Third District Court of Appeal

State of Florida

Opinion filed October 21, 2026.
Not final until disposition of timely filed motion for rehearing.

No. 3D25-0823
Lower Tribunal No. 20-23756-CA-01

Norma Dominguez, et al.,
Appellants/Cross-Appellees,

vs.

Nancy Suarez,
Appellee/Cross-Appellant.

An Appeal from the Circuit Court for Miami-Dade County, Vivianne V. del Rio, Judge.

The Law Offices of Erik B. Espinosa, P.A., and Erik B. Espinosa, for appellants/cross-appellees.

DE MELLO LAW, INC., and Julieta Gomez de Mello, for appellee/cross-appellant.

Before GORDO, LOBREE and GOODEN, JJ.

GORDO, J.

ON MOTION FOR REHEARING AND CLARIFICATION

We deny the motion for rehearing and clarification but withdraw our previous opinion and substitute the following opinion in its stead.

In this partition action, the parties each own an undivided one-third interest in the subject property—an indivisible single-family home—as joint tenants with rights of survivorship pursuant to a 2013 deed. The trial court denied partition following a non-jury trial and instead required Appellee to obtain a reverse mortgage for the maximum available amount, pay the net proceeds equally to both Appellants and execute a deed reserving to herself an enhanced life estate with remainder to the Appellants. The order contained no findings of manifest injustice, fraud or oppression.

Partition actions are equitable in nature. As such, decisions made by the trial court are reviewed for abuse of discretion. See Lee v. Lee, 352 So. 3d 420, 432 (Fla. 2d DCA 2022) ("We review the partition court's order for an abuse of discretion."). However, the trial court's legal conclusions and application of Chapter 64's statutory framework to undisputed facts are reviewed de novo. See Parisi v. de Kingston, 357 So. 3d 1254, 1257 (Fla. 3d DCA 2023) ("A trial court's legal conclusions and interpretation of a statute are reviewed de novo."); Faller v. Faller,

51 So. 3d 1235, 1236 (Fla. 2d DCA 2011) ("We review the trial court's application of law to undisputed facts de novo.").

Partition is a matter of right for co-owners of indivisible property. See § 64.051, Fla. Stat. (2026) ("The court shall adjudge the rights and interests of the parties, and that partition be made if it appears that the parties are entitled to it."); Bucacci v. Boutin, 933 So. 2d 580, 584 (Fla. 3d DCA 2006) ("Partition in Florida is governed by [Chapter 64]. The general rule is that partition is a matter of right." (citation omitted)); Caruso v. Plunk, 574 So. 2d 1230, 1230 (Fla. 5th DCA 1991) ("Partition is a matter of right for tenants in common." (citation omitted)).

The Florida Supreme Court has held that lower courts have the discretion to refuse partition but has emphasized that courts should exercise such discretion only in extreme cases or where manifest injustice, fraud or oppression will result if the partition is granted. See Condrey v. Condrey, 92 So. 2d 423, 427 (Fla. 1957) ("[A] court of equity has the right in its discretion to refuse to grant [partition]. But . . . litigants should be wary of relying on the expectation that the court will so exercise its discretion, since it should be so exercised only in extreme cases or where manifest injustice, fraud or oppression will result if partition is granted." (citation omitted)). Here, Appellee failed to establish the extreme circumstances, manifest injustice,

fraud or oppression required for a court to properly refuse the general right to partition.

Further, the creative remedy fashioned by the trial court—a reverse mortgage with an enhanced life estate—was never requested in any pleading. See Butler v. Brown, 338 So. 3d 392, 393 (Fla. 5th DCA 2022) ("[C]ourts are not authorized to award relief not requested in the pleadings . . . [t]o grant unrequested relief is an abuse of discretion . . . and reversible error." (citation omitted)); Bank of Am., N.A. v. Nash, 200 So. 3d 131, 135 (Fla. 5th DCA 2016) (citing Fla. R. Civ. P. 1.100(a)) ("Pleadings sufficient to invoke a court's jurisdiction, according to the rules of civil procedure, include a complaint, petition, counterclaim, crossclaim, and a third-party complaint."); Morrison v. Smolarick, 334 So. 3d 675, 677 (Fla. 2d DCA 2022) ("Partition is achieved by ordering the physical division of the property or, if indivisible, by sale after which the proceeds are divided . . . . Neither the statute nor the case law provides for [a remedy outside of those outcomes] . . . . [E]ither the property is divided or, if it cannot be divided, the funds from its sale are divided.").

The court's order also failed to take into account appreciation of the property and proportionate expenses. This too was error. See Fernandez v.Marrero, 282 So. 3d 928, 930 (Fla. 3d DCA 2019) ("In a partition

proceeding, there must be an accounting to determine whether each co-tenant has paid his or her proportionate share of the expenses of the property, and to adjust the co-tenants' accounts accordingly.").

The parties agree that each owns an undivided one-third interest and that the property cannot be divided in kind without prejudice—the only prerequisites for partition by sale. Because the record conclusively establishes the statutory prerequisites for partition we reverse and remand with instructions to order partition by sale after which the trial court may conduct an accounting. See Sudholt v. Sudholt, 389 So. 2d 301, 302 (Fla. 5th DCA 1980) (holding that when the parties are tenants in common "the property is subject to partition . . . nothing demonstrated . . . justif[ied] the trial court's denial of partition . . . [and] the portion denying partition is reversed and remanded to the trial court for partition of the home"); Moraitis v. Galluzzo, 487 So. 2d 1151, 1152 (Fla. 4th DCA 1986) ("At the same time, we note that where property is held in a tenancy in common, partition is practically a matter of right . . . . Moraitis is entitled to judgment on his claim for partition and accounting[.]"); Bucacci, 933 So. 2d at 586 ("We . . . remand with directions that the property be sold . . . that an accounting be had to properly allocate and adjust the contributions and expenses among the parties during the years of their ownership of the property . . . and that a

distribution of the proceeds thereafter be made to the parties in proportion to their interest pursuant to section 64.071, after the payment of all costs, attorney fees and taxes, as required by section 64.081.”).

Reversed and remanded for further proceedings consistent with this opinion.