SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2449-21

ANGELINE GABRIEL,

Plaintiff-Respondent,

v.

TAZHETTE WALLACE,

Defendant-Appellant.

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Submitted December 19, 2022 – Decided December 28, 2022

Before Judges DeAlmeida and Mitterhoff.

On appeal from the Superior Court of New Jersey, Chancery Division, Union County, Docket No. C-000079-21.

Vasquez Heldman, attorneys for appellant (Peter J. Vazquez, Jr., on the briefs).

Richard Obuch, attorney for respondent.

PER CURIAM

Defendant Tazhette Wallace appeals from the Chancery Division's March 2, 2022 final judgment ordering (1) the partition by sale of a property she co-

owned with plaintiff, Angeline Gabriel, and (2) the division of the sale's net proceeds in equal shares between defendant and plaintiff. On appeal, she does not contest the partition, only the equal division of the net proceeds. We affirm substantially for the reasons set forth by Judge Robert J. Mega in his March 2, 2022 written opinion.

We discern the following facts from the record. On or about March 8, 2018, plaintiff and defendant purchased the property for $435,000. To facilitate the purchase, plaintiff provided her good credit and employment income while defendant provided money for the down payment and assumed responsibility for ongoing mortgage payments. Both parties' names were on the deed and mortgage, and defendant does not dispute that, as a result, she and plaintiff were tenants in common.

The parties agreed that defendant and her husband, Jason Wallace (J.W.), would live at the property and that plaintiff's name would remain on the deed and mortgage. The arrangement was to last one year, when defendant was to refinance and remove plaintiff's name from the deed and mortgage. Defendant

failed to refinance and in January 2020, she ceased making mortgage payments.[1] The mortgage went into forbearance and remains so to date. Defendant refused to refinance while plaintiff refused to agree to a modification. The total amount due on the mortgage by January 28, 2022 increased to $474,477.58. Despite plaintiff's numerous requests, defendant neither secured refinancing nor removed plaintiff from the mortgage or deed.

On June 22, 2021, plaintiff filed a verified complaint and order to show cause for partition by sale of the property. On July 26, 2021, defendant filed a verified answer and counterclaim seeking an order compelling plaintiff to agree to a mortgage modification. On August 19, 2021, Judge Mega denied all injunctive relief requested by defendant.

The matter was tried to completion on January 6, 2022. At trial, the parties stipulated to a partition and a fair-market comparable analysis of $537,500 and sought the court to determine credits, if any, to be awarded to each party. In

[1] Defendant paid the mortgage in 2018 and 2019, drawing the principal amount to $415,461.94. In two years, roughly $20,000 was applied to the outstanding principal.

that regard, defendant alleged that her husband made numerous renovations to the property between 2018 and 2020.[2]

On March 2, 2022, the judge entered a written opinion and final judgment ordering an equal distribution of the net proceeds of the sale. Notably, the judge concluded "that [defendant's] testimony was not credible" and that the doctrine of false in one, false in all[3] should apply to her testimony. Specifically, the judge found:

> [Defendant's] testimony was largely contradicted by her ex-husband, [J.W.'s] testimony as well as contradicted by the documents submitted to the Court. Further[,] it seemed as if [defendant's] means of knowledge of the facts were solely based on what she wanted to believe, which was contradicted by the evidence submitted. For example, Defendant [] seemed to believe that the mortgage remained in good standing, despite clear documentation evidencing a substantial increase in the debt owed.
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> Defendant appeared to be reading off of a piece of paper during her testimony. Defendant had to be directed by the Court not to look at documents that are not being referred to as exhibits while she is testifying. . . . Further, [defendant] lacked eye contact and was very

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[2] Defendant claims she spent $39,696.22, payable to Word of Mouth Home Improvement, on January 12, 2018; $8,127.25, payable to Kiko Wood Flooring, on March 6, 2018; and $18,277, payable to Lxoye Home Club Solutions, on November 3, 2020.

[3] See State v. Fleckenstein, 60 N.J. Super. 399, 408 (App. Div. 1960).

> uneasy in in answering certain direct questions. For example, when questions concerning [defendant's] spending habits, vehicle owned,[4] or vacations[5] was posed, Defendant [] seemed evasive and would begin to discuss her deteriorating family relationship, as if to attempt to seek pity from the Court. Overall, Defendant [] attempted to answer different questions when she did not like the question posed.
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> The Court finds the Defendant . . . not credible.

On June 16, 2022, the property was sold. Pursuant to the June 9, 2022 consent order, the net proceeds of the sale are being held in escrow by the attorneys for the parties pending the outcome of this appeal. On appeal, defendant raises the following issues for our review:

> POINT I
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> APPELLANT WALLACE SHOULD HAVE BEEN GIVEN CREDIT FOR ALL MONIES PAID BY HER TOWARDS THE ACQUISITION OF THE PROPERTY.

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[4] On direct, defendant testified that a Mercedes-Benz in her Instagram photos belonged to a neighbor. On cross-examination, defendant admitted that she owns a 2018 Mercedes-Benz that she obtained in 2019. Defendant's car payments are $780 per month.

[5] On direct, defendant testified that her 2021 Mexico vacation was due to a death in the family and that her two 2021 Jamaica vacations were paid for by someone in her family. Defendant did not provide proof that she did not pay.

POINT II

APPELLANT WALLACE SHOULD HAVE BEEN GIVEN CREDIT FOR HER PAYMENTS OF MORTGAGE PRINCIPAL, PROPERTY TAXES AND PROPERTY INSURANCE.

POINT III

APPELLANT WALLACE SHOULD HAVE BEEN GIVEN CREDIT FOR PAYMENTS FOR WORK PERFORMED ON THE PROPERTY MADE BY HER HUSBAND.

POINT IV

RESPONDENT GABRIEL DID NOT MEET HER[] BURDEN TO DEMONSTRATE THE RENTAL VALUE OF THE PROPERTY AND THEREFORE IS NOT ENTITLED TO ANY CREDIT FOR WALLACE'S OCCUPANCY OF THE PROPERTY.[6]

Our review of the trial court's determinations following a non-jury trial is a limited one. Petrozzi v. City of Ocean City, 433 N.J. Super. 290, 316 (App. Div. 2013) (citing Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)). We must "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (citing Rova Farms Resort, Inc., 65

[6] The judge did not reward credit for defendant's occupancy; therefore, we will not address this issue.

N.J. at 483-84). Reviewing courts "should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant[,] and reasonably credible evidence as to offend the interests of justice.'" Ibid. (quoting Rova Farms Resort, Inc., 65 N.J. at 484).

We accord particular deference to the trial judge's evaluation of witness credibility. Cesare v. Cesare, 154 N.J. 394, 412 (1998). Thus, "appellate review does not consist of weighing evidence anew and making independent factual findings; rather, our function is to determine whether there is adequate evidence to support the judgment rendered at trial." Cannuscio v. Claridge Hotel and Casino, 319 N.J. Super. 342, 347 (App. Div. 1999) (citing State v. Johnson, 42 N.J. 146, 161 (1964)). However, we owe no deference to the trial court's "interpretation of the law and the legal consequences that flow from established facts . . . ." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"[A] tenancy in common is subject to partition." DiSanto v. Adase, 116 N.J. Super. 226, 228 (App. Div. 1971). "While generally a tenant in common has an absolute right to partition, the particular manner in which it is effective is left to the sound discretion of the court." Asante v. Abban, 237 N.J. Super.

495, 498 (Law Div. 1989). "The purpose of partition between tenants in common is to dissolve the only unity existing between them, to wit, the unity of possession. . . ." Kraft v. Fassitt, 132 N.J. Eq. 603, 607 (Ch. 1942).

A co-owner is not entitled to credits for funds expended on renovations solely by virtue of having expended those funds. Donnelly v. Capodici, 227 N.J. Super. 310, 312 (Ch. Div. 1987). Rather, a co-owner is entitled to credit for improvement to a property only to the extent that its value is enhanced by the improvement. Ibid. In other words, to receive credit for renovations, a co-owner must: (1) demonstrate that the value of the property has increased; (2) due to the improvements; (3) by proper evidence. Ibid.

Having considered defendant's contentions in light of the record and the applicable law, we affirm the equal distribution of the net proceeds of the partition by sale of the property for the reasons detailed in the trial judge's written opinion. In that regard, Judge Mega correctly declined to award defendant credit for the down payment in connection with the acquisition of the property. As the judge noted, both parties provided things of equal value in the acquisition of the property:

> [Plaintiff] provided her credit worthiness and [defendant] provided cash closing costs and a deposit to the purchase price. . . . Although only [defendant] expended funds to close, she would not have been able

> to close without [plaintiff]. . . . [Plaintiff's] credit was needed to close the transaction. Thus, this Court views the monetary expenditures of [defendant] and the credit worthiness and employment income needed to qualify[,] of [plaintiff's], as equals. Each was required and thus each is valued equally.

Equally without merit is defendant's argument that she should be credited for her payment of the mortgage principal, property taxes, and property insurance in the amount of $17,423.99.[7] These costs were assigned to defendant in the parties' original agreement. Furthermore, as the judge noted, defendant's nonpayment of the mortgage caused the mortgage to "gr[o]w in excess of $50,000." Thus, "any amount expended by [defendant] was negated by her failure to pay the mortgage which resulted in an increase of the mortgage due in excess of her deposits." For these reasons, Judge Mega correctly concluded that defendant is not owed a credit for her upkeep of the property and the mortgage payments.

Judge Mega also properly declined to award defendant credit for the $66,100.97 of work allegedly performed on the property by contractors and her

[7] Approximately half of her alleged expenditures.

husband.[8] Evidence of an increase in value was not provided for the court. "[Defendant] merely provides invoices paid by [J.W.]" and a comparable home analysis as proof of increased value. Neither of the documents are sufficient to demonstrate increased property value due to renovation. See Donnelly, 227 N.J. Super. at 312. We discern no abuse of discretion.

Affirmed.



[8] The judge rejected defendant's argument for two reasons. This court need not rely on the first—that J.W., not defendant, paid for the renovations—because the second is sufficient.