

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD PARR and GAIL PARR,

Plaintiffs-Appellants,

v

LEONARD KEMNITZ, GLADYS E. KEMNITZ,
SHIRLEY J. HOUSTON, RANDY T. KREBS,
CYNTHIA KREBS, MARK STRALEY, JANET
M. STRALEY, THOMAS KENNEDY,
JACQUELINE KENNEDY, THOMAS F.
RITTER, ERIC KREBS, and PAMELA KREBS,

Defendants-Appellees.

UNPUBLISHED
February 15, 2002

No. 226678
Alcona Circuit Court
LC No. 99-010252-CH

Before: Fitzgerald, P.J., and Hood and Sawyer, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

Four-hundred acres of property were acquired by a northern Michigan hunt club known as "The Little Wolf Club." The articles of the partnership set forth the procedure involved in the transfer and sale of a partnership interest. The property was held as tenants in common, and any resigning member had to provide advance notice. The partnership determined the value of the interest at the annual October meeting. The partnership could find a replacement, or the resigning member could present a member for partnership approval for purchase at the partnership established price. Plaintiffs acquired the interest of original member Bud Thomas.¹ Plaintiffs never signed the partnership agreement that set forth the procedure for the sale of the property. However, the meeting notes indicate that plaintiff Richard Parr became an active member of the club. Plaintiffs notified defendants that they wished to sell their interest for \$70,000. At that time, the annual established value was \$30,000. When defendants did not agree, plaintiffs filed a complaint to partition the property. The trial court granted defendants' motion for summary disposition.

¹ The circumstances surrounding the purchase and whether it was handled by the hunting club or the bank was not established with documentary evidence.

Plaintiffs argue that the trial court erred in granting defendant's motion for summary disposition and denying their request for summary disposition. We disagree. Our review of this issue is de novo. *The Herald Co v Bay City*, 463 Mich 111, 117; 614 NW2d 873 (2000). Persons holding lands as tenants in common may seek to have the land partitioned. MCL 600.3304. The action is equitable in nature, MCL 600.3301, and is subject to equitable defenses such as laches and unclean hands. See *Anderson v Richter*, 54 Mich App 532, 536-537; 221 NW2d 251 (1974). The right to partition rests within the discretion of the trial court and the court may refuse to act based on some paramount or controlling equity. *Henkel v Henkel*, 282 Mich 473, 482; 276 NW 522 (1937). Additionally, a party may enter into an agreement to estop another from enforcing the right of partition. *Eberts v Fisher*, 54 Mich 294, 299; 20 NW 80 (1884); *Avery v Payne*, 12 Mich 540 (1864).

Irrespective of plaintiffs' failure to sign the partnership agreement, plaintiff Gail Parr's lack of active participation, and the application of the statute of frauds to the relationship between the partnership agreement and the warranty deed,² the trial court properly exercised its discretion to conclude that plaintiffs' were estopped from exercising the right of partition. *Henkel, supra*.³ Despite the lack of formal written documentation, the members of the Little Wolf Club voted plaintiff Richard Parr into the club at the January 1991 meeting. Plaintiff Richard Parr then acted as a member of the club. He moved and supported motions, including motions to establish the value of the interest, participated in committees, and nominated guests. The membership had the right to limit or estop the right of partition. *Henkel, supra*. The equities of the situation, in light of plaintiff Richard Parr's membership and action in accordance with membership, indicate that partition was not appropriate under these circumstances. *Eberts, supra*; *Avery, supra*.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Harold Hood
/s/ David H. Sawyer

² Plaintiffs argue that the execution of the warranty deed essentially dissolved the partnership. Plaintiffs failed to cite authority in support of this position. "A party may not leave it to this Court to search for authority to sustain or reject its position." *Staff v Johnson*, 242 Mich App 521, 529; 619 NW2d 57 (2000).

³ See also *Anderson, supra*, where the defendant was not entitled to reformation or expunging of the deed, but the plaintiff nonetheless was not entitled to partition.