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 Superior Court (Somerset County)

Brief of Appellee

Michael LeHay

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Table of Contents

Table of Authorities

Statement of Facts

In addition to the facts as set forth within the brief of the Appellant, Sue LeHay, hereinafter "Sue" or "Appellant," the following facts are believed pertinent to the issue presented. During her direct examination, Sue testified that "I'm actually considering a purchase and sale agreement to buy out the other three." (Trial Transcript, hereafter "Tr." 179)

She further testified that she will seek the help of the Farm Service Agency [a division of the United States Department of Agriculture] to help obtain financing through a "very lengthy application" which first requires a purchase and sales agreement, which has not yet been formed. If approved, an agricultural appraisal would be required. (Tr. 180) The application and approval process might take 30-90 days. (Tr. 181)

Issue Presented

The one issue presented on appeal is whether the court abused its discretion by ordering a sale of the property to complete an equitable partition without authorizing a "partition by buy-out,"[1] by Sue, of the remaining three co-owners.

[1] The court's ruling that the property is to be sold and equitably divided according to the findings in the judgment does not necessarily preclude Appellant from a "buy-out" purchase according to those terms, if she is able.

Standard of Review

The court properly identified its power of equitable jurisdiction granted by 14 M.R.S. § 6051 (13), upheld in *Murphy v. Daley*, 582 A.2d 1212, 1213 (Me. 1990), citing *Libby v. Lorraine*, 430 A.2d 37, 39 (Me. 1981) which gives it gives it broad and flexible powers to order the property sold and equitably divided. *Withee v. Garnett*, 1998 ME 30, ¶ 4, 705 A.2d 1119. A party appealing a decision committed to the reasonable discretion of a State or local decisionmaker has the burden of demonstrating that the decision maker abused its discretion in reaching the decision under appeal. *Sager v. Town of Bowdoinham*, 2004 ME 40, ¶ 11, 845 A.2d 567, See also *Davric Me. Corp. v. Maine Harness Racing Comm'n*, 1999 ME 99, ¶ 7, 732 A.2d 289.

An abuse of discretion may be found where an appellant demonstrates that the decision maker exceeded the bounds of the reasonable choices available to it, considering the facts and circumstances of the particular case and the governing law. It is not sufficient to demonstrate that, on the facts of the case, the decision maker could have made choices more acceptable to the appellant or even to a reviewing court. *Sager, at* 2004 Me. at 570.

> Review of an exercise of discretion involves resolution of three questions: (1) are factual findings, if any, supported by the record according to the clear error standard; (2) did the court understand the law applicable to its exercise of discretion; and (3) given all the facts and applying appropriate law, was the trial court's weighing of the applicable facts and choices within the bounds of reasonableness. *See McAllister v. McAllister*, 2011 ME 69, ¶11, 21 A.3d 1010; *State v. Bickart*, 2009 ME 7, ¶ 15, 963 A.2d 183; *Pettinelli v. Yost*, 2007 ME 121, ¶ 11, 930 A.2d 1074.
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> Alexander, *Maine Appellate Practice*, § 418 at 264-265 (6th ed. 2022)

Argument

The testimony of licensed real estate appraiser Vurle Jones supported (Tr. 24), and the court found (Judgment, 2), that physical division of the property would not yield an equitable split of the farm value; the house and two acres of land are of greater value than could be found in the remaining acreage to divide among the remaining three co-owners. (Judgment, 2) No other expert testimony was presented at trial as to value of the property; Sue did testify that she believed the remaining undeveloped acreage would be valued higher based on mineral and timber uses, but when asked, she did not offer her opinion for the value of the farm, in whole or in part. (Tr. 187-188).

Sue presented two alternatives for the Court to consider. Michael LeHay respectfully submits neither of them is viable, however.

In her first, preferred option, Appellant indicated to the Superior Court a desire to purchase the property from the co-owners. Sue testified of her recent

investigation into using a Farm Service Agency loan guarantee to secure funding necessary to purchase the farm and land but had not initiated the application process, moreover, she offered no evidence that she could execute, qualify for, or afford, a plan of financing that would accomplish that objective within a reasonable timeframe for the parties involved.

The Court in *Wicks v. Conroy*, 2013 ME 84, ¶ 21, 77 A.2d 479, found that a partition by "buy-out" was not reasonable where co-owner did not provide evidence of his ability to financially resolve the purchase in a reasonable time, citing that "granting Conroy the right to purchase his sister's interest could prolong the final resolution of what has already been a lengthy and contentious dispute." *Id*, ¶ 22.

Sue's second proposed option, "plan B," as presented to the court, would have the court physically divide the property, whereby it would award her the house, buildings and 20 acres of land. The remaining 112 acres, as she proposed, would be split among the three remaining co-owners. Her reasoning for this relies on her belief that the river frontage, timber lands and minerals in the undeveloped land near the river would offset the value of the house, buildings and 20 acres. (Tr. 185) This is directly contradictory to the opinion of appraiser Jones, who indicated that the remaining acreage did not contain enough value to

form three quarters of the overall property value. (Tr. 24) Sue indicated that the high value from the remaining 112 acres would come from the timber and mineral resources, apparently a reference to the "Haley Ward report" on minerals and energy development. Though this report was offered as Michael LeHay's Exhibit 10, its admission was objected to by Sue's own counsel (Tr. 28), it was ultimately admitted only for the limited purpose of showing an expense incurred by Michael LeHay and not for the truth of the information it contained. (Tr. 37)

The court did not abuse its discretion by ordering the sale and equitable division of the proceeds where it was within the courts power to do so. The court relied on the expert testimony of Jones who valued the entire 132 acre farm with home and buildings at $420,000.00 while the home, buildings and two acres separately were valued at $220,000.00. (Tr. 22-24) The court cited and accepted Jones' expert opinion that physical division of the property could not be equitably achieved among the four co-owners. (Tr. 24) There was no contradictory testimony or competing valuations presented at trial.

Conclusion

Appellant did not present a viable or reasonable alternative for the court to consider.

The Trial Court's rational basis for ordering the property sold and the proceeds split equitably among the four co-owners rests squarely on the testimony of Vurle Jones, the wishes of three of the four co-owners and the lack of evidence from Appellant supporting her ability to financially complete her stated desire to purchase the farm from her co-owners.

Date:___June 10, 2024__

__S/ Paul H. Mills_____

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CERTIFICATE OF SERVICE

I, Paul H. Mills, Attorney for the Appellee, Michael LeHay, hereby certify this appellee brief was:

a) emailed to the Court and each opposing counsel and Scott LeHay, pro se,
b) printed copies were mailed postage-pre-paid to opposing counsel and Scott LeHay, pro se, and
c) sent by United States Postal Service, Priority Mail, to the Court.

Date:__June 10, 2024____

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