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WESTERN DISTRICT OF MICHIGAN
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IN THE CHANCERY COURT
FOR WILLIAMSON COUNTY, TENNESSEE
AT FRANKLIN

FAWN [redacted] FENTON,	)	
Plaintiff/Wife,	)	
vs.	)	No. 48419B
JEFFREY RYAN FENTON,	)	
Defendant/Husband.	)	

TRANSCRIPT OF PROCEEDINGS

August 1, 2019

Heard Before: HON. MICHAEL W. BINKLEY, JUDGE

Prepared by:
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APPEARANCES:

For the Plaintiff/Wife:

Ms. Virginia Lee Story
Attorney at Law
136 Fourth Avenue, South
Franklin, Tennessee 37064

For the Defendant/Husband:

Mr. Mitchell R. Miller
Mr. Charles M. Duke
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P R O C E E D I N G S

MS. STORY: Your Honor, with your permission what we would like to do is leave the ex parte order of protection in place.

THE COURT: All right.

MS. STORY: That has given relief to these parties not being able to contact each other.

THE COURT: Okay.

MS. STORY: And put as part of that, that she does not contact him, he does not contact her, which the ex parte already has him restrained and enjoined from any contact whatsoever.

THE COURT: All right.

MS. STORY: Because what we don't want to do is have something go down on his record that's going to affect his employability, because he needs to get a job ASAP, so as long as we have the protection, the order of protection under the ex parte, we are good with that.

THE COURT: Okay.

MR. DUKE: Thank you, your Honor.

THE COURT: Any other issues?

MS. STORY: We can move on to the

sale of the house.

THE COURT: Okay.

MS. STORY. This is the situation, your Honor. These parties have no minor children. They've been separated since March of 2018. Mrs. Fenton filed for divorce back in '18, and she was unable to get Mr. Fenton served. In that period of time Mr. Fenton was in the marital home, which is in Sunnyside Drive, 1986 Sunnyside Drive, Brentwood, Tennessee.

We believe that house should sell in the neighborhood of 414,000 we hope. It's a great location. People want to get in Brentwood, to get into Brentwood in that zip code. Those schools for that kind of price is wonderful. This thing could sell immediately if you had a good marketer to get that thing on the market and get it sold.

Mr. Fenton and Mrs. Fenton had agreed last year that they would do that. She then dropped the divorce. They were going to try to get it on the market. The problem with the private realtor is that Mr. Fenton posts these kind of documents that are -- this is the do not enter my property, and I'll hand you a copy of that.

1 It was made as part of the exhibits
2 when we filed for divorce in 2019. Mr. Fenton was
3 avoiding service. We hired two different process
4 servers to try to go out to the residence, and
5 this is what they would encounter. We're
6 concerned that if a private realtor was going to
7 list this property, that it would just be more
8 road blocks.
9 In 2018, when they made this
10 agreement, if she dropped the divorce he would
11 agree to put the house on the market. It never
12 got on the market. It was he's got to fix this,
13 he's got to fix that. It was one excuse after
14 another, and here we are sitting a year later,
15 and now my client had to file bankruptcy.
16 She is paying the second mortgage on
17 the house. She's paying $48,000 in credit card
18 debt, and this credit card debt is in her name,
19 but the genesis of those cards, I have a history
20 of the cards where Mr. Fenton would transfer
21 balances from his credit cards to a credit card in
22 her name, and then she became in a horrible
23 financial situation.
24 She is -- she used to make around
25 90,000 a year. Her most recent income is 5800 a

1 month. She is an architect, works for a firm,
2 and Mr. Fenton was the IT person for the firm,
3 and he hacked the emails so he lost that job. He
4 is very intelligent. He has a high school
5 education, but he is a self-taught computer
6 genius.
7 And he also has -- or he had a real
8 estate license. I don't believe that's current.
9 He had a flip home of rental property in 2016, is
10 my understanding, but he never filed his tax
11 return for 2016, when he sold that home, and so
12 we've got a tax liability from 2-2016, standing
13 out there.
14 2017, 2018, my client did get the
15 tax returns filed, but they withheld everything
16 she paid in because they still haven't filed the
17 2016 tax return. So we have woes, IRS woes. We
18 have unsecured credit card debt in excess of
19 $48,000. There is a Chapter 13. Because my
20 client makes $5800 a month, she can't qualify for
21 a Chapter 7 bankruptcy.
22 And so what happened in the
23 bankruptcy proceedings is they allowed her six
24 months to sell this house. She will have to use
25 her equity from the house. There should be about

1 120,000 equity. We have asked --
2 THE COURT: Total or just her share?
3 MS. STORY: Total. So my client is
4 around 80 -- his -- no. If it's 120 hers would be
5 around 60. Most of hers will go to pay off the
6 debt.
7 THE COURT: Is the IRS going to be
8 intercepting this money?
9 MS. STORY: When he gets his -- the
10 holdup here is the 2016 tax returns because he had
11 the property that he sold, so I don't know where
12 he is on getting that information together, but
13 the IRS is clearly not bankruptable. Once he --
14 Once he files the 2016 tax returns,
15 I imagine they will take that $8,000 they're
16 holding of her money from the -- from her
17 employment where she pays in her taxes. They will
18 take that and apply it toward the '16 taxes, no
19 doubt. So that's --
20 THE COURT: Any possibility she
21 could be an innocent spouse? I don't know how
22 that works anymore.
23 MS. STORY: She could probably, but
24 since they are already holding 8,000 of her money,
25 at this point, your Honor, she just needs the

1 burden of all the debt off her mentally. She
2 suffers from narcolepsy and she suffers -- she has
3 very sleepless nights. She can't -- she has
4 chronic fatigue.
5 Her health has declined
6 considerably. It's a toxic marriage. It's been
7 unbelievably difficult just dealing with Mr.
8 Fenton to even get him served. So we continued
9 this matter from Ms. Brittany Gates who was the
10 attorney who was first retained to represent him.
11 We continued it from June 29 until today to give
12 her a month to work on him, to see if we could get
13 the house on the market, do something.
14 We really believe the only thing we
15 can do, your Honor, is to auction this house. We
16 got a text on June 15th from Mr. Fenton. Here's a
17 copy of the text, and he says --
18 THE COURT: Could this be with
19 reserve or without reserve?
20 MS. STORY: I think without reserve,
21 just let it go. I think a good auctioneer will do
22 a fabulous job. It's a good flip property. It's
23 a good -- as I said, in that zip code you can't
24 hardly find anything for that price. So Mr.
25 Fenton sent her an email.

1 Said I will -- text. (Quoted as
2 read.) "I will stay here until the bank -- until
3 you, the banks and the police carry me out of
4 here, while they carry truckloads of junk and
5 treasures out to the lawn." Then it goes on and
6 on.
7 But that is truly what we've dealt
8 with. So he's going to say that he doesn't have
9 anyplace to live, and that he has renters. He has
10 gotten renters in there. Well, we didn't sign a
11 lease. We never authorized any renters to be in
12 that house. I think the renters need to go.
13 THE COURT: Okay.
14 MS. STORY: So --
15 THE COURT: Do you know whether or
16 not they are month to month or if there's a
17 contract?
18 MS. STORY: I just got the lease,
19 and I didn't have a chance to look at it.
20 THE COURT: Okay.
21 MS. STORY: I have been told that it
22 says 90 days to vacate but -- I don't know. He
23 says --
24 MR. DUKE: Your Honor, I'm sorry,
25 but if Mrs. Fenton is going to make comments from

1 the table here, can we go ahead and put her under
2 oath, please?
3 THE COURT: She won't make any more.
4 MR. DUKE: Thank you, your Honor.
5 MS. STORY: And I don't mind being
6 under oath whatsoever. So I don't know. Like I
7 said, I was just handed this lease.
8 THE COURT: Sure.
9 MS. STORY: So I do not know.
10 THE COURT: Okay.
11 MS. STORY: I feel sure we have an
12 escape clause because my client didn't sign the
13 lease. She is the owner of the property.
14 THE COURT: Is she the only titled
15 owner?
16 MS. STORY: Both of them.
17 THE COURT: Okay.
18 MS. STORY: So that is our argument.
19 I would ask that the exhibit on the note, don't
20 come on my property, the no trespassing be made an
21 exhibit to this hearing, and the email or the text
22 from Mr. Fenton that says I will stay here until
23 you, the banks and the police carry me out.
24 THE COURT: All right. We'll make
25 this picture the first exhibit, number one.

(Exhibit One received into evidence to this hearing.)

THE COURT: What about the ...

MS. STORY: The text, yes. I would like those texts to be made an exhibit.

THE COURT: The text will be accepted into evidence as Exhibit Number Two.

(Exhibit Two received into evidence to this hearing.)

MS. STORY: I have the bankruptcy, your Honor, that says it has to be sold within 180 days or goes to foreclosure.

THE COURT: What is the starting date of that order?

MS. STORY: She filed in April, April 29th.

THE COURT: Okay.

MS. STORY: Well, April 26.

THE COURT: Okay. So when does the 120 or 80 days start?

MS. STORY: I believe it starts from

1 the confirmation, but I'm not a bankruptcy lawyer,
2 so I was counting from -- I have talked to the
3 bankruptcy lawyer to make sure what relief we have
4 to get.
5 THE COURT: Okay.
6 MS. STORY: And I'm supposed to send
7 him a copy of this order from this court so that
8 he can get the Bankruptcy Court to ratify that
9 order so they're also in -- notified of that
10 process.
11 THE COURT: What about -- just to
12 fill in your statement here. I want to get the
13 whole picture. Have y'all talked about an
14 auctioneer? I know there are two opposite sides
15 here. I get that, but have y'all gotten that
16 far? You probably haven't because you disagree?
17 MS. STORY: Their position is they
18 want a private realtor to come in.
19 THE COURT: Okay.
20 MS. STORY: I don't mind doing
21 that, but, quite frankly, your Honor, I would not
22 recommend any of the realtors I work with because
23 I think it would be a nightmare. We get emails,
24 books and books and books from Mr. Fenton all
25 hours of the night, and I don't even think

there's anybody I could send into that situation.

THE COURT: Not even Ms. Martin? She probably --

MS. STORY: She could do it. Mr. Fenton would have to be put on a really short leash until -- he could throw kinks in it, and the other thing we're worried about -- it's what Mrs. Fenton said -- is even if you got a realtor, if he had to sign a listing contract within five days, sell it as is, theyre going to --

The buyers are probably going to want a home inspection. I don't know if it will pass a home inspection, and with three people living here with him, and if he says in that email, you'll have to carry me out, he says all my treasures, I don't know what the status that house is. It's been since March of -- 18 months, almost 18.

THE COURT: The tenants that are in there now, is it a family or one person?

MS. STORY: You will have to ask him. We don't know. Let me see if I can tell from a name. Jesse Garcia. I don't know who that is.

MR. DUKE: There's another one as

well.

THE COURT: Okay. All right. Yes, sir. Well, whoever the lawyer is.

MR. MILLER: My name is Mitchell Miller from the Nashville Bar.

THE COURT: Yes, sir, Mr. Miller. How are you today?

MR. MILLER: I'm doing very well. We have made a lot of progress talking about this case so far, and my client is essentially coming down to accept the inevitability that we're going to need to sell this home to get this divorce finalized and to move Mrs. Fenton through the bankruptcy.

At this time, however, Mr. Fenton is not employed although he is looking for employment. He does have renters in this home, and I know that Ms. Story has taken issue with that, but I would also like to tell the court that this has sort of come about because of the bankruptcy and Mrs. Fenton stopped the -- you know, discontinuing her payment on the primary mortgage happened around the same time.

And so Mr. Fenton has tenants in this home and has what is supplements and provides

1 his ongoing day-to-day costs, although the first
2 mortgage is not currently being paid.
3 Mr. Fenton did not know that the first mortgage
4 was not being paid until several months after Mrs.
5 Fenton stopped paying.
6 So, Judge, we have sort of an issue
7 here where the wife, by filing bankruptcy, filing
8 divorce and stopping to pay the first mortgage,
9 has created the financial crisis that we're now
10 here to resolve.
11 Obviously, Mrs. Fenton would
12 contend that my client ran up all the debt, and
13 we're not necessarily here to determine all of
14 the marital assets and how to distribute marital
15 debt and assets conclusively, but my client would
16 show the court that many of those -- many of those
17 transactions and I'll say creative financial
18 decisions were done by agreement, or at least with
19 the knowledge of the wife.
20 However, for today's purposes we
21 agree that the home needs to be sold, but Mr.
22 Fenton's liability to his current tenants needs
23 to be taken into account. Mr. Fenton's current
24 financial ability needs to be taken into account,
25 and we would oppose the motion in terms of an

1 auction, especially to the extent that it
2 requested an immediate auction.
3 At minimum, Mr. Fenton needs some
4 degree of time to gather his personal belongings,
5 give proper notice to his tenants, find
6 subsequent housing, and most importantly, if he
7 doesn't have a renter income coming in, have some
8 transitional time to figure out how to be self-
9 sustaining in the short run.
10 We're not here on an alimony
11 pendente lite motion, but we probably should be
12 soon because --
13 THE COURT: Can I ask you this?
14 MR. MILLER: Yes, sir.
15 THE COURT: One of the biggest
16 problems I'm bumping up against in trying to make
17 the best decision here is who's going to control
18 the husband? Exhibit One and Exhibit Two show
19 some very disturbing conduct. I know you are not
20 in charge of trying to control your client all the
21 time.
22 I do know good lawyers like you
23 gentlemen on the left side of the table will tell
24 your clients, if you don't do what I tell you to
25 do, we're out of here. I don't know how people

1 work any more, but that's the way we used to
2 practice law. The lawyer is in charge. You can
3 be nice and sweet, but tell the client what they
4 need to do.
5 And I don't have any assurance at
6 this point that his conduct won't continue
7 thereby delaying this process even more. I know
8 you can't guarantee his conduct. I know that,
9 but is there anything you can give me to indicate
10 that his conduct will not be an issue at all? You
11 probably can't. If I were in your shoes I would
12 probably say --
13 MR. MILLER: I can give you no
14 guarantees.
15 THE COURT: I'm not an insurer of my
16 client's conduct.
17 MR. MILLER: I will adopt that
18 statement as Mr. Fenton's -- but, your Honor, I
19 would indicate that there's been an ex parte order
20 in place for some time now --
21 THE COURT: Right.
22 MR. MILLER: -- and that Mr. Fenton
23 has complied with that to the letter, and that we
24 stipulate he will continue to comply with that to
25 the letter, and Mrs. Fenton has agreed with that

1 and also agreed, you know, not to have any contact
2 with him.
3 So we are in a place. We are
4 coming to the table and starting to realize -- I
5 say "we" as in my whole team here and Mr. Fenton,
6 that this is where the rubber is meeting the road,
7 and this divorce is going to get moving along, and
8 we're going to have to take this one step at a
9 time.
10 This is going to have to be done.
11 So I will tell the court that I am confident that
12 my client now understands that. We spent many
13 hours working with him to impress upon him the
14 realistic difficulties of any divorce and, in
15 particular, this one.
16 So I think what you are seeing there
17 is probably something that you've seen a lot
18 before, where spouses in emotional and financial
19 crisis are lashing out in irrational, unstable
20 ways. That is coming to an end, and I can give
21 the court my best confidence that I believe that
22 Mr. Fenton is turning a corner on that.
23 He has expressed that to the court
24 by agreeing with Ms. Story's very generous
25 proposal to continue the ex parte order rather

1 than go for it on 402. So I do think that there
2 are some good indicators there. Mr. Fenton just
3 told me that he is willing to take down all those
4 troubling signs that Ms. Story mentioned.
5 We are prepared to entertain any
6 other limitations and orders that the court would,
7 you know, would want in that kind of order, but we
8 do think that because the main asset in this
9 divorce is this home, which we are essentially
10 disposing of before there's been any discovery and
11 any further analysis on this, that we need to
12 proceed in a way that absolutely maximizes the
13 total take on this.
14 THE COURT: Under the circumstances.
15 MR. MILLER: Under the
16 circumstances.
17 THE COURT: That's where the real
18 issue is here.
19 MR. MILLER: Yes, sir.
20 THE COURT: Can I ask you some more
21 questions too? Ms. Story may be able to answer
22 this. The other concern I have is: What kind of
23 condition is the interior of the home? Have we
24 seen -- has Ms. Story and her client had an
25 opportunity to look at the interior to see what it

1 looks like?
2 MR. MILLER: Your Honor, I'm not
3 sure. There's definitely some clutter, and my
4 client is willing to get to work today to make
5 sure that that is done, and in terms of following
6 recommendations for a realtor, we'll follow all
7 those recommendations. There may be some
8 financial limitations about, you know, what
9 extraordinary efforts can be made.
10 THE COURT: I'm going to think out
11 loud here for a moment. My tendency is to --
12 considering all these factors, first of all we're
13 getting ready to close out the best marketing
14 months of real estate; however, when we look at
15 property that is specialty property or property
16 that is very desirable like Brentwood, that
17 really doesn't matter like it used to.
18 People, if they want to buy, will
19 buy. If the right buyer comes along -- and they
20 do in these desirable neighborhoods -- they'll buy
21 it.
22 MR. MILLER: Yes, sir.
23 THE COURT: So the next thing is,
24 looking at the husband's past conduct, which
25 bothers me, and his interruption of the smooth

1 transition of a sale or auction, I want to get
2 the highest and best price as everyone does.
3 It's such a close decision for me.
4 I'm thinking of three options.
5 Number one, getting a real estate person who is
6 aggressive, who'll sell the property, and if it
7 can't be sold within 30 days, auction it. But
8 what that's going to require, if the interior of
9 the home looks like trash, I mean, that's going to
10 cost money to get it in good condition.
11 So I guess the question there is
12 that no one has an answer, and I don't expect
13 one. What is the margin of additional equity
14 that could be obtained to fix the home up and
15 make it marketable and sold with an aggressive
16 seller within a month, and is it going to be
17 worth it to do that financially?
18 MR. MILLER: From my understanding
19 -- from my understanding an investment of five to
20 10,000 would yield an additional profit of about
21 50. That calculus might make sense, but I don't
22 think that either party has the money to make
23 that investment even though that may be a rational
24 decision to make.
25 THE COURT: My tendency is to sell

1 it at auction -- it really is -- for a lot of good
2 reasons.
3 MR. MILLER: Your Honor, if I could
4 add another note about how I've arrived on this
5 case, especially just a few days before this
6 hearing ...
7 THE COURT: Yes, sir.
8 MR. MILLER: Mr. Fenton contacted
9 me I would say in February maybe before some of
10 these things happened, and he wanted to engage
11 me, but at that time I was working with HCA, and
12 we developed a rapport -- I couldn't take his
13 case, but we developed a rapport several months
14 ago.
15 Although I wasn't able to take his
16 case, I think that we've connected and we've
17 established a rapport, and since I've moved back
18 into private practice he contacted me just last
19 week. So since this has gotten rolling -- and I
20 know that there was a divide between he and his
21 prior counsel -- I do have a strong rapport with
22 my client.
23 And I would be willing to do
24 whatever the court would like to try to work with
25 him and make sure that all phases of this divorce

1 proceed in an orderly and respectful fashion. I
2 think that we're ready to turn a corner and do
3 that if the court would allow us that opportunity,
4 if the court's main concern is how we conduct
5 ourselves.
6 THE COURT: If the margin of
7 additional money pales against the cost to get
8 there, and we know that no one has the money to
9 get there, that particular option, that's not
10 going to work, so it looks like to me -- correct
11 me if I'm wrong, but it look like to me that
12 trying to get the home fixed up for purposes of
13 producing a higher return --
14 MR. MILLER: Let me clarify. We're
15 not proposing further investment to -- we're
16 proposing an as-is sale, but through a -- on the
17 market rather than at auction so that -- I mean
18 without additional --
19 THE COURT: But you have to pay the
20 realtor, don't you?
21 MS. STORY: I was looking at the
22 realtors that Ms. Martin would -- or the auction
23 companies that might be suggested --
24 THE COURT: Right.
25 MS. STORY: -- and there's an

1 auctioneer in Brentwood, First Cumberland
2 Auctioneers. What they would probably do is go
3 out and just do an estate sale and sell whatever
4 treasures are there that he's not going to take
5 with him. Then they would just sell everything.
6 We would just sell personal property and the
7 home.
8 They do charge six percent. Now a
9 realtor -- an auctioneer is going to charge the
10 same amount.
11 THE COURT: Okay. So that's not
12 a --
13 MS. STORY: It's the same, six
14 percent. They do a pretty good job of getting
15 advertising out there. You would be surprised
16 how many people show up on these courthouse
17 steps.
18 THE COURT: I see them all the time.
19 MS. STORY: For auction.
20 THE COURT: Right. Can I just ask
21 this question too? I've seen where -- I don't
22 want it to look like a desperation sale, and y'all
23 don't either because the hawks will be out there.
24 But at the same time these auctioneers now are
25 marketing these sales not as an auction

1 necessarily, but like Ms. Story said, like an
2 estate sale to kind of disguise the idea that it's
3 a desperate sale when it --
4 MR. MILLER: If an auction has to be
5 the way to go we certainly appreciate, you know,
6 proceeding within some form that appears
7 respectful and doesn't just result in a basement
8 price.
9 THE COURT: There are auctioneers
10 who can do that. They understand that because
11 that makes their commission a lot higher if they
12 don't make it look like it's desperate, and
13 they're doing a good job of that from what I've
14 seen.
15 MR. MILLER: And, your Honor, if an
16 auction has to be the way we go, I would still ask
17 for that auction to be out a ways so that he can
18 obtain -- if we're talking about 30 days, he can't
19 both clear the home out and apply for jobs. So
20 then he's got to sell -- we got to figure out
21 where his personal property goes, find a storage
22 unit for that.
23 We've got to kick the tenants out,
24 which are providing income, so he can't really go
25 buy a storage unit to keep the stuff he wants to,

1 and since he doesn't have a job, especially in
2 that time frame, he couldn't turn around with his
3 current resources and rent the cheapest place in
4 the county.
5 MS. STORY: What I suggested there,
6 your Honor, is that let him -- I've asked for the
7 proceeds be placed in the court from the sale,
8 but we would say he could have X amount of dollars
9 toward his equity.
10 THE COURT: Draw on his interest.
11 MS. STORY: That way it would go
12 towards the division of marital property, but
13 give him some money to get him a new place to
14 live.
15 MR. MILLER: Then, your Honor,
16 that's why time is also very important. If we
17 did this auction tomorrow and we had that exact
18 order in place, still wouldn't make much of a
19 difference because he needs some time to get even
20 the most, you know -- the most nominal --
21 THE COURT: Let me know what you're
22 talking about timewise. I know what I'm thinking.
23 MR. MILLER: So another issue is the
24 liability to current tenants, and that lease puts
25 90 days.

THE COURT: Well, I don't want to put you in the position of buying a lawsuit --

MR. MILLER: That's why we --

THE COURT: -- having to pay out money on that, so Ms. Story, what do you say about that?

MS. STORY: It's a self-made -- it's a self-made lease --

MR. MILLER: Which is fine.

MS. STORY: -- that he did, and it says sale. Under the sales provision that any time during this lease, if the landlord decides to sell, if landlord sells this property or places it up for sale, whether voluntarily or by court order, or in any way the ownership of this property or rights to sell this property are conveyed to another party, whether by foreclosure or other legal process -- which is going to happen soon if we don't get it on the auction block within 30 days or so -- during the term of tenancy, this tenancy per this agreement, the assuming owner or controlling party and their agents and assigns must continue to comply in full with the terms of this lease.

Well, obviously he cannot bind a new

1 owner to comply with this lease, so that is a
2 voidable contract. There's no way that that
3 tenant could go after the assuming owning or
4 controlling party or their agents.
5 MR. MILLER: I would stipulate that
6 that interpretation is absolutely correct. The
7 controlling provision is what follows.
8 THE COURT: Right.
9 MR. MILLER: Landlord herein
10 promises and assures tenant that absolutely under
11 no circumstances will the tenant be requested or
12 required to move out within receiving at least,
13 the very least, 90 days written notice in advance.
14 That is -- I mean he is boxed himself in here.
15 THE COURT: Yeah.
16 MR. MILLER: The court is going to
17 give him a lawsuit from two tenants.
18 MS. STORY: I don't even know. Are
19 they paying?
20 MR. MILLER: Yes.
21 MS. STORY: Do they have -- where
22 is his -- I don't have an income and expense
23 statement from him. Has he given them notice?
24 He's known since March of last year that the house
25 was going on the market, and he signed the lease

1 in April of this year.
2 I don't -- you took that other lease
3 so I don't know when the other one was signed, but
4 this one, March, he signed it March of '19. The
5 bankruptcy was filed April. He knew this was
6 coming down the pike. I think this is a ruse to
7 try to keep you from selling the house, and I'm
8 sorry that he signed this.
9 THE COURT: How many days -- Ms.
10 Story, if I decide to auction this house, if I
11 decide to auction it, how many days do you
12 suggest?
13 MS. STORY: I would say 30 days.
14 THE COURT: Okay.
15 MS. STORY: Let us within the next
16 week agree on an auctioneer between the attorneys,
17 reach out to some of our referrals and see who
18 they prefer that we use and we get it on -- have a
19 goal for 30 days.
20 THE COURT: All right. Anything
21 else by either party?
22 MR. MILLER: Your Honor, if the
23 court orders an auction I would ask for further
24 order that proceeds be immediately available, at
25 least some portion of proceeds be immediately

available to Mr. Fenton for his continued --

THE COURT: Once the money is placed in the clerk's office, we'll talk about that. I know that may be an issue.

MS. STORY: If he will just send me a list of what he, you know, a pro forma of what he wants, what his budget might be, how much he thinks he is going to need to buy us time to get us to our mediation or to trial, I certainly will be reasonable with that.

THE COURT: Okay. Let me tell y'all, none of this is pleasant.

MR. MILLER: I know that you are about to -- I hate to do this. My client really doesn't prefer that I tell you this, but the timing is especially difficult for him to deal with because he has several -- he has several mental issues. He has anxiety and depression disorders that make this a very crippling task to handle: Gathering personal things, getting a job set up, trying to land somewhere.

There's no family or friends in town willing to give him a place to stay in the very near term, and so if the court can be generous and give him as much time as you can possibly see, I

1 would appreciate that. My client would. That
2 seems to be justice. In this case we're about 90
3 days since bankruptcy. It sounds like we have
4 another -- is it an additional 90?
5 MS. STORY: Ninety. I would say 90
6 to 120.
7 MR. MILLER: So if we can have
8 something approaching the 60- to 75-day range,
9 that would still put us within that window. We
10 can still proceed with the bankruptcy unimpeded.
11 My client would have the best fighting chance to
12 land on his feet.
13 THE COURT: Right.
14 MS. STORY: Here's my comments about
15 that. I know that his father has a summer home in
16 Tennessee. His mother has been giving him money.
17 He has a place to live, albeit in Michigan, but
18 they don't have -- we would -- if he vacated the
19 property we could meet with the auctioneer out
20 there and take care of that.
21 He doesn't have -- I mean, if he
22 just wants to vacate and go, get the tenants out,
23 we'll meet with the auctioneer and take care of
24 the auction. My client has mental health issues
25 too and physical debilitating issues, and she's

1 trying to work, but we have to do what we have to
2 do, and that's the quickest we can get money in
3 his pocket and give us some relief.
4 THE COURT: All right. I'm going to
5 go ahead and rule. I respect and appreciate the
6 argument of both counsel, and you are very good at
7 this. You are very articulate. You are very
8 calm. You are very -- you understand what it
9 means to sit down with a lawyer and try to talk
10 things out, but still represent your client's
11 interests.
12 I can tell, so it's nice to see
13 someone who knows what they're doing.
14 MR. MILLER: I appreciate that,
15 Judge. Thank you.
16 THE COURT: I mean that, I really
17 mean that. You are very calm and articulate. You
18 know what you're doing. I respect your approach.
19 I really do. Did you know Bruce Moore, or do you
20 know him?
21 MR. MILLER: I think I've maybe met
22 him in passing.
23 THE COURT: Well, he's one of my
24 lifelong friends. He's been with HCA forever.
25 He is a great guy. I don't mean that in a bad

way. I just kid my buddy. But anyway, he is a great guy. If you are ever back over there, get to meet him because he is a good man.

MR. MILLER: Will do, your Honor. Thank you. I appreciate those comments.

THE COURT: You are very welcome. I don't have a magic wand here. I wish I did where I could please everyone, but I can't. We all know that in these types of cases it is very difficult, but we got to move. I understand the exigencies of the issues here. I understand the time limitations of the path through bankruptcy, et cetera.

I understand that there's a potential lawsuit that may come down the road. I understand this is the biggest asset, and you can try to get the highest and best dollar, all kinds of different elements that go into making a decision, so this is what I would like to do.

The home will be sold at auction in 45 days. Y'all will discuss and try to agree upon an auctioneer. Obviously, you two good lawyers, three lawyers, will do whatever is necessary to obtain the services of a good auctioneer who will market the sale in a marketable fashion that will

1 not invite a desperation offer.
2 Both sides will follow the
3 directives of the auctioneer or their agent with
4 regard to visiting the interior of the home to
5 determine a fair range of auction sale, sale
6 price and to review, look at and tag personal
7 items, if necessary, for sale.
8 Both parties through their
9 attorneys will give the auctioneer their
10 absolute, full cooperation even though it is
11 difficult, but that must be done. Once the
12 auction has been completed. the proceeds, netted
13 proceeds of the auction after expenses and
14 commissions are paid as a result of the auction
15 will be placed in the -- are we Chancery or
16 Circuit?
17 MS. STORY: Chancery.
18 THE COURT: In the Chancery Court
19 clerk's office in an interest-bearing account in
20 both parties' names. How do we do that now? Do
21 y'all put it in your name now? However it's
22 done.
23 MS. STORY: I think it might be in
24 Ms. Beeler's name.
25 THE COURT: I think it is.

1 MS. STORY: On behalf of.
2 THE COURT: Right, exactly, bnf or
3 on behalf of. If moneys are needed after the
4 moneys are deposited I will definitely entertain
5 a request for withdrawal of either side's
6 equitable interest in those moneys from the
7 clerk's office. That will have to be done either
8 by agreement of the parties or a court hearing.
9 It will be a straight auction
10 without reserve, and I believe that's it. Let
11 me ask this question. I really don't believe,
12 now that the husband is represented by excellent
13 counsel, that we're going to have any problems
14 with the husband trying to stall the auction or
15 interfere directly or indirectly in any way.
16 Is there a restraining order against
17 him at this point in that regard?
18 MS. STORY: There's just the
19 standard restraining order that went down, the
20 statutory from harassing, threatening or
21 intimidating or dissipating marital -- dissipating
22 assets or encumbering. Then the ex parte from
23 contact so there's nothing to prevent him from
24 stalling the sale of the house.
25 THE COURT: What do you say about

that, Ms. Story?

MS. STORY: Well, I would like it in there.

THE COURT: I know you would. I'm going to put it in there because I want this sale to go off. I've made a decision about how to do it, when we're going to do it, and I want to make sure because of the immediacy of this issue, that it gets done without any interference, and I believe that the husband will cooperate and will be a gentleman even though it's all difficult.

He will do whatever is necessary to get this asset sold and get the money into the clerk's office as quickly as possible so that he may share in some of the proceeds on an immediate basis if he feels that he needs to.

So the husband will be enjoined and restrained from interfering in any form whatsoever directly or indirectly with a smooth transition and preparation of the home for auction. Yeah.

Do y'all need me to order when the tenants should vacate? I will be glad to do it.

MR. MILLER: Will you repeat that, your Honor?

THE COURT: Sir?

MR. MILLER: Would you repeat that, please.

THE COURT: Would y'all like for me to put in the order when the tenants should vacate, or should that be done I guess more efficiently through discussions with the auctioneer and how they want to proceed?

MS. STORY: That escape clause that I read says whether by volunteer or by court order. I think it would help him if it's by court order.

MR. MILLER: So my thought is when would the buyer take possession after -- if it's taking place in 45 days, does that mean they take possession --

THE COURT: Well, this is what I'm trying to avoid. I know the auctioneer, in order to get the highest and best price, is going to want to go in and take a look at it, the interior. He may want to tag items. I don't know who the tenant is. I don't know what the inside of it looks like.

I just don't want people bumping into each other, running over each other when

we're trying to get this property sold through auction, so I'm thinking we need to give the tenant a drop-dead deadline to be out, something that's reasonable.

If we're going to auction in 45 days, everybody is going to have to be pressed against the wall because of circumstances that have come up in this divorce case. I'm thinking he needs to be out of there in ten days so we don't have that to worry about.

MR. MILLER: One thing is I believe Mr. Fenton has already been paid by these tenants for the month of August.

THE COURT: Okay. You will have to reimburse them.

MR. MILLER: That is probably not on hand because that goes toward his living expenses at the moment.

THE COURT: I didn't hear you. I'm sorry.

MR. MILLER: The amount required for reimbursement is not on hand because that goes to his living expenses, so if we could put their leave date at the very end of the month so that he doesn't owe any further

reimbursement.

THE COURT: At the end of this month?

MR. MILLER: At the end of August.

THE COURT: Today is August 1st.

MR. MILLER: Right.

THE COURT: What do you say, Ms. Story?

MR. MILLER: Are you saying that they need to move out ten days from today or ten days after the auction? You're saying from today?

THE COURT: Well, y'all tell me. What I'm trying to do is to prevent unexpected problems and issues that come up. Again there's so many things I don't know and y'all don't know, but the last thing I want to do is have an auctioneer coming in there and tripping all over the tenant and the tenant getting --

I mean I don't know anything that's going to happen. I just want that to be a non-issue, so if the tenant is out of there it is a non-issue. Any reimbursement, we'll have to deal with that, but it's going to have to be paid back to keep him happy. He may not be happy at

all. Again I can't solve all the problems, but, you know, we're just going to have to move through here with what's necessary.

MR. MILLER: Since we are --

MS. STORY: I think she is okay with letting him stay until August 30th if he gives them notice today, because that way, 15 days to find the auctioneer for us to get that started. Then the auctioneer is going to advertise.

THE COURT: Okay.

MS. STORY: Then tell Mr. Fenton what he needs to get out of the house I'm sure, so I think we would be okay with August 30th.

MR. MILLER: She just made my next point. I appreciate that.

THE COURT: Good deal. Okay. Anything else that we need to talk about?

MR. MILLER: The only question I would have is about personal property between the two of them. Wanting to know if Mrs. Fenton has anything in particular we should be aware of?

MS. STORY: There's a couple of things. We'll make a list.

MR. MILLER: We don't want any

further headache about stuff like that.

THE COURT: I respect that. Thank you. Let's do this. Are y'all going to make a -- you've already --

MS. STORY: There's a few little things she wants. We'll make a list.

THE COURT: Okay, good enough.

MS. STORY: I can do that.

THE COURT: If you will put that in the order as well. Do you want a deadline for her to get that list of property out of the home? Y'all are doing really well.

MR. MILLER: A couple of days, ten days?

MS. STORY: Ten days.

THE COURT: That will work. I think we covered it all.

MR. MILLER: Thank you, your Honor.

THE COURT: Is that it? Very good. Can I get both of you to sign off on that order, please, and I'll sign it whenever it's prepared. I believe that's it. Any other questions?

MS. STORY: No, your Honor.

THE COURT: Very good. Thank y'all very much. It's good to see y'all.

MS. STORY: We're off the record?

THE COURT: Yes.

(Whereupon, this was all that was heard in this cause, this the 1st day of August, 2019.)

REPORTER'S CERTIFICATE

I, Susan D. Murillo, Certified Court Reporter in and for the State of Tennessee, do hereby certify that the above proceedings were reported by me and that the foregoing 42 pages of the transcript is a true and accurate record to the best of my knowledge, skills and ability.

I further certify that I am not related to nor an employee of counsel or any of the parties to the action, nor am I in any way financially interested in the outcome of this case.

I further certify that I am duly licensed by the Tennessee Board of Court Reporting as a Licensed Court Reporter as evidenced by the LCR number and expiration date following my name below.

Susan Murillo, LCR #224
Expiration Date: 6-30-20
118 Wheaton Hall Lane
Franklin, Tennessee 37069

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

FAWN [redacted] FENTON v. JEFFREY RYAN FENTON

Chancery Court for Williamson County
No. 48419b
COA NO. M2019-02059-COA-R3-CV

CERTIFICATE OF APPELLATE RECORD

I, Elaine B. Beeler, Clerk and Master, Williamson County Chancery Court, Franklin, Tennessee, do hereby certify that the following items herewith transmitted to the Court of Appeals are original or true and correct copies of all or the designated papers on file in my office in the captioned case.

1. Technical record attached to this certificate consisting of 709 pages contained in five volumes.
2. One volume of transcripts filed in my office on February 18, 2020, and authenticated by the Trial Judge or automatically authenticated under T.R.A.P. Rule 24(f).

   1 Volume - Hearing Date August 1, 2019
3. No exhibits are included in the record.
4. No sealed documents and/or exhibits are included in the record.
5. No depositions are included in the record.
6. No exhibits and/or documents of unusual bulk or weight have been retained in my office.

This the 31st day of March, 2020.

(SEAL)

THE CHANCERY COURT SEAL WILLIAMSON CO. TN

Sara B McKinney D.C.

Elaine B. Beeler
Clerk and Master
Williamson County Chancery Court
Franklin, Tennessee