FILED
APR 14 1977
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BERTHA BECKER,

Appellant,

vs.

HAROLD THUL and ELVINA THUL, Husband and Wife, ROBERT THUL, and ALAN WIEMERS and SANDRA WIEMERS, Husband and Wife,

Appellees.

Filed April 14, 1977

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No. 2-58040

Appeal from Humboldt District Court -- Newt Draheim, Judge

Plaintiff appeals trial court's order dismissing a Petition for a partition in a matter which also includes the rule against restraint on alienation.

AFFIRMED

Linnan, Lynch & Peterson, of Algona, Joe E. Lynch, Jr., counsel for appellant.

Harlyn A. Stoebe, of Humboldt, counsel for appellees.

Heard by Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Plaintiff appeals trial court's order dismissing the Petition for a partition in kind of the farm she owns in tenancy in common with her brother, the defendant in this action. The parties acquired their interest under the Will of their father, George Thul. The Will provided that the realty would pass with a life estate to his wife and with a remainder of equal shares to the plaintiff and the defendant with a limitation that they were not to sell the land for five years.

It is well recognized that the party who seeks a partition in kind has the burden to show that said partition would be both equitable and practicable. Rule 278, Rules of Civil Procedure, Spies v. Prybil, 160 N.W.2d 505, 508 (Iowa 1968). However, we find, after a review of the record, that the plaintiff failed to carry her burden of proof.

Judgment affirmed - all judges concur.