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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FIVE POINTS TEMESCAL, LLC, et al., Plaintiffs and Respondents, v. MERRIE HATHAWAY, Defendant and Appellant.	B275664 (Los Angeles County Super. Ct. No. BC569837)

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth Allen White, Judge. Affirmed.

Donna M. Standard for Defendant and Appellant.

Dinsmore & Sandelmann, Frank Sandelmann and Brett A. Stroud for Plaintiffs and Respondents.

In September 2013, and pursuant to a stipulation among the parties, the trial court partitioned real property jointly owned by plaintiffs and respondents Five Points Temescal, LLC (Five Points) and Temescal Ranch Limited Partnership (Temescal Ranch) (plaintiffs); a third party, Hathaway Temescal, LLC (Hathaway); and defendant and appellant Merrie Hathaway (defendant). Roughly 16 months later, plaintiffs filed a complaint seeking partition of an adjacent piece of real property owned by the same parties, and the trial court declined to consolidate the later-filed action with the earlier case resulting in the partition judgment. Instead, the court deemed the cases related and separately ordered partition of the adjacent property. We consider whether the trial court erred by declining to consolidate the two cases.

I. BACKGROUND

There are a number of documents concerning the litigation between the parties that are not included in the appellate record.[1] Based on the record presented to us, the facts are these.

Pursuant to a stipulated judgment in 2008, Temescal Ranch, Hathaway, and certain other parties were determined to be the joint owners of real property described in the judgment as "Temescal Ranch Parcel 1" (Parcel 1) and "Temescal Ranch

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[1] We grant defendant's motion to take judicial notice of the complaint plaintiffs filed in 2012 and her answer to it. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) We deny, however, defendant's request to take judicial notice of a portion of a reporter's transcript of a trial court hearing that post-dates the judgment on appeal.

Parcel 2" (Parcel 2). In 2009, part of the other parties' ownership interest in Parcel 1 and Parcel 2 was transferred to Five Points LLC and defendant.[2] The 2008 stipulated judgment and the quitclaim deeds defining the relevant ownership interests identified each of the parcels by its legal description. In addition, and apart from the legal description, the stipulated judgment and quitclaim deeds also referred to Parcel 1 and Parcel 2 collectively by the shorthand terms "Temescal Ranch Property" or "Temescal Ranch."

In October 2012, plaintiffs sued defendant and Hathaway to partition Parcel 1 through a sale of the property (hereafter, the Parcel 1 action).[3] Defendant's answer to the complaint generally

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[2] Following these grants and subject to certain encumbrances, plaintiffs together held a 55 percent interest in each parcel, Hathaway held a 40 percent interest in each parcel, and defendant held the remaining five percent interest in each parcel.

[3] """The primary purpose of a partition suit is . . . to partition the property, that is, to sever the unity of possession. [Citations.]" [Citation.]' (*LEG Investments v. Boxler* (2010) 183 Cal.App.4th 484, 493[ ]; see also *14859 Moorpark Homeowner's Ass'n v. VRT Corp.* (1998) 63 Cal.App.4th 1396, 1404-1405[ ] ["'partition'" is "'the procedure for segregating and terminating common interests in the same parcel of property'"].) "'Partition is a remedy much favored by the law. The original purpose of partition was to permit cotenants to avoid the inconvenience and dissension arising from sharing joint possession of land. An additional reason to favor partition is the policy of facilitating transmission of title, thereby avoiding unreasonable restraints on the use and enjoyment of property." [Citation].' (*LEG Investments*, *supra*, at p. 493.) [¶] . . . [¶] The manner of partition may be 'in kind'—i.e., physical division of the property

denied its allegations. Defendant's answer did not allege, however, that the description of Parcel 1 in plaintiff's complaint was inadequate, nor does she appear to have demurred to the complaint.

In September 2013, the parties stipulated to a judgment of partition by sale, and the trial court appointed a referee to conduct the sale. During the sale process, the referee moved to amend the judgment in the Parcel 1 action to add Parcel 2 to it. The trial court denied the referee's motion in January 2015.

Two weeks after the trial court denied the motion to amend the judgment in the Parcel 1 action, plaintiffs filed this action, seeking to partition Parcel 2 by sale (hereafter, the Parcel 2 action). Defendant did not oppose partition of Parcel 2, but she averred in her answer to plaintiffs' complaint that both parcels should be partitioned together because Parcel 1 and Parcel 2 were "deeded as one property." Defendant asserted plaintiffs had erred by not including Parcel 2, which was a "small[er] portion" of the combined parcels, in the Parcel 1 action. She further requested partition be in kind rather than by sale. Although defendant's answer suggested plaintiffs' Parcel 2 complaint was defective, defendant did not file a demurrer to challenge the complaint's sufficiency.

(see, e.g., *Butte Creek Island Ranch v. Crim* (1982) 136 Cal.App.3d 360, 365[ ])—according to the parties' interests as determined in the interlocutory judgment. [Citations.] Alternatively, if the parties agree or the court concludes it 'would be more equitable,' the court may order the property sold and the proceeds divided among the parties. [Citations.]" (*Cummings v. Dessel* (2017) 13 Cal.App.5th 589, 596-597.)

After filing her answer, defendant moved to consolidate the Parcel 1 and Parcel 2 actions. The trial court ordered the two cases related, but it denied defendant's motion to consolidate. The Parcel 2 action was thereafter tried to the court, which took judicial notice of the 2008 judgment quieting title and the quitclaim deeds, and the court granted a judgment of partition for Parcel 2.

II. DISCUSSION

Defendant contends that because the 2008 stipulated judgment and the 2009 quitclaim deeds use the shorthand terms "Temescal Ranch" or "Temescal Ranch Property" to describe Parcel 1 and Parcel 2 collectively, the parcels could only be partitioned together and plaintiffs' complaints in both this action and the prior partition action are therefore defective. It follows, according to defendant, that the trial court should never have allowed the Parcel 2 action to proceed separately from the Parcel 1 action.

Insofar as defendant's contention presents a cognizable claim on appeal, it challenges the trial court's denial of her motion to consolidate the Parcel 1 and Parcel 2 actions. The record on appeal does not contain any motion to consolidate or opposition papers, a copy of the trial court's order denying the motion, or a reporter's transcript of any hearing on the motion (or of the partition trial). The absence of these documents in the record is alone fatal to defendant's appeal, but we include a brief discussion of the merits to explain why the decision to refrain from consolidating the two actions was not an abuse of the trial court's discretion.

A. Standard of Review

"When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." (Code Civ. Proc. § 1048, subd. (a).) A trial court's decision to grant or deny consolidation is reviewed for abuse of discretion. (*State Farm etc. Ins. Co. v. Superior Court* (1956) 47 Cal.2d 428, 432; *McArthur v. Shaffer* (1943) 59 Cal.App.2d 724, 727 (*McArthur*).) "And a trial court's discretion in this as in other discretionary matters will not be interfered with either on appeal or by writ of mandate except when there has been a manifest abuse of such discretion." (*McArthur*, *supra*, 59 Cal.App.2d at p. 727.)

In addition, "it is settled that: 'A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. This is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error.' [Citations.]" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564 (*Denham*).) The appellant's obligation to establish error includes providing a record that enables us to determine whether the trial court abused its discretion. (*Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.)

B. Defendant Has Not Established the Trial Court Erred in Denying Consolidation

Defendant contends the trial court erred in denying consolidation because the complaints in both the Parcel 1 and Parcel 2 actions failed to describe the property to be partitioned in accordance with Code of Civil Procedure section 872.230. Defendant did not demur to either complaint on this basis, and the record on appeal does not indicate whether the trial court considered the argument when it denied consolidation. While the inadequacy of the record alone warrants affirmance (*Denham*, *supra*, 2 Cal.3d at p. 564), we conclude defendant's contention is meritless in any event.

Code of Civil Procedure section 872.230 requires a complaint for partition to provide a "description of the property that is the subject of the action," which, in the case of real property, "shall include both its legal description and its street address or common designation, if any." (Code Civ. Proc., § 872.230, subd. (a).) Plaintiffs' complaint in the Parcel 1 action included a legal description of Parcel 1, the subject of that partition action; plaintiffs' complaint in the Parcel 2 action included a legal description of Parcel 2, the subject of that partition action. Defendant has not shown that "Temescal Ranch" or the "Temescal Ranch Property" is a common designation of Parcel 1 and Parcel 2—as opposed to a shorthand reference provided for the purpose of convenience. But the property descriptions provided in plaintiffs' complaints were adequate regardless (see *Broome v. Broome* (1919) 179 Cal. 638, 646; *Home Sec. Bldg. & Loan Asso. of Alameda County v. Western Land & Title Co.* (1904) 145 Cal. 217, 218), and there is no legal reason why consolidation of the two cases was required simply

because the parcels had previously been conveyed together in the past.

Apart from her claim that plaintiffs failed to sufficiently describe the property to be partitioned, defendant raises no other arguments and refers to no other documents in the record to challenge the trial court's denial of consolidation. So far as the record reveals, the court's consolidation ruling was otherwise within its discretion. At the time defendant moved to consolidate the two cases, judgment had already been entered in the Parcel 1 action and the trial court had already denied the referee's request to amend that judgment to add Parcel 2. The trial court could have reasonably found that consolidating the actions was unnecessary, impracticable, or impossible. (See, e.g., *Sosnick v. Sosnick* (1999) 71 Cal.App.4th 1335, 1339 [trial court had no discretion to consolidate two actions where the first had been prosecuted to final judgment].)

DISPOSITION

The judgment is affirmed. Five Points Temescal, LLC and Temescal Ranch Limited Partnership are to recover their costs on appeal.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

RAPHAEL, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.