

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-2019-232

PETER MCCLURE,  
DOUGLAS MCCLURE and  
ANN MCCLURE NOEL,  
Plaintiffs

**DECISION AND ORDER**

V.

KATHLEEN M. LOWELL,  
Defendant

Before the court is the Plaintiffs' Motion for Summary Judgment on their complaint for equitable partition (Count I) and declaratory judgment (Count II). The Defendant opposes the motion. Pursuant to M.R.Civ.P. 7(b)(7), the court will rule on the motion without a hearing. Based upon the summary judgment record, the following material facts are undisputed.<sup>1</sup>

The three Plaintiffs and the Defendant are siblings who own property as tenants-in-common located at 30 Robbins Lane in Rome, Maine. The property is identified on Map 27, as Lot 45, and is described in a deed dated September 14, 2005 recorded in the Kennebec County Registry of Deeds at Book 8598, Page 0125. Each sibling owns a 25% interest in the property. The parties were gifted the property by their parents.

The Plaintiffs no longer wish to own the property with the Defendant because, they contend, irreconcilable differences have arisen between them in the

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<sup>1</sup> Although the Defendant, in her submissions in opposition to the summary judgment motion, purports to dispute certain facts, she has failed to comply with M.R.Civ.P. 56(h)(2). Accordingly, the statement of facts in support of the summary judgment motion are deemed to be admitted. M.R.Civ.P. 56(h)(4).

management, use and possession of the property. The Plaintiffs, however, do desire to continue to own the property together without the Defendant. Physical division of the property is impossible and impractical and would materially injure the rights of the parties. The fair market value of the property, which consists of 2.98 acres of land, a seasonal single-family residence and 3 seasonal one-bedroom cabins, is \$551,000.

A tenant-in-common has the right to seek equitable partition of the property pursuant to 14 M.R.S. § 6051 et seq. See *Ackerman v. Hojnowski*, 2002 ME 147, ¶ 19, 804 A.2d 412; *Libby v. Lorraine*, 430 A.2d 37, 39-40 (Me. 1981). Moreover, the court is authorized to permit a tenant-in-common to purchase the share of another tenant-in-common. 14 M.R.S. § 6515.

In this case, three of the four tenants-in-common wish to purchase the remaining 25% interest of the Defendant. Although the Defendant opposes this plan, the court finds that it is the most fair and equitable alternative available. Accordingly, it is hereby

ORDERED, that the property located at 30 Robbins Land in Rome, Maine, being Lot 45 on Map 27, and more fully described in a deed dated September 14, 2005 recorded in the Kennebec Registry of Deeds at Book 4598, Page 0125, is equitably partitioned, and it is further

ORDERED, that Defendant Kathleen M. Lowell shall convey her 25% interest in the property to Plaintiffs Peter McClure, Douglas McClure and Ann McClure Noel, and said Plaintiffs shall pay to Defendant Kathleen M. Lowell the sum of \$137,750 for her 25% interest in the property based upon its appraised value.

Counsel for the Plaintiffs shall prepare all necessary conveyance documents.

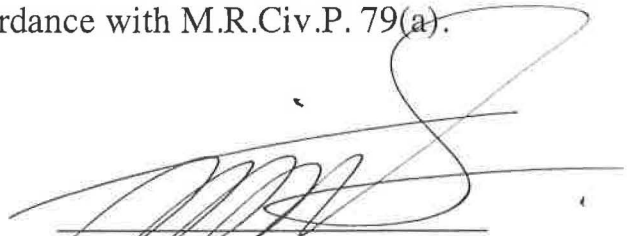
The entry is:

Plaintiffs' Motion for Summary Judgment is GRANTED. Final judgment is entered in favor of Plaintiffs Peter McClure, Douglas McClure and Ann McClure Noel against Defendant Kathleen M. Lowell on Count I (Equitable Partition) and Count II (Declaratory Judgment) of their Complaint.

The Clerk is directed to incorporate this Decision and Order into the docket of this case by notation reference in accordance with M.R.Civ.P. 79(a).

Dated: December 7, 2020

Entered on the docket 12/8/2020



William R. Stokes  
Justice, Superior Court

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*MR/SC #121-21*

12/7/20  
SUPERIOR COURT  
KENNEBEC, ss.  
Docket No AUGSC-CV-2019-00232

DOCKET RECORD

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Filing Document: COMPLAINT  
Filing Date: 11/14/2019

*need counsel  
for  $\Delta$  prose*

Minor Case Type: DECLARATORY JUDGMENT