

STATE OF MICHIGAN
COURT OF APPEALS

JAMES A. NORVELL,

Plaintiff-Appellant,

v

JO ANN HACKETT and JUANITA HUSEMAN,

Defendants-Appellees.

UNPUBLISHED

February 11, 2000

No. 208769

Wayne Circuit Court

LC No. 97-718913-CH

Before: O'Connell, P.J., and Meter and T. G. Hicks*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition and dismissing the case. We affirm.

The parties, who are siblings, own a parcel of property as joint tenants with full rights of survivorship. Plaintiff filed a complaint seeking sale of the property in lieu of partition. Defendants moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that property owned by parties as joint tenants with full rights of survivorship could not be the subject of a partition action. The trial court granted the motion.

We review the trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(8) de novo. *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253; 571 NW2d 716 (1997). Summary disposition is proper where the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Simko v Blake*, 448 Mich 648, 654; NW2d 842 (1995). We conclude that the trial court properly granted summary disposition in this case.

Parties who hold property as joint tenants with full rights of survivorship hold joint life estates with contingent remainders. *Albro v Allen*, 434 Mich 271, 275; 454 NW2d 85 (1990). The contingent remainders cannot be destroyed by any act of a co-tenant. *Id.* at 279. Although the life estate may be partitioned, this does not affect the contingent remainders. *Id.* at 282. The contingent remainders are not subject to partition. *Id.* at 284.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition because *Albro* specifically overruled earlier cases that held that a joint tenancy with full rights of survivorship cannot be partitioned. While *Albro* did overrule those previous cases, it reaffirmed the rule that the contingent remainders are indestructible and not subject to partition. At most, plaintiff would be entitled to convey only his life estate in the joint tenancy. *Id.* at 287. However, such a conveyance would not affect defendants' rights of survivorship. *Id.* The trial court correctly concluded that plaintiff's complaint seeking sale of the property in lieu of partition failed to state a claim on which relief could be granted.

Affirmed.

/s/ Peter D. O'Connell

/s/ Patrick M. Meter

/s/ Timothy G. Hicks