

STATE OF MICHIGAN  
COURT OF APPEALS

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CHESTER WROBEL,

Plaintiff-Appellee,

v

BERNICE WROBEL,

Defendant-Appellant.

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UNPUBLISHED

January 25, 2000

No. 210919

Macomb Circuit Court

LC No. 97-001297-DO

Before: White, P.J., and Hood and Jansen, JJ.

JANSEN, J. (concurring in part and dissenting in part).

I respectfully dissent from the majority's affirmance of the trial court's award of the property to plaintiff and would hold that the trial court could not sever defendant's survivorship interest because the parties owned the property as joint tenants with full rights of survivorship.

Generally, all jointly held property is subject to being partitioned. MCL 600.3304; MSA 27A.3304. However, as defendant points out, there is a significant distinction between a joint tenancy and a joint tenancy with full rights of survivorship.<sup>1</sup> In fact, these two distinct joint tenancies have long been recognized in Michigan. See *Schulz v Brohl*, 116 Mich 603; 74 NW 1012 (1898); *Finch v Haynes*, 144 Mich 352; 107 NW 910 (1906); *Jones v Snyder*, 218 Mich 446; 188 NW 505 (1922); *Ames v Cheyne*, 290 Mich 215; 287 NW 439 (1939); *Rowerdink v Carothers*, 334 Mich 454; 54 NW2d 715 (1952); *Ballard v Wilson*, 364 Mich 479; 110 NW2d 751 (1961); *Mannausa v Mannausa*, 374 Mich 6; 130 NW2d 900 (1964); *Albro v Allen*, 434 Mich 271, 276; 454 NW2d 85 (1990). Our Supreme Court, in *Albro*, *id.* at 274-276 stated:

The principal characteristic of the joint tenancy is the right of survivorship. Upon the death of one joint tenant, the surviving tenant or tenants take the whole estate. Tiffany, *supra*, § 419, p 198. In the standard joint tenancy, the right of survivorship may be destroyed by severance of the joint tenancy. *Id.*, p 199. The joint tenancy may be severed by an act of the parties, by conveyance by either party, or by levy and sale on an execution against one of the parties. *Smith v Smith*, 290 Mich 143; 287 NW 411 (1930). If one joint tenant conveys his interest to a third party, then the remaining joint

tenant and the grantee become tenants in common, thus destroying the element of survivorship.

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At the crux of this case is the distinction between the “joint tenancy with full rights of survivorship” and the ordinary joint tenancy. The “joint tenancy with full rights of survivorship” is comprised of a joint life estate with dual contingent remainders. See 1 Cameron, Michigan Real Property Law, §9.11, p 274. While the survivorship feature of the ordinary joint tenancy may be defeated by the act of a cotenant, the dual contingent remainders of the “joint tenancy with full rights of survivorship” are indestructible. A cotenant’s contingent remainder cannot be destroyed by an act of the other cotenant.

The Court in *Albro* went on to consider the effect of a conveyance on the cotenant’s survivorship rights. “Generally, it is recognized that where the interest held is not an ordinary joint tenancy, but instead a joint life estate with dual contingent remainders, the right of survivorship cannot be affected by a conveyance of the life estate.” *Id.* at 278. The significant holding of *Albro* is that the contingent remainder of either cotenant may not be destroyed by any act of the other. Although either cotenant may transfer his or her interest in the joint life estate, such a transfer has no effect on the contingent remainders; thus, upon the death of either of the original cotenants, the other cotenant, or any person to whom the contingent remainder has been transferred, takes the whole estate. *Id.* at 287.

The trial court in the present case, however, found that MCL 552.102; MSA 25.132 allowed it to sever the survivorship interest upon the divorce. That statute provides:

Every husband and wife owning real estate as joint tenants or as tenants by entireties shall, upon being divorced, become tenants in common of such real estate, unless the ownership thereof is otherwise determined by the decree of divorce.

I disagree with the trial court and the majority because a plain reading of the statute does not lead to the conclusion that a joint tenancy with full rights of survivorship may be severed when a husband and wife are divorced. The statute speaks only to a joint tenancy and a tenancy by the entirety. As the Supreme Court in *Albro* carefully delineated, a joint tenancy and a joint tenancy with full rights of survivorship are wholly different joint tenancies. While the ordinary joint tenancy is destructible by an act of the parties, the dual contingent remainder of a joint tenancy with full rights of survivorship is indestructible. Because the statute refers only to a joint tenancy, but not to a joint tenancy with full rights of survivorship, I find that the statute does not apply to a joint tenancy with full rights of survivorship.

Further support for my position is also found in this Court’s decision in *Snover v Snover*, 199 Mich App 627; 502 NW2d 370 (1993). There, Mayland Snover executed a quitclaim deed to himself (a single man) and William and Nancy Snover (husband and wife) as joint tenants with full rights of survivorship and not as tenants in common. William and Nancy Snover, the plaintiffs, were Mayland’s son and daughter-in-law. Approximately eleven years later, Mayland signed a quitclaim deed conveying

the property to himself and Gladys Snover, husband and wife. When Mayland died a few months later, plaintiffs brought an action seeking to evict Gladys, the defendant, from the premises. This Court held that the language in the original deed created an indestructible joint tenancy among all the named grantees, whose interest in the property was thereafter limited to a personal life estate with a contingent remainder. *Id.* at 629. This Court reiterated the rule that a conveyance by any of the grantees does not operate to convey more than that interest or in any way diminish the contingent remainder of the named joint tenants. *Id.* Importantly, this Court stated that such a construction is not altered when two of the grantees were married. *Id.* Thus, the contingent remainder of the named joint tenants will full rights of survivorship, William and Nancy Snover, was indestructible and they were entitled to the property.

Further, the maxim *expressio unius est exclusio alterius*—the express mention in a statute of one thing implies the exclusion of other similar things—applies to this case. *Bradley v Saranac Community Schools Bd of Ed*, 455 Mich 285, 298; 565 NW2d 650 (1997). Here, the Legislature explicitly stated that a joint tenancy or tenancy by the entirety is to become a tenancy in common upon a divorce, unless otherwise expressed in the judgment of divorce. The Legislature made no mention of a joint tenancy with full rights of survivorship, a long recognized type of tenancy in this jurisdiction. Thus, the statute should not be applied to a joint tenancy with full rights of survivorship in light of the clear and unambiguous terms of the statute. MCL 552.102; MSA 25.132 does not allow a court to sever a cotenant’s contingent remainder interest in the property where the deed created a joint tenancy with full rights of survivorship.

Additionally, the Legislature is “deemed to act with an understanding of common law in existence before the legislation was enacted” *Nation v W D E Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997). Where there is doubt regarding the meaning of a statute, it is to be given effect which makes the least rather than the most change in the common law. *Id.* It is presumed that the Legislature is familiar with the principles of statutory construction. *Id.* at 494-495. Because contingent remainders are not subject to partition, and because a joint tenancy with full rights of survivorship is not expressly stated in MCL 552.102; MSA 25.132, I do not believe that the statute destroys defendant’s interest in the property.

In the present case, defendant had an indestructible contingent remainder to the property and MCL 552.102; MSA 25.132 did not in any way diminish that interest. As noted by the Court in *Albro*, *supra* at 284-285, contingent remainders are not subject to partition because they are not possessory estates. See also MCL 600.3308; MSA 27A.3308. Thus, only plaintiff’s life estate to the property was subject to partition. Upon plaintiff’s death, the entire estate should have reverted to defendant as the joint tenant with full rights of survivorship. I would, therefore, reverse the trial court’s ruling severing defendant’s survivorship interest, creating a tenancy in common, and awarding the entire property to plaintiff. Defendant’s survivorship interest could not be destroyed.

I would reverse the trial court’s ruling severing defendant’s survivorship interest in the property, creating a tenancy in common, and awarding the entire property to plaintiff. Defendant’s survivorship interest could not be severed, thus, I would remand to the trial court to award the property to defendant in light of plaintiff’s death.



I concur with the majority's ruling regarding award of the joint bank account.

/s/ Kathleen Jansen

<sup>1</sup> For a good review of the distinction between a joint tenancy with full right of survivorship and other joint tenancies, see Cooper, *Continuing Problems with Michigan's Joint Tenancy 'with Right of Survivorship,'* 78 Michigan Bar J 966 (September 1999).