

IN THE SUPREME COURT OF IOWA

No. 15-0011

Filed January 12, 2018

BERNARD J. WIHLM and **PATRICIA M. BALEK**,

Appellees,

vs.

SHIRLEY A. CAMPBELL, Individually and as Executor of the ESTATE OF JOHN JOSEPH WIHLM, and as Trustee of the JOHN JOSEPH WIHLM REVOCABLE TRUST dated April 2, 2012, and **PARTIES IN POSSESSION**,

Appellant.

On review from the Iowa Court of Appeals.

Appeal from the Iowa District Courts for Cerro Gordo County and Franklin County, DeDra L. Schroeder, Judge.

Appellees seek further review of a court of appeals decision reversing the district court's order for the partition of property by sale.

COURT OF APPEALS DECISION VACATED; DISTRICT COURT JUDGMENT AFFIRMED.

Michael G. Byrne of Winston & Byrne, P.C., Mason City, for appellant.

Collin M. Davison of Heiny, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellees.

PER CURIAM.

The plaintiffs filed actions in two counties requesting several parcels of real estate be partitioned by sale. The defendant in both actions answered, requesting partition in kind. After a trial of the consolidated actions, the district court found the defendant failed to prove a partition in kind would be equitable and practicable, and ordered a partition by sale. See Iowa R. Civ. P. 1.1201(2) (“Property shall be partitioned by sale and division of the proceeds, unless a party prays for partition in kind by its division into parcels, and shows that such partition is equitable and practicable.”).

The defendant appealed and we transferred the case to the court of appeals. On de novo review, the court of appeals found a partition in kind would be equitable and practicable, reversed the district court judgment, and remanded for further proceedings.

The plaintiffs sought, and we granted, further review. Upon our review, we conclude the district court correctly found the defendant failed to meet her burden to prove a partition in kind of the real estate was equitable and practicable. Accordingly, we vacate the decision of the court of appeals and affirm the judgment of the district court. See *Newhall v. Roll*, 888 N.W.2d 636, 644 (Iowa 2016) (affirming district court’s decision granting partition by sale where party seeking in-kind partition failed to prove such relief was equitable and practicable); see also *Spies v. Prybil*, 160 N.W.2d 505, 508 (Iowa 1968) (stating the rule pertaining to partition of real estate “is unequivocal in favoring partition by sale and in placing upon the objecting party the burden to show why this should not be done in the particular case”).

COURT OF APPEALS DECISION VACATED; DISTRICT COURT JUDGMENT AFFIRMED.

This opinion shall not be published.