2025 PA Super 43

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| DARREN EUGENE CLEVER, JR. | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| Appellant | : | |
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| v. | : | |
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| KENNA VICTORIA CLEVER | : | No. 126 MDA 2023 |

Appeal from the Order Entered January 18, 2023
In the Court of Common Pleas of Franklin County
Civil Division at No(s): 2020-01964

BEFORE: BENDER, P.J.E., BOWES, J., and SULLIVAN, J.

DISSENTING OPINION BY SULLIVAN, J.: **FILED: FEBRUARY 24, 2025**

When, as here, the law does not keep pace or align with modern-day values and beliefs, the outcome can seem unjust. This is plainly the case where twenty-first century pet ownership meets property rights in divorce cases. The initial framing under the law of our beloved pets as "personal property" is, in my personal opinion, the fundamental shortcoming from which the remaining legal analysis veers from keeping pace with modern societal practices and beliefs. However, the current law is clear: "Pennsylvania law considers dogs to be personal property." ***Desanctis v. Pritchard***, 803 A.2d 230, 232 (Pa. Super. 2002) (disallowing a supplementary divorce agreement awarding custodial visitation of a dog purchased during the marriage). Regrettably, under the current law, dogs are akin to a table or a lamp for purposes of dividing marital property, and are not treated as living, breathing creatures that become enmeshed in the fabric of a family. ***See id***. Likewise,

under current law there is a presumption that personal property acquired during the marriage is "marital property." 23 Pa.C.S.A. § 3501(b). The presumption is broad and encompasses "all property acquired by either party during the marriage" unless one of the eight exceptions within the statute applies. ***See Focht v. Focht***, 32 A.3d 668, 670 (Pa. 2011) (internal citation and quotations omitted).[1] Further, this Court has recognized that "in this Commonwealth, a ***presumption exists that property held by a husband and wife is held by the entireties*** and that said presumption can be overcome ***only when the opposing party demonstrates, through clear and convincing evidence***, that the property was not intended to be held by the husband and wife as entireties property." ***Jones v. McGreevy***, 270 A.3d 1, 14 (Pa. Super. 2022) (quoting ***Johnson v. Johnson*** 908 A. 2d 290, 295 (Pa. Super. 2006)) (emphasis added); ***accord In re Estate of Navarra***, 113 A.3d 829, 833 (Pa. Super. 2015) (stating that "there is a presumption under Pennsylvania law that property held by husband and wife is held as a tenancy by the entireties and this presumption can only be overcome by clear and convincing evidence that the property was not intended to be held by the

[1] Neither party invoked any of the eight "marital property" exceptions set forth in 23 Pa.C.S.A. § 3501(a)(1)-(8).

entireties").[2] Finally, when married individuals hold property in the entireties and then divorce, the property, by operation of law, is (post-divorce) held as tenants in common with equal one-half share, ***and*** either party may bring an action to have the property sold and proceeds divided. ***See*** 23 Pa.C.S.A. § 3507(a) (emphasis added). Given the applicable law and the facts before us, many of which are uncontested, I am constrained to agree with the trial court's disposition, and do not believe the court below abused its discretion or committed an error of law.[3] Indeed, the "scope of appellate review of a decree in equity is limited. Absent an abuse of discretion or an error of law, we are

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[2] While it is well settled law that the presumption exists where property is obtained during a marriage, marital property is not *de facto* entireties property, an analysis to determine whether the marital property is held by the entireties is done by the court. ***See Jones***, 270 A.3d at 16. ***Jones*** concerned the property subject to garnishment including several accounts held only in the husband's name (although the opposing party agreed without argument that a joint checking account and an individual IRA account were held in the entireties and not subject to garnishment). As this Court noted in ***Jones***, because the contested property was clearly held individually and solely by husband with no evidence that there was comingling of funds, the presumption never attached; thus, no subsequent analysis was required.

[3] Concerning questions of credibility and weight accorded the evidence at trial, we will not substitute our judgment for that of the finder of fact. ***See Linde v. Linde***, 220 A. 3d 1119, 1140 (Pa. Super. 2019). It is not the province of an appellate court to reweigh the evidence and we are prohibited from making contrary credibility determinations or reweighing the evidence in order to reach an opposite result. ***See In re: Petition of the Board of School Directors of the Hatboro-Horsham School District for the Sale of Real Property***, 306 A.3d 981, 987 n.9 (Pa. Commw. 2023); ***see also Commonwealth v. Hunt***, 220 A.3d 582, 590 n.6 (Pa. Super. 2019) (this Court may cite Commonwealth Court decisions for their persuasive value).

bound to accept the findings of the trial court . . .." ***Spears v. Spears***, 769 A.2d 523, 524 (Pa. Super. 2001) (internal citation and quotations omitted); ***see also Werner v. Werner***, 573 A.2d 1119, 1121 (Pa. Super. 1990) (noting that "we are bound to accept the findings of the trial court . . ., particularly where the findings are largely dependent upon the credibility of the witnesses"). I echo the trial court's reasoning that "if [Husband's] interpretation is to be accepted[,] it must be [by] a higher court than this one[,]" or if the General Assembly amends the statute(s) at issue. Trial Ct. Op., 3/10/23, at 6. Because the trial court's findings and conclusions were reasonably supported by the record, and the law applied thereto is valid, I am compelled to follow it, and respectfully dissent.

Initially, I must emphasize, a prefatory but noteworthy clarification regarding the burden shifting vis-à-vis the tenancy by the entireties presumption. The sole matter before us on appeal is the Appellee/Wife's petition for special relief filed by the Appellee/Wife eighteen months after the divorce was finalized. The actual divorce proceedings, other than the caption used here, are irrelevant and are not under review or analyzed here. Wife's Petition for Special Relief did not attempt to reopen the divorce proceedings; it specifically asked for relief under section 3507 of the Divorce Code to partition property obtained during the marriage. There is some confusion throughout the record with Husband being referred to as Plaintiff and Wife as

Defendant, and ambiguities as to the movant and opposing party. In the matter under our review, it is clear that Wife is the moving party for purposes of the petition for special relief and Husband is the opposing party. ***See Jones***, 270 A.3d at 14.

The following facts are uncontested by the parties: The parties were married in December 2011. ***See*** Order, 12/6/22, Joint Ex. A (Joint Stipulation of Facts and Law), ¶ 1. In December 2018, the parties acquired a male Corgi dog named "Bentley." ***See id***. at ¶ 2. The parties acquired a female Corgi dog in July 2019 named "Bailey." ***See id***. at ¶ 3 (collectively "the dogs"). The parties stipulated that the dogs are personal property, and they also agreed the dogs are marital property. ***See id***. at ¶ 10 (joint stipulation that the dogs are personal property); ***see also*** Plaintiff's Amended Answer, 7/22/22, at ¶ 10 (Husband admitting that the dogs are marital property) ***and*** N.T., 12/2/22, at 8 (counsel for both parties agreeing the parties acquired the property during the marriage). Additionally, the parties agreed that "during the time that they . . . lived together [as a married couple]," they "handled the dogs in the same manner they handled other household goods, furnishings, and personal property. . . . [T]hey shared them. They each had full access to the property . . .." N.T., 12/2/22, at 8. The parties purchased Bailey and Bentley using funds from a joint account and took possession of the dogs at the same time during their marriage. ***See generally id***. at 6-10. During the marriage, Wife

"filled out the paperwork [for the dogs]. ***They were licensed to [her]***." ***Id***. at 21 (emphasis added); ***see also id***. at 48 (Husband conceding that Wife acquired licenses for the dogs, and that "initially in the first year that she had left, I know she had renewed them").

There is no evidence of record that the dogs are titled property or that either party obtained "legal title," *i.e.*, an instrument evincing ownership of the dogs. Additionally, Husband maintained that dogs are not titled property. ***See***, ***e.g.***, Pl.'s Ans. to Def.'s Pet. for Mot. for Reconsideration, 9/15/22, at ¶ 20 (Husband asserting that "[d]ogs and other items of personal property do not have titles or certificates").[4]

The parties separated in May 2020. ***See*** Order, 12/6/22, Joint Ex. A (Joint Stipulation of Facts and Law), at ¶ 5. At the time of separation, Wife left the marital residence to reside briefly in Chicago and enlist in the military. ***See*** N.T. 12/2/22, at 11-12. Husband retained physical possession of the dogs while Wife was away. ***See id***. at 12.[5]

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[4] "Title" is defined, in relevant part, as legal evidence of a person's ownership rights in property; an instrument, such as a deed, that constitutes evidence of a person's ownership rights in property. ***See*** Black's Law Dictionary 1788 (11th ed. 2019).

[5] The parties later disputed whether they had an oral agreement that Husband would return the dogs to Wife upon completion of her military training. ***See*** N.T., 12/2/22, at 12, 42.

In November 2020, the parties divorced by mutual consent. ***See*** Order, 12/6/22, Joint Ex. A, at ¶ 6. Neither party filed for equitable division of marital property pursuant to 23 Pa.C.S.A § 3502. There was no property settlement agreement between the parties, and the dogs, which the parties agreed are both personal and marital property purchased during the marriage with money taken from a joint checking account, were not addressed during the divorce action. ***See id***. at ¶ 10 (joint stipulation that the dogs are personal property); ***id***. at ¶ 7 (joint stipulation that the parties did not address, dispose of, or resolve the dogs' ownership); ***see also*** Plaintiff's Amended Answer, 7/22/22, at ¶ 10 (Husband admitting that the dogs are marital property).

In June 2022, Wife/movant filed the Petition for Special Relief currently before us pursuant to 23 Pa.C.S.A. § 3507(a), in which she averred that the dogs were marital property owned as tenants by the entireties that converted into tenants in common by operation of law post-divorce. ***See*** Petition, 5/26/22, at ¶¶ 11, 12. She sought a sale of the dogs between the parties via auction. ***See id***. at ¶ 16. Husband opposed the petition; the trial court initially denied the petition; Wife moved for reconsideration, which Husband opposed. As the opposing party, husband argued, *inter alia*, that Wife's petition was contrary to 23 Pa.C.S.A. § 3503 and that the dogs are ***untitled*** property and not subject to partition under section 3507(a). ***See***, ***e.g.***, Pl.'s Ans. to Def.'s

Pet. for Mot. for Reconsideration, 9/15/22, at ¶ 20 ("Dogs and other items of personal property do not have titles or certificates.").

The trial court held an evidentiary hearing at which the parties both testified, and the trial court heard the evidence synopsized above. Additionally, Husband offered into evidence documentation of AKC registration,[6] and PA dog license registration from 2021,[7] both of which post-dated the separation of the parties, and both parties agreed that Wife was the individual who obtained the dog licenses during the marriage. ***See id***. at 21, 52.

At the conclusion of the hearing, the trial court determined the dogs were marital property, and that the parties jointly decided "to make the purchase and to own the dogs together." ***See*** N.T., 12/2/22, at 64. Based

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[6] The AKC is an organization whose stated purpose/mission is "promoting the sport of purebred dogs and breeding for type and function." https://www.akc.org/about/mission/#:~:text=The%20American%20Kennel%20Club%20is,breeding%20for%20type%20and%20function (last visited 4/15/24). Nowhere does the AKC assert that registration of a dog with its organization is a written instrument proving ownership or title, and there is no caselaw in this Commonwealth that supports AKC registration papers as a title instrument or written proof of ownership. Regardless, neither dog was registered with the AKC during the marriage; husband registered the dogs with the AKC post-separation and post-divorce. N.T. 12/2/22 at 50-51.

[7] I note that Husband confirmed Wife's testimony that she registered the licenses of both dogs during the marriage. ***See*** N.T., 12/2/22, at 52. Wife testified that in addition to registering the dogs during the marriage, she continued to renew the licenses in 2020, 2021 and 2022, post-separation and post-divorce. ***See id***. at 21.

on the stipulations and testimony, the trial court found the parties: acquired the dogs together during the marriage, shared possession of them, and had the same interests as to both dogs. ***See id***. at 62. The trial court additionally found no evidence of title, and it specifically found there was no legal support for Husband's testimony that post-separation AKC registrations and dog licenses constituted title. ***See id***. The trial court accurately noted that the law presumes unity of title and tenancy by the entireties unless there is clear and convincing evidence to the contrary offered by the party opposing the presumption (the Husband here). ***See id***. at 64; ***see also*** Trial Ct. Op., 3/10/23, at 5. The court found that "it's quite clear" that the property was ***not*** intended to be held by only one of the parties to the marriage during the marriage and the opposing party failed to rebut the presumption by clear and convincing evidence. ***See id***. As credited in the trial court's opinion, the parties agreed that the dogs were marital property, and paid for out of a joint bank account. ***See*** N.T., 12/2/22, at 6-8, 41. And the trial court noted the stipulation that neither party requested equitable division of property per section 3502 of the Divorce Code, nor did they enter into a marital settlement regarding any property. ***See id***. at 11, 27, 57.[8] The trial court found under

[8] A plain reading of section 3502 neither compels equitable distribution upon either party in a divorce, nor does it express any indication that property rights shall be lost in these circumstances if equitable distribution is not pursued. ***See also infra*** notes 18 and 19.

the evidence presented the "plain language of § 3507" applied and required partition. ***Id***.

Husband, in all three of his issues, asserts the trial court erred in granting Wife's petition for partition pursuant to section 3507. ***See*** Husband's Brief at 4. Our standard of review is abuse of discretion or error of law. ***See Spears***, 769 A.2d at 524.

Section 3507(a) provides that "***[w]henever married persons holding property as tenants by entireties are divorced, they shall . . . thereafter hold the property as tenants in common*** . . ., and either [one] . . . may bring an action against the other to have the property sold and the proceeds divided between them." 23 Pa.C.S.A. § 3507(a) (emphasis added). Because the tenancy in common created by section 3507(a) arises subsequent to divorce, a petition for partition under section 3507(a) must necessarily occur ***after*** the divorce is final. ***See***, ***e.g.***, ***Spears***, 769 A.2d at 523 (addressing a petition for partition filed approximately twenty-four years after divorce pursuant to section 3507's predecessor statute). Section 3507 was passed into law in 1990, and remains viable. ***See id***.[9]

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[9] To the extent the Majority attempts to discern the intent of the legislature in enacting section 3507, such history is only employed when the language is ambiguous. ***See***, ***e.g.***, ***Jones***, 270 A.3d at 18-19 (noting that "[i]f the terms of a statute are clear and free of all ambiguity, we will not disregard the letter of the law in favor of pursuing its apparent spirit"; that the plain language of
*(Footnote Continued Next Page)*

Section 3507 concerns property held by married persons as tenants by the entireties. "A tenancy by the entireties exists when real or ***personal*** property is held jointly by a husband and wife, with its essential characteristic being that ***each spouse is seised of the whole or the entirety and not a divisible part thereof***." ***Gilliland v. Gilliland***, 751 A.2d 1169, 1172 (Pa. Super. 2000) (internal citation and quotations omitted) (emphases added).

Our Supreme Court has long held that personal property in Pennsylvania may be held by a husband and wife by the entireties. ***See***, ***e.g.***, ***Madden v. Gosztonyi Savings & Trust Co.***, 200 A. 624, 628 (Pa. 1938). This Court has likewise held that personal property may be held by the entirety. ***See***, ***e.g.***, ***Fascione v. Fascione***, 416 A.2d 1023, 1026 (Pa. Super. 1979) (holding that a husband and wife had held property, including, *inter alia*, furniture, by the entirety); ***Banko v. Malanecki***, 451 A.2d 1008, 1011 (Pa. 1982) (recognizing that the Court previously "held that household goods purchased

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a statute is the best indication of legislative intent; and only where the statutory language at issue is determined to be ambiguous does this Court go beyond the text to consider other considerations such a legislative history); 1 Pa.C.S.A. § 1921(b) (providing that when a statute is clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit); ***id***., § 1921(c) (providing that where a statute is ***ambiguous***, courts may consider, *inter alia*, "contemporaneous legislative history"); ***contra*** Maj. Op. at 21. There is no ambiguity in section 3507; it clearly allows divorced persons to continue to have a right in property and compel sale of property that was obtained during the marriage and owned by the entireties during the marriage.

by a husband and used during the marriage by both spouses are presumed to be the property of both spouses 'held jointly by the entireties'"). I note that, "[n]evertheless, it is equally well established that an estate by the entireties may be terminated by agreement, express or implied, of the parties." ***Fascione***, 416 A.2d at 1025. In the instant matter, however, there was no evidence of an agreement prior to the divorce, either written or implied; nor did the parties seek equitable distribution or a property settlement agreement. Other than some text messages back and forth, which only showed the parties were totally at odds about how to handle the dogs, both parties were under the impression that each of them would get the dogs after the divorce. This testimony clearly shows there was no implied meeting of the minds on the division of this property.

A legal presumption exists that "property held by a husband and wife is held by the entireties and that said presumption can be overcome only when the opposing party demonstrates, through clear and convincing evidence, that the property was not intended to be held by the husband and wife as entireties property." ***Jones***, 270 A.3d at 14 (internal citation and quotations omitted). However, the petitioning party must first prove what properties were held by the entireties and, thereby, subject to partition. ***See Winpenny v. Winpenny***, 442 A.2d 778, 781 (Pa. Super. 1982).

While this Court has held that a tenancy by the entireties requires a legally binding marriage, plus satisfaction of the four unities of time, title, possession, and interest, ***see Jones***, 270 A.3d at 15 n.18, a presumption of ownership by the entireties nevertheless applies where marital property is ***untitled***, if the parties used joint funds to purchase the property, and they shared possession of, and interest in, the property. ***See***, ***e.g.***, ***In re Estate of Matson***, 542 A.2d 147, 153 (Pa. Super. 1988) (holding that a purchase of untitled personalty, made with proceeds from a loan obtained on the credit of both spouses, creates a presumption of entireties ownership). Further, when a party seeks to overcome the presumption of a tenancy by the entireties of untitled marital property, that party can only overcome the presumption through clear and convincing evidence that the property was not intended to be held by the husband and wife as entireties property. ***See Jones***, 270 A.3d at 14.[10]

It is well settled law that dogs are personal property. ***See Desanctis***, 803 A.2d at 232 (stating that "Pennsylvania law considers dogs to be personal property"); ***see also Snead v. Society for Prevention of Cruelty to***

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[10] As noted above, personal property may be held as entireties property; and it is similarly "well established that tenants in common of personal property, like tenants in common of real estate, own and possess in equal shares an undivided interest in the whole property." ***In re Engel's Estate***, 198 A.2d 505, 507 (Pa. 1964).

***Animals of Pennsylvania***, 929 A.2d 1169, 1181 (Pa. Super. 2007) (stating the same); ***Baltruasaitis v. Schilpp***, 296 A.3d 623 (Pa. Super. 2023) (unpublished memorandum at *8).[11]

In sum, marital property that is also personal property is subject to section 3507 if it is held by the entireties. That is, where marital property is not otherwise addressed by equitable distribution or a marriage settlement agreement, section 3507 provides that a "dissolution of the . . . marriage by divorce terminate[s] the tenancy by the entireties," and creates a tenancy in common. ***Barrett v. Barrett***, 614 A.2d 299, 301 (Pa. Super. 1992).

Here, Wife initially filed the post-divorce petition, averring the dogs were marital property subject to partition under section 3507. Wife, the moving party, identified the dogs as the property to be partitioned pursuant to section 3507 and submitted evidence (largely uncontested) that the dogs were purchased during the marriage with joint funds, and both had equal possession of the dogs during the marriage. Husband, as the opposing party, agreed with the Wife's assertions regarding the purchase and possession of the dogs during the marriage; however, he asserts on appeal that section 3507 is inapplicable to personal property (*i.e.*, it is limited to real property) and, consequently, the dogs are not subject to partition under section 3507.

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[11] Pursuant to Pa.R.A.P. 126(b), unpublished non-precedential decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value.

***See*** Husband's Brief 10-14. He further asserts that since he had possession of the dogs at the time the divorce was finalized, he can claim the dogs "as his separate property under 23 Pa.C.S.[A.] §§ 3503 and 3504." ***Id***. at 14.

The trial court noted that the plain language of section 3507 "is clear in its mandates providing [that] when married individuals are divorced[,] and they're holding property as tenants by the entirety at the time that they are divorced, [they] thereafter[] hold the property as tenants in common . . .." N.T., 12/2/22, at 61. As such, the trial court recognized the statute provides that either party "may bring an action against the other to have the property sold and the proceeds divided between them." ***Id***. The court noted that the presumption applied to the facts presented by the parties, as the facts provided by both parties showed the parties acquired the dogs at the same time, shared possession of the dogs, and had an undivided interest in the whole of the property. ***See id***. at 62. Since the presumption clearly applied, the burden shifted to Husband to prove by clear and convincing evidence that the presumption did not apply, and the property was not owned by the entireties. ***See Jones***, 270 A.3d at 14.

The trial court found there was no evidence of title, and, specifically, Husband's AKC registrations and dog license were not instruments constituting title.[12] ***See id***. Accordingly, the trial court determined the law "presumes it to be [held by the entireties] until there's . . . clear and convincing evidence otherwise. And we don't have clear and convincing evidence . . .." ***Id***. at 64. The trial court specifically found that Husband, as the opposing party, failed to carry his burden of rebutting the presumption that the property was held by the entireties, the property was thus subject to conversion by operation of law to a tenancy in common and thereafter subject to partition pursuant to section 3507. ***See id***.; ***accord*** Trial Ct. Op., 3/10/23, at 5.

Pennsylvania courts have not required property to be titled for it to be held by the entireties or in common. Further, nothing in the plain text of section 3507 limits its application to ***titled*** property. ***See generally*** 23 Pa.C.S.A. § 3507(a); ***Commonwealth v. Miller***, 364 A.2d 886, 887 (Pa. 1976) (noting that "statutes are not presumed to make changes in the rules

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[12] During the hearing, husband testified that he had written documentation of the signed purchasing contracts for the dogs but "[didn't] have them present" at the time of the hearing. N.T., 12/2/22, at 58. Although the trial court could not consider this in its factual determination, I find it curious that husband brought dog licenses and AKC registrations unarguably obtained post-separation as proof of individual ownership of property, but did not bring paperwork to court, which would have been dispositive of whether the purchase of the dogs at issue was individual or joint.

and principles of the common law or prior existing law beyond what is expressly declared in their provisions"); ***Carrozza v. Greenbaum***, 916 A.2d 553, 566 (Pa. 2007) (stating the same). Furthermore, courts are to apply the plain meaning to statutory provisions, and "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S.A. §1921(b). Indeed, post-1980, this Court has held that "untitled personalty" can be owned by the entireties. ***See In re Matson***, 542 A.2d at 153; ***Clingerman v. Sadowski***, 519 A.2d 378, 380 (Pa. 1986) (a tenancy by the entireties "exists when property, ***either real or personal***, is held jointly by a husband and wife, with its essential characteristic being that each spouse is seised of the whole or the entirety and not a divisible part thereof") (emphasis added); ***Gilliland***, 751 A.2d at 1172 (stating that a husband and wife may own personal property by the entireties); ***In re Estate of Navarra***, 113 A.3d 829, 832 (Pa. Super. 2015). As such, a plain reading of section 3507 renders it applicable to any property owned by the entireties, which includes untitled personalty. ***Contra*** Maj. Op. at 21.

It is uncontested that the dogs are personal property acquired during the marriage, and, as such, were marital property. ***See***, ***e.g.***, Order, 12/6/22, Joint Ex. A. There was no dispute that the parties acquired the dogs at the same time, with joint funds, and they shared possession and full access to the

dogs during the marriage. ***See*** N.T., 12/2/22, at 8.[13] Additionally, Husband conceded, and the trial court concluded, the dogs were not titled property. ***See*** Pl.'s Ans. to Def.'s Pet. for Mot. for Reconsideration, 9/15/22, at ¶ 20 (Husband asserting that "[d]ogs and other items of personal property do not have titles or certificates").

Further, during the marriage, Wife "filled out the paperwork [for the dogs]. ***They were licensed to [her]***." N.T., 12/2/22, at 21 (emphasis added); ***see also id***. at 48 (Husband conceding that Wife acquired licenses for the dogs, and that "initially in the first year that she had left, I know she had renewed them"). Thus, Husband's concession and the evidence admitted at the hearing established that the dogs were untitled property; the parties acquired them at the same time and with joint funds; and the parties shared possession during the marriage. Therefore, relying on the facts of record, the trial court held that Wife met her initial burden of showing that the dogs were presumptively held by the entireties. ***See In re Estate of Matson***, 542 A.2d at 153; ***Banko***, 451 A.2d at 1011; ***Jones***, 270 A.3d at 14; ***Fascione***, 416

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[13] Additionally, Wife, whose testimony the trial court credited, testified that she and Husband: made a joint decision to buy the dogs, used joint funds to do so, and owned the dogs together. ***See*** N.T., 12/2/22, at 5-6, 9-10, 62, 64. This Court must accept the trial court's findings based on its credibility determinations. ***See Werner***, 573 A.2d at 1121.

A.2d at 1025-26.[14] Likewise, the trial court reasonably relied on the record in finding the husband did not show by clear and convincing evidence that the ownership of the dogs during the marriage was meant to be individual or separate. ***See*** N.T., 12/2/22, at 64. Thus, based on the evidence, and testimony provided, the trial court's determination that the dogs were owned by the entireties was supported by the record facts, and this Court is bound

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[14] Even if, *arguendo,* the law required evidence showing the property was in each party's name in order to trigger the presumption of ownership by the entireties, such evidence existed here and actually favored Wife. Again, neither party showed ownership or title with a written instrument. However, Wife testified she and Husband, during the marriage and prior to separation, "went to the store together [to obtain dog licenses,] ***but I [wife] filled out the paperwork. They were licensed to me.***" N.T., 12/2/22, at 21 (emphasis added). Husband himself acknowledged the truth of Wife's testimony on this point. ***See id***. at 52 (Husband stating, "That is correct," when asked if Wife "was the one who got the dogs licensed and kept the licenses during the marriage"). ***Cf***. ***In re Holmes' Estate***, 200 A.2d at 747 (stating that "[w]here property or an account is placed in the names of a husband and wife, a gift and the creation of an estate by the entireties is presumed ***even though the funds used to acquire the property or to establish the account were exclusively those of the husband***") (emphasis added). ***See also Werner***, 573 A.2d at 1121 (noting that "we are bound to accept the findings of the trial court . . ., particularly where the findings are largely dependent upon the credibility of the witnesses"). To the contrary, the documentation and testimony offered by the Husband all occurred post-separation. A tenancy by the entireties determination focuses on the status of property during the marriage so, in essence, the only paperwork that tended to show any type of ownership during the marriage were the dog licenses that were admittedly in Wife's name and did not support Husband's burden.

to accept the trial court's findings of fact,[15] particularly where they rest on credibility. ***See Werner***, 573 A.2d at 1121.[16]

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[15] This Court is not entitled to re-weigh evidence found by the trial court. ***See Hess v. Hess***, 212 A.3d 520, 523 (Pa. Super. 2019) (stating that "it is within the province of the trial court to weigh the evidence and decide credibility and this Court will not reverse those determinations so long as they are supported by the evidence") (internal citation omitted). Just because we would find differently does not entitle an appellate court to put itself in the place of the trial court.

[16] I find unpersuasive Husband's argument that section 3507 only applies to titled or real property. The statute contains no such prescription, and it is well established that personal property may be held by the entireties as well as in common. ***See Madden***, 200 A. at 628 (personal property may be held by the entireties); ***see also In re Engel's Estate***, 198 A.2d at 507 (personal property may be held by tenants in common). ***Contra*** Husband's Brief at 4, 5. To the extent Husband argues that section 3507 should apply to ***real property***, a separate provision, section 3508 ("Conveyance of entireties property to divorced spouse"), specifically addressing real property. The section states, "Whenever married persons have acquired ***real estate*** as tenants by entireties and are thereafter divorced, either former spouse . . . may convey to the other . . . the grantor's interest in the real estate so that the grantee holds the real estate in fee simple . . .." Had the legislature intended to limit the application of section 3507 to real estate, it could have easily used language specifying "real estate" as it did in section 3508. ***See Fletcher v. Pennsylvania Prop. & Cas. Ins. Guar. Ass'n***, 985 A.2d 678, 684 (Pa. 2009) (directing that "where the legislature includes specific language in one section of the statute and excludes it from another, the language should not be implied where excluded").

I note, as did the trial court, that a strict reading and application of section 3507 may upset a party's expectation of finality in the resolution of economic claims via equitable distribution. ***See*** Trial Ct. Op., 3/10/23, at 5-6. However, this Court is bound to apply the plain language of the statute to the findings of the trial court as are supported by the record, and determine whether the trial court erred or abused its discretion. ***See*** 1 Pa.C.S.A. § 1921(b); ***Carrozza***, 916 A.2d at 566; ***Spears***, 769 A.2d at 524. Furthermore, a party's

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Furthermore, existing law supports the trial court's conclusion that untitled property can be held as tenancy by the entireties. ***See In re Matson***, 542 A.2d at 153; ***Clingerman v. Sadowski***, 519 A.2d 378, 380 (Pa. 1986) (a tenancy by the entireties "exists when property, ***either real or personal***, is held jointly by a husband and wife, with its essential characteristic being that each spouse is seised of the whole or the entirety and not a divisible part thereof") (emphasis added); ***Gilliland***, 751 A.2d at 1172 (stating that a husband and wife may own personal property by the entireties); ***In re Estate of Navarra***, 113 A.3d 829, 832 (Pa. Super. 2015) (cash proceeds from the sale of real property held in the entireties, noting entireties property "is a form of co-ownership in real and ***personal*** property held by a husband and wife with right of survivorship.") (emphasis added).

Upon the parties' divorce, that tenancy by the entirety was transformed by operation of law to a tenancy in common. ***See*** 23 Pa.C.S.A. § 3507(a); ***see also Barrett***, 614 A.2d at 301. Further, as noted above, because the tenancy in common created by section 3507(a) is only created upon divorce

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ability to proceed under section 3507 is not unfettered. A petitioning party must first show that the marital property was held by the entirety, or demonstrate the applicability of the presumption to that effect. Additionally, a respondent may assert that a tenancy by the entirety was terminated either expressly or impliedly, ***see Fascione***, 416 A.2d at 1025, and a section 3507 petition is subject to defenses such as laches. ***Cf***. ***Werner***, 573 A.2d at 1121 (finding waiver of statute of limitations and laches defenses because they were not contained in a responsive pleading).

of the parties, a petition for partition under section 3507(a) must necessarily occur after the divorce, and, accordingly, nothing precluded Wife from seeking partition following the divorce decree. ***See***, ***e.g.***, ***Spears***, 769 A.2d at 525 (addressing a petition for partition filed twenty-four years after divorce decree); ***contra*** Husband's Brief at 9 (implying that a section 3507 partition claim cannot be made after the entry of a divorce decree).[17] To the extent that the Majority implies the passage of the Divorce Code in 1980 precludes a presumption that spouses own "household goods" by the entireties during the marriage, ***see*** Maj. Op. at 18, I note that neither Wife, nor the trial court, assumed the presumption of ownership by the entireties based merely on the parties' marriage; rather, she advanced evidence to show the presumption applied. By stipulation, and at the hearing, the parties agreed they had jointly acquired and possessed the untitled property, *i.e.*, the dogs; they had joint

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[17] Insofar as Husband argues Wife impliedly agreed to terminate the tenancy by the entireties, the trial court disbelieved Husband's testimony, and the record supports this determination. ***See***, ***e.g.***, N.T., 12/2/22, at 11 (Wife testifying that prior to her divorce from Husband, she believed the parties had agreed she would get the dogs back following the divorce); ***id***. at 20 (Wife testifying that Husband would not permit her to see the dogs after the divorce). ***See also Werner***, 573 A.2d at 1121 (noting that "we are bound to accept the findings of the trial court . . ., particularly where the findings are largely dependent upon the credibility of the witnesses"). Accordingly, Husband's argument that the dogs were his separate personal property, and thus exempt from section 3507(a) because of section 3504 (providing divorced parties freedom to dispose of their separate personal property), is unavailing.

access to the dogs, and offered uncontradicted evidence that the dogs' licenses were held in her name during the marriage. Together, these facts triggered the presumption that the personal property was held by the entireties during the marriage. Furthermore, this Court has, well after the passage of the Divorce Code in 1980, affirmed the validity of this presumption. ***See***, ***e.g.***, ***Jones***, 270 A.3d at 14-15, 16 n.20.[18]

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[18] Thus, if the property is owned by the entireties, as the trial court held based on the facts presented, then section 3507 applies. Additionally, a party has a vested interest in property owned by the entireties. ***Cf***. ***Jones***, 270 A.3d at 16 (noting that the appellees failed to show that the property at issue was owned by the entireties, and thus that the wife had a vested interest in the property). ***See also Clingerman v. Sadowski***, 518 A.2d 378, 383 (Pa. 1986) (holding that where married persons own property by the entireties, and one spouse dies, the entireties property "automatically vest[s] in [the] surviving spouse"). Therefore, section 3503 would not apply in the instant matter, because section 3503—which terminates property rights dependent upon the marital relation upon the granting of a divorce decree—expressly exempts ***vested*** property rights. ***See*** 23 Pa.C.S.A. § 3503; ***cf***. ***Smith v. Smith***, 749 A.2d at 924-25 (Pa. Super. 2000) (applying section 3503 and holding that a wife's interest in her husband's pension was terminated following the entry of a divorce decree, and that even though she and husband later remarried and again divorced, her interest in the pension following the second marriage only dated back to the date of the second marriage).

Indeed, application of section 3503 in these circumstances nullifies section 3507. ***Cf***. ***Kowall v. United States Steel Corporation, Inc.***, 325 A.3d 802, 807-08 (Pa. Super. 2024) (discussing rules of statutory construction and noting this Court is required to construe statutes *in pari materia* together and as one statute; and every statute is to be construed so as to give effect to all its provisions). The Majority, under the stated aim of clarifying the legislative intent behind section 3507, has taken upon itself to limit the application of the plain language of section 3507 to titled property when no such limitation is contained in the plain language of the statute. ***See*** 1 Pa.C.S.A. § 1921(b)
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While it would undoubtedly have been wiser for the parties to dispose of thein ir personal property, held by the entireties during the marriage, via equitable distribution, or via a settlement agreement, both parties chose not to pursue that path.[19] This left open the possibility of a section 3507 partition action for property held by the entireties. ***Cf***. ***Laudig v. Laudig***, 624 A.2d 651, 655 (Pa. Super. 1993) (stating that "[o]ne of the recognized purposes of marital agreements is to allow the parties to avoid the operation of equitable distribution"). As unfortunate as I personally find the outcome, the plain

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(providing that "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit"); ***contra*** Maj. Op. at 21.

[19] The Majority appears to put the onus on Wife indicating that she was required to file for equitable distribution or enter into a settlement agreement, or else forfeit marital property. ***See*** Maj. Op. at 21 ("Because Wife produced no instrument . . . their prospective ownership was [not] subject [to] post-divorce partition pursuant to section 3507, but for a marital settlement agreement or equitable distribution litigated in connection with the Divorce Code. ***Wife's failure to avail herself of [these] available remedies resulted in the extinguishment of her claim to recover her share of the value of the dogs*** "). A plain reading of Section 3502 does not compel either party to enter into equitable distribution. And certainly the Husband had equal opportunity to avail himself of an equitable distribution determination, but also chose not to do so. I read nothing in the relevant law that compels a party to avail themselves of settlement or equitable distribution or else forfeit their property rights in these circumstances. In fact, the mere existence of section 3507 belies such a notion. And, as indicated ***supra,*** section 3507 remains a valid statutory provision. Furthermore, the holding that a party to divorce must show a written instrument as it relates to personal/untitled property is contrary to law and puts a burden on Wife that does not exist statutorily or in legal precedent.

language of section 3507 permits Wife's petition and authorizes the trial court's order.

Likewise, there is record support for the trial court's finding that the dogs were marital property held in the entireties, and the current law supports the trial court's conclusion that untitled property can be held in the entireties. Furthermore, section 3507 is not only valid but applicable based on the trial court's reasonable conclusions of law and fact, and an appellate court is not to substitute our judgment for that of the factfinder; rather, the test we apply is not whether we would have reached the same result on the evidence presented, but rather, after due consideration of the evidence which the trial court found credible, whether the trial court could have reasonably reached its conclusion. ***See G&G Investors LLC v. Phillips Simmons Real Estate Holdings, LLC***, 183 A.3d 472, 478 (Pa. Super. 2018). Because the trial court's findings and conclusions were reasonable and supported by the record, and the law was appropriately applied, I would affirm the trial court's order.[20]

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[20] As the trial court itself recognized, the outcome in this matter is extremely difficult to accept. The record shows the trial court gave the parties forty-five days to try to settle the matter before it entered its order, hoping cooler and wiser heads would prevail; sadly, they did not. However, it is the province of the General Assembly to amend the Divorce Code should it desire to distinguish dogs and other pets differently from other types of property. This matter "presents a problem for the General Assembly . . .. Under the guise of construing a statute we cannot amend or extend it, however strongly a poignant case may arouse our sympathy." ***Hogg v. Kehoe-Berge Coal Co.***,
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2025 PA Super 43

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101 A.2d 168, 170 (Pa. Super. 1953). Indeed, legislation pertaining to the potential equitable distribution of "companion animals" is currently pending in the General Assembly. ***See***, ***e.g.***, 2023 H.B. 1108. Let us hope that the legislature addresses this in short order, and moves in a positive direction to update the law to reflect our current societal principles that pets are more akin to family members than inanimate objects such as lamps.