IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2011-CA-00984-COA

CAROLYN JONES **APPELLANT**

v.

ANTHONY GRAPHIA **APPELLEE**

DATE OF JUDGMENT:	06/24/2011
TRIAL JUDGE:	HON. CARTER O. BISE
COURT FROM WHICH APPEALED:	HANCOCK COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANT:	GEORGE W. HEALY IV CASSIDY LEE ANDERSON
ATTORNEY FOR APPELLEE:	W. STEWART ROBINSON
NATURE OF THE CASE:	CIVIL - REAL PROPERTY
TRIAL COURT DISPOSITION:	APPELLEE AWARDED PROCEEDS OF PARTITION SALE
DISPOSITION:	AFFIRMED: 08/07/2012
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE GRIFFIS, P.J., MAXWELL AND RUSSELL, JJ.

GRIFFIS, P.J., FOR THE COURT:

¶1. Two unmarried, romantically involved people bought a house together as joint tenants. The man paid the purchase price for the home, and the woman paid nothing. Later when the relationship soured, he filed suit in chancery court to partite the property. The chancellor awarded him the entire amount he had paid for the house, giving his former lover and joint tenant nothing. She appeals. Finding no error in the chancellor's judgment, we affirm.

FACTS

¶2. Anthony Graphia and Carolyn Jones were romantically involved, but never married.

Each lived in Louisiana. On March 26, 2010, they purchased a home in Diamondhead in Hancock County, Mississippi, as joint tenants with the right of survivorship, and not as tenants in common. Graphia and Jones had dated for two years prior to buying the home. It was their intention at the time to marry and live in the Mississippi home.

¶3. It was undisputed that the purchase price of the home, $274,000, was paid entirely by Graphia. He also paid all the utilities, the insurance, the taxes, and the dues for the property owners' association. Jones testified that she helped decorate the home, hung draperies, and used some of her furnishings in the home.[1]

¶4. The relationship waned, after which Graphia filed suit in Hancock County Chancery Court to partition the property. Graphia contended that the property was incapable of division in kind, and that even if it were, that he should be allowed an equitable adjustment since he alone purchased the property. Jones answered denying the allegations. Jones filed a motion for summary judgment claiming that the parol-evidence rule would not allow a court to look beyond the language of the deed, which names the parties as joint tenants with rights of survivorship.

¶5. In her motion for summary judgment, Jones argued that as a joint tenant she was entitled to a share of the funds from the sale of the home. She cited *Thornhill v. Chapman,* 748 So. 2d 819 (Miss. Ct. App. 1999), for the proposition that the chancellor should not have allowed Graphia to testify about how much he paid for the property, as that was a violation

[1] Graphia testified that Jones wanted to be a joint owner and that she agreed to give him fifty percent ownership of her town home in Baton Rogue, Louisiana, in return for including her as a joint tenant of the Mississippi property. However, Graphia testified that this never happened.

of the parol-evidence rule. The summary-judgment motion was denied, and a trial was held, after which the chancellor ruled that he could adjust the equities between the parties pursuant to Mississippi Code Annotated section 11-21-9 (Rev. 2004). Further, the chancellor applied Mississippi Code Annotated section 11-21-33 (Rev. 2004), which allows the chancellor to use owelty in a partition action, and awarded Graphia $274,000, the amount of the purchase price. The chancellor allowed Jones to retrieve any personal belongings remaining in the home.

STANDARD OF REVIEW

¶6. This Court has a limited standard of review in appeals from the chancery court. *Tucker v. Prisock*, 791 So. 2d 190, 192 (¶10) (Miss. 2001). The standard of review of a chancellor's decision is abuse of discretion. *Creely v. Hosemann*, 910 So. 2d 512, 516 (¶11) (Miss. 2005). An appellate court "will not disturb the factual findings of a chancellor when supported by substantial evidence unless we can say with reasonable certainty that the chancellor abused his discretion, was manifestly wrong, clearly erroneous[,] or applied an erroneous legal standard." *Biglane v. Under the Hill Corp*., 949 So. 2d 9, 13-14 (¶17) (Miss. 2007) (quoting *Cummings v. Benderman*, 681 So. 2d 97, 100 (Miss. 1996)). However, on questions of law, appellate courts employ a de novo standard of review. *Id.*; *Tucker*, 791 So. 2d at 192 (¶10).

ANALYSIS

¶7. Before we address the issues in this appeal, we must discuss the peculiarities of the joint tenancy. The Mississippi Supreme Court has held that "the distinguishing characteristic of a joint tenancy is the right of survivorship." *In re Admin. of Estate of Abernathy*, 778 So.

2d 123, 129 (¶24) (Miss. 2001) (citing *Vaughn v. Vaughn*, 238 Miss. 342, 349, 118 So. 2d 620, 622 (1960)). By virtue of survivorship, the property descends outside of probate from the deceased joint tenant to the surviving joint tenant. John E. Cribbet, *Principles of the Law of Property* 99 (1975). The requirements for the creation of a joint tenancy with right of survivorship in land are governed by statute.[2] Ownership of the whole and then taking the whole by survivorship are the outstanding features of owning property as joint tenants. *Id.* at 99. The decedent's share does not have to pass to the survivor because the survivor already owns the whole. The usefulness of the joint tenancy as one property-law expert explained is that it serves as a "poor man's probate." *Id.* at 102.

¶8. With the above said about joint tenancy and its feature of survivorship, one point becomes clear about this case: Jones owned the whole along with Graphia while they were joint owners. However, when Graphia filed to partite the property, as joint tenants are

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[2]Mississippi Code Annotated section 89-1-7 (Rev. 2011) provides:

> All conveyances or devises of land made to two (2) or more persons, including conveyances or devises to husband and wife, shall be construed to create estates in common and not in joint tenancy or entirety, *unless it manifestly appears from the tenor of the instrument that it was intended to create an estate in joint tenancy or entirety with the right of survivorship. But an estate in joint tenancy or entirety with right of survivorship may be created by such conveyance from the owner or owners to himself, themselves or others, or to himself, themselves and others*.
>
> An estate in joint tenancy or entirety with right of survivorship between spouses may be terminated by deed of one spouse to the other without necessity of joinder of the grantee spouse and without regard to whether the property constitutes any part of the homestead of the spouses.

(Emphasis added).

allowed to do,[3] then Jones's interest was subject to division by the chancellor. Prior to the chancery proceeding, Jones enjoyed the ownership of the whole. Jones lost this enjoyment when Graphia, her joint tenant, filed for partition. Had Graphia died, Jones, as the only other joint owner, would have owned the whole by herself. But since there was no death, the joint tenants had to give testimony during the partition hearing concerning their contributions to buying the house.

¶9. We next turn to the decision of the chancellor to partite the property and give all of the sale proceeds to Graphia. Jones cites *Johnson v. Johnson*, 550 So. 2d 416, 420 (Miss. 1989), for the proposition that when a property owner agrees to own property jointly with another, the common law presumes that the owner intended to gift the one-half interest to the other property owner. First and foremost, *Johnson* was abrogated in *Pearson v. Pearson*, 761 So. 2d 157, 163 (¶16) (Miss. 2000), when the court noted that *Johnson* was pre-*Ferguson* and that the *Johnson* holding was just an equitable way for a court to divide marital property. The *Pearson* court held that consideration of the *Ferguson* factors would now serve that function. Secondly, *Pearson* involved married individuals who had collected assets together for seventeen years, rather than an unmarried couple in a short relationship as in this case.

¶10. Jones argues that the chancellor erred when he found that Jones would be unjustly enriched if she were awarded any part of the partition sale.

¶11. The chancellor, as an alternative ground to his decision, found that awarding Jones

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[3] *See* Miss. Code Ann. § 11-21-3 (Rev. 2011). In addition to partitioning real property, a chancellor may adjust the equities between cotenants by, for example, adjusting the amount paid by one cotenant for improvements made to the property, or for taxes paid and other related expenses. Miss. Code Ann. §§ 11-21-11, 11-21-27 (Rev. 2004).

an equal share of the purchase price, to which she contributed no purchase funds and very little sweat equity in the property, would unjustly enrich her. The chancellor found that Jones contributed nothing to the acquisition of the property and that she had no equity interest in the property. The chancellor cited Mississippi Code Annotated section 11-21-9, which allows him to determine all questions concerning title. "The court may adjust the equities between and determine all claims of the several cotenants as well as the equities and claims of encumbrancers." *Id.*

¶12. We remain mindful of our limited standard of review with regard to a chancellor's findings. Here we find no error of law or of fact. As joint tenants, either party could have filed for partition after the relationship soured. Graphia did so. Then, the duty fell to the chancellor to adjust the equities and determine the claims of the joint tenants. Here, we have two unmarried adults who titled property as joint tenants with the right of survivorship, and not as tenants in common. It was undisputed that Graphia paid the $274,000 purchase price for the home, plus utilities, insurance, club dues, and taxes. It was undisputed that Jones paid nothing. Had Graphia died, Jones would have benefitted from the joint tenancy and become the sole owner. However, as joint tenants are allowed to do, Graphia sought partition and allowed the chancellor to decide the issues. The chancellor found that Graphia should receive the total purchase price since he had paid it and that Jones should receive nothing since she had made no contribution. We find no error in the chancellor's decision.

¶13. **THE JUDGMENT OF THE CHANCERY COURT OF HANCOCK COUNTY IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT**.

LEE, C.J., BARNES, ISHEE, ROBERTS AND RUSSELL, JJ., CONCUR.

CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY FAIR, J.; IRVING, P.J., AND MAXWELL, J., JOIN IN PART. MAXWELL, J., DISSENTS WITH SEPARATE WRITTEN OPINION.

CARLTON, J., DISSENTING:

¶14. I respectfully dissent from the majority opinion wherein the majority allows the trial court to deviate from the statutory procedure in dividing the joint interest in real property upon the filing of a petition to partition. *See Walker v. Williams*, 84 Miss. 392, 36 So. 450, 451-52 (1904); *see also Murphree v. Cook*, 822 So. 2d 1092, 1098-99 (¶21) (Miss. Ct. App. 2002) (This Court found the chancellor erred in divesting a co-tenant of his interest in property using such factors as original cost and subsequent cost of maintaining the property. The Court held that the right of partition created by statute is an absolute right of a tenant in common); *see also* Miss. Code Ann. § 11-21-11 (When considering partition in kind, the court may order a sale of the lands or any part thereof if sale would better promote the interest of all parties than a partition in kind or court may order sale when determining that equal division of the lands cannot be made.); *Cox v. Kyle,* 75 Miss 667, 23 So. 518, 519 (1898) (Applying strict construction of partition statute).

¶15. The decision by this Court in *Murphree*, 822 So. 2d at 1098-99 (¶¶21-22) is helpful to the resolution of the case before us today. In *Murphree*, this Court explained that the chancellor abused his discretion in attempting to fashion a unique remedy to sever a co-tenancy by ignoring statutes of the state defining the only lawful method available to accomplish that purpose. *Id*. In the case before us, if the chancellor determined that the lands were not subject to equal partition in kind or that the interest of the parties were served by a sale, then the chancellor should have equally divided any sale proceeds in accordance

with each co-tenant's respective joint interest. *See generally* MSPRAC–ENC § 60:100 (explaining that the equities that may be adjusted between the parties upon partition and cancellation of the joint title include adjustments such as rent, improvements to the property, payment of taxes, and other related expenses). The equities that may be adjusted upon partition of the property constitute equities that arise out of the cancellation of that joint title in the partition action. *Hudson v. Strickland*, 58 Miss. 186, 1880 WL 4849, 4-5 (1880); *see also Moorer v. Willis*, 239 Miss. 118, 129-30, 121 So. 2d 127, 132 (1960) (The equities arising out of the cancellation of the title concern matters such as the collection of rents, payment of taxes, and costs of maintenance and upkeep.).

¶16. In this case, the chancellor considered disputes between the parties that exceeded those equities arising out of the cancellation of the title upon partition. The original purchase price related to the formation of the title, but it did not constitute an equity arising out of the cancellation of the title or partition after formation of the joint title. Graphia's testimony that Jones agreed to give him fifty percent ownership of her town home in exchange for including her as a joint tenant on the property in dispute relates to a matter arising prior to formation of the joint title. I submit that nothing in the title of joint ownership provides that Jones's joint interest was contingent upon some other such conveyance. However, Mississippi Code Annotated § 11-21-9 and precedent all recognize the chancellor's authority to consider the equities arising out of the cancellation of the title in partition actions. The chancellor, and majority, properly recognized the chancellor's authority in making adjustments relating to the maintenance of the property, such as taxes. *Dailey v. Houston*, 246 Miss. 667, 151 So. 2d 919 (Miss. 1963); *see* Miss. Code Ann. § 11-21-11. I submit that the chancellor exceeded

the equities of the claims between the parties arising out of the cancellation of the title; therefore, I would reverse and remand for a new partition division by the chancellor. *See Walker*, 84 Miss. at 392, 36 So. at 451-52; *Murphree*, 822 So. 2d at 1098-99 (¶¶21-22).

FAIR, J., JOINS THIS OPINION. IRVING, P.J., AND MAXWELL, J., JOIN THIS OPINION IN PART.

MAXWELL, J., DISSENTING:

¶17. This case concerns a partition sale of a house that Jones and Graphia owned as joint tenants with the right of survivorship. But instead of partitioning the property, the chancellor essentially performed an equitable distribution of the house, justifying his decision to award one joint tenant all the proceeds of a partition sale based primarily on the "putative-spouse doctrine." Because Graphia was not a "putative spouse"—and was, thus, not entitled to an equitable distribution of the property he jointly owned with his girlfriend—I dissent.

¶18. The chancellor relied on *Chrismond v. Chrismond*, 211 Miss. 746, 757, 52 So. 2d 624, 629 (1951), *Pickens v. Pickens*, 490 So. 2d 872 (Miss. 1986), and *Cotton v. Cotton*, 44 So. 3d 371 (Miss. Ct. App. 2010), to hold he could look beyond joint ownership and consider each owner's contribution to the accumulation of the property. But the Mississippi Supreme Court has made clear the equity power in *Chrismond* and *Pickens* does not extend to cohabitants, like Jones and Graphia, who never attempted a valid marriage. *See Davis v. Davis*, 643 So. 2d 931, 934-36 (Miss. 1994). While Jones and Graphia had intended to marry when they purchased the home as joint tenants, they were never married or ceremonially married. Thus, equitable distribution—which authorizes a chancellor to look beyond title and consider disparity in contribution to divest a joint owner of his or her interest in *marital*

property, *e.g.*, *Ferguson v. Ferguson*, 639 So. 2d 921, 927 (Miss. 1994)—simply was unavailable to the unmarried Graphia in his *statutory partition action*. And it was error for the chancellor to distribute the proceeds of the partition sale based on this doctrine.

¶19. The majority justifies the chancellor's award on an alternative basis—the language in Mississippi Code Annotated section 11-21-9 (Rev. 2004) that a chancellor "may adjust the equities between and determine all claims of the several cotenants." According to Graphia, this language authorized the chancellor to divest Jones of her right to equal ownership of the home or proceeds. I disagree. Section 11-21-9 does not, as the majority suggests, authorize chancellors to look beyond title when a joint tenant initiates a partition action. Rather, this statute concerns *jurisdiction*—allowing the chancellor to decide all ancillary issues between cotenants to the partition action. *See id.*

¶20. I agree with Judge Carlton that "adjust[ment] of the equitities," as contemplated by section 11-21-9, authorizes chancellors to use a cotenant's otherwise equal share of proceeds to *offset* what he owes his cotenant for rent, improvement costs, taxes, or other similar debts. However, this language does not grant chancellors authority to disregard title and to divide sale proceeds based solely on equity. Thus, the chancellor in this case could not rely on section 11-21-9 to deny Jones her equal share of the partition-sale proceeds.

¶21. Because title showed Jones was a joint tenant with Graphia, both were entitled to an equal share of the jointly owned home upon severance, by either partition in kind or partition by sale. And the chancellor erred by denying Jones this right. I would reverse the judgment and remand this partition case for an equal distribution of the partition-sale proceeds.