

STATE OF MICHIGAN  
COURT OF APPEALS

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JUDITH SLIEDE,

Plaintiff-Appellee,

v

SUSAN SLIEDE,

Defendant,

and

TIMOTHY SLIEDE,

Defendant-Appellant.

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UNPUBLISHED  
October 19, 2017

No. 334601  
Kent Circuit Court  
LC No. 16-001177-CH

Before: MURRAY, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Defendant Timothy Sliede appeals as of right from a final order providing for the sale of real property owned by the parties as joint tenants with the right of survivorship. For the reasons stated below, we reverse and remand for further proceedings.

The parties' mother, Delores Theresa Sliede, executed a quitclaim deed on June 20, 1984, to herself and the parties as joint tenants with rights of survivorship. Delores died on January 21, 2008. After her death, Timothy became the sole resident of the property.

Plaintiff commenced the present action on January 21, 2016, arguing that Timothy had impermissibly resided at the property without paying rent to his siblings. In her complaint, plaintiff moved the trial court for an order partitioning the property or, if partition was not possible, an order providing for the sale of the property. Plaintiff served the summons and complaint on defendants and, in May 2016, the trial court entered a default against defendants for failure to respond. Plaintiff subsequently moved for the entry of default judgment against defendants.

On June 24, 2016, defendants responded to plaintiff's motion. Defendants alleged that they had filed an answer to the complaint and that it had been lost by the court clerk. Defendants further argued that the parties had agreed that Timothy could reside at the property so long as he paid all applicable taxes, insurance, utilities, bills, and maintenance for the property.

On July 8, 2016, the trial court entered default judgment against defendants. It found that a just and equitable partition of the property could not be made and, therefore, ordered the property to be sold with the proceeds being equally divided among the parties. The trial court further ordered that the costs and expenses of the proceeding should be deducted from the sale proceeds and paid to plaintiff's counsel pursuant to MCR 3.403(C).

Timothy subsequently moved the trial court for reconsideration of its order, arguing that, in accordance with *Albro v Allen*, 434 Mich 271; 454 NW2d 85 (1990), the property could not be sold in fee simple. According to Timothy, because a joint tenancy with full rights of survivorship contained an indestructible contingent remainder interest in the property, the trial court exceeded its authority by ordering the sale of the property. The trial court summarily denied his motion.

On appeal, Timothy argues that the trial court improperly denied his motion for reconsideration for the same reasons. We agree.

This Court reviews the trial court's decision on a motion for reconsideration for an abuse of discretion. *Sanders v Perfecting Church*, 303 Mich App 1, 8; 840 NW2d 401 (2013). An abuse of discretion occurs where the trial court selects an outcome that falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Insofar as the motion for reconsideration involves an action for partition, this Court reviews such an equitable action de novo. MCL 600.3301; *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). The trial court's underlying findings of facts are reviewed for clear error. *Blackhawk Dev Corp*, 473 Mich at 40.

"[A] trial court has discretion on a motion for reconsideration to decline to consider new legal theories or evidence that could have been presented when the motion was initially decided." *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012). Moreover, where the moving party simply presents the same issues previously ruled upon, the moving party must also demonstrate "a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3).

In the present case, the trial court ruled on a motion for reconsideration of the trial court's entry of default judgment regarding an action for partition. Generally, all jointly held property is subject to partition. MCL 600.3304. Further, "[a]ny person who has an estate in possession in the lands of which partition is sought may maintain a claim for partition of those lands, but a person who has only an estate in reversion or remainder in the lands may not maintain a claim for their partition." MCL 600.3308. Partition distributes possession of property between those entitled to its possession. *Albro*, 434 Mich at 284. A court may physically partition the property, conferring upon each cotenant a fraction of the land. *Id.* However, if an equitable physical partition cannot be made, the court may order sale of the property and division of the proceeds. *Id.*; MCL 600.3332.

Michigan law recognizes two types of joint tenancies: (1) ordinary joint tenancies, and (2) joint tenancies with full rights of survivorship. *Wengel v Wengel*, 270 Mich App 86, 94; 714 NW2d 371 (2006). Both forms of joint tenancy are characterized by the four unities: (1) unity of

interest, (2) unity of title, (3) unity of time, and (4) unity of possession. *Id.* Both forms of joint tenancy are also characterized by the right of survivorship, wherein, upon the death of one of the joint tenants, the surviving tenants assume ownership of the whole estate. *Id.*

The ability of a cotenant to destroy the right of survivorship—severing the joint tenancy into a tenancy in common—depends on the type of joint tenancy. *Albro*, 434 Mich at 275; *Wengel*, 270 Mich App at 94-95. “[I]n an ordinary joint tenancy, the right of survivorship can be destroyed by severance of the joint tenancy through an act of one tenant by such means as conveyance to a third party or by levy and sale . . . .” *Wengel*, 270 Mich App at 94. However, in a joint tenancy with full rights of survivorship, a joint tenant cannot destroy the right of survivorship. *Albro*, 434 Mich at 275. A joint tenancy with full rights of survivorship creates joint life estate interests and dual contingent remainder interests. *Id.* Although the life estate interests may be partitioned or sold, the dual contingent remainders are indestructible. *Id.* at 282. Therefore, a trial court may partition the joint life estate interests but cannot interfere with the contingent remainder interests. *Id.*

In the present case, the parties owned the property as joint tenants with full rights of survivorship, as indicated by the express words of survivorship in the granting instrument. See *id.* at 275. This type of ownership creates joint life estate and contingent remainder interests in the cotenants. *Id.* Michigan caselaw is abundantly clear that the trial court cannot destroy the contingent remainder interests through partition or forced sale in fee simple. See *id.* at 280-282; *Wengel*, 270 Mich App at 87-88. Here, the trial court’s judgment ordered the sale of the property without specification of the interest to be sold. Had the trial court ordered the sale of the parties’ life estate interests, its order would have been proper. However, to the extent that the order can be interpreted as an order to sell the property in fee simple, thereby destroying the parties’ contingent remainder interests, the trial court committed palpable error by ordering relief beyond the scope of its authority. See MCR 2.119(F)(3). Accordingly, we reverse the trial court’s judgment and remand with instructions to enter a default judgment requiring the sale of only the life estate interests of the parties.

On appeal, Timothy also challenges the trial court’s award of attorney fees and costs pursuant to MCR 3.403(C). In the situation of a forced sale, MCR 3.403(C) authorizes the trial court to award “the costs and expenses of the proceeding, including the plaintiff’s reasonable attorney fees as determined by the court, from the proceeds of the sale and pay them to the plaintiff or the plaintiff’s attorney.” Because this fee award was based on an unenforceable order of sale, as described above, we reverse the trial court’s order. We note that, upon remand, the trial court may properly reinstate the award of attorney fees and costs related to the sale of the parties’ life estate interests in the property.

Finally, we reject Timothy’s brief argument on appeal advocating for the imposition of sanctions upon plaintiff and plaintiff’s attorney pursuant to MCR 2.114. Insofar as Timothy requests attorney fees and costs for defending against plaintiff’s complaint, he requests sanctions for litigation that did not occur before this Court. Moreover, plaintiff’s complaint was warranted by existing law insofar as it sought partition generally. Although plaintiff did not specify that only the life estate interests in the property could be partitioned, plaintiff did not pursue an action that was clearly and completely contradictory to established law. See *Kitchen v Kitchen (After Remand)*, 465 Mich 654, 663; 641 NW2d 245 (2002) (“Not every error in legal analysis

constitutes a frivolous position.”). Further, although this Court may sanction a party pursuant to MCR 2.114(E) for litigation occurring before this Court, see *Edge v Edge*, 299 Mich App 121, 128; 829 NW2d 276 (2012), Timothy initiated this appeal due to the erroneous decision of the trial court in entering an unlawful judgment and denying his motion for reconsideration, not due to plaintiff’s misconduct. Accordingly, we refrain from imposing sanctions on plaintiff and plaintiff’s counsel.

Reversed and remanded. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Jane E. Markey