

STATE OF MICHIGAN
COURT OF APPEALS

JAMES R. TEMPLE,

Plaintiff-Appellee,

v

JANICE L. TEMPLE,

Defendant-Appellant,

and

MARILYN CANFIELD and JOSEPH J.
HARTIGAN, JR.,

Defendants-Appellees.

UNPUBLISHED
February 14, 2003

No. 238036
Presque Isle Circuit Court
LC No. 01-002438-CH

Before: Neff, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Defendant Janice Temple appeals as of right from the trial court's order that property she held as a tenant in common be sold rather than partitioned. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Actions containing claims for the partition of land are equitable in nature. MCL 600.3301. We review equitable determinations de novo. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998).

Physical division of jointly held property "is the preferred method," and a sale may be ordered only "where an equitable physical division cannot be achieved." *Albro v Allen*, 434 Mich 271, 284; 454 NW2d 85 (1990). In its written opinion, the trial court determined that "this property cannot be divided into four parcels having equal value."

Defendant argues that the appraiser's opinion, standing alone, does not provide adequate support for this conclusion. We agree. In response to the trial court's question whether the property could "be divided into four parcels . . . of substantially equal value," the appraiser stated "my answer . . . is no" but went on to say that "there is no way to divide the property into four sites that are physically similar." The remaining text of the appraiser's report fails to explain how the physical dissimilarities would necessarily result in parcels without substantially equal

value. Without the appraiser available to answer questions about her conclusions, this presented an inadequate response to the important question posed by the court.

Moreover, the trial court had to determine “whether the premises can be partitioned without great prejudice to the parties.” MCR 3.401(A)(1). Again, the bare appraiser’s report here provided an inadequate basis for that determination. Its short, one paragraph mention of this issue is wholly conclusory and apparently based on unstated assumptions. Moreover, it vaguely states that it would be “less costly” to divide the full parcel, instead of partitioning it first. Without knowing the logic of that analysis or the extent of the suggested extra costs resulting from a partitioning, it is impossible to determine whether partitioning would present a “great prejudice” to the parties.

This is not to say that an order that the property be sold is necessarily inappropriate. It is to say instead that the record established below does not presently support an order of sale. We thus agree with defendant that the trial court erred in failing to grant her motion for an evidentiary hearing. Defendant should be allowed to cross-examine appraiser Sherwood as to her report and present alternative expert opinion, if available, for the court’s consideration.¹

We reverse and remand for a further evidentiary hearing consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly

¹ Defendant acknowledges in her brief that she agreed with the trial court’s suggestion that an appraiser be appointed to examine the property and make a recommendation. However, she certainly did not agree to be bound by that recommendation.