

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)

**Reply Brief of Appellant
Sue LeHay**

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ARGUMENT

Pursuant to M.R. App. P. 7A(c), this Reply Brief only addresses the following new facts asserted or arguments raised in the brief of the Appellees.

Tellingly, the Appellees neither address the case-law cited in the Appellant’s principal brief nor the general judicial disfavoring of forced sales against the will of an owner. (See Blue Br. 6-12.) Appellee Michael LeHay relies on the uncontroverted expert testimony offered by Vurle Jones—an issue not raised in the Appellant’s appeal. Furthermore, Appellee Michael LeHay cites *Wicks v. Conroy* to support the proposition that a partition buy-out is not reasonable without demonstrating a financial ability to pay within a reasonable time.

Appellee is correct that the ability to pay is a factor in the trial court’s analysis; however, contrary to Appellee Michael LeHay’s contentions, *Wicks v. Conroy* is readily distinguishable from the present case. In *Wicks v. Conroy*, the Law Court explained that the appellant “presented *no evidence* that he could afford to do so.” *Wicks v. Conroy*, 2013 ME 84, ¶ 21, 77 A.3d 479. The trial court there expressly denied the request to purchase the property and buy out the co-owner’s interest “because [he] failed to present evidence of his financial ability to do so.” *Id.* ¶ 9.

In this case, and unlike in *Wicks v. Conroy*, the trial court did not rely on the financial capacity to pay factor and did not expressly find that the Appellant was not able to pay. (A. 11-14.) Furthermore, this is not a case (again, like *Wicks v. Conroy*)

where there was “no evidence” that the Appellant could afford to buy out the other owners’ interest. The Appellant testified at length about her ability to buy out the property if given the opportunity by the trial court. (*See* Tr. 180-182, 190.)

Appellee Kathi Plante’s brief, which is more of an idea as opposed to an analysis, ignores the plain language of the Court’s Order and the testimony from LeHay about how she would be able to finance the purchase of the property. The Court ordered that the property be sold at \$420,000 or more. Appellee Kathi Plante’s speculation about what the parties *could* do and how the court may feel if the parties did not get on board with her idea of how the Appellant *could* buy out the property is not relevant to the merits of this appeal. Looking at the plain language of the Court’s Order it is clear that the Appellant was not meant to be given an opportunity to buy out the property because it was ordered to be sold at \$420,000 with the proceeds divided evenly. Furthermore, the proposal offered by Appellee Kathi Plante would not allow the Appellant to purchase the property—as the Appellant testified at trial.¹

¹ 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 present issue is not whether “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.” (Red. Br. 3.) Rather, it is whether the Superior Court abused its discretion in its decision when it disregarded Sue’s reasonable, judicially favored, and well-supported request that she be allowed to purchase the Farm from her siblings.

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: 06/18/2024

/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 reply 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: 06/18/2024

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