Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-045

SEPTEMBER TERM, 2017

Johnny Aldermann	}	APPEALED FROM:
	}	
	}	Superior Court, Lamoille Unit,
v.	}	Civil Division
	}	
	}	
Rhonda S. Camley, Stanley Howard Machia II and Breanne Earlene Machia	}	DOCKET NO. 7-1-16 Lecv
	}	
		Trial Judge: Thomas Z. Carlson

In the above-entitled cause, the Clerk will enter:

Girlfriend appeals from the trial court's decision that equitably divided the parties' real and personal property.[1] She raises numerous arguments. We affirm.

The trial court made the following findings. The parties were married between 1998 and 2004, when they divorced. They reunited as boyfriend/girlfriend in 2006 and lived together until 2014. In 2009, they bought a house and several acres of land in Johnson, Vermont. The house was purchased in girlfriend's name because she had better credit than boyfriend. The parties jointly applied for mortgage financing, and boyfriend's understanding from the start was that they would own the home jointly even though the deed was in girlfriend's name. From the outset, the parties paid the costs of ownership and improvement of the home essentially equally, or at least jointly, without separate accounting. The purchase price for the home was $88,000.

The parties pooled most of their income in a joint account. In 2010, they received a large settlement based on a dispute involving the septic system of their home. The settlement was in girlfriend's name, but boyfriend also signed the settlement statement, and the proceeds were deposited into the parties' joint account. Boyfriend negotiated a favorable deal for replacing the septic system and performed a good portion of the work himself. During negotiations regarding the septic system dispute, the opposing party to the dispute had refused to allow boyfriend to participate in the process because his name was not on the deed. Boyfriend then insisted on a deed in both parties' names. In September 2010, girlfriend prepared and signed a "Vermont Quit Claim Deed Life Estate Reserved," which initially purported to convey the home to the parties as joint tenants with rights of survivorship but then reserved a life estate including "the reserved rights of sale, lease or mortgage of the property." Girlfriend did not tell boyfriend about the life estate portion of the deed because she did not want him to know about it, and she did not want to upset him. Girlfriend wanted boyfriend to think that he was an equal owner. The parties received a joint property tax bill in 2011, which reassured boyfriend of any doubt regarding his equal ownership.

[1] For convenience's sake, we refer to the parties as girlfriend and boyfriend.

The parties subsequently settled another dispute over the home's drainage issues; this sum was paid jointly to the parties and deposited into their joint account. The parties made substantial improvements to the home, with boyfriend and his family and friends doing much of the work. Boyfriend also purchased thousands of dollars of materials and appliances.

In 2014, due to relationship issues, the parties signed an "Agreement on Refinancing" pursuant to which girlfriend would move out but would co-sign a new mortgage also in boyfriend's name, anticipating that boyfriend would be responsible for all costs of the home going forward, including the mortgage, and that he would further refinance the home within two years to relieve girlfriend from the mortgage debt entirely. If boyfriend could not refinance the mortgage after two years, he would move out, the property would be sold, and the proceeds would be split evenly. The agreement was signed at a bank in front of a witness. The court rejected as not credible girlfriend's assertion that she only signed the Refinancing Agreement "under duress" so that she could retrieve "her stuff" as she was moving out. At the bank closing on the refinancing in July 2014, both accepted direct responsibility for the mortgage debt, and boyfriend was advised of girlfriend's retained life estate set forth in the 2010 quit claim deed. The court found it clear, however, that boyfriend relied on the Refinancing Agreement in agreeing to proceed regardless. Girlfriend acknowledged that she knew that boyfriend was relying on the agreement in going forward with the refinancing.

Girlfriend moved back in with boyfriend in October 2014. Around the same time, the parties agreed to amend the Refinancing Agreement such that girlfriend would make the mortgage payments and boyfriend would pay everything else. At the same time, girlfriend prepared, signed, and recorded a second "Vermont Quit Claim Deed Life Estate Reserved," this time purporting to convey the entire ownership interest in the home to her children as tenants in common, subject to a life estate reserved for her. The deed also purported to convey "all personal property located in said premises." Girlfriend did not mention this deed to boyfriend because she did not want him to know about it.

In 2014, girlfriend also co-signed a truck loan for boyfriend. In May 2015, girlfriend co-signed another loan with boyfriend to pay off credit card debt and to pay for a boat. In September 2015, girlfriend moved out of the home. The following month, girlfriend obtained a relief-from-abuse order that effectively evicted boyfriend from the home. While boyfriend retrieved some items of personal property, the parties disputed the ownership of other items. Boyfriend continued to make payments on the boat and truck. Girlfriend continued to make payments on the mortgage. All three of those debts remained in the parties' joint names. The court found that the current fair market value of the home probably was between $140,000 and $150,000, with a mortgage debt of $104,000.

Based on these and other findings, the court determined that the parties had a volatile but ongoing financial and emotional relationship in which they contributed roughly equally to the combined costs of the ownership, maintenance, and improvements of the home. The settlement proceeds referenced above, the court concluded, belonged to both of them as the joint equitable owners of the property. The documents of title to the property, beginning with the deed to girlfriend alone due to credit concerns, the parties' joint liability on all mortgage debt, and the Refinancing Agreement, all indicated to the court that the parties intended a joint and equal ownership of the property as between the two of them. The court found that girlfriend's reservation of a life estate in the 2010 deed and girlfriend's deed to her children were "secret chess moves" in an extended emotional drama between the parties that has played out for twenty years. They were not actually "secrets" in that they were recorded in the land records and the life estate became

known to boyfriend along the way. Nonetheless, they were not consistent with the assurances that girlfriend gave to boyfriend by way of their course of conduct and the Refinancing Agreement that girlfriend knew boyfriend was relying upon, and which she intended boyfriend to rely upon when he signed on to the mortgage refinancing debt in 2014.

The court concluded that an equitable partition of the property was appropriate. It ordered that the real property be sold if the parties could not agree within sixty days on some buyout arrangement that also addressed all of their joint debt to the parties' mutual satisfaction. If the property was to be sold, it would be done by a receiver. The net proceeds would be split equally, but prior to distribution of boyfriend's share, the receiver would pay off the truck loan and boat loan with boyfriend's share of the funds. Girlfriend would then relinquish her interest in these items. The court distributed other personal property as well. Girlfriend appealed.

Girlfriend raises numerous arguments on appeal, all of which are summarily presented with few record citations and little legal or factual arguments offered in support. She first argues that the court erred in concluding that the parties were "joint equitable owners of the property." She cites the deeds discussed above, noting that boyfriend never held title to the real property. According to girlfriend, because boyfriend did not hold title, equitable partition was not an available remedy. In a somewhat related vein, girlfriend asserts that the court should have considered and rejected boyfriend's request for specific enforcement of the Refinancing Agreement. Girlfriend also asserts that the court erred in rejecting her argument that she signed the deed and Refinancing Agreement under duress. Finally, girlfriend asserts that the court erred in finding that she could not buy out boyfriend's interest in the property and failing to order that the truck and boat be sold.[2]

At the outset, we emphasize that the court applied an equitable remedy here, which we review only for abuse of discretion. Shattuck v. Peck, 2013 VT 1, ¶ 10, 193 Vt. 123. "This standard requires a showing that the court withheld its discretion entirely or exercised it on clearly untenable grounds." Id. (quotation omitted). It is foundational, moreover, that "[a]s the trier of fact, it [is] the province of the trial court to determine the credibility of the witnesses and weigh the persuasiveness of the evidence." Cabot v. Cabot, 166 Vt. 485, 497 (1997).

We find no abuse of discretion here. First, the absence of boyfriend's name on the deeds is not controlling. See, e.g., Mitchell v. Oksienik, 880 A.2d 1194, 1199 (N.J. Super. Ct. App. Div. 2005) ("It is clear . . . that the purchase of property under one unmarried cohabitant's name is essentially irrelevant to an equitable action." (quotation omitted)). We decide cases involving "unmarried partners in a marriage-like relationship" "based on equitable principles," and we "endors[e] the use of flexible procedures derived from equity even though they may not fully comply with the statutes." Wynkoop v. Stratthaus, 2016 VT 5, ¶ 20, 201 Vt. 158. "[T]he overall rationale applicable to property division for unmarried partners in marriage-like relationships is that we must consider all relevant circumstances to ensure that complete justice is done . . . . " Id.

[2] We do not address girlfriend's assertion that "[a]ssuming that the agreement was entitled to specific enforcement, the court should have at least credited [her] for her payments of the mortgage, taxes and insurance from September 2014 to date pursuant to its terms." This argument, which is contained in the single sentence above, is inadequately briefed. See V.R.A.P. 28(a) (brief shall contain concise statement of case and specific claims of error, contentions of appellant, and citations to authorities, statutes and parts of record relied on); Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (Court will not address contentions so inadequately briefed as to fail to minimally meet standards of V.R.A.P. 28(a)). In any event, the court did not specifically enforce the parties' agreement. It applied an equitable remedy of partition.

¶ 21; see also Mitchell, 880 A.2d at 1199 (concluding that unmarried cohabitants "who have engaged in a joint venture to purchase property in which they reside" "are entitled to seek a partition of their property when their joint enterprise comes to an end").

The court here evaluated the parties' situation and found that they contributed roughly equally to the combined costs of the ownership, maintenance, and improvements of the home. While the house was purchased in girlfriend's name for creditworthiness reasons, boyfriend reasonably believed that they would own the home jointly. From the outset, the parties paid the costs of ownership and improvement of the home essentially equally, or at least jointly without separate accounting. The court's conclusion that the parties are "joint equitable owners of the property" is amply supported by the findings set forth above. Because this is an equitable, rather than a contract, action, we need not address girlfriend's confusing argument concerning specific enforcement. Further, boyfriend did not have an adequate remedy at law, as girlfriend asserts, because his name was not included on the deed to the property.

We find girlfriend's duress argument equally unavailing.[3] See generally EverBank v. Marini, 2015 VT 131, ¶¶ 17-31, 200 Vt. 490 (discussing defense of duress to formation of contract).[4] The trial court rejected girlfriend's testimony regarding duress as not credible. As it explained, the agreement was signed in a neutral location before a disinterested witness. It was implausible that boyfriend dictated the terms of the agreement given the protections that it provided for her, which were expressed in language extremely favorable to her. The court found that it simply made no sense that girlfriend would have effectively acknowledged shared ownership of all of the equity in the home simply to "get her stuff," as she claimed. It noted that girlfriend did not disclaim the Refinancing Agreement until boyfriend filed this action in July 2016. The court also queried why girlfriend would have proceeded with the actual refinancing a month later if she was under such duress. While girlfriend urges us to draw different conclusions from the evidence, we will not reweigh the evidence on appeal. Cabot, 166 Vt. at 497.

We thus turn to girlfriend's assertion that the court erred in finding that she could not buy out boyfriend's interest. The court explained the difficulties associated with allowing one party to buy out the other's interest. It noted that this would have to be based either on the court's very gross estimate of fair market value based on the evidence in the record or on further appraisal. The

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[3] We do not address girlfriend's assertion, raised for the first time on appeal, that she was suffering from battered-woman's syndrome. See Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000) ("Contentions not raised or fairly presented to the trial court are not preserved for appeal."). Girlfriend also argues, apparently for the first time on appeal, that she was under duress when she executed the 2014 deed. Assuming this argument was preserved, we reject it. Girlfriend included language in that deed that benefited her and which she hid from boyfriend.

[4] Girlfriend cites "burden-shifting" language applicable to "undue influence" with respect to wills. See Landmark Trust (USA), Inc. v. Goodhue, 172 Vt. 515, 524-25 (2001) ("Undue influence vitiates a devise or gift because of the concern that the testator or donor has done something contrary to his true desires."). In Goodhue, we stated that "[o]rdinarily, the party claiming undue influence bears the burden of proof," but an exception exists "when there are suspicious circumstances surrounding the execution of the relevant documents." Id. at 525. Under these circumstances, "the burden shifts to the proponent of the document to show affirmatively that the will was not procured by undue influence." Id. Even assuming that this standard, made in the context of wills, was applicable here, girlfriend's argument is unavailing. There could be no burden shifting because the court did not find that girlfriend produced any credible evidence of "suspicious circumstances." Id.

court expressed its reluctance to penalize one party or the other by playing "pin the tail on the donkey with fair market value." It thus deemed a required assignment/buyout to be impractical. The court identified other reasonable grounds that supported its decision. Nonetheless, the court gave the parties the opportunity to agree to a buyout before the property would be sold. In doing so, the court noted the absence of evidence as to either party's ability to buy out the other and also to refinance the existing debt(s) in a manner that relieved the other party of any ongoing liability. Girlfriend does not argue to the contrary on appeal. She simply asserts that she testified that she could refinance the mortgage if her name was removed from the personal loans. There is no evidence, however, that boyfriend could remove her name from these loans absent sale of the real property. The court did not abuse its discretion in allowing the parties to negotiate a buyout, and if that failed, in ordering that the property be sold.

Finally, girlfriend argues that the court erred by failing to order that the truck and, apparently, the boat be sold so that her name could be removed from the loans associated with these items. She maintains that there will be insufficient money available from the sale of the property to enable her name to be removed from these loans. Girlfriend does not show that she raised this argument below. In any event, should a problem arise, girlfriend can seek relief at that time. We find no error in the court's decision.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice