

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Granville H. McKenzie

Court of Appeals No. L-08-1299

Appellant

Trial Court No. CI05-3633

v.

Norma S. Vickers-McKenzie

DECISION AND JUDGMENT

Appellee

Decided: September 30, 2009

* * * * *

David G. Grude, for appellant.

Joseph J. Solomon and Arthur D. Lake, for appellee.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas in an action that originally sought a division of marital property and spousal support.

{¶ 2} This is the second time this case has come before this court. For the sake of clarity, we will repeat herein the facts as set forth in our decision in *McKenzie v. Vickers-McKenzie*, 6th Dist. No. L-06-1045, 2006-Ohio-7005, ¶ 2-7.

{¶ 3} "Appellant, Granville H. McKenzie, and appellee, Norma S. Vickers-McKenzie, are Jamaican nationals, now United States citizens. The couple was married in Jamaica on September 28, 1975, where appellee attended medical school. They relocated to Toledo in 1992. At some point, appellant returned to Jamaica, leaving appellee in their Toledo home.

{¶ 4} "On February 3, 2004, appellee petitioned for a dissolution of marriage in Jamaica. Appellant filed an answer in opposition with the Jamaican court on April 1, 2004. On August 30, 2004, the Jamaican court issued a 'decree nisi' of dissolution which became absolute on November 11, 2004.

{¶ 5} "On June 11, 2004, while the Jamaican dissolution was pending, appellant sued appellee for divorce in the Lucas County Court of Common Pleas, Domestic Relations Division. This matter was eventually dismissed for want of subject-matter jurisdiction after the Jamaican divorce was final.

{¶ 6} "It would appear that under Jamaican law, the division of property is a matter separate from a dissolution proceeding. Following the absolute dissolution decree, appellee filed a claim with the Jamaican courts for several pieces of real property to which she claimed ownership. Shortly thereafter, appellant instituted the present proceeding, initially seeking a division of real and personal property and an award of

spousal support. With leave, this complaint was later amended to include a count seeking sale of the home held by the parties by survivorship deed and equitable distribution of the proceeds.

{¶ 7} "In the trial court, appellee moved to dismiss appellant's complaint arguing that the court lacked subject matter jurisdiction over the case because 1) it was a domestic relations matter exclusively within the jurisdiction of the domestic relations division; 2) the prior dismissal of appellant's divorce complaint in the domestic relations division was res judicata to the present matter, and 3) appellant was a party to the litigation in Jamaica over the same issues.

{¶ 8} "The trial court granted appellee's motion to dismiss, concluding that it lacked subject matter jurisdiction over the case."

{¶ 9} Appellant then appealed that judgment to this court, asserting in a single assignment of error that the trial court's determination that it lacked subject matter jurisdiction was erroneous. In our decision and judgment entry of December 29, 2006, we reversed in part the trial court's dismissal of appellant's complaint. See *McKenzie*, supra. In pertinent part, we held that while the lower court did not have subject matter jurisdiction over appellant's claim for spousal support, the same could not be said for the remainder of appellant's complaint. We then stated:

{¶ 10} "A prayer that jointly held property be sold and the proceeds divided constitutes a request for partition. See Blacks Law Dictionary (6th Ed. Rev. 1990) 1119-1120. Partition is clearly a matter which a court of the general division may determine,

see R.C. Chapter 5307, and is properly brought in a county where the land to be partitioned is situated. R.C. 5307.02. Since Lucas County is the situs of the property which the parties hold by survivorship deed, it is the appropriate place to partition such property. Moreover, there is nothing in the record to suggest that any other jurisdiction, foreign or domestic, claims jurisdiction over the parties' Ohio property." Id. at ¶ 12.

{¶ 11} We therefore reversed the lower court's judgment in part and remanded the case back to that court "for consideration of those causes of action not clearly within the domestic relations division's authority."

{¶ 12} On remand, both parties filed motions for summary judgment. The parties' motions and arguments centered on the meaning of our December 29, 2006 decision. Appellant asserted that because we remanded the case to the trial court for consideration of those *causes* (plural) of action not clearly within the domestic relation divisions authority, the court had the authority to partition the parties' real and personal property. In contrast, appellee asserted that the trial court did not have the authority to determine what was marital property and then divide it because a final judgment entry and decree of divorce had been entered. Rather, appellee argued that the trial court only had the authority to partition the parties' real property located at 5006 Rudgate Boulevard, Toledo, Ohio, which the parties held as tenants in common pursuant to R.C. 5302.20(C)(5). Upon consideration, the court found that it did not have jurisdiction over appellant's claim for an equitable distribution of personal property but did have jurisdiction over appellant's claim for partition of the real property located at 5006

Rudgate Boulevard. The court therefore granted in part appellee's summary judgment motion and denied appellant's summary judgment motion.

{¶ 13} In response, appellant filed a motion for reconsideration on the ground that the lower court misinterpreted our decision of December 29, 2006. Appellant asserted that our remand was not limited to a partition of real property. Rather, appellant argued, we specifically determined that the lower court had no jurisdiction to review the spousal support claim and remanded the balance of the claims for further consideration. Those claims included all of the personal property of the marriage. Appellee opposed the motion for reconsideration, and on June 2, 2008, the court issued an opinion and judgment entry which denied the motion for reconsideration and ruled on other pending motions. In denying the motion for reconsideration, the lower court noted this court's specific reference to R.C. Chapter 5307, which deals only with real property, not personal property. The court therefore held that it only had jurisdiction to partition the Rudgate property.

{¶ 14} Subsequently, the parties resolved their differences regarding the Rudgate property, and on August 5, 2008, the lower court issued a judgment entry dismissing the case without prejudice. Appellant now challenges the lower court's various rulings through the following assignments of error.

{¶ 15} "1. The trial court erred in holding for the second time that the trial court lacked subject matter jurisdiction over the personal property partition issues raised in plaintiff's amended complaint dated August 29, 2005.

{¶ 16} "2. The trial court erred in failing to follow the appellate court decision dated December 29, 2006, determining that the trial court has jurisdiction over the partition of personal property (law of the case).

{¶ 17} "3. The trial court erred in granting defendant/appellee's motion to quash subpoenas issued by plaintiff/appellant for the purpose of acquiring financial information necessary for plaintiff/appellant to properly and adequately pursue plaintiff/appellant's personal property partition claim."

{¶ 18} The first and second assignments of error are related and will be addressed together. Appellant asserts that the lower court erred in dismissing all of his causes of action pertaining to the partition of personal property. An action for the partition of personal property, appellant contends, may be maintained in Ohio separate and apart from a statutory action concerning the partition of real property. Appellee counters that in Ohio only the domestic relations division of the common pleas court has jurisdiction to divide marital property, real or personal. Appellee further asserts that even if the lower court had jurisdiction to partition the personal property of the parties, a party seeking partition must have legal or equitable title to the property at issue. In the proceedings below, appellee contends, appellant never documented a joint ownership of any personal property. Accordingly, appellee argues, the lower court properly granted her summary judgment on appellant's claim for an equitable distribution of personal property.

{¶ 19} In reviewing a ruling on a summary judgment motion, this court applies the same standard as the trial court. *Lorain Natl. Bank v. Saratoga Apts.* (1989), 61 Ohio

App.3d 127, 129. Summary judgment will be granted when there remains no genuine issue as to any material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 20} The sole issue to be determined under these assignments of error is whether the lower court had the authority to partition any property that had belonged to the parties during the course of their marriage in addition to the Rudgate home. We find that it did not.

{¶ 21} Appellant's amended complaint filed in the court below consisted of three causes of action. Count 1 alleged that during the course of their marriage, the parties accumulated a great deal of assets including business property investments, pension contributions and a marital home located at 5006 Rudgate, Toledo, Ohio. Appellant alleged that he was a co-owner of the parties' real and personal property and entitled by law to an equitable division of those properties. Count 2 set forth appellant's claim for spousal support, which we addressed in our prior decision. Finally, Count 3 set forth appellant's claim for a partition of the Rudgate property, in which appellant asserted that he and appellee were holders in common (coparceners) of that property. We do not find that our use of the phrase "causes of action" in the remand language of our prior decision is determinative of whether we intended for the lower court to partition the personal property of the parties' marriage.

{¶ 22} In Ohio the partition of real property is controlled by R.C. Chapter 5307 and is clearly a matter which a court of the general division of the common pleas court may determine. It has further been held, however, that "[w]hile there is no statute in Ohio authorizing proceedings for the partition of personal property, the absence of such statute does not mean that such an action cannot be maintained. *Greenwald v. Kearns* (1957), 104 Ohio App. 473, 476 * * *; *Traicoff v. Christman* (May 13, 1982), [Seventh Dist.] App. No. 549 * * *. The general rule is that personal property of every class may be subject to compulsory partition. *Greenwald* at 476 * * *. This right was well established before statutes of Ohio dealt with the subject, and the statute dealing with partition of real property did not change the character or scope of the action; nor did the statute, merely because it failed to deal with all types of partition, repeal the common-law right to partition personal property. *Id.* There are many instances where parties, claiming to be joint owners of personal property as tenants in common, would be wholly without a legal remedy were it not for the jurisdiction of the courts in partition. *Id.*" *Crowthers v. Gullett*, 150 Ohio App.3d 419, 2002-Ohio-7051, ¶ 13.

{¶ 23} As we stated in our prior decision, "[a] prayer that jointly held property be sold and the proceeds divided constitutes a request for partition." *McKenzie*, supra at ¶ 12 citing Blacks Law Dictionary (6th Ed. Rev.1990) 1119-1120. In reviewing appellant's amended complaint, it is clear that the only cause of action in which appellant asked that jointly held property be sold and the proceeds divided was Count 3. Count 1 sought an equitable division of marital property. As we also stated in our prior decision, in Lucas

County, all divorce, dissolution of marriage, legal separation, and annulment cases are assigned to the Domestic Relations Division of the Common Pleas Court. *Id.* at ¶ 9. The Domestic Relations Division then exercises its jurisdiction in part pursuant to R.C. Chapter 3105. R.C. 3105.171(B) reads:

{¶ 24} "In divorce proceedings, the court shall, and in legal separation proceedings upon the request of either spouse, the court may, determine what constitutes marital property and what constitutes separate property. In either case, upon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section. For purposes of this section, the court has jurisdiction over all property in which one or both spouses have an interest."

{¶ 25} Accordingly, a claim for the equitable division of marital property is a claim over which the domestic relations division has exclusive jurisdiction. Because Count 1 of appellant's amended complaint sought an equitable division of marital property, the lower court, which is the General Division of the Lucas County Court of Common Pleas, did not have jurisdiction to address the claim. The lower court, therefore, did not err in granting appellee summary judgment and dismissing Count 1 of appellant's complaint. The first and second assignments of error are therefore not well-taken.

{¶ 26} In light of our ruling regarding the first and second assignments of error, we find that the issue raised in the third assignment of error is moot. The third assignment of error is therefore not well-taken.

{¶ 27} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

JUDDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.
CONCUR.

JUDGE

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