

CINDY WOOD

v.

DAVID ONYONS

Argued May 11, 2017
Decided May 23, 2017

Panel: SAUFLEY, C.J., and ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

David Onyons appeals from a judgment of the District Court (Belfast, *R. Murray, J.*) ordering the equitable partition of property held jointly with Cindy Wood following a non-jury trial. On appeal, Onyons argues that the court erred as a matter of law in its equitable partition analysis and by ordering that the sale proceeds first be applied to satisfy the balance of a note that was signed only by Wood, but which was secured by a mortgage on the jointly-held property. We affirm the judgment.

The partition of jointly-held property is a flexible procedure available through the court's equity jurisdiction and is reviewed for an abuse of discretion. *See Pew v. Sayler*, 2015 ME 120, ¶ 27, 123 A.3d 522. The trial court's factual findings are reviewed for clear error. *See Spottiswoode v. Levine*, 1999 ME 79, ¶ 16, 730 A.2d 166. When an appealing party does not provide a transcript of the trial—as is the case here—we assume that there is sufficient competent evidence in the record to support the trial court's findings of fact and the discretionary rulings on evidence, procedure, and remedies made during the course of the trial. *See Greaton v. Greaton*,

2012 ME 17, ¶ 2, 36 A.3d 913; *Rainbow v. Ransom*, 2010 ME 22, ¶ 3, 990 A.2d 535.

Here, the court found that the facts and circumstances of the case did not support Onyons's theory that Wood should be solely responsible for the balance of the note on the jointly-held property. The court stated that "the reason why only [Wood] was a signer of the note had at least as much to do with the fact that [Onyons] was precluded from signing such a document based on his status as a citizen of the United Kingdom." The court also found that although he did not sign the note, Onyons, along with Wood, signed the mortgage that was used to secure the loan obligation.

Given these findings and the court's careful consideration of the equities growing out of the joint tenant relationship, Onyons has not demonstrated that the court erred or abused its discretion in ordering that the sale proceeds from the jointly-held property be applied first to satisfy the balance of the note, with the remainder of the proceeds to be divided equally between the parties. *See Ackerman v. Hojnowski*, 2002 ME 147, ¶ 11, 804 A.2d 412 ("The division of property held in joint tenancy should take into account all equities growing out of that relationship."); *Libby v. Lorraine*, 430 A.2d 37, 40 (Me. 1981) (in distributing proceeds from an equitable partition by sale, a court may consider payments made on a joint and several debt along with all other relevant considerations).

As noted above, on the limited record provided to us, we must assume that the court's findings and its ultimate conclusions based on those findings are supported by the record. *See Rainbow*, 2010 ME 22, ¶ 3, 990 A.2d 535; *Libby*, 430 A.2d at 38.

The entry is:

Judgment affirmed.

Peggy L. McGehee, Esq. (orally), and Lauren B. Weliver, Esq., Perkins Thompson PA, Portland, for appellant David Onyons

Christopher K. MacLean, Esq. (orally), and Laura Shaw McDonald, Esq., Elliott, Maclean, Gilbert & Coursey, LLP, Camden, for appellee Cindy Wood

Belfast District Court docket number RE-2014-66
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