NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JAMES SCHWARTZMAN, ESQUIRE CO-EXECUTOR OF THE ESTATE OF EDWARD L. WOLF AND ARLEEN L. WOLF, BOTH IN HER INDIVIDUAL CAPACITY AND AS CO-EXECUTOR OF THE ESTATE OF EDWARD L. WOLF Appellees v. MICHAEL B. WOLF, ESQUIRE, DEBORAH WOLF, BEM ENTERPRISES, INC., HAUTEUR RESOURCES, LLC AND WOLFE EQUITIES, INC. Appellants MICHAEL B. WOLF, ESQUIRE v. ARLEEN L. WOLF APPEAL OF: MICHAEL B. WOLF, ESQUIRE	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2823 EDA 2011

Appeal from the Judgment Entered October 21, 2011
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 00388 Apr. Term 2008;
Nos 000881 Mar. Term 2008

BEFORE: MUNDY, J., OTT, J., and PLATT, J.*

MEMORANDUM BY MUNDY, J.: Filed: January 14, 2013

Appellant, Michael B. Wolf, Esquire, appeals[1] from the October 21, 2011 judgment of $32,278.74 entered in favor of Appellee, Arleen L. Wolf.

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* Retired Senior Judge assigned to the Superior Court.

After careful review, we vacate the judgment and remand for further proceedings.

The trial court summarized the relevant facts of this case as follows.

> [Appellant] is an attorney licensed to practice law in the Commonwealth of Pennsylvania. [Appellant] is the son of Edward L. Wolf, ("Edward") deceased. After divorcing [Appellant]'s mother, Edward married Arleen Wolf ("Arleen") in 1974. Edward was a well respected Philadelphia trial lawyer who practiced for many years as a named partner at the law firm of Segal, Wolf, Berk, Gaines, and Liss. [Appellant] and Edward practiced law together at that firm.
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> On January 29, 1999, Edward and [Appellant] formed a partnership to acquire real estate for the purpose of reselling and renting properties. It was understood that it would be necessary to renovate properties, mortgage properties and to perform pertinent activities in connection with the venture. Edward and [Appellant] executed a Partnership Agreement.
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> The Agreement provides as follows:
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> 1. It is hereby understood between the parties hereto that [Appellant] shall perform all manner of work in connection with servicing these properties and that Edward would only advise.
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> 2. The costs of financing this operation shall be borne by Edward and all of the properties shall be owned, either of

(Footnote Continued) ––––––––––––––––––––

[1] Although Appellant purports to appeal from the September 23, 2011 order granting Appellee's petition for distribution, his appeal properly lies from the entry of judgment. ***Hart v. Arnold***, 884 A.2d 316, 325 n.2 (Pa. Super. 2005) (citation omitted), *appeal denied*, 897 A.2d 458 (Pa. 2006).

record or by understanding, in both names as tenants in common.

3. It is a fundamental agreement between the parties that [Appellant] shall not profit from the project until all of the funds which have been expended by Edward have been recouped, including the interest Edward has incurred in realizing these sums.

4. After Edward has received back his entitlement, at that point [Appellant] and Edward shall share equally in any profits or losses of this venture.

5. in the event of a disagreement between the parties or their successors, heirs and assigns, concerning the partnership, a dissolution and/or sale of the properties will be achieved by the following procedure.
   a. Each party will secure an individual appraiser from an appraiser of their choice. The average price of these two appraisals will be the sale price or buying price by either of the parties.
   b. If the properties cannot be sold in that manner, then the two appraisers will place the matter for sale and both appraisers will agree as to the market price at which the property will be sold.
   c. Each party will share the expenses of the sale equally.

Initially, real estate purchases were financed through Edward's line of credit with PNC Bank which he held jointly with Arleen. Edward and Michael purchased twenty seven (27) properties as partnership properties. Twenty four of the properties were titled as "Joint Tenants with Right of

Survivorship", three (3) of the properties were titled in [Appellant]'s name only.

In addition to the foregoing properties, [Appellant] also donated his interest in two properties that he held a partial ownership interest in to the partnership and also donated three (3) properties. The deeds for these properties were titled "Joint Tenants with Right of Survivorship".

The following seven properties are not partnership properties: 4618 Mansion Street, Philadelphia, 18 Beach Drive, Brigantine, New Jersey, 7147 Boca Grove Place, B 630 D Unit 210, Bradenton, Florida, 138 East Sail, Little Egg Harbor, [New Jersey,] 1433 Pemberton, Philadelphia, 173 Krams Avenue, Philadelphia, and 3910 Terrace Street, Philadelphia. The Brigantine, Little Egg Harbor, Pembertion, and Krams properties were sold.

The property at 4618 Mansion Street, Philadelphia, Pa. was purchased by Edward, [Appellant], and Arleen as Joint Tenants with Right of Survivor[ship] prior to the creation of the Partnership. This property is currently owned by [Appellant] and Arleen as Joint Tenants with Right of Survivorship.

The property at 7147 Boca Grove Place, B 630 D, Unit 201, Bradenton, Florida is owned by BEM. BEM is a New Jersey corporation established in January 2005 by Barry Kimmel, Edward, and [Appellant] for the purpose of acquiring real estate. Each shareholder owned one third of the stock of BEM. Currently, [Appellant] owns two thirds since he purchased Barry Kimmel's shares and the Estate of Edward L. Wolf owns the other one third share. Lastly, the 3910 Terrace Street property was purchased by [Appellant] and is owned by [Appellant] solely.

Initially, Arleen was designated by Edward and [Appellant] to maintain the record for their real estate venture and to collect rents. At some time in

> October 1998, Arleen had no involvement in any real estate business involving [Appellant] and Edward. Arleen was never a partner in the partnership.
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> In November 2001, Edward approached [Appellant] and asked [Appellant] to sign a promissory note in favor of Edward for $602,000. The note was signed by Edward and [Appellant] as co-obligors. [Appellant] did not request any documentation to support the $602,000 figure.
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> On October 4, 2006, Edward died. Under the terms of Edward's will, Arleen received all of the marital property including an apartment building in Philadelphia that houses an artist's studio, as well as three other units, a property on North America St., Philadelphia, a paid for marital home, approximately $500,000 in cash, Edward's retirement accounts and a silver collection.

Trial Court Opinion, 8/16/10, at 1-4.

On March 7, 2008, Appellee and the Estate filed their initial complaint seeking to recover monies for repayment of loans and breaches of the partnership agreement. Appellees subsequently filed an amended complaint on April 24, 2008. In their amended complaint, Appellees alleged 15 separate counts, spanning over 900 separate paragraphs. Following a lengthy discovery process, Appellees again amended their complaint on February 3, 2009, prior to the commencement of trial.

In February 2009, a bench trial was conducted before the Honorable Albert W. Sheppard, Jr. On February 19, 2010, Appellant filed a motion to strike *lis pendens* and sought the trial court's permission to sell certain properties. Relevant to the instant appeal, the trial court entered an order

granting Appellant leave to sell the property at 4618 Mansion Street on July 14, 2010. The trial court ordered the proceeds from the sale placed into an interest-bearing escrow account with counsel for both parties to be the escrow agents.

On August 16, 2010, the trial court issued its findings of fact. The trial court ordered Appellant to pay Appellee $16,509.00 plus 5% interest and a 10% collection fee. Appellant was also required to pay to the Estate, $277,547.16 plus 5% interest per annum and a 10% collection fee on the $602,000.00 promissory note. The trial court also found that Appellee was entitled to the proceeds from Edward's capital account as of the date of his death. Relevant to this appeal, the trial court also found that 4618 Mansion Street was not a partnership property. On August 26, 2010, Appellee filed a motion for the trial court to mold its decision into a judgment. On February 24, 2011, the trial court filed an order and opinion entering a judgment in the amount of $16,509.00 with 5% interest from January 31, 2008 plus a 10% collection fee in favor of Appellee, and against Appellant; $277,547.16 plus 5% interest from November 13, 2001 and a 10% collection fee in favor of the Estate, and against Appellant; and $136,223.00 representing the balance of Edward's capital account in favor of the Estate, and against Appellant. On March 23, 2011, both Appellee and the Estate filed praecipes to mark the judgment satisfied.

On June 23, 2011, the 4618 Mansion Street property was sold for $164,000.00, and the net proceeds from the sale were $138,463.70. On July 28, 2011, Appellee filed a petition for distribution of proceeds from the escrow account set up pursuant to Judge Sheppard's July 14, 2010 order. Judge Sheppard passed away on September 4, 2011 and the case was reassigned to the Honorable Mark I. Bernstein. Judge Bernstein heard oral arguments on Appellee's petition on September 20, 2011, no hearing was held and no testimony was taken. On September 23, 2011, Judge Bernstein entered an order allowing for the distribution of the proceeds from the sale. The order directed $36,953.11 to be disbursed to Appellant and $101,510.59 to Appellee. On October 18, 2011, Appellant filed a timely notice of appeal.[2]

Thereafter, on October 21, 2011, the trial court entered a judgment in favor of Appellee for $101,510.59. On February 2, 2012, the parties stipulated to reduce Appellee's judgment to $32,278.74, and to disburse $69,231.85 to Appellee and $25,128.11 to Appellant. The parties further agreed to allow the remaining $44,103.74 to remain in escrow pending the outcome of this appeal. The stipulation was entered by the trial court that same day.

On appeal, Appellant presents the following 18 issues for our review.

> 1. Did the trial court err as a matter of law and/or abuse its discretion in granting [Appellee]'s

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[2] Appellant and the trial court have complied with Pa.R.A.P. 1925.

Petition for Distribution of Proceeds of Sale for 4618 Mansion Street?

2. Did the trial court erred [sic] as a matter of law and/or abuse its discretion in failing to determine that [Appellee]'s Petition for Distribution of Proceeds of Sale for 4618 Mansion Street was untimely and/or procedurally incorrect?

3. Did the trial court err as a matter of law and/or abuse its discretion in considering [Appellee]'s Petition for Distribution of Proceeds of Sale for 4618 Mansion Street after Orders to Satisfy Judgment in the same matter were filed?

4. Did the trial court err as a matter of law and/or abuse its discretion in failing to deny [Appellee]'s Petition for Distribution of Proceeds of Sale for 4618 Mansion Street based on the doctrine of res judicata?

5. Did the trial court err as a matter of law and/or abuse its discretion in failing to find that [Appellee] was judicially estopped from asserting the requested relief [sic] her Petition for Distribution of Proceeds of Sale for 4618 Mansion Street?

6. Did the trial court err as a matter of law and/or abuse its discretion by not finding that the $34,773.51 "original investment" was included in the calculation of the $602,000 Note?

7. Did the trial court err as a matter of law and/or abuse its discretion in failing to recognize that pursuant to Judge Sheppard's Orders and Opinions dated August 16, 2010 and January 24, 2011, [Appellant] has repaid the original investment to the Estate?

8. Did the trial court err as a matter of law and/or abuse its discretion by ordering [Appellant] to

pay [Appellee] funds for an investment that [Appellant] paid back to the Estate?

9. Did the trial court err as a matter of law and/or abuse its discretion in permitting [Appellee] to re-litigate the issue of who is entitled to reimbursement of the "original investment?"

10. Did the trial court err as a matter of law and/or abuse its discretion by awarding money to [Appellee] for "back rents" when [Appellee] previously took the position in the same litigation that the Estate, not her [sic] individually, was entitled to "back rents?"

11. Did the trial court err as a matter of law and/or abuse its discretion by awarding money to [Appellee] for "back rents" for "back rents" [sic] when the court had already determined the amount of money to which the Estate was entitled from [Appellant]?

12. Did the trial court err as a matter of law and/or abuse its discretion by awarding money to [Appellee] for "back rents" in the face of a lack of competent evidence in the record to determine the proper amount of alleged back rents?

13. Did the trial court err as a matter of law and/or abuse its discretion by awarding money to [Appellee] for a mortgage payoff for 4618 Mansion Street as the lengthy complaint filed in the above matter contains no allegation relating to the mortgage payoff?

14. Did the trial court err as a matter of law and/or abuse its discretion by failing to require [Appellee] to file a new lawsuit relating to all claims asserted in her Petition for Distribution of Proceeds of Sale for 4618 Mansion Street?

15. Did the trial court err as a matter of law and/or abuse its discretion by not finding that the

Estate of Edward L. Wolf is a necessary and indispensable party relating to the claims asserted in the Petition for Distribution of Proceeds of Sale for 4618 Mansion Street?

16. Did the trial court err as a matter of law and/or abuse its discretion by not finding that the Estate of Edward L. Wolf was responsible for paying [Appellee] some or all of the monies she sought in her Petition for Distribution of Proceeds of Sale for 4618 Mansion Street, as the Estate received those same monies from [Appellant]?

17. Did the trial court err as a matter of law and/or abuse its discretion by awarding [Appellee] money for a mortgage payoff when the evidence reflected that the mortgage was paid in full?

18. Did the trial court err as a matter of law and/or abuse its discretion by allowing [Appellee] to recovery [sic] money for the sums that were paid out of the sale of the house towards utility bills and repairs because [Appellee] was a joint owner of the property and was equally responsible for the upkeep expenses?

Appellant's Brief at 5-6.[3]

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[3] We note that the order of issues addressed in the argument section of Appellant's brief does not mirror the order set forth in his statement of questions presented. We will therefore proceed to address Appellant's claims in the order they are presented in his argument.

In Appellant's first issue, he argues generally that the trial court erred in granting Appellee's petition for distribution of the escrow funds. As such, issue one is addressed throughout this memorandum by our resolution of Appellant's remaining specific 17 issues.

(Footnote Continued Next Page)

We begin by noting our well-settled standard of review.

> To the extent that the questions presented are issues of law, our standard of review is *de novo,* and our scope of review is plenary. It is also relevant that, in equity matters … the appellate courts are authorized to review questions concerning whether sufficient evidence supports the factual findings; whether factual inferences and legal conclusions are correct; and whether there has been an error of law or abuse of discretion.

Schwartz v. Rockey, 932 A.2d 885, 891 (Pa. 2007) (citation omitted).

In Appellant's second and third issues on appeal, he contends that the trial court was without jurisdiction to consider Appellee's petition, which Appellant characterizes as an untimely post-trial motion. Appellant's Brief at 16. Specifically, Appellant avers that because Appellee and the Estate both marked their respective judgments satisfied, the case was closed. ***Id.*** Appellee counters that her petition is not a post-trial motion, but rather a petition for distribution of funds specifically contemplated by Judge Sheppard's July 14, 2010 order. Appellee's Brief at 13.

As a general rule, post-trial motions must be filed within ten days of the verdict. Pa.R.C.P. 227(c)(1). As our Supreme Court has previously

(Footnote Continued) ––––––––––––––––––––

At the outset, we also observe that in Appellant's sixth, seventh, eighth and ninth issues, he argues that the trial court erred with regard to Appellee's claim that she was owed $34,773.51 for her original investment in the property. However, we note that the trial court's order did not award Appellee any money for her original investment, nor has Appellee filed a cross-appeal. We therefore express no opinion on these issues as they are moot.

noted, "[t]he purpose [of post-trial motions] is to provide the trial court with an opportunity to correct errors in its ruling and avert the need for appellate review." ***Chalkey v. Roush***, 805 A.2d 491, 494 n.9 (Pa. 2002).

Upon review, we agree with Appellee that her petition cannot be characterized as an untimely post-trial motion. While it is true that Appellee and Estate marked their respective judgments as satisfied with regards to issues raised at the February 2009 bench trial, we agree that issues regarding 4618 Mansion Street were not closed. First, Judge Sheppard's July 14, 2010 order specifically contemplated future proceedings by requiring that all proceeds from the sale of the property be placed into an escrow account and requiring that a petition for distribution be filed in the trial court before funds would be released. Trial Court Order, 7/14/10, at 1. Second, we agree with Appellee that it would be nonsensical to hold her to Rule 227.1's ten-day deadline when the property was not sold for ten months after Judge Sheppard's verdict. We agree with the trial court's conclusion that, were we to adopt Appellant's reasoning, the funds would just sit in escrow conceivably forever, because the trial court would never have jurisdiction to consider a petition for distribution of said funds. ***See***

Trial Court Opinion, 6/5/12, at 3. As a result, we conclude Appellant is not entitled to relief on these issues.[4]

We next consider Appellant's fourth, fifth and tenth issues together. Appellant avers that Appellee's claim for rental income is barred by the doctrines of *res judicata* and judicial estoppel. Specifically, Appellant contends that because Appellee took the position in her complaint that the Estate was entitled to one-half of the proceeds from 4618 Mansion Street's sale or rental, she cannot now assert that she is personally entitled to said income. Appellant's Brief at 17, 19.

"The doctrine of *res judicata* holds that an existing final judgment rendered on the merits, without fraud or collusion, is conclusive of causes of action and of facts and issues thereby litigated, and also of those issues that could have been litigated in the first suit but were not, between the parties of the first suit and their privies." ***LSI Title Agency, Inc. v. Evaluation Servs., Inc.***, 951 A.2d 384, 392 (Pa. Super. 2008) (citation omitted; italics added), *appeal denied*, 960 A.2d 841 (Pa. 2008).

> The doctrine of *res judicata* will preclude an action where the former and latter suits possess the following common elements: (1) identity of issues;

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[4] Similarly, in Appellant's 13th and 14th issues, he avers that the trial court lacked jurisdiction to consider Appellee's claim for the balance due on the mortgage, arguing that her petition is an untimely request for post-trial relief. ***See*** Appellant's Brief at 24-25. As we have explained above, we decline to find that Appellee's petition was an untimely post-trial motion.

> (2) identity in the cause of action; (3) identity of persons and parties to the action; and (4) identity of the capacity of the parties suing or being sued.

Gray v. Buonopane, 53 A.3d 829, 835 n.3 (Pa. Super. 2012) (internal quotation marks and citation omitted).

Likewise, our Supreme Court has explained the doctrine of judicial estoppel as follows.

> Judicial estoppel is an equitable, judicially-created doctrine designed to protect the integrity of the courts by preventing litigants from "playing fast and loose" with the judicial system by adopting whatever position suits the moment. Unlike collateral estoppel or *res judicata*, it does not depend on relationships between parties, but rather on the relationship of one party to one or more tribunals. In essence, the doctrine prohibits parties from switching legal positions to suit their own ends.

Sunbeam Corp. v. Liberty Mut. Ins. Co., 781 A.2d 1189, 1192 (Pa. 2001) (internal citation omitted; italics added). As a result, "judicial estoppel is properly applied only if the court concludes the following: (1) that the appellant assumed an inconsistent position in an earlier action; *and* (2) that the appellant's contention was 'successfully maintained' in that action." ***Black v. Labor Ready, Inc.***, 995 A.2d 875, 878 (Pa. Super. 2010) (emphasis in original; citation omitted).

In this case, Appellant bases his *res judicata* and judicial estoppel arguments on the following paragraph in Appellee and the Estate's second amended complaint.

> 508. Once all notes and post-note contributions have been paid off and satisfied, all proceeds from the sale or rental of 4618 Mansion St. must be divided evenly between the Estate and [Appellant].

Appellee's Second Amended Complaint, 2/3/09, at ¶ 508. Appellant argues that Appellee cannot now claim back rent when she previously claimed the Estate was entitled to rental income. For the following reasons, we disagree.

While it is true that Appellee asserted that the Estate was entitled to rental income from 4618 Mansion Street,[5] that was part of Appellee's claim that 4618 Mansion Street was partnership property. The issue as to ownership of 4618 Mansion Street and the amount of rental income due to the respective owners is not the same issue. We therefore conclude that Appellee's claim for back rent is not barred by *res judicata*.

Nor can we agree with Appellant that Appellee was judicially estopped from seeking back rental income to her personally. As noted above, the doctrine of judicial estoppel requires that the first position of the estopped party be successful. ***Black***, ***supra*** at 878. Contrary to Appellee's argument, Judge Sheppard decided that 4618 Mansion Street was not partnership property. As a result, Appellee's argument that the Estate has an ownership interest in 4618 Mansion Street and is entitled to one-half of the rental income did not prevail. We therefore cannot say that it was a

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[5] Moreover, it may well be that the Estate is entitled to rental income. However, the Estate is not a party to this appeal.

"successful" position because Judge Sheppard did not agree with Appellee's argument that 4618 Mansion Street was partnership property. As a result, we conclude Appellant is not entitled to relief on either of these issues.

In his 11th and 12th issues, Appellant argues that even if the trial court was allowed to consider Appellee's petition, it lacked sufficient evidence in the record to determine the amount of rental income owed to her. Appellant's Brief at 21. Appellant further argues that Appellee only provided partnership tax returns for years 1999 through 2002, the trial court failed to take into account any of the maintenance expenditures for the property, and "should have ordered additional discovery to ascertain the net rental income over the life of 4618 Mansion [Street]." ***Id.*** at 22.

Appellee counters that the record does support the trial court's calculations. Appellee's Brief at 16. Appellee also asserts that the property generated $100,913.00 in collected rent and only $20,245.00 in expenses from 1999 until the property was sold. ***Id.*** Appellee relies on Appellant's rent log for the property to reach these figures.[6] Appellee also attached to her petition "[a] summary of the income and expenses relating to 4618 Mansion Street." ***Id.*** The summary, attached as Exhibit C to her petition, is a typed summary of incomes and expenses from 1999 through 2010, with estimated income and expenses for 2006 through 2010. From the expenses

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[6] We note that Appellee's citation for this proposition refers to her summary of information contained in Appellant's rent log, not to the rent log itself.

for each year, the summary carves out expenses for depreciation. It is not clear who authored this summary or the source of the information contained therein. Appellee asserts that the summary is based on the partnership's tax returns. However, the only tax returns from the partnership submitted in the certified record are for the years 1999 through 2002. Appellant contends that these returns show the property operating at a loss for numerous years. Appellant's Brief at 21-22.

Upon review, we agree with Appellant that the certified record does not contain evidence to support a determination of the property's rental income or expenses. There are no tax returns from the partnership for years 2003 through 2010, nor is there any factual basis for the summaries of expenses and rental income submitted by Appellee for the years 2006 through 2010. We therefore conclude that the current state of the certified record cannot support Appellee's claims for rental income from 1999 through 2010.

Additionally, Appellant takes issue with the trial court's award of $5,740.00 to Appellee for unrealized rents. Appellant argues that there is no support for the trial court's conclusion that "a month to month rental would impose a *de minimis* deterrent to rental …." Trial Court Opinion, 6/5/12, at 3 n.5 (italics added). Attached to her petition, Appellee included Exhibit D, which consisted of photocopies of three checks from $400.00 each from three individuals, who, according to the Exhibit, were prepared to lease 4618

Mansion Street starting August 1, 2010.[7] We agree with Appellant that Appellee has failed to demonstrate that these individuals or anyone else would have agreed to a month-to-month tenancy instead, given that the property had to be sold.[8] We therefore agree with Appellant that the record does not support the trial court's award of $5,740.00 for unrealized rental income.

In his 15th issue, Appellant contends that the Estate was a co-obligor on the mortgage and therefore an indispensable party to the proceedings below. Appellant's Brief at 28. Appellee counters, recognizing that Edward and Appellant were co-obligors on the mortgage in question, the Estate was noticed with a copy of the distribution petition. Appellee's Brief at 18. The record contains Appellee's certificate of service, in which Appellee certified that counsel for the Estate, Barry W. Krengel, Esquire, was served on July 28, 2011 through the trial court's electronic filing system, which Appellant does not appear to dispute. ***See*** Appellee's Petition for Distribution,

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[7] We note that Appellee's exhibit does not contain any lease agreement or delineate the proposed terms of the lease, nor does it state that these three individuals agreed to pay utilities.

[8] We also observe that the trial court based this award of $5,740.00 on the argument that Appellee was entitled to "one half of the rent that could have been collected in 2010." Trial Court Opinion, 6/5/12, at 3. If the rent would have been $1,200.00 a month for the rest of 2010 starting on August 1, 2010, the most that could have been collected in 2010 would have been $6,000.00 before taking expenses into account. Therefore, at best, Appellee would have been entitled to $3,000.00 if none of the expenses for the property's upkeep were taken into account.

7/28/11, Certificate of Service. We also note that since Appellee filed her petition under the existing trial court docket, the Estate is already a party to the action. Although the trial court is allowed to find that the Estate is obligated to pay a portion of the mortgage, we conclude that Appellant is not entitled to relief on this issue.[9]

In his 17th issue, Appellant contends that the record does not support the trial court's conclusion that Appellee was entitled to $12,813.00 for the balance due on an unrecorded mortgage for 4618 Mansion Street. Appellant's Brief at 29. The parties agree that the principal due on the mortgage was $39,000.00. ***Id.***; Appellee's Brief at 19. Appellant admits that to date he had paid $34,692.00 on the mortgage and owes $4,308.00. N.T., 9/20/11, at 51; Appellant's Brief at 29. What appears to be in dispute in this matter is whether any interest is due on the mortgage. Appellee asserted in the trial court that there was 4.97% interest on the mortgage. Appellee attached to her petition as Exhibit H an amortization schedule that

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[9] In his 16th issue, Appellant avers that the trial court erred "by not finding that the [Estate] was responsible for paying [Appellee] some or all of the monies she sought in her Petition for Distribution of Proceeds of Sale for 4618 Mansion Street, as the Estate received those same monies from [Appellant]." Appellant's Brief at 6. However, Appellant has not developed this argument in the argument section of his brief, we therefore deem this issue waived. ***See Umbelina v. Adams***, 34 A.3d 151, 161 (Pa. Super. 2011) (stating, "[w]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived[]") (citation omitted), *appeal denied*, 47 A.3d 848 (Pa. 2012).

she avers was prepared by her accountant. In the upper right-hand corner of the schedule, the interest is shown as 4.97%. ***See*** Appellee's Petition, 7/28/11, Exhibit H, at 1. However, Appellant disputes that he or Edward ever agreed to any interest on the loan secured by the mortgage.[10] N.T., 9/20/11, at 50-51. Appellee attached, as Exhibit F to her petition, a copy of the mortgage signed by Edward and Appellant. The mortgage references an interest term throughout and specifically refers to the interest term being spelled out in the note. Appellee's Petition, 7/28/11, Exhibit F, at 2. However, no note was ever executed stating the interest term. N.T., 9/20/11, at 50. Without additional supporting documentation, we agree with Appellant that the record does not support the trial court's conclusion that Appellee was entitled to $12,813.00 for the 4618 Mansion Street mortgage.

In his 18th and final issue, Appellant avers that the trial court erred in concluding that Appellee "was entitled to $5,660.48 … [for] one-half of the unpaid expenses as reflected at settlement in the HUD-1" form. Trial Court Opinion, 6/5/12, at 3; Appellant's Brief at 30. Appellee attached the HUD-1 form from the settlement as Exhibit E. Appellee refers to the second page of

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[10] To the extent that Appellant argues that the mortgage is satisfied in full because he paid Appellee an additional $32,400.00, we deem this argument waived as well, since his brief does not explain what this additional $32,400.00 was for or point to any place in the record showing this money was paid. ***See Umbelina***, ***supra*** at 161.

the HUD-1 form, which list a "seller's assist," taxes, gas and water charges that were not paid at the time of the sale. Appellee's Petition, 7/28/11, Exhibit E, at 2. The total of these sums as reflected on the HUD-1 is $11,320.96, half of which is $5,660.48, the figure reached by the trial court.

The record reflects that Appellee premised this argument on the theory that Appellant should have paid these bills all on his own through rental income. ***See*** Appellee's Petition, 7/28/11, at ¶ 28. Appellant argues that because Appellee owns one-half of the property, she should be responsible for one-half of the expenses. Appellant's Brief at 30. Appellee counters that the trial court held her responsible for one-half of the expenses as calculated by her typed summary of 4618 Mansion Street's income and expenses between 1999 and 2010. Appellee's Brief at 19. Appellee further argues that Appellant should bear complete responsibility due to his refusal to rent out the property. ***Id.*** at 19-20. As we have already determined that the record does not support the trial court's conclusions as to the division of rental income, we likewise conclude the record does not support the trial court's conclusion regarding the expenses.

To summarize, we agree with Appellee that the trial court was not barred from considering her petition. However, we agree with Appellant that the trial court's conclusions as to disbursement of the funds are not supported by the record. On remand, the trial court should allow the parties to take additional discovery and hold an evidentiary hearing as the trial court

should deem appropriate in order to resolve these issues. Accordingly, we vacate the October 21, 2011 judgment and remand for further proceedings, consistent with this memorandum.

Judgment vacated. Case remanded. Jurisdiction relinquished.