MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Court Docket No. Som-24-48

Kathi Plante

v.

Sue LeHay, et al.

On Appeal from the Superior Court (Somerset County)

Brief of Appellant
Sue LeHay

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STATEMENT OF FACTS

The following facts derive from the procedural and trial record.

Kathi Plante ("Kathi")[1] filed a Complaint on October 25. (App. 1, 15). The Complaint sought claims for statutory partition, equitable partition, action for rent and profits, and contribution arising out of the joint family member ownership of a farm property located at 327 Kennebec River Road, in Embden Maine ("the Farm"). (App. 15-19). Only the equitable partition claim was pursued and ultimately tried. (App. 94). The trial was held on November 27, 2023. (App. 7). The Court's Order ("the Decision") was entered on January 12, 2024. (App. 8).

At trial, Kathi called appraiser Vurle Jones ("Jones"). (Trial transcript ("Tr.") 20). Jones is a certified appraiser and conducted the appraisal of the Farm. (Tr. 20-21). The Farm is a 132-acre parcel, and Jones testified that the value of the Farm was $420,000.00. (Tr. 21-22). There was a house on the Farm that, when including two of the 132 acres, had a value of $200,000.00. (Tr. 24). Jones' appraisals, Exhibits 28 and 29, were admitted in evidence without objection. (Tr. 23-24). (App. 20-92). Jones did not complete an appraisal on the land as a separate parcel divided from the house and two acres. (Tr. 32). In order to do that, he would have had to have done a separate appraisal of that land which he did not do. (Tr. 33).

[1] Given the fact that the parties are related and largely share common last names, the parties' first names will be used for clarity.

Kathi testified that she has three siblings - the other parties, Scott LeHay ("Scott"), Michael LeHay ("Michael"), and Sue LeHay ("Sue"). (Tr. 44). The four of them all owned the Farm as tenants in common, having received equal shares in 1999. (Tr. 44). Their mother had a stroke in October of 2017 and stayed in the home at the Farm until April 2020 and then went into a nursing home. (Tr. 46). Kathi wanted to have the property sold. (Tr. 48).

Sue testified that she grew up on the Farm. (Tr. 170). After she graduated from college, she got married and lived in her own residence for a period of time until she got divorced and then she stayed with her mother and father at the Farm until she was able to buy the home where she lives at this time. (Tr. 170-171). Their father passed away in November of 2012, and prior to that time, the Farm was given to all four of the siblings. (Tr. 171). The Farm has sentimental value to Sue and is "priceless to me. This is where I grew up." (Tr. 178-179). Sue wants to keep the Farm because it was her parents' property, is where she grew up, and it is part of her family, and "it means everything to me." (Tr. 179).

Sue would like to bring her mother home as this was her parents' property, her father had bought the property in 1947 and lived there together with his wife, Sue's mother, for almost 50 years. (Tr. 179). Kathi put their mother in a nursing home, but there is "no reason why my mother can't come home." (Tr. 179). Sue wants to purchase the Farm to buy out the other three, and she wants to continue to

farm the property and bring her mother home. (Tr. 179-180). If Sue cannot keep all of the Farm, then she wants to at least keep a portion of it. (Tr. 180). Sue has been working through the Farm Service Agency to purchase the Farm, which is a lengthy process that requires that there be a purchase and sale agreement to submit the application. There will then be a farm appraisal, after which she can close on the Farm. (Tr. 180). Once she purchases the Farm, she would look to move her mother back in. (Tr. 181). Sue has not been able to get a purchase and sale agreement to get the process started with the Farm Service Agency because the court has to enter an order ruling as to what can happen to the property, and once the court makes a decision she will be able to present that as part of the purchase and sale. (Tr. 181).

The appraisal process for a farm appraisal is different than Jones' residential mortgage appraisal process in that it is based on what is actually going to be done with the Farm as far as farming. (Tr. 182). Sue plans to till the property, reseed it for hay, cut some timbers to use for repairs to the barn and house as needed, and then select some of the timber out so that there will be additional tree growth. (Tr. 182).

In the alternative, Sue wants to purchase the house and 20 acres, and the balance of the acreage could be sold off which would be fair given that she would be getting the house with 20 acres, and her siblings would receive 112 acres of land to be divided. (Tr. 185-186). This would be fair because the timber, the minerals, and the river frontage would all go to her siblings. (Tr. 187).

Being able to own the Farm was important to Sue because it was her father's homestead. (Tr. 188). It was also important because it was part of the promise that was made to their father on his deathbed that their mother would be taken care of, and fulfilling that promise would involve bringing their mother home, even just for a short period of time. (Tr. 188).

Sue was not in a position to purchase the Farm until 2023 because she committed to making sure that her granddaughter graduated from high school before taking any action. (Tr. 190).

The Decision did not make any provision for Sue to buy out her siblings, much less even mention that it was a consideration. (App. 13). The Superior Court instead flatly ordered that the property "shall be sold and the parties shall accept any offer for the premises of $420,000.00 (the actual number) or more." (emphasis added) (App. 13). The Decision goes on to address progressive reductions of the price depending on whether the property sold. (App. 13).

This appeal followed.

ISSUES PRESENTED FOR REVIEW

Whether the Superior Court abused its discretion by ordering a forced sale in the underlying equitable partition action and failing to consider Sue's reasonable request to buy out her siblings and retain the family farm.

STANDARD OF REVIEW

A partition action is meant to be a "flexible procedure available through the equity jurisdiction of the Superior Court." 14 M.R.S. § 6051(7). A Superior Court is "necessarily require[d] . . . to weight the competing interests of common landowners" and "will order sale and divisions of the proceedings where physical division is impractical or would materially injure the rights of the parties." *Withee v. Garnett,* 1998 ME 30, ¶ 4, 705 A.2d 1119. "The Superior Court's equity power is broad and flexible, and is reviewed on appeal for an abuse of discretion." *Id.* "A decision exceeding the bounds of discretions may be found when appellant demonstrates that the decisionmaker exceeded the bounds of the reasonable choices available to it, considering the facts and circumstances of the particular case and the governing law." *Sager v. Town of Bowdoinham,* 2004 ME 40, ¶ 11, 845 A.2d 567.

> Review of an exercise of discretion involves resolution of 3 questions: (one) are factual findings, if any, supported by the record according to the clear error standard; (2) to the court understand the law applicable to its exercise of discretion; and (3) given all the facts and applying the appropriate law, was the Superior Court's weighing of the applicable facts and choices within the bounds of reasonableness.
>
> Exceeding the bounds of discretion may be found when a court, and discretionary decision-making: "(one) considers a factor prohibited by law; (2) declines to consider a legally proper factor under a mistaken belief that the factor cannot be considered; (3) acts or declines to act based on a mistaken view of the law; or (4) expressly or implicitly finds facts not supported by the record according to the clear error standard of review.

Alexander, *Maine Appellate Practice*, § 417 at 264 (6th ed. 2022).

SUMMARY OF ARGUMENT

The Superior Court abused its discretion in its Decision when it disregarded Sue's reasonable and well-supported request that she be allowed to purchase the Farm from her siblings. This was not just some random piece of property owned by four people: this was a farm that had been in the family for decades, and that Sue wanted to keep so she could bring her mother home and so she could honor her father's dying wishes. The Superior Court did not even consider Sue's request, and the Decision makes no mention of it. Sue should have been allowed the reasonable opportunity to buy out her siblings, and she was not provided with that opportunity, which she clearly requested.

The forced sale of a property like this and under these circumstances was unreasonable, unfair, and an abuse of discretion.

ARGUMENT

"In general, tenants in common have a right to have their undivided interest in land partitioned." *Pew v. Sayler,* 2015 ME 120, ¶ 28, 123 A.3d 522.

> The statutory law in the various states makes provision for one tenant in common or one joint tenant to compel partition of land held in one or the other of these forms of concurrent ownership. If the land held jointly is not capable of physical division among the concurrent owners, a forced sale of the land will be the result of the partition proceedings and the proceeds of the sale will be divided among the concurrent owners.

Restatement (Second) of Property: Donative Transfers, § 4.1 comment a.

The remedies of an equitable partition include physical division of the property, ordering the sale of the property, or allowing a buy-out of the property. *Connor v. Mazeika,* No. BCD-REA-2023-10, 2023 Me. Bus. & Consumer LEXIS 25, at *1 (July 19, 2023). "Physical division *is not appropriate* if it would materially injure the rights of the parties." *Id*. at *2-3.

> If the court contemplates granting one party an unconditional opportunity to buy the other party's interest, it must consider "whether the party who desires the buyout has the financial capacity to discharge the outstanding mortgage obligations and pay for the other party's interest as determined by the court." "The court, however, is not required to permit one party to by the interest of the other ... and acts within its discretion by refusing to do so even if the party has a financial ability to pay for the interest."

Hutz v. Alden, 2011 ME 27, ¶ 13, 12 A.3d 1174.

"Forced sales are strongly disfavored." *Butte Creek Island Ranch v. Crim,* 136 Cal. App. 3d 360, 1982 Cal. App. LEXIS 2021 (Sept. 13, 1982) (reversing Superior Court's judgment and remanding with instructions to divide the property in kind). *Arcucci v. Gull,* No. CV-23-6129087-S, 2024 Conn. Super. LEXIS 297, at *5, 2024 WL 686754 (Feb. 16, 2024) ("It has long been the policy of this court, as well as other courts, to favor a partition in kind over a partition by sale."). The jurisprudential disfavor of a forced sale is logical, as such a result "disturb[s] the existing form of inheritance or compel[s] a person to sell his property against his will." *Fout v. Wise,* No. 22-CHCV-00032, 2023 Cal. Super. LEXIS 9237, at *6 (Jan. 26, 2023). Accordingly, "[t]he proponent of the forced sale has the burden of

proving great prejudice" in overcoming the strong disfavoring of forced sales in partition proceedings. *Kaberna v. Brown,* 864 N.W.2d 497, 502 (S.D. 2015) (quotation marks omitted).

In assessing what should happen with a property subject to equitable partition, a court examines "all... Relevant equitable considerations" and factors, including but not limited to the length of occupancy, the efforts expended on the property, the expenses and delay of selling to 1/3 party, and the financial capacities of the parties. *Libby v. Lorrain,* 430 A.2d 367, 40 (Me. 1981); *Ackerman v. Hojnowski,* 2002 ME 147, ¶ 20, 804 A.2d 412; *Wicks v. Conroy,* 2013 ME 84, ¶ 19, 77 A.3d 479. In balancing the equities, a key consideration when it comes to the forced sale of property versus allowing an owner to buy out the other owners, is the delay in the resolution of the property's ownership, an increase in administrative costs, and forced divestiture of the family property *See* Zachary D. Kuperman, *Cutting the Baby in Half: an Economic Critique of Indivisible Resource Partition*, 77 Brook. L. Rev. 263, 290 - 93 (2011) (noting that a significant number of states explicitly or in practice prefer buy-outs (*citing Dyer v. Lowell*, 30 Me. 217, 219 (1849) ("If the estate was incapable of division, they should have set off the whole to one of the co-tenants"))); *see also Wilk v. Wilk*, 795 A.2d 1191, 1196 (Vt. 2002) (explaining that "[f]orced sale is disfavored because the Legislature, and the common law that came before, sought to minimize the forced divestiture of family property where

avoidable")). In these circumstances, "there [is] much to impel the . . . court to" order a buy-out. *Libby*, 430 A.2d at 40.

Arthur v. Fronczak is an instructive trial court decision where this balance was properly achieved. *See* No. CV-14-59, 2018 Me. Super. LEXIS 166 (Nov. 26, 2018). In that case, unmarried cohabitants jointly owned a 28-acre parcel of real property in Lamoine, Maine. *Id.* at *3. The couple's relationship deteriorated, resulting in the filing of a complaint for protection from abuse and an eight-count civil action alleging, in relevant part, statutory and equitable partition. *Id.* at *4-9. The Superior Court only rendered judgment on the equitable partition claim—finding that neither party carried their respective burdens of proof on their other various claims. *Id.* at *9. Unlike the Superior Court in the present appeal, the Superior Court considered and ordered a potential buy-out by one of the owners, and did not force a sale. Instead, the Superior Court held that

> if the Plaintiff, within 90 days from the date this Judgment becomes final, presents the Defendant with a commitment letter from a licensed financial institution approving a refinancing of the current debt which releases him from further liability, and provides for an additional cash payment to the Defendant in the amount of $46,125, the Plaintiff will be entitled to full ownership of the 236 Mud Creek Road property and improvements thereon upon tender of the actual $46,125 payment and the filing of a Notice of Satisfaction of Judgment with the Court in the matter PA-11-206. To the extent the Plaintiff is able to meet these obligations, the Defendant is hereby ordered to execute all necessary documents to complete such a transaction.
>
> If the Plaintiff is unable to arrange the financing necessary to purchase the Defendant's interests in their property, as set forth in the previous

> paragraph, within the 90 day time frame described, the parties are hereby ordered to list the 236 Mud Creek Rd. property for sale on the terms set forth below. If the parties are unable to mutually agree upon a real estate agent to assist in the sale of the property, each party shall immediately designate a real estate agent who will then agree upon a third licensed real estate agent to act as the listing agent for the property. Unless mutually agreed to otherwise by the parties, the property shall be listed for sale at the price of $400,000. Again, unless mutually agreed to otherwise by both parties, any qualifying offer in the amount of at least 95% of the listing price shall be accepted by the parties.

Id. at *13.

In the case before the Court, the Superior Court provided zero option for Sue to purchase the property from her siblings; rather, the Superior Court ordered only that the property "shall be sold" and nothing more beyond that. (App. 13). There was no provision allowing Sue to purchase the property, nor was there any finding by the Superior Court that Sue was unable to buy the property. It was simply not addressed by the Superior Court—notwithstanding the credible and competent evidence in the record.

Sue testified that this was not just some ordinary property; this was a property that she grew up in and was the family farm. Her father had purchased the property and renovated the home where Sue's parents lived for 50 years. Sue had a close and direct connection to the Farm. Importantly, this was the very home that Sue wanted to bring her mother back to, even for a short period of time, before she passed away. Sue's mother had been moved into a nursing home by Kathi, and it was Sue's reasonable request to the Superior Court to allow her to purchase the property and

move her mother back home where she could be taken care of until she passed away. It is hard to imagine a more sincere, reasonable, and honorable request. Before Sue could undertake the process of purchasing the Farm, the Court had to enter an order setting out the process for Sue to do so, which would allow her to start the process with the Farm Service Agency. But the Superior Court never gave Sue that opportunity, and instead simply forced the sale of the Farm and the division of the proceeds, as if this property was something other than a family farm that had been part of the LeHay family for 50+ years.

Sue's plan was also reasonable in that she was not able to, prior to 2023, commit to the purchase given her other commitment to her granddaughter to see her through her senior year of high school. That having now passed in the spring of 2023, by the time of trial Sue's testimony that she was now ready to purchase the Farm, had plans to do so, and wanted the Court to enter an order accordingly, was especially reasonable. Sue's plans with respect to the Farm were to actually use it as a farm, with the ability to hay the many acres of the Farm and sell the hay to farmers. Maine in Maine is all but gone. Though Sue cannot change the decline of farming in Maine, she would like to keep at least one little corner of it.

Separate from that, Sue's alternate plan was to simply have the home and 20 acres, and allow 112 of the remaining open acres available to her siblings which, in Sue's opinion as an owner of the property, would more than satisfy her siblings'

share of the total value of the property. The 112 acres including river frontage, timber, and minerals are valuable. Jones could not testify as to the value of the property less the house and acreage. Given this, Sue's testimony as to the value of the property as a whole, minus the house and two acres, was fair and reasonable and should have been considered by the Court.

Given all these facts and applying the appropriate law, which disfavors the approach taken in this case, the Superior Court's weighing of the applicable facts and choice to simply sell off the property was not within the bounds of reasonableness and constitutes an abuse of discretion. Alexander, *Maine Appellate Practice*, § 417 at 264 (6th ed. 2022). Courts have long held that "[t]he power to convert real estate into money against the will of the owner, is an extraordinary remedy and dangerous power, and ought never to be exercised unless the necessity therefore is clearly established." *Overlake Farms B.L.K. III, LLC v. Bellevue-Overlake Farm, LLC,* 196 Wn. App. 929, 941 (Dec. 5, 2016) (*quoting Vesper v. Farnsworth,* 40 Wis. 357, 362 (1876)). Yet, that is exactly what occurred in this case where the Court forced the sale of the property without being guided by these principles and failing to consider and address Sue's proposed physical division and buy-out of the family property. For the aforementioned reasons, the Superior Court abused its discretion.

CONCLUSION

This Court should vacate the Superior Court's order, and remand the case to the Superior Court to enter an order that allows Sue LeHay to purchase the Farm.

Date: 04/25/2024

/s/ Walter F. McKee

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CERTIFICATE OF SERVICE

I, Walter F. McKee, Attorney for the Appellant, Sue LeHay, hereby certify that this appellate brief was filed and that the service requirements were complied with by copying opposing counsel on the email and hand-delivered filing with the Court.

Date: 04/25/2024

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