

STATE OF MICHIGAN
COURT OF APPEALS

JEANNEANE ADAMINI, EUNICE QUEVEDO,
and JUDITH PETERSON,

UNPUBLISHED
March 13, 2003

Plaintiffs-Appellants,

v

JAMES B. NASON and INEZ HEUER,

No. 240690
Marquette Circuit Court
LC No. 01-038215-CZ

Defendants-Appellees.

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the judgment entered in this dispute over insurance proceeds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties jointly owned a parcel of property that they received from their father. A cottage located on the property burned down, and the insurer issued a check for the loss payable to the five parties. The parties could not agree how to divide the proceeds, and plaintiffs brought this action. Plaintiffs sought credit for taxes and insurance premiums they paid on the property. The trial court found that they were not entitled to such credit, and it ordered an even split of the insurance proceeds.

The decision of a trial court in an equity action is reviewed de novo. *McDonald Ford Sales, Inc v Ford Motor Co*, 165 Mich App 321, 325; 418 NW2d 716 (1987). A trial court's decision will not be reversed unless its findings are clearly erroneous or the reviewing court is convinced that it would have reached a different result. *Id.*

In the absence of an agreement, where property is owned jointly neither tenant can recover for services to the property against the other. *Gay v Berkey*, 137 Mich 658, 661; 100 NW 920 (1904). When a cotenant is required to account for rents and profits, he is entitled to credit for reasonable expenditures incurred incident to the protection or maintenance of the property. *Falkner v Falkner*, 58 Mich App 558, 562, n 3; 228 NW2d 461 (1975). If one tenant has possession and use of the whole estate, it is his or her duty to pay the taxes. 24 Michigan Civil Jurisprudence, Tenants in Common and Joint Tenants, § 18, p 214. Where one cotenant has had all the use and benefit from the property, to the exclusion of the other cotenant, the latter is under no obligation to contribute. *Id.* at § 19, p 215; *Nott v Gundick*, 216 Mich 217; 184 NW 864 (1921). Here, plaintiffs enjoyed the exclusive use of the property.

Plaintiffs have shown no basis for overturning the trial court's decision. This was not an action requiring them to account for rents or profits. There was no evidence of any agreement between the parties on the payment of taxes and insurance. Error by the trial court in mentioning a receiver had no effect on its decision and was harmless.

Affirmed.

/s/ Richard Allen Griffin
/s/ Janet T. Neff
/s/ Hilda R. Gage