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January 29, 2004

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Re: Deakyne v. Deakyne
C.A. No. 1511-K
Date Submitted: October 16, 2003

Dear Counsel:

Plaintiff Everett L. Deakyne, Jr. ("Plaintiff") was successful in his effort at trial, as reflected in the Court's bench ruling, to demonstrate that Defendants, Everett W. Deakyne ("Billy"), his grandson, and Angela Deakyne ("Angie"), Billy's wife, had acquired record title to a residence in Sussex County in which they all lived under a resulting trust for his benefit. The relationship among them had soured and the residence had been sold. The only issue remaining for decision following the Court's bench ruling

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is the question of Billy and Angie's monetary liability to the Plaintiff. Resolving this question is the purpose of this letter opinion.

I.

I start with the value of the residence which was subject to the resulting trust and then determine and subtract the various charges appropriately allocated to the Plaintiff or credited to Billy and Angie.

II.

The residence was sold in January 2002 for \$165,000 to a disinterested third party. Closing costs were \$13,714.14, which included a realtor's commission of \$9,900, representing six percent of the purchase price. The Plaintiff challenges the reasonableness of the realtor's commission. I find that it was necessary, in light of the financial circumstances of the parties and their personal relationships, that the residence be sold; that listing with a realtor was a reasonable means of achieving a sale; and that the realtor's commission was at the prevailing market rate. Thus, I am satisfied that the closing costs were reasonable and necessary.

III.

Angie provided home healthcare services for the Plaintiff's wife for approximately 2.5 months. I have previously found that Angie is entitled to compensation for the care

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which she provided. Both sides supplemented the record with price quotes for similar services. Angie seeks \$27,456 based on \$13.00 per hour for 88 days. Under the circumstances, I find this amount excessive. The Plaintiff has submitted estimates ranging between \$2,200 and \$4,500 per month; nursing home care would have been approximately \$6,000 per month. I also note that while Angie was the primary caregiver for the Plaintiff's wife, visiting nurses came on an average of two hours for three days per week for several weeks. I find, from the relatively limited record before me, that the fair value of the services provided by Angie should be measured at a monthly rate of \$4,400,¹ or a total of \$11,000, for her work as primary caregiver for the Plaintiff's wife.²

IV.

Billy and Angie mortgaged the residence on three occasions following the first mortgage on which the Plaintiff was obligated. These additional loans were obtained primarily for their benefit to address their personal financial problems. In the first

¹ This number falls at the upper end of the range suggested by the Plaintiff. It is necessarily case specific and should not be viewed as an appropriate rate applicable for other cases or circumstances.

² There is a suggestion that Billy and Angie are entitled to a credit, which they concede cannot be reasonably estimated, for the general housekeeping services and personal services which they provided to the Plaintiff. In the absence of any proof as to amount, I am unable to award any sum for this work. Moreover, Billy and Angie were able to live for an extended period of time in a comfortable home at very little cost to themselves.

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refinancing, the Plaintiff's mortgage, with a payoff of \$85,910.33, was paid. However, Billy and Angie's decision to satisfy that mortgage was part of their effort to placate the Plaintiff and to defeat Plaintiff's ultimate claim to the premises. The several refinancings which Billy and Angie undertook resulted in significant additional costs, such as prepayment penalties and settlement fees.³ Because those refinancings were primarily for their benefit, it is appropriate that they bear those costs. The parties, however, agree that the mortgage payoff should be deducted from the sale price of the residence in order to determine the Plaintiff's equity.

V.

Billy and Angie made several improvements to the residence. These improvements totaled \$20,660. Repainting the downstairs cost \$1,200, but the Plaintiff argues that repainting was not necessary. I am satisfied, based on a limited record, that it was reasonable to repaint the downstairs and that the cost – in terms of materials and labor – was reasonable. The major dispute is the cost of an above ground pool (\$14,350) which Billy and Angie installed for their own benefit.⁴ There has been no showing that

³ When the residence was sold, a substantial prepayment penalty was incurred. That penalty should not be charged to the Plaintiff because Billy and Angie made the decision to obtain a mortgage with a prepayment penalty and the timing of the sale was their decision.

⁴ The Plaintiff was aware of, and apparently did not object to, installation of the pool.

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the funds spent on the pool materially enhanced the resale value of the residence.⁵ Thus, under the circumstances, a significant reduction in any credit that would go to Billy and Angie for the pool expenditure must result. I find, again from the sparse record, that one-third of the cost of the pool should be credited as a benefit conferred by Billy and Angie. The other expenses claimed by Billy and Angie are not subject to dispute. Thus, the value of the improvements made and paid for Billy and Angie is \$11,093.33.

VI.

For the foregoing reasons, I determine the liability of Billy and Angie to the Plaintiff as follows:

Sale of Residence	\$165,000.00
Reasonable Settlement Costs	(\$13,714.14)
Angie's Care of Plaintiff's Wife	(\$11,000.00)
Payment of Plaintiff's Mortgage	(\$85,910.33)
Improvements by Billy and Angie	<u>(\$11,093.33)</u>
Net Liability	\$43,282.20 ⁶

⁵ The Plaintiff, after trial, submitted a letter from a real estate professional to the effect that she does not place value on above-ground pools.

⁶ Proceeds from the sale of the residence in the amount of \$2,680.30 have been escrowed. The escrowed funds shall be applied against the obligation of Billy and Angie by payment to the Plaintiff.

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Accordingly, judgment will be entered in favor of the Plaintiff and against Defendants, jointly and severally, in the amount of \$43,282.20, together with post-judgment interest at the legal rate and costs. A copy of the implementing order is attached.

Very truly yours,

/s/ John W. Noble

JWN/cap
Enc.
cc: Register in Chancery-K