

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF MARQUETTE

In the matter of:

GARY L. CARR,

File No 10-315421-PO

deceased.

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**OPINION AND ORDER**

The case code for this matter is undoubtedly incorrect. The case was filed as a request for protective order. This court's jurisdiction to issue protective orders derives from MCL 700.5401, which authorizes the court to issue a protective order in lieu of a conservatorship for a minor or a legally incapacitated adult.

If fact, this is a dispute over ownership of property. It could be made to look like a conversion action, an issue of trust administration, a probate proceeding, or a divorce property settlement. In any event, there is a problem which needs to be solved, and this court has elected to attempt to solve it without jurisdictional quibbling. If nothing else, this court has sufficient concurrent jurisdiction under MCL 700.1303 to hear and decide the case.

The facts are these:

Gary Carr and Carol Kurian Carr lived together for upwards of 20 years. Mr. Carr had a variety of jobs, including operating a mobile home transportation business and working for the Sault Ste. Marie Tribe of Chippewa Indians.

Gary Carr was eventually diagnosed with cancer.

On April 14, 2009, Gary and Carol were married. On the same day, Gary Carr signed a trust document dividing his property between Carol and his two sons from a

previous marriage, Jason Carr and Garry Carr. The trust instrument was drafted by a local attorney who specializes in estate planning. Mr. Carr also signed a Bill of Sale (Exhibit 21) transferring all of his interest in “. . . all tangible personal property” to the trust.

On April 28, 2009, Gary Carr died. Upon his death, some of Mr. Carr’s property was distributed in accordance with the provisions of Article Two of the trust. Carol Carr received a life estate in Mr. Carr’s homestead and a 2004 Ford Hybrid vehicle. Jason Carr received his father’s interest in Carr’s Mobile Home Transportation, the remainder interest in the homestead property, several vehicles, and other real and personal property. Garry Carr received a life estate in some real property, a truck, and the right to use personal property and equipment.

There were disputes between the parties about ownership of many of the items of personal property. The case was referred to mediation in an attempt to resolve the disputes, but mediation was unsuccessful.

In an attempt to preserve (or re-create) the status quo, this court issued what was in essence a preliminary injunction on July 7, 2009. The Order stated that no one should dispose of items in their possession, and that all items should be returned to where they were originally located. Testimony at the hearing on March 1, 2011, and a view of the premises on March 21, 2011, proved that some of the items had not been returned.

Both sides were asked to make lists of the personal property that existed at the time of Gary Carr’s death, and did so.

Testimony at the hearings established where some of the personalty was located. Some items have apparently disappeared. The parties have abandoned some of their original claims to ownership of some of the items.

Carol Carr continues to live in the homestead, but she stopped making the mortgage payments, and the Catholic Credit Union foreclosed on the loan. Some of the personal items, like solar panels and windmills, were considered fixtures, and the credit union is claiming ownership of those items because of the foreclosure. The property is currently for sale. The loan payoff is \$76,000.

Testimony established that Carol Carr has a seventh grade education and has worked most of her life as a housekeeper at a motel. Between 2007 and 2009, Ms. Carr's income from her employment was between \$10,000 and \$12,000 per year. She also received about \$5,000 per year in social security payments. Ms. Carr's son testified she could not read or write. During the course of her relationship with Gary Carr, there were multiple occasions on which she took out small, unsecured loans from local financial institutions. Exhibits 12 – 20 are evidence of these transactions, although Exhibit 17 was not admitted. Ms. Carr repaid these loans with her own money, although she used a friendly bank teller and paid in cash because she was not capable of writing checks.

The proceeds of the loans were used for various household purposes and to purchase items Mr. Carr used in his business. Without considering Exhibit 17, these loans totaled \$34,810 between 1996 and 2009.

Jason Carr was appointed Personal Representative of Gary Carr's estate on April 15, 2010. On November 15, 2010, he filed an Inventory showing the value of the estate assets to be \$0. The Inventory states that all of Gary Carr's property was transferred to

the Gary L. Carr Trust prior to Mr. Carr's death. A Notice of the spouse's rights of election and allowances was mailed to Carol Carr on August 23, 2010. Ms. Carr never filed a Notice that she wished to exercise her rights, although the dispute about ownership was already before the court, and her elections would have asserted against assets of the estate, which do not exist, according to the inventory.

During the testimony, Carol Carr indicated that she wanted to court to award her some of the items that had belonged to Gary. They include:

1. A 2001, ¾ ton Dodge truck, with a biodiesel unit and an in-bed gooseneck hitch, value not established by testimony, titled in the names of Gary Carr and Carol Kurian.
2. A 6" wood chipper, value not established by testimony, obtained with proceeds of a loan taken out by Ms. Kurian.
3. A Miller wire-feed welder, value not established by testimony, partial trade for a Ford Bronco.
4. A Miller arc welder, value not established by testimony.
5. An 8' x 16' flat tandem utility trailer, value not established by testimony.
6. A 40' steel I-beam which has been on the property for an extended period of time, value not established by testimony.
7. A plasma cutter, value not established by testimony, partial trade for the Ford Bronco. Paul Kurian testified he purchased this item from his sister, and gave it to his mother.
8. A pull-behind drag, value not established by testimony.
9. A Kawasaki Bayou 4-wheeler, valued at \$400.

10. A 1996 Skid-Steer Bobcat front-end loader valued at \$37,000 - \$40,000.
11. An air compressor with hoses, impacts, and chisel, valued at \$1,200 - \$1,300.
12. Family pictures, no monetary value.
13. Files and records from a filing cabinet removed from the house, no monetary value.

Most of the items in dispute were purchased before the parties married. Some were purchased with the proceeds of loans Carol Carr personally obtained and paid off. The steel I-beam was apparently in Mr. Carr's possession before he ever met Carol Kurian.

In an effort to arrive at a just result, this court has attempted to consider all of the surrounding circumstances. As a single man, Gary Carr was entitled to choose how he disposed of his own property and to provide for his sons. As part of a comprehensive estate plan produced by an experienced attorney, he conveyed all of his property by a Bill of Sale to the trust he created. He left Ms. Carr with a car and a life estate, so that she had transportation and a place to live.

In spite of a lack of evidence about the precise value of some of the equipment, it is obvious that Ms. Carr has asked the court to award her the items with the highest dollar values. Many of these items would be most useful to, and were probably purchased for, Mr. Carr's mobile home transport business. That business was given to Jason Carr. Ms. Carr's requests are not surprising if we assume that after Mr. Carr's death, she was confronted with the fact that Mr. Carr had conveyed everything he owned to the trust before he died in spite of the fact that she had contributed significantly to the acquisition

of the property. Ms. Carr's attitude about this was evident when she was asked why she didn't make payments on the mortgage. She responded that she didn't because she felt she "got taken" when she paid Gary's debts and essentially all of his property was left to his sons.

In the end, this court's options are to ignore any claim Ms. Carr might have upon items that were acquired with her help before she and Gary were married, and to enforce Gary's estate plan, or to make some adjustment in the equities so that Gary's children are not unjustly enriched at Carol's expense. Of those options, it seems preferable to order a cash payment to Carol and to allow Jason to retain those items that are most likely to be useful for the continuation of Gary's business.

While no precise assessment of the value of Carol's interest is possible under the circumstances, this court has determined that a constructive trust should be imposed on the property which Gary Carr assigned to his sons by means of the Gary L. Carr Trust. To adjust the equities, Carol Carr is entitled to receive the following:

1. The 2001 Dodge  $\frac{3}{4}$  ton truck, with biodiesel attachment and gooseneck hitch, all in good working order.
2. \$60,000 to offset her interest in the items she helped purchase but which were conveyed to others. This obligation may be satisfied by payment in full within 60 days of the date of this order, or by monthly payments of not less than \$750 per month, commencing May 1, 2011, until the full amount of the debt is satisfied. This debt may be secured by filing a copy of this order as a lien against any or all of the specific items transferred to Jason

Carr or Garry Carr by means of the Gary L. Carr Trust, or as a lien against any other non-exempt asset owned by Jason Carr or Garry Carr.

3. Copies of all family photos, copies at the expense of Jason Carr.
4. Return of the filing cabinet and any of its contents owned by or pertaining to Carol Kurian Carr within seven days of the date of this order.

The cash award to Ms. Carr may be adjusted if Ms. Carr requests assignment of additional items of personal property, and the parties agree on the dollar amount that should be deducted from what is awarded to her by this judgment.

All items of personal property not transferred to Carol Carr will remain the property of Jason Carr and/or Garry Carr.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

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Hon. Michael J. Anderegg  
Probate Court Judge