

STATE OF MICHIGAN
COURT OF APPEALS

HELEN L. BAILEY,

Plaintiff-Appellant,

v

FORREST DEAN BAILEY and SUSAN BAILEY,

Defendants-Appellees.

UNPUBLISHED

May 19, 1998

No. 201442

Lenawee Circuit Court

LC No. 93-005822-CZ

Before: Neff, P.J., and O'Connell and Young, Jr., JJ.

PER CURIAM.

Plaintiff appeals as of right from an order requiring the sale of property with neither party receiving reimbursements for contributions or improvements. We affirm.

This is the second appeal in this case involving disputing joint tenants. This Court in its prior opinion aptly characterized this case as involving a “tragic family situation for which equity provides no real solution.” *Bailey v Bailey*, unpublished opinion per curiam of the Court of Appeals, issued February 27, 1996 (Docket No. 170297). On the first appeal, this Court found that the trial court erred because its order effectively excluded plaintiff from her right to joint possession. This Court stated that a court acting in equity is not permitted to restrain a joint tenant from possession pursuant to *Albro v Allen*, 434 Mich 271, 284; 454 NW2d 85 (1990), and that in this situation the appropriate equitable remedy was sale or partition of the property.

The trial court on remand determined that the property could not be partitioned and therefore that a sale was the only equitable solution. The trial court ordered that neither party would receive reimbursement for contributions or improvements. The trial court also ordered that the proceeds from the sale of the property be placed in a trust account with the income divided evenly between plaintiff and defendant Forrest Dean Bailey until the death of either, at which time the survivor “shall be the owner of the funds held in trust and distribution shall be so made.”¹ Plaintiff thereafter filed this appeal.

Plaintiff first argues that the trial court erred when it determined that plaintiff made a gift by executing a deed making her and defendant joint tenants with full rights of survivorship. This Court declined to address this issue in the original appeal because plaintiff never challenged the validity of the

deed before the trial court. Moreover, the purpose of this Court's remand was not to give plaintiff the opportunity to raise additional issues, but (1) for the trial court to "clarify" its first order which erroneously excluded plaintiff from possession of the property, and (2) to give the court the opportunity to determine which of two equitable remedies was appropriate with respect to the property at issue: partition or sale. *Jennings v Southwood (After Remand)*, 224 Mich App 15, 26-27; 568 NW2d 125 (1997). Simply put, this issue is not properly before this Court and we decline to address it.

Plaintiff next argues that public policy, caselaw, and equity require that she be repaid her contributions and improvements prior to a division of the sale proceeds. Decisions in equity are reviewed by this Court de novo. *Webb v Smith (After Remand)*, 204 Mich App 564, 568; 516 NW2d 124 (1994). However, this Court reviews the trial court's findings of fact in an equity action for clear error. *Id.* A trial court's findings are considered clearly erroneous when this Court has a definite and firm conviction that a mistake has been made. *Id.*

Certainly, improvements are properly considered in determining what is an equitable division of the proceeds of a sale. See *Fenton v Miller*, 116 Mich 45, 50; 74 NW 384 (1898). In *Strohm v Hoepke*, 352 Mich 659, 662; 90 NW2d 495 (1958), our Supreme Court explained that "[t]he doctrine of contribution between cotenants is based upon purely equitable considerations. It is premised upon the simple proposition that equality is equity." However, the record in this case reflects that *both* parties made various contributions to and improvements on the subject property. On this record, we cannot say that the trial court's division of the sale proceeds was inequitable.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ Robert P. Young, Jr.

¹ All references to "defendant" in this opinion will be to defendant Forrest Dean Bailey only.