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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-616

Filed 2 April 2024

Pasquotank County, No. 22SP105

CECELIA GUARASCIO, Petitioner,

v.

JOSEPH MICHAEL GUARASCIO, Respondent.

Appeal by respondent from order entered 13 March 2023 by Judge Timothy W. Wilson in Pasquotank County Superior Court. Heard in the Court of Appeals 6 March 2024.

Poyner Spruill LLP, by and J. Nicholas Ellis, and Michele L. Livingstone, for the petitioner-appellee.

Joseph Michael Guarascio, pro se.

TYSON, Judge.

Joseph Michael Guarascio (“Respondent”) appeals from an order of partition. We affirm.

I. Background

Respondent was incarcerated for approximately twelve years. During Respondent’s incarceration, his mother, Cecelia Guarascio (“Petitioner”), was

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appointed as Respondent's attorney in fact.

Respondent receives a monthly pension from his prior employment. Respondent alleges he directed Petitioner to purchase a house for his and her use from savings generated from his pension income. Petitioner purchased a single-family house located at 100 Binnacle Court in Elizabeth City. Petitioner and Respondent took title by a general warranty deed as joint tenants with rights of survivorship, as recorded at Book 1386, Page 924 in the Pasquotank County Registry.

Petitioner filed a petition for partition on 6 September 2022, seeking a partition of the property. The Pasquotank County Clerk of Superior Court held a hearing and entered an order granting the petition for partition on 3 January 2023. The clerk found Petitioner and Respondent each held a one-half undivided interest as joint tenants with the right of survivorship and ordered the sale of the property. Respondent appealed the clerk's order to superior court. The superior court entered an order affirming the sale of the property. Respondent appeals.

II. Jurisdiction

Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2023).

III. Issues

Respondent argues: (1) the clerk of superior court erred by failing to transfer the case to superior court for findings of fact; (2) the superior court erred by declining to address Respondent's equitable ownership arguments; (3) the superior court erred by failing to grant discovery to decide the ownership dispute; and, (4) Petitioner's

power of attorney precludes seeking partition.

IV. Standard of Review

“[W]hether a partition order and sale should [be] issue[d] is within the sole province and discretion of the trial judge and such determination will not be disturbed absent some error of law.” *Whatley v. Whatley*, 126 N.C. App. 193, 194, 484 S.E.2d 420, 421 (1997) (citation omitted). We review errors of law *de novo*. See *Mann Media, Inc. v. Randolph Cnty. Planning Bd.*, 356 N.C. 1, 14, 565 S.E.2d 9, 18 (2002) (citations omitted).

V. Transfer to Superior Court

Respondent argues the clerk erred by not transferring the case to superior court for findings of fact. Respondent’s appeal from the clerk to the superior court argued the clerk erred by not allowing discovery. Respondent did not argue the clerk erred by failing to transfer the case. “[W]here a theory argued on appeal was not raised before the trial court, the law does not permit parties to swap horses between courts in order to get a better mount in the appellate courts.” *State v. Holliman*, 155 N.C. App. 120, 123, 573 S.E.2d 682, 685 (2002) (citations and internal quotation marks omitted). Respondent has waived appellate review of this argument. Respondent’s argument is dismissed.

VI. Scope of Superior Court’s Review

Respondent argues the superior court erred in limiting its scope of the hearing to only whether a sale in lieu of a physical partition in kind was appropriate.

N.C. Gen. Stat. § 46A-52(b) provides:

In any partition proceeding, if two or more cotenants appear as respondents claiming the same undivided interest in the real property to be partitioned, or *if any part of the undivided interest claimed by the petitioner is disputed by any respondent, it shall not be necessary to decide on their respective claims before the court orders an actual partition or partition sale of the property.* The controversy between the contesting parties may be afterwards decided either in the same or an independent proceeding.

N.C. Gen. Stat. § 46A-52(b) (2023) (emphasis supplied). N.C. Gen. Stat. § 46A-75(d) further provides: “As provided in G.S. 46A-52, if two or more parties claim the same undivided interest in the property, the court is not required to decide the issue before ordering a partition sale of the property.” N.C. Gen. Stat. § 46A-75(d) (2023).

Our General Statutes expressly authorize a superior court to limit its scope of review to only whether a sale in lieu of a partition in kind was appropriate. Respondent’s argument is overruled. See *Id.*

VII. Request for Discovery and Power of Attorney

Respondent argues the clerk erred by denying his request for discovery and also argues Petitioner’s power of attorney precludes seeking partition. Respondent does not cite any authority to support his argument for either argument. Where a party “does not set forth any legal argument or citation to authority to support the contention, [it is] deemed abandoned.” *State v. Evans*, 251 N.C. App. 610, 625, 795 S.E.2d 444, 455 (2017). Both of these issues are abandoned and dismissed.

VIII. Conclusion

Respondent failed to raise or argue before the trial court and has waived appellate review of the issue of the clerk not transferring the case to superior court. The superior court did not err in refusing to address issues beyond whether a sale in lieu of a physical partition in kind was appropriate. *See* N.C. Gen. Stat. §§ 46A-52, 75.

Respondent has abandoned appellate review of his arguments concerning the request for discovery and whether Petitioner's power of attorney precludes seeking partition by failure to cite any supporting authority. *See Evans*, 251 N.C. App. at 625, 795 S.E.2d at 455. The order of the superior court is affirmed. *It is so ordered.*

AFFIRMED.

Judges ARROWOOD and COLLINS concur.

Report per Rule 30(e).