

NOTICE
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2016 IL App (4th) 150326-U

NO. 4-15-0326

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RAYMOND SCHNEPF and JOHN SCHNEPF,)	Appeal from
Plaintiff-Appellants,)	Circuit Court of
v.)	Pike County
LYNDLE SCHNEPF and BRENDA SCHNEPF)	No. 07CH2
JOHNSON,)	
Defendants-Appellees.)	Honorable
)	Alan D. Tucker,
)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment, which authorized the partition and sale of real estate.

¶ 2 This appeal arises from an action in partition involving real estate owned by four siblings. In January 2007, plaintiffs Raymond Schnepf, John Schnepf, and their mother, Maleta Maxine Schnepf—who later died—filed a complaint for partition of real estate, naming Lyndle Schnepf and Brenda Schnepf Johnson as defendants. Following an October 2014 hearing in which the trial court considered the parties' arguments on multiple complaints and counter-complaints for partition, the court entered a December 2014 judgment of partition and ordered the sale of the real estate. The court also ordered that the allocation of sale proceeds be divided equally among Raymond, John, Lyndle, and Brenda.

¶ 3 Raymond and John appeal, contesting only the trial court's finding regarding the allocation of sale proceeds. For the reasons that follow, we affirm.

¶ 4

I. BACKGROUND

¶ 5

A. The Circumstances Preceding the Controversy at Issue

¶ 6

Because the parties are familiar with the extensive, complicated, and contentious history of this litigation, we summarize only the facts necessary to explain our decision.

¶ 7

The real estate at issue is an approximately 320-acre family farm (property) located in Pike County. Through a series of deeds in 1988, 1989, and 1993, Maleta deeded the property to her children, Raymond, John, Lyndle, and Brenda. With each deed executed between 1988 and 1993, Maleta attempted, but failed, to reserve a life estate for herself. As a result of the 1993 deed, Raymond, John, and Brenda each held a four-fifteenth interest and Lyndle held a one-fifth interest in the property.

¶ 8

In May 2005, Maleta, Raymond, and John filed an amended complaint for reformation, seeking to amend the 1988 and 1989 deeds to effectuate Maleta's life estate. The amended complaint alleged that in August 1988, the parties entered into an oral agreement whereby Maleta—as owner—would convey the property in equal shares to Raymond, John, Lyndle, and Brenda upon her death. Following a June 2005 bench trial, the trial court denied the amended complaint for reformation.

¶ 9

On appeal, this court reversed the trial court's reformation ruling and directed the entry of a judgment in favor of Maleta, Raymond, and John, which effectively granted Maleta a life estate in the property. *Schnepf v. Schnepf*, No. 4-05-0817 (July 26, 2006) (unpublished order under Supreme Court Rule 23). In concluding that the trial court's ruling was against the manifest weight of the evidence, we noted that the evidence presented at the June 2005 hearing showed, in pertinent part, the following:

"Maleta testified that she intended to keep the property for

her lifetime but that John, Raymond, Lyndle, and Brenda would receive it after her death. She believed the [1988 and 1989] deeds did so. John and Raymond also testified that they believed the [1988 and 1989 deeds] gave the property to Maleta for her lifetime and then to John, Raymond, Lyndle, and Brenda with the right of survivorship. In fact, in May 1993, once they discovered the [1988 and 1989] deeds did not accomplish what was intended, John, Raymond, and Brenda executed deeds to establish a life estate for Maleta." *Id.* at 14.

¶ 10 We also noted that since 1988, the actions of Raymond, John, Lyndle, and Brenda were consistent with an understanding that Maleta exercised complete control over the property for her lifetime. Specifically, we noted that "all of the evidence in the case points to only one possible conclusion—that the parties intended for Maleta to have a life estate and believed this was effectuated by the [1988 and 1989] deeds." *Id.* at 15. Our July 2006 order, however, addressed only whether the 1988 and 1989 deeds should have been reformed to provide Maleta a life estate. The parties did not raise, and this court did not consider, whether those deeds entitled Raymond, John, Lyndle, and Brenda to equal, one-quarter interests in the property following Maleta's death.

¶ 11 In November 2006, the trial court entered an order, reforming the 1988 deed by granting Maleta "a full and complete life estate interest" in the property.

¶ 12 In January 2007, Maleta, Raymond, and John filed a complaint for partition (735 ILCS 5/17-102 (West 2006)), naming Lyndle and Brenda as defendants. In February 2007, Lyndle filed a motion for substitution of judge as of right (735 ILCS 5/2-1001(a)(2) (West

2006)), which the trial court granted. After the case was reassigned, Raymond filed a motion for substitution of judge as of right, which the court granted later that month. In February 2008—after resolution of Lyndle's separate suit to set aside a lease on the property—John filed a motion for substitution of judge as a matter of right, which the court denied. (In July 2008, Maleta died.) In May 2009, following a hearing to determine the parties' proportionate interests in the property, the court entered a written order, finding that Raymond, John, and Brenda each owned a four-fifteenth interest in the property, and Lyndle owned a one-fifth interest.

¶ 13 John appealed the trial court's denial of his motion for substitution of judge as a matter of right, and this court reversed. *Schnepf v. Schnepf*, 2013 IL App (4th) 121142, ¶ 58, 996 N.E.2d 1131. Specifically, we (1) vacated the trial court's May 2009 ruling on the parties' respective property interests and (2) remanded with directions that the court grant John's motion for substitution of judge as a matter of right. *Id.* ¶ 60.

¶ 14 B. The Proceedings in This Case

¶ 15 On remand, the trial court conducted an October 2014 hearing, where it considered the parties' arguments on multiple complaints and countercomplaints for partition. Thereafter, the court took the matter under advisement. At a December 2014 hearing, the court reminded the parties that it was acting as a chancery court, and, as such, the principles of equity were applicable. After explaining that the court had considered (1) the extensive record in the instant case, (2) this court's July 2006 order and 2013 opinion, and (3) the parties' respective briefs and arguments, the court opined that the allocation of the property "should be consistent with the intention of the parties and specifically, [Maleta]." Thereafter, the court announced, as follows:

[T]he court is of the opinion that the *** sole goal in [the 1988 and 1989] conveyances was to establish an estate plan for [Maleta]

whereby she would have the use, benefit, and profits from the [property] for her lifetime, and then upon her death, [Raymond, John, Lyndle, and Brenda] would have equal shares of this property."

Thereafter the court (1) entered a judgment of partition, (2) ordered the sale of the property, and (3) ordered that the allocation of sale proceeds be divided equally among Raymond, John, Lyndle, and Brenda.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Partition and the Standard of Review

¶ 19 A party owning land in co-ownership may compel a partition of the property by complaint seeking the division and partition per the parties' interests, or, where a division and partition cannot be made without "manifest prejudice" to the owners, requesting a sale and division of the proceeds. 735 ILCS 5/17-101, 17-102 (West 2006). In a partition action, the trial court shall determine the parties' rights and whether the property may be divided without manifest prejudice to the parties. 735 ILCS 5/17-105 (West 2006). Where the court determines the property may be divided, it shall do so fairly and impartially with or without owelty. *Id.* If the court finds that the property cannot be divided without manifest prejudice to the parties, it shall order the property sold and fix its value. *Id.* We will not reverse a trial court's determination on a complaint for partition unless it is against the manifest weight of the evidence. *Robinson v. North Pond Hunting Club*, 382 Ill. App. 3d 888, 892, 890 N.E.2d 535, 538 (2008).

¶ 20 B. The Plain Language of the 1988 and 1989 Deeds

¶ 21 On September 27, 1988, Maleta signed the following deed:

"[T]he Grantor, Maleta ***, a widow and not remarried, ***, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration in hand paid, conveys and quit claims to Lyndle ***, Raymond ***, John ***, and Brenda ***, as joint tenants with right of survivorship and not tenants in common, the following described Real Estate[.]"

(The deed then described the property.)

¶ 22 On March 31, 1989—after the parties discovered that Maleta did not have a life estate in the property—Lyndle, Raymond, John, and Brenda signed the following deed:

"[T]he Grantors, Lyndle ***, Raymond ***, John ***, and Brenda *** for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration in hand paid, convey and quit claim to Maleta ***, Lyndle ***, Raymond ***, John ***, and Brenda ***, as joint tenants with right of survivorship and not tenants in common, the following described Real Estate[.]"

(The deed then described the property.)

¶ 23 C. Joint Tenancy With Right of Survivorship

¶ 24 As we have previously noted, although the two aforementioned deeds did not convey a life estate in the property, Maleta enjoyed that status as of this court's July 2006 order in case No. 4-05-0817. Thus, upon her death in July 2008, Maleta's intent—as expressed by the plain language of the 1988 deed—was to convey the property to Raymond, John, Lyndle, and Brenda as joint tenants with right of survivorship.

¶ 25 A joint tenancy is a present state in all the joint tenants, with each joint tenant be-

ing " 'seized of the whole.' " *Harms v. Sprague*, 105 Ill. 2d 215, 224, 473 N.E.2d 930, 934 (1984) (quoting *Partridge v. Berliner*, 325 Ill. 253, 257, 156 N.E. 352, 353 (1927)). "An inherent feature of a joint tenancy is the right of survivorship, which is the right of the last surviving joint tenant to take the whole of the estate." *Snyder v. Heidelberger*, 2011 IL 111052, ¶ 14, 953 N.E.2d 415. "The right of survivorship is thus a present interest that is created by the conveyance of the property into joint tenancy." *Id.*

¶ 26 D. The Trial Court's Allocation Decision

¶ 27 The challenge raised by Raymond and John in this appeal concerns only the trial court's finding that the allocation of sale proceeds should be divided equally among Raymond, John, Lyndle, and Brenda. Specifically, Raymond and John contend that (1) the court's judgment lacked a sufficient basis in fact, (2) the court's order of sale was barred by the doctrine of *res judicata*, and (3) Lyndle effectively forfeited any challenge to the apportionment of proceeds by not contesting the court's November 2006 order, which reformed the 1988 deed by granting Maleta a life estate interest in the property. We conclude that the challenges raised by Raymond and John to the court's judgment are both unpersuasive and unavailing.

¶ 28 The resolution of this case is governed by Maleta's intent. As we have previously noted, in June 2005, Maleta testified that she intended (1) to create a life estate interest for herself in the property; and (2) that upon her death, the property would pass to Raymond, John, Lyndle, and Brenda, as joint tenants with right of survivorship. As joint owners of the property, Raymond, John, Maleta, and Brenda shared that property equally. See *In re Estate of Martinek*, 140 Ill. App. 3d 621, 628, 488 N.E.2d 1332, 1337 (1986) (A joint tenancy creates an estate "that two or more individuals hold jointly with equal rights to partake in its enjoyment during their lifetimes."). Since 1998, Raymond, John, Maleta, and Brenda acted consistently with Maleta's

intent. It was not until 2002, approximately 14 years after the execution of the 1988 deed, that Lyndle claimed an interest in the property inconsistent with Maleta's stated intent when he filed suit requesting a portion of the income generated by the property.

¶ 29 In this case, the trial court, acting as a chancery court, was well versed with the history of this litigation, and after noting that it had considered (1) the record in this case, (2) this court's previous orders and opinions, and (3) the parties arguments, it determined that the equitable resolution of this controversy would be to sell the property and divide the proceeds equally among the parties. The court's determination was consistent with Maleta's intent that following her death, Raymond, John, Maleta, and Brenda would own the property as joint tenants with the right of survivorship. Given this record, the court's determination was not unreasonable but, instead, firmly based on the evidence presented. See *Offord v. Fitness International, LLC*, 2015 IL App (1st) 150879, ¶ 16, ("A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented."). Accordingly, we affirm the trial court's judgment.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the trial court's judgment.

¶ 32 Affirmed.