

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000774-MR

WESLEY H. MILLS AND
MARY ANN MILLS

APPELLANTS

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NO. 03-CI-00646

BRADLEY S. MILLS;
MILLS FARM PARTNERS, LTD;
DIXIE LAND & CATTLE CO., LLC;
JERRY J. MILLS; ALYCE R. MILLS;
AND MATTHEW S. MILLS

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: FORMTEXT COMBS, CHIEF JUDGE; DIXON AND TAYLOR,
JUDGES.

TAYLOR, JUDGE: Wesley H. Mills and Mary Ann Mills (collectively referred to
as appellants) bring this appeal from a March 12, 2007, summary judgment of the
Graves Circuit Court concluding that Wesley was not entitled to partition certain

real property owned by a limited partnership under Kentucky Revised Statutes (KRS) 381.135. We affirm.

On July 1, 1999, Wesley and four other family members, Jerry J. Mills, Alyce R. Mills, Bradley S. Mills, and Matthew S. Mills, created Mills Farm Partners, LTD (Mills Farm) by executing an Agreement of Limited Partnership (limited partnership agreement).¹ Under the limited partnership agreement, each partner held a 1 percent general partnership interest and a 19 percent limited partnership interest in Mills Farm. Additionally, each partner conveyed his or her individually held real property totaling some 800 acres to Mills Farm.

A dispute arose between the family members concerning Mills Farm that ultimately culminated in the initiation of legal proceedings in the Graves Circuit Court. Although sundry claims were asserted among the family members, the only claim remaining for adjudication on appeal pertains to a petition for partition of real property owned by Mills Farm. Relying upon KRS 381.135, Wesley filed the petition and claimed the right to compel partition of the limited partnership's real property among the partners. Wesley did not seek to dissolve the partnership and liquidate its assets in his petition. Ultimately, the circuit court held that Wesley waived the right to partition Mills Farm's property under Article VI of the limited partnership agreement. The circuit court subsequently rendered summary judgment in Mills Farm's favor, thus precipitating this appeal.

¹ A Certificate of Limited Partnership of Mills Farm Partners, LTD was filed with the Kentucky Secretary of State on December 6, 1999.

Appellants contend that the circuit court erroneously rendered summary judgment that concluded Wesley was barred by the limited partnership agreement from seeking partition of Mills Farm's real property under KRS 381.135. For the reasons hereinafter elucidated, we conclude that the limited partnership agreement included an implied waiver of the right to partition property of Mills Farm, which prohibits the relief sought by appellants in this action.

Summary judgment is proper where the material facts are uncontroverted and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (CR) 56; *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476 (Ky. 1991). In the case *sub judice*, there exists no material issue of fact; rather, resolution is dependent upon issues of law. And, as an appellate court, we review issues of law *de novo*.

We begin our analysis with an examination of the statutory provision relied upon by Wesley to compel partition of Mills Farm's property. KRS 381.135 reads, in part:

(1) (a) As used in this subsection:

1. "Ownership interest in a closely held farm corporation or partnership" means any interest in a farm with one (1) or more of the shareholders or partners owning twenty percent (20%) or more of the corporation or partnership.
2. "Farm" means a tract of at least five (5) contiguous acres used for the production of agricultural or horticultural crops including, but

not limited to, livestock, livestock
products, poultry, poultry products, grain,
hay, pastures, soybeans, tobacco, timber,
orchard fruits, vegetables, flowers, or
ornamental plants, including
provision for dwellings for
persons and their families who are engaged
in the above agricultural use on the
tract, but not including residential
building development for sale or lease to the
public.

- (b) A person desiring a division of land held jointly with others, a person desiring an allotment of dower or curtesy, or a person with an ownership interest of twenty percent (20%) or more in a closely held farm corporation or partnership may file in the Circuit Court of the county in which the land or the greater part thereof lies a petition containing a description of the land, a statement of the names of those having an interest in it, and the amount of such interest, with a prayer for the division or allotment

Under the plain terms of KRS 381.135, a partner owning at least a 20 percent interest in a closely held farm partnership may file a petition for partition of real property held by that partnership.² Also, it is clear that the term “partnership” would necessarily include within its ambit a limited partnership.³

² It should be noted that Kentucky Revised Statutes (KRS) 362.2-506(2), a statutory provision within the Kentucky Uniform Limited Partnership Act, provides that “property of a limited partnership subject to this subchapter shall not be subject to KRS 381.135(1)(a).” However, KRS 362.2-506(2) did not become effective until July 12, 2006, and thus, is not applicable or controlling in this case. KRS 362.2-1205.

³ Under KRS 362.175(1), the term partnership is defined as “an association of two (2) or more persons to carry on as co-owners a business for profit and includes, for all purposes of the laws of this Commonwealth, a registered limited liability partnership.” This definition is applicable to Kentucky limited partnerships. See KRS 362.523. And, under the common law, the term partnership was defined as “a status arising out of a contract entered into by two or more persons, whereby they agree to share as common owners the profits of a business carried on by all or some of them on behalf of all of them.” *Guthrie v. Foster*, 76 S.W.2d 927, 929 (Ky. 1934).

Hence, a partner holding at least a 20 percent interest in a closely held limited farm partnership may file a petition to partition real property under KRS 381.135. In this case, it is undisputed that Wesley is a partner owning a 20 percent interest in Mills Farm, a limited farm partnership. Thus, KRS 381.135 arguably bestowed upon Wesley the right to file a petition to partition the real property of the limited partnership, Mills Farm, without resort to dissolution of the partnership and liquidation of its assets. However, as a general rule the right to partition is not absolute.

It is commonly recognized that the right to partition real property may be waived by contract or agreement. 59A Am Jur. 2d *Partition* § 52 (2008); 68 C.J.S. *Partition* § 26 (1998). And, an agreement limiting the right to partition may be either expressed or implied. Although never specifically articulated in this Commonwealth, we are persuaded that an agreement not to partition real property will be implied into an existing agreement between the parties when such existing agreement would be defeated or contravened by partition. Wade R. Habeeb, *Contractual Provision As Affecting Right To Judicial Partition*, 37 A.L.R.3d 967 (1971); *see also Twin Lakes Reservoir & Canal Co. v. Bond*, 157 Colo. 10, 401 P.2d 586 (1965), *cert. denied*, 382 U.S. 902, 86 S.Ct. 236, 156 L.Ed.2d 155 (1965); *Kayann Properties Inc. v. Cox*, 268 N.C. 14, 149 S.E.2d 553 (1966); *Penasquitos, Inc. v. Holladay*, 27 Cal.App. 3d 356, 103 Cal. Rptr. 717 (1972); and *Fuhrman v. Doll*, 305 Pa. Super. 277, 451 A.2d 530 (Pa. 1982); *Brewer v. Schalansky*, 278

Kan. 734, 102 P.3d 1145 (Kan. 2004); *Rosenberg v. Rosenberg*, 413 Ill. 343, 108 N.E. 2d 766 (Ill. 1952). Simply stated, an implied agreement not to partition arises where partition is patently and manifestly inconsistent with the existing agreement between the parties.⁴

Our attention now turns to the limited partnership agreement of Mills Farm. The circuit court, relying on various management provisions in Article VI of the limited partnership agreement, concluded that appellants had contracted away or effectively waived any rights that might have accrued under KRS 381.135. However, we believe that of more pivotal importance to disposition of this appeal is Article V of the limited partnership agreement, which reads:

⁴ Although not at issue, we observe that an agreement not to partition must be reasonable in duration and cannot exist *in perpetuum*. In this case, the Agreement of Limited Partnership dissolved by its own terms no later than December 31, 2049.

LEGAL TITLE TO THE PROPERTY

The Partners agree that legal title to the Partnership property and assets shall remain in the Partnership.

Article V plainly provides that legal title to all partnership property “shall remain” in the partnership. Pursuant thereto, all partners of Mills Farm, including Wesley, agreed that title to the partnership’s property shall remain in the limited partnership. By filing the petition to partition under KRS 381.135, Wesley attempted to divide Mills Farm’s real property, sever a portion of the real property from the limited partnership, and obtain individual ownership of the partitioned real property. Wesley’s attempted partition of Mills Farm’s real property is patently inconsistent with and contrary to Article V of the limited partnership agreement wherein he agreed that title to all partnership property shall remain in the partnership. Additionally, no action in contravention of any partnership agreement between the partners may be upheld without the consent of all the partners. KRS 362.235(8); KRS 362.523. Consequently, we conclude that a waiver of the right to partition impliedly exists under Article V of the limited partnership agreement and appellants were estopped from pursuing partition under KRS 381.135.

While the result reached by the circuit court was correct, we believe it was based upon the wrong provision of the limited partnership agreement. In Kentucky, a judgment will be affirmed if the result is correct, even though the reason stated by the circuit court for the judgment is doubtful. *See Entwistle v.*

Carrier Conveyor Corp., 284 S.W.2d 820 (Ky. 1955). Accordingly, we hold that the circuit court properly entered summary judgment determining that Wesley waived his right to partition under KRS 381.135 and thus, affirm although upon different grounds.

We view any remaining contentions as moot.

For the foregoing reasons, the summary judgment of the Graves Circuit Court is affirmed.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
FOR APPELLANTS:

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BRIEF FOR APPELLEES:

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ORAL ARGUMENT FOR
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