

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WILLIAM KULINSKI, RONALD KULINSKI,  
and RUSSELL KULINSKI,

UNPUBLISHED  
December 9, 2014

Plaintiffs-Appellees,

v

No. 318091  
Lenawee Circuit Court  
LC No. 12-004591-CH

ILENE KULINSKI,

Defendant-Appellant.

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Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right a final order providing for the sale of the fee simple interest in real property owned by the parties as joint tenants with the right of survivorship and not as tenants in common. For the reasons stated below, we affirm in part and reverse in part.

**I. PERTINENT FACTS AND PROCEDURAL HISTORY**

This case arises from a property dispute between defendant and her brothers, plaintiffs William Kulinski, Ronald Kulinski, and Russell Kulinski. Plaintiffs filed a complaint on November 21, 2012, requesting that the trial court partition real property that the parties own as joint tenants with the right of survivorship and not as tenants in common. Plaintiffs alleged that the mother of all the parties, Irene Kulinski, executed and delivered a quitclaim deed on October 29, 1985, in which she reserved a life estate in the real property to herself and transferred the remainder interest in the real property to Ronald Kulinski and Russell Kulinski as joint tenants with the right of survivorship and not as tenants in common. On November 14, 1985, this first deed was recorded with the Lenawee County Register of Deeds. On February 24, 1998, Irene Kulinski, Ronald Kulinski, and Russell Kulinski executed and delivered a second quitclaim deed, which transferred ownership of the real property to Irene Kulinski, defendant, and plaintiffs as joint tenants with the right of survivorship and not as tenants in common.<sup>1</sup> Irene

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<sup>1</sup> A copy of this second deed does not appear in the lower court record. However, a physical copy of the deed is not necessary to decide the issues on appeal because the parties agree that they hold the property as joint tenants with the right of survivorship and not as tenants in

Kulinski died on August 11, 2010. Plaintiffs and defendant disagreed regarding the use and occupation of the real property, which is lakefront property with a single residence. Plaintiffs requested in their complaint that the trial court order “just and equitable division and partition” of the real property. If partition of the real property was impossible, then plaintiffs requested that the trial court order the sale of the real property at a reasonable minimum price and division of the proceeds among the parties based on their rights and interests in the real property. Plaintiffs also requested costs and attorneys fees.

On January 2, 2013, defendant filed an answer, in which she asserted that the fact that each party was a joint tenant with the right of survivorship to real property, and the fact that each party had access to the property, indicated that each party’s interest should be “perceived as a life estate with a contingent remainder.” Defendant admitted that the parties own the real property as joint tenants with the right of survivorship and not as tenants in common.

On March 6, 2012, plaintiffs filed a motion to apportion the use of the real property. According to plaintiffs, defendant occupied the real property and refused to allow plaintiffs to use or enjoy it. Plaintiffs requested that the trial court order the parties to rotate possession of the real property each month. Plaintiffs also requested that the court order defendant to stop smoking inside the property. Defendant filed a response on March 25, 2013, in which defendant denied that she has refused to allow plaintiffs to use the property, and stated that she smoked outside of the home when other persons were there. Defendant also filed a motion for summary disposition, as discussed below. On April 8, 2013, the trial court denied plaintiffs’ motion to apportion use of the real property, although it ordered no smoking within 20 feet of the property.

In her summary disposition motion, which was brought under MCR 2.116(C)(8) and (10), defendant argued that plaintiffs had failed to state a claim upon which relief could be granted and that there was no genuine issue of material fact. Defendant requested that the case be dismissed and that she receive an award of costs and attorney fees.

On April 19, 2013, plaintiffs filed a brief in opposition to defendant’s motion for summary disposition and requested summary disposition under MCR 2.116(I)(2). Plaintiffs contended that the trial court should partition the current possessory interests as well as the contingent remainder interests in the real property. Plaintiffs requested the sale of the real property because division was impossible. Plaintiffs also noted that defendant had failed to properly support her motion with documents in the record or state the issues for which she was entitled to summary disposition under MCR 2.116(C)(10). Plaintiffs attached to their brief an affidavit of William Kulinski, in which William Kulinski stated that defendant refused to allow plaintiffs to use the property. Plaintiffs also attached an email from defendant to William Kulinski, in which defendant stated that certain guests were not allowed to stay on the property

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common. As the holder of only a life estate, Irene Kulinski could not convey a remainder interest via quitclaim deed. See *Ziegler v Simmons*, 353 Mich 432, 437; 91 NW2d 819 (1958). However, she could convey a life estate, and the two original remaindermen could convey their remainder interests such that a new joint tenancy was created through unity of interest, title, time, and possession. See *Albro v Allen*, 434 Mich 271, 275; 454 NW2d 85 (1990).

unless Russell Kulinski accompanied them. Finally, plaintiffs attached several pictures of the real property, depicting a single house on a lakefront.

The trial court held a hearing on defendant's motion for summary disposition on April 29, 2013. Defendant clarified her position that plaintiffs were entitled to sell their life estate interests in the property, but that plaintiffs could not destroy defendant's contingent remainder interest. Plaintiffs argued that they were entitled to the sale of the property. However, plaintiffs clarified that they would also accept, in the alternative, an order for the sale of the life estate interests. The trial court stated that defendant's motion fell under MCR 2.116(C)(8) because defendant argued that plaintiffs had failed to state a claim upon which relief could be granted. The trial court did not rely on plaintiffs' documentary evidence in coming to a decision on the issue. The trial court explained that it could not grant defendant's motion for summary disposition because defendant did not provide an explanation or argument for her motion. The trial court did not resolve the underlying partition claim. However, the trial judge did opine that "partition is inevitable." The trial court also stated to the parties, "It is my impression you will lose any and all remainder interests that you will have in the property unless you are the purchaser."

On June 17, 2013, the trial court entered a stipulated order denying defendant's motion for summary disposition, granting plaintiffs' request for summary disposition under MCR 2.116(I)(2), finding that the real property could not be physically divided, granting plaintiffs' request that the property be sold, and ruling that the property interest to be sold was "an estate the duration of which extends until the death of the third of the four parties to die, after which time the then surviving party shall become the fee simple owner of the Property." The trial court reserved for further consideration the reasonable minimum price of the real property. Defendant's attorney prepared the stipulated order, and the parties' attorneys signed the order.

On July 2, 2013, defendant filed a claim of appeal with this Court. The parties filed a stipulation to dismiss the appeal without prejudice on August 23, 2013, because the appeal was not from a final order. This Court entered an order dismissing the appeal on August 28, 2013.<sup>2</sup>

On July 22, 2013, plaintiffs filed a brief on the issue of the proper disposition of the contingent remainder interests, arguing that, although a joint tenant with the right of survivorship can only sell his or her life estate, a trial court can partition a joint tenancy. Furthermore, plaintiffs argued that MCL 600.3340 authorizes partition of the contingent remainder interest. Therefore, plaintiffs argued that the trial court should order the sale of the contingent remainder interests as well as the life estate interests in the real property for full market value.

On July 26, 2013, defendant filed a brief in the trial court with regard to the proper disposition of the contingent remainder interests in the real property. Defendant argued that the trial court should not order the sale of the contingent remainder interests based on the distinction between a joint tenancy and a joint tenancy with the right of survivorship.

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<sup>2</sup> See *Kulinski v Kulinski*, unpublished order of the Court of Appeals, entered August 28, 2013 (Docket No. 317011).

On August 1, 2013, the trial court held a bench trial on the issue of the partition of the parties' contingent remainder interests. Thereafter, on August 26, 2013, the trial court entered an order providing that the June 17, 2013 order remained in effect except as modified, and ordered that the property interest to be sold "is the fee simple interest," including the parties' life estates and dual contingent remainder interests. The trial court cited to MCL 600.3340 as authority for the order. The order was "a final order which resolves all claims in this matter." This appeal by defendant followed.<sup>3</sup>

On appeal, defendant argues that the trial court erred in ordering the sale of the fee simple interest in real property owned as joint tenants with the right of survivorship and not as tenants in common because the trial court improperly interfered with defendant's contingent remainder interest. We agree. Defendant further argues that the trial court erred in granting summary disposition in favor of plaintiffs and in granting the sale of an estate for the duration of the lives of three of the four parties. We disagree.

## II. STANDARD OF REVIEW

"An action to partition land is equitable in nature." *In re Temple Marital Trust*, 278 Mich App 122, 141; 748 NW2d 265 (2008). This Court reviews a trial court's decision with regard to an action to partition land de novo, and the trial court's findings of fact are reviewed for clear error. *Id.* at 141-142.

Defendant challenges the trial court's decision to deny her motion for summary disposition. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maple Grove Twp v Misteguay Creek Intercounty Drain Bd*, 298 Mich App 200, 206; 828 NW2d 459 (2012). "A motion under 'MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted.'" *Id.* (citation omitted). A trial court properly grants a motion for summary disposition under MCR 2.116(C)(8) " 'if no factual development could justify the plaintiff's claim for relief.'" *Id.* (citation omitted). The trial court stated that defendant's motion for summary disposition fell under MCR 2.116(C)(8), and the court did not rely on evidence outside of the pleadings in ruling that plaintiffs had stated a claim upon which relief may be granted. Therefore, this Court's review of defendant's motion for summary disposition is proper under MCR 2.116(C)(8). See *id.*

The trial court granted summary disposition to plaintiffs under MCR 2.116(I)(2). " 'The trial court appropriately grants summary disposition to the opposing party under MCR 2.116(I)(2) when it appears to the court that the opposing party, rather than the moving party, is entitled to judgment as a matter of law.'" *BC Tile & Marble Co, Inc v Multi Bldg Co, Inc*, 288 Mich App 576, 590; 794 NW2d 76 (2010) (citation omitted).

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<sup>3</sup> The trial court indicated at the August 1, 2013 hearing that the sale of the property would not take place until after defendant had the opportunity to appeal.

### III. PARTITION

MCL 600.3304 provides, “All persons holding lands as joint tenants or as tenants in common may have those lands partitioned.” MCL 600.3308 clarifies that “[a]ny person who has an estate in possession in the lands of which partition is sought may maintain a claim for partition of those lands, but a person who has only an estate in reversion or remainder in the lands may not maintain a claim for their partition.” Under MCR 3.401(A), the trial court has discretion to determine whether to partition real property. Forced sale is an alternative to partition. MCL 600.3332 (providing that a trial court may order the sale of real property at a public auction if the real property cannot be divided); MCR 3.401(B) (providing that a trial court may order a sale of real property if the property cannot be partitioned “without undue prejudice” to the owners of the property).

There are two forms of joint tenancies. *Albro v Allen*, 434 Mich 271, 274; 454 NW2d 85 (1990). The first form is the “standard” joint tenancy, which a joint tenant may sever at will. *Id.* at 275. If one party transfers his or her interest in a “standard” joint tenancy, then the “standard” joint tenancy becomes a tenancy in common. *Id.* However, if a joint tenancy is created by a document that contains an express right of survivorship, such as “ ‘with right of survivorship,’ ” then a joint tenant may not sever the joint tenancy by selling his or her interest in the property. *Id.* at 275-276.

*Albro* controls the resolution of the instant case. In *Albro*, the defendant transferred her interest in a joint tenancy with the right of survivorship. *Albro*, 434 Mich at 273. The Michigan Supreme Court explained that a joint tenancy with the right of survivorship constitutes a joint life estate, and the surviving joint tenant has a contingent remainder interest in the property. *Id.* at 277-278. The Court further clarified that the law regarding standard joint tenancies does not apply to a joint tenancy with the right of survivorship. *Id.* at 278. Instead, a contingent remainder interest in a joint tenancy with the right of survivorship cannot be destroyed by the act of one of the joint tenants. *Id.* A joint tenant may transfer his or her life estate interest in real property without destroying the other joint tenant’s contingent remainder interest. *Id.* at 282. This is because the sale of a life estate interest in a joint tenancy with the right of survivorship will not affect the remainder interest in the property. See *id.* at 285. However, the joint tenant cannot partition his or her remainder interest in the property. See *id.* at 284.

The Court in *Albro* also considered a trial court’s ability to partition a joint tenancy under MCL 600.3304 and MCL 600.3308. *Albro*, 434 Mich at 284. The Court clarified that the term “partition” includes voluntary partition or partition by judicial action. *Id.* “Partition” may also refer to physical division or a court-ordered sale of the real property. *Id.* The Court confirmed that “this Court has denied partition to parties holding joint life estates with dual contingent remainders” and held that the dual contingent remainder interests in a joint tenancy with the right of survivorship may not be partitioned. *Id.* at 284. However, the Court concluded that the joint life estate elements of a joint tenancy may be partitioned. *Id.* at 286. “A person holding both a life estate and a future interest may have partition of the life estate only, absent a statute authorizing partition of future interests.” *Id.* at 285 n 5. Thus, upon the death of one of the joint tenants, the other joint tenant will take ownership of the entire estate. See *id.* at 287. A trial court therefore may partition the joint life estate interests in a joint tenancy with the right of

survivorship, but may not interfere with the parties' contingent remainder interests. *Albro*, 434 Mich at 281-287.

Plaintiffs argue that they have a statutory right to partition and sale of both interests under MCL 600.3304. Plaintiffs point out that *Albro* only applies "absent a statute authorizing partition of future interests," 434 Mich at 285 n 5, and that MCL 600.3304 is such a statute, in that it provides that a person holding property as a joint tenant may receive an order for partition. However, as discussed above, the Michigan Supreme Court considered MCL 600.3304 in holding that only a life estate interest in property held as a joint tenancy with the right of survivorship can be partitioned. See *id.* at 284.

Plaintiffs also argue that MCL 600.3340, which the Court did not discuss in *Albro*, provides the statutory authorization for the sale of the contingent remainder interests. MCL 600.3340 provides, in part:

In all cases of sales under judgment in partition where it appears that any married woman has an inchoate right of dower in any of the lands divided or sold, or that any person has a vested or *contingent future right* or estate in the lands, the court under whose judgment the sale is made *shall ascertain* and settle the proportional value of the inchoate, contingent, or vested right or estate, according to the principles of law applicable to annuities and survivorships, and *shall direct* the proportion of the proceeds of the sale to be invested, secured, or paid over in the manner considered the best to secure the rights and interests of the parties. [Emphasis added.]

Plaintiffs essentially argue that this statute provides that a trial court can, in the context of a partition action, order the sale of the indestructible contingent remainders created by a joint tenancy with right of survivorship. However, MCL 600.3340 dictates how the trial court should determine the value of a contingent right in property and does not discuss partition of a contingent remainder interest. See MCL 600.3340. The statute dictates that a court ordering a forced sale under a judgment of partition must ascertain any parties with dower, vested, or contingent interests in the lands and make sure their interests are protected; it does not provide that a trial court may order the forced sale of indestructible contingent remainders. See *Wengel v Wengel*, 270 Mich App 86, 95; 714 NW2d 371 (2006). MCL 600.3340 has been in effect since 1963 and has never been applied in the manner that plaintiffs suggest. See 1961 PA 236 (effective January 1, 1963). The statute itself indicates that the trial court must consider "the principles of law applicable to annuities and survivorships" in conducting forced sales under judgments of partition. MCL 600.3340.

For the reasons stated above, the trial court erred in ordering the sale of the fee simple interest in the real property. See *Albro*, 434 Mich at 282-288. The trial court's order would impermissibly destroy defendant's contingent remainder interest in the real property. See *Albro*, 434 Mich at 281-287. We therefore reverse the trial court's August 26, 2013 order to the extent that it provides for the sale of the fee simple interest of the property, and specifically to the extent that it provides for the sale of the parties' dual contingent remainder interests.

However, the trial court did not err in granting summary disposition in favor of plaintiffs on the issue of the parties' life estate interests in the real property and in ordering the sale of an estate extending until the death of the third of the four joint tenants. Initially, we note that defendant stipulated and agreed to (and, in fact, prepared) the June 17, 2013 order for the sale of the life estates of the parties in the real property. "Like contracts, stipulated orders are agreements reached by and between the parties." *Phillips v Jordan*, 241 Mich App 17, 21; 614 NW2d 183 (2000). "Stipulated orders that are accepted by the trial court are generally construed under the same rules of construction of contracts." *Id.* A party may argue that a contract defense applies to prevent enforcement of a stipulation. *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 394; 573 NW2d 336 (1997). Defendant does not argue that there was any error with regard to her stipulation. Therefore, the stipulation is binding on defendant. See *Phillips*, 241 Mich App at 21.

Further, regardless of whether defendant stipulated to the contents of trial court's order, the trial court did not err in granting summary disposition to plaintiffs and ordering the sale of the parties' life estate interests. The trial court ordered the sale of an estate extending until the death of the third of four joint tenants. After that party dies, the remaining joint tenant will hold the fee simple interest in the real property. As discussed above, the Court in *Albro* held that a joint life estate interest in a joint tenancy with the right of survivorship can be partitioned. *Albro*, 434 Mich at 281-287. However, a joint tenant will retain his or her remainder interest, which is contingent upon the death of the other joint tenants. See *id.* at 277-278. The trial court ordered the sale of an estate encompassing the lives of three of the four parties. The trial court's order has the same effect as partitioning plaintiffs' life estate interests since in both scenarios defendant will only obtain the real property in fee simple if she outlives plaintiffs. See *id.* at 277-278. Therefore, the stipulated order does not affect defendant's contingent remainder interest in the real property, and the trial court did not err in ordering the sale of an estate for the duration of the lives of three of the four parties. See *id.* at 281-285.

We affirm the trial court's June 17, 2013 order granting summary disposition to plaintiffs. We reverse the trial August 26, 2013, order to the extent that it provides for the sale of the fee simple interest of the property, specifically the parties' dual contingent remainder interests, and affirm the portion of the order allowing for the sale of the parties' life estates only. We remand for further proceedings consistent with this opinion. Neither party having prevailed in full, no costs may be taxed. MCR 7.219(A). We do not retain jurisdiction.

/s/ Michael J. Riordan  
/s/ Jane M. Beckering  
/s/ Mark T. Boonstra