CHARLES W. GETTYS, JR. AND TAMMY ABIDE	*	**NO. 2017-CA-0859**
VERSUS	*	**COURT OF APPEAL**
WILLIAM G. GETTYS, FLOELLEN SANCHEZ-RICKARD, VICTORIA FOGHT VIRGA AND MICHAEL VIRGA	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	* * * * * * *	

APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 14-0642, DIVISION "D"
Honorable Kirk A. Vaughn, Judge
* * * * * *

Judge Regina Bartholomew-Woods

* * * * * *

(Court composed of Chief Judge James F. McKay, III, Judge Terri F. Love, Judge Regina Bartholomew-Woods)

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AFFIRMED
May 16, 2018

This civil appeal involves the co-ownership, partition by licitation, and reimbursement for renovation of 216 Coney Drive, an immovable property located in Arabi, Louisiana, in St. Bernard Parish. For the reasons that follow, we affirm the trial court's February 9, 2017 judgment.

FACTUAL AND PROCEDURAL HISTORY

On December 15, 2004, the trial court signed a judgment of possession in the Succession of Florence Schmit Gettys Sanchez, which awarded Plaintiffs-Appellees, Charles W. Gettys, Jr. ("Charles") and Tammy Abide ("Tammy") (collectively "Plaintiffs-Appellees") and Defendants-Appellants, William G. Gettys ("William"), Floellen Sanchez-Rickard ("Floellen"), Victoria Foght Virga, and Michael Virga (collectively "Defendants-Appellants"), each an undivided one-fifth (1/5) interest in 216 Coney Drive ("property"), a residence in St. Bernard Parish ("parish"); all parties are owners in indivision or co-owners of the property.

On June 18, 2014, Plaintiffs-Appellees filed a petition for partition of jointly owned property by licitation and rule to show cause against Defendants-

Appellants. On November 10, 2014, William filed an answer in reconventional demand and alleged that after Hurricane Katrina, Charles, Tammy, and Floellen expressed that they no longer "wanted an interest in the property," did not want to "put any money into the property," and did not want to be responsible for the costs of repair and any liens or fines from the parish. William asserted that after Hurricane Katrina, he completely renovated the property and began residing there. William further asserted that prior to Hurricane Katrina, he and Charles agreed to renovate, then sell the property, and ultimately share the proceeds. William stated that the cost of renovations totaled $46,000.00. According to William, he and Charles agreed to share equally in the costs of the renovation; however, Charles had not made any payments toward the cost of the pre-Hurricane Katrina renovation. Therefore, through the partition of the property proceedings, William sought reimbursement from Charles in the amount of $23,000.00, one-half of the cost of the pre-Hurricane Katrina renovation. Ultimately, William sought reimbursement for the renovations that he made to the property both before and after Hurricane Katrina.

The trial in this matter began on October 17, 2016, and the trial court rendered a final judgment on February 9, 2017. The trial court ordered that the property be partitioned by licitation and ruled that the property be seized and sold at auction with a minimum bid of $50,000.00 and the $48,476.18 of the net proceeds to be paid to William as reimbursement for the renovations to the property after Hurricane Katrina. The trial court's final judgment permitted co-

owners to avoid the sale of the property at auction by agreeing to sell the property privately before April 1, 2017. It is from this judgment that William appeals.

DISCUSSION

On appeal, William raises the following assignments of error:

1. Whether the trial court erred in failing to reimburse William for renovations made to the property before Hurricane Katrina.
2. Whether the trial court erred in failing to reimburse William for workmanship of renovations made to the property after Hurricane Katrina.
3. Whether the trial court's award of one-fifth (1/5) of the proceeds of the sale to each owner in indivision subject to a credit of $48,476.18 to William is contrary to law.

Standard of Review

This Court, in *Slimp v. Sartisky*, outlined the appropriate standard of review as follows:

> A trial judge is afforded a great deal of latitude in arriving at an equitable distribution of the assets between co-owners. However, the allocation or assigning of assets and liabilities in the partition of property is reviewed under the abuse of discretion standard. *Legaux-Barrow v. Barrow*, [20]08-530, p. 5 (La. App. 5 Cir. 1/27/09), 8 So.3d 87, 90, *writ not considered*, [20]09-0447 (La.4/13/09), 5 So.3d 152. It is further settled that a court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of "manifest error" or unless it is "clearly wrong," and "where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable." *Rosell v. ESCO*, 549 So.2d 840, 844 (La.1989).

Slimp v. Sartisky, 2011-1677, p. 21-22 (La. App. 4 Cir. 9/17/12), 100 So.3d 901, 916.

According to La. C.C. art. 797, ownership of the same thing by two (2) or more persons is "ownership in indivision," and all shares are presumed equal. Louisiana Civil Code article 807 provides, in pertinent part, that "[a]ny co-owner has a right to demand partition of a thing held in indivision." Here, the parties, as owners in indivision or co-owners of the property had the right to seek partition. Pursuant to La. C.C. art. 811[1], because the property, a residential house, does not lend itself to partition in kind, it was subject to partition by licitation with proceeds distributed in proportion to shares.

Pre-Hurricane Katrina Renovation

Before Hurricane Katrina, the co-owners agreed to sell the property. But first, the co-owners agreed to renovate the property in an attempt to yield a higher profit. The co-owners also agreed that, prior to the renovation, the property was worth $67,000.00; Charles and William would be financially responsible for the renovations; and, upon the sale of the property, each co-owner would receive one-fifth (1/5) share of $67,000.00 and Charles and William would share, equally, any proceeds that exceeded $67,000.00. About this time, Charles was terminated from his job and was unable to financially contribute his one-half of the cost of renovations. William asserts that he and Charles agreed that William would pay all

[1] As provided in La. C.C. art. 810, partition in kind is the "division into as many lots of nearly equal value as there are shares and the aggregate value of all lots is not significantly lower than the value of the property in the state of indivision."

the costs of the renovations and that Charles would reimburse him from Charles' share of the proceeds after the sale of the property. William asserted that he paid $46,000.00 for these renovations. After the renovations were completed, but before the property was sold, Hurricane Katrina caused significant damage to the property, which was not insured. At trial and on appeal, William seeks reimbursement in the amount of $23,000.00 representing one-half of the costs of the pre-Hurricane Katrina renovation.

Post-Hurricane Katrina Renovation

William asserts that after Hurricane Katrina, he was the only co-owner interested in renovating the property. In his appellate brief, William asserts that if the property had been sold without renovating, the property would have sold for $5,000.00; each co-owner would have received a one-fifth share of that amount.[2] According to William, Charles, as the executor, received notice from the parish that the property would be demolished if it was not repaired. In response, William began renovating the property with the knowledge and consent of the other co-owners; the other co-owners did not contribute financially to the post-Hurricane Katrina renovation. In July 2007, after the completion of the renovation, William and his wife began residing in the property.

Analysis

Louisiana Code of Civil Procedure article 804 provides that "[s]ubstantial alterations or substantial improvements to the thing held in indivision may be

[2] At trial, the parties stipulated that immediately after Hurricane Katrina, the property was valued at $22,500.00, and the property is presently valued at $110,000.00.

undertaken only with the consent of all the co-owners." Upon review of the appellate record, it appears that all owners in indivision consented to William and Charles renovating the property, both before and after Hurricane Katrina. As such, La. C.C. art. 496 provides that "[w]hen constructions, plantings, or works are made by a possessor in good faith, the owner of the immovable may not demand their demolition and removal. He is bound to keep them and at his option to pay to the possessor either the cost of the materials and of the workmanship, or their current value, or the enhanced value of the immovable." In *Franklin v. Franklin*, the court makes it clear that "[t]he choice of the method of compensation is at the option of the other co-owner." *Franklin*, 415 So.2d 426, 428 (La. App. 1st Cir. 1982). Here, in its reasons for judgment, the trial court reasoned that "[a]lthough the other parties have not explicitly selected a particular valuation, it greatly behooves them to select the lowest one, so the [c]ourt will proceed as if they had made that choice." It was reasonable for the trial court to determine that the parties would select the lowest reimbursement option.

At trial, William was unable to prove the cost of his pre-Hurricane Katrina renovation because his receipts were lost in the flood. However, both William and his expert witness, Roy Gross, III ("Gross"), estimated the cost of the pre-Hurricane Katrina renovation at $46,000.00. William admitted at trial and in his appellate brief that he only presented receipts for some of the costs of the post-Hurricane Katrina renovations. However, Gross testified that the value of the material and workmanship totaled $91,150.00.

After weighing the evidence and the witness testimony presented at trial, the trial court found the evidence insufficient to prove that William was entitled to reimbursement from Charles for one-half of the costs of the pre-Hurricane Katrina renovations and that "the loss should remain where it fell." The trial court held that William was entitled to reimbursement in the amount of $48,476.18 for the "cost of the materials and labor he paid to renovate the property." After weighing the evidence and the witness testimony presented at trial, the trial court found the evidence insufficient to prove that William was entitled to additional reimbursement for the post-Hurricane Katrina renovation to the property. The Louisiana Supreme Court has stated:

> [w]hen there is evidence before the trier of fact which, upon its reasonable evaluation of credibility, furnishes a reasonable factual basis for the trial court's finding, on review the appellate court should not disturb this factual finding in the absence of manifest error. Stated another way, the reviewing court must give great weight to factual conclusions of the trier of fact; where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. The reason for this well-settled principle of review is based not only upon the trial court's better capacity to evaluate live witnesses (as compared with the appellate court's access only to a cold record), but also upon the proper allocation of trial and appellate functions between the respective courts.

Canter v. Koehring Co., 283 So.2d 716, 724 (La.1973)

Accordingly, this Court will not disturb the trial court's factual findings because we do not find that the trial court abused its discretion.

DECREE

For the foregoing reasons, we find that the trial court did not abuse its discretion; therefore, we affirm the trial court's February 9, 2017 judgment.

AFFIRMED