

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - PROBATE DIVISION

6 IN RE THE ESTATE OF:)
7)
8 MARY SYKES,) No. 09 P 4585
9)
10 a Disabled Person.)

11 REPORT OF PROCEEDINGS had at the
12 hearing of the above-entitled cause before the
13 HONORABLE JANE STUART, Judge of said court, on the
14 8th day of September, A.D., 2011.

15 PRESENT:

16 MR. ADAM STERN,
17 Guardian Ad Litem for Mary Sykes,

18 MR. PETER SCHMIEDEL,
19 Appeared on behalf of Carolyn Toerpe,

20 MS. CYNTHIA FARENGA,
21 Guardian Ad Litem for Mary Sykes,

22 MS. CAROLYN TOERPE,
23 Daughter and Guardian for Mary Sykes,

24 MS. GLORIA JEAN SYKES,
25 Daughter of Mary Sykes.

26 CHARLENE J. THOMAS, CSR, RPR
27 Official Court Reporter
28 CSR License No. 084-001251
29 69 West Washington Street, Suite 900
30 Chicago, Illinois 60602

1 THE COURT: Good afternoon, all.

2 Sykes. And all who want to come, please
3 come.

4 MR. SCHMIEDEL: That might limit it some,
5 Judge.

6 THE COURT: Just a moment, I want to wait until
7 everyone is here.

8 MR. SCHMIEDEL: Peter Schmiedel,
9 S-c-h-m-i-e-d-e-l, on behalf of Carolyn Toerpe.

10 MS. TOERPE: Carolyn Toerpe, T-o-e-r-p-e,
11 Guardian and daughter of Mary Sykes.

12 MS. FARENGA: Cynthia Farenga, F-a-r-e-n-g-a,
13 Guardian Ad Litem for Mary Sykes.

14 MR. STERN: Adam Stern, S-t-e-r-n, also
15 Guardian Ad Litem for Mary Sykes.

16 MS. SYKES: Gloria Jean Sykes, the youngest
17 daughter of Mary G. Sykes. And I do not submit to
18 the jurisdiction of this Court as it doesn't meet the
19 requirements of Sodini (phonetic).

20 And Your Honor --

21 THE COURT: No.

22 MS. SYKES: The name -- no, I was having some
23 people come but the name wasn't on the outside and --

24 THE COURT: Okay. I have before me a petition

1 for partition that has been filed. When was this
2 filed?

3 MR. SCHMIEDEL: Excuse me, Judge, I have it
4 here.

5 THE COURT: I don't have the date here.

6 MS. FARENGA: Would the Court like the most
7 recent order?

8 THE COURT: Say it again.

9 MS. FARENGA: Would the Court like the order
10 setting the matter for today?

11 THE COURT: Okay. I'm just going to put in the
12 record what was --

13 MS. FARENGA: Right, it was filed --

14 THE COURT: It was filed on July 8th, oh
15 goodness, and --

16 MS. FARENGA: I think it was filed --

17 MR. SCHMIEDEL: No, no, no, the petition
18 actually was filed well before that, Judge. I'm
19 sorry, I have to look at the --

20 MS. FARENGA: This is just the order setting
21 it.

22 THE COURT: Is there any other matter before
23 the Court?

24 MR. SCHMIEDEL: There was the apportionment

1 agreement, the motion to set aside the apportionment
2 agreement.

3 THE COURT: Yes, which is ongoing. I want to
4 set a definite hearing date, set aside time in the
5 Court's calendar. I know it's going to be sometime
6 in the future for a hearing on that so that we can
7 have witnesses. There also is your motion to set
8 aside the testimony of Dr. Shaw.

9 Looking back in the record, I find nothing
10 that makes this Court, me, feel that there was
11 appropriate notice to Ms. Sykes of Dr. Shaw's
12 testimony. However, he has testified and he was
13 sworn and testified.

14 I would have him come back at the date of
15 hearing on the apportionment agreement and he will be
16 subject to cross-examination by Ms. Sykes and you
17 will then be able to redirect -- have a redirect of
18 him. Do you understand what I'm saying?

19 MR. SCHMIEDEL: I think he was cross-examined
20 by --

21 THE COURT: Well, but I want her to have some
22 opportunity to know that he's coming and to be
23 prepared for her cross. I think that will solve any
24 question about any deficiencies there.

1 Now, is there anything else?

2 MS. TOERPE: Just as to the estate, Your Honor.
3 I understand what the Court --

4 THE COURT: We have to do this the correct way.

5 MS. TOERPE: But Ms. Sykes --

6 THE COURT: If improperly done, up on appeal
7 this will be undone.

8 MS. TOERPE: I would argue it was not
9 improperly done. Ms. Sykes is held to the
10 (inaudible) if she issued no discovery. If she
11 issued discovery, Dr. Shaw's new (inaudible) would
12 have been disclosed.

13 THE COURT: You have my ruling.

14 MS. TOERPE: Thank you.

15 THE COURT: Okay. Anything else besides those
16 three items?

17 MR. SCHMIEDEL: The apportionment -- excuse me,
18 the partition action.

19 THE COURT: Right, I started out with that.

20 MS. SYKES: Your Honor, do I get to bring
21 witnesses for this hearing?

22 THE COURT: Yes, of course.

23 MS. SYKES: Okay. I just -- I didn't hear
24 that.

1 THE COURT: Yes.

2 MS. SYKES: Thank you very much.

3 THE COURT: Okay. The partition action. And as
4 you know, and I will state for the record, in 2004
5 the Illinois legislature generally restated the
6 entire law in terms of partition. And at that time
7 went so far as to say that it wanted this to stand as
8 the law, irregardless of any historical conflicts
9 that might have existed between decisions between the
10 various Appellate courts.

11 Therefore, relying upon 735 ILCS 5/17
12 through -- I mean dash 102 from Chapter 110,
13 Paragraph 17-102, Section 17-102, et seq., that means
14 everything following, it would appear that any party
15 who has an interest in real estate has an absolute
16 right to bring a request before the Court to ask for
17 a partition of the property, which would then require
18 several steps.

19 Ultimately, it seeks to give monies to the
20 parties to convert the property into monies or to
21 divide the property, if it can be so divided, so that
22 a definite portion of the property will belong to
23 Owner A, assuming two owners, and the other portion
24 would belong to Owner B.

1 However many owners there are, however many
2 interests there are, that determines the number of,
3 if you will, shares that there would be in the
4 property.

5 The first step is to discern after the
6 proper petition is to, one, make sure that we have
7 all parties in interest including any unknown parties
8 or parties thought to have interest. And then the
9 Court must ascertain, and this is 517-105, ascertain
10 and declare the right, titles and interest of all
11 parties in such action, the Plaintiffs as well as the
12 Defendant, and enter judgment according to the rights
13 of the parties. So this would reflect the ownership
14 interest.

15 And I may have misspoken, because sometimes
16 title is owned where there are uneven shares of
17 interest in property, where one party may have
18 three-quarters or some other fractional interest.
19 Their share is related to the share that they retain,
20 and the Court must make a finding of that.

21 Then the Court must discern if a division
22 of the property, that is, a physical division of the
23 property can be done.

24 Let us first then look at do we have all

1 parties in interest named in this petition for
2 partition?

3 MR. SCHMIEDEL: Yes.

4 THE COURT: And you base that on what, Mr.
5 Schmiedel?

6 MR. SCHMIEDEL: The ownership interest that --
7 I think we supplied the deed, the deed for the home,
8 part of the petition that shows ownership interest
9 between Mary Sykes, who is now represented in her
10 capacity, but disabled, by Carolyn Toerpe and Gloria
11 Sykes. There's only two people.

12 MS. SYKES: There's the 2005 will that's a
13 joint tenancy --

14 THE COURT: That has no bearing. A will is
15 nothing.

16 MS. SYKES: There's a --

17 THE COURT: A will is nothing.

18 MS. SYKES: There's a trust of which the joint
19 tenancy was severed.

20 THE COURT: Is there -- is there any land trust
21 interest --

22 MR. SCHMIEDEL: No, Judge.

23 THE COURT: -- for this PIN?

24 MR. SCHMIEDEL: No, Judge. There is only --

1 there's simply a deed which we have supplied that
2 shows ownership interest in joint tenancy.

3 THE COURT: And I mentioned PIN, that's
4 permanent tax number.

5 MR. SCHMIEDEL: Yes.

6 THE COURT: Is there more than one permanent
7 tax number?

8 MR. SCHMIEDEL: One PIN for this particular
9 piece of property.

10 MS. SYKES: Your Honor, in the Estate of Domkey
11 vs. Domnkey (phonetic), it is very clear that the
12 Appellate Court said that a joint tenancy will be
13 severed when more or one unity of time, title,
14 interest or possession is destroyed.

15 My mother destroyed the unity of everything
16 except for survivorship. She was very clear in
17 her -- in her trust that this is not a part of her
18 estate and --

19 THE COURT: As far as you know, is there any
20 land trust or other trust that this title resides in?

21 MR. SCHMIEDEL: Absolutely not.

22 MS. SYKES: It's in her trust, my mother's
23 intention, and an intent is very important and I
24 don't have that, and I -- and it was also a gift.

1 But beyond that my mother severed it, she said it was
2 her only interest. And they didn't turn over the
3 deed as they were requested by you to do -- the
4 trust, excuse me, the 2005 pooled trust.

5 MR. SCHMIEDEL: It's not in the trust.

6 MS. SYKES: You have a copy of the portion of
7 it. On Page 1 my mother is very specific that
8 6016 North Avondale is -- her only interest is in her
9 survivorship if she survives me. That is -- and it's
10 not a part of her trust and her assets. All of her
11 other assets are in her trust. She was very clear.
12 And for, you know --

13 THE COURT: And so I'm going to rule against
14 you because if the property by what you have stated
15 yourself is not in the trust, then it's not in the
16 trust. The title, as I understand it, is held in
17 joint tenancy with rights of survivorship. Is that a
18 correct statement of the law and fact?

19 MR. SCHMIEDEL: Yes, Judge, correct.

20 MS. SYKES: Yes.

21 THE COURT: Therefore, Mrs. Gloria Sykes now
22 has a present interest in this property and that is
23 my ruling.

24 Now, we have all the parties. I am also

1 allowed under 735 ILCS 5/17-106 to appoint a
2 commissioner. The Court in its discretion, and I
3 quote here the statute, sua sponte, that means on my
4 own, or at the motion of any interested party may
5 appoint a disinterested commissioner who, subject to
6 direction by the Court, shall report to the Court in
7 writing under oath as to whether or not the premises
8 are subject to division without manifest prejudice to
9 the rights of the parties and if so, report how the
10 division may be made.

11 The Court may authorize the employment of a
12 surveyor to carry out or assist in the division of
13 the premises, the fees and expenses of the
14 commissioner and the surveyor, and the person making
15 the sale shall be taxed as costs in the proceeding.

16 Therefore, I believe it would be
17 appropriate for this Court to appoint a commissioner.
18 And do you have any recommendations?

19 MR. SCHMIEDEL: I can provide a recommendation.
20 I don't have the --

21 MS. SYKES: I would like an independent, Your
22 Honor. I wouldn't want anybody --

23 MR. SCHMIEDEL: I can provide -- we can provide
24 people who have acted as commissioners.

1 THE COURT: All right. I would have you
2 back --

3 MS. SYKES: Objection, Your Honor.

4 THE COURT: I would have you back on the
5 14th -- 13th or 14th of next week.

6 MR. SCHMIEDEL: I'm in trial in DuPage County.

7 THE COURT: Oh, that's too bad,

8 MS. SYKES: Your Honor, I would like --

9 THE COURT: Can someone come for you?

10 MR. SCHMIEDEL: Yes, I can have somebody come.
11 I can have somebody come, Judge.

12 MS. SYKES: I would like to bring somebody
13 here.

14 THE COURT: Are you going to provide, also, a
15 commissioner?

16 MS. SYKES: Yes, I will provide somebody. But
17 Your Honor --

18 THE COURT: Give me a name, I want the name.
19 You two will have to discuss whether it will be the
20 13th or 14th. We need to move this along because
21 this petition has been --

22 MS. SYKES: Your Honor, this is my home where
23 I'm going to be living, and my --

24 THE COURT: Ma'am, the law --

1 MS. SYKES: They're evicting me.

2 THE COURT: The law, historically, has been
3 very clear in Illinois.

4 MS. SYKES: No, the law, historically, Your
5 Honor --

6 THE COURT: Now, I'm not going to argue the law
7 with you, ma'am. You have my ruling.

8 MS. SYKES: Then I would ask --

9 THE COURT: Now --

10 MS. SYKES: -- for reconsideration.

11 THE COURT: Stop, please.

12 MS. SYKES: I will ask for reconsideration.

13 THE COURT: Denied.

14 Continue.

15 MS. SYKES: Then I will appeal.

16 MR. SCHMIEDEL: We can do the 14th. I'll have
17 a colleague come on the 14th, Judge, with the name of
18 a commissioner.

19 THE COURT: All right.

20 MR. SCHMIEDEL: People who have done this
21 before.

22 THE COURT: I believe the commissioner should
23 have certain expertise, so you would know. I would
24 definitely -- I would definitely look for someone who

1 has experience with real estate and property, and the
2 question -- and understand the question before the
3 Court, and that is, how this division can be made, if
4 it can be made.

5 If the division can be made, if we can draw
6 a line through the property and say the north side is
7 yours, the south side is Gloria Sykes', without
8 destroying the property, then -- and it is a
9 practical division, then you will have your part,
10 your mother will have hers, and what happens to your
11 mother's part will be what happens to your mother's
12 part, and you will have total control over the
13 remaining part that you maintain.

14 Is there anything else that we can do today
15 on this matter?

16 MR. SCHMIEDEL: No, Judge.

17 THE COURT: All right. May I have my book?

18 THE CLERK: Yes, Judge.

19 THE COURT: This matter has been going on and
20 on for quite some time. It is time for us to
21 definitely get this -- move beyond and move on.

22 MS. SYKES: Your Honor, Wednesday is the
23 only --

24 THE COURT: I'm thinking of giving you two full

1 days. Do you think that would be enough?

2 MR. SCHMIEDEL: I hope so, Judge.

3 MS. FARENGA:: Two full days, yes.

4 THE COURT: Do you have your calendar, ma'am?

5 MS. SYKES: I do, it's right here.

6 THE COURT: Okay. November 28th and

7 November 29th. That's right after Thanksgiving. Is

8 that bad for anybody?

9 MS. FARENGA: Is it the Friday after --

10 MR. STERN: I'm out of town the 28th. I'm

11 leaving the 28th. I'll be back on the 29th.

12 THE COURT: There's no holiday indicated, in

13 case you're worried about a religious holiday.

14 The 1st and the 2nd. The 1st is a

15 Thursday, the 2nd a Friday.

16 MR. SCHMIEDEL: That's fine.

17 MR. STERN: No problem.

18 MS. FARENGA: No problem.

19 MS. SYKES: October 1st?

20 THE COURT: No, December 1st.

21 MS. SYKES: December?

22 THE COURT: I'm going to give you time to get

23 ready.

24 MS. SYKES: Now, this is for the partition?

1 THE COURT: No.

2 MS. SYKES: Oh, this is for the --

3 THE COURT: This is for the hearing on the
4 question of Mrs. Sykes' --

5 MS. SYKES: Competency?

6 THE COURT: -- ability --

7 MR. SCHMIEDEL: Setting aside the apportionment
8 agreement.

9 THE COURT: Yes, to set aside the apportionment
10 agreement and her state at the time that she signed
11 it.

12 December 1st and 2nd. Anybody have
13 difficulty with that time?

14 MR. STERN: No, Your Honor.

15 THE COURT: Or day.

16 MS. SYKES: Starting at what time?

17 THE COURT: It will start at 10:00 o'clock.

18 Let's make it 10:15. I have two cases on the 1st.
19 And I have already entered a ruling as to how we are
20 going to handle Dr. Shaw.

21 MR. STERN: Have you done a written ruling or
22 you want us to draft that based on what you said?

23 THE COURT: I want you to draft that.

24 MR. STERN: Okay.

1 MS. FARENGA: 10:15 both days?
2 THE COURT: 10:15 both days.
3 MS. SYKES: And when --
4 MS. FARENGA: Could I suggest that we have a
5 formal deadline for the exchange of discovery?
6 THE COURT: I would allow you to think about
7 that and offer that. You need to think about what
8 your needs are and discuss that among all of you.
9 MS. FARENGA: Yes.
10 THE COURT: All right?
11 MS. FARENGA: Thank you.
12 MR. STERN: Thank you, Your Honor.
13 THE COURT: I'm not going to tell you at this
14 point how to prepare for your hearing.
15 MS. SYKES: Has there been a hearing set for
16 Dr. Shaw?
17 MR. SCHMIEDEL: That's the date.
18 THE COURT: They don't know because they are
19 sick. They have not had -- they just found out
20 they're going to trial.
21 MS. FARENGA: Assuming Dr. Shaw is available
22 one of those days, one of those days would include
23 his testimony.
24 MS. SYKES: Oh, so it would be either the 1st

1 or the 2nd.

2 THE COURT: One would think at this point, but
3 of course, Dr. Shaw isn't here so it's a little bit
4 difficult. And if there needs to be some adjustment,
5 this is far enough in the future so that if there
6 needs to be some adjustment, by the time you talk to
7 Dr. Shaw about his availability you have more than
8 enough time to bring that before me.

9 And obviously before you couple before me,
10 there must be some legitimate attempt to get
11 Ms. Sykes involved in deciding what day that's going
12 to be, if we need to adjust the whole calendar.

13 Again, I realize that for the four of you,
14 the three attorneys and Ms. Sykes, you did not know
15 you were going to be going on trial on the 1st and
16 2nd of December, so that's why I'm giving you time to
17 work these things out. Thank you very much.

18 MR. STERN: So it's clear, his testimony stands
19 as it is. It's being reopened for --

20 THE COURT: Exactly, exactly.

21 MS. FARENGA: Okay.

22 THE COURT: Exactly. Thank you. I'm sorry.
23 So much better.

24 MS. SYKES: And the commissioner, we're here on

1 the 14th, is that what you're saying?

2 THE COURT: On the 14th. I need to know -- I
3 need to have recommendations for the commissioner. I
4 also -- I don't believe the law would prevent me from
5 appointing a third party not nominated by either one
6 of you.

7 MS. FARENGA: Is that at --

8 THE COURT: Let's make that 11:30 on the 14th.

9 MS. SYKES: On the 14th? Thank you.

10 THE COURT: Really we could make it even 10:00
11 because I was supposed to have a trial all day. So
12 it's a very light calendar, so you can come in.

13 MS. FARENGA: Okay. So 10:00 o'clock.

14 THE COURT: Yes.

15 MS. SYKES: On the 14th of this month.

16 MS. FARENGA: Your Honor, I'm reminded that my
17 motion -- I thought my motion was set for today, but
18 I didn't see it in the order I tendered to the Court.
19 But Mr. Stern reminded me it was set by a separate
20 order, a motion to compel disclosure of whereabouts
21 of \$60,000. I'm wondering if we should --

22 THE COURT: Have we set that down for any
23 briefing schedule?

24 MS. FARENGA: No, we have not.

1 THE COURT: All right. Why don't we set this
2 down for a briefing schedule. I'm going to give you,
3 Ms. Sykes, 14 days to respond to that motion.

4 MS. SYKES: I already did, Your Honor.

5 THE COURT: And then -- you did?

6 MS. SYKES: I did respond to it but --

7 THE COURT: Excuse me, did you want to file any
8 reply?

9 MS. FARENGA: Could I have 10 days?

10 THE COURT: Certainly.

11 MS. FARENGA: Just in case.

12 THE COURT: And then we need to set this out
13 for a hearing on your motion for -- how much?

14 MS. FARENGA: \$60,000, Your Honor. I kind of
15 think that if the Court rules that Mary Sykes has an
16 interest then my motion is relevant. If the Court
17 rules that Mary Sykes does not have an interest then
18 I don't think my motion is relevant anymore.

19 THE COURT: So would you want to put it off
20 until after the trial?

21 MS. FARENGA: Yes, I think so.

22 MR. SCHMIEDEL: Put it at the same time.

23 MS. FARENGA: Right.

24 THE COURT: We can consider it at the time of

1 the trial. Entered and continued until that time.

2 MS. FARENGA: Okay. Thank you.

3 THE COURT: Thank you.

4 Thank you very much.

5 MS. SYKES: Your Honor, have a wonderful day,
6 and thank you.

7 THE COURT: You, too.

8

9 (Which were all the proceedings
10 had in the above-entitled cause.)

11

12

13

14

15

16

17

18

19

20

21

22

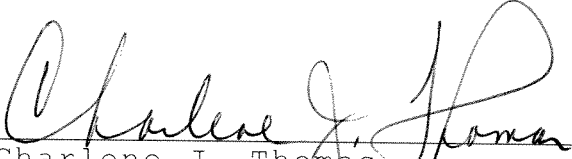
23

24

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4

5 I, CHARLENE J. THOMAS, an Official Court
6 Reporter for the Circuit Court of Cook County, County
7 Department, Probate Division, do hereby certify that
8 I reported in shorthand the proceedings had at the
9 hearing in the above-entitled cause; that I
10 thereafter caused the foregoing to be transcribed
11 into typewriting, which I hereby certify to be a true
12 and accurate transcript of the Report of Proceedings
13 had before the HONORABLE JANE STUART, Judge of said
14 court.

15
16
17
18
19
20
21
22
23
24


Charlene J. Thomas
Official Court Reporter
CSR No. 084-001251

Dated this 20th day
of June, A. D., 2012.