

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2008-417

MAR 5 2009

MARCH TERM, 2009

Miriam R. Levin, Margaret Grundstein and
Leon D. Grundstein

v.

Robert Grundstein

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APPEALED FROM:

Lamoille Superior Court

DOCKET NO. 148-8-05 Lecv

Trial Judge: Christina C. Reiss

In the above-entitled cause, the Clerk will enter:

In this partition action, defendant appeals the superior court's order restraining him from interfering with plaintiffs' sale of the subject property. We affirm.

Defendant and the three plaintiffs are siblings who inherited a lakefront camp that became the subject of a partition action. In relevant part, the superior court's August 3, 2007 partition order stated as follows:

(A) The Lake Eden camp property will be wholly assigned to Defendant Robert H. Grundstein, on condition that he pay to each Plaintiff the separate sum of **\$25,000** as his or her respective share in the property, no later than June 1, 2008. 12 V.S.A. § 5174. . . . Until that transfer and conveyance occurs, all parties shall remain obligated to pay all expenses of the property . . . in strict conformance with their respective [one-quarter] share(s) of the property

(B) If payment is not made in full as set forth above, then the property shall be put up for public, or private sale. 12 V.S.A. § 5175. Plaintiffs, as the [three-quarter] majority of the co-tenants, may amongst themselves unanimously agree, in writing, to such conditions of sale as they deem reasonable and necessary. . . .

The final judgment, issued the same day, stated that "[a]ll right, title and interest in and to the subject real property is hereby assigned and conveyed solely to Defendant Robert H. Grundstein; and all right, title and interest in the subject real property of [plaintiffs] is hereby extinguished, all subject to the terms and provisions of" the court's August 3 order issued the same day.

Defendant did not pay the money as ordered, and plaintiffs attempted to sell the property pursuant to the August 3 order. When defendant interfered, plaintiffs sought injunctive relief enforcing the order. Following a hearing, the superior court ordered defendant to vacate the


property and not interfere with plaintiffs' sale of the property. Defendant appeals, arguing that the August 3 order and final judgment gave him a fee simple right to the property subject to plaintiffs' lien, and that plaintiffs could extinguish his right only through foreclosure proceedings.

We find no merit to this argument. This is not an action in equity, as defendant claims, but rather a statutory partition action. As permitted by statute, the court assigned the property to one of the parties "provided he pays to the other part[ies] such sum of money, at such times and in such manner" as is equitable. 12 V.S.A. § 5174. The court's final judgment plainly stated that its assignment was subject to the provisions of the order entered the same day, which plainly stated that (1) the assignment was conditioned on payment of the money by the designated time; (2) the transfer would not occur until then; and (3) in the event payment was not made in full, plaintiffs were to sell the property. That order was proper under the statute, which requires sale of the property if a party being assigned the property does not pay the required sum. 12 V.S.A. § 5175; see Taran v. Vt. Structural Slate Co., 139 Vt. 441, 443 (1981) ("[W]here the statutory requirements of a partition sale are met, a sale becomes a matter of right."). Further, the superior court did not err by enjoining defendant from interfering with the sale of the property pursuant to its earlier order. Nothing in our law requires plaintiffs to go through foreclosure proceedings to obtain property that was already theirs and that a previous court order allowed them to sell under the circumstances. By the plain terms of the August 3 order, defendant did not obtain a fee simple interest in the property he owned with his siblings as co-tenants, without first having paid the money required to obtain such an interest.

Defendant also argues that plaintiffs could not obtain equitable relief because of the "unclean hands" of one of the siblings, whom defendant claims illegally removed funds from the living will of the parties' now-deceased mother. As noted above, this is a statutory, not an equitable, action. See Wilk v. Wilk, 173 Vt. 343, 345 (2002) (noting that partition by sale is purely statutory remedy). Defendant's claims in this regard, which apparently have been raised in another lawsuit in Washington state, have nothing to do with the partition action before us here.*

Affirmed.

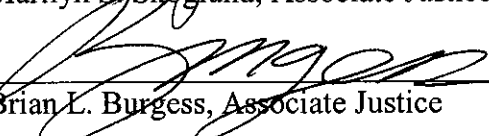
BY THE COURT:



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice

* In light of this decision on the merits, we do not address plaintiffs' motion to dismiss the appeal.