

Campisi v. Campisi, PICS Case No. 15-0894 (Pa. Super. May 28, 2015) (memorandum) Shogan, J. (18 pages).

SUPERIOR COURT

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EVIDENCE

Hearsay • Business Records Exception • Notary Register • Notary Public Law

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The trial court did not err in admitting a notary register into evidence through the testimony of an attorney since the attorney's testimony regarding the regular business activity of notarizing legal documents provided sufficient information to justify a presumption of trustworthiness. Affirmed.

In 1981, plaintiff purchased land with his father, Joseph Campisi, Sr., and Joseph's wife, Carmella. The deed provided that title to the property was held as one-half interest in favor of plaintiff and one half interest in favor of Joseph and Carmella. After Joseph died, plaintiff and Carmella became embroiled in a dispute over royalties generated from an oil/gas lease on the property.

At that time, plaintiff contacted an attorney and learned of a deed dated March 12, 1992, which purported to convey the property to plaintiff's parents. According to plaintiff, he had no knowledge of this deed and the deed was forged. According to Carmella, plaintiff executed the deed dated in 1992, thereby selling his one-half interest in the property to Carmella and his father.

Plaintiff filed this action seeking to quiet title. D'Ambrosio, an independent witness, the lawyer handling the deed transaction, testified that although he did not remember this specific transaction, it was his practice to require all sellers to sign a deed in his presence.

D'Ambrosio was questioned regarding the notary register maintained by his employee, Alma Walters.

D'Ambrosio testified that he employed Walters as a secretary for 26 years. Walters was also a notary public. D'Ambrosio testified that the notary register was maintained at his office. The register reflected an entry for: "deed, Campisi, Joseph, Sr., Carmella V., ... and Joseph, Jr. to Campisi, Joseph Sr. and Carmella[,] dated March 12, 1992.

While plaintiff's counsel objected to such evidence, the trial court allowed it under the business records exception to the hearsay rule. The jury found in favor of Carmella and determined that the signature on the 1992 deed was not forged. Thus, the trial court determined that the title was quieted and that the deed dated March 12, 1992, was in full force and effect.

On appeal, plaintiff argued that the trial court erred in admitting the notary register as a business record. He maintained that the Notary Public Law, set forth at 57 P.S. §161, made it clear that the notary register was the exclusive property of Walters and was her "statutorily mandated record to keep and retain." Thus, D'Ambrosio was incapable of laying the proper foundation for the register's admissibility.

The evidence reflected that the notary register was properly admitted into evidence under the business records exception. The record was made at the time of the transaction by Walters and was kept in the course of D'Ambrosio's regularly conducted business.

D'Ambrosio, who was intrinsically involved in the workings of his own legal practice, established these conditions through his testimony. The court found that D'Ambrosio's testimony regarding the regular business activity of notarizing legal documents provided "sufficient information relating to the preparation and maintenance of the records to justify a presumption of trustworthiness."

Moreover, the court found no merit to plaintiff's claim that, pursuant to the Notary Public Law, the notary register could not be admitted through D'Ambrosio's testimony because it was not one of his business records. Although the law provides that the notary register is the responsibility and property of the notary, this fact does not preclude admittance of the register under the business records exception or the Uniform Business Records as Evidence Act, the court reasoned.

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