

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

Warren Ruggles, et al.

Court of Appeals No. H-09-031

Appellants

Trial Court No. CVH 2004-0335

v.

Ruggles Family Limited Partnership, et al.

DECISION AND JUDGMENT

Appellees

Decided: August 20, 2010

* * * * *

John P. Donahue and West M. Ruggles, for appellants.

Peter J. Krembs and Jeffrey S. Moeller, for appellees.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Huron County Court of Common Pleas. The appeal stems from an ongoing sibling dispute in connection with several family-owned farms situated in Huron County.

{¶ 2} From the inception of the underlying dispute, to the present, this case represents the third appeal before us arising from this matter. In the first appeal, the trial

court's summary judgment determination that no parol partition of the subject property had occurred was challenged. The summary judgment ruling resulted in a subsequent administrative partition of the property. *Ruggles v. Ruggles*, 6th Dist. No. H-07-011, 2007-Ohio-5889. In finding that a genuine issue of material fact existed as to whether parol partition of the property had occurred, we reversed. The reversal negated the subsequent partition actions which had been premised on that summary judgment ruling.

{¶ 3} The second appeal before this court, following our first remand, pertained to a motion to disqualify a family member as co-counsel for appellant. We reversed the disputed disqualification judgment based on the trial court's failure "to engage in the specific legal analysis and make specific findings of fact." *Ruggles v. Ruggles*, 6th Dist. No. H-08-012, 2008-Ohio-5037. As such, the substantive merits of the motion were not reached in our reversal.

{¶ 4} Following our second remand, the trial court conducted a two-day bench trial to address the unresolved parol partition claim. The court held that appellants had not met their burden of proof to establish that a parol partition agreement existed between the parties. Timely notice of appeal was filed. For reasons set below, this court affirms the judgment of the trial court.

{¶ 5} Appellants, Warren and Susan Ruggles, sets forth the following two assignments of error:

{¶ 6} "I. The Trial Court's adjudication of appellants' claim of parol partition of real estate was arbitrary, unreasonable, and unconscionable.

{¶ 7} "II. The Trial Court's judgment on appellants' claim of parol partition of real estate is contrary to the manifest weight of the evidence."

{¶ 8} The following undisputed facts are relevant to the issues raised on appeal. The core opposing parties in this case are brothers. The brothers have engaged in protracted litigation over ownership of two family farms, the Webb Settlement Farm and the Ruggles Road Farm. The properties at issue have been owned and farmed by the Ruggles family for seven generations. In 1982, their mother died, leaving 85 percent of the Ruggles Road Farm to Warren and 85 percent of Webb Settlement Farm to Allen. The remaining minority ownership stake in each parcel was left to the other brother.

{¶ 9} Appellants' original claim asserted that an enforceable parol partition agreement was reached regarding the respective ownership of the two parcels in August of 1985. Appellees countered that the agreement was limited to the use of the respective properties and did not encompass ownership percentages. It is not disputed that there was no written agreement or deed transferring the rights to the properties in question.

{¶ 10} The record reflects that each brother has paid the full taxes and expenses for his respective majority share property. In addition, each brother has collected the full rent and income of his majority share property. The only exception to this was farming operations and government subsidies, which have been respectively split based on majority and minority ownership in the properties.

{¶ 11} The trial court held that appellants failed to meet their burden of proof by clear and convincing evidence establishing the existence of a parol partition agreement so

as to redistribute the existing co-ownership percentage into absolute ownership of the respective parcels.

{¶ 12} The court found insufficient evidence establishing the allocation of all benefits and burdens of ownership since the benefits of subsidies from both parcels were shared. Similarly, the benefit of the release of a tax lien in connection to the Ruggles Road Farm was shared. Most significantly, the court found insufficient evidence that the parties believed the parol agreement included a new division of ownership. Appellants timely filed an appeal.

{¶ 13} In their first assignment of error, appellants assert that the trial court's denial of their claim of parol partition of the subject real estate was arbitrary, unreasonable, and unconscionable. The proper standard of appellate review of a bench trial in equity is an abuse of discretion. *Sweet v. Caudill*, 11th Dist. No. 2004-P-0095, 2006-Ohio-1009. To prevail at trial on a parol partition agreement the appellant must prove by clear and convincing evidence the existence of an equitable agreement allocating the benefits and burdens of ownership in real estate, long acquiescence to the agreement, and acts of confirmation by the parties. *Docktermann v. Elder* (1892), 11 Ohio Dec. Reprint 506, 27 W.L.B. 195.

{¶ 14} As for the existence of an agreement allocating the benefits and burdens of ownership, the record fails to meet the requisite showing that the entirety of rights had been transferred to the respective parties. The farming operations and revenue of the parcels have been divided. Aspects of ownership including timber rights, third party

access, farming production ownership, and government payments were not alleged to have been incorporated in the 1985 agreement. Furthermore, the benefit of the release of a tax lien was shared. Given this evidentiary indicia of continued co-ownership, the trial court did not abuse its discretion in determining the first element of parol partition was not established.

{¶ 15} With regards to the remaining elements of acquiescence and confirmation, the record is devoid of evidence that the 1985 agreement was believed to be modifying the existing co-ownership into absolute ownership. In fact, the lands were subsequently used jointly in collecting farm subsidies. The main facts to support confirmation of ownership are the taxes and rents collected by the parties. Countering this evidence in support of confirmation are the shared benefits of the subsidies and tax lien release on the properties. We find that the record of evidence of the actions of the parties towards the properties subsequent to 1985 does not establish parol partition. The record contains significant evidence contrary to the claimed parol partition. The record does not show the disputed trial judgment that parol partition was arbitrary, unreasonable or unconscionable. Wherefore, we find appellants' first assignment of error not well-taken.

{¶ 16} In their second assignment of error, appellants assert that the trial court's judgment on appellants' claim of parol partition of real estate was contrary to the manifest weight of the evidence.

{¶ 17} In determining whether a judgment was against the manifest weight of evidence, an appellate court "weighs the evidence and all reasonable inferences, and

considers the credibility of witnesses." *State v. Tompkins*, (1997), 78 Ohio St.3d 380, 387. The court sits as a "thirteenth juror" and determines whether the factfinder lost its way, so as to result in a manifest miscarriage of justice necessitating reversal. Id.

{¶ 18} While appellants assert that the trial court's judgment was against the manifest weight of the evidence, they failed to provide supporting legal analysis and an evidentiary basis to demonstrate the judgment was contrary to the manifest weight of the evidence. Regardless, on the same basis as our determination in response to the first assignment of error, we find appellants' second assignment of error not well-taken.

{¶ 19} The judgment of the Huron County Court of Common Pleas is affirmed. Appellants are ordered to pay the costs of appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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