Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-104

NOVEMBER TERM, 2018

Robert E. Snelgrove v. Herman LeBlanc* et al.	}	APPEALED FROM:
	}	
	}	Superior Court, Orleans Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 231-8-15 Oscv
		Trial Judge: A. Gregory Rainville

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

Defendant Herman LeBlanc appeals a partition order issued by the civil division of the superior court. We affirm.

The parties have been embroiled in a more than decade-long dispute concerning lakefront property on Lake Memphremagog. Plaintiff Robert Snelgrove owns property adjoining part of the subject property, which consists of three parcels of land previously owned by LeBlanc and his late wife: (1) the "Lake Road House Lot," consisting of 1.5 acres of land and a residence; (2) the "Lake Lot," consisting of .7 acres and both seasonal and year-round residences; and (3) the "Open Lot," consisting of 5.5 acres of primarily open land. Between 1993 and 2000, the LeBlancs conveyed the subject property to their four children as tenants in common. The adversarial nature of the parties' relationship began in 2006 when Snelgrove replaced and relocated the boathouse on his property. Between the fall of 2015 and the summer of 2016, following years of litigation on several fronts, Snelgrove acquired the interests of three of the LeBlanc children in the subject property, and LeBlanc acquired the interest of the other child. At that point, Snelgrove held a three-quarter interest, and LeBlanc a one-quarter interest, in the subject property as tenants in common.

In August 2015, Snelgrove moved for judgment of right to partition, pursuant to 12 V.S.A. § 5161. In response, LeBlanc argued that the deeds by which Snelgrove acquired his interest in the subject property were invalid. Following an August 2017 evidentiary hearing, the superior court ruled that LeBlanc did not have a life estate in the subject property and that Snelgrove, as a tenant in common, was entitled to partition of the property. The court held an evidentiary hearing in November 2017 to consider the method of partition.

In a February 2018 decision, after finding that a physical partition was neither feasible nor requested by the parties, the superior court ordered LeBlanc to convey his one-quarter interest in the subject property to Snelgrove for an equitable amount, which the court determined to be $182,660, based on Snelgrove's testimony as to the property value, which was based in part on the property's assessed value and the town equalization ratio and partly on his purchase price for each of the other one-quarter interests that he bought.

LeBlanc appeals, arguing that Snelgrove should be denied the equitable remedy of partition because he has unclean hands and that partition by assignment should be denied, both because the court should have ordered partition in kind, and because the court did not have sufficiently reliable evidence of the fair market value of the property to order assignment of LeBlanc's interest to Snelgrove for a specified payment.

We decline to address LeBlanc's "unclean hands" argument, which was not preserved in the trial court and which is based on allegations regarding Snelgrove's actions that have been considered in other proceedings. See Progressive Ins. Co. v. Brown, 2008 VT 103, ¶ 8, 184 Vt. 388 ("We have consistently held that we will not consider arguments on appeal that were not preserved in the trial court. To properly preserve an argument, a party must present the issue with specificity and clarity." (citation and quotation omitted)). Nothing in LeBlanc's brief or printed case, or the transcripts of the August or November 2017 hearings, or the August 2017 or February 2018 decisions suggests that LeBlanc's argument on appeal for denying partition based on unclean hands was presented to the superior court with clarity and specificity such that the court had an opportunity to rule on it.[1] See V.R.A.P. 28(a)(4)(A) (providing that appellant's brief must contain statements of issues presented and "how they were preserved").

And we reject both prongs of LeBlanc's challenge to the superior court's chosen method of partition—assignment of LeBlanc's interest to Snelgrove for payment of $182,660.

Vermont's partition statutes lay out three potential means for an equitable partition: "(1) physical division of the land—i.e., partition in-kind; (2) the assignment of the interest of one cotenant to the other for a predetermined pay-off, described as partition by assignment; or (3) partition by sale, with the cotenants sharing the proceeds according to a predetermined formula." Wynkoop v. Stratthaus, 2016 VT 5, ¶ 42, 201 Vt. 158 (citing 12 V.S.A. §§ 5174-5175). "Partition in-kind is favored, but where property cannot be divided without great inconvenience to the parties, assignment may be ordered." Id. (quotation omitted). "Partition by sale generally is available only where the first two methods are impractical." Id.

At the November 2017 hearing, when presented with the three options, LeBlanc indicated that he wanted the property sold and the proceeds divided. He stated that he saw "no other way of settling this because the deeds are vague, they're not legal, to my knowledge, on account of splitting up land to make deeds." He stated that another possibility was "just sell my share outright." He presented no argument or evidence as to how to partition the properties in kind. Snelgrove proposed that he purchase LeBlanc's one-quarter share, arguing that the unique attributes of the property would not easily permit a partition in kind and that the least-preferred partition-by-sale method would not guarantee a fair price for the property. Snelgrove then testified that the fair market value of the subject property was $731,041. He based his opinion on three factors: (1) the property's assessed value adjusted by application of the town equalization ratio; (2) his forty-one years of owning land in Newport Town and following local real-estate

[1] Snelgrove has moved to strike LeBlanc's reply brief on the ground that it contains numerous misstatements of fact, and representations that are not supported in the record below. We grant that motion in part. To the extent the reply brief describes events in the ongoing disputes and litigation between LeBlanc and Snelgrove and makes arguments based on those events, we strike those portions of the reply brief and decline to consider them. Because the reply brief includes some arguments properly raised on appeal and not resting on extra-record information, we have not stricken the reply brief in its entirety. We decline to award Snelgrove attorney's fees pursuant to V.R.A.P. 25(d) and V.R.C.P. 11(c) for having to respond to LeBlanc's alleged misstatements and improper arguments.

transactions; and (3) the sums he paid to acquire each of the other one-quarter interests in the property. LeBlanc neither presented evidence on the fair market value of the property nor cross-examined Snelgrove regarding his methodology for calculating fair market value.

In its decision, the superior court concluded, based on the evidence presented at the hearing, that neither the improvements on the partition lots, nor the configuration, location, or topography of the lots lent themselves to a straightforward physical partition into three-quarter and one-quarter shares of land and improvements. The court noted that neither party presented any testimony or evidence at the hearing that would allow the court to effectuate a partition in kind consistent with the parties' ownership interests. The court concluded that the next-preferred option—partition by assignment—made practical sense in this case because the partition lots adjoin Snelgrove's property and would resolve other outstanding boundary and zoning issues between the parties. Noting the absence of alternative evidence, the court credited Snelgrove's valuation of the subject property in determining the reimbursement due to LeBlanc.

The trial court's decision not to award partition in kind is well supported by the record. LeBlanc argues that Snelgrove failed to meet his burden to show that partition in kind could not be achieved without great inconvenience and suggests, for the first time on appeal, that the court could have awarded him the Lake Road House Lot. He further suggests that, to the extent the Lake Road House Lot represents more than one-quarter of the fair market value of the subject property, the award could have been justified based on Snelgrove's unclean hands. As noted, LeBlanc made no unclean-hands argument below. Moreover, as the superior court noted, LeBlanc presented no evidence at the hearing on a proposed partition in kind—indeed, LeBlanc indicated at the hearing that a partition in kind would not be feasible—and he explicitly stated his preference that the property be sold. The court agreed and provided a reasonable basis for not requiring the parties to submit to a partition in kind. Even if the record did not support the court's decision not to order partition in kind, the invited-error doctrine forecloses LeBlanc's argument on appeal that it should have done so. See State v. Longe, 170 Vt. 35, 39 n.* (1999) ("The invited error doctrine, which applies in both civil and criminal cases, is a branch of the doctrine of waiver by which courts prevent a party from inducing an erroneous ruling and later seeking to profit from the legal consequences of having the ruling set aside." (citation and quotation omitted)); cf. Whippie v. O'Connor, 2010 VT 32, ¶ 1 n.1, 187 Vt. 523 (rejecting defendant's argument that plaintiff had no right to bring partition action, given that defendant's trial attorney admitted that partition statute entitled plaintiff to seek partition).

The record also supports the superior court's decision to order partition by assignment rather than the less-preferred option of partition by sale. Under Vermont law, a property owner is competent to testify to the value of that property. 12 V.S.A. § 1604. Accordingly, both Snelgrove and LeBlanc were competent to testify to the value of the subject property. Only Snelgrove chose to do so. Moreover, Snelgrove's opinion was well supported by several considerations, including his years of experience following real-estate transactions in the area, his experience in negotiating arms-length purchases of three one-quarter shares in the subject property, and the town assessment of his property for tax purposes adjusted for the equalization ratio.[2] This evidence was sufficient

[2] Town listers "are required to appraise as will enable them to appraise [town property] at its fair market value." 32 V.S.A. § 4041; see also 32 V.S.A. § 3481(1)(A) (defining appraised value as estimated fair market value). Because updating each property each year is not feasible, the town must establish an equalization ratio—"calculated as the sum of the listed values of the comparables divided by the sum of the fair market values of these properties"—so that comparable properties are taxed comparably. Alexander v. Town of Barton, 152 Vt. 148, 155-56 (1989). In this case, the undisputed evidence was that the Town's equalization ratio was 107.6 percent.

for the superior court to establish an equitable amount that Snelgrove would be required to pay to compensate LeBlanc for his one-quarter interest in the subject property. See Whippie, 2010 VT 32, ¶ 12 (stating that this Court will "uphold the trial court's findings as long as they are supported by any credible evidence in the record").

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Therefore, to approximate fair market value, the appraised value of the subject property was reduced slightly.