

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

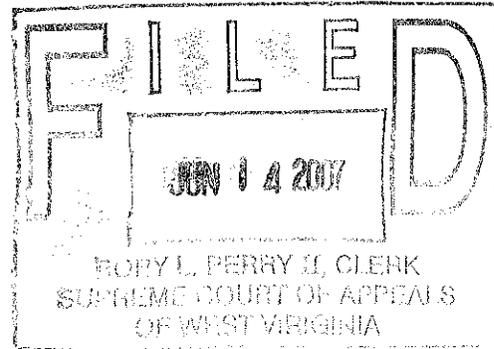
Linda Kessler Archer,

Defendant/Petitioner

v.

Bill E. Morton and
Jess R. Morton

Plaintiff/Respondent,



Appeal No. 33341

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.

APPELLANT'S MEMORANDUM OF LAW IN RESPONSE TO APPELLEE'S
MEMORANDUM OF LAW

With regards to Paragraphs I and II, the Appellant has no disagreement with the characterizations. In addition to those alleged assignments of error, in Appellee's Memorandum, the Appellant states that the lower Court erred in determining that the property could not be partitioned and that the Court did not administer this case in accordance with this Supreme Court's ruling in Ark Land Company v. Harper, et. al., 215 W.Va. 331, 599 S.E.2d 754 (2004).

With regard to Paragraph IV, there is no disagreement.

With regard to Appellee's discussion of law in Paragraph V on page 5, the Appellant came to the Circuit Court asking for a portion of the land to be allocated to her for her to continue to live in her mobile home along with her daughter. The Court instructed the Appellant to obtain a survey partitioning a one-seventh ($1/7^{\text{th}}$) interest to the Appellant based upon land size, without regard to land value. The Appellant obtained that survey using the existing location of Appellant's trailers and using the Court's directive of one-seventh ($1/7^{\text{th}}$) of the total acreage size. The Appellant submitted that survey in accordance with the request.

The Appellant agrees that expert subsequent testimony revealed that this particular 3.64 acres was in the center, and was part of the most valuable acreage. The Appellant stated that her interest was in saving a homeplace upon her ancestor's property, not necessarily in the exact location of Appellant's mobile home, but asking only for enough land to relocate two mobile homes in a location so as to cause minimal expense considering roads for ingress and egress, water, sewer, and other utilities. The Appellant stated that she did not have the funds to develop expert testimony land valuations and a second survey, but suggested that a Commissioner be appointed to study the land values within the subject parcel and to recommend an allocated amount of land at a location that would compensate the Appellant for her one-seventh ($1/7^{\text{th}}$) interest, but at the same time, have the least amount of impact upon the residue and Appellee's interests.

With regard to the second criteria as mentioned on page 5, the Appellant maintains that carving out a lessor portion of land to the side of the agreed upon more valuable land, would have virtually no impact upon the Appellee's use of the property, and would satisfy the Supreme Court's directives and determinations in the Ark Land case and to promote the "fair test" as mentioned in the Croston case.

With regard to the discussion of the third criteria on page 6, it is obvious that the Appellant would be prejudiced by the sale, in that she would lose the homesite that she has grown to know and love over her lifetime.

The Appellee's bring up the past residence of the Appellant, who will testify, if it is relevant, that she was in an abusive marriage in the 1980's, that she had to leave her husband many times, and she left to go to Florida for her safety and while she was gone, her husband burned the original homeplace down, but continued to live on the property. Appellant learned of her husband's death in 1998. It took her two years to accumulate money necessary to buy a mobile home and return to her homeplace. Again, these facts are, more than likely, not relevant regarding the issue of this appeal.

The Appellees attempt to argue that the Ark Land case is easily distinguished from the facts in this case and the Appellant takes opposition to that statement. This Court's pronouncements in the Ark Land case apply nearly point for point to the facts in this case and should be given deference and consideration.

In conclusion, the Appellant simply wants to remain on a portion of the property that has minimal effect upon the residue and the Appellees, and, therefore, asks this Court to overturn the lower ruling and to remand this case to the lower court for such determination.

Respectfully submitted,

Linda Kessler Archer
By Counsel



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CERTIFICATE OF SERVICE

I, Larry G. Kopelman, do hereby certify that on the 13th day of June, 2007, I served the foregoing *Appellant's Memorandum of Law in Response to Appellee's Memorandum of Law* upon said parties of record herein by depositing a true copy thereof in the United States Mail, postage prepaid, addressed to said parties as follows:

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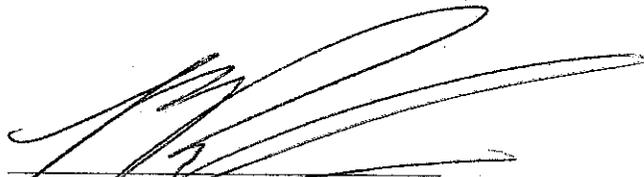
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