

Senator Randall Hardy
Kansas Senate Judiciary Committee
Topeka, KS
RE: SB 55

February 1, 2019

Dear Committee Members, (Good morning members of the Senate Judiciary Committee. My name is Janet Hoskins and I live near Chapman, Kansas in Dickinson County, District 24)

Last year I testified before this committee about an on-going partition action involving my family. My experience will be presented below. However, for us, our nightmare is over. The Sheriff's sale was completed last July. Our experience un-covered Kansas law oddities that are just not right.

Background: My niece, nephew, (my brother is deceased) sister and I inherited our family farm where my sister, brother and I grew up. It was at 6416 W. 53rd St. N., Sedgwick County near Maize, Kansas. However, my niece and nephew were anxious to get their money immediately, by selling the farm now, and my sister and I preferred to wait until water and sewer was available in our area from Wichita. City water and sewer would make our inheritance much more valuable, which was our parents' intent. By selling the farm, the buyer will reap a much larger profit, since the property will be development property in a few years, rather than a family farm. As the farm included the farmhouse, barns and a lake, it could not be evenly divided into 3 shares. I have learned that four other families who attend my small church near Chapman, KS are in similar situations. The current Kansas Partition law is putting small family farms at risk all over the State.

Our niece and nephew filed a lawsuit against us for Partition of the farm in order to force a sale or auction. We offered to buy their portion at about double its current value per acre, but they refused our offers. We could not afford more than that in order to preserve our farm and our inheritance. We also offered to list the property with a realtor twice, but they refused those offers as well. The current Partition Law in Kansas (K.S.A. 60-1003), that appears to be more than 50 years old, is written so it favors those bringing a partition action and forcing the sale of the farm, regardless of the wishes of the majority owners. We then received a letter stating that we could not communicate with our niece and nephew. We could only go through their lawyer. We wished there had been a requirement for arbitration at this point before proceeding with the Partition process. There needs to be a way to make the Kansas law more equitable to all parties and for a judge to make it as equitable as possible.

We were forced to learn a lot about Partition Action. The biggest one is that owners pay the legal fees in accordance with their proportion of the ownership. Therefore, my sister and I are the majority land owners and payed 2/3 of all associated legal bills. We majority owners and defendants do not seem to get a vote as to anything that happens in Partition. We did not bring this action nor did we want to sell our family farm. Our suggestion is that whoever files the Partition Action should be required to pay the court costs with each party paying their own legal fees.

In our case, for a total of \$10,500 for 3 Commissioners, (one was not even a licensed appraiser) we got a 1 sentence appraisal listing the appraised amount. The judge awarded each Commissioner \$3500, which is not at all the market rate, as one of the appraisers had already agreed to do an appraisal for us on this property for \$1200, and when applying for a loan on this property, we were told by the bank that the appraisal would cost \$500. We realized that the Commissioners' appraisal was unusually high but had no information about how they arrived at that appraisal. Therefore, we had no basis on which to file an Exception to the Appraisal. We tried for a couple of months to get more detailed information about the appraisal rationale without success, which resulted in substantial attorney fees, as well. If we had been given a complete written appraisal, we could have made a more informed decision about filing an exception. We were also told that if we filed an Exception to their original appraisal, we would be charged an additional \$3500 per appraiser for them to re-evaluate their original appraisal. And our attorneys advised us that judges almost always approved the original appraisal, even when an Exception was filed. So, we did not file an Exception.

Our niece and nephew then took us to court to force a sale by a private auction company, but the law requires that the Sheriff conduct the sale. The disadvantage for us was by ordering a sale by a private auctioneer, rather than the Sheriff, is that private auctions are very expensive. The auction companies charge up to \$3000 in advance for advertising the sale, and then charge a 10% buyer's Commission. For example, local auction companies McCurdy and Weigand, both charge a 10% buyer's premium, which is likely to depress the sales price, although the companies deny this! In addition, if we wanted to bid on the property at a private auction, we would have to pay the 10% buyer's premium on property we already own! These are added costs, again paid mostly by us the majority owners. We were relieved the judge ruled to follow the statute and ordered the property sold by the sheriff and not a commercial auction firm.

KSA 60-1003 requires that the property be sold in an auction for a minimum of 2/3 of the appraised value. My question to our lawyer was: Why are defendants in a Partition required to pay full appraised value to avoid sale or auction, but the property can then sell at auction at 2/3 of appraised value? So, outsiders get a better deal to purchase the property than family members. We sold our farm at a sheriff's sale in mid-April. There needs to be some guidance in the current law as to what happens when the appraisal is incorrect. As indicated above, we had no information from the appraisers as to what was the basis of their numbers. Neither we (and I suspect) many other family farms have the kind of liquid assets available to survive a partition action and retain the family farm. We wanted to wait 2-3 years, our niece and nephew didn't, and as a result, our buyer is going to reap the benefits that our father and mother intended to be our inheritance.

SUMMARY

Of course, as our Partition action has already been filed and completed by our niece and nephew, this law will not affect us, but we are hoping that SB 55 will help to protect the majority property owners in future Partition cases in Kansas. And, this might have helped us to avoid the sheriff auction. Perhaps, this is why similar laws have been adopted in at least ten states: Alabama, Arkansas, Connecticut, Georgia, Hawaii, Montana, Nevada, New Mexico, South Carolina, Texas.

Specifically, we like:

The Sections of SB 55, where there are good time limits. We have been involved in this Partition for a very stressful 2 years and had a Sheriff's sale of our family farm in April of 2018. With stricter time limits we could have saved a lot of stress and we have spent a lot of money on attorneys' fees!

Sect. 7 (b). We particularly like the fact that "the co-tenants requesting partition-by-sale" are not allowed to bid on the property in the Partition action. Our attorney let us know that our niece and nephew planned to also "bid" on the property. It just seems that someone filing a Partition Action requiring a sale, should not be able to place a bid or purchase that property!

Sect. 10 (d) Concerning what happens if there is no division in kind and no acceptable offers on the open market, there are several good ideas in SB 55 where the judge has some discretion (goes to realtor first, judge can accept highest outstanding bid, re-determine value if Commissioners' appraisal was incorrect.)

In closing, I would say there are no winners in a Partition Action. This 2-year legal battle has divided our family and we lost our family farm.

THANK YOU, Senator Hardy for inviting me to speak today at the meeting of the Kansas Senate Judiciary Committee during the discussion of SB 55. My sister and I appreciate the work that you are doing to make the Partition Law more predictable and hopefully more equitable for all parties. Please let me know if there are future opportunities to share my personal experiences that would be helpful.

There is still work to be done to help heirs maintain their family farms and we thank you for your work on SB 55. If there are any questions, I'd be glad to answer them.

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