For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

MICHAEL LEWIS, JR., MEDINA ROGERS as Trustee for DELON TYRONE LEWIS, INGRID ROGERS-LAKE, and LAURENT LAKE, Appellants/Cross-Appellees,	)	**S. Ct. Civ. No. 2017-0072** Re: Super. Ct. Civ. No. 375/2009 (STT)
v.	)	
PATRICIA ROGERS, Appellee/Cross-Appellant.	)	

On Appeal from the Superior Court of the Virgin Islands
Division of St. Thomas & St. John
Superior Court Judge: Hon. Renee Gumbs Carty

Argued: October 8, 2019
Filed: August 26, 2020

Cite as 2020 VI 17

BEFORE: **MARIA M. CABRET**, Associate Justice; **IVE ARLINGTON SWAN**, Associate Justice; and **DARRYL DEAN DONOHUE, SR.**, Designated Justice.[1]

APPEARANCES:

Stylish E. Willis, Esq.
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Attorney for Appellants,

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OPINION OF THE COURT

[1] By order of the Court dated September 10, 2019, Chief Justice Rhys S. Hodge was recused from this matter, in accordance with title 4, section 284 of the Virgin Islands Code. By separate order of the Court dated September 16, 2019, the Honorable Darryl Dean Donohue, Sr., a former judge of the Superior Court of the Virgin Islands, was appointed to sit in his place as a Designated Justice for consideration of this case pursuant to the authority provided in title 4, section 24(a) of the Virgin Islands Code.

CABRET, Associate Justice.

¶ 1 Appellants Michael Lewis, Jr., Ingrid Rogers-Lake, Laurent Lake, and Medina Rogers as trustee for Delon Tyrone Lewis, appeal, and Appellee Patricia Rogers cross-appeals, from the Superior Court's findings of fact and conclusions of law and accompanying order, entered July 25, 2017. Because the Superior Court either failed to explain its decision with respect to each of the issues raised on appeal, or otherwise failed to address these issues entirely, we vacate the Superior Court's order and remand this matter for the court to explain its decision, and to address these issues in the first instance.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶ 2 This case concerns a dispute over rental income generated from two properties—Parcel No. 1-104 Estate Wintberg, consisting of two units, an upstairs unit with three bedrooms and two bathrooms and a downstairs unit with two bedrooms and two bathrooms ("Wintberg property"); and Parcel No. 137 Estate Hospital Ground, consisting of four units each with two bedrooms and one bathroom ("Hospital Ground property")—owned jointly by the parties as tenants in common. Both properties were initially owned by Andrew Rogers, the father of the three original parties to this action—Ingrid Rogers-Lake, Sandra Rogers-Joseph, and Patricia Rogers. Following a series of conveyances, by April 7, 2006, each of the three sisters possessed a 1/3 interest in each of the two properties as tenants in common.[2] Both properties are subject to outstanding mortgages.

¶ 3 In order to pay down the mortgages on the two properties, the sisters rented out the downstairs unit of the Wintberg property and all four units of the Hospital Ground property, while

[2] Following the death of Sandra Rogers-Joseph, her 1/3 interest in the two properties was evenly distributed to her two sons, Michael Lewis Jr. and Delon Tyrone Lewis, who were later substituted as parties in this action, each possessing a 1/6 interest in each property as tenants in common.

Patricia continues to live in the upstairs unit of the Wintberg property. From April 2006 through June 2009, Patricia collected all rents from each property, but following a breakdown in the relationship between Patricia and her sisters, in July 2009, Ingrid began collecting the rent from one of the Hospital Ground units and the downstairs unit of the Wintberg property. Meanwhile, Patricia continued to collect rent from the other three Hospital Ground Units. With the exception of a single check for $500 from Patricia to Sandra, neither Patricia nor Ingrid distributed any of the rental monies collected to the other sisters and tenants in common.

¶ 4 On August 11, 2009, Appellants filed this action for partition in the Superior Court, explaining that they could not reach an agreement with Patricia as to the disposition of the two properties and requesting a partition of their interests by sale of the properties. Following a three-day bench trial in December 2016, and after considering the parties' post-trial briefs, the Superior Court entered its findings of fact and conclusions of law on July 25, 2017, holding that, after payments made on the respective mortgages, Patricia had been unjustly enriched by $51,752.51, while Ingrid had been unjustly enriched by $7,996.46. The court further ordered that, unless the parties could reach an agreement as to the disposition of the properties, both would be sold because the properties are so situated that partition cannot be made without great prejudice to the owners. Appellants timely filed their notice of appeal on August 17, 2017, and Appellee timely filed her notice of cross-appeal on August 21, 2017.

II. JURISDICTION

¶ 5 We have jurisdiction over this civil appeal pursuant to title 4, section 32(a) of the Virgin Islands Code, which provides that "[t]he Supreme Court shall have jurisdiction over all appeals arising from final judgments, final decrees or final orders of the Superior Court, or as otherwise provided by law." Because the Superior Court's July 25, 2017 findings of fact and conclusions of

law and accompanying order conclusively adjudicated all disputes between the parties, it is a final order within the meaning of 4 V.I.C. § 32(a). Generally, we exercise plenary review over the trial court's application of law while we review its findings of fact for clear error. *Slack v. Slack,* 69 V.I. 567, 570-71 (V.I. 2018).

III. DISCUSSION

¶ 6 Appellants argue that the Superior Court erred by failing to award them their proportionate share of the rental value of the upstairs unit of the Wintberg property, owned by all parties as tenants in common, but occupied exclusively by Appellee Patricia Rogers ("Rogers"), and further erred by awarding Rogers a portion of her claimed expenses for maintaining the apartment without any providing any reasoning or explanation of its decision. In her cross-appeal, Appellee argues that the Superior Court erred in distributing among the interested parties $14,886.86 of loan debt secured by mortgage against the Wintberg property, when that loan was purportedly used solely for the personal benefit of Appellant Ingrid Rogers-Lake. Additionally, Appellee argues that the court abused its discretion by concluding that the properties in question cannot be equitably divided and that the Appellants should have the first option to purchase the interest of Appellee.

A. Patricia Rogers' Claimed Expenses

¶ 7 In its findings of fact and conclusions of law, the Superior Court proclaimed that "Patricia M. Rogers had a total of approximately Twenty Thousand, Four Hundred Three Dollars and Thirty-Two Cents ($20,403.32) in property related expenses." As Appellants note however, "the trial court gave no explanation for how it arrived at the amount awarded Appellee for expenses." Indeed, the court failed even to indicate which of Patricia's claimed expenses it determined to be reasonably necessary for the maintenance of the property, let alone to provide the reasoning supporting those determinations. And while Appellee maintains that the Superior Court was

correct to consider her claimed expenses in its accounting, Appellee also concedes that the court erred in failing to explain the basis for its decision.

¶ 8 As we have repeatedly held, meaningful appellate review is not possible where the trial court fails to sufficiently explain its reasoning, and such failure of explanation itself constitutes reversible error. *Slack*, 69 V.I. at 572 (collecting cases). In this case, the Superior Court's findings of fact and conclusions of law are devoid of any explanation as to how the court reached its figure, which differs substantially from any proposed figure put forth by the parties. Accordingly, we conclude that the Superior Court erred in failing to provide any reasoning to support its determination that Patricia was entitled to compensation in the amount of $20,403.32 for expenses related to maintenance of the property, and we remand this matter for the court to explain its decision as to this issue. On remand, the Superior Court must identify, by reference to the bank statements, cancelled checks, and accounting included in Patricia's trial exhibits, which particular claimed expenses or categories of expenses it determined to be reasonably necessary for the maintenance of the property, and must further explain the reasons for its determination.

B. Remaining Issues on Appeal

¶ 9 With respect to the remaining issues raised by the parties in this appeal—(1) the court's failure to award Appellants their proportionate share of the rental value of the upstairs unit of the Wintberg property; (2) the court's decision to equally distribute the $14,886.86 of loan debt purportedly used solely for the benefit of Ingrid Rogers-Lake; and (3) the court's determinations that the subject properties cannot be equitably partitioned in kind and that Appellants should have the first option to purchase the interests of Appellee—the Superior Court's findings of fact and conclusions of law, as well as the remainder of the record on appeal, is utterly devoid of any indication that the court ever considered the arguments presented by the parties. Each of these

issues was squarely raised before the Superior Court, either during trial or in the parties' post-trial briefs. Yet inexplicably, the court's findings of fact and conclusions of law is bereft of any mention or discussion of these issues.

¶ 10 With respect to the first of these issues—whether Appellants are entitled to a proportionate share of the rental value of the upstairs unit of the Wintberg property— the "general rule of cotenancy holds that a cotenant in possession is not obligated for rent to a cotenant out of possession unless there is an ouster, or an agreement holding otherwise…." 20 AM. JUR. 2D *Cotenancy and Joint Ownership* § 48. However, in its findings of fact and conclusions of law, the Superior Court failed to make any determination as to whether the parties had a valid agreement to rent out the unit as Appellants contend, let alone any finding as to whether Patricia violated the terms of such an agreement. The court also failed to address Appellants' alternative argument that the intense animosity between Patricia and her sisters constituted an ouster entitling Appellants to a share of the unit's rental value. *See Mahabir v. Heirs of George,* 63 V.I. 651, 663 (V.I. 2015) (discussing actions that may constitute ouster of cotenants). More generally, the Superior Court failed to consider the abundance of authority holding that in adjudicating actions for partition, even in the absence of any agreement or ouster, a court should balance the equities of the case before it to determine whether the cotenant in possession should be accountable by way of offset for the value of the exclusive occupation of the premises. *See* 20 AM. JUR. 2D *Cotenancy and Joint Ownership* § 50 ("When, in a suit for partition… an occupying cotenant seeks contribution from co-owners, the court, in some jurisdictions as incidental to the relief sought and by way of adjusting the rights of the parties, may charge the claimant with at least a part of the reasonable value of the occupancy and use."); *see also* W.W. Allen, Annotation, *Accountability of Cotenants for Rents and Profits or Use and Occupation*, 51 A.L.R.2d 388 (1957, updated 2020) (collecting cases).

¶ 11 As to the second issue—the court's decision to equally distribute loan debt purportedly used solely for the benefit of Ingrid Rogers-Lake—the Superior Court failed to make any finding as to whether and to what extent the evidence supports Patricia's assertion that the loan was used solely for Ingrid's personal benefit. Given that "[t]he fundamental objective in a partition action is to divide the property so as to be fair and equitable and confer no unfair advantage on any cotenant," the court erred in distributing the loan debt evenly among the parties without considering Patricia's argument, and without any discussion or explanation as to whether, in light of the equities of this particular case, the loan debt should constitute a charge against Ingrid's personal interest. *See* 59A AM. JUR. 2D *Partition* § 6.

¶ 12 As to the final issue, it was insufficient for the Superior Court to merely recite: "As has been established by the evidence, and to the satisfaction of the Court, it has been determined that the Subject Properties are so situated that partition [in kind] cannot be made without great prejudice to the owners." 28 V.I.C. § 451 provides: "When several persons hold and are in possession of real property as tenants in common… any one or more of them may maintain an action of an equitable nature for the partition of such real property according to the respective rights of the persons interested therein, and for a sale of such property, or a part of it, *if it appears that a partition cannot be had without great prejudice to the owners*.") (emphasis added). Here, the Superior Court failed to identify any particular evidence regarding the situation of the properties—such as the disparity in the value of the two properties—to support its conclusion that they cannot be partitioned in kind, or to explain how precisely the parties would be greatly prejudiced by such a partition. For example, courts typically deny partition in kind where the value of the property is dependent upon its remaining whole, *Conyers v. Conyers*, 194 S.W.2d 660 (Ky. 1946); *Belfour v. Corley*, 217 So. 2d 679 (La. Ct. App. 1969), when the value of each cotenant's share after partition in kind would

be significantly less than what could probably be obtained from a sale of the whole property, *Keen v. Campbell*, 249 S.W.3d 927 (Mo. Ct. App. 2008); *Harris v. Harris*, 275 S.E.2d 273 (N.C. App. 1981), or when the physical characteristics of the property make it infeasible to divide the property into parts reflecting the parties' respective interests, *McNamara v. Mossman*, 230 P.3d 1286 (Colo. App. 2010). However, the Superior Court failed to provide any reason to support its determination that partition in kind would cause great prejudice to the parties. Additionally, the court failed to explain precisely what about the equities of this particular case support its determination that Appellants should be entitled to the first right to purchase Patricia's interest in both of the subject properties, despite the fact that the Wintberg property is Patricia's sole residence.

¶ 13 As we have previously explained, "a court can never exercise its discretion to simply ignore a claim that a party has brought squarely before it." *Bryan v. Fawkes*, 61 V.I. 416, 476 (V.I. 2014) (citing *Garcia v. Garcia*, 59 V.I. 758, 771 (V.I. 2013)). The trial court's "failure to address an argument—even on a question of law to which this Court owes the Superior Court no deference—itself constitutes grounds for reversal." *Gerace v. Bentley*, 65 V.I. 289, 297 (V.I. 2016) (citing *Gov't of the V.I. v. Connor*, 60 V.I. 597, 604 (V.I. 2014)). Exercising our appellate jurisdiction under 4 V.I.C. § 32(a) means that, as the United States Supreme Court has succinctly stated, "we are a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Therefore, we conclude that the Superior Court erred by wholly failing to address these arguments presented by the parties, and remand this matter for the court to make express findings and rulings on these issues in the first instance.

IV. CONCLUSION

¶ 14 Because the Superior Court either failed to explain its decision or simply failed to address each of the issues raised on appeal, we vacate the Superior Court's July 25, 2017 order and remand

this matter for the court to explain its decision to award Patricia Rogers $20,403.32 in expenses related to the maintenance of the property, and to address, in the first instance, the remaining arguments presented by the parties.

Dated this 27th day of August, 2020.

BY THE COURT:

/s/ Maria M. Cabret
MARIA M. CABRET
Associate Justice

ATTEST:

VERONICA J. HANDY, ESQ.
Clerk of the Court