotenant adjoining the lands owned by him, if this can be done without material injury to the other cotenants, or, if this cannot be done, then

so to allot the lands as to best the convenience of all the parties.” *Howard v. Long*, 238 Ky. 822, 38 S.W.2d 951, 952 (1931).

A review of the record indicates that the circuit court properly followed all necessary procedures provided by KRS 381.135. Further, we conclude that the record contains ample evidence to support the circuit court’s conclusion that the partition was fair and equitable.

First, Klinton financially benefited from the commissioners’ award. Although he owned twenty percent of the property, based upon the feasibility of partitioning the land, the commissioners awarded Klinton twenty-one percent of the property. In addition, the parcels awarded to Klinton have a higher monetary value than the parcels he requested.

Further, we are not persuaded by Klinton’s claims that the remoteness of his allocated parcels frustrates his goal of renting the parcels for farming. While he was awarded parcels in opposite areas of the property, many of the parcels are adjoined. Klinton did not allege that the parcels were uninhabitable or not conducive to farming. Klinton failed to demonstrate how the commissioners’ distribution was unfair or even inconvenienced him. Inequity does not exist simply because Klinton requested other parcels.

Accordingly, we affirm the Carlisle Circuit Court judgment.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Todd Elmore
Mayfield, Kentucky

BRIEF FOR APPELLEE:

Michael W. Hogancamp
Bardwell, Kentucky