

IN THE COURT OF APPEALS OF IOWA

No. 6-687 / 05-1837
Filed November 30, 2006

JAMES E. SCHEPPELE,
Plaintiff-Appellee/Cross-Appellant,

vs.

BONNIE SCHULZ,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Black Hawk County, Jon Fister,
Judge.

Defendant appeals and plaintiff cross-appeals from the district court's
order and judgment entry on plaintiff's action for partition of real estate and
accounting. **AFFIRMED AS MODIFIED ON APPEAL, AFFIRMED ON CROSS-
APPEAL.**

David H. Correll of Correll, Sheerer, Benson, Engels, Galles & Demro,
P.L.C., Cedar Falls, for appellant.

D. Raymond Walton of Beecher Law Offices, Waterloo, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

MILLER, J.

Defendant Bonnie Schulz appeals and plaintiff James Scheppele cross-appeals from the district court's order and judgment entry on Scheppele's action for partition of real estate and accounting. We agree with Schulz that any remaining balance of the proceeds from the sale of the subject property, after deductions for the expenses of the sale and reimbursement of the parties' contributions, should be divided equally between the parties. We modify the district court's order and judgment entry accordingly. The remainder of the order and judgment entry is affirmed.

I. Background Facts and Proceedings.

On October 1, 2001, Schulz and Scheppele, an unmarried couple, purchased a single-family dwelling with the intent to make it their personal residence. In order to lower the selling price of the home, Schulz agreed to forgo the \$9,300 commission she was entitled to as a licensed real estate agent. The parties made a total down payment of \$156,084: Schulz contributed \$80,000 and Scheppele contributed \$76,084. Scheppele borrowed the remaining \$150,000 due to the seller. Schulz and Scheppele took title to the home as joint tenants with rights of survivorship.

The parties undertook an extensive renovation of the property. The project took approximately two years to complete. Schulz agreed to supervise the work and provide some of the needed labor. She moved into the new home shortly after closing and began the renovation. Scheppele agreed to bear the monetary expenses of renovation, but did not move into the new residence until he was able to sell his former home in November 2002. Scheppele paid the

majority of the remodeling expenses, as well as basic home expenses such as mortgage payments, property taxes, and utilities. Schulz made some financial and material contributions to the remodeling. In addition, while Schulz did not pay any of the home expenses directly, she did make a \$400 monthly payment to Scheppele from November 2001 through August 2002.

The parties' relationship eventually deteriorated. In August 2004 Scheppele filed an action for partition of real estate and accounting. Schulz moved from the home in October 2004.

The matter was tried to the district court in September 2005. The court's order and judgment entry, as supplemented by post-trial orders, directed that, if one party did not buy out the interest of the other within thirty days, the property should be sold at public auction. It further directed that the proceeds from the sale of the home, after expenses, would first be used to reimburse each party's contributions: \$303,000 to Scheppele (\$293,000 for capital contributions plus \$10,000 for certain monthly expenses) and \$146,800 to Schulz (\$156,800 for capital contributions minus \$10,000 for certain monthly expenses). It ordered any remaining balance be divided sixty-five percent to Scheppele and thirty-five percent to Schulz, in proportion to their capital contributions.

The court reached the capital contribution figures as follows. It determined Scheppele was entitled to reimbursement for his \$76,000 down payment, the \$150,000 loan, and \$67,000 in renovation expenses. It determined Schulz was entitled to reimbursement for her \$80,000 down payment, the \$9300 forfeited commission, \$27,500 in remodeling expenses, and \$40,000 in labor. It then reduced Schulz's contributions by \$10,000, and increased Scheppele's

contributions by the same amount, after determining Schulz had agreed to pay Scheppele \$400 per month towards taxes, utilities, and insurance; and that she owed Scheppele such payments from September 2002 until she left the residence in October 2004.

Schulz appeals and Scheppele cross-appeals. Schulz asserts the court erred in concluding the parties were entitled to be compensated for their respective contributions to the property. She contends that, instead, the gross sale proceeds should be divided equally. Alternatively, she contends that if she and Scheppele are entitled to reimbursement for their respective contributions, the court overvalued Scheppele's contributions, undervalued her contributions, and erroneously found that she was obligated to pay him \$400 per month until she left the home. Finally, Schulz contends that, after any appropriate reimbursement for the parties' contributions, any remaining balance from the gross sale proceeds must be divided equally. On cross-appeal, Scheppele asserts the district court overvalued Schulz's contributions.

II. Scope and Standard of Review.

This action for was filed and tried in equity. See Iowa R. Civ. P. 1.1201. Accordingly, our review is de novo. Iowa R. App. P. 6.4. Although not bound by the district court's fact findings we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 6.14(6)(g).

III. Discussion.

In determining each party was entitled to reimbursement for their contributions to the property and a pro rata share of any remaining amount from the sale proceeds, the district court relied on the equitable principles governing

the termination of a joint venture. See *Jensen v. Schreck*, 275 N.W.2d 374, 388 (Iowa 1979). Schulz asserts the doctrine has no application in a case such as this, which involves the personal residence of former romantic partners.¹ We find it unnecessary to address this contention, as we would reach the same result whether we applied joint venture principles or the general rules of partition.

In a partition action, proceeds from the sale of the property are to be divided according to the interest each party held in the property prior to the sale. See Iowa R. Civ. P. 1.1209. Here, the property was held in joint tenancy with right of survivorship.² Thus, each party held an undivided interest in the whole property that, upon severance of the joint tenancy, became an interest in one-half of the property. *In re Estate of Bates*, 492 N.W.2d 704, 706-07 (Iowa Ct. App. 1992).³ This does not mean, however, that each party is simply entitled to one-half of the proceeds after deducting the costs of the sale. It has long been held that parties may be entitled to reimbursement for things such as value-enhancing improvements or indebtedness. See *Mahon v. Mahon*, 254 Iowa 1349, 1352, 121 N.W.2d 103, 106 (1963) (improvements); *Creger v. Fenimore*, 216 Iowa 273, 276, 249 N.W. 147, 148 (1933) (note secured by mortgage).

¹ Although we have previously applied joint venture principles in a case dividing jointly acquired property of cohabitants, we did so because the parties stipulated the division should be made according to such principles. See *Riley v. Schrage*, No. 01-0681 (Iowa Ct. App. July 19, 2002).

² Although Scheppele contends he was unaware the property was held in joint tenancy, the officer that took Scheppele's loan application testified that

[t]hey both wanted to be on the title of the property as joint tenants because they each had children and if something happened to one of them, . . . they wanted the other one to be able to get the house.

³ Cf. *Williams v. Monzingo*, 235 Iowa 434, 439-40, 16 N.W.2d 619, 621-22 (1944) (providing conveyance to *tenants in common* that is silent as to respective shares creates a presumption the tenants will take equally, but that this presumption can be rebutted by proof to the contrary, including unequal contributions to the property).

Accordingly, we conclude the law of partition, as well as general equitable principles, provide for reimbursement of the contributions of the parties and an equal division of any remaining proceeds. The same result would occur under joint venture principles. See *Jensen*, 275 N.W.2d at 388 (providing joint venture's adjusted termination value was to be divided equally between the parties, with each share to be augmented and/or reduced by amounts the joint venture was owed by or owed to the party and to account for excess contributions to capital); 46 Am. Jur. 2d. *Joint Ventures* § 21, at 48 (2006) ("The law will imply an equal division of the profits of the joint venture without regard to any inequality of contribution in the absence of evidence to the contrary.").

We therefore turn to the parties' claims regarding the amount of contributions fixed by the district court. Schulz asserts the court overvalued Scheppele's renovation expenses by approximately \$6500; undervalued her financial contributions to the renovation by approximately \$8000; and undervalued her labor by one-half, \$40,000. She also contends she never agreed to pay Scheppele \$400 per month for the length of her stay in the new jointly-owned home, but rather simply agreed to help him with expenses until he sold his prior home. Scheppele asserts the value of Schulz's labor is only \$20,000, one-half the amount fixed by the district court; and moreover that any compensation for her labor should be offset against all the household expenses he paid over the two-year period. He also asserts Schulz should not be credited with the commission she voluntarily forfeited to lower the home's selling price.

The majority of these contentions turn on the credibility of the parties and the weight given to conflicting evidence. For instance, the parties offered

differing versions of the agreement behind Schulz's \$400 monthly payments. In concluding that Schulz was obligated to pay Scheppele \$400 per month until she vacated the premises in October 2004, the district court specifically found Scheppele's version of the agreement—that the \$400 monthly payment was Schulz's contribution to the ongoing expenses of the new home—to be the more credible. We give weight to, and concur in, this assessment. For this same reason we decline to credit Scheppele's contention that Schulz's labor was additional compensation for the home's ongoing expenses rather than a contribution to the remodeling expenses. We also find it appropriate to credit Schulz with the \$9300 forfeited commission, as we see little basis to distinguish it from the down payments made by each party. Both items were properly included in the contribution analysis.

We accordingly turn to the renovation expenses and the value of Schulz's labor. Both Scheppele and Schulz were able to support some of their individual renovation expenditures with documentary evidence, while other expenditures were supported solely by party testimony. Some expenditures were challenged—primarily through the opposing party's testimonial opinion—and some were not. Similarly, Schulz's claim for labor was based on her undocumented estimate that over the two-year period she worked at least forty hours per week on the renovation, and her opinion that, based on professional labor estimates of approximately thirty-five dollars per hour, the reasonable value of her labor was twenty dollars per hour. Scheppele countered with testimonial evidence that could support a conclusion Schulz did not work as many hours as she claimed.

Based on our review of the record, we can see potential merit in some of the individual undervaluation and overvaluation contentions. However, when we look at overall figures fixed by the district court, and place due weight on the court's fact findings, we conclude those figures are fair estimates of each party's contributions to the property. We accordingly affirm the district court's determination that the parties should first divide the proceeds of the sale, after expenses, \$303,000 to Scheppele and \$146,800 to Schulz. We do, however, modify the court's distribution of any remaining balance, to provide that it shall be divided equally between the parties. The remainder of the district court's order and judgment entry is affirmed.

Costs of this appeal are to be assessed one-half to each party.

AFFIRMED AS MODIFIED ON APPEAL, AFFIRMED ON CROSS-APPEAL.