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STATE OF MICHIGAN

COURT OF APPEALS

LEO J. BARKER, JR.,

Plaintiff-Appellee,

v

WENDY A. SCHUETTE,

Defendant-Appellant.

UNPUBLISHED
October 27, 2026
9:33 AM

No. 371938
Menominee Circuit Court
LC No. 2023-017452-CH

Before: SWARTZLE, P.J., and ACKERMAN and TREBILCOCK, JJ.

PER CURIAM.

The general rule is that litigation continues following the death of a party, with the decedent's representative substituting in place of that party. Not so in this property dispute, which arises from the parties' status as a non-married couple holding the property as joint tenants with full rights of survivorship. Before the parties could mutually relinquish their ownership as part of this partition litigation, plaintiff died. Plaintiff's death, preceding a final order of partition from the trial court, vested fee simple absolute ownership in defendant as the surviving joint tenant regardless of the parties' apparent agreement to sell the property and divide the proceeds as stipulated in this litigation. Because the trial court did not appreciate this controlling principle, we reverse the trial court's order denying relief from judgment, and remand for entry of an order of dismissal in defendant's favor.

I. PERTINENT FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case concerns property located at 1210 15th Street in Menominee that plaintiff, Leo Barker, Jr., owned with defendant, Wendy Schuette. They owned that property—defendant's childhood home—as a non-married, cohabiting couple ever since her mother quit claimed it to them in 2009. The quit claim deed provided that each would own the property "as joint tenants with full rights of survivorship and not as tenants in common . . . ."

Plaintiff initiated this partition action under MCL 600.3301 in April 2023 because he "no longer wish[ed] to be a co-owner of the property and wish[ed] to have the property sold and the proceeds divided equally between the parties." In December of that year, the trial court entered a "final stipulated order," through which the parties agreed to: (1) sell the property, (2) "fully

cooperate in the sale and execute any and all necessary documents in which to facilitate the sale," and (3) divvy up the proceeds. That order, however, did not end this litigation.

In January and February 2024, plaintiff filed motions for defendant to show cause, alleging that she "unequivocally refused to participate in the sale, in violation of the court's orders." He thus asked that the trial court order defendant to vacate the home "so that the realtor can effectuate the court order" to sell the property. Around the same time, the trial court permitted defendant's attorney to withdraw after she terminated their agreement.

Plaintiff died on March 16, 2024. A few weeks later, the trial court conducted a hearing on plaintiff's motions to show cause. It first began by orally acknowledging plaintiff's death, but we note the record does not indicate any formal death notice filed with the court, parties, or interested persons as required by MCR 2.202(A)(2). The trial court then permitted the parties' daughter, Justine Eatherton, to appear with plaintiff's attorney. At no point during this litigation did any party or Eatherton, as plaintiff's purported representative, file a motion for substitution under MCR 2.202(A)(1)(a).

Nonetheless, the trial court took defendant's testimony concerning plaintiff's allegations. There she gave color to why she fired her attorney—she claimed he did not represent her interests during this litigation and that she never agreed to the stipulated final order because it would mean giving up her familial home. (We note she does not press any of these lack-of-authority arguments on appeal.) After hearing those allegations, the trial court expressed "some concerns about the legitimacy of the prior order," declined to find defendant in contempt, and gave her a date certain to find an attorney and file a motion to set aside the final stipulated order.

Defendant tardily filed that motion, but did so still pro per. At the subsequent hearing, the trial court found that defendant was "intentionally violating the continued court order" based on her failure to cooperate with the sale of the house. So it ordered her to vacate the house within 30 days. It also granted Eatherton the "power of attorney to sign all documents related to the sale" and allowed the parties to "come to an agreement and allow defendant to buy the equity out from" plaintiff. By this point, still, Eatherton had not filed a motion for substitution under MCR 2.202(A)(1), and the court had not entered—nor did it ever enter—an order permitting her to substitute for her father as a personal representative of his estate.

After securing current counsel, defendant moved for relief from judgment under MCR 2.612(C)(1). She argued, among other things, that plaintiff's interest in the property extinguished upon his death. The trial court denied the motion, finding no "mistake, inadvertence, surprise, or excusable neglect" as required by MCR 2.612(G)(1)(a). It reasoned that plaintiff could not "come back to this court and argue that something that occurred after the agreement [(plaintiff's death)] then violates the agreement that she'd entered into and she should not be responsible or held accountable with respect to the stipulated order that was entered by the Court."

Defendant appeals the trial court's denial of her motion for relief from judgment by leave granted, and the trial court has stayed proceedings. In this appeal, we note that no one, including Eatherton, has moved for substitution under MCR 2.202(A)(1); so we proceed with briefing just from defendant.

II. EFFECT OF PLAINTIFF'S DEATH

The issue on appeal is whether the trial court erroneously denied defendant's motion for relief from judgment due to plaintiff's death during this litigation. We review that denial for abuse of discretion, *Peterson v Auto Owners Ins Co*, 274 Mich App 407, 412; 733 NW2d 413 (2007), which occurs when a court's "decision falls outside the range of reasonable outcomes," *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 294; 14 NW3d 472 (2023). A decision premised on "an error of law" necessarily constitutes an abuse of discretion. *Id*. at 294-295. As set forth next, the trial court committed an error of law by not dismissing this action upon plaintiff's death given the parties' status as joint tenants with full rights of survivorship.

A. SUBSTITUTION OF PARTIES UNDER MCR 2.202(A)

As a general matter, "[t]he death of a party during the pendency of an action neither abates the suit nor deprives a court of jurisdiction over the matter." *Yee v Shiawassee Cnty Bd of Comm'rs*, 251 Mich App 379, 402; 651 NW2d 756 (2002). See also MCL 600.2921 ("All actions and claims survive death."). Consistent with this principle, MCR 2.202(A) sets forth the procedures parties, attorneys, and courts must follow after a party's death:

> (1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties.
>
> > (a) A motion for substitution may be made by a party, or by the successor or representative of the deceased party.
> >
> > (b) Unless a motion for substitution is made within 91 days after filing and service of a statement of the fact of the death, the action must be dismissed as to the deceased party, unless the party seeking substitution shows that there would be no prejudice to any other party from allowing later substitution.
> >
> > (c) Service of the statement or motion must be made on the parties as provided in MCR 2.107, and on persons not parties as provided in MCR 2.105.
>
> (2) If one or more of the plaintiffs or one or more of the defendants in an action dies, and the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. A party or attorney who learns that a party has died must promptly file a notice of the death.

This substitution-of-parties provision "grant[s] a court wide discretion to substitute a party" in the decedent's place, *Bradley v Progressive Marathon Ins Co*, 345 Mich App 126, 134; 3 NW3d 559 (2022), citing MCR 2.202(A) and (D), which may occur "either before or after judgment or by the Court of Appeals or Supreme Court pending appeal," MCR 2.202(D).

The record does not reflect compliance with MCR 2.202(A)'s notice provisions. Plaintiff's attorney did not "file a notice of [plaintiff's] death," let alone one that was "prompt[]." MCR 2.202(A)(2). Rather, his counsel apparently just orally informed the trial court of plaintiff's

death sometime before the hearing on plaintiff's motions to show cause. Defendant, and her later-retained attorney, similarly did not make the required filing.

Citing the "must be dismissed" provision set forth in MCR 2.202(A)(1)(b), defendant suggests dismissal is in order due to the lack of a motion for substitution. We cannot agree. A court "must" dismiss a deceased party's action "[u]nless a motion for substitution is made *within 91 days after filing and service of a statement of the fact of the death* . . . ." MCR 2.202(1)(b) (emphasis added). "Service of the statement," the rules continue, "must be made on the parties as provided in MCR 2.107, and on persons not parties as provided in MCR 2.105." MCR 2.202(A)(1)(c). We review these rules the same way we do statutes; accordingly, "when the language is unambiguous, we will enforce the plain meaning of the rule." *Tyler v Findling*, 508 Mich 364, 370; 972 NW2d 833 (2021). And here, MCR 2.202(1)(b)'s "must be dismissed" language is unambiguous: it does not become operable until a statement of the fact of the death is filed and served. Indeed, defendant offers no caselaw supporting the notion that the oral notification apparently given by plaintiff's attorney of plaintiff's death suffices to trigger the dismissal requirement set forth in MCR 2.202(A)(1)(b). Absent that, we decline to expand the court rules beyond the unambiguous text.

B. JOINT TENANCY WITH FULL RIGHTS OF SURVIVORSHIP EXTINGUISHED UPON PLAINTIFF'S DEATH

To resolve this appeal, we turn instead to the parties being joint tenants with full rights of survivorship and MCR 2.202(A)(1)'s substitution provision applying only if a "claim is not thereby extinguished" upon a party's death. In our view, that ownership status is outcome determinative—when plaintiff died, his pending claim for partition extinguished.

Michigan law recognizes several types of concurrent ownership in real property, including joint tenancies with full rights of survivorship. *Schaaf v Forbes*, 338 Mich App 1, 15; 979 NW2d 358 (2021). The parties' "joint tenancy with full rights of survivorship" means each has "a joint life estate with dual contingent remainders." *Albro v Allen*, 434 Mich 271, 275-276; 454 NW2d 85 (1990). "The principal characteristic of the joint tenancy is the right of survivorship. Upon the death of one joint tenant, the surviving tenant or tenants take the whole estate." *Id*. See also *In re VanConett Est*ate, 262 Mich App 660, 667–68; 687 NW2d 167 (2004) ("Property held as joint tenants with full rights of survivorship automatically passes to the surviving tenant(s) at a tenant's death."). These "dual contingent remainders"—the automatic conveyance of interest in property upon a joint tenant's death by operation of law to the surviving joint tenant—"are indestructible. A cotenant's contingent remainder cannot be destroyed by an act of the other cotenant." *Albro*, 434 Mich at 276.

Plaintiff sought in this litigation to sever this property ownership arrangement through partition under MCL 600.3301. The trial court never ordered the property's partition; instead, it only entered the parties' final stipulated order in which the parties agreed to sell the property and divvy up the proceeds. While to a casual observer (and setting aside defendant's position below that she did not agree to its terms) the stipulated order should control resolution of this dispute, our controlling case law provides that "merely expressing a desire to end a joint tenancy," does not "carr[y] out the task of terminating a joint tenancy with rights of survivorship." *VanConett*, 262 Mich App at 668.

Absent completion of the sale contemplated by the stipulated order and subsequent relinquishment of ownership, the parties needed an order of partition, without which "the joint tenancy has not been severed." *Jackson v Estate of Green*, 484 Mich 209, 214; 771 NW2d 675 (2009) (opinion by CORRIGAN, J.). And when it comes to the death of a joint tenant during a pending suit for partition, "the universal rule in the United States is that a pending suit for partition does not survive the death of one of the joint tenants." *Id*. "This rule is based on two related concepts: First, the theory of survivorship—that at the moment of death, ownership vests exclusively in the surviving joint tenant or tenants—and second, the doctrine that severance of the joint tenancy does not occur until the partition suit reaches final judgment." *Id*. at 214-215 (quotation marks and citations omitted).

In accordance with *Jackson*, the trial court committed an error of law in not granting defendant relief from judgment under MCR 2.612. Because plaintiff died before the sale of the property and without entry of an order of partition, plaintiff's interest in the property vested by operation of law in defendant as a joint tenant with rights of survivorship. Simply, "the filing of the partition action did not sever the joint tenancy because an order effectuating a partition had not entered at the time of [plaintiff]'s death. Therefore, regardless whether [plaintiff]'s partition action survived his death under the survival statute, his interest in the parcel of land did not." *Id*. at 215. See also *Tiller v Versacut Indus Inc*, unpublished per curiam opinion of the Court of Appeals, issued July 20, 2023 (Docket No. 360703), p 7 ("In this case, if Gerald and Michael had followed through with the consent judgment and mutually executed the documents while Gerald was alive, their mutual action would have destroyed the full rights of survivorship. However, because the parties never changed the ownership of the Morenci property, at the moment of Gerald's death, ownership vested exclusively in Michael, the surviving joint tenant.").

III. CONCLUSION

For these reasons, we reverse the trial court's order denying relief from judgment, and remand for entry of an order dismissing this action in defendant's favor. We do not retain jurisdiction.

/s/ Brock A. Swartzle
/s/ Matthew S. Ackerman
/s/ Christopher M. Trebilcock