



IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JUDITH A. SAWITSKI, INDIVIDUALLY
AND IN HER CAPACITY AS TRUSTEE
OF THE JS LIVING TRUST, U/A
DATED APRIL 4, 2023,
Appellant,
vs.
THERESA LYNN GROH,
INDIVIDUALLY AND IN HER
CAPACITY AS TRUSTEE OF THE TLG
LIVING TRUST, U/A DATED MAY 2,
2023,
Respondent.

No. 90707-COA

ORDER OF AFFIRMANCE

Judith A. Sawitski, individually and in her capacity as trustee, appeals a district court order denying her motion for summary judgment and granting respondent Theresa Lynn Groh's motion for partial summary judgment in a partition matter. Eighth Judicial District Court, Clark County; Hon. Timothy C. Williams, Judge.

In November 2024, Groh filed a complaint seeking to partition or sell real estate in which she held an interest. She also claimed unjust enrichment. In 2022, Sawitski and Groh purchased a single-family home in North Las Vegas with each party receiving a one-half interest in the property. Subsequently, Sawitski transferred her interest to JS Living Trust and Groh transferred her interest to TLG Living Trust. Groh moved out of the home in October 2023, and parties were unable to negotiate a deal for Groh's interest in the property. Sawitski answered the complaint and counterclaimed, asserting Groh was unjustly enriched. Groh answered and denied the allegations in the counterclaim.

Both Sawitski and Groh subsequently moved for summary judgment. In her motion seeking denial of the partition claim, Sawitski asserted that selling the property would significantly prejudice her because it is her primary residence and she is elderly. Groh opposed Sawitski's motion, asserting that Sawitski failed to support a single factual position with admissible evidence as required by NRCP 56(c). Groh also asserted Sawitski sought to restore an unacceptable status quo and deprive Groh of the remedy of a judicial sale simply because Sawitski is elderly.

Groh also moved for partial summary judgment on the partition/judicial sale claim. Relying on the records accompanying the complaint and declarations submitted in support of her motion, Groh asserted that she contributed \$210,000 toward the purchase of the property but has not lived there since early 2022. Groh contended that all the requirements for a judicial sale pursuant to NRS 39.010 were present: the parties were joint tenants or tenants in common, there were no lienholders, Groh filed notice of lis pendens after filing the complaint; and the summons and complaint were served on Sawitski. Groh asserted that the property was a single-family residence that was not susceptible to partition in kind without significant prejudice to the owners. Groh further sought an order directing a judicial sale consistent with NRS Chapter 39. Sawitski opposed Groh's motion for partial summary judgment, reasserting that the sale of the home would greatly prejudice her due to her age.

The district court thereafter issued a written order in which it denied Sawitski's motion for summary judgment and granted Groh's motion for partial summary judgment. The court determined that both Sawitski's motion and her opposition to Groh's motion lacked supporting evidence as required by NRCP 56(c)(1). It found that a physical partition of a single-family

residence would prejudice both parties. The district court accordingly ordered the property sold via a licensed realtor and that the proceeds be held in an escrow account pending further order of the court. This appeal followed.

Sawitski argues that the district court erred in granting partial summary judgment on the partition claim and ordering the property to be sold. Sawitski contends that the district court erred by failing to apply the principles of equity and consider the effect the sale of her primary residence would have on her due to her age and removal from the community. She further argues that Groh would not be prejudiced by the denial of partial summary judgment because Groh would continue to grow equity in the property. Sawitski also generally asserts that there remains a genuine dispute of material fact.

We review a district court's grant of summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). All evidence is construed in the "light most favorable to the nonmoving party." *Id.* Summary judgment is appropriate when there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCP 56(a). General allegations and conclusory statements do not create a genuine dispute of fact. *Id.* at 731, 121 P.3d at 1030-31. The party moving for summary judgment must meet its initial burden of production to show no genuine dispute of any material fact exists. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). The nonmoving party must then "transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine [dispute] of material fact." *Id.* at 603, 172 P.3d at 134.

Joint tenants or tenants in common of real property may bring an action seeking partition of that property "according to the respective rights of the persons interested therein, and for a sale of such property or a part of it, if

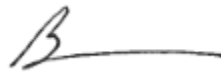
a partition cannot be made without great prejudice to the owners.” NRS 39.010; *see also Dall v. Confidence Silver Min. Co.*, 3 Nev. 531, 532 (1868) (recognizing “[t]he right of one tenant in common to claim a partition or sale was a common law right”). A court may order the property sold “[i]f the evidence establishes to the satisfaction of the court that the property, or any part of it, is so situated that partition cannot be made without great prejudice to the owners.” NRS 39.120. A complainant must identify the interests of all parties in the complaint, NRS 39.020; record notice of the pending litigation after the complaint is filed, NRS 39.040; and serve a summons on all interested parties, NRS 39.050. While the partition process is statutory, “a partition action is an equitable one in which the courts will apply the broad principles of equity.” *Kent v. Kent*, 108 Nev. 398, 402, 835 P.2d 8, 10 (1992).

We conclude that Sawitski fails to demonstrate the district court erred by granting Groh’s motion for partial summary judgment. While Sawitski points to information concerning the parties’ attempts to negotiate a sale of the relevant property, Sawitski did not identify any factual dispute regarding the operative facts relevant to the partition action. *See* NRCP 56(c); *Cuzze*, 123 Nev. at 603, 172 P.3d at 134. Further, Sawitski alleged no facts and did not identify any authority suggesting she had the right to buy Groh’s interest before Groh sought partition or judicial sale of the property. *See, e.g., Terrible v. Terrible*, 91 Nev. 279, 282, 534 P.2d 919, 921 (1975) (observing that the right to partition real property “may be waived by reason of an agreement”). To the extent Sawitski contends that equitable principles may have militated against granting partition, we have recognized that the use of “extraordinary equitable devices to supplant the partition statutes risks creation—rather than prevention—of unjust enrichment.” *Myricks v. Shields*,

No. 89588-COA, 2026 WL 923892, at *6 (Nev. Ct. App. Apr. 3, 2026) (Order Affirming in Part, Reversing in Part and Remanding).

Instead, the undisputed evidence showed that Sawitski and Groh purchased and held title to a single-family residence in Clark County. They each transferred their interest in the property to their respective trusts. There were no mortgages or encumbrances on the property. The district court's conclusion that the single-family home could not be partitioned without great prejudice to *all* the owners was supported by the record. *See* NRS 39.120; *see, e.g., Friend v. Friend*, 964 P.2d 1219, 1222 (Wash. Ct. App. 1998) (affirming finding by trial court that partition in kind would prejudice the owners because single-family residence could not be legally divided under local zoning and subdivision ordinances); *Martin v. DeWitt*, 334 P.3d 123, 127 n.1 (Wyo. 2014) ("A single family urban residential dwelling obviously could not be partitioned in most cases."). In light of Sawitski's failure to demonstrate that there remains a genuine dispute of material fact, she likewise fails to demonstrate that the district court erred by granting Groh's motion for partial summary judgment and ordering the sale of the property. Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


Bulla, C.J.





¹Insofar as Sawitski raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

Gibbons, J.

Westbrook, J.

cc: Hon. Timothy C. Williams, District Judge
Patrick N. Chapin, Settlement Judge
David J. Winterton & Associates, Ltd.
Hutchison & Steffen, LLC/Las Vegas
Hutchison & Steffen, LLC/Reno
Eighth Judicial District Court Clerk