

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of ROBERT E.
BOUGHTON, Deceased.

DENNIS BOUGHTON,

Petitioner-Appellant/Cross-Appellee,

v

BARBARA CARVER, ALLAN BOUGHTON, and
CALVIN BOUGHTON,

Respondents-Appellees/
Cross-Appellants.

UNPUBLISHED

June 16, 1998

No. 200750

Calhoun Probate Court

LC No. 96-000057 IE

DENNIS BOUGHTON,

Petitioner-Appellant,

v

BARBARA CARVER, ALLAN BOUGHTON, and
CALVIN BOUGHTON,

Respondents-Appellees.

No. 201318

Calhoun Probate Court

LC No. 96-000057 IE

Before: Sawyer, P.J., and Kelly and Smolenski, JJ.

PER CURIAM.

Petitioner appeals, and respondents cross appeal, from a judgment of the probate court concerning the division of property in decedent's estate. We affirm in part, reverse in part and remand.

Petitioner and respondents are the children of the decedent, who died intestate. Decedent owned a farm in Calhoun County. While all of the children worked on the farm while growing up, only petitioner remained involved in the farm's operations as an adult. Petitioner maintains that he developed a business partnership with decedent in the farming operations, while respondents maintain that he did not. Accordingly, petitioner maintains that he is entitled to his partnership share of the farming operation, including both equipment and real estate, plus his one-quarter share of the remainder as an heir. Respondents maintain that petitioner is only entitled to his one-quarter share of all of the property as an heir. There was no formal partnership agreement executed and conflicting evidence was presented in the trial court regarding whether decedent had, in fact, formed a partnership with his son.

The trial court submitted the question to a jury, which concluded that a partnership did, in fact, exist. The trial court, however, concluded that it was not bound by the jury verdict to the extent that it infringed upon the court's equitable discretion and that it would not be equitable to find that a partnership existed as to all of the assets, including the real estate.¹ Accordingly, the trial court awarded petitioner a one-half interest in the dairy cattle, stored crops used for cattle feed, and to the dairy equipment. The remainder of the property, including all of the real estate, was treated as part of the decedent's estate. The trial court partitioned the property and awarded petitioner one-quarter of the real estate.

We first address a question raised in the cross appeal, namely whether the trial court erred in submitting the question of the existence of a partnership to the jury. Respondents argue that, because this is a case in equity, the trial court erred in so submitting the question. We disagree.

Certainly the general rule is that there is no right to jury trial in an action at equity. See, e.g., *Sokel v Nickoli*, 356 Mich 460, 467; 97 NW2d 1 (1959). However, it is recognized that, in probate actions, a party may demand a jury trial for issues for which there is a right to a jury trial. MCR 5.508. Furthermore, a right to jury trial in a probate proceeding is recognized by statute. MCL 600.857(1); MSA 27A.857(1). Specifically, that statute recognizes a right to a jury trial in probate court if, prior to 1971, there was a right to a jury trial on a particular issue of fact in an appeal from probate court to circuit court. Earlier authority recognized a right to trial by jury on issues of fact in such appeals. See, e.g., *In re Weiss' Estate*, 315 Mich 276, 278; 24 NW2d 123 (1946) (“ ‘and if there shall be any question of fact to be decided, issue may be joined thereon, under the direction of the court, and a trial thereof had by jury’ ”, quoting Stat Ann 1943 Rev § 27.3178[42]).

Respondents argue that the older decisions of the Michigan Supreme Court which recognize a right to jury trial are bad law. Perhaps so. However, we are aware of no decisions of the Supreme Court which change that law. Accordingly, we are bound to follow it. It is the prerogative of the Supreme Court, not this Court, to decide that prior Supreme Court decisions were incorrectly decided. Until the Supreme Court so decides, which must follow those prior cases.

For these reasons, we conclude that the trial court correctly submitted the factual disputes to the jury. The next issue for our determination is whether the trial court erred in substituting its findings for that of the jury's findings. We agree with petitioner that the trial court erred.

We begin by noting that the trial court did not grant a judgment notwithstanding the verdict. Rather, it merely concluded that it would not be equitable to follow the jury's verdict. That was improper. As discussed above, petitioner was entitled to have the disputed issues of fact resolved by the jury. The jury having done so, the trial court was obligated to base its decision upon those findings of fact. The jury concluded that the farm real estate was part of the partnership assets. Therefore, the trial court was obligated to include the farm real estate in awarding petitioner his share of the partnership assets. That did not implicate the trial court's equitable authority. The court's equitable powers were not involved until it reached the question of how to divide the property.

That is, petitioner's share of the property was to be determined by adding his partnership interest in the property (as determined by the jury) to his share as an heir (as determined by the laws of intestacy). Because this was less than 100% of the property, the trial court was then faced with an equitable decision of how to divide the property and distribute the estate. But, the trial court's discretion did not lie in the amount of petitioner's share, only in how that share was to be distributed.

This leads us to petitioner's other issue on appeal, namely whether the trial court erred in partitioning the property and allowing respondents to sell their portions at auction rather than forcing a sale of the property to petitioner based upon the jury's finding of the value of the property. We decline to answer the question because the trial court's actions are essentially irrelevant in light of our resolution of the above issues. That is, how the trial court should or would distribute the estate may be different where petitioner is entitled to a majority share of the property than when he is only entitled to a one-quarter share of the property. Because the trial court might choose to exercise its discretion differently in light of the fact that petitioner is entitled to more than a one-quarter share of the real estate, we believe that the best resolution of the issue is to remand the matter to the trial court to redetermine the appropriate means of distributing the estate.

Affirmed in part, reversed in part and remanded in part. We do not retain jurisdiction. Petitioner may tax costs.

/s/ David H. Sawyer
/s/ Michael J. Kelly
/s/ Michael R. Smolenski

¹ It is undisputed that the farm house itself and five surrounding acres are not part of the farming operations and is not part of the partnership. Petitioner maintains a partnership claim only to the remaining real estate.