

IN THE COURT OF APPEALS OF IOWA

No. 8-702 / 07-0620
Filed December 31, 2008

**MARY STEGALL and
DAVID W. HENDRIX,**
Plaintiffs-Appellees,

vs.

**RICKY L. STEGALL and
BARBARA SUE GREEDY,**
Defendants-Appellants.

Appeal from the Iowa District Court for Mills County, James S. Heckerman, Judge.

The defendants appeal from the district court's ruling denying them summary judgment on the partition action brought by the plaintiffs. **REVERSED AND REMANDED.**

DeShawne L. Bird-Sell of DeShawne L. Bird-Sell, P.L.C., Glenwood, for appellants.

Matthew G. Woods of Peters Law Firm, P.C., Glenwood, for appellees.

Heard by Sackett, C.J., Vaitheswaran and Potterfield, JJ.

SACKETT, C.J.

Ricky Stegall and Barbara Greedy appeal the district court's ruling denying them summary judgment in this partition action. We reverse.

Mary Stegall filed a petition for partition of real property alleging she was the owner of a life estate and that the defendants, Ricky Stegall, Barbara Greedy, and David Hendrix, each had an undivided one-third vested remainder interest in the property at issue. The petition asked that the property be sold and the profits partitioned in accord with Iowa Rules of Civil Procedure 1.1201 through 1.1228.

Defendants Ricky Stegall and Barbara Greedy filed a motion for summary judgment, asserting that absent the consent of the remaindermen, the holder of a life estate could not seek partition.¹ They do not consent to the action for partition.

Mary Stegall filed a motion to amend the petition to realign David Hendrix as a plaintiff who is the owner of an undivided remainder interest in the property. The motion was granted and, on March 12, 2007, the district court entered a ruling denying the defendants' motion for summary judgment. The court concluded that the partition action was properly brought by a tenant in common, with the consent of the life tenant.

¹ Iowa Code § 557.9 provides:

No expectant estate shall be defeated or barred by an alienation or other act of the owner of the precedent estate, nor by the destruction of such precedent estate by disseizin, forfeiture, surrender, or merger; provided that on the petition of the life tenant, *with the consent of the holder of the reversion*, the district court may order the sale of the property in such estate and the proceeds shall be subject to the order of the court until the right thereto becomes fully vested. The proceedings shall be as in an action for partition.

(Emphasis added).

Ricky Stegall and Barbara Greedy filed an application for interlocutory appeal, which was granted by the supreme court. The case was then transferred to this court.

“Partition may be maintained only when the parties plaintiff and defendant are entitled to the present possession of their interests in severalty.” *Morris v. Morris*, 383 N.W.2d 527, 528 (Iowa 1986) (internal quotation omitted). It is undisputed that Ricky Stegall, Barbary Greedy, and David Hendrix are not entitled to present possession in light of Mary Stegall’s life estate.

“In the absence of positive statutory authorization, the holder of an estate for years or for life in the property sought to be partitioned cannot maintain an action for partition thereof against the remaindermen or reversioners, and this rule applies to preclude his suing the remaindermen or reversioners either for partition in kind or for partition by sale and division of the proceeds”

Id. at 528-29 (quoting with approval 68 C.J.S. Partition § 57(a) (1950)). Mary Stegall, the holder of a life estate cannot maintain an action for partition against the Ricky Stegall, Barbara Greedy, and David Hendrix, be they characterized as remaindermen or reversioners.

That David Hendrix was realigned as a plaintiff has no impact. “It makes no difference that some of the plaintiffs share an interest with defendants in the remainder.” *Id.* The district court is not authorized to order partition in the circumstances presented.

The defendants’ motion for summary judgment should have been granted. We reverse and remand for entry of judgment in conformity with this opinion.

REVERSED AND REMANDED.