NOT FOR PUBLICATION WITHOUT THE APPROVAL OF
THE COMMITTEE ON OPINION

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-168-22

ARTHUR SCHWARTZ,

Plaintiff,

v.

JESSE SCHWARTZ, and
ROBERT SCHWARTZ,

Defendants.

AMENDED OPINION

Decided: September 26, 2025.

Arthur Schwartz, plaintiff, pro se.

Jesse Schwartz, defendant, pro se.

Robert Schwartz, defendant, pro se.

Ansell Grimm & Aaron (Brian E. Ansell, Esq., appearing), court-appointed counsel for the purpose of selling the subject property.

Day Pitney LLP (Stephen R. Catanzaro, Esq., appearing), attorneys for intervenor T NJ Wall LLC.

FISHER, P.J.A.D. (t/a, retired on recall).

Three brothers – plaintiff Arthur Schwartz, and defendants Jesse and Robert Schwartz – seek partition of a Wall Township farm, which they inherited from their parents and which has been in their family for approximately 100 years. Other than taking steps necessary to keep the property within the farm assessment program, the parties have not otherwise operated the 100-acre farm for quite a while. Indeed, not one of the parties lives in the area; Jesse[1] resides in California, Robert in Arizona, and Arthur in Maryland, although for most of the time in question he resided in Louisiana.[2] In the three years this action has been pending – in fact, at least for two decades[3] – the parties' efforts to sell or divide the property have gotten them nowhere. They just can't agree. It has been, to borrow from the always quotable Judge Wilfred H. Jayne, a contest between "a strong will and a strong won't." See RKO Theatres v. Trenton-New Bruns.

[1] To avoid confusion, the parties will be referred to by their first names.

[2] Because of their distant domiciles, the trial was conducted remotely.

[3] The parties advised during their testimony of a partition action filed in this vicinage's Chancery Division many years earlier. They provided some anecdotal information about it in their testimony, including the name of the chancery judge who presided over it, which assists the court in concluding that that litigation occurred about twenty years ago. The parties agree that the judge at the time concluded the property could not be fairly or equitably divided into three pieces.

Theatres Co., 9 N.J. Super. 401, 407 (Ch. Div. 1950). Their inability to reach a consensus about how to divide, market or sell the property for these many years ultimately led to a trial on September 17 and 18, 2025; their intractability has resulted in their ceding to this court whether or how their property ought to be partitioned.

I

The circumstances that have led to the recent trial demonstrate how the court's ultimate conclusion about how to partition the property is the only sensible path forward. To explain, the court notes that soon after commencement of this action in November 2022, the parties agreed – probably the last time they agreed on anything – to the terms of a consent order. That order, entered by another judge on February 2, 2023, directed that the property be "sold forthwith"; the same order appointed Brian E. Ansell, Esq., of the prominent law firm of Ansell Grimm & Aaron, to collect all offers by February 17, 2023, after which Mr. Ansell would endeavor to obtain a consensus from the brothers about which offer to pursue and, failing that, recommend to and seek guidance from the court about how to proceed. Offers were received, the parties couldn't agree,[4]

[4] In fact, after attorney Ansell advised that eight offers had been timely received and were being reviewed by Michael V. Benedetto, Esq., of the Ansell firm, and that attempts would thereafter be made to get a consensus from the property owners as to how to proceed, Robert moved to halt the process until the parties

and the Ansell firm applied to the court for instructions. Other motions were filed and attorneys representing the parties were relieved; little or no progress was made until the court heard the Ansell motion for instructions on February 7, 2024. That motion featured the fact that two offerors were in a contest about which offer was the highest and best, and resolution of that dispute depended in part on whether the court would consider an offer made after the consent order's February 17, 2023 deadline. Because of the twelve months that had elapsed since the original offer/acceptance process, the court deemed it most equitable – as outlined in its February 12, 2024 opinion and order – to ignore the February 17, 2023 deadline and reopen the bidding process.

Following that, offers from those two competing bidders as well as others were submitted, and the parties entered into the contract they deemed the most advantageous. That buyer, however, eventually terminated the contract, apparently because its understanding of what could be built on the property did not align with its expectations; the parties never questioned or challenged the prospective buyer's cancellation.

Following the failed attempt to sell to that prospective buyer, it became apparent from discussions during later case management conferences that the

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could get "full disclosure" of the Ansell firm's fees and have those fees "rolled back" to February 21, 2023. The bloom was already off the February 2 rose.

direction in the February 2, 2023 order to "s[ell] forthwith" the property wasn't sufficiently clear. In seeking clarification, Mr. Benedetto described the various ways the property might be sold; for example, it could be sold "as is," or a sale could be made contingent on the buyer being able to obtain approvals necessary for development. Obviously, some form of the latter would generate a higher purchase price than the former. But the latter would also be more time consuming and would not provide the certainty and expediency of the former. During those discussions, it became readily apparent that the three brothers were not in agreement about any single approach. Indeed, one brother was then urging that the property be physically divided into three pieces.

Recognizing that the court could not render the clarification the Ansell firm sought without a trial at which the parties would have the opportunity to provide testimony and evidence to support their views about how to partition the property, the court allowed for one last "college try" and encouraged the parties to come to a consensus even though what was said during those conferences revealed an amicable resolution was highly unlikely. Not surprisingly, the parties failed to resolve their differences, and a trial was scheduled to occur in June 2025.

In February 2025, Arthur contracted to sell his interest in the property to T NJ Wall LLC. Because of that, TNJ was permitted to intervene[5]; that caused an adjournment of the trial, which eventually occurred on September 17 and 18, 2025.

II

At trial, the court heard the testimony of Arthur, Robert, and Jesse, and TNJ's Zachary Campbell. The brothers provided testimony about their preferences. TNJ's representative testified about the nature of the property and how there is no likelihood the property could be developed to yield the 300 marketable units assumed possible by past offerors. He also testified that further difficulties were presented because the sewer lines do not reach the entirety of the area where development could occur, requiring further action and delays if a conditional sale was pursued. The court called as its witness, Michael V. Benedetto, Esq., who testified about the various ways in which the property might be marketed and sold if the sale were conditional; he provided insight into the time required and the likelihood of repeated court intervention due to the unpredictability of the results of governmental applications in seeking approvals that could further result in an unraveling of the transaction, depending on how

[5] Jesse's recent motion to enjoin a closing of that transaction – that has yet to occur but apparently is imminent – was denied on September 12, 2025.

the contract was structured. Mr. Benedetto also testified about the manner in which the property could be sold "as is" via an auction or auction-type proceeding.

Despite the looseness of the trial proceedings – because it was conducted virtually for the convenience of the out-of-state brothers and because the three brothers are not attorneys and had opted to represent themselves – the record will nevertheless reflect that all parties were allowed to present whatever testimony they liked – relevant or not – and were allowed the right to cross-examine. The court heard their arguments at the beginning and end of the case, and sporadically during the course of the trial. Only one exhibit was presented ("Robert-1"), which was never moved into evidence but which the court now admits.[6]

III

Prior to discussing the testimony and evidence, and prior to the rendering of the court's factual findings, it is appropriate to describe the applicable legal and equitable principles, even though no great explanation is warranted. It

[6] In that document, Robert expressed the dozen or so conditions he believed should be imposed on any future transaction. Robert also submitted on September 25, 2025, a letter dated September 21, 2025, well after the record was closed and while the court's ruling was under consideration. The court has read and considered that letter as well even though it seems somewhat repetitious of the testimony and Robert-1.

suffices to mention that our courts are fully empowered to partition jointly-owned property. That power is well established in the common law, Newman v. Chase, 70 N.J. 254, 263 (1976), and by legislation, N.J.S.A. 2A:56-2.[7] Once evidence suggests grounds for partition, as here, the court must determine whether partition can be ordered "without great prejudice to the owners." Ibid. Courts should initially attempt to divide property in kind; failing that, a court may direct a sale and then equitably divide the proceeds. See, e.g., Swartz v. Becker, 246 N.J. Super. 406, 412-13 (App. Div. 1991); see also Mitchell v. Oksienik, 380 N.J. Super. 119, 128 (App. Div. 2005). That division may also allow for credits to a joint owner when necessary to achieve an equitable resolution, see Newman, 70 N.J. at 263; Swartz v. Becker, 246 N.J. Super. at 412-13; Woolston v. Pullen, 88 N.J. Eq. 35, 40 (Ch. 1917), because equity, after all, is equality, see Smith v. Whitman, 39 N.J. 397, 402 (1963). In the final analysis, the court must "not act ministerially and in obedience to the call of those who have a right to the partition"; instead, a court of equity must act "according to its own notions of general justice and equity between the parties."

[7] Last month, Governor Murphy signed into law the Uniform Partition of Heirs Property Act, which provides a detailed mechanism for adjudicating such disputes. That Act, however, does not apply to any action pending when this new law was enacted, see L. 2025, c. 88, ¶ 13 (enacted August 7, 2025), and, thus, has no application here.

Woolston, 88 N.J. Eq. at 40 (emphasis added) (quoted with approval in Newman, 70 N.J. at 263).[8]

Little need be said about the burden of persuasion. There is no dispute that the circumstances at hand warrant a decree of partition; no one has argued the outcome of this case ought to be retention of the status quo, although as noted in the margin below, see n.8, the court is empowered to deny all relief sought if that should be the most equitable outcome. And, while, as observed earlier, a division in kind is always the preferred manner of partition, no one argued at trial, despite pretrial overtures, that this farm can be physically divided into three pieces in a fair and equitable way. Indeed, to the extent one might interpret any of the arguments of the unrepresented litigants to suggest such a demand, no plan for a physical division has been offered. No one provided so much as a map or drawing of the grounds; the court has only received verbal descriptions. The testimony reveals, without contradiction, that seventy percent of the property is wooded, that there are wetlands somewhere on the property, and that only part of the useable tract is presently serviced by existing sewer/sanitation lines. The

[8] This broad description of the power to partition should be understood as also allowing a court of equity the discretion to deny relief, as the court recognized in Baker v. Drabik, 224 N.J. Super. 603, 609 (App. Div. 1988) (holding that "[t]he remedy of partition is not necessarily available as a matter of right in all cases"). Nevertheless, because the evidence revealed a longstanding impasse about this property, the court concludes partition is warranted and, in fact, long overdue.

proofs do not demonstrate – let alone provide enough illumination by which the court might even hazard a guess – about where boundary lines might be drawn to allow the three parties to share equally in both the marketable and unmarketable parts of the farm. No testimony from an engineer or surveyor has been elicited.

Additionally, there is no doubt that Arthur – the only party who seems to be seeking a credit for the time and expenses he incurred to maintain the property – must show by a preponderance of the evidence whether or to what extent he is entitled to such an award. This means Arthur was required to establish that he was more likely entitled to such an award as not. See Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006).

IV

In explaining the decree that must issue in this case, the past is certainly prologue. While providing little information about it, the parties agree an earlier partition action was heard and decided by the late Judge Alexander D. Lehrer, necessarily dating that suit back approximately twenty years. That action, according to the parties, resulted in a decision that the property could not be physically partitioned, certainly a sound conclusion. The action at hand was commenced in November 2022, and for nearly three years the parties – with the sole exception of the February 2, 2023 consent order – have been unable to agree

on anything constructive about how to partition the property. Disputation for decades.

And so, keeping in mind the legal and equitable principles described above, as well as the brothers' longstanding impasse about how to divide their property, while further recognizing the only feasible and sensible manner of partitioning the property would be by sale and an appropriate division of the proceeds, the central issue to be decided concerns how the property should be sold.

Recognizing – and finding based on their testimony – that the parties will be unable to agree[9] now or in the future[10] about any marketing or transaction

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[9] The court should note that Robert stated in his testimony that the testamentary conveyance of the property to the three brothers required that further use or disposition of the property would be governed by the wishes of two out of the three brothers – majority rule. He asserts this as a basis for allowing a result based on whatever two brothers might agree on. The court rejects this for two chief reasons. First, Robert has offered nothing other than his statements to that effect; if a parent's will or some other documentary evidence existed to support that two-thirds rule, it should have been presented at trial. But, more importantly, Arthur has sold his interest and, should that transaction close, Arthur's view of what should be done with the interests held by Robert and Jesse becomes irrelevant. If the court is left to consider what Robert and Jesse want to do with their share of the property, there can be no majority if there is a disagreement between them. A majority consists of more than half, not just half. See Black's Law Dictionary (8th ed. 2004) 974; Arnold v. Eastern Air Lines, 712 F.2d 899, 905-06 (4th Cir. 1983).

[10] Considering that Arthur is likely to have no further interest in the outcome of any disposition of Robert's and Jesse's interests – because Arthur will soon be conveying his interest to TNJ unless for some reason that transaction does not

that is dependent on the outcome of approval applications and the meeting of conditions over a course of years, the court would – in calling for partition through such a sale – necessarily remain immersed in additional proceedings generated by continuing disagreements and uncertainties. Because of these vagaries,[11] the court necessarily adds to the calculus utilized to decide how to partition the property whether it is appropriate for the court to remain engaged with these parties in this transaction for the next few years and commit to shepherding a transaction subject to conditions, attempt to resolve difficulties along the way, and potentially face picking up again where we are now if a buyer in a conditional sale should ultimately abort its transaction.

In short, choosing an option that might result in the most compensation for the property owners, would not provide finality or a cessation of litigation, it would merely move the impasse on to the next plateau. Such an approach would necessarily require this court's involvement for years to come.

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close or the contract is terminated – it still would appear likely that the remaining brothers will not agree on a way forward, let a way that would not require constant revisitation through time-consuming and uncertain processes outside the court's control.

[11] The amount of marketable units that can be built on the property is not entirely clear, as revealed in the credible testimony of both Michael V. Benedetto, Esq., and Zachary Campbell, TNJ's principal, who spoke about the wetlands, the inaccessibility of a good portion of the property to the sewer lines, and how development would not likely yield anywhere near 300 marketable units as seems to have been the earlier expectations of other prospective buyers.

Considering the court has already been involved for nearly three years in this suit, and this suit followed an earlier suit that did not resolve the parties' differences, a conditional sale does not provide a salutary resolution. There comes a point in time when a court must utilize its equitable discretion to either withhold a remedy or at least narrowly tailor it to avoid the court's "continuing and constant superintendence over a considerable period of time." Fleischer v. James Drug Stores, 1 N.J. 138, 148 (1948).[12] Application of this notion does not derive from a lack of jurisdiction; the need to tailor a remedy to avoid constant court supervision over an indefinite period is derived instead from equity's desire to provide a practical and performable solution, not a vain or ineffective decree. See Fiedler, Inc. v. Coast Finance Co., Inc., 129 N.J. Eq. 161, 168-69 (E. & A. 1941) (observing that decrees that might prove to be impractical or nugatory "should not be made"); see also Kalogeras v. 239 Broad Ave., L.L.C., 202 N.J. 349, 361-62 (2010) (recognizing that equity's refusal to compel performance of a sale of a liquor license is "firmly moored in practicality"); Silverman v. Berkson, 141 N.J. 412, 429-30 (1995) (holding that issuance of an

[12] The court should also be sensitive to its overriding obligation to ensure the fair and efficient administration of justice not just for these parties but others as well. See, e.g., Parker v. City of Trenton, 382 N.J. Super. 454, 458 (App. Div. 2006). A remedy that would generate a need for continued supervision and revision would necessarily draw the court's attention away from other litigants.

unenforceable out-of-state subpoena should not be compelled because a court of equity will not order performance of "a useless or vain thing").

And, so, this court will not issue a judgment that would necessitate the court's continued involvement in the property's disposition for years to come with the potential that the time and energy so invested may only lead back to where we started. The only effective remedy is that described by Mr. Benedetto in his credible and persuasive testimony; a remedy that, in essence, calls for an auction of Robert's and Jesse's interest (and Arthur's as well if his transaction with TNJ is not soon closed) in the property "as is." A brief period of time – to allow prospective buyers an opportunity to make inquiry about what they would be bidding on and to allow reasonable time for Arthur's agreement with TNJ to close if it is actually going to close[13] – should precede this auction or bidding process. Conditions for a sale in this fashion may also be imposed. For example, the high bidder should certainly be obligated to immediately provide a minimum deposit, a minimum sale price should be set in advance, and there should be a limited and short time period in which the balance of the highest bid should be paid. Other conditions may also be imposed; in all those matters, the court will

[13] If that transaction closes prior to the auction or bidding process, then the process will only call for the sale of Robert's and Jesse's interests. If, however, the Arthur-TNJ transaction is terminated by then or does not close by then, the auction or bidding process will include Arthur/TNJ's interest as well.

consider any recommendations suggested by Mr. Ansell, who will, if he consents, continue in the role bestowed on him by the February 2, 2023 order.[14]

V

The court's judgment will also call for an equal division of the proceeds, but with further provision for Arthur's entitlement to his brothers' share of the time and expense Arthur invested in maintaining the property's inclusion in the farm assessment program for the past couple of decades, to which the court now turns. To be sure, other than Arthur's testimony about how often he traveled to the property from his Louisiana home over all those years and his general description of what he did on those occasions, the court was given scant evidence upon which to quantify this claim. The court observes, however, that other than Robert's testimony or argument that Arthur's claim should be rejected because he failed to prove the existence of a written contract authorizing such compensation, no one disputed that Arthur took the actions he described.

Neither legal nor equitable principles support Robert's argument. The brothers knew Arthur was taking these steps; equity and good conscience obligate them to share in the cost of the property's maintenance, particularly when there is no evidence that either other brother ever volunteered their time

[14] The Ansell firm should also include in any proposed amended judgment, if it deems appropriate, a provision for the appointment of an auctioneer or other similar professional, and, if so, to recommend who it is that should be appointed.

and money as did Arthur. A court of equity may provide a remedy despite the absence of some formal, written agreement to support such a claim. See Baker, 224 N.J. Super. at 609-11; see also Estevez v. Estevez, 341 N.J. Super. 197, 201-02 (App. Div. 2001). This principle of owelty, see Leonard v. Leonard, 124 N.J. Super. 439, 442-43 (App. Div. 1973), is not dependent on the formalities on which Robert insists.

The court also agrees with Arthur when he described as conservative his estimate of the cost of his efforts on behalf of the jointly-owned property for all those years. The court awards to Arthur a credit for his time, efforts, and expenses, of $1,000 per trip to New Jersey; the court further finds Arthur traveled here twice a year for a period of twenty years on behalf of himself and his brothers. That outlay totals $40,000. Arthur is entitled to have Robert and Jesse each pay to him their one-third shares of that amount from the sale proceeds.

VI

With that the court turns to a dispute about whether Arthur has some liability to Jesse – or whether Arthur is entitled to damages because of Jesse's allegations or statements – about Jesse apparently paying $1,000 to some non-party for the loss of this non-party's camera or cameras that had been placed on the property. To explain, Arthur testified that while plowing or doing other work

on the property a while back he noticed one or more cameras placed in trees on the property. He testified that he called police, and a responding officer advised him that someone had been using the property for hunting or that this person had allowed, for a price, others to hunt on the property; the surveillance cameras were apparently placed on the property by this other person for that purpose. Because there is no evidence that any of the brothers had given permission to the camera owner to use their property, Arthur quite rightly removed the cameras. Arthur later apparently could understandably not be bothered, when a request was made by the camera owner, to arrange for the return of the cameras. It appears from the scant testimony about this entire episode that Jesse paid to the camera owner $1,000 and now apparently seeks Arthur's compensation to him for that amount; Arthur, in response, seems to seek tort damages from Jesse because of Jesse's allegations about this incident. The court finds no basis to grant either Arthur or Jesse any relief from the other about these events. If Jesse paid $1,000 to the camera owner, he did so voluntarily; there is no evidence to suggest that Jesse was obligated to make such a payment and thus his actions in that regard were not performed on behalf of Arthur or Robert or both. In addition, the court can see no damage to Arthur for Jesse having made allegations or contentions about these events, even if those allegations were, as they seem to the court, unsupported and misguided.

VII

Lastly, the court is mindful of the complaints and accusations made by the three brothers in varying degrees about the expense they may ultimately have to bear because of the Ansell firm's involvement. The parties will certainly have an opportunity to challenge the compensation the Ansell firm may seek in this matter when the time comes. In fact, today's judgment contains provisions about when the Ansell firm's application for interim compensation must be submitted, as well as a deadline within which the parties may respond to the request. After receiving those submissions, the court will assess the compensation that is due. But, as for the broader yet unspecified allegations hurled at the Ansell firm by some of the brothers during their testimony, the court has no hesitancy in concluding that these parties have not presented a scintilla of evidence that would cause this court to question the firm's involvement to date or to generate any hesitancy about continuing the Ansell firm's involvement in these proceedings until partition is concluded. Brian E. Ansell, Esq., Michael V. Benedetto, Esq., and the Ansell firm itself, have done nothing except reconfirm the court's great confidence in them, and they have demonstrated throughout these proceedings why they are worthy of the high regard and esteem they have been held in for many years by the bench, the bar, and the community itself.

* * *

A judgment of partition has been entered in accordance with these findings. As the judgment indicates, the Ansell firm may submit a proposed amended judgment, under the five-day rule, that provides greater detail about the manner in which the property will be disposed that is in conformity with the letter and spirit of this opinion. For these reasons, as well as the fact that the court has yet to adjudicate the compensation to which the Ansell firm is entitled, the judgment entered today should not be understood to be a final, appealable judgment within the meaning of Rule 2:2-3(a)(1).