**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| GREGORY MOORE,<br><br>Appellant<br><br>v.<br><br>LORI FEHRENBACH,<br><br>Appellee | IN THE SUPERIOR COURT OF PENNSYLVANIA<br><br><br><br><br><br>No. 535 MDA 2012 |

Appeal from the Judgment Entered March 12, 2012
In the Court of Common Pleas of Wyoming County
Civil Division at No(s): 2009-1428

BEFORE: BOWES, OLSON and WECHT, JJ.

MEMORANDUM BY OLSON, J.: Filed: March 7, 2013

Appellant, Gregory Moore, appeals from the judgment entered on March 12, 2012. We affirm.[1, 2]

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[1] Within Lori Fehrenbach's brief to this Court, Ms. Fehrenbach claims that Appellant's appeal is frivolous and that, in accordance with Pennsylvania Rule of Appellate Procedure 2744, this Court should award her counsel fees. Ms. Fehrenbach's Brief at 13-15; Pa.R.A.P. 2744 ("an appellate court may award as further costs damages as may be just, including . . . a reasonable counsel fee . . . if it determines that an appeal is frivolous"). We deny Ms. Fehrenbach's request.

[2] Appellant's counsel has filed, in this Court, a petition for leave to withdraw as counsel. As Appellant's counsel avers, Appellant has refused to pay any of the attorneys' fees and costs that were incurred in this action. Since counsel must now file suit against Appellant to recover these fees and costs, and since further representation "will result in an unreasonable financial burden on the lawyer," counsel requests permission to withdraw as counsel. We grant this petition for leave to withdraw as counsel.

On December 4, 2009, Appellant instituted the current action for partition by filing a complaint against Lori Fehrenbach.[3] Within Appellant's two-count complaint, Appellant claimed that he and Ms. Fehrenbach owned title to real property in Wyoming County, Pennsylvania as joint tenants with the right of survivorship, and Appellant requested that the trial court partition the entirety of the real property, including the underlying oil, gas, and mineral rights. Appellant's Complaint, 12/4/09, at 1-4. Following a pre-trial conference, the trial court "determined that the property was capable of division into purparts. Both counsel agreed [with the trial court's determination]. Accordingly, a non-jury trial date was set." Trial Court Opinion, 5/22/12, at 1; Trial Court Order, 5/25/10, at 1.

During the ensuing two-day bench trial, the parties presented the trial court with a detailed description of the property, as well as with evidence supporting their own, respective view of what a fair partition of the land would entail. In sum, the property at issue consists of (approximately) 60 acres of land, one house, and one barn. N.T. Trial, 1/13/12, at 21-22; V.S. Land Data Survey, 12/31/10, at 1. State Route 92 bisects the 60 acres from north to south. On the west-side of Route 92 lies approximately 40 acres of undeveloped land, which is imbued with valuable timber, topsoil, natural gas, and minerals. N.T. Trial, 1/13/12, at 16 and 31-33; V.S. Land Data

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[3] Appellant filed his partition action pursuant to Pennsylvania Rules of Civil Procedure 1551 through 1574.

Survey, 12/31/10, at 1. On the east-side of Route 92 lies approximately 20 acres of land – some of which is developed and some of which is undeveloped. Although this east-side, 20-acre parcel is in a floodplain, a house – built in the 1870's – and a barn exist on the land. N.T. Trial, 1/13/12, at 55, 86, and 89; V.S. Land Data Survey, at 1; Labar Appraisal, 2/10/11, at 1. Yet, as the trial court explained, the house is "in deplorable condition and the best plan for it would be to tear it down." Trial Court Opinion, 5/22/12, at 3; ***see also*** N.T. Trial, 1/13/12, at 86 and 135-136.

As the parties agree, in June of 1998, Ms. Fehrenbach purchased the entire realty at issue for $85,000.00. Deed, 6/25/98, at 1. To facilitate the purchase, Ms. Fehrenbach tendered a $20,000.00 down payment and took out a mortgage, in her name only, for the balance of the purchase price. N.T. Trial, 1/13/12, at 131. Originally, the deed was issued in Ms. Fehrenbach's name only. However, Ms. Fehrenbach later conveyed an undivided one-half interest in the property to Appellant for the consideration of $1.00. Deed, 5/19/05, at 1. Following the transfer, Appellant and Ms. Fehrenbach held the property as joint tenants with the right of survivorship. ***Id.***

Appellant testified that, after Ms. Fehrenbach purchased the property at issue, he and Ms. Fehrenbach moved into the existing house on the east-side, 20-acre parcel. N.T. Trial, 1/13/12, at 8-9. In 1999, Ms. Fehrenbach became pregnant with Appellant's son. From 1999 until January 2010 (when

the parties ended their relationship and Appellant moved out of the house), Appellant contributed to the mortgage payments, while Ms. Fehrenbach took care of their child and the house. ***Id.*** at 133. Appellant stopped contributing to the mortgage after he moved out of the house and, at the time of the January 13, 2012 trial, Ms. Fehrenbach was paying the mortgage and living in the house with the parties' son; Appellant was paying $400.00 per month in child support and living in an apartment in New Jersey.[4] ***Id.*** at 13, 14, 34-38, 130, and 133.

During the trial, the parties agreed that the entire realty – including the land, structures, and subsurface gas rights – was worth between $630,000.00 and $640,000.00. Labar Appraisal, 2/10/11, at 1; Bosley Appraisal, 12/28/10, at 1. However, the parties had different views as to how the court should partition the property. According to Ms. Fehrenbach, a fair partition of the property required that she receive the east-side, 20-acre parcel as well as an additional, five-acre parcel that bordered the west-side of Route 92. N.T. Trial, 1/13/12, at 141-142. To support this position, Ms. Fehrenbach presented the testimony of Donna Labar, whom the trial court accepted as an expert in the field of real estate appraisal. ***Id.*** at 84. Ms. Labar testified that she attempted to "look at the property overall and come

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[4] At the time of trial, the remaining principal on the mortgage was approximately $32,800.00. N.T. Trial, 1/13/12, at 145.

up with [] what I would think would be a division of the property that would give an equal value if divided." ***Id.*** at 86.

According to Ms. Labar, she was "quite familiar" with the property at issue and, after considering other comparable sales, she determined that the land was worth $9,000.00 per acre and that the "home with water and sewer and outbuildings [was worth $90,000.00]." ***Id.*** at 90-91; Labar Appraisal, 2/10/11, at 2. Thus, according to Ms. Labar, the east-side, 20-acre parcel – including the structures – was worth $270,000.00 and the undeveloped, west-side, 40-acre parcel was worth $360,000.00. To make a fair partition, Ms. Labar testified that "about five acres more or less [needed] to be divided out" of the 40-acre parcel and given to the party receiving the 20-acre parcel. N.T. Trial, 1/13/12, at 91-92. This would create two equal, $315,000.00 parcels of property, one of which totaled 25 acres and one of which totaled 35 acres.

Ms. Labar testified that, after viewing comparable sales, the five-acre parcel needed to be carved out of an area bordering Route 92, but in a place that also allowed the 35-acre parcel holder access to Route 92. ***Id.*** at 92-93. Ms. Labar identified an optimal area in which to excise the five acres, submitted a proposed map, and testified that her division enabled both parties to receive an equal, $315,000.00 parcel of property. ***Id.*** at 97; Labar Appraisal, 2/10/11, at 2 and 4.

Moreover, Ms. Labar was questioned as to why the east-side parcel (containing the house) did not have a higher per acreage value than the west-side parcel. Ms. Labar testified:

> This property on the eastern side [of Route 92] is in flood zone (A) and flood zone (B). So it has its own dynamics that don't affect the [western] side at all. And so it just has different conditions that you have to weigh in value.

N.T. Trial, 1/13/12, at 94.

Appellant presented the trial court with a competing view of what a fair property partition would require. According to Appellant, the trial court should simply use State Route 92 as the dividing line and award one party the west-side, 40-acre parcel and the other party the east-side, 20-acre parcel. ***Id.*** at 25. In support of this view, Appellant presented the expert testimony of residential real estate appraiser J. Conrad Bosley. N.T. Trial, 2/15/12, at 5.

Mr. Bosley testified that he valued the east-side, 20-acre parcel to be worth $295,000.00 – or $12,000.00 per acre plus $55,000.00 for the structures and development on the land. ***Id.*** at 15 and 32. According to Mr. Bosley, he viewed this parcel to be valuable because it was "level land," partially developed, and 80% clear of timber. ***Id.*** at 31-32.

Mr. Bosley then considered Ms. Fehrenbach's proposed property division, including Ms. Fehrenbach's proposed five-acre cutaway from the west-side, 40-acre parcel. Mr. Bosley testified that he valued Ms. Fehrenbach's proposed five-acre cutaway to be worth $12,000.00 per acre

because, in his view, it was a level and an "appealing" parcel of land. ***Id.*** at 33-35. Finally, Mr. Bosley testified that, although he surveyed the remainder of the west-side parcel "from afar," Mr. Bosley valued the remaining 35-acre area to be worth $7,000.00 per acre.[5] ***Id.*** at 35-36. According to Mr. Bosley, from his visual inspection, the remaining 35 acres were "steeply slop[ed]," heavily wooded, and "not as appealing" as either the five-acre cutaway or the east-side, 20-acre parcel. ***Id.*** at 36-37.

Yet, as Mr. Bosley admitted, he never explored the 35-acre, west-side parcel, his appraisal did not consider the value of the timber or minerals on the west-side parcel, his appraisal did not account for the fact that the east-side 20-acre parcel was in a floodplain, and his appraisal did not consider the fact that the house and structures on the 20-acre parcel were in poor condition. ***Id.*** at 34-36 and 70-71.

On February 16, 2012, the trial court entered its Findings of Fact and Order of Court, in which the court essentially partitioned the property in the manner requested by Ms. Fehrenbach. In relevant part, the trial court's decision and order provides:

> [The trial court has concluded] that the subject realty is capable of division without prejudice to or spoiling the

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[5] Mr. Bosley testified that, if the land were left under a single owner, the entire 60-acre plot of land plus structures would be worth $640,000.00. N.T. Trial, 2/15/12, at 19 and 28. If partitioned, however, Mr. Bosley testified that the land and structures would only be worth $600,000.00 in total. ***Id.*** at 28.

whole; and pursuant to Pa.R.C.P. 1570, [the trial court] enters the following[:]

. . .

1. the subject property is most advantageously divided into two purparts.

2. the value of the entire property is [$635,000.00].

3. the value of purpart number one is [$320,000.00] and the value of purpart number two is [$315,000.00].

4. there exists a mortgage upon the entire property . . . with a balance due of $32,886.46 as of January 12, 2012.

. . .

7. [p]urpart number [one] is defined as all those lands contained in Lot 1 (20.478 acres) and Lot 2 (5.845 acres) as set forth on the survey map of J.N. Masters dated February 21, 2011, which is incorporated herein by reference.

8. [p]urpart number [two] is defined as all those lands contained in Lot 3 (35.367 acres) as set forth on the aforesaid survey map.

. . .

IT IS ORDERED that purpart number [one] is directed to be conveyed to Lori Fehrenbach, under and subject to the existing mortgage, and subject to the [50 foot] easement providing access to purpart number [two] as set forth in the aforesaid survey map.

IT IS FURTHER ORDERED that purpart number [two] is directed to be conveyed to [Appellant] together with the [50 foot] easement as stated above; and, under and subject to the said mortgage.

IT IS FURTHER ORDERED that Lori Fehrenbach shall continue to be responsible for all mortgage payments with

> respect to both purparts until the said mortgage has been satisfied or refinanced.
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> . . .
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> IT IS FURTHER ORDERED that in order to equalize the net values of the distribution of the purparts, and taking [into] consideration the allocation of payment of the mortgage responsibility, [Appellant] shall pay to Lori Fehrenbach the sum of $13,942.00[] (representing one-half [of] the mortgage balance less one-half the difference in value of the purparts) . . . .

Trial Court Findings of Fact and Order of Court, 2/16/12, at 1-4.

On March 12, 2012, the prothonotary entered judgment on the trial court's February 16, 2012 order and, on March 14, 2012, Appellant filed a timely notice of appeal to this Court.[6]

On appeal, Appellant raises the following claims:[7]

> [1.] Did the trial court err and abuse its discretion by abruptly and arbitrarily terminating Appellant's counsel's cross-examination of the expert appraisal witness, [Donna] Labar, and excusing the witness before the examination was complete regarding valuation and the division or carving out of five [] acres on the west side of Route 92[?]

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[6] Appellant was not permitted to file exceptions to the trial court's order directing partition. Pa.R.C.P. 1557 ("[n]o exceptions may be filed to an order directing partition"). Moreover, we note that an order directing partition is an interlocutory order immediately appealable as of right. Pa.R.A.P. 311(a)(7). In this case, however, the trial court's order disposed of all claims in the partition action and, thus, the order constitutes a final order. Pa.R.A.P. 341(b)(1).

[7] The trial court ordered Appellant to file a concise statement of errors complained of on appeal. Appellant complied and listed the four claims currently raised on appeal.

> [2.] Did the trial court err and abuse its discretion in awarding [Ms.] Fehrenbach purpart number [one], which consisted of lot number [one] on which a home existed and lot number [two] of approximately 5.845 acres, which was carved out of the acreage on the west side of Route 92, as shown on the survey map of J.N. Master, which lot was suitable for building, while awarding purpart number [two] on the Master survey to Appellant[,] which consisted of lot number [three] consisting of 35.565 acres, which lot was wooded and largely contained topography up the side of a mountain, which was unsuitable for building, thus ignoring [Appellant's] survey procured from V.S. Land Data and ignoring the testimony of Appellant's expert appraiser, J. Conrad Bosley[?]
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> [3.] Did the trial court err in awarding Appellant [] purpart number [two], defined as all those lands in lot [three] of the J.N. Master survey (35.565 acres) when it failed to consider the $77,000.00 cost necessary for a roadway required for access to the lot, thus the partition ordered by the [trial] court did not equalize net values between the two parties and was, therefore, an abuse of discretion[?]
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> [4.] Did the trial court err in ordering Appellant [] to pay [Ms.] Fehrenbach the sum of $13,942.00 (representing one-half the mortgage balance less one-half the difference in the value of the purparts), as the [trial] court failed to consider that [Ms.] Fehrenbach is living in the home to [Appellant's] exclusion, pursuant to a court order and [Appellant] is paying child support when Pennsylvania support law provides that whoever lives in the home is obligated to pay the mortgage[?]

Appellant's Brief at 7-8.

Appellant first claims that the trial court abused its discretion when it terminated his cross-examination of Donna Labar. This claim fails.

As Pennsylvania Rule of Evidence 611(a) demands, "[t]he [trial] court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and

presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time and (3) protect witnesses from harassment or undue embarrassment." Pa.R.E. 611(a). To discharge this obligation, "[t]he trial [j]udge . . . must of necessity have reposed in him wide discretion to hold within bounds the examination and cross-examination of parties and witnesses." ***Williams v. Phila. Transp. Co.***, 203 A.2d 665, 668 (Pa. 1964). Given the fact that "[c]ontrol of the scope and manner of cross-examination are [matters] within the sound discretion of the trial court," we may not reverse a trial court's ruling on such matters absent an abuse of this discretion. An abuse of discretion is defined as "not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused." ***Stumpf v. Nye***, 950 A.2d 1032, 1036 (Pa. Super. 2008) (internal citations and quotations omitted).

Moreover, since the current issue concerns an evidentiary ruling, we note that, "for a ruling on evidence to constitute reversible error, it must have been harmful or prejudicial to the complaining party." ***Id.*** "A party suffers prejudice when the trial court's error could have affected the verdict." ***Reott v. Asia Trend, Inc.***, 7 A.3d 830, 839 (Pa. Super. 2010).

Trial in this case did not proceed as smoothly as the trial court would have wished. As the trial court explained:

> [After establishing a trial date, the trial court directed counsel] to obtain appraisals and submit a proposed plan for dividing the realty. . . .
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> On the date set for trial, Ms. Fehrenbach had done what the [trial] court [had] asked: she had a comprehensive plan for dividing the property, a proposed survey, and an appraisal of each proposed purpart. [Appellant] did not provide a survey or a plan. His only submission before trial was an appraisal of the entire property, which was of no use to the [trial] court under the circumstances. [Further, Appellant's] proposed survey map was not submitted prior to trial.
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> In addition, on the date set for trial, [Appellant's] appraiser[, J. Conrad Bosley,] was not available to appear. Consequently, Ms. Fehrenbach's attorney had to present his case, and counsel for [Appellant] was able to cross-examine her witnesses, particularly the appraiser, based on the pre-trial discovery that [Ms.] Fehrenbach had provided to him. Unfortunately, [Appellant] had not reciprocated. Consequently, [Ms.] Fehrenbach was at a distinct disadvantage [during trial].
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> When[,] during the cross-examination of [Ms. Fehrenbach's expert real estate appraiser,] Donna Labar, . . . counsel for [Appellant] digressed into an area which was clearly irrelevant to any issue [the trial court] had to decide, [the trial court] had had enough. [Ms.] Labar had fully explained and defended her report. Consequently, [the trial court terminated the] cross-examination [of Ms. Labar]. [When informed that his cross-examination must come to an end, c]ounsel for [Appellant said] nothing, and made no proffer as to what[, if anything,] he wished to cover in further cross-examination.
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> At this point, [the trial court stated that it] probably should have . . . enter[ed] a decision once [Ms.] Fehrenbach had presented her remaining witnesses. But, what the [trial] court did was [] grant [Appellant] a continuance to present his expert appraiser, even though [Appellant] had not produced a report on the issue as previously directed by [the trial court].

> Therefore, trial resumed some five weeks later, and J. Conrad Bosley, [Appellant's] appraiser, took the witness stand. During the interim, and having had the benefit of learning Donna Labar's [trial] testimony, [Mr. Bosley] now produced a report dealing with the value of the three proposed parcels.

Trial Court Opinion, 5/22/12, at 1-2.

While Appellant now claims that the trial court erred in terminating his cross-examination of Ms. Labar, it is clear that – during this bench trial – the trial court's actions did not amount to an abuse of discretion.

During Appellant's cross-examination of Ms. Labar, Appellant questioned Ms. Labar on the basis for her real estate appraisal, as well as upon her knowledge of the land, her connection with Ms. Fehrenbach's counsel, and her assessment of Mr. Bosley's competing expert report. N.T. Trial, 1/13/12, at 101-111. As the trial court explained, it only terminated Appellant's cross-examination after Appellant continued to question Ms. Labar on – what the fact-finder determined to be – irrelevant, repetitive, and wasteful issues. Trial Court Opinion, 5/22/12, at 1-2. For example, prior to terminating the cross-examination, Appellant's counsel asked Ms. Labar questions regarding matters that were clearly stated within the expert report, matters that were within common knowledge, matters that called for legal conclusions, matters that called for speculation, and matters that were irrelevant to the instant partition action. ***See*** N.T. Trial, 1/13/12, at 104, 105, 109, and 111. The final exchange occurred when Ms. Labar was explaining her proposed division of the land:

> [Ms. Labar]: I'm saying the way I divided the property the piece with the five acres on the Westside and the twenty and her house is worth equal to the rest of the land, yes.
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> [Appellant's Counsel]: It's not her house it's their house[.]
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> [Ms. Labar]: Well, where she's living, where she's living.
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> [Appellant's Counsel]: So you think it's her house.
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> [Ms. Fehrenbach's Counsel]: Objection.
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> [Trial Court]: [Counsel].
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> [Appellant's Counsel]: No, I just think.
>
> [Trial Court]: If you would like this hearing to be over, stop, stop. If you would like this hearing to be over real fast and I'm this close I cannot stand trial by ambush and we spent the whole morning doing trial by ambush. I have not received one report from you. I've received everything that I required by court order from [Ms. Fehrenbach's counsel]. I've received nothing from you. Let it go. And now you're playing games like this. Your testimony is done. Thank you very much. You may step down and you are free to leave.

***Id.*** at 111-112.

In this case, Appellant's counsel had received Ms. Labar's expert report and, therefore, Appellant's counsel was well aware of the fact that Ms. Labar knew the house was jointly owned. Thus, the above questioning was, as the trial court described, "clearly irrelevant to any issue [the trial court] had to decide." Trial Court Opinion, 5/22/12, at 2.[8]

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[8] Within his brief on appeal, Appellant claims that he was "only trying to correct the witness Labar[] when she referred to the parties' home as Ms. Fehrenbach's home." Appellant's Brief at 36. The trial court, however,
*(Footnote Continued Next Page)*

Given counsel's repeated questioning into irrelevant or wasteful issues – and given that the trial court was sitting as the finder of fact – this Court simply cannot conclude that the trial court abused its discretion when it terminated Appellant's cross-examination. Counsel's line of questioning merely demonstrated to the trial court that "further cross-examination [would have been] of no value." ***Commonwealth v. Marker***, 331 A.2d 883, 887 (Pa. Super. 1974) ("it is . . . clear that the trial judge has discretion in determining the point at which further cross-examination will be of no value, and his ruling will not be reversed in the absence of an abuse of that discretion"). Under such circumstances, the trial court was within its discretion to terminate the cross-examination. Appellant's claim thus fails.[9]

Appellant next claims that the trial court's partition order was against the weight of the evidence. According to Appellant, his expert real estate appraiser – J. Conrad Bosley – provided a more precise acreage evaluation than Ms. Fehrenbach's expert real estate appraiser – Donna Labar. As such,

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

clearly believed that counsel was either badgering or inappropriately questioning the witness. Obviously, our review of the above exchange is limited to the cold record – and, a review of the record supports the trial court's factual determination.

[9] We also note that counsel did not indicate – either through his prior questioning or in a statement to the trial court at the time cross-examination was terminated – that he wished to pursue other, legitimate areas of interrogation. As such, Appellant failed to establish that he was prejudiced by the trial court's action. ***Stumpf***, 950 A.2d at 1036 ("for a ruling on evidence to constitute reversible error, it must have been harmful or prejudicial to the complaining party").

Appellant claims that the trial court erred in crediting Ms. Fehrenbach's expert witness over his own. This claim fails.

As our Supreme Court has explained:

> in a challenge to the weight of the evidence, the function of an appellate court on appeal is to review the trial court's exercise of discretion based upon a review of the record, rather than to consider *de novo* the underlying question of the weight of the evidence. In determining whether this standard has been met, appellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion. It is for this reason that the trial court's denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings.

***Commonwealth v. Rivera***, 983 A.2d 1211, 1225 (Pa. 2009) (internal quotations and citations omitted). Moreover, the trier of fact "has [the] discretion to accept or reject a witness' testimony, including that of an expert witness, and is free to believe all, part, or none of the evidence presented." ***In re Bosley***, 26 A.3d 1104, 1111 (Pa. Super. 2011).

Here, the trial court believed Ms. Fehrenbach's expert – Donna Labar – when Ms. Labar testified that the land was worth $9,000.00 per acre. It simply did not believe Appellant's expert – J. Conrad Bosley – when Mr. Bosley (belatedly) testified that the land Ms. Fehrenbach wanted was worth $12,000.00 per acre and that the remaining land was worth only $7,000.00. Other than Appellant claiming that, in his view, his expert provided a more precise appraisal than did Ms. Fehrenbach's expert, Appellant has given this Court no reason to upset the trial court's factual determination. Indeed, as

was explained above, the trial court had ample reason to discount Mr. Bosley's appraisal, including that Mr. Bosley: "learn[ed] Donna Labar's [trial] testimony[ before he produced his] report dealing with the value of the three proposed parcels;" never explored the 35-acre, west-side parcel; did not consider the value of the timber or minerals on the west-side parcel; did not account for the fact that the east-side, 20-acre parcel was in a floodplain; and, did not consider the fact that the house and structures on the 20-acre parcel were in poor condition. Trial Court Opinion, 5/22/12, at 2; N.T. Trial, 2/15/12, at 34-36 and 70-71.

Regardless, the trial court's factual determination was within its province and there has been no abuse of discretion. Appellant's weight of the evidence claim thus fails.

For Appellant's third claim on appeal, Appellant contends that the trial court's partition order was an abuse of discretion, as the trial court failed to consider the testimony of one of Appellant's witnesses, Howard Beebe. Mr. Beebe testified that, if Appellant wished to place an access road on his property, the road would cost $77,000.00. Appellant claims that the trial court erred in not considering the cost of this road in its partition order. Appellant's Brief at 43-46. This claim fails. Indeed, the entire basis for Appellant's claim is faulty.

In this case, the trial court concluded that the property could be divided "without prejudice to or spoiling the whole." Trial Court Findings of

Fact and Order of Court, 2/16/12, at 1. Under such circumstances, the trial court was tasked with dividing the property "into as many purparts as there are parties entitled thereto, the purparts being proportionate in value to the interests of the parties." Pa.R.C.P. 1560(a). In accordance with this mandate, the trial court divided the land into "purpart number one" – which it defined as the east-side, 20-acre parcel, plus a 5-acre parcel on the west-side of Route 92 and which was valued, in total, at $320,000.00 – and "purpart number two" – which it defined as the remaining west-side, 35-acre parcel and which was valued at $315,000.00. Trial Court Findings of Fact and Order of Court, 2/16/12, at 1-2. The trial court then awarded Ms. Fehrenbach purpart number one and awarded Appellant purpart number two and $5,000.00. In doing so, the trial court correctly awarded the parties purparts that were "proportionate in value to the interests of the parties." Pa.R.C.P. 1560(a).

While Appellant now claims that the trial court erred in "failing to consider" the cost of an access road in its partition order, there was simply no testimony that the assigned value of Appellant's 35-acre purpart was dependent upon him constructing such a road. Indeed, as the trial court concluded (and as the trial testimony supports), **in its current state** Appellant's 35-acre purpart is worth $315,000.00. ***See***, ***e.g.***, N.T. Trial, 1/13/12, at 91-92; Labar Appraisal, 2/10/11, at 2 and 4. Thus, in realization of its mandate to divide the land into two purparts of equal value,

the trial court properly refused to consider the cost of building an access road on Appellant's 35-acre purpart. Appellant's claim to the contrary fails.

Finally, Appellant claims that the trial court erred when it required him to pay one-half of the mortgage principal, even though Appellant is not living in the house and is paying $400.00 per month in child support. According to Appellant, since the child support guidelines "assume that the spouse occupying the [] residence will be solely responsible for the mortgage payment . . . unless the recommendation specifically provides otherwise," the trial court should have considered "the existing child support order and the support guidelines when it decreed that [Appellant] should be responsible for one-half the balance of the existing mortgage." Appellant's Brief at 47; Pa.R.C.P. 1910.16-6(e). The claim is meritless.

At trial, Appellant admitted that the subject mortgage secured the entire 60 acres of land, as well as the house. ***See*** N.T. Trial, 1/13/12, at 15 (Appellant testified that "the mortgage covers the entire [60] acres") and 144 (Ms. Fehrenbach testified that "the mortgage applies to [the] entire [60] acres"). Since Appellant was awarded 35 acres of this land – or, approximately one-half of the entire value of the land – the trial court, obviously, was within its discretion in ordering Appellant to pay one-half of the mortgage principal.

Appellant did not provide this Court or the trial court with any argument as to how – in this partition action – his child support obligations

could or should affect a fair division of the land. Appellant's final claim on appeal thus fails.

Judgment affirmed. Ms. Fehrenbach's request for counsel fees denied. Appellant's counsel's petition for leave to withdraw as counsel granted.