

STATE OF MICHIGAN

IN THE PROBATE COURT FOR THE COUNTY OF MARQUETTE

GRACE CARLAND,

Plaintiff

v

File No. 10-31857-TV

TED CARLAND

and

THE HAZEL M. DRURY TRUST,
SARAH DRURY, TRUSTEE

Defendants.

FINDINGS OF FACT

ORDER

This case is a classic example of the perils of multiple ownership and alternate use, compounded by poor communication between the joint owners. The dispute came to this court in a somewhat circuitous fashion.

The Drury Trust was established in 1969. It was created by Hazel Drury, and holds title to real property, including a cabin near Conway Lake. The cabin (or by Upper Peninsula convention, “camp”), is known as “Doc’s Folly”. The trust also holds title to four other camp properties for other beneficiaries. The two beneficiaries entitled to use of “Doc’s Folly” are Grace Carland and Ted Carland.

In September of 2009, Grace Carland filed a partition action in Marquette County Circuit Court. That action was transferred to this court by stipulation of counsel on October 15, 2010. A one-day hearing was conducted on February 28, 2011.

Testimony at the trial established that Grace Carland and Ted Carland used “Doc’s Folly” for recreational purposes from time to time, but that Ted Carland began living there on a full-time basis sometime in 2004. Grace Carland did not, and does not, consent to Ted Carland’s use of the camp as his principal residence.

Predictably, disputes have arisen about use of the property and payment of expenses. The conflict has been exacerbated by Ted Carland’s unwillingness to communicate with his sister. His mail comes to a post office box in Big Bay, but he does not regularly collect it. He testified he has a cell phone, but he had only called Grace one or two times since he got it, and said that he has had a “life-long problem” dealing with her. After the lawsuit was filed, the parties attempted to resolve their disputes by mediation, but were not able to reach an agreement.

Several issues need to be resolved. The parties need to have the court set out a schedule for use of the camp, since they have not been able to arrive at a satisfactory schedule themselves. They need a determination about who should pay for past and future reoccurring expenses such as taxes and insurance. A shed on the property has been damaged, and insurance proceeds of \$2,704 were paid to Ted Carland. The loss occurred in 2006. The insurance payment was received by Ted Carland in 2007. It is now 2011, and the hole in the shed roof has not yet been repaired. There is a dispute about what the repair should cost and what should become of the insurance proceeds. Finally, the parties need some guidance as to rules for the condition of the property at the times one party’s use ends and the other party’s use begins.

Most of these issues must be resolved by application of the court’s discretion. The only legal issue is the right to reimbursement for past expenses. Although Grace

Carland originally made the claims for reimbursement, the only claims she continues to assert are for taxes and insurance she has paid since 2009, for the \$2,704 in insurance proceeds, and for \$150 which she claims as for two nights she had to spend in a motel when she arrived at camp and found that her brother had turned off the electricity and that the refrigerator was not working.

A. OCCUPANCY

Grace Carland has suggested that she be allowed to use Doc's Folly for the months of July and August, October and November, and February and March. Ted Carland has requested that he be able to use the camp August through November, that Grace be able to use it April through July, and that December, January, February, and March be "open" for negotiated use by the parties. Given their history of communication problems, it is not reasonable to assume the parties will be more likely to agree on a schedule in the future than they have in the past. For this reason, the court will order a specific schedule.

In an effort to reach a fair result, the court has considered the usual factors that affect the desire to go to camp: weather, biting insects, and snow removal. Because Grace Carland resides in California, short periods of occupancy are not a practical solution. Counsel for Ted Carland has suggested that the parties should alternate their months of permitted use so that over time, each party will have equal access to the camp in the most and least desirable times. This is an excellent suggestion, and the court will adopt it.

Allocation of use for 2011 is complicated by the fact that Ted Carland is currently living at Doc's Folly. Accordingly, the schedule for 2010 will be:

TED: March-April; July-August; November-December

GRACE: May-June; September-October

For 2012, and alternating years thereafter, the schedule will be:

TED: January-February; May-June; September-October.

GRACE: March-April; July-August; November-December.

For 2013, and alternative years thereafter, the schedule will be:

GRACE: January-February; May-June; September-October

TED: March-April; July-August; November-December

B. PERSONAL PROPERTY

During the hearing, Grace Carland testified about the amount of Ted's belongings that were left in and around the camp when she closed it. Petitioner's Exhibits 14 – 18, which were photographs of the camp, established that this is a legitimate problem. It seems to me that the most expeditious solution is to divide the storage shed into two equal compartments. Each party will be able to store personal belongings in their own locked portion of the shed. All personal property will be locked into storage upon completion of an occupancy period, rather than left in the camp or left in the yard. Any personal property belonging solely to one of the parties which is not stored may be disposed of by the other party in any manner he or she sees fit: sold, given away, or taken to a waste disposal facility.

This ruling will require that the roof repair and construction of secure, separate storage areas will be required to be completed by Ted Carland before April 30, 2011. The \$2,704 insurance proceeds will be used for this purpose, with any remaining balance being divided equally between the parties.

C. CONDITION ON TERMINATION OF OCCUPANCY

This has been an issue between the parties in the past, and is difficult to make a comprehensive rule for, because, as Respondent's counsel points out, every person has his or her own concept of acceptable housecleaning. The overall intent of the court's order in this regard is that when one of the parties begins a period of occupancy, Doc's Folly should be in a generally clean and habitable condition, with the other party's personal property in locked storage rather than in the camp or in the yard. This means the utilities, especially heat, lights, plumbing, water, and electricity, should all be in working order. The building should be swept and dusted, counters wiped, furniture vacuumed, windows clean, and refrigerator empty. Rust stains from the well water are a continuing problem at Doc's Folly. While I understand that the stains cannot be completely eliminated, the departing tenant should make an effort to clean the sinks, shower, and toilet to reduce the stains to the extent that can be accomplished.

The best way the parties can comply with the court's order in regard to exchange of occupancy is, when in doubt, apply the "Golden Rule", and do unto others what you would have them do unto you.

D. FINANCIAL ADJUSTMENTS

As indicated above, the \$2,704 received from the insurance company should be used to pay for repairs to the shed, construction of storage, and the balance, if any, divided between the parties. Grace Carland's claim for reimbursement of \$150 for two nights' room rental seems to be reasonable under the circumstances. Ted Carland either caused the problems which made the camp unusable or failed to notify Grace of the

problem in a timely fashion; he should therefore reimburse her for the expense she incurred.

Likewise, Grace Carland has paid the taxes and insurance bills since 2009. While she has waived any claim for reimbursement of expenses before 2009, Ted Carland should reimburse Grace for one-half of the expenses she paid, or \$994.19 for insurance and \$882.45 for taxes, or a total of \$1,876.64. Adding the \$150 reimbursement for the motel expense, Ted Carland must pay \$2,026.64 to Grace Carland by June 9, 2011.

E. OPERATING EXPENSES

Petitioner's Exhibit 6 is a copy of a memo from the trustee of the Drury Trust dated May 1, 2010. It contains a spread sheet listing amounts owed to the Trust for 2009 summer and winter taxes and liability insurance. The total for the 2009 real estate taxes is \$1,596.91. In her testimony, Grace Carland estimated the yearly cost of insurance at \$800. The camp is apparently in need of some other repairs, including fixing part of the camp roof and repairing a buckled floor. Given the origin and age of the building, and the rigors of the U.P. environment, it is reasonable to suppose additional future needs for repairs and general maintenance. In her testimony, Grace Carland estimated operating expenses of \$4,000 - \$5,000 per year and a monthly payment of \$250 - \$300 per month for each of the parties. This would generate a minimum of \$6,000 per year. Ted Carland testified he was currently having financial difficulties, and that he thought a payment of \$175 per month for each of them, or a total of \$4,200 per year, would be sufficient to meet future needs.

Based on all the testimony, I believe each party should pay \$200 per month toward operating expenses, effective immediately. This will generate \$4,800 per year. If

this amount proves insufficient in any given year, obviously the additional expense should be divided equally between the parties.

In light of the history of the case, and Mr. Carland's testimony about his current financial problems, some mechanism should be in place to provide a solution if either party is unable or unwilling to pay his or her assessment.

The Drury Trust contains some provisions that may be looked to for guidance should this eventuality arise. Paragraph 4.6 provides for the sale of an interest in the trust to other beneficiaries. Paragraph 4.10 provides that each beneficiary shall "promptly pay" among other things, "insurance premiums" and "all taxes". Paragraph 4.10.1 provides that in the event a beneficiary fails to promptly pay, the trustee may assess a delinquency against that beneficiary's share of the trust, or, with the consent of all other beneficiaries, terminate that beneficiary's interest in the trust. To date, these provisions have not been used by the Trustee against either of the Carlands.

The trustee participated in the hearing of this matter and stated that the Drury Trust holds property, not cash. If that is the case, and funds are not forthcoming from the Carlands to meet current obligations, it is not reasonable for other trust beneficiaries to bear those costs for a property they do not use, even if such payments might ultimately increase the value of their beneficial interest.

Another option might be to adjust the occupancy rights of a party who fails to promptly pay a share of current expenses. While such a method makes some abstract sense, it is a distant second to a method which assures that cash is available to meet operating expenses as they accrue.

This court's decision about how the operating expense dilemma should be resolved is that if either of the parties to this litigation is more than \$4,000 in arrears in paying operating expenses at any time, the other party, upon payment of the balance due, may submit an order to this court which terminates the interest of the non-paying party and conveys that interest to the other party.

If the party whose payments are not in default elects not to exercise the option of acquiring the defaulting party's share, that share should be offered to other trust beneficiaries pursuant to Article 4.6 of the Drury Trust document.

F. OCCUPANCY BY OTHERS

Each of the parties to this litigation will have exclusive use of the property during the months identified in Section A of this Opinion. The other party may be on the property only by consent of the occupying party. The party with the right to occupy the property may also invite other individuals to be on the camp property as he or she chooses, and the parties are encouraged to continue to invite others in light of the testimony that in the past, Doc's Folly has been a "family gathering place". However, neither of the parties may rent the property to anyone else for periods when they are entitled to exclusive use.

G. CONTINUING JURISDICTION

This Opinion is intended to completely resolve the existing disputes between the litigating parties. However, in recognition of the fact that unanticipated problems may arise, this court retains continuing jurisdiction over issues arising from the use of Doc's Folly, and either of the parties may bring the matter back to the court in the future should that be necessary.

IT IS SO ORDERED.

Dated: _____

Hon. Michael J. Anderegg
Probate Court Judge