IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
February 8, 2022 Session

LINDA MICHELLE WATTS v. DAVID WAYNE SUITER

Appeal from the Circuit Court for Shelby County
No. CT-3034-19 Robert Samual Weiss, Judge

No. W2021-00496-COA-R3-CV

This appeal involves unmarried parties who jointly own real property together. After a two-day bench trial, the trial court divided the equity in the jointly owned property equally, stating that it could not "speculate" as to the parties' agreements or "parse through" their relationship "to determine who paid what or who did what when." The trial court also dismissed related tort claims and ordered one party to pay a share of the other's attorney fees. We vacate in part, affirm in part, and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated in Part, Affirmed in Part, and Remanded

CARMA DENNIS MCGEE, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and KENNY W. ARMSTRONG, J., joined.

Leslie M. Gattas and Jason R. Ridenour, Memphis, Tennessee, for the appellant, David Wayne Suiter.

Kevin A. Snider and Sean P. O'Brien, Germantown, Tennessee, for the appellee, Linda Michelle Watts.

MEMORANDUM OPINION[1]

[1] Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

> This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

I. FACTS & PROCEDURAL HISTORY

Linda Watts[2] and David Suiter were in a relationship for many years and lived together as self-described "domestic partners." They resided in Shelby County, Tennessee. However, Ms. Watts worked as a flight attendant and was often away from home due to her employment. Mr. Suiter was retired. As early as 2005 or 2007, Mr. Suiter was covered as a "domestic partner" under the health insurance policy Ms. Watts maintained through her employer. The parties lived in a home on "Neshoba" in Germantown, which was sold in 2011, then rented property for the next year.

In May 2013, Mr. Suiter and Ms. Watts purchased a home on Great Oaks Road in Germantown. The deed conveyed the property to "David W. Suiter, an unmarried person and Linda Watts, an unmarried person, as joint tenants with Rights of Survivorship." The total purchase price, with closing costs, was $223,955.83. A check for $1,000 in earnest money was drawn on an account listing both parties' names. Mr. Suiter paid a down payment of roughly $50,000 using some of the proceeds from the Neshoba property and the parties financed the remainder of $171,200. Both Mr. Suiter and Ms. Watts were listed as borrowers on the deed of trust. Their loan application reflected that Ms. Watts had a monthly income of $3,051 from her employment with the airline and Mr. Suiter had a monthly income of $2,143 from social security.

According to Ms. Watts, she left the Great Oaks property around February 2015. In June 2015, she purchased a home in Spokane, Washington. Mr. Suiter sent her a cashier's check for $5,005 for the down payment, with a handwritten notation on the check that stated "Loan: [Property Address], Spokane, WA." Ms. Watts maintained her separate residence apart from Mr. Suiter for the next few years. However, according to Ms. Watts, she had promised to keep Mr. Suiter on her medical insurance policy as a domestic partner until he reached the age of 65 and would qualify for Medicare.

In early May 2018, Mr. Suiter reached the age of 65. Around this time, he learned that he was no longer covered under Ms. Watts's health insurance policy as a domestic partner. Mr. Suiter is disabled and encountered difficulties obtaining health insurance. The parties admittedly discussed the idea of getting married so that Mr. Suiter could be covered under Ms. Watts's policy as a spouse. Ms. Watts traveled to Shelby County to stay at the jointly owned residence with Mr. Suiter for a brief period. On May 25, 2018, Mr. Suiter and Ms. Watts went to the courthouse in Shelby County together and obtained a marriage license. However, no marriage ceremony ever took place.

Paperwork was initially submitted to Ms. Watts's employer to have Mr. Suiter added to the policy, but a disagreement had arisen between the parties, and she contacted

[2] Throughout the record, Ms. Watts name is spelled as both "Linda" and "Lynda". It is not possible to verify the correct spelling in the record, so we will refer to her throughout this opinion as "Linda".

her employer to have him removed from the policy. In July 2019, Ms. Watts filed this lawsuit against Mr. Suiter seeking a declaratory judgment that a marriage never occurred, or in the alternative, an annulment. The complaint noted that the parties had also acquired real property as unmarried persons and asked the court to "declare the rights and obligations of the parties." Mr. Suiter filed an answer and counter-complaint. First, he asserted a claim for "sworn account, breach of contract and unjust enrichment," claiming that Ms. Watts breached an agreement or was unjustly enriched by failing to repay him the $5,005 she obtained for the down payment on her home in Spokane, which Mr. Suiter claimed was a loan. Next, he sought a declaratory judgment that the Great Oaks home in Germantown was solely his property and that Ms. Watts had no interest in it. Ms. Watts then filed an amended complaint seeking to recover a judgment for $402,725.71 due to unjust enrichment for what she characterized as "actual financial benefits and contributions" that had benefitted Mr. Suiter during the parties' relationship. Specifically, she claimed to have paid $1,000 per month to Mr. Suiter for her "Partnership share" of the mortgage on the Great Oaks property and expenses; she claimed to have contributed "sweat equity" by renovating various homes thereby increasing the funds available for investment; and she sought to recover $79,814.36 for insurance premiums she paid and $282,910.81 for medical benefits her insurer paid for Mr. Suiter's benefit, in addition to an undisclosed sum for "free flight benefits" he enjoyed. She also alleged fraud. Finally, she asked to either be declared the sole owner of the Great Oaks property or be awarded a monetary judgment for her share of the equity in the property.

Prior to trial, a "Stipulation and Partial Judgment" was entered whereby the parties stipulated that any purported marital relationship between them was declared null and void and of no legal effect because no marriage ceremony was ever performed. A two-day bench trial began on March 31, 2021. The only witnesses were Mr. Suiter, Ms. Watts, and Ms. Watts's current boyfriend. Testifying first, Mr. Suiter acknowledged that Ms. Watts's name was on the deed to the Great Oaks property and that she was a borrower on the mortgage loan. However, he insisted that she never paid any money toward the property. When asked if Ms. Watts paid him $1,000 per month toward the house payments, as she alleged in her amended complaint, Mr. Suiter admitted that she made some payments to him but said they only totaled about $5,000 to $7,000. He said that "those monies were to help with the house payments" but also to buy necessaries such as food. He characterized the payments as her "rent." He denied that she had consistently paid $1,000 per month and said some payments were for a few hundred dollars. Mr. Suiter testified that the mortgage payment was withdrawn every month from the account that contained his social security income. When asked whether he could afford to pay a mortgage payment of approximately $1,200 based on his social security income of $2,100, he said that he could.

Mr. Suiter testified that the previous home on "Neshoba" had been similarly titled, with Ms. Watts's name appearing on the deed and also on the mortgage loan. However, he said he kept the $200,000 in proceeds from the sale of that home in 2011 and used part of it for the down payment on the Great Oaks property in 2013. He said none of the money

went to Ms. Watts because it "wasn't her money."

Mr. Suiter testified that he and Ms. Watts had reached an agreement in May 2018 regarding the marriage license whereby he would be added as a spouse on her insurance policy for twelve months, and at the end of the term, they would obtain a divorce and she would sign a quitclaim deed to the Great Oaks property. He introduced text messages between the parties that allegedly reflected the agreement. In one exchange, Ms. Watts wrote, "Please make sure my name stays the same and I do not take on your name. . . . . This deal is from 06/27/2018 to 06/27/2019. All cost for attorneys and legal free [sic] will be paid for by David Wayne Suiter." In another text message discussing what would happen over the next year, she wrote, "Like you said the house is your! [sic] My insurances [sic] is yours[.]"

Ms. Watts, however, had a very different version of the events. First, regarding the Great Oaks property, she testified that when the parties purchased it jointly, Mr. Suiter told her that her responsibility toward the house note would be $1,000 per month. She said it was never characterized as rent. Ms. Watts said this amount represented her "obligation to Great Oaks" and that she transferred it from her bank account to Mr. Suiter's "every month." Ms. Watts said she sometimes divided the transfers into smaller payments because she received paychecks twice a month, but she always met her obligation. She submitted bank statements and said she had highlighted transfers and payments listing Mr. Suiter's name, and all of them were contributions she made to the Great Oaks property. According to Ms. Watts, she made $1,000 payments from the time the property was acquired in 2013 until she left in February or March 2015, and the bank statements would confirm her $1,000 monthly payments. She testified that she lived at the Great Oaks property throughout that period and "[c]ontributed towards it the whole time" she was there. Ms. Watts said she "grew up in a construction family" and was familiar with renovating houses, so she redid the entryway of the house, stripped and stained the wood floors, painted the cabinets and baseboards in the kitchen, and worked with Mr. Suiter to retile the kitchen and paint all the rooms. She said she also did landscaping work. Ms. Watts opined that the Great Oaks property was currently worth between $370,000 and $385,000, with the parties owing about $141,000 on the mortgage.

Ms. Watts acknowledged that she did not personally contribute any of her own money to the down payment on the Great Oaks home, but she claimed that the work she did on the parties' previous residences enabled them to have more money to purchase the Great Oaks property. She did not receive any of the $200,000 in proceeds from the sale of the Neshoba property in 2011 but noted that Mr. Suiter used a portion of it to pay the down payment on the Great Oaks property in 2013. Ms. Watts said she considered the proceeds from the Neshoba property as belonging to both of them because she had worked on the Neshoba home. Ms. Watts claimed that when she bought the house in Spokane in 2015, she called and asked Mr. Suiter for "an advance on [her] equity" in the Great Oaks property to cover the closing costs, and Mr. Suiter agreed. She insisted that she did not simply

borrow money from Mr. Suiter.

Regarding the May 2018 marriage license, Ms. Watts testified that Mr. Suiter had presented "an offer" of an agreement whereby they would get married and he would pay for the divorce, but she declined his offer. She said her text message about "your" house was just being sarcastic. Ms. Watts said she had been in another relationship for a couple of years but had continued "taking care of David's insurance." She said she did this not for monetary gain but because he had a lot of health issues and could not get insurance anywhere else. Upon further questioning about her claim for damages, Ms. Watts admitted that most of the amount she was claiming for reimbursement represented money paid by her insurance company, not by her. Ms. Watts explained that she was "asking the Court to award me money on the benefit David got from being with him for 12 years," for "the benefit of being in a relationship with me."

Mr. Suiter submitted his proof on the second day of trial, but he was the only witness to testify. At the outset, his own attorney asked him, "Was there ever a time that you agreed that Ms. Watts would serve as an owner of the Great Oaks property and share in the proceeds?" He responded, "Yes." When asked to describe their agreement, Mr. Suiter said that Ms. Watts's name was to be placed on the deed and the mortgage "in order to rebuild her credit which was in great disrepair." He said she would also be allowed to take the tax deduction, which she did every year. Mr. Suiter claimed that he could have purchased the home outright but doing so would have consumed all of his life savings. On cross examination, however, he acknowledged that the parties' loan application only listed $85,000 of assets between the two of them.

Mr. Suiter also testified that he had reviewed the bank statements submitted by Ms. Watts as an exhibit and confirmed that they only showed about $7,000 in payments to him over a period of around nineteen months. He said Ms. Watts had only made one or two payments in a sum of $1,000 and that most were for only a few hundred dollars. Mr. Suiter also maintained that those payments constituted rent and some other obligations, such as the repayment of loans her daughter had borrowed. He said Ms. Watts never gave him money that he utilized to pay the mortgage payment. Accordingly, he maintained that Ms. Watts had not contributed any money toward the Great Oaks property. He insisted that it was his home, as he had made all the payments and put it in all the effort. He acknowledged a text message he had sent to Ms. Watts in which he suggested that the mortgage lender was "stiffing *us*" on the escrow payment (emphasis added), but in another, Ms. Watts had told him to contact the lender "about your house payment."

Although Mr. Suiter had testified on the first day of trial that the Neshoba property was jointly owned, he said that he had since looked at the deed and discovered that he was the sole owner of that property. He said there was never any agreement between them that Ms. Watts would be compensated for any "sweat equity" regarding the Neshoba property. He also said that Ms. Watts "didn't do anything" at the rental house and that the upgrades

were made by him or contractors he paid. Mr. Suiter also testified regarding the damage claims asserted by Ms. Watts and said he had already incurred $10,000 in attorney fees before trial began.

The trial judge announced his oral ruling on April 14, 2021, and it was later incorporated into the court's final written order. To begin, the court agreed with the parties' attorneys in their characterization of this case as "a crazy mess." It found a few undisputed facts: the parties were in a relationship for a number of years and held themselves out as domestic partners to Ms. Watts's employer, which enabled Mr. Suiter to receive insurance benefits. It found that they acquired a marriage license in 2018 for the purpose of allowing Mr. Suiter to continue receiving insurance benefits. The court noted the parties' stipulation that the marriage was void ab initio because there was never a marriage ceremony. Next, the trial judge noted the undisputed facts that both parties' names were on the deed and the mortgage for the Great Oaks property. It found that the value of the property was $370,000, with a current mortgage of $141,000. It noted that Ms. Watts claimed the mortgage interest deduction each year. The trial judge continued his oral ruling as follows:

> This case at a minimum was a mess in that the parties were never married. And I think what this Court was stuck with was just that. And the parties, for better or worse, were entered into a relationship and through that course of time entered into a series of exchanges and deals which I am sure made perfect sense at the time because at that point they were two committed individuals in a relationship and the agreements were the give and take of a relationship.
>
> Unfortunately, this Court cannot and will not speculate what agreements the parties made in the past because from an outsider's position both parties have credibility problems because, again, the handshake deals or the pillow decisions made in the intimate relationship between the parties there is not a lot that the Court can do.
>
> And just as if the parties were married, I wouldn't have any ability or interest in going back to, you know, the course of the marriage of what was done and who did what to what property and how they -- you know, who paid what insurance and who paid what mortgage. It was all part of a relationship, and this Court can't unravel that relationship.
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> So from the Court's perspective, the only issue that this Court really can and is going to deal with is this real property. The tort claims alleged by Ms. Watts are all denied. . . .
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> . . . .
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> So the equity in the Great Oaks property by the Court's calculation is 229,000. $229,000. Half of that would be $114,500, less a credit of the $5005 which was given by Mr. Suiter to Ms. Watts.

The trial court denied Ms. Watts's request for attorney fees but granted Mr. Suiter's in part.

The court awarded Mr. Suiter $5,000 in attorney fees for the necessity of defending against the damage claims asserted by Ms. Watts in which she sought reimbursement for medical benefits and free flight benefits despite that fact that she had not expended anything to support a claim for reimbursement. The trial court deducted that $5,000 sum and the $5,005 loan/advance from Ms. Watts's one-half share of the equity in the Great Oaks property, leaving a balance of $104,495 that Mr. Suiter would be required to pay Ms. Watts. The trial court entered a written order that set forth the aforementioned oral rulings and also incorporated the transcript.

II. ISSUES PRESENTED

Mr. Suiter presents the following issues for review on appeal:

1. Whether the trial court erred by finding that both parties were entitled to one-half of equity in the Great Oaks property.
2. Whether the trial court erred in failing to make findings regarding the agreements of the parties.
3. Whether the trial court erred when it failed to declare the title to the real property free of claim by Ms. Watts.
4. Whether the trial court erred by failing to consider the financial contributions made by the parties towards the Great Oaks property.
5. Whether Mr. Suiter is entitled to attorney fees and costs associated with this appeal due to Ms. Watts's breach of their agreement concerning the Great Oaks property.
6. Whether Mr. Suiter is entitled to additional attorney fees at trial due to the frivolous claims of Ms. Watts.

In her posture as appellee, Ms. Watts asserts that the trial court's decision should be affirmed on all grounds, as the court "correctly apportioned the interests of the parties in the Great Oaks Property" and did not abuse its discretion in its award of attorney fees.

For the following reasons, we vacate in part, affirm in part, and remand for further proceedings.

III. DISCUSSION

A. Great Oaks Property

On appeal, Mr. Suiter argues that the trial court erred by expressly declining to make findings as to the existence of agreements between the parties or "who paid what or who did what when," and instead, simply awarding each party one-half of the equity in the property. Mr. Suiter argues that the trial court's approach was inconsistent with other Tennessee cases involving unmarried parties who owned property as joint tenants. We agree.

This Court has considered several cases involving unmarried individuals and jointly owned property, including *Rivkin v. Postal*, No. M1999-01947-COA-R3-CV, 2001 WL 1077952 (Tenn. Ct. App. Sept. 14, 2001), *Harris v. Taylor*, No. W2004-02855-COA-R3-CV, 2006 WL 772007 (Tenn. Ct. App. Mar. 28, 2006), *Parker v. Lambert*, 206 S.W.3d 1 (Tenn. Ct. App. 2006), and *Brewer v. Brewer*, No. M2010-00768-COA-R3-CV, 2011 WL 532267 (Tenn. Ct. App. Feb. 14, 2011). However, all four of those cases were partition suits. In *Rivkin*, for instance, we noted that the statutory factors and principles governing the division of marital property were inapplicable to the unmarried parties and said "[t]he principles governing the division of jointly-owned property in cases such as this one are derived from the statutes and legal precedents involving the partition of jointly-owned property." 2001 WL 1077952, at *10.

The case before us did not originate as a partition suit, perhaps because both parties have at times insisted that the Great Oaks property was solely owned by them. To briefly recap, Ms. Watts filed a complaint for declaratory judgment and/or annulment "and other relief," asserting that the parties had "acquired real property together as unmarried persons" and asking the court to "declare the rights and obligations of the parties." In his counter-complaint, Mr. Suiter also sought a declaratory judgment regarding the property, alleging that Ms. Watts made no contributions or payments toward its purchase, preservation, or appreciation, and therefore, he should own it in fee simple. He sought an order to that effect "or additional orders as may be necessary to declare the rights of the parties with respect to Great Oaks" and quiet title. In her amended complaint, Ms. Watts asserted that she was entitled to a judgment declaring her the "sole and exclusive owner of the property" or in the alternative, a judgment for "no less than half the equity in the Great Oaks property." She also sought a judgment for all financial benefits received by Mr. Suiter, including those she contributed for the "upkeep, maintenance, and upgrade of the Great Oaks property." At trial, Ms. Watts asked the trial court to assign a percentage to each party's ownership interest in the property.

In response to Mr. Suiter's reliance on partition cases on appeal, Ms. Watts did not argue that they should not apply to this case. Instead, her brief states:

> While the lawsuit was not for partition, the lawsuit did request an apportionment of the Great Oaks Property, and therefore, the trial court had to divide the ownership interests as would any trial court would [sic] in a partition action. In fact, both parties requested that the Property be divided equitably in their respective pleadings.

Her brief goes on to discuss partition cases as well, including *Harris*. Accordingly, we will also consider the principles applied in the series of partition cases listed above and apply them to the facts of this case, just as the parties do. They do not assert that any other analysis should apply. We now turn to an examination of those cases.

The first case, chronologically, was *Rivkin*, in which the parties were cohabiting as a couple but unmarried. 2001 WL 1077952, at *10. The man purchased a home for them as sole owner *and then* quitclaimed it to himself and the woman as tenants in common one month later. *Id.* When they separated and sought partition of their jointly owned property, the trial court awarded them equal shares of the proceeds from the sale of the home. *Id.* On appeal, the man argued that the woman should not receive any of the proceeds because she failed to prove that he intended to give her an interest in the property. *Id.* This Court first recognized that partitioning jointly owned property "should be consistent with the respective co-owners' interests as shown by the evidence." *Id.* We noted that a partition "need not be equal." *Id.* However, we also recognized that "[a] party seeking to establish an interest in property *by gift* must prove (1) that the donor intended to make a gift to the donee and (2) that the donor delivered or transferred the property to the donee." *Id.* at *11 (citing *Dunlap v. Dunlap*, 996 S.W.2d 803, 814-15 (Tenn. Ct. App. 1998); *Arnoult v. Griffin*, 490 S.W.2d 701, 710 (Tenn. Ct. App. 1972)) (emphasis added). We concluded that the woman proved both elements of a gift in *Rivkin*. *Id.* The language of the quitclaim deed itself provided evidence of the man's present intent to convey ownership, and the proof that he caused the quitclaim deed to be recorded provided evidence of delivery. *Id.* Because the proof showed that the man "gave [the woman] an undivided one-half interest in the property" via the quitclaim deed, we concluded that the trial court did not err in awarding each party an equal share of the proceeds from the sale. *Id.*

Here, neither party claims any ownership interest in the Great Oaks property based on a gift or attempts to establish the elements of a gift. During oral argument, Ms. Watts's counsel was specifically asked and confirmed that she has never asserted any ownership interest in the property as a result of a gift. Instead, counsel said, her claim was based on her alleged contributions of money, sweat equity, and the use of her credit. Due to the absence of any issue in this case regarding a gift, the analysis in *Rivkin* is largely inapplicable.

Five years after *Rivkin*, this Court decided *Harris v. Taylor*, 2006 WL 772007, which both parties cite on appeal. It was another partition suit involving unmarried parties, but they had *jointly purchased* a residence. *Id.* at *1. The woman paid the entire down payment, and the parties financed the remainder. *Id.* Relying on *Rivkin* and the language of the deed, the trial court had evenly split the proceeds of the sale of the property even though one joint tenant had paid more than her equitable share of the purchase money. *Id.* The woman argued that she was entitled to contribution from the man for the excess paid by her and that she did not make a gift of the excess to him. *Id.* This Court agreed. We began with the initial statement from *Rivkin* that a partition of jointly owned property "should be consistent with the respective co-owners' interests as shown by the evidence." *Id.* at *3 (citing *Rivkin*, 2001 WL 1077952, at *10). However, we found *Rivkin* factually distinguishable because it had involved property originally purchased in the name of one party that was subsequently conveyed by quitclaim deed to both parties, while *Harris* involved "joint purchasers" of property directly from a third party. *Id.* at *4. We explained

that "[w]hile the interests of joint tenants are presumed to be equal, 'in the case of a *joint purchase* of land, if one pa[ys] more than his half of the purchase money, a Court of Equity [will] hold the land bound for the excess.'" *Id.* at *3. (quoting *Rankin v. Black*, 38 Tenn. (1 Head) 650, 658 (Tenn. 1858)) (emphasis added). In the case of joint purchasers, "'the party paying the excess has the right to be reimbursed out of the land.'" *Id.* (quoting 7 Tenn. Jur. *Contribution & Exoneration* § 11 (2005)). Thus, we explained:

> While *Rivkin* supports the proposition that a gift *inter vivos* has been made when an owner of real property conveys an interest to another in that real property by deed and then records the deed without any consideration for doing so, we find that rationale does not apply where a third party conveys property jointly to multiple parties who are purchasing the property, one of which has paid more than his or her equitable share of the purchase money.

Id. at *4. Thus, the deed conveying the property to the parties as joint tenants with rights of survivorship "was not conclusive evidence of a gift." *Id.*

Still, the *Harris* Court went on to consider whether the elements of a gift had been shown by other evidence in the record. *Id.* The Court reiterated that two elements must be present in order to find a properly executed gift *inter vivos*: intention and delivery. *Id.* Both elements must be proven by clear and convincing evidence. *Id.* In *Harris*, "the only evidence presented at trial other than the deed" was competing testimony from the parties. *Id.* at *5. Therefore, the donee had not clearly and convincingly established the elements of a gift. *Id.* In the absence of a gift, we agreed with the woman's assertion that she was "entitled to a greater percentage of the sale proceeds because she made a down payment of approximately $54,000 on the Property and [] paid a greater percentage of the total amount of the mortgage payments due." *Id.* at *2. We reversed for the trial court to determine the amount of contribution owed by the other joint tenant. *Id.* at *5.

This approach is consistent with the one taken in *Brewer v. Brewer*, 2011 WL 532267, although we reached the opposite result as to whether a gift was proven under the facts presented. *Brewer* involved parties who divorced and then cohabited without remarrying. *Id.* at *1. The deed at issue transferred the property to both parties. *Id.* The man testified that he had the woman's name put on the deed along with his so that if he died she would have a home for their grandchildren, but he denied that he intended to make a gift of the property to her. *Id.* at *2. We began by noting that "[t]here is generally a presumption that joint tenants have equal interests, but a tenant who pays more than his or her share for the property may seek contribution to compensate him or her." *Id.* (citing *Harris*, 2006 WL 772007, at *3). However, the trial court had concluded that the man made a gift to the woman of a one-half interest in the property. *Id.* at *3. We agreed with the finding of a gift, finding both elements were present. *Id.* (citing *Rivkin*, 2001 WL 1077952, at *11). The man's own testimony regarding his intent supported the finding of a gift because his desire for the woman to live with the grandchildren in the home after his

death could only be accomplished if she was entitled to the property upon his death. *Id.* Thus, we found no error in the trial court's conclusion that he made a gift of a one-half interest in the property. *Id.* However, the Court went on to consider the man's argument that he was entitled to compensation for excess contributions he made on subsequent maintenance and improvements to the property, recognizing that "[t]he law allows a joint tenant compensation for contributing more than his or her share for improvements to the property that enhance its value, necessary repairs and maintenance, and satisfaction of encumbrances." *Id.* at *4.

Finally, we consider *Parker*, 206 S.W.3d at 3-4, which involved a couple who undertook construction of a home together and sought partition after their breakup. The trial court ordered the sale proceeds divided equally, relying on *Rivkin*. *Id.* at 4. The Court of Appeals explained that when jointly held property is sold, the proceeds are to be divided in accordance with the parties' rights as determined by the court, as the court has a statutory and inherent right to adjust the equities and settle claims between the parties. *Id.* The opinion contains a very detailed discussion of the principles governing contributions by co-tenants for the preservation, maintenance, and improvement of property. *Id.* at 4-7. However, the term "gift" never appears in the opinion. In fact, the Court of Appeals distinguished *Rivkin*, stating that it did not involve "a claim for contribution." *Id.* at 4.

Thus, *Parker* is most analogous to the case at bar because of the absence of any argument here regarding a gift. In *Parker*, the Court discussed "well settled principles governing when one cotenant is entitled to compensation from another cotenant," as follows:

> The common theme of these principles is that a cotenant must equally share both the burdens of land ownership (i.e., the responsibility of preserving the land) as well as the benefits of the land ownership. If one cotenant bears a disproportionate share of the burden, the other cotenants must provide compensation. Alternatively, if one cotenant enjoys a disproportionate share of the benefits, the other cotenants must be compensated.

Id. at 4-5. We further explained,

> The[re] are five primary principles governing compensation in the partition context. First, the courts will compensate a cotenant who improved the jointly owned property as long as the improvements enhanced the property's value. *Broyles v. Waddel*, 58 Tenn. 32, 1872 WL 3987, at *4-5 (Tenn. 1872); *Butler v. Butler*, No. 86-60-II, 1986 WL 8593, at *2 (Tenn. Ct. App. Aug. 6, 1986). Generally, the amount of this compensation cannot exceed the amount by which the improvements enhanced the land's value. *Wilburn v. Kingsley*, 3 Tenn. App. 88, 1926 WL 2026, at *10 (Tenn. Ct. App. 1926). Second, cotenants must equally contribute to satisfying encumbrances

> on the property. *Tisdale v. Tisdale*, 34 Tenn. 596, 1855 WL 2382, at *2-3 (Tenn. 1855); *Butler*, 1986 WL 8593, at *2. Third, cotenants must also equally contribute to expenses for necessary repairs and maintenance of the jointly owned property. *Broyles*, 58 Tenn. 32, 1872 WL 3987, at *4; *Butler*, 1986 WL 8593, at *2. However, "a cotenant is not entitled to credit for the value of personal services in managing and caring for the property," unless the cotenants have an agreement to the contrary. *Bunch v. Bunch*, No. 02A01-9705-CH-00106, 1998 WL 46217, at *4 (Tenn. Ct. App. Jan. 8, 1998). Fourth, a cotenant with sole possession of the property is liable to other cotenants for any profits received in excess of his or her pro rata share. *Omohundro v. Elkins*, 109 Tenn. 711, 71 S.W. 590, 591 (1902); *Bunch*, 1998 WL 46217, at *4. Fifth, a cotenant with sole possession of the property who has excluded his or her cotenants from the property or who has denied their title to any part of the property, must pay rent to the cotenants for the use and occupation of the property regardless of the profits received. *Johnson v. Covington*, 148 Tenn. 47, 251 S.W. 893, 898 (1923); *Butler*, 1986 WL 8593, at *2.

Id. at 5 n.2.

Applying these rules, this Court found that the man spent $5,000 of his own assets on the construction of the home, contributing to its improvement, so he was entitled to an equitable allowance from the other party's sale proceeds for the expenditure. *Id.* at 5. In addition, he had paid the monthly mortgage obligation and was entitled to contribution for those expenditures as well. *Id.* at 6. However, the woman claimed she had paid him $7,000 that she intended for him to put toward the mortgage payment. *Id.* at 7. We recognized that "[his] mortgage payments establish a claim for contribution only to the extent he has paid more than his fair share of the common liability." *Id.* Thus, she was entitled to an offset for any amounts she paid him for the purpose of paying down the mortgage, taxes, or insurance. *Id.* Finally, the woman claimed to have provided services in supervising construction as a general contractor, but this Court explained that she was "entitled to an offsetting right of compensation for these services only if the parties had an agreement to that effect." *Id.* at 6-7. She never testified as to any such agreement and thus was not entitled to compensation for these services. *Id.* at 7. In conclusion, we vacated the judgment equally dividing the proceeds and remanded to the trial court to "divide the proceeds, taking into account the contributions and entitlements of the parties" for the aforementioned amounts. *Id.* at 2.

Returning to the facts of the present case, the parties hotly disputed the extent to which each party had contributed to the Great Oaks property in the form of monetary contributions or otherwise. Rather than resolving these disputes, the trial court's written order stated:

> 7. While the parties were never married, they admittedly were in a long-term relationship and entered into the give and take of which would typically occur between two individuals in a committed relationship.
> 8. The Court cannot speculate what agreements were made because all of the deals were informal in nature and both parties have credibility problems.
> 9. Further, just as if the parties were married, the Court would not have any ability to parse through the course of a marriage to determine who paid what or who did what when. Such transactions are all part of the relationship and the Court cannot unravel the relationship.

Regarding the Great Oaks property specifically, the Court concluded:

> 11. The parties agreed that they owned the real property at 7196 Great Oaks Road, Germantown, Tennessee which was purchased in May, 2013 and both parties were listed on the deed and mortgage associated with the property.
> 12. Suiter paid the mortgage payment to the bank each month and Watts made direct payments to him. Watts claimed the mortgage deduction each year from 2013 to 2017.
> 13. The limited testimony about the Great Oaks Road property valued it at $370,000.00 and was encumbered with a mortgage of $141,000.00 resulting in the total equity to being $229,000.00.
> 14. The equity in the real property at 7196 Great Oaks Road shall be equally divided with both parties receiving $114,500.00, except as provided hereinbelow.

Although the trial court found that each party was entitled to a one-half interest in the property, it is clear that no gift was alleged by the parties or found by the trial court. Moreover, aside from referencing the undisputed fact that Mr. Suiter paid the mortgage payments while Ms. Watts made some payments to him, the court made no findings regarding the amount of the parties' contributions. To use the words of the trial judge, he did not decide "what agreements were made" or "determine who paid what or who did what when." However, that is precisely what was required under the facts of this case, at least with respect to the jointly owned real property. Thus, we conclude that the trial court's analysis does not comport with the principles set forth above for determining the parties' interests in these circumstances.

Mr. Suiter suggests on appeal that the record contains sufficient evidence for this Court to apply the appropriate analysis and decide the parties' interests in the property. However, "appellate courts are ill-equipped to make the type of credibility determinations that would be necessary to resolve the factual disputes" in this case. *Lovlace v. Copley*, 418 S.W.3d 1, 36 (Tenn. 2013). We therefore vacate the trial court's decision with respect

to the equity in the Great Oaks property and remand for further proceedings consistent with this opinion. The trial court may, in its discretion, reopen the proof to the extent necessary to resolve the issues on remand.

B. Attorney Fees

Mr. Suiter argues that he should be awarded attorney fees for two reasons. First, he asserts that the parties had an agreement memorialized in their text messages whereby he would pay the attorney fees necessary to comply with the agreement, with only limited fee liability. He claims that Ms. Watts breached their agreement by bringing this litigation, which "necessitated increased attorney fees" for him. Although he does not cite any caselaw in support, Mr. Suiter suggests that Ms. Watts should be required to pay his attorney fees "due to [her] breach," apparently under a contractual theory. We find no support for this argument, however. The alleged agreement in the text messages stated, "This deal is from 06/27/2018 to 06/27/2019. All cost for attorneys and legal free [sic] will be paid for by David Wayne Suiter." Even assuming arguendo that the agreement was found to be enforceable, there simply was no provision in it requiring Ms. Watts to pay attorney fees. *See Eberbach v. Eberbach*, 535 S.W.3d 467, 479 (Tenn. 2017) (explaining that courts "must look to the actual text" of a contract's attorney fee provision to determine whether the provision is "applicable" to the case); *Cracker Barrel Old Country Store, Inc. v. Epperson*, 284 S.W.3d 303, 309 (Tenn. 2009) ("In the context of contract interpretation, Tennessee allows an exception to the American rule only when a contract *specifically* or *expressly* provides for the recovery of attorney fees."); *Himes v. Himes*, No. M2019-01344-COA-R3-CV, 2021 WL 1546961, at *8 (Tenn. Ct. App. Apr. 20, 2021) ("The language used in the [agreement] governs our decision.")

Secondly, Mr. Suiter vaguely asserts that the trial court erred by not awarding him "a greater attorney fee award" at the trial level "due to the frivolous nature" of the claims Ms. Watts asserted. He includes citations to two cases but no analysis or discussion of them or further explanation as to why he should be entitled to "a greater" award. The two cases cited by Mr. Suiter discuss Rule 11 sanctions, but the trial judge in this case did not specify the basis for its award of attorney fees. Thus, Mr. Suiter certainly has not shown this Court any authority that he should have received a *greater* award of fees in the trial court. We note that Ms. Watts's brief treats the trial court's award as one made pursuant to Tennessee Code Annotated section 20-12-119, due to the dismissal of her damage claims. However, she does not assert any error with respect to the award and asks this Court to affirm it. So, that is what we will do.

IV. CONCLUSION

For the aforementioned reasons, the decision of the circuit court is vacated in part, affirmed in part, and remanded for further proceedings. Costs of this appeal are taxed equally to the appellant, David Wayne Suiter, and to the appellee, Linda Michelle Watts,

for which execution may issue if necessary.

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CARMA DENNIS MCGEE, JUDGE