MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Docket No.: Som-24-48

Kathi Plante

APPELLEE

vs.

Sue LeHay, et al.

APPELLANT

On appeal from the Somerset County Superior Court,
of the State of Maine, in and for the County of Somerset.

BRIEF OF APPELLEE KATHI PLANTE

APPEARANCES:

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

INTRODUCTION

This is a partition action between four siblings who were deeded the property by their parents. Three siblings agree with selling the property one does not.

STATEMENT OF FACTS

The parties to the proceedings are Kathi Plante f/k/a Kathi Irvine, Scott LeHay, Sue LeHay and Michael LeHay. The parties are siblings (Trial Transcript ("Tr") 44). As three of the parties have the same last name, the first names of the parties will be used in this brief. Their parents gifted them the family farm by a deed first retaining a life estate then later giving up that life estate in a second deed (Plaintiff's Exhibits 1,2, and 3). For many years after gifting the farm, the parents continued to live there and then after their father died Kathi moved in and took care of their mother. Eventually it became too much for Kathi to take care of her mother and her mother was moved to a nursing home (Tr 46,47,207-210). There is no evidence of any other sibling looking to move into the home with the mother and take care of her prior to the trial in this matter. Kathi is the healthcare power of attorney for their mother and Scott is the financial power of attorney for their mother (Tr 207-210). While Scott was not represented by counsel at trial the Court noted that Scott was sitting at Kathi's table with Kathi and her legal counsel during

the trial and testimony would show that Scott and Kathi are in agreement throughout the trial (Tr 5-6). At some point, Sue without discussing it at least with Kathi and Scott moves her son Brandon Grant into the premises (Tr 53,73,194). Kathi, Scott and Michael all testified to fear of Brandon Grant and believing Brandon Grant living there would hinder the sale. (Tr 54-55,76,82,109, 135). Brandon Grant has paid no rent for the lengthy time he has lived there. An issue contested at trial was whether Sue's share of sale proceeds should be reduced for rental value for the time period Brandon Grant has been living there (Tr 109-113). The Court agreed with Sue on that issue and did not force Sue's share to be reduced by any rental value for Brandon Grant (See Court's order App 11-14).

Kathi brings this complaint for partition action (App 15-19). The only other person besides the four (4) parties to testify at trial was Vurle Jones, a certified appraiser who was a shared expert witness between Michael and Kathi. Vurle Jones testified to the value of the entire property as being four hundred and twenty thousand dollars ($420,000.00) and that the value of the buildings with two (2) acres around them as being two hundred thousand dollars ($200,000.00). Both of his appraisals were admitted into evidence without objection and are included in the appendix as Plaintiff's exhibits 28-29 (App 20-92). Vurle Jones further testified the property could not be divided in to four (4) parcels of equal value (Tr 21-24). At trial Sue testified that she would like to either have the portion of the property

with the buildings and twenty (20) acres around them or to just buy out her siblings' interest in the property. Sue called no experts to support her claim for partitioning the property. Sue testified that she had never attempted or offered to purchase the property from her siblings prior to that day in court (Tr 189-190).

The Court issues a detailed order. In paragraph one of the actual order portion and not the factual recitation portion the Court states "the premises shall be sold and the parties shall accept **any** offer for the premises of four hundred and twenty thousand dollars ($420,000.00) or more" (App 13) (highlighting of the wording "any" is done for purposes of this brief and was not highlighted in the Court order).

ISSUES PRESENTED FOR REVIEW

Do the words "accept any offer" (App 13) in the Trial Court's order include Sue being able to buy her siblings out of the property?

STANDARD OF REVIEW

Maine has two different forms of partition action. The first is Legal Partition pursuant to 14 M.R.S.A. §6501 which states persons seized or having a right of entry into real estate in fee simple or for life, as tenants in common or joint tenants may be compelled to divide the same by civil action for partition. The second statute is 14 M.R.S.A. §6051 sub 7 which grants equitable powers in cases of partnership or between partners of part owners of vessels and other real and

personal property to adjust all matters of the partnership or between such part owners, compel contribution, make final decrees and enforce the decrees for proper process in cases where all interested persons within the jurisdiction of the Court are made parties. The difference between the two was explained in the case of *Libby v. Lorraine 430 A2d 37 (Me 1981).* On page 38 of said case the Court pointed out the statutory partition is subject to a special prescribe procedure or rules. The statutory partition is a process whereby the property is parceled out with each party getting a parcel of essentially equal value. It distinguished this from equitable partition which is available to joint owners of real estate through equity jurisdiction of the Superior Court. Equitable partition is more flexible in its procedure than statutory partition and is not limited to physical partition and maybe carried out by sale. The Trial Court did engage in colloquy with the parties on equitable partition versus legal partition at the beginning of the trial (Tr 7-8, App 94).

SUMMARY OF ARGUMENT

The Trial Courts order allows Sue being able to buy out her siblings for the fair market value of the property being four hundred and twenty thousand dollars ($420,000.00) (App 11-14).

Vurle Jones uncontested testimony made it clear that physical division of the property could not provide each party with equal value (Tr 20-24, Plaintiff's Exhibits 28 and 29 App 20-92).

ARGUMENT

I. Under the Court's Order Sue can buy the property

The Courts order left open to Sue the ability to buy the property. In paragraph one of the order portion the Court states as follows:

> Premises shall be sold and the parties shall accept any offer for the premises of four hundred and twenty thousand dollars ($420,000.00) or more. (App 13)

The word "any" means that Sue could purchase the property for that amount. In paragraph six of the order portion of the order the Court also goes on to state as follows:

> Under this Court's equitable powers this Court shall maintain continuing jurisdiction over this matter and any party that fails to cooperate or is unreasonably hindering the sale of the premises maybe held in contempt of Court. (App 13-14)

The Court then goes on in paragraph seven of the order and states as follows:

> It is the expectation of the Court that all parties shall cooperate with the selling of this property for fair market value as expeditiously as possible. (App 14)

Under that wording of the order, Sue could not only buy the property for four hundred and twenty thousand dollars ($420,000.00), but she could also apply her one hundred- and five-thousand-dollar ($105,000.00) interest against the

purchase price and just pay her siblings a total of three hundred and fifteen thousand dollars ($315,000.00) or one hundred and five thousand dollars ($105,000.00) each. While the Court did not expressly state that if Sue made the offer that each of her siblings would get their one hundred and five thousand dollars ($105,000.00) the Court could easily use its ongoing jurisdiction to make sure the parties go along with that as Sue would receive her one hundred and five thousand dollars ($105,000.00) in value as the down payment on the property and each of her siblings would receive their one hundred and five thousand dollars ($105,000.00) in value minus some standard closing costs. The Trial Court needs to be given some credit that it would likely frown upon the parties turning down such an offer by Sue and would use its ongoing jurisdiction to see that that happened. Perhaps the real question is can Sue come up with the $315,000 to buy out her siblings. At trial, Sue's deposition was read into the record of her she stating under oath she wanted her siblings to receive no benefits from the property (Tr 192-193). Sue also admitted she had made not attempt to try and buy her siblings out prior to trial (Tr 189-190).

II. Vurle Jones Testimony established that physical partition is not possible

Vurle Jones uncontested testimony was that the entire parcel was worth four hundred and twenty thousand dollars ($420,000.00) and that the portion of the

property with the buildings on it including two (2) acres of land was valued at two hundred thousand dollars ($200,000.00) (Tr 20-24). This is a common problem with partition actions that a small portion of the land has all the buildings and is therefore worth so much more than the raw acreage. No other experts were called to contradict Vurle Jones' testimony. In paragraph 8 of the Trial Court's findings, the Court cites to Vurle Jones' testimony (App 13). On the stand, Sue testified that she wanted physical partition taking the buildings plus twenty (20) acres, but presented no appraisals or opinions or even diagrams to support what her partition plan (Tr 191). It was pointed out during cross-examination that Vurle Jones had not done an appraisal of the remaining one hundred and thirty (130) acres when he appraised the buildings with the two (2) acres. However, it is within the Trial Court's discretion to infer that if the buildings and two (2) acres are worth two hundred thousand dollars ($200,000.00) and the entire parcel is worth four hundred and twenty thousand dollars ($420,000.00), you cannot get three (3) other parcels of land out of the remaining that would also be worth two hundred thousand dollars ($200,000.00). Vurle Jones, Scott LeHay, and Kathi Plante all testified the parcel could not be divided into four (4) parcels of equal value (Tr 24, 55, 76-77). The Trial Court was within its discretion to determine that the parcel could not be divided into four (4) parcels therefore had to be sold and the proceeds split.

Sue claims she wants to bring her mother back to the property. While Sue's intent to bring her mother back is irrelevant, her conduct also contradicts this claim. After her mother moved out, Sue moved her son Brandon Grant and his family into the property to the exclusion of her siblings (Tr 194). No evidence was introduced of Sue making any attempt to move her mother back into the property or of anyone trying to stop her from moving her mother back into the property. Kathi, the plaintiff, was the caregiver for her mother and is the healthcare power of attorney and Scott is the financial power of attorney and both agree that it is not feasible to move the mother back to the farm (Tr 206-210).

CONCLUSION

The Court should uphold the Superior Court's order.

Dated:

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CERTIFICATE OF SERVICE

I, Daniel J. Bernier, Attorney for the Appellee, Kathi Plante f/k/a Kathi Irvine, hereby certify that two copies of the foregoing have been furnished, by mail to Walt McKee, Esq. at 191 Water Street Augusta, Maine 04330, two copies to Paul Mills, Esq. at P.O. Box 608 Farmington, Maine 04938, two Copies to Scott Lehay at 305 Kennebec River Road Embden, Maine 04958 and ten copies to the Law Court this appellee brief was filed and that the service requirements were complied with by copying opposing counsel on the email and filing with the Court.

Date:

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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that this brief was typed in 14-point Times New Roman font.

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