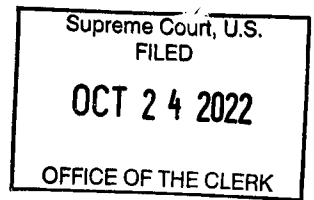


No.

22-818



In the Supreme Court of the United States

[Yusufu Anyika], Petitioner

v.

[Cecelia Francis-Anyika], Respondents

**FOR THE SUPREME COURT OF
PENNSYLVANIA**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS TO BE PRESENTED

The Lower Court incorrectly granted Judgment (Contempt of Court) in favor of the Plaintiff (Wife) where genuine issues of material fact exist which were timely raised and objected to by the Defendant. eg Contempt of Court for performing a Realty appraisal based upon the date of sperate instead of current date.

The main issue is – Why are “some” assets valued up to the date of separation (DOS), eg bank accounts, 401K and other assets such as Realty Property valued to date of sale which can be years “after” the date of separation. PA rule 3501 and 3505 do not differentiate between assets when it comes to date of separation. In this instance the lower Court Judge applied arbitrary dates to assets which resulted in incorrect asset values which affected the financial outcome for Mr Anyika. If Rule 3501 and 3505 is

followed it would have been a fair and equitable to both parties. Mr Anyika should not be found Contempt of Court for following Rule 3501 and 3505 which clearly states appraised values of assets are to be based upon Date Of Separation regardless of the asset. This is an ongoing problem that should be resolved promptly.

Defendant (Yusufu Anyika) request consistency in the Rule 3501 and 3505 because it has detrimental financial impact to him.

Defendant objected to Plaintiff (wife) obtaining ownership of the properties due to Contempt of Court.

Defendant objected to selling of his house/properties

PARTIES TO PROCEEDING

1. Defendant - Yusufu Anyika
2. Plaintiff - Cecelia Francis-Anyika

CORPORATE DISCLOSURE STATEMENT

1. No Corporate Institutions involved with Plaintiff for this petition.
2. No Corporate Institutions involved with Defendant for this petition.

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TABLE OF AUTHORITIES

Constitutional Provisions

Not applicable

Statutes

Pennsylvania, Chapter 35. Property Rights

3501

Cases

N/A

Constitutional Provisions

Not Applicable

Statutes

Pennsylvania, Chapter 35. Property Rights

3501

(a.1) Measuring and determining the increase

in value of nonmarital property-

The increase in value of any nonmarital property acquired pursuant to subsection (a)(1) and (3) shall be measured from the date of marriage or later acquisition date to either the date of final separation or the date as close to the hearing on equitable distribution as possible, whichever date results in a lesser increase.

3505. Disposition of property to defeat obligations

(b) Inventory of property.-Both parties shall submit to the court an inventory and appraisement, which shall contain all of the following:

(1) A list of the property owned or possessed by either or both of them as of:

(i) the date of separation;”

2) A list of the value of the property owned or

possessed by either or both of them as of:

(i) the date of acquisition;

(ii) the date of separation;

CITATION OF OPINIONS

Court of Common Pleas Delaware County

Pennsylvania # - CV-2016-003838

Superior Court Of Pennsylvania Docket No. 377

EDA 2021

Pennsylvania Supreme Court Docket No. 50 MAL

2022

Basis for the Jurisdiction

The Judgement of the Supreme Court of
Pennsylvania was entered on 25th May
2022. A petition for rehearing was denied
on 28th July 2022. This petition is timely
filed pursuant to Supreme Court Rule 13.1.
This Court's jurisdiction rests under 28
U.S.C. §1254(1) and Rule 28.

STATEMENT OF THE CASE

1. Date of Marriage, November 1999
2. Date of Separation (DOS), May 4th 2016
3. Ms Francis-Anyika (Plaintiff) departed the marital home May 2016
4. Mr Anyika (Defendant) remained on property (18 E. Essex Ave) to present. He has lived at this property since 2008/2009 when he bought and reconstructed the fire damaged house with his own funds.
5. Divorce trial order requested real estate appraisal be performed within 30 days of the order. Mr Anyika complied with the order.
6. Mr Anyika , paid upfront and requested the appraiser to perform the appraisal based upon DOS

of Pa Statute and Discovery Order. Order did not state what dates to use.

7. Appraisal results was shared with Plaintiff. Plaintiff did not object to appraisal until several months later.

8. Mr Anyika was accused of contempt for not obtaining an appraisal based upon current date/present date.

9. Between May 2006 – June 2022(to date) Ms Francis-Anyika has not offered or made any payment to the upkeep of the properties. Mr Anyika had sole responsibility.

10. Mr Anyika has up kept and made property taxes payment since DOS to present.

REASONS FOR GRANTING THE WRIT

This matter is of public importance and if not addressed properly will undermine the public confidence in the legal system. The public may view it as unfair and therefore rigged. The letter of the law must be followed to maintain the public confidence in what is written as Pa Rule Section 3502, failure to adhere to the Rules will erode the public confidence in what is written. If these rules are not fairly upheld it will deteriorate the public trust in the marital institution, fostering an increase in non-marital couples and distrust in this the judicial system as a whole.

The basis of this reconsideration is grounded on testimony and evidence presented at the divorce trial, post-trial hearing(contempt) and pre-trial hearing (Discovery).

Ms Francis-Anyika moved out (Date of Separation) of family home May 2016 and has never returned. Plaintiff has never contributed to upkeep, payment of taxes and mortgage since May 2016 to present (June 2022).

There are certain sections of the Order(s) that cannot be followed and therefore needs amendment or at least clarification. As written some parts are impossible to execute. Amending the Order of the Lower Court and granting the defense (Mr Anyika) option to buy out the Plaintiff based upon Real Estate values obtained by the date of separation (DOS), which is the standard approach in these cases, the plaintiff will also benefit from the amended order if granted.

“Berish v. Berish

69 Ohio St. 2d 318

In Berish, the Court stated, "the choice of a date as of which assets available for equitable distribution should be identified and valued must be dictated largely by pragmatic considerations."

The choice of a date as of which assets available for equitable distribution should be identified and valued must be dictated largely by pragmatic considerations.

The public policy giving rise to equitable distribution is at least in part an acknowledgment that marriage is a shared enterprise or joint undertaking. While marriage is literally a partnership, it is a

partnership in which the contributions and equities of the partners do differ from individual case to individual case. Assets acquired by the joint efforts of the parties should be, on termination, eligible for distribution.

But the precise date upon which any marriage irretrievably breaks down is extremely difficult to determine, and this court will avoid promulgating any unworkable rules with regard to this determination. It is the equitableness of the result reached that must stand the test of fairness on review.”

The defense has always requested asset value should

be based upon DOS. All Lower Court Orders thus far have NOT stipulated what the equitable distribution date is. Defendant has performed properties appraisal based his correct interpretation of DOS being the equitable distribution date. Subsequently, plaintiff has to set aside her emotional anger and reprisal approach and use reason and logic. Plaintiff testified in the divorce trial she played no part in acquiring and maintenance in the 3 properties in question. It was the sole responsibility of the Defendant.

Defendant followed the Court Order and got the appraisal done within the time frame required within the Order and yet was found in contempt. The appraisal values of the three (3) properties should be based upon Date of Separation as outlined in Discovery and also in Rule- **Chapter 35 Property Rights 3505 (b) (1) (i).**

It will benefit everyone if the defense can buyout the Plaintiff, Ms Francis-Anyika for the several reasons as follows:

1. Mr Anyika has been in the real estate business for over 20 years. He has maintained all three (3) properties.

“Blickstein v. Blickstein

99 A.D.2d 287 (N.Y. App. Div. 1984)

In Blickstein, the court stressed the idea that the basic assumption underlying equitable distribution is that the marriage relationship is to be viewed as an economic partnership in which both parties have contributed to the accumulation of marital assets.”

2. Ms Francis-Anyika has not paid any real estate taxes (over 6 years) to prevent these houses going to Sheriff sale.

3. Mr Anyika maintained these properties, since purchasing and especially within the last 6 years after Date of Separation, so that they will uphold market value.

“Hoyt v. Hoyt

53 Ohio St. 3d 177 (Ohio 1990)

In Hoyt, supra, the Court also held that the trial court has discretion in this area and that, “* * * any given is not

necessarily subject to direct

division but is subject to evaluation

and consideration in making an equitable distribution of both parties' marital assets."

The trial court must have the flexibility to make an equitable decision based upon the circumstances of the case, the status of the parties, and the reasonableness of the result. but is subject to evaluation and consideration in making an equitable distribution of both parties' marital assets."

4. Properties was purchased, by husband, with life savings as attested to by spouse during the divorce trial.

5. Two properties are owned free and clear and

one has a mortgage which husband has be solely paying up present. Ms Francis-Anyika has never made a payment to this date.

“Upchurch v. Upchurch

122 N.C. App. 172 (N.C. Ct. App.

1996)

Holding that a third party holding

legal title to property is a

necessary party in an action for

equitable distribution”

Mr Anyika has paid all taxes and any mortgage(Franklin Mint Credit Union) post DOS.

Exhibit #2

6. It is reasonable for the defense, Mr Anyika, to purchase the properties at market value. Also note the value of the properties are decreasing since

appraisal and the plaintiff would be financially better off if Ms Francis-Anyika allow Mr Anyika to buy her out at the stated appraised value performed by Barrone Apraisal Company. Current values are less.

7. Most realtor in the business knows to sell a house on the open market can take up to 6 months depending on condition and location. In addition, the other unknown is who is going to finance repairs that is mandated by borough or townships. This is not addressed in the Court Orders. Thus DOS value is reasonable and logical. Values of properties can increase and decrease in the future therefore a fixed and verifiable date is appropriate, ie DOS. The argument is similar here. Asset and Property value may increase or decrease AFTER Date of separation. We have precise and accurate appraisal performed by the Court appointed appraiser which should be

used by the lower courts. No one is getting rich overnight with this reasonable approach.

“Beasley v. Beasley

518 A.2d 545 (Pa. Super. Ct. 1986)

In Beasley v. Beasley 359 Pa.Super.

20, 518 A.2d 545, 554 (1986), the

Pennsylvania Superior Court

observed that "[i]t is tenuous and

risky to attempt to evaluate the

likely return on contingent fees

and as such, no value can be placed

on them for purposes of equitable

distribution."..... The court denied

this request and held that good will

is future earnings and that

the Divorce Code of 1980

permitted distribution only of

present property, the value of
which could be ascertained.”

8. Choosing of a repair person is also important. Will they over-charge the unsuspecting and/or ignorant? Is there room for corruption and kick backs? Another reason Mr Anyika should be allowed to buy out Ms Francis-Anyika. Everyone will lose all around if this does not happen.

9. The trial court erroneously reached the conclusion that the plaintiff contributed to attaining and maintaining the properties in question.

“Hunt v. Hunt

112 N.C. App. 722 (N.C. Ct. App.
1993)

In Hunt, the trial court made
insufficient findings of fact, leading

**to unsupported conclusions of law
and no record for the trial court to
rely upon to determine equitable
distribution.”**

CONCLUSION AND RELIEF

The Court should grant the petition for a writ of certiorari.

I, Yusufu Anyika – Defendant, request that the Lower Court amend the Order, of Contempt of Court(Exhibit E), which includes the need to sell his home and properties, furthermore, the order should be amended to allow Defendant to buy-out the Plaintiff. Defendant was not in Contempt of Court because he performed Realty appraisal based upon Pa Rule 3501 and 3505.

The Court should stay Petitioner's execution and grant certiorari to review the Pennsylvania Supreme Court in his case, or grant such other relief as justice requires.

Respectfully submitted,

20DEC2022

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APPENDIX A - E

A - Supreme Court Of Pennsylvania – ORDER
Reconsideration Denied - Order

B - Superior Court of Pennsylvania – ORDER
And Petitioner's Brief

C - Court of Common Pleas Delaware County
Pennsylvania – Statement of Errors

D - Court of Common Pleas Delaware County
Pennsylvania – Equitable Distribution Order

E - Court of Common Pleas Delaware County
Pennsylvania - Contempt Of Court - ORDER