

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2007-CA-00849

**ANN TIMOTHY GEORGIAN,
PETER TIMOTHY GEORGIAN
AND GUS TIMOTHY GEORGIAN**

APPELLANTS

VERSUS

GEORGIA BELDEKAS HARRINGTON

APPELLEE

**APPEAL FROM THE CHANCERY COURT
OF FORREST COUNTY, MISSISSIPPI**

REPLY BRIEF OF APPELLANTS

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

Page(s)

TABLE OF CONTENTS *i*

CITATION OF AUTHORITIES *ii*

ARGUMENT 1-3

CERTIFICATE OF SERVICE 4

CITATION OF AUTHORITIES

CASES

PAGE(S)

Fuller v. Chimento, 824 So.2d 599 (Miss. 2002) 1, 2, 3

STATUTES

Miss. Code Ann. § 11-21-1 (Supp. 2007) 2

ARGUMENT

The Appellee argues that “several of the properties also adjoin one another, further complicating a partition in kind” (Appellee’s Brief, p.7) and contends that dividing the property in kind would “force them into ownership of adjoining properties” (Appellee’s Brief, p.8). *Fuller v. Chimento*, 824 So.2d 599 (Miss. 2002), is cited by the Appellee as an analogous case factually to the one at bar.

There are at least two flaws in this argument. First, there is no requirement that a partition in kind of the properties in this case would make the parties “owners of adjoining properties.” Using the groupings of Doug Davis, Parcel 1 (821-831 Hardy Street) is located *north* of Hardy Street at the Northeast corner of Hardy Street and Broad Street. Parcel 2 (902 Hardy Street) is located *south* of Hardy Street at the Southwest corner of Hardy Street and Pinehurst Street. Parcel 4 (103 and 105 Broad Street) is located *north* of Hardy Street to the rear (north) of Parcel 1 but is physically divided from Parcel 1 by an alley. Parcel 3 is located *south* of Hardy Street, adjacent to and south of Parcel 2. Parcel 5 is in a different county and city: Purvis, Lamar County.

The Court could have divided the property in kind without “forcing them into ownership of adjoining properties” by giving, for example, one party Parcel 1 and the second party Parcels 2, 3, 4 and 5, with the second party providing the first party *owelty* of \$92,500.00.

In addition, there is nothing in the Record even suggesting the kind of behavior between the parties that existed in *Fuller v. Chimento*, 824 So.2d 599 (Miss. 2002). In *Fuller*, the Court noted:

the relationship between Fuller and Chimento throughout the course of their ownership and this litigation is especially worth noting. They could not even agree on the nature of their relationship when they acquired the subject property. . . . It is obvious from this strained relationship that partiting the property in kind would only, as the chancellor stated, “exacerbate the efforts of the parties to work out the

problems created and which caused the need for the litigation. . . .” 824 So.2d at 602.

Despite the comment by the Appellee in her Brief, p.8, that “Given the tension and lack of cooperation between the parties which has resulted in this litigation and appeal . . . ,” the Record and the Judgment of the Trial Court are both silent as to any “tension and lack of cooperation between the parties.”¹

The Appellee’s Brief also ignores the possibility - set forth in *Miss. Code Ann. § 11-21-11* (Supp. 2007) - that *some* of the property might be sold and *some* divided in kind, as Appellants argued on page 10 of their original Brief. As the statute makes clear, it does not have to be a simple either “all by sale” or “all in kind” decision.

The fact that the properties have different values and are of different types is not an insurmountable obstacle to a division in kind *with owelty*. The fact that some of the parcels in the case at bar are income-producing and some are not, and that the income-producing parcels are projected to produce different amounts of income in the future, is *irrelevant* to the issue of *whether* the property can be divided in kind. The income that a property should be expected to provide in the future *is taken into consideration* when determining the Market Value of the various parcels of land.²


¹The Appellee’s Brief also claims that “clearly the filing of a lawsuit against family members is indisputable evidence that the parties cannot and do not get along.” Yet there is absolutely nothing in the Record that supports the statement that the parties “cannot and do not get along.” In fact, there is nothing in the Record that even states what the relationship of the parties to each other is, other than being co-tenants of real property. This is simply a case about co-tenants of real property who differ as to *how* property they own should be divided. That is really the only issue

²The statement on page 7 of the Appellee’s Brief - that “a partition in kind would result in an inequitable result - giving one party Parcel I, which generates a substantial income, and leaving the other party with the less valuable properties” - ignores the fact that the appraiser, Doug Davis, considered, as he is supposed to, all three approaches to value - market data, cost, and income - in reaching a conclusion as to the *Market Value* of each Parcel. It is the *Market Value* of the properties that is relevant in determining whether parcels can be grouped together and divided in

This Court, in *Fuller v. Chimento*, 824 So.2d 599 (Miss. 2002), made clear that partition in kind remains the preferred method of dividing property, and that only where it is “not practical” will property be divided by sale. 824 So.2d at 603. *A bit difficult, or complicated* is not the same thing as “not practical.”

The case should be reversed and remanded.

RESPECTFULLY SUBMITTED,



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kind, or partially divided in kind and partially sold.

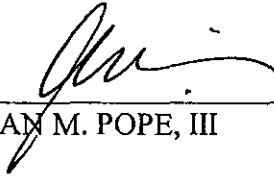
CERTIFICATE OF SERVICE

I, MORAN M. POPE, III, do hereby certify that I have this date caused to be sent via facsimile and by United States Mail, postage prepaid, a true and correct copy of the foregoing pleading to the following at his usual mailing address:

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Hon. James H. C. Thomas, Jr.
Chancery Court of Forrest County
Post Office Box 807
Hattiesburg, MS 39403-0807

This the 7 day of January, A.D., 2008.



MORAN M. POPE, III