

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN D. SMITH,  
Appellant,  
vs.  
BERNICE OSCHE,  
Respondent.

No. 36495

FILED

MAR 06 2003

ORDER OF REVERSAL

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Rehak*  
CHIEF DEPUTY CLERK

This is a proper person appeal from a district court judgment in a quiet title action. In 1999, respondent Bernice Osche sued appellant John Smith, an inmate, seeking to quiet title in a parcel of real estate the two had acquired as joint tenants before Smith was incarcerated. Osche alleged that she made the down payment and, notwithstanding an agreement with Smith to split the monthly mortgage payments, she has been the only cotenant to make those payments. Smith answered the complaint in proper person, alleging that he contributed money to the down payment and gave Osche money after he was incarcerated to help with expenses.

Smith moved for summary judgment, arguing that Osche had failed to produce any evidence to support her complaint. Osche opposed summary judgment, but conceded that Smith had contributed \$500 "to the property." The district court denied Smith's summary judgment motion.

Following a bench trial, the district court entered judgment for Osche and declared that Smith had no interest in the property. Smith appealed, and this court ordered Osche to file a response by February 10, 2003. Osche has not responded. As explained below, we reverse.

It is well-established that a cotenant has a right to contribution from other cotenants for mortgage payments, including principal and interest paid to preserve the property.<sup>1</sup> But even though entitled to contribution, the paying cotenant is not entitled to a decree conveying to her the delinquent cotenant's interest.<sup>2</sup> Rather, the paying cotenant's contribution right lies in an action for partition.<sup>3</sup> There, the district court can determine the cotenants' respective ownership interests and order the property sold with the net proceeds to be distributed according to each cotenant's interest.<sup>4</sup> Alternatively, if a sale is inequitable, the district court may enter judgment concerning the respective interests of the cotenants.<sup>5</sup>

We conclude that the district court erred in voiding Smith's ownership interest in the real property and quieting title in Osche. Smith was listed on the deed as a joint tenant and had contributed at least \$500 to the property. Thus, the district court's findings that Smith "has not had

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<sup>1</sup>Sack v. Tomlin, 110 Nev. 204, 215, 871 P.2d 298, 306 (1994); see generally E. H. Schopler, Contribution, subrogation, and similar rights, as between cotenants, where one pays the other's share of sum owing on mortgage or other lien, 48 A.L.R.2d 1305, 1310 (1956) (collecting cases).

<sup>2</sup>20 Am. Jur. 2d Cotenancy and Joint Ownership § 72 (1995); see, e.g., Hardee v. Alexander, 182 S.W. 57, 60 (Tex. App. 1915).

<sup>3</sup>See 4 John V. Orth, Thompson on Real Property § 31.07(b) (David A. Thomas ed. 1994); see, e.g., Langevin v. York, 111 Nev. 1481, 907 P.2d 981 (1995).

<sup>4</sup>Langevin, 111 Nev. at 1484-85, 907 P.2d at 983.


<sup>5</sup>Id. at 1486, 907 P.2d at 984.


... any right, title, or interest whatsoever” to the real property and that Smith has not “made any payment on the property” are clearly erroneous.<sup>6</sup>

Accordingly, we

ORDER the judgment of the district court REVERSED.<sup>7</sup>

 J.  
Shearing

 J.  
Leavitt

 J.  
Becker

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<sup>6</sup>See Sandy Valley Assocs. v. Sky Ranch, 117 Nev. \_\_\_, \_\_\_, 35 P.3d 964, 968 (2001) (stating that this court will not set aside a district court’s factual findings unless they are clearly erroneous or are not supported by substantial evidence).

<sup>7</sup>We note that our January 9, 2003 order directing a response to the appeal observed, among other things, that the district court may have abused its discretion in failing to rule on Smith’s motion to be transported to court for trial. See Dodd v. Dodd, 17 S.W.3d 714, 718 (Tex. App. 2000) (holding that trial court abused its discretion by not ruling on inmate’s request to appear at a civil trial in which he was a defendant); see also Jay M. Zitter, Annotation, State Prisoner’s Right to Personally Appear at Civil Trial to Which He Is a Party--State Court Cases, 82 A.L.R.4th 1063, 1067 (1990). Upon further review of the record, however, it appears that Smith failed to submit his motion for decision as required by Washoe District Court Rule 12(4).

cc: Hon. Peter I. Breen, District Judge  
John C. Hope Jr.  
John D. Smith  
Washoe District Court Clerk