

STATE OF MICHIGAN
COURT OF APPEALS

JACK CARTER,

Plaintiff-Appellant,

v

PAULETTE CARTER and COMERICA BANK,

Defendants-Appellees.

UNPUBLISHED

November 27, 2012

No. 302255

Wayne Circuit Court

LC No. 10-007203-CH

Before: K.F. KELLY, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals as of right an order denying him summary disposition and granting summary disposition in favor of defendant Paulette Carter in this action for partition. Because we determine that the civil division of the circuit court lacked jurisdiction over the claims asserted in this action, we remand for dismissal of this case.

The parties divorced in 1989. The judgment of divorce provided that the parties would jointly own the marital home “until such time as the property is sold, and then the parties shall divide equally the net proceeds from the sale.” On June 23, 2010, plaintiff filed this action for partition in the civil division of the Wayne Circuit Court. On December 10, 2010, the circuit court denied plaintiff’s motion for summary disposition, and instead granted summary disposition in favor of defendant under MCR 2.116(I)(2).

After consideration of the issues raised in plaintiff’s appeal, we conclude that the family division of the circuit court had sole and exclusive jurisdiction over the claims asserted in this matter, and that, therefore, this case must be dismissed.

“When a court lacks subject matter jurisdiction to hear and determine a claim, any action it takes, other than to dismiss the action, is void.” *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992). Questions related to subject-matter jurisdiction are questions of law that we review de novo. *In re Lager Estate*, 286 Mich App 158, 162; 779 NW2d 310 (2009). Moreover, subject-matter jurisdiction cannot be waived and can be raised at any time by any party or sua sponte by the court. *MJC/Lotus Group v Brownstown Twp*, 293 Mich App 1, 7-8; 809 NW2d 605 (2011) rev’d in part on other grounds *Mich Props, LLC v Meridian Twp*, 491 Mich 518 (2012).

In 1996, the Legislature reorganized Michigan's court system by enacting 1996 PA 388 to create a "family division" within the circuit court. MCL 600.1001; MCL 600.1003; MCL 600.1021; *In re AP*, 283 Mich App 574, 594-595; 770 NW2d 403 (2009). Under MCL 600.1021(1), the family division of circuit court was given "sole and exclusive jurisdiction" over certain enumerated actions, including "[c]ases of divorce and ancillary matters as set forth in the following statutes: . . . (ii) 1909 PA 259, MCL 552.101 to 552.104. . . ." MCL 552.103, identifying some of the ancillary matters over which the family division of circuit court has sole and exclusive jurisdiction, provides:

The bill of complaint or amendment thereto, or the answer or cross bill or amendment thereto, filed in any divorce proceeding may ask that the ownership of the lands described therein and owned by the parties to such suit as joint tenants or as tenants by entireties shall be determined by the decree of divorce, if granted, and in such case the court granting the divorce may award such lands to 1 or the other of said parties, or any part of it to either of them, or may order such lands to be sold under the direction of a circuit court commissioner, and the proceeds thereof divided between the parties in such proportion as the court shall order; or may appoint commissioners to partition such lands between said parties in the proportion fixed by the decree. The proceedings following the appointment of such commissioner shall conform to the law governing the partition of lands between tenants in common.

In sum, MCL 552.103 encompasses three primary components: (1) parties in a divorce may ask the trial court to determine rights to land owned by the parties as joint tenants or as tenants by the entireties, (2) when granting the divorce, the trial court may award the land at issue as it deems proper amongst the parties, or (3) alternatively, when granting the divorce, the trial court may order the lands to be sold and the proceeds distributed amongst the parties as it deems proper. Here, the trial court in its judgment of divorce stated that defendant "shall have exclusive use of the property until such time as the property is sold and then the parties shall divide equally the net proceeds from the sale."

In the present action, plaintiff seeks to force a sale of the jointly held property described in the judgment of divorce. Not only do the claims asserted in this action fall squarely within the bounds of the judgment of divorce, more importantly as it relates to our disposition of this case, the claims asserted in this action are specifically governed by MCL 552.103. Since matters governed by MCL 552.103 are within the "sole and exclusive" jurisdiction of the family division of the circuit court, the proceedings in this case were void because the presiding judge in this case, who was assigned to the civil division of the circuit court, lacked jurisdiction. Plaintiff is unable to create jurisdiction in the civil division of the circuit court by framing claims governed by MCL 522.103 as a claim for partition. See *Local 1064, RWDSU AFL-CIO v Ernst & Young*, 449 Mich 322, 327 n 10; 535 NW2d 187 (1995) (stating that it is well established that "the court may look behind the technical label that plaintiff attaches to a cause of action to the substance of the claim asserted").

Because the civil division of the circuit court lacked jurisdiction, its order granting summary disposition on the merits is void, and instead, the action should have been dismissed. Moreover, we note that the divorce judgment states that "...this Court specifically reserves and

retains jurisdiction over this cause and the parties hereto for the purpose of assuring compliance with the executory provisions of this Judgment and reserves the right to make such other and further orders as shall be necessary to implement the same[.]” Because the family division of the circuit court was the proper forum in which to raise the issues, Plaintiff’s issues should have been raised in the context of a post-judgment filing in the divorce case.

We remand for the entry of an order dismissing this action. We do not retain jurisdiction. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Kirsten Frank Kelly

/s/ Kurtis T. Wilder

/s/ Mark T. Boonstra