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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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Damon Stephens

v.

Michael F. Claridy

**Appeal from Madison Circuit Court
(CV-17-901604)**

SELLERS, Justice.

Damon Stephens appeals from a judgment of the Madison Circuit Court ordering that certain property located on Old Railroad Bed Road in

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Toney, consisting of approximately 7.82 acres ("the property"), be partitioned by sale, pursuant to the Alabama Uniform Partition of Heirs Property Act ("the Heirs Act"), § 35-6A-1 et seq., Ala. Code 1975.¹ We affirm.

Facts

This appeal involves whether, under the Heirs Act, the property is susceptible to partition in kind or whether, as determined by the circuit court, it must be partitioned by sale.² Pursuant to the Heirs Act, if a court determines that property is heirs property, see § 35-6A-2(5), Ala. Code 1975, the court can, after determining the fair market value of the property, order the division of the heirs property by partition in kind or by partition by sale. The Heirs Act presumes that a partition in kind can be

¹The Heirs Act, effective April 7, 2014, applies to partition actions commenced on or after January 1, 2015. § 35-6A-3, Ala. Code 1975. The Heirs Act defines "heirs property" as "[r]eal property held in tenancy in common which satisfies [certain specified] requirements." § 35-6A-2(5), Ala. Code 1975.

²"Partition in kind" is defined as "[t]he division of heirs property into physically distinct and separately titled parcels." § 35-6A-2(7), Ala. Code 1975. "Partition by sale" is defined as a "court-ordered sale of the entire heirs property, whether by auction, sealed bids, or open market sale conducted under § 35-6A-10[, Ala. Code 1975]." § 35-6A-2(6).

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ordered unless such a partition would "result in great prejudice to the cotenants." § 35-6A-8(a), Ala. Code 1975. If heirs property cannot be partitioned in kind, then a partition by sale must be ordered pursuant to § 35-6A-10, Ala. Code 1975.

In September 2017, Michael F. Claridy filed a complaint to quiet title to the property and requested that the circuit court partition the property by sale on the basis that the property could not be equitably divided or partitioned in kind. Following an initial hearing, the circuit court determined that the property was heirs property governed by the Heirs Act. Specifically, the court determined that the property has been in the Riddle family since 1944. Claude Riddle and Mary G. Riddle initially owned the property. Claude died first, and Mary died intestate in 2000, so title to the property vested equally in their children: Jimmie C. Riddle, Billy Riddle, and Bobby Riddle. Jimmie died in 2005. After several conveyances and reconveyances, Billy held title to a two-thirds interest in the property, which he conveyed to Claridy in 2017. Bobby conveyed half of his one-third interest in the property to Stephens in 2019, and Stephens was subsequently added as a party to the action. Thus, the

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circuit court declared that Claridy owned an undivided two-thirds interest in the property and that Stephens and Bobby owned an undivided one-third interest as joint tenants with the right of survivorship.

After establishing that the property was governed by the Heirs Act, the circuit court adopted an appraisal indicating that the fair market value of the property was \$140,000. See § 35-6A-6, Ala. Code 1975 (requiring a circuit court to order an appraisal of the property at issue before determining how to partition the property). According to the appraisal, there are several structures located on the property, including a house that Bobby personally built, valued at \$44,100; a freestanding carport located at or near Bobby's house, valued at \$2,000; and a house in which Bobby's parents, Claude and Mary, lived before their deaths, valued at \$7,200 ("the original house"). The appraisal also indicated that the land alone was valued at \$86,700, with an average value of \$11,087 per acre. Based on the fair market value of the property, the circuit court, pursuant to § 35-6A-7(e), Ala. Code 1975, allowed Stephens and Bobby 30

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days in which to elect to buy Claridy's two-thirds interest in the property.³

Neither Bobby nor Stevens elected to buy Claridy's interest in the property; thus, the circuit court conducted a bench trial to determine whether a partition in kind or a partition by sale was appropriate under the Heirs Act.

During the trial, the circuit court heard testimony from Bobby, Claridy, and Stephens; the court also considered depositions and other evidentiary materials. The evidence indicates that Bobby began living in a camper-trailer on the property in approximately 1972; that, over the years, he converted the camper-trailer into a house; and that he continued to make improvements to the house until approximately 2002. Bobby does not have independent water and septic lines running to his house. Rather, his house uses the water and septic lines running to the original house.

³Section 35-6A-7(e) provides, in pertinent part:

"If any cotenant, including the petitioner, has requested partition by sale, after the determination of value under Section 35-6A-6[, Ala. Code 1975], the court shall send notice to the parties that any cotenant except a cotenant that requested partition by sale may buy all the interests of the cotenants that requested partition by sale."

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Bobby also stated that he had made improvements to the original house. Bobby testified that no one in his family ever objected to his building the house on the property or making improvements thereto. Bobby stated that he had been the caretaker of the property from 2000 until 2015 and that he had paid the taxes on the property during that time. He indicated that he did not know who had paid the property taxes after 2015. Bobby finally stated that he has a sentimental attachment to the property because he has always lived there. As indicated, Claridy acquired his interest in the property in 2017. Although Claridy is related to the Riddles and has visited the property since his youth, he has never lived on the property and indicated that he had no intentions of doing so. Claridy stated that he had paid the taxes on the property for the past three years. Stephens acquired his interest in the property in 2019; he has neither lived on the property nor paid taxes on the property. Stephens testified that, as a teenager, i.e., from approximately the mid-1980s until the early 1990s, he lived with his mother, who is now deceased, in Bobby's house. Bobby and Stephens's mother were in a relationship for a long period, but

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they never married. Stephens stated that, when he had lived with his mother and Bobby, he had helped Bobby build additions to Bobby's house.

After hearing the testimony and considering the evidentiary materials, the circuit-court judge personally viewed the property. The circuit court indicated in its judgment that the property was overgrown and that the buildings on it were dilapidated; that Bobby had failed to maintain the buildings in good working order; that the roof of the original house was falling in; that Bobby's house did not have independent water or septic lines running to it; that there was a large hole on approximately three acres of the property negatively impacting the potential use of those acres; and that the differences in terrain, elevation, and condition of the property rendered some of the property to be of significantly lower value than the rest of the property. Based on the testimony, the evidentiary materials, and the judge's personal observation of the property, the circuit court concluded that there was no method by which the property could be partitioned in kind to adequately preserve each cotenant's interest in the property. Accordingly, the circuit court entered a detailed judgment

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ordering that the property be partitioned by sale via public auction, pursuant to § 35-6A-10. Stephens appealed; however, Bobby did not.

Standard of Review

"The ore tenus rule affords a presumption of correctness to a trial court's findings of fact based on ore tenus evidence, and the judgment based on those findings will not be disturbed unless those findings are clearly erroneous and against the great weight of the evidence. Reed v. Board of Trs. for Alabama State Univ., 778 So. 2d 791, 795 (Ala. 2000). It is grounded upon the principle that when a trial court hears oral testimony it has an opportunity to evaluate the demeanor and credibility of the witnesses. Hall v. Mazzone, 486 So. 2d 408, 410 (Ala. 1986). The ore tenus rule does not cloak a trial court's conclusions of law or the application of the law to the facts with a presumption of correctness. Kennedy v. Boles Invs., Inc., 53 So. 3d 60 (Ala. 2010)."

Allsopp v. Bolding, 86 So. 3d 952, 958 (Ala. 2011).

Discussion

The main issue on appeal is whether the circuit court erred in holding that the property was incapable of being partitioned in kind, thus warranting a partition by sale. Section 35-6A-8(a) provides, in relevant part, that,

"[i]f all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 35-6A-7[, Ala. Code 1975], ... the court shall order

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partition in kind unless the court, after consideration of the factors listed in Section 35-6A-9[, Ala. Code 1975], finds that partition in kind will result in great prejudice to the cotenants."

(Emphasis added.)

In determining whether a partition in kind will result in "great prejudice" to the cotenants, a court is required to consider all the factors stated in § 35-6A-9(a), Ala. Code 1975:

"(1) Whether the heirs property practicably can be divided among the cotenants.

"(2) Whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur.

"(3) Evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other.

"(4) A cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant.

"(5) The lawful use being made of the property by a cotenant and the degree to which the cotenant would be

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harmed if the cotenant could not continue the same use of the property.

"(6) The degree to which the cotenants have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property.

"(7) Any other relevant factor."

Additionally, § 35-6A-9(b) provides that "[t]he court may not consider any one factor ... to be dispositive without weighing the totality of all relevant factors and circumstances." Stephens contends that the circuit court erred by ordering a partition by sale because, he says, the court considered only the second factor in its analysis. He asserts that the circuit court provided no discussion of the other factors and provided no analysis regarding whether any particular cotenant would be greatly prejudiced by a partition in kind. Contrary to Stephens's assertions, § 35-6A-9 does not require a circuit court to provide a detailed written analysis of each factor, nor does it require a written analysis regarding whether a partition in kind would result in great prejudice to any particular cotenant. Rather, § 35-6A-9 requires only that the court consider all the

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factors and weigh the relevant factors accordingly in light of the evidence or circumstances presented. In this case, the circuit court entered a detailed judgment, noting that it had "considered and reviewed all of the evidence in [the] case, as well as, the factors [set out in § 35-6A-9(a)] to determine if a partition in kind will result in great prejudice to the cotenants." The circuit court then indicated that the property "was in disrepair and any partition of the property would decrease the value of the property 'in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole.' [§ 35-6A-9(a)(2)]." Although the circuit court "quoted" only the second factor, that does not imply that the court considered only that factor to the exclusion of all others. Rather, given the extensive details contained in the circuit court's judgment, it is clear that the court considered all the factors but accorded the second factor more weight given the evidence presented regarding the use and quality of the property. As indicated, the judge personally visited the property and observed that it was overgrown and that the buildings on it were dilapidated, that it had not been properly maintained, that there was

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a large hole on approximately three acres negatively impacting the potential use of those acres, and that the differences in terrain, elevation, and condition of the property rendered some of the property to be of a significantly lower value than the rest of the property. In addition, the circuit court heard evidence implicating the other factors, including evidence regarding the degree to which the cotenants had contributed to the payment of property taxes, their upkeep and maintenance of the property, and their sentimental attachments to the property. Being mindful that the circuit court received oral testimony, considered evidentiary materials, personally inspected the property, and entered a thorough judgment containing its findings, we find no error in the circuit court's judgment ordering a partition by sale. "A trial court's finding that land cannot be equitably partitioned is entitled to a presumption of correctness and will be overturned only if plainly or palpably erroneous." Black v. Stimpson, 602 So. 2d 368, 370 (Ala. 1992)(citing Moore v. McNider, 551 So. 2d 1028 (Ala.1989)).

Stephens also argues that the circuit court erred by failing to award an equitable lien "to Bobby and Stephens for the improvements Bobby

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and, by extension, Stephens, made to the property," specifically the construction of Bobby's house, valued at \$44,100. As indicated, Stephens testified that, from approximately the mid-1980s to the early 1990s, he lived with his mother, who is now deceased, in Bobby's house. Stephens stated that, during that time, he helped Bobby build additions to the house. It is undisputed that Bobby built the house on the property and that he continued to make improvements to the house until approximately 2002. Stephens, however, did not acquire any interest in the property, i.e., including the house, until 2019. In contravention of Rule 28, Ala. R. App. P., Stephens has not cited any authority for the proposition that he is entitled to an equitable lien "by extension" or that he possesses any right to make arguments on behalf of Bobby, who is not a party to this appeal. Accordingly, Stephens has failed to provide a valid reason supported by legal authority for reversing the circuit court's judgment insofar as it failed to award an equitable lien in favor of Stephens or Bobby.

Conclusion

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For the above-stated reasons, the judgment of the circuit court ordering a partition of the property by sale pursuant to the Heirs Act is affirmed.

AFFIRMED.

Bolin, Shaw, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ.,
concur.

Parker, C.J., dissents.