MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Estate of Richard A. Woods,
Appellant-Respondent,

v.

Sandra Reeves,
Appellee-Intervenor

July 11, 2023

Court of Appeals Case No. 22A-EU-2469

Interlocutory Appeal from the Marion Superior Court

The Honorable Steven R. Eichholtz, Judge

Trial Court Cause No. 49D08-2202-EU-6420

Memorandum Decision by Judge Crone
Judge Kenworthy and Senior Judge Robb concur.

Crone, Judge.

Case Summary

[1] Richard Woods owned a residence in Indianapolis (the Property) in which he lived with his partner Sandra Reeves. Woods took out a mortgage on the Property and later quitclaimed his interest in the Property to himself and Reeves as tenants in common. Woods died, and an estate (the Estate) was opened on his behalf. Reeves intervened and petitioned for a declaratory judgment as to how much it would cost for her to buy out the Estate's interest in the Property. After a hearing, the trial court issued an order granting the petition, declaring the buyout amount to be $113,500, and directing Reeves to tender that amount to the court in exchange for the Estate conveying to her its interest in the Property.

[2] The Estate now appeals that order, arguing that the trial court erred in essentially forcing a sale of its interest in the Property to Reeves. We agree, so we reverse and remand.

Facts and Procedural History

[3] The relevant facts are undisputed. Woods and Reeves were partners for approximately twenty-eight years, and they lived together in the Property after it was built in 2000. At some point, Woods took out a loan from Wells Fargo that was secured by a note and a mortgage on the Property. The mortgage was recorded in November 2011. In February 2016, Woods executed a deed quitclaiming his interest in the Property to himself and Reeves, "[s]ubject to any

and all easements, agreements and restrictions of record." Appellee's App. Vol. 2 at 57.[1] The deed was recorded in March 2016.

[4] Woods died testate on February 1, 2022. At that time, the outstanding principal balance on the mortgage loan was $83,169.46. Woods's will devised his personal property and the residue of his estate, "whether real, personal, or mixed," to his five children, and it named two of his children as co-personal representatives of his estate. Appellant's App. Vol. 2 at 55. Among other things, Woods's will authorized the personal representatives "[t]o sell or convey any part of [his] estate whether real, personal or mixed (for cash or on credit) at a public or private sale." *Id.* at 56.

[5] On February 28, 2022, the personal representatives filed a petition for probate, appointment of personal representatives, and unsupervised administration. On March 2, Reeves filed a petition to intervene. Reeves claimed "a substantial interest in the Property, a portion of which is an asset of the Estate," and she stated that "[o]nce appraisal of the Property is complete, [she] will tender into Court an amount sufficient to purchase the Estate's interest in the Property and which will allow for the Estate's creditors to be paid, namely Wells Fargo." *Id.* at 18. On May 19, after a hearing, the trial court granted both parties' petitions and ordered them to mediate.

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[1] Reeves characterizes the estate created by the deed as a tenancy in common, which the Estate does not dispute.

[6] On July 5, Reeves filed a petition for declaratory relief, requesting "a declaration establishing the amount that she is required to pay in order to buy out the Estate's 50% interest in the Property." *Id.* at 30. She asserted that the value of the Property at Woods's death was $230,000, pursuant to her appraisal; that she was "not obligated on the Wells Fargo mortgage since it is in [Woods's] name only"; and that, "under Indiana law, [her] buyout amount should be based solely on the 50% value of the Property, or no more than $115,000.00." *Id.* The Estate filed an answer, asserting that Reeves was "responsible for 50% of the mortgage on the [P]roperty" and that the matter was not appropriate for declaratory relief due to the existence of factual disputes regarding the extent of Reeves's responsibility for "rent, taxes, utilities and other expenses that [had] been paid to keep the [P]roperty going" since Woods's death. *Id.* at 36-37. Reeves filed a reply, in which she noted that the Estate had obtained an appraisal valuing the Property at $224,500, and that an averaging of the two appraisal values would result in her buyout amount totaling no more than $113,625.

[7] On September 19, the trial court held a hearing on the petition. Later that day, the court issued an order granting the petition, declaring the buyout amount for the Property to be $113,500, directing Reeves to tender that amount to the court within fifty days "in exchange for the Estate conveying to [her] all of its right, title and interest in and to the Property[,]" and vacating the prior mediation order. Appealed Order at 1. The order does not mention the mortgage on the Property or direct that notice be given to Wells Fargo. The Estate filed a motion

to correct error, which was deemed denied, and the trial court stayed its order pending this interlocutory appeal.

Discussion and Decision

[8] The Estate contends that the trial court erred in granting Reeves's petition for declaratory judgment. "The use of a declaratory judgment is discretionary with the court and is usually unnecessary where another form of action provides a full and adequate remedy." *Cmty. Hosps. of Ind., Inc. v. Estate of North*, 661 N.E.2d 1235, 1241 (Ind. Ct. App. 1996), *trans. denied*. An abuse of discretion "occurs when the court's decision is contrary to the logic and effect of the facts and circumstances before it, or when the court errs on a matter of law." *Cmty. Health Network v. Bails*, 53 N.E.3d 450, 453 (Ind. Ct. App. 2016). We review questions of law de novo. *Underwood v. Bunger*, 70 N.E.3d 338, 341 (Ind. 2017).

[9] We are unaware of any valid legal basis for essentially forcing the Estate to sell its interest in the Property to its cotenant Reeves in this situation, as the trial court's order does, and we note the lack of notice to mortgagee Wells Fargo. *Cf.* Ind. Code §§ 29-1-15-11 ("A personal representative may file a petition to sell, mortgage or lease any real property belonging to the estate.… Upon the filing of the petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing, unless waived, shall be given to all heirs and lienholders ….")*,* 29-1-15-13 (providing that sale order "shall direct whether the property shall be sold at private sale or public auction"); Ind. Code ch. 32-17-4 (governing partition action, which requires notice to all lienholders). Accordingly, we

reverse and remand for either a sale conducted pursuant to Indiana Code Chapter 29-1-15 or a partition conducted pursuant to Indiana Code Chapter 32-17-4. Any factual disputes regarding Reeves's obligations to the Estate, if any, may be resolved on remand.[2]

[10] Reversed and remanded.

Kenworthy, J., and Robb, Sr.J., concur.

[2] We agree with Reeves's argument that she is not personally obligated on the mortgage on the Property. *See Walther v. Comm'r of Internal Revenue*, 316 F.2d 708, 709-10 (7th Cir. 1963) ("In our view, it is the law of Indiana that a conveyance of real estate subject to an encumbrance such as a mortgage, which is the personal obligation of the grantor, without any assumption by the grantee to discharge the encumbrance, does not operate to relieve the grantor of his obligation to the mortgagee or to transfer such obligation to the grantee."); *Hancock v. Fleming*, 103 Ind. 533, 3 N.E. 254, 255 (1885) ("The difference between the purchaser's assuming the payment of the mortgage, and simply buying subject to the mortgage, is simply that in the one case he makes himself personally liable for the payment of the debt, and in the other case he does not assume such liability."). But a grantee who does not assume personal liability for the payment of the debt nevertheless "leave[s] the land bound by the lien and entitle[s] the mortgagee to resort to it for the payment of his mortgage." *Hewitt v. Powers*, 84 Ind. 295, 298 (1882). Thus, absent a binding agreement that the Estate would satisfy the mortgage, Reeves risked paying $113,500 for the Property and then having to pay an additional $83,000 or so to avoid a possible foreclosure.