



January 11, 2017

Talina R. Matthews, Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, Kentucky 40602-0615

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Public Service
Commission

RE: Case No. 2016-00326
East Kentucky Network: Burning Fork

Dear Ms. Matthews,

In response to your letter dated January 5, 2017, I sent the enclosed letter to Mr. Thomas Keeth, on behalf of East Kentucky Network, LLC d/b/a Appalachian Wireless ("EKN"). As set forth in the attached letter, it is my belief that Mr. Keeth's claims lack merit. However, ultimately, that decision can only be determined by a court of law, as you have already notified Mr. Keeth.

As indicated in the enclosed letter, it is our understanding from our prior meeting with Mr. Keeth that he does not object to a cell tower being constructed on the property, but merely desires to obtain his portion of the rent proceeds if he can prove any ownership interest in the property. If I have misunderstood Mr. Keeth's statements, I trust that he will reply to clarify his position. We have informed Mr. Keeth that if he institutes a lawsuit, he can request that the Court direct lease payments to be held in escrow or be otherwise secured pending a determination of whether he is entitled to any portion of the rent proceeds.

Based on the circumstances, it is EKN's position that Mr. Keeth's claims are not relevant to this proceeding.

Very truly yours,

Cindy D. McCarty
Senior Staff Attorney
(606) 339-1006
cmccarty@ekn.com

cc: Mr. Thomas W. Keeth

Enclosure

EAST KENTUCKY NETWORK
101 TECHNOLOGY TRAIL
IVEL, KY 41642
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January 11, 2017

Mr. Thomas W. Keeth
319 Ramey Road
East Point, Kentucky 41216

RE: Case No. 2016-00326
East Kentucky Network: Burning Fork

Dear Mr. Keeth,

As you know, Lynn Haney and I previously discussed this matter with you when you visited our office several weeks ago. At that time, you claimed that you and your brother hold an interest in the property that was conveyed to Eagle Well Service by your father, Hershel Keeth, which is the same property that East Kentucky Network, LLC d/b/a Appalachian Wireless ("EKN") is leasing from Eagle Well Service. You agreed that Eagle Well Service holds at least some interest in the property. You also stated that no lawsuit had been filed to seek a declaration of whether you and your brother own any interest in the subject property and that you had not retained a lawyer regarding this issue.

I stated to you that I am not your lawyer and cannot give you legal advice, but that I believed any question regarding the ownership of the property would have to be determined by a court of law. I stated to you that I did not believe the Kentucky Public Service Commission would have jurisdiction to declare whether or not you have any legal ownership interest in the property. In response, you stated that you intended to file an objection anyway in order to delay the approval of the cell tower because you did not want Eagle Well Service to receive any lease payments. We stated to you that Eagle Well Service was already receiving lease payments and would continue to receive payments unless you filed a lawsuit in a court of law and a judge ordered otherwise.

You also stated that you would have no objection to a cell tower being constructed on the property if you received part of the lease payments. You also informed us of other property that you claim to own and asked us to consider leasing your other property to build another cell tower.

After your meeting with us, we had an opportunity to look again at the title for the subject property, and we remain convinced that Eagle Well Service is the owner of the property. In your parents' divorce proceeding (Magoffin County Circuit Court, Case No. 90-CI-147), Judge Robert Morgan of the Magoffin County Circuit Court entered the *Findings of Fact, Conclusions of Law, and Decree of Dissolution of Marriage* on August 4, 1992 (the "1992 Order"). While you are correct that the subject property was not specifically mentioned in the 1992 Order by deed book and page number, the conclusions of law stated by Judge Morgan should undoubtedly

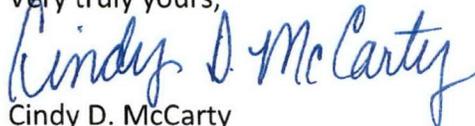
apply to the subject property, in my opinion. Judge Morgan cited K.R.S. 403.190, which states that property acquired by gift, bequest, devise, or descent is not marital property and, similarly, property acquired in exchange for property acquired by gift, bequest, devise, or descent is not marital property. Judge Morgan also cited the case of Angel v. Angel, 562 S.W.2d 661 (Ky. App. 1978), which holds that even if a spouse's name is jointly listed on a deed for property acquired by the other spouse by gift, bequest, devise, or descent, it does not change the status of the property as nonmarital. The subject property was inherited by your father from his uncle, and his brother and aunts also gifted to your father the partial interests they had inherited. This situation was clearly addressed in the 1992 Order.

We also noted that the subject property was not listed as an asset of your mother's estate in the *Inventory and Appraisement of the Estate of Geneva Keeth* (Magoffin County District Court, Case No. 95-P-38). Finally, we noted that you had previously filed a lawsuit against Eagle Well Service involving a boundary dispute (Magoffin County Circuit Court, Case No. 96-CI-00179), and you did not raise any issues regarding the ownership of the subject property.

In your letter to the Kentucky Public Service Commission dated December 15, 2016, you asked the question: "How can East Ky. Network enter into a lease agreement without all ownership parties of the real estate executing the lease?" We believe that Eagle Well Service is the only owner and, accordingly, the sole owner has signed the lease. We also believe that even if you can successfully show some ownership interest, Eagle Well Service, as a co-tenant of the property, has the right to lease the property to EKN, and your remedy would be to seek an accounting and payment of your proportionate share of the rent, if any, directly from Eagle Well Service.

I must reiterate that I do not represent you, and that by stating my own personal opinion on the legal ownership of the property, it is not my intention to dissuade you from exercising any legal rights you believe you may have. As we discussed when you visited our office, you have every right to and should seek advice from an attorney of your choosing. If you do file a legal action against Eagle Well Service in a court of law, you may request that the judge order EKN to hold lease payments in escrow or make other arrangements during the pendency of the suit, and we will, of course, comply with any directive of the Court.

Very truly yours,



Cindy D. McCarty
Senior Staff Attorney
(606) 339-1006
cmccarty@ekn.com

cc: Kentucky Public Service Commission

Enclosure