

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA A. OSTRANDER, Personal
Representative of the Estate of MERRILL C.
OSTRANDER, Deceased,

UNPUBLISHED
April 12, 2005

Plaintiff/Counter-Defendant-
Appellant,

v

No. 250883
Arenac Circuit Court
LC No. 02-008154-CH

RICHARD OSTRANDER, Trustee of RICHARD
OSTRANDER REVOCABLE TRUST, and
SHIRLEY OSTRANDER, Trustee of SHIRLEY
OSTRANDER REVOCABLE TRUST,

Defendants/Counter-Plaintiffs-
Appellees.

Before: Saad, P.J., and Smolenski and Cooper, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order that denied her motion for summary disposition and granted summary disposition in favor of defendants in this action to partition real property. We reverse and remand.

I

On October 6, 1970, Katherine Ostrander conveyed three parcels totaling two hundred acres of farm land to her sons, plaintiff's decedent Merrill Ostrander and defendant Richard Ostrander,¹ "as joint tenants and not as tenants in common." On March 30, 1999, due to health concerns, Richard Ostrander conveyed, via quitclaim deed, his interest in two of the three parcels comprising 160 acres (hereinafter referred to as "the disputed property") equally to himself as trustee of the Richard Ostrander Revocable Trust and to Sandra Ostrander as trustee of the

¹ Plaintiff is decedent's widow and the personal representative of his estate. Defendant Sandra Ostrander is defendant Richard Ostrander's wife.

Sandra Ostrander revocable trust. The quitclaim deed contained a statement that the disputed property was conveyed “subject to joint tenancy” with decedent.

Decedent died on September 27, 2001. In August 2002, plaintiff filed the instant action to partition the disputed property. Plaintiff argued that Richard Ostrander’s unilateral conveyance of his interest in the disputed property severed the joint tenancy. Plaintiff says that when the joint tenancy was converted to a tenancy in common, the typical right of survivorship that accompanies joint tenancies was destroyed. According to plaintiff, when decedent, Merrill Ostrander, died, his undivided one-half interest in the disputed property was held by his estate as a tenant in common with defendants’ trusts, each of which held an undivided one-quarter interest in the disputed property.

Defendants countered that the language on the deed, “subject to the joint tenancy,” evidenced Richard Ostrander’s intent to preserve the joint tenancy. As a result, defendants say, the joint tenancy was never severed, and thus that decedent’s death extinguished decedent’s interest in the land due to Richard Ostrander’s right of survivorship.

Plaintiff moved for summary disposition, which the trial court denied. The trial court later held an evidentiary hearing to determine whether the 1999 deed severed the joint tenancy, because the parties agreed that this issue was dispositive. The trial court ruled that because the 1999 deed purported to convey Richard Ostrander’s interest in the disputed property “subject to the joint tenancy,” Richard Ostrander intended to preserve the joint tenancy. Accordingly, the trial court ruled that the joint tenancy had not been severed, and that plaintiff had no interest in the disputed property due to Richard Ostrander’s right of survivorship.

II

Plaintiff argues, correctly, that the trial court erroneously denied her motion for summary disposition and erroneously granted summary disposition in favor of defendants.² Because one joint tenant’s conveyance of his interest in a joint tenancy severs the joint tenancy and converts it to a tenancy in common, the trial court should have granted summary disposition in favor of plaintiff. Plaintiff further maintains, again correctly, that Richard Ostrander’s intent is irrelevant because conveyance of one tenant’s interest in a joint tenancy automatically severs the joint tenancy, as a matter of law, regardless of the conveying tenant’s subjective intent.

Michigan law recognizes two types of joint tenancies: (1) a “standard” joint tenancy, as here, that is severed when one tenant conveys his interest to a third party, and (2) an “indestructible” joint tenancy that is the functional equivalent of a joint life estate with dual contingent remainders. *Albro v Allen*, 434 Mich 271, 274-275; 454 NW2d 85 (1990). In addition to the standard terms that create a joint tenancy, an indestructible joint tenancy requires the granting instrument to include express words of survivorship, such as “and to the survivor of them,” “to them and the survivor of them,” “or survivor of them,” “with right of survivorship,”

² We review a trial court's decision with respect to a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

or “with full rights of survivorship.” *Id.* at 275. As the term “indestructible” suggests, one joint tenant may not deprive the other of his right of survivorship by a unilateral conveyance. *Id.* at 275-276. On the other hand, a standard joint tenancy “may be severed by an act of the parties, *by conveyance by either party*, or by levy and sale on an execution against one of the parties.” *Id.* at 275 (emphasis added).

The 1970 deed does not contain the express words of survivorship that are required in order to create an indestructible joint tenancy between Merrill Ostrander and Richard Ostrander. Thus, the 1970 deed created a standard joint tenancy. Moreover, as *Albro, supra*, makes clear, it is the *conveyance* itself that severs a joint tenancy and converts it to a tenancy in common, regardless of the intent of the conveying party. Accordingly, we hold that Richard Ostrander’s conveyance of his interest to the two trusts severed the joint tenancy and created a tenancy in common with Merrill Ostrander. Thus, we further hold that the trial court erred when it denied plaintiff’s motion for summary disposition and when it granted summary disposition in favor of defendants.

III

We reverse the trial court’s order that denied summary disposition in favor of plaintiff and granted summary disposition in favor of defendants. We remand to the trial court for further proceedings consistent with our opinion. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Michael R. Smolenski
/s/ Jessica R. Cooper