

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
AT CHARLESTON

Linda Kessler Archer,

Defendant/Petitioner

v.

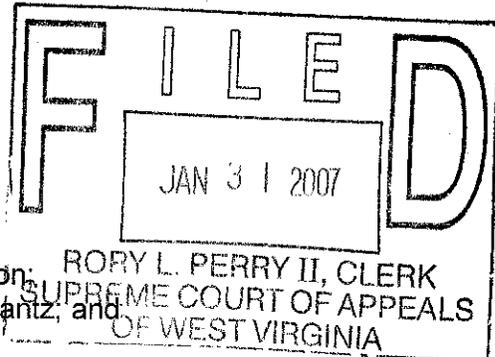
Bill E. Morton and
Jess R. Morton

Plaintiff/Respondent,

v.

Appeal No.
(Civil Action No. 05-C-2376
Honorable Judge Louis H. Bloom)

Unknown Heirs of Ernest M. Van Camp;
Linda Kessler Archer; Lilly Tucker;
Unknown Heirs of Margaret Van Camp Price;
Unknown Heirs of Dorothy Van Camp;
Unknown Heirs of Violet Van Camp;
Unknown Heirs of Martha Van Camp;
Herbert Hopkins; Natalie Steel;
Glenna May (Haynes) Deitz;
Barbara Ann (Haynes) Gunnoe Young;
Mary Lou (Haynes) Mason; Carolyn Ruth (Haynes) Melton;
William Donald Haynes; Charlotte Elizabeth (Haynes) Plantz; and
Unknown Heirs of Squire Van Camp



Defendants/Respondents.

PETITION FOR APPEAL
FROM CIRCUIT COURT OF KANAWHA COUNTY

LINDA K. ARCHER
PETITIONER/DEFENDANT
BY COUNSEL

Larry G. Kopelman, Esquire
Counsel for Linda Archer
WV State Bar ID# 4818
9 Pennsylvania Avenue
Charleston, WV 25302
(304) 345-2889

TABLE OF CONTENTS

	PAGE
I. NATURE OF THE PROCEEDINGS AND RULING.....	2
II. FACTUAL BACKGROUND.....	2, 3, 4
III. ASSIGNMENT OF ERROR.....	4
A. The Circuit Court erred by affirming the moving parties request for sale of the entire parcel and by determining that a partition in kind would have been appropriate to accommodate all co-owners interests.....	4
B. The Circuit Court erred by affirming the moving parties request because the sale of the entire property will cause irreparable harm to Petitioner, and by failing to recognize that a partition of 1/7 th of land equivalent to 1/7 th of value of the whole is appropriate and will not prejudice the Respondents.....	4, 5
C. The Circuit Court erred by affirming the moving parties request on the basis that a partition in kind would cause extra expense and excavation to develop the land for residential lots.....	5
IV. DISCUSSION OF LAW WITH POINTS AND AUTHORITY.....	5, 6, 7, 8
IV. CONCLUSION AND REQUESTED RELIEF.....	8

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Ark Land Company, v. Harper, et. al.</u> , 215 W.Va. 331, 599 S.E.2d 754 (2004)	5, 6, 7
<u>Delfino v. Vealencis</u> , 181 Conn. 533, 436 A.2d 27 (1980)	7
<u>Hale v. Thacker</u> , 122 W.Va, 648, 650 12 S.E.2d 524, 526 (1940)	6
<u>Sensabough v. Sensabough</u> , 232 Va. 250, 349 S.E.2d 141, 146 (1986)	7
<u>Wight v. In-gram-Day Lumber, Co.</u> , 195 Miss. 823 17 So.2d 196, 198 (1944)	6

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
AT CHARLESTON**

Linda Kessler Archer,

Defendant/Petitioner

v.

**Bill E. Morton and
Jess R. Morton**

Plaintiff/Respondent,,

Appeal No.

v.

**(Civil Action No. 05-C-2376
Honorable Judge Louis H. Bloom)**

**Unknown Heirs of Ernest M. Van Camp;
Linda Kessler Archer; Lilly Tucker;
Unknown Heirs of Margaret Van Camp Price;
Unknown Heirs of Dorothy Van Camp;
Unknown Heirs of Violet Van Camp;
Unknown Heirs of Martha Van Camp;
Herbert Hopkins; Natalie Steel;
Glenna May (Haynes) Deitz;
Barbara Ann (Haynes) Gunnoe Young;
Mary Lou (Haynes) Mason; Carolyn Ruth (Haynes) Melton;
William Donald Haynes; Charlotte Elizabeth (Haynes) Plantz; and
Unknown Heirs of Squire Van Camp**

Defendants/Respondents.

PETITION FOR APPEAL

Petitioner, Linda Kessler Archer ("Petitioner"), by counsel, submits this Petition for Appeal of an "Order" entered by the Circuit Court of Kanawha County on September 18, 2006, which erroneously allows the sale of real property in which Petitioner resides and which has been in the family for generations.

I. Nature of the Proceedings and Ruling

This appeal arises from an Order entered by Judge Bloom of the Circuit Court of Kanawha County on September 18, 2006, (a copy of said Order is attached hereto and made a part hereof as Exhibit A) regarding a certain parcel of land which is owned by the parties including the Petitioner, Linda Archer, who owns an undivided one-seventh (1/7) interest.

The Respondents in this case, want to sell the property and all but one of the co-owners, the Petitioner, agrees. Petitioner requested to remain on the property and to be given her 1/7th share by a partition in kind of a portion of the property.

The Circuit Court agreed with Respondents that the property could not be partitioned in kind and ordered the sale of the entire parcel of land and the proceeds to be divided among the seven co-owners.

II. Factual Background

Respondents filed a Complaint on October 20, 2005, seeking to sell the approximately twenty five and one half acres of undeveloped West Virginia land. The property is basically divided into 1/7th ownerships with various persons amassing 6/7th of ownership, all desiring to sell the entire parcel, and with one of the parties, namely Petitioner, a 1/7th undivided owner, who desires to remain on the property and to continue homestead and residence.

Respondents seek to promote development of the land in which they state that the only entrance is through the portion of property in which Petitioner and her daughter reside. In a letter from plaintiffs' counsel, Lisa M. Moye to previous counsel for Petitioner, Alexander J. Ross, dated May 8, 2006, it states that "both of my clients believe that this (Linda Archer's continued use of the center of the property for her homestead)

(explanation added by Petitioner) would significantly diminish the value of the residue and make the real estate nearly impossible for development. Evidently, Ms. Archer's mobile home is located in the center of the best land suitable for building." (A copy of the letter is attached hereto and made a part hereof as Exhibit B).

There is evidence of long standing family ownership going back multiple generations coupled with sentimental and emotional interest in the property. For example, Petitioner's family has resided on the property for generations and Petitioner herself grew up living with her parents, siblings and grandmother on the property in a house her parents built. The house burnt down when Petitioner was a child but she continued to reside on the said property in a mobile home.

Petitioner desires to remain on a portion of the property that would represent her fair share of economic value with her only condition being the ability for ingress and egress to a relocated mobile home. Her mobile home does not have to be at the location she is on now and, therefore, Petitioner requests that she be able to move her trailer to the lower southwest portion of the subject property which is less than stellar, with some defects, which Petitioner finds acceptable for her desired home place.

Respondents did not file a report from an expert that gave an opinion that the land could not be partitioned in kind. Instead they had an appraisal of the property to determine the loss it would suffer if Petitioner remained on her homestead. The Order by the Circuit Court of Kanawha County points out Respondents expert testimony by Darrell Rolsten, a licensed real estate appraiser, that "Mr. Rolsten testified that the 3.64 acres was the only flat land on the subject real estate currently suitable for a homesite and that any development of the remaining acreage would require significant excavation and the building of a road to access the remaining acreage." Order pgs. 3 and 4.

Further, the Circuit Court states in ¶12 of the Order that “the expert testimony offered in this matter confirms that the 3.64 acres constitutes the most valuable portion of the real estate and that due to the character of the remaining acreage, there would be significant expense and excavation involved to develop the remaining acreage.”

This should not be the basis for a decision to take away Petitioner’s homeplace. Also, the Circuit Court states that “if Ms. Archer, who only has a one-seventh (1/7) interest in the subject real estate, received the 3.64 acres by partition, the remaining owners would receive much less valuable land and would be required to expend substantial sums of money to place the remaining acreage in a position whereby the acreage could be developed for residential purposes.” Order ¶12. These conclusions by the Circuit Court are disturbing to Petitioner because this is the only homeplace she has known since she was a child and to force her to leave would be unimaginable only due to extra expense to excavate the remaining land. If this land is sold and developed it will require excavation nonetheless.

III. Assignment of Error

A. The Circuit Court erred by affirming the moving parties request for sale of the entire parcel and by determining that a partition in kind would have been appropriate to accommodate all co-owners interests.

B. The Circuit Court erred by affirming the moving parties request because the sale of the entire property will cause irreparable harm to Petitioner, and by failing to recognize that a partition of 1/7th of land equivalent to 1/7th of value of the whole is appropriate and will not prejudice the Respondents.

C. The Circuit Court erred by affirming the moving parties request on the basis that a partition in kind would cause extra expense and excavation to develop the land for residential lots.

IV. Discussion of Law with Points and Authorities

In a similar case, Ark Land Company v. Harper, et. al., 215 W.Va. 331, 599 S.E.2d 754 (2004), the dispute was over 75 acres in Lincoln County, West Virginia, that the Caudill family had owned for 100 years. Ark Land Company purchased 67.5% undivided interest in the property and intended to surface mine the property to extract coal. Ark Land Company wanted to purchase the remaining interests of the property and when the family objected to a sale and requested a partition in kind, Ark Land sought to have it sold. The Circuit Court of Lincoln County, West Virginia, entered a Final Order to sell the property.

The Caudill heirs appealed and this court held in, Ark Land Company v. Harper, et. al., in Syl. Pt. 3, that:

in a partition proceeding in which a party opposes the sale of property, the economic value of the property is not the exclusive test for deciding whether to partition in kind or by sale. Evidence of longstanding ownership, coupled with sentimental or emotional interests in the property, may also be considered in deciding whether the interests of the party opposing the sale will be prejudiced by the property's sale. The latter factor should ordinarily control when it is shown that the property can be partitioned in kind, though it may entail some economic inconvenience to the party seeking the sale.

Syl. Pt. 3, Ark Land Company v. Harper, et. al., 215 W.Va. 331, 599 S.E.2d 754.

In the above mentioned case, this Court stated “we are troubled by the circuit court’s conclusion that partition by sale was necessary because the economic value of the property would be less if partitioned in kind.” This Court further states that “we have

long held that the economic value of property *may* be a factor to consider in determining whether to partition in kind or to force a sale.”

Further, this Court has stated in Hale v. Thacker 122 W.Va. 648, 650, 12 S.E.2d 524, 526 (1940);

many considerations, **other than monetary**, attach to the ownership of land, **and courts should be, and always have been, slow to take away from owners of real estate their common law right to have the same set aside to them in kind.**

Hale v. Thacker 122 W.Va. 648, 650, 12 S.E.2d 524, 526 (1940) (emphasis added).

It is Petitioner’s common law right to keep her portion of land in which she, and her family before her, has lived for most of her life. None of the co-owners have lived on the property and all have homes that will not be taken by the sale of the entire property. The sale of the entire property would place undue hardship and burden on Petitioner to try and find another place to reside. Certainly no place can replace “home”.

This Court stated in Ark Land Company v. Harper, et. al that a “partition by sale, when it is not voluntary by all parties, can be a harsh result for the cotenant(s) who opposes the sale. This is because “[a] particular piece of real estate cannot be replaced by any sum of money, however large; and one who wants a particular estate for a specific use, if deprived of his rights, cannot be said to receive an exact equivalent or complete indemnity by the payment of a sum of money.” Wight v. In-gram-Day Lumber Co., 195 Miss. 823 17 So.2d 196, 198 (1944).

Petitioner is of the opinion that the subject property can be conveniently partitioned in kind, and that the interest of the other parties will not be prejudiced by the partition since her 1/7th share she is seeking will not interfere with a developer wanting to maximize the use including the best available entrance to the property.

Petitioner does not care about the monetary gain in selling the property. She is only concerned with the residence she has established and does not desire to leave her homeplace.

Also, in Ark Land Company v. Harper, et. al., this Court cited a Connecticut case, Delfino v. Vealencis, 181 Conn. 533, 436 A.2d 27 (1980) as follows:

It is the interests of all of the tenants in common that the court must consider; and not merely the economic gain of one tenant, or a group of tenants.
The trial court failed to give due consideration to the fact. . . that the [defendant] has made her home on the property. . . as her family before her has for many years.

Delfino v. Vealencis, 181 Conn. 533, 436 A.2d 27 (1980) (emphasis added).

This Court also quotes a case from Virginia, Sensabough v. Sensabough, 232 Va. 250, 349 S.E.2d 141, 146 (1986) as follows:

Even evidence that the property would be less valuable if divided [has been] held 'insufficient to deprive a co-owner of his 'sacred right' to property.

Sensabough v. Sensabough, 232 Va. 250, 349 S.E.2d 141, 146 (1986).

This holding essentially sums up Petitioner's appeal. The 1/7th share of Petitioner's property is worth more to Petitioner than monetary gain because it has been her home since she was a child. The sentimental and emotional attachment outweighs any amount of money obtained from the sale of the property. Respondents cannot deny Petitioner her right to property simply for their own monetary gain, when she is willing to relocate to another part of the property which can be characterized as less valuable and severable from the corpus without detriment to the remainder.

Yet, in the Order of the Circuit Court, it states "while Ms. Archer has indicated that she is willing to accept another portion of the subject real estate, Ms. Archer has

failed to produce a survey setting forth another proposed area for partition and has failed to provide an appraisal report for another proposed area.”

Petitioner is unable to provide an expert or a proposed map or survey of a proposed 1/7th interest division of land because she is financially unable.

Petitioner has a limited income. She has requested and been granted pro bono counsel and her limited income is evidenced in the Pauper's Affidavit filed with this Petition for Appeal.

V. Conclusion and Requested Relief

Petitioner respectfully requests that this Court reverse the lower court's decision to force a sale of the property, and remand this matter back to the lower court for the purposes of appointing a Commissioner to determine the location and amount of land that in his or her opinion, would adequately represent a 1/7th value of the whole with such land to be located so that the residue would not be adversely impacted and the respondents interest would not be prejudiced and to, therefore, convey unto Petitioner, Linda K. Archer, her 1/7th share as a portion of the land in which she may maintain her homestead.

Respectfully submitted,

Linda Kessler Archer
By Counsel



Larry G. Kopelman
WV Bar No. 4818
9 Pennsylvania Avenue
Charleston, West Virginia 25302
(304) 345-2889 Telephone

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

BILL E. MORTON and
JESS R. MORTON,

FILED
MB

2006 SEP 21 AM 9:13

Plaintiffs,

CATHY S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

v.

CIVIL ACTION NO. 05-C-2376

JUDGE: LOUIS H. BLOOM

UNKNOWN HEIRS OF ERNEST M. VAN CAMP;
LINDA KESSLER ARCHER;
LILLY TUCKER;
UNKNOWN HEIRS OF MARGARET VAN CAMP PRICE;
UNKNOWN HEIRS OF DOROTHY VAN CAMP;
UNKNOWN HEIRS OF HELEN VAN CAMP;
UNKNOWN HEIRS OF VIOLET VAN CAMP;
UNKNOWN HEIRS OF MARTHA VAN CAMP;
HERBERT HOPKINS;
NATALIE STEELE;
GLENNA MAY (HAYNES) DEITZ;
BARBARA ANN (HAYNES) GUNNOE YOUNG
MARY LOU (HAYNES) MASON;
CAROLYN RUTH (HAYNES) MELTON;
WILLIAM RONALD HAYNES;
CHARLOTTE ELIZABETH (HAYNES) PLANTZ; and
UNKNOWN HEIRS OF SQUIRE VAN CAMP,

Defendants.

ORDER

This matter came before the Court on the 28th day of June, 2006 and the 28th day of July, 2006 for a final hearing on whether the real property that is the subject of this action is equitably divisible in kind or whether the same should be ordered sold by the Court. The Plaintiffs, Bill E. Morton and Jess R. Morton, were present in person and by counsel, Lisa M. Moye. The Defendant, Linda Kessler Archer, was present in person and by counsel, Larry G. Kopelman. The Defendants, Glenna May (Haynes) Deitz, Barbara Ann (Haynes) Gunnoe Young, Mary Lou (Haynes) Mason, Carolyn Ruth (Haynes) Melton, William Ronald

EXHIBIT A

Haynes, and Charlotte Elizabeth (Haynes) Plantz, appeared by counsel, Harvey D. Peyton and Ann E. Deitz. The Defendant, Carolyn Ruth (Haynes) Melton, also appeared in person. The Defendants, Nancy Beck, Emma Ayles and Lora Lynch (heirs of the Margaret Van Camp Price) appeared by counsel, J. Mark Adkins. The unknown heirs appeared by counsel, James E. Garvin.

Prior to ruling in this matter, the Court has heard testimony offered by the parties and their experts and has reviewed the court file and pertinent legal authorities. Whereupon, the Court makes the following **FINDINGS OF FACT and CONCLUSIONS OF LAW**:

1. The real property that is the subject of this matter consists of 25.5 acres situate in Cross Lanes, Union District, Kanawha County, West Virginia. There are currently two (2) mobile homes situate on the subject real estate. One mobile home is occupied by the Defendant, Linda Kessler Archer, who owns a one-seventh (1/7) interest in the subject real estate. The remaining mobile home is occupied by Ms. Archer's daughter, Denise Johnson, who does not have an ownership interest in this property. Ms. Archer testified that she knew that other individuals had an ownership interest in the subject real estate at the time the mobile homes were moved onto the subject real estate. The two mobile homes situated on the subject real estate are serviced with public sewer and well water.

2. Ms. Archer, currently owns a one-seventh (1/7) interest in the subject real estate after having acquired the ownership interest of the Defendant, Lilly Tucker. Ms. Archer proposes receiving her one-seventh (1/7) interest in the subject real estate by means of a partition of the subject real estate, allotting to her a portion of the real estate. The

remaining heirs to the subject real estate oppose the proposed partition and argue that the real estate is not susceptible to partition in kind.

3. Ms. Archer offered a survey map into evidence in this matter, said survey map being entitled "Plat of Partition Survey on the Property Currently Owned by Linda Archer, Lilly Tucker & Others Containing an Area of 3.64 Acres, +/- Situate on the Waters of Clay Bank Branch, Union District, Kanawha County, West Virginia" Dated May 17, 2006, prepared by Brian W. Lawrence, P.S. 2056, Paramount Surveying, LLC. Ms. Archer proposed that she receive the 3.64 acres for her one-seventh (1/7) interest, but subsequently indicated that she would accept any portion of the real estate upon which her mobile home could be re-located. However, Ms. Archer did not offer into evidence any other surveys with any other proposed areas for partition.

4. Ms. Archer admitted expert testimony and an appraisal report from Eddie Estep, a licensed real estate appraiser, indicating that the fair market value for the aforesaid 3.64 acres is Fifteen Thousand Dollars (\$15,000.00). However, Mr. Estep indicated that he was not prepared to offer an opinion on the fair market of the remaining 22 acres.

5. The Plaintiffs admitted expert testimony and a report from Darrell Rolsten, a licensed real estate appraiser, indicating that the fair market value for the aforesaid 3.64 acres is Fifty Thousand Dollars (\$50,000.00) and further indicating that the fair market value for the remaining 22 acres is Thirty-Three Thousand Dollars (\$33,000.00). Mr. Rolsten testified that the 3.64 acres was the only flat land on the subject real estate currently suitable for a homesite and that any development of the remaining acreage would require significant

excavation and the building of a road to access the remaining acreage. Accordingly, Mr. Rolsten opined that the partition of the 3.64 acres would be an inequitable distribution of the acreage.

6. While the experts differed regarding the fair market values for the 3.64 acres, both the expert witness offered by Ms. Archer and the expert witness offered by the Plaintiffs agreed that the aforesaid 3.64 acres constituted the most valuable portion of the subject real estate.

7. The Plaintiff, Bill E. Morton, who is a real estate developer, also testified that from his knowledge and experience, the 3.64 acres is the most valuable acreage of the subject real estate because the 3.64 acres is the only portion of the acreage currently suitable for development.

8. The Defendant, Carolyn Ruth (Haynes) Melton, testified that she was familiar with the property and that in her opinion the 3.64 acres is the most valuable acreage of the subject real estate because the remaining acreage consists of hillside and areas currently unsuitable for a homesite.

9. Ms. Archer testified that she viewed the property as her home. She further testified that she had timbered the subject property and received the sum of Three Thousand Dollars (\$3,000.00) in timber proceeds.

10. In regard to the partition of real estate, W.Va. Code § 37-4-3 states in pertinent part as follows:

...[I]n any case in which partition cannot be conveniently made, if the interest of one or more of those who are entitled to the subject, or its proceeds, will be promoted by a sale of the entire subject, or allotment of part and sale of the residue, and their interest of the other person or persons so entitled will not be prejudiced thereby, the court may order such sale, or such sale and allotment, and make distribution of the proceeds of sale...

11. In interpreting W.Va. Code § 37-4-3, the West Virginia Supreme Court of Appeals has held as follows:

[A] party desiring to compel partition through sale is required to demonstrate [(1)] that the property cannot be conveniently partitioned in kind, [(2)] that the interests of one or more of the parties will be promoted by the sale, and [(3)] that the interests of the other parties will not be prejudiced by the sale. Syllabus Point 3, *Consolidated Gas Supply Corp. v. Riley*, 161 W.Va. 782, 247 S.E.2d 712 (W.Va. 1978).

12. In this case, the subject real estate cannot be conveniently partitioned in kind.

The testimony admitted in this matter demonstrates that the only acreage currently suitable for a homesite is the 3.64 acres which is the current location of Ms. Archer's mobile home and the mobile home of her daughter. The expert testimony offered in this matter confirms that the 3.64 acres constitutes the most valuable portion of the real estate and that due to the character of the remaining acreage, there would be significant expense and excavation involved to develop the remaining acreage. If Ms. Archer, who only has a one-seventh (1/7) interest in the subject real estate, received the 3.64 acres by partition, the remaining owners would receive much less valuable land and would be required to expend substantial sums of money to place the remaining acreage in a position whereby the acreage could be developed

for residential purposes. Accordingly, Ms. Archer's proposal to receive the 3.64 acres for her one-seventh (1/7) interest in the subject real estate would be an inequitable and inconvenient partition of the subject real estate.

Furthermore, while Ms. Archer has also indicated that she is willing to accept another portion of the subject real estate, Ms. Archer has failed to produce a survey setting forth another proposed area for partition and has failed to provide an appraisal report for another proposed area.

13. The interests of the majority of the parties would be promoted by a sale of the subject real estate. While Ms. Archer opposes a sale of the subject real estate, the remaining owners who collectively have a six-seventh (6/7) interest in the real estate desire for the property to be sold and would derive a benefit from the sale of the real estate. Currently, Ms. Archer and her daughter, who has no ownership interest in the property, are the only individuals benefitting from the real estate. Ms. Archer and her daughter are the only individuals who have enjoyed the benefit of residing on the real estate and Ms. Archer is the only individual who has benefitted from the sale of timber on the real estate. However, if the real estate is ordered sold by the Court, the remaining owners will benefit from their ownership interests by deriving a monetary benefit from the sale. Thus, the interests of the majority of the parties in this matter would be promoted by a sale.

14. No party to this action will be prejudiced by a sale of the subject real estate. If the subject real estate is sold, Ms. Archer would receive one-seventh (1/7) of the net proceeds from the sale and would be afforded an opportunity to move her mobile home to

another location. Ms. Archer's daughter, who has no ownership interest in the subject real estate, could likewise move her mobile home to another location. While the Court is sensitive to Ms. Archer's desire to reside on the subject real estate, the interests of all the parties to this matter must be considered as a whole and the desires of one party cannot adversely impact the rights of the remaining parties.

WHEREFORE, since the property can not be conveniently partitioned, the interests of the majority of the property owners will be promoted by a sale of the property and the interests of Ms. Archer will not be prejudiced thereby, the Court **ORDERS** that this property shall be sold at public sale. Accordingly, the Court further **ORDERS** that Dennis Braglio, a competent attorney practicing before this Court shall serve as Special Commissioner to sell the property in accordance with W.Va. Code § 55-12-1 *et seq.* The Special Commissioner shall post bond in the amount of Eighty-Three Thousand Dollars (\$83,000.00) before beginning the duties of Special Commissioner. After posting bond, the Special Commissioner may sell the subject property in fee or may sell the surface and mineral interests separately, depending on the method which will yield the highest profit.

The Court further **ORDERS** that this action be **DISMISSED** from the docket of this Court. The objections of the parties to this Order are hereby noted and preserved.

The Circuit Clerk is **DIRECTED** to mail a certified copy of this Order to the following parties:

Larry G. Kopelman
9 Pennsylvania Ave.
Charleston, WV 25302

Franklin L. Gritt, Jr.
Lisa M. Moye
Gritt Law Offices
Middleton Place
19 Valley Street
Winfield, WV 25213

Date: 9/21/06
Certified copy to:
 parent
 parties
 other (please describe)
By: [Signature]
certified/1st class mail
fax
hand delivery
interdepartmental
other directives accomplished

LEK/718, Jr./HDP/5MA
JES/AED

Harvey D. Peyton
Peyton Law Firm
P.O. Box 216
Nitro, WV 25143

James E. Garvin
Turley Garvin & Turley
3751 Teays Valley Road
Hurricane, WV 25526

J. Mark Adkins
Bowles Rice McDavid Graff & Love LLP
P.O. Box 1386
Charleston, WV 25325

Anne E. Dietz
1424 Kanawha Blvd. E #11
Charleston, WV 25301

ENTER this 18 day of September, 2006.



LOUIS H. BLOOM, JUDGE

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 21st
DAY OF September, 2006
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

May 8, 2006

Alexander J. Ross, Esq.
151 Dudding Avenue
Hurricane, WV 25526

Re: Morton v. Unknown Heirs of Ernest M. VanCamp, et al.
Civil Action No. 05-C-2376

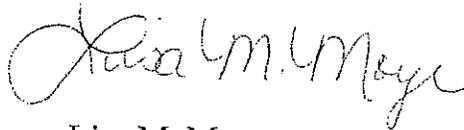
Dear Alex:

I recently spoke to my clients, Bill Morton and Jess Morton, concerning Linda Archer's interest in surveying a portion of the subject real estate where her mobile home is located. Both of my clients believe that this would significantly diminish the value of the residue and make the real estate nearly impossible for development. Evidently, Ms. Archer's mobile home is located in the center of the best land suitable for building.

I have briefly spoken to J.J. Casto to determine whether he likewise believes the value of the residue would be diminished if the mobile home area is severed from the whole land. Mr. Casto indicated that he did believe the value of the residue would be diminished, but that he could not determine a monetary value unless he examined the survey and the survey stakes. Accordingly, I am writing to advise you that my clients intend to object to any survey proposed by Ms. Archer.

Please feel free to contact me if you would like to discuss this matter. Thank you for your attention in this matter.

Very truly yours,



Lisa M. Moyer

cc: Harvey D. Peyton, Esq.
Anne E. Deitz, Esq.
James E. Garvin, Esq.
Bill E. Morton
Jess R. Morton