FILED
JUN 24 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DUANE E. CRAFT and JOANNE M. CRAFT,

Appellees,

vs.

EDNA C. HANNEY,

Appellant.

Filed June 24, 1977

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No. 2-58144

Appeal from Black Hawk District Court -- Peter Van Meter, Judge.

Defendant appealed a partition action ordered by the court under rule 278, Rules of Civil Procedure - AFFIRMED.

Charles B. Hoffman, of Hoffman, Meyer, Keest & Fortney, of Waterloo, counsel for appellant.

Michael Buckner, of Robertson, Robertson & Buckner, of La Porte, counsel for appellees.

Submitted to Allbee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

Defendant, Edna C. Hanney, appeals trial court's decree to partition by sale certain real estate in which plaintiffs had an undivided two-thirds interest, and the defendant had an undivided one-third interest. The defendant claims that the evidence supports a partition in kind. We disagree.

The burden of proving that a partition in kind is equitable and practicable is clearly on the defendant's shoulders. Spies v. Prybil, 160 N.W.2d 505, 508 (Iowa 1968). The only evidence presented in support of a partition in kind was the defendant's testimony in which an aerial photograph of the farm was presented along with the proposed division of the farm into parcels.

In support of a partition by sale, a realtor called on behalf of the plaintiffs, testified as to the physical description of the property and that in his opinion, the property would be less valuable if divided into parcels.

We are bound by Spies v. Prybil, *supra*, which held that the unsupported statement of a party claiming that a partition in kind would be equitable and practicable was insufficient to support a partition in kind claim. Also, we are mindful that evidence was introduced which showed that the value of the real estate divided into separate parcels would be less than if it was sold as a single tract. See Murphy v. Bates, 224 Iowa 389, 390, 276 N.W. 29 (1937); Snyder v. Snyder, 211 Iowa 445, 446, 233 N.W. 498 (1930).

We find that the trial court was correct in its ruling, and that the court's failure to allow questioning of the plaintiff's intent in purchasing his undivided two-thirds interest of the farm did not constitute prejudicial error to necessitate a reversal.

We affirm.