

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2608-20**

WILLIAM CANDA,

Plaintiff-Appellant,

v.

LUIS R. CANDA,

Defendant-Respondent.

Submitted March 2, 2022 – Decided April 8, 2022

Before Judges Hoffman and Whipple.

On appeal from the Superior Court of New Jersey,
Chancery Division, Camden County, Docket No.
C-000085-19.

McDowell Law, PC, attorneys for appellant (Joseph F.
Riga, on the brief).

Respondent has not filed a brief.

PER CURIAM

Plaintiff appeals from the Chancery Division order naming defendant the owner of the subject property, requiring plaintiff to title the property in

defendant's name, and granting plaintiff a mortgage on the property to be paid by defendant upon a sale or at death. Considering the record and for the reasons stated by the trial court, we affirm as to the ownership findings, but remand for a statement of reasons as to the amount of the mortgage and why plaintiff must wait for defendant's death or sale of the property to be paid on the awarded mortgage.

Plaintiff, William Canda, and defendant, Luis R. Canda, are brothers who own real property together. They purchased and resold properties in Camden County and have purchased individual homes including 214 North 37th Street in Camden (the subject property), where defendant resides. Plaintiff contends he and defendant own the subject property as tenants in common; defendant contends the parties had agreements as to who owned what, regardless of the title on the deeds, such that he is the only one with interest in the subject property. Their relationship has deteriorated to a degree where plaintiff thought he would never get "what is [his]" from defendant after plaintiff moved out of the subject property. Defendant agrees their relationship deteriorated but blames this on plaintiff's failure to sign full title to defendant for the subject property.

On August 28, 2019, plaintiff filed a complaint seeking a partition. Defendant failed to answer the complaint, so plaintiff requested default. On

December 9, 2019, defendant moved to vacate the default, which the court granted; defendant subsequently filed an answer denying plaintiff's contribution and interest in the subject property. On January 15, 2020, the trial court entered a case management order. Before trial, the court directed the parties to a mediation session.

After unsuccessful mediation, the court rescheduled the trial. During the remote trial, the court heard arguments from counsel and testimony from both brothers, which revealed the following contested facts.

The brothers, listed on the deed together, purchased the subject property on December 17, 1996, and recorded this with the Camden County Clerk's office on January 7, 1997. Title has not changed since the settlement where both parties were present. Plaintiff and his family lived at the property for two years with defendant before plaintiff's family needed more space. Only defendant and his family have lived in the property for over twenty years.

Both parties executed a mortgage note for the \$90,000 loan to purchase the property and were named as mortgagors in the security instrument and family rider. Defendant wanted his own property, but he needed a co-signer. Defendant conceded that he could not have secured the mortgage without

plaintiff's credit. Plaintiff believed they verbally agreed to share the property equally and thought they were co-tenants.

Plaintiff testified that he made a monetary contribution to purchase the subject property and that each party contributed half towards the \$10,000 down payment; then, plaintiff further contributed through monthly amounts he paid to defendant for plaintiff's portion of monthly mortgage payments, to be paid by defendant to the mortgage lender, as evidenced in part by receipts for cash between the parties. Defendant asserted that he paid for everything, i.e., he asserted plaintiff did not contribute to the \$10,000 down payment; plaintiff's monthly payments were to rent the third floor; and only defendant made monthly mortgage payments. Plaintiff did not pay taxes, utilities, or repairs and believed defendant was renting part of the property.

The mortgage is paid off. Plaintiff asserts that he signed over the full proceeds check from another property they owned, the Park Boulevard property, but he did not have the receipt for the proceeds. Defendant produced a check showing \$75,767 signed over to defendant on March 21, 2006. Defendant paid \$78,270.55 to Wachovia Bank, so arguably he had been paying less than \$100 per month to the bank for ten years, without foreclosure. Plaintiff signed over all the proceeds instead of half for half his ownership because he thought it

would help his overall investments. As of the November 18, 2019, appraisal, the subject property was valued at approximately \$188,000.

Defendant testified that he tried to have plaintiff sign over the title, but he did not provide a copy of the drafted deed or a certification from the attorney involved. The parties purchased two other properties: their Park Boulevard property and an Atlantic Avenue property, neither of which was ever titled in defendant's name. The brothers gave conflicting testimony.

According to plaintiff, the parties purchased the Park Boulevard property in Camden for \$75,000, but it was only titled in plaintiff's name because defendant is distrustful of putting his name on things. Plaintiff also said that they did not agree to be half owners but that defendant hoped to contribute. Defendant testified he was personally approached to purchase the Park Boulevard property for \$40,000 with a \$5,000 down payment and \$500 monthly payments and that he purchased Park Boulevard but put it in plaintiff's name.

Plaintiff testified that he was the primary payer for the Park Boulevard property; that defendant contributed about \$5,000 to \$10,000; and that plaintiff rented out the property and used some of the money for his family and for owner installment payments and taxes, but still saved about \$200 per month over five years. Plaintiff, but not defendant, declared this rental income on his tax returns.

Defendant disputes that plaintiff paid at all. Both parties testified, however, that the proceeds derived from the sale of the Park Boulevard property were used to pay off the mortgage associated with the subject property. There was never a mortgage on the Park Boulevard property, and the owner installment agreement was paid off before plaintiff sold the property and signed 100% of the proceeds check to defendant.

The court clarified with defendant.

THE COURT: My notes say that [plaintiff's] testimony was that when he sold Park [Boulevard], he gave [defendant] \$75,876. Handed him the check, correct?

. . . .

[DEFENDANT]: Exactly. [Plaintiff] had to give me the check because the [Park Boulevard] property was in his name, but it was mine.

. . . .

[COURT]: Right. So [plaintiff] gave that to you, and you took the money, and you paid off a mortgage on a property that was in both of your names, correct?

[DEFENDANT]: Correct. Yes. I took the money and I wanted to pay it off as soon as possible. And then after I did that I had a family gathering and I asked [plaintiff] to go with me to [the attorney's] office in order to take [plaintiff's] name off the property.

. . . .

[DEFENDANT]: In 2006. And that was around the same time [plaintiff] sold his property at 812 Atlantic Avenue and bought the properties he has now.

As to the Atlantic Avenue property in Camden, plaintiff initially testified it was titled in defendant's wife's name, but that both parties purchased it, and defendant's wife received the proceeds when the parties sold it, with plaintiff borrowing some for the down payment on his current home he owns with his wife. Counsel, through plaintiff's re-direct, tried to clarify that only plaintiff was at the settlement; he deposited the check with the proceeds and kept half for himself; and that by him testifying that defendant's wife got "all the proceeds," plaintiff meant she received the other half rather than plaintiff giving any money directly to defendant. The court clarified the amount would have been less than half of \$84,000 because plaintiff paid commission to a real estate broker, but plaintiff did not know the exact amount he gave to defendant's wife because they did not sign papers.

Plaintiff viewed defendant as the Atlantic Avenue owner through defendant's wife. Plaintiff paid \$25,000 to defendant when he bought the property from William Velazquez and defendant's wife, and he became the sole

owner according to the deed, but he did not pay the \$35,000¹ to defendant's wife until after he sold the Atlantic Avenue property.

Defendant testified that he purchased Atlantic Avenue jointly with his wife, from the same person who sold him Park Boulevard, with a \$5,000 down payment and \$500 rent-to-own monthly payments. Defendant testified

The first person that was the owner of [the Atlantic Avenue] property was my wife. I then transferred it to [plaintiff]. And then after it being under my brother's [name], it transferred back to my wife along with Mr. William Velazquez. And it was after that that I sold it to [plaintiff] for \$20,000. That was the amount of which I gave it to [plaintiff], for [him] being my brother.

Q: So it went back and forth between [plaintiff] and your wife twice?

[DEFENDANT]: Yes. I'll say it again. When I was having issues with her . . . out of security I transferred it over to [plaintiff].

Defendant asserted he was able to make these transfers with his wife and plaintiff without ever having title because he "was behind those persons."

Defendant testified he was "1,000 percent" certain plaintiff only paid defendant a total of \$20,000 for Atlantic Avenue because that equaled the

¹ Approximately half of the \$84,000 proceeds, after commission.

\$36,000 defendant paid to purchase plus \$4,000 in repairs, then half because "well, he's my brother." Numerous receipts for \$200 each signed by defendant showed plaintiff paid at least \$24,300 for the Atlantic Avenue property and one receipt said, "Starting agreement of William and Luis for \$24,000."

At the conclusion of the trial, the court asked both parties to submit written closing arguments, but only plaintiff submitted one. The court entered its reasons onto the record on April 6.

On April 7, 2021, the trial court entered its order, which: required plaintiff to deed his interest to defendant, so title would change from both parties' names to just defendant's name (and granting defendant power of attorney (POA) if plaintiff did not execute); required defendant to execute a first-priority mortgage on the property in favor of plaintiff (without granting the reciprocal POA); allowed the mortgage to be paid when defendant dies or sells the property; prohibited defendant from encumbering the property with additional liens; and extinguished all other claims for reimbursement, contribution, or recovery of costs and expenses. The court cited the record from April 6 as to its reasons.

Plaintiff raises the following issues on appeal of the April 7 order:

**I. THE CIRCUMSTANCES DEMAND IMMEDIATE
PARTITION BY SALE.**

II. PLAINTIFF SHOULD HAVE BEEN AWARDED
A [FIFTY-PERCENT] INTEREST [IN] THE
PROPERTY COMMENCERATE WITH HIS TITLE.

Plaintiff asks us to reverse and direct the trial court to order partition of the property by sale then equally divide the net proceeds. Defendant's response and cross-appeal were suppressed and dismissed as untimely. We decline to order a partition by sale and affirm part of the April 7 order because the court's statement of reasons on April 6 provides substantial and credible evidence, so plaintiff failed to show that the court abused its discretion in not finding him a joint tenant.

We defer to a trial court's determination of facts and will only find error in such if the trial court abused its discretion by failing to use, or state in its reasons, competent, credible, and sufficient evidence. "Appellate review, however, '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' by the trial court." Allstate Ins. Co. v. Fisher, 408 N.J. Super. 289, 302 (App. Div. 2009) (quoting Cannuscio v. Claridge Hotel & Casino, 319 N.J. Super. 342, 347 (App. Div. 1999)).

Thus, the court's "task is to determine whether the trial court's fact findings have adequate evidentiary support and whether proper legal

conclusions have been drawn therefrom" Brodzinsky v. Pulek, 75 N.J. Super. 40, 44 (App. Div. 1962). The reviewing court defers to the facts and credibility findings but will still conduct an independent review of whether the evidence is compelling toward the conclusion of a finding of joint tenancy. See id. at 44-55 (finding that "the cumulative effect of all the evidence clearly and convincingly persuade[d the court that the parties], by their conduct and course of dealing, mutually treated the subject mortgages as held by them as tenants in common").

On April 6, the trial court stated:

[C]learly, there was some sort of an arrangement there -- financial arrangement, a business relationship And, clearly, the parties intended that, eventually, since [defendant] took the brunt of the financial responsibility, [the court] thinks, that in fairness after reviewing the facts of the case -- and it was a very fact sensitive case -- that [plaintiff] will be required to sign a deed transferring his interest in the property to [defendant]. In the event that [plaintiff] does not cooperate, the [c]ourt gives [defendant] the power of attorney to sign [plaintiff]'s name to transfer the property from . . . both brothers to [defendant].

Secondly, however, [defendant] is obligated to sign a mortgage made in the favor of [plaintiff] and the amount of the mortgage is going to be . . . one half of \$75,000, plus all of the \$1,800 that [plaintiff] paid. So the mortgage amount is going to be \$40,000. Now the \$40,000 will remain as a mortgage on the property until such time as [defendant] sells the property.

[Defendant] is not permitted to further encumber or place any liens on the property. And the mortgage owned by [plaintiff] and owed by [defendant] to [plaintiff] is going to remain as a first mortgage on the property, a first lien. So there will be no other liens that take precedence over that. And [defendant] is obligated to maintain the property such that no other liens arise against the property.

And in this way, [plaintiff]'s . . . financial rights are preserved and protected until such time as [defendant] sells the property or if [defendant] were to pass away . . . his estate would then owe the mortgage amount to [plaintiff]. And that . . . takes [care] of the fairness and equities in . . . this case because the property will then belong to [defendant] but [plaintiff]'s financial contributions to the property will be preserved to some point in the future.

The overall ownership conclusion was within the court's discretion based on competent, credible, and sufficient evidence. The court applied these facts to treat plaintiff as a mortgagee to defendant, the owner. The court did not find them to be joint tenants based on the available evidence, and we find no clear error in this determination. The evidence does not compel a different conclusion that the court erred in not treating the brothers as joint tenants in the subject property.

Plaintiff does not dispute specific findings of fact with credible evidence submitted at trial nor offer additional evidence of his ownership; rather, he disputes the court's discretion to not believe everything plaintiff said. Plaintiff

only asserts that he was a joint tenant based on the evidence he could provide; however, even with his testimony, the evidence fails to provide enough support for this court to conclude the trial court erred by not finding him a joint tenant.

The court accepted evidence as trustworthy and credible for leading to its conclusion. The court did consider the relationship as to the mortgage documents and repeated payments, and plaintiff has not provided any legal support to show that both parties signing mortgage documents and paying rent must create joint tenancy rather than the mortgage the court found.

The court acknowledged the various title documents, but the parties themselves both showed their indifference to title across multiple property arrangements, including by agreeing that title on one property was once given to defendant's wife and Velazquez and at one time was given to plaintiff to hide it from defendant's wife. Plaintiff's appeal brief argues title is dispositive, but all the undisputed testimony and the facts on which the trial court relied show that the court was more than justified in not treating title as dispositive in determining the parties' relationships to the property.

As to plaintiff's specific arguments on appeal, plaintiff provides no law to say that a non-joint tenant is entitled to partition by sale, even if that person has a lien on the property. Plaintiff provides legal support to show joint tenants are

entitled to partition, but this is moot because plaintiff has not shown that the court erred in not treating him as a joint tenant.

Further, the court specifically addressed the issue of interest and did not award it. The court was "not going to attribute any interest to this amount either. If [defendant sold] the property then [plaintiff would] be paid off. And the rest of the proceeds [would] belong to [defendant]." Plaintiff fails to provide legal support to show a lien holder is entitled to interest in the property in the way a joint tenant would be.

Plaintiff failed to argue in the alternative—that even if this court did not find an abuse of discretion with the ownership conclusion, the trial court otherwise erred in awarding the mortgage. Nonetheless, the trial court did not provide specific reasons under Rule 1:7-4(a) as to why the mortgage was \$40,000 and why it shall be paid upon defendant's death or sale of the property. Thus, we remand, in part, for a statement of reasons. See Avelino-Catabran v. Catabran, 445 N.J. Super. 574, 594-95 (App. Div. 2016); Monte v. Monte, 212 N.J. Super. 557, 565 (App. Div. 1986); Foley, Inc. v. Fevco, Inc., 379 N.J. Super. 574, 588-89 (App. Div. 2005).

The trial court said the \$40,000 was half of \$75,000 plus the \$1,800 that plaintiff paid, but it did not specify the sources for those amounts. The record

reflects that the proceeds check, which plaintiff signed to defendant after selling Park Boulevard, was testified to as in the amount of \$75,767, although repeatedly referred to by the court in the amount of \$75,876. The court did not state if the \$75,000 was based on that check or why it would use an approximate amount. The court had receipts from plaintiff repeatedly paying defendant, but it did not identify whether any of these checks contributed to the \$1,800. The amounts are additionally unclear because half of \$75,000 plus \$1,800 equals \$39,300. The failure to identify the sources of these amounts is an abuse of discretion, and we remand to the trial court to identify adequate reasons and support for these amounts.

The trial court should also explain why plaintiff's financial contributions of \$40,000 would be preserved in the future instead of being paid immediately or through regular payments. The court did not reconcile why plaintiff, if he would never be entitled to more than \$40,000 because he does not have an ownership interest in the property, must wait until sale or death to receive that amount. Waiting for death or sale is akin to how long a joint tenant would wait for money from a property and wholly dissimilar to how long a typical mortgagee would wait to be repaid.

This court offers no opinion as to whether the trial court can or should award a \$40,000 mortgage to be paid at death or sale, and only remands for a statement of reasons.

Affirmed, in part, remanded, in part. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION