SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2425-21

LOUIS JEAN VENANT
and ROSE N. VENANT,

Plaintiffs-Respondents,

v.

JEAN C. VENANT,

Defendant-Appellant,

and

MARIE E. VENANT,

Defendant.

Argued September 12, 2023 – Decided September 26, 2023

Before Judges Rose and Perez Friscia.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-000109-20.

Ronald L. Davison argued the cause for appellant (Starr, Gern, Davison & Rubin, PC, attorneys; Ronald L. Davison, on the briefs).

Joshua M. Lurie argued the cause for respondents (Lurie Strupinsky, LLP, attorneys; Joshua M. Lurie, on the brief).

PER CURIAM

This partition action stems from a family feud regarding the ownership of a two-family home located on Berwick Street in Orange (Berwick Property). In July 2020, plaintiffs Louis Jean Venant and his wife, Rose N. Venant, filed a Chancery Division complaint against defendant Jean C. Venant and his then wife, Marie E. Venant.[1] In their complaint, plaintiffs sought partition through the sale of the Berwick Property, which was jointly purchased by the couples in 1985. Defendant filed a counterclaim, seeking reformation of the deed, thereby declaring him the "legal and equitable owner of the Berwick . . . Property." Thereafter, defendant amended his counterclaim to assert alternate relief. In the second count of his amended counterclaim, defendant demanded apportionment of the proceeds, following a court-ordered sale of the Berwick Property, to

[1] Because the parties and defense witnesses bear the same surname, we use first names when necessary for clarity. We intend no disrespect in doing so. After plaintiffs filed their complaint, Jean and Marie E. divorced, and Marie E. conveyed her interest in the property to Jean. Defendant then married Marie M. Venant. Neither Marie E. nor Marie M. are parties to this appeal. Accordingly, we use defendant to refer to Jean.

compensate him for certain expenses incurred during the parties' ownership of the property.

Following a five-day bench trial, Judge Jodi Lee Alper granted plaintiffs' application to partition the Berwick Property, thereby denying defendant's application to reform the deed. The judge also ordered the sale of the property and equal distribution of the net proceeds, subject to a $51,892 credit for defendant's expenditures.

Defendant now appeals from a February 25, 2022 order, contending the judge's findings in the accompanying written decision were unsupported by the evidence. Alternatively, defendant argues the judge failed to declare him the sole owner of the property pursuant to equitable principles. Because we conclude there is sufficient support in the record to justify the trial judge's decision, we affirm.

I.

We summarize the facts that are pertinent to this appeal from the record before the trial judge. Pursuant to the granting clause of the deed, ownership of the property was reflected as follows:

> Louis Jean Venant and Rose N. Venant his wife & Jean Clentine Venant and Marie E. Venant, his wife. As to each other, the spouses take as Tenants by the Entirety. As between the groups, they take as Joint Tenants.

The names of all four Venants are listed on the sales contract; all four Venants signed the mortgage loan note. The purchase price of the Berwick Property was $85,000.

In 1982, a few years before the couples purchased the Berwick Property, Louis and Jean executed a deed and mortgage for a two-family home on Tremont Avenue in Orange (Tremont Property).[2] Although the Tremont Property is not the subject of this appeal, the parties' agreement concerning the purchase of that property underscores defendant's equitable arguments regarding his ownership of the Berwick Property.

Plaintiffs testified on their own behalf and did not call any other witnesses. Both plaintiffs claimed they contributed $12,000 toward the purchase price of the Berwick Property. The couple and their three children lived in the largest of three bedrooms in the first-floor apartment of the home. They shared the apartment with Jean and Marie E.; and Louis and Jean's mother, Eiline Zamor. Rental income from the second-floor tenants was deposited into the parties' joint bank account and utilized to pay the mortgage, real estate taxes, and utility payments until plaintiffs moved to Florida in 1999.

[2] The deed incorrectly names Jean as Louis's wife.

On cross-examination, Louis acknowledged that when the brothers "took title to the Tremont Property in 1982, [they] had an understanding that even though [defendant's name] was on the deed, the property was going to be [Louis's]." Further in May 1986, defendant transferred ownership of the Tremont Property to plaintiffs and Zamor for one dollar. Louis also acknowledged that contrary to his trial testimony, when deposed he stated he had not "contribute[d] any money toward the purchase" of the Berwick Property. Nor did Louis provide any documentation supporting his trial testimony that he contributed $12,000 at the closing of title.

Defendant testified on his own behalf and moved into evidence various documents evidencing payments made regarding the Berwick Property. Defendant stated he paid the down payment, the mortgage, and all expenses related to the property, including utilities, homeowners insurance, renovation costs, and property taxes. He also "t[ook] a deduction on [his] personal income tax returns for depreciation allowance." Defendant explained that plaintiffs signed the deed and mortgage because the seller required a co-signer. He claimed plaintiffs never resided at the Berwick Property.

Defendant also testified that he signed the mortgage and deed for the Tremont Property pursuant to an oral agreement with Louis that the brothers

would co-sign each other's loans to enable them to qualify for the purchases. Defendant said he contributed no money toward the purchase price of the Tremont Property and shared in none of the proceeds when Louis sold the property in 1987. Similar to Louis's testimony, defendant stated the brothers orally agreed that defendant would "cosign" the deed and mortgage for the Tremont Property and when defendant purchased a home in the future, Louis "w[ould] return the favor." Specifically, Louis "w[ould] cosign for [defendant] so [he] c[ould] afford to buy [a] house, too."

Defendant further stated that he had cosigned mortgages for two other people, including Jean LaFortune, without obtaining an ownership interest in the property. Testifying on defendant's behalf, LaFortune corroborated defendant's account. Defendant also called Zamor, and two other brothers, Jean Baptiste Venant and Joseph Donnejour, all of whom testified that plaintiffs never resided at the Berwick Property.

At the close of all evidence, Judge Alper reserved decision. After the parties submitted proposed findings of fact and conclusions of law, the judge issued a cogent written decision that accompanied the February 25, 2022 order.

In her credibility assessment, the judge cited inconsistencies between plaintiffs' trial testimony and Louis's deposition testimony. As one example, the

judge found Louis testified at trial that he "had an oral agreement to purchase the Berwick Property together with [defendant], while at his deposition, he denied having a conversation regarding the property prior to signing the purchase contract." The judge further found: "At trial, [Louis] claimed to contribute $12,000 to the purchase of the Berwick Property, while at his deposition he testified that he did not contribute to its purchase. He was unable to produce a document to establish the alleged contribution." The judge found "incredible" defendant's "failed recollection" concerning "core issues," including whether he contributed to expenses or sought information concerning rental income regarding the Berwick Property. The judge found Rose's testimony "similarly incredible."

Conversely, Judge Alper credited the testimony of Jean Baptiste, LaFortune, and Donnejour. The judge also cited defendant's documentary evidence regarding "his claim that he paid an excessively unequal share of the expenses related to the Berwick Property, including mortgage, taxes, insurance, and repairs."

Against these credibility findings, the trial judge nonetheless was persuaded "partition by sale [wa]s appropriate in this case." See N.J.S.A. 2A:56-2. The judge elaborated:

> Here, notwithstanding circumstantial evidence to the contrary, there is prima facie evidence of the parties' intent to be joint owners as established in the contract for sale, the deed, and the mortgage for the Berwick Property. Pursuant to these documents, the Berwick Property is held by Louis Jean Venant and his wife Rose N. Venant, Jean C. Venant, and Marie E. Venant, his wife. Until this action was filed by the plaintiffs, no party took action to modify the title documents which have been in existence for more than thirty-six years.

Turning to defendant's counterclaim for reformation of the deed to reflect his sole ownership, the judge was not convinced defendant met the clear and convincing standard for relief. The judge found "no evidence of error in the 1985 granting of title to the Berwick Property to the parties as stated clearly and unequivocally in the documents." Conversely, the record was devoid of any documentation "expressing responsibilities and/or benefits of the respective parties regarding the Berwick Property." Thus, the judge found the evidence "suggest[ed] that plaintiffs may have understood that they were merely cosigners with no expected benefit, but it is not clear what the expectations of any party were." According to the judge:

> Plaintiffs claim that, while they understood that defendant would obtain the rental incomes and would pay the debts, it does not extinguish that it was their house too and they expected the benefits as to its value either during life or after one or more of the parties passed. Though the plaintiffs took no credible actions

> in regard to the management of the Berwick Property, the court cannot find, on clear and convincing evidence, that, in 1985, plaintiffs only sought to co[]sign the mortgage to assist Jean C. Venant to purchase the Berwick Property while relinquishing any claim to ownership.
>
> [(Emphasis added).]

The judge concluded:

> It is somewhat significant that, until this [c]omplaint for partition was filed by plaintiffs, defendant did not take action during the approximately thirty-six-year period of ownership to claim that he is the sole owner of the Berwick Property. There is a preponderance of evidence through the title documents that plaintiffs co-own the Berwick Property.

Nonetheless, Judge Alper was persuaded that apportionment of the proceeds was equitable in view of the "considerable evidence that [defendant] was the only party who was financially and administratively responsible for the Berwick Property during the entire ownership period from 1985." Noting defendant "was a credible witness," the judge found defendant "paid an excessively unequal share of the costs and expenses associated with the Berwick Property, including mortgage, insurance, taxes, repairs, and associated expenses." Citing N.J.S.A. 2A:56-11, the judge directed the parties divide the net sale proceeds evenly between plaintiffs, then reduce plaintiffs' share by the

$51,892 amount sought by defendant. After defendant's motion for reconsideration was denied,[3] this appeal followed.

In his overlapping points on appeal, defendant maintains he is the sole, equitable owner of the Berwick Property in view of the parties' oral agreement, evidenced by defendant's maintenance and control of the Berwick Property, and the circumstances surrounding Louis's prior purchase of the Tremont Property. Accordingly, defendant contends the trial judge failed to reform the deed or declare him the sole owner of the property under other equitable principles. Defendant's contentions are unavailing.

II.

Our review of a trial judge's decision following a bench trial is limited by well-settled legal principles. Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011). "We are not to review the record from the point of view of how we would have decided the matter if we were the court of first instance." Sebring Assocs. v. Coyle, 347 N.J. Super. 414, 424 (App. Div. 2002). "Because a trial court 'hears the case, sees and observes the witnesses, [and] hears them testify,' it has a better perspective than a reviewing court in evaluating the

[3] Defendant does not appeal from the April 1, 2022 Chancery Division order denying his reconsideration motion.

veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (alteration in original) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)). For that reason, a trial court's findings of fact "should not be disturbed unless 'they are so wholly [u]nsupportable as to result in a denial of justice.'" Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974) (quoting Greenfield v. Dusseault, 60 N.J. Super. 436, 444 (App. Div.), aff'd o.b., 33 N.J. 78 (1960)). We owe no special deference, however, to a trial court's conclusions of law, which are reviewed de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Partition is an equitable remedy by which property, held by at least two people or entities as joint tenants or tenants in common, may be divided. Newman v. Chase, 70 N.J. 254, 260-61 (1976); see also N.J.S.A. 2A:56-1 to -44; R. 4:63-1. When property is subject to partition, a physical division of the property is one possible remedy. However, N.J.S.A. 2A:56-2 permits the court to direct the sale of real estate when partition "cannot be made without great prejudice to the owners, or persons interested therein." Further, "the 'manner in which property is effected' is within the discretion of the court." Greco v. Greco, 160 N.J. Super. 98, 102 (App. Div. 1978) (quoting Newman, 70 N.J. at 263).

Nonetheless, "the law favors partition in kind." Swartz v. Becker, 246 N.J. Super. 406, 412 (App. Div. 1991).

Reformation of a contract is justified only where there has been "mutual mistake or unilateral mistake by one party and fraud or unconscionable conduct by the other." St. Pius X House of Retreats, Salvatorian Fathers v. Diocese of Camden, 88 N.J. 571, 577 (1982); see also Dugan Constr. Co., Inc. v. N.J. Tpk. Auth., 398 N.J. Super. 229, 242-243 (App. Div. 2008). "The doctrine of mutual mistake applies when a 'mistake was mutual in that both parties were laboring under the same misapprehension as to a particular, essential fact.'" Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 608 (1989) (quoting Beachcomber Coins, Inc. v. Boskett, 166 N.J. Super. 442, 446 (App. Div. 1979)). The party seeking reformation must present "'clear and convincing proof' that the contract in its reformed, and not original, form is the one that the contracting parties understood and meant it to be." Cent. State Bank v. Hudik-Ross Co., 164 N.J. Super. 317, 323 (App. Div. 1978) (quoting Brodzinsky v. Pulek, 75 N.J. Super 40, 48 (App. Div. 1962)).

In the present matter, the Berwick Property deed was unambiguous, and the evidence presented at trial fell far short of clear and convincing proof that there was a mutual mistake of fact. Moreover, defendant disregards our

deferential standard of review, that a trial court's "[f]indings [of fact] . . . are considered binding on appeal when supported by adequate, substantial and credible evidence." Rova Farms Resort, Inc., 65 N.J. at 484. That standard does not permit our speculation about findings of fact the judge could have made had she weighed the evidence differently in this case. Having considered the evidence adduced at trial, we discern no basis to disturb the judge's findings.

In summary, the undisputed facts established plaintiffs and defendant were named on the Berwick Property deed as equal owners. Defendant's actions after the fact, including payment of the expenditures relating to the property, do not establish intent at the time of the deed's acceptance and are not relevant to the issues of ownership. However, Judge Alper considered that defendant played the dominant role in the purchase of the property and overwhelmingly contributed to its maintenance and operation. Accordingly, the judge determined defendant would not be left without a remedy; in a final accounting upon the sale the property, defendant will receive a majority share of any proceeds.

To the extent we have not addressed a particular argument, it is because either our disposition makes it unnecessary, or the argument is without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

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

CLERK OF THE APPELLATE DIVISION