STATE OF MICHIGAN

COURT OF APPEALS

In re MARK E. MOON ESTATE

KRISTINA MOON, Personal Representative of the Estate of MARK E. MOON,

Appellant,

v

MERLIN MOON,

Appellee.

UNPUBLISHED
January 27, 2011

No. 294176
Eaton Probate Court
LC No. 08-045647-DE

Before: MARKEY, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

This case arises from a dispute regarding whether certain property belongs in decedent's estate. The probate court held that a partnership existed between decedent Mark E. Moon and his father, appellee Merlin Moon, and that appellee therefore has a 50% ownership stake in several items that had been listed in the estate inventory. Appellant Kristina Moon, the personal representative of decedent's estate, brought this appeal. We affirm.

I. JURISDICTIONAL CHALLENGE

As a preliminary matter, appellee argues that this Court does not have jurisdiction to hear appellant's appeal because it was not timely filed. We disagree. The existence of subject-matter jurisdiction is a question of law, which this Court reviews de novo. *Smith v Smith*, 218 Mich App 727, 729; 555 NW2d 271 (1996).

An appeal of right may be taken within 21 days of the entry of a final order or judgment. MCR 7.204(A)(1)(a). An appeal of right may also be taken within 21 days after the entry of an order deciding a motion for reconsideration, rehearing, or a new trial, if that motion was brought "within the initial 21-day appeal period...." MCR 7.204(A)(1)(b). In this case, it is undisputed that appellant moved for reconsideration within 21 days of the probate court's final order and filed this appeal within 21 days of the probate court's Opinion on Motion for Reconsideration. Therefore, if the Opinion on Motion for Reconsideration constitutes an order disposing of that motion, this appeal is timely.

Appellee argues that there was no such order because the court did not label the Opinion on Motion for Reconsideration with the word "order." Appellant counters that the opinion contained the same language that one would expect to see in an order, and therefore it should be treated as an order. The term "order" is not defined by the Michigan Court Rules. MCR 5.162 states that all orders of the probate court must be typewritten or legibly printed in ink and signed by the judge. The Opinion on Motion for Reconsideration meets these requirements.

If a statute or court rule does not define a term, the term should be given its ordinary meaning. *Haynes v Neshewat*, 477 Mich 29, 36; 729 NW2d 488, 2007. This Court may resort to a dictionary to determine the meaning of the term. *Id.* Black's Law Dictionary (8th ed) defines "order" as a "written direction or command delivered by a court or judge." In the Opinion on Motion for Reconsideration, the probate court stated, "[t]he Personal Representative's Motion for Reconsideration is denied in its entirety for the reasons set forth above." This sentence fully comports with the dictionary definition of "order" and is typical of a sentence normally labeled by courts as an order. In addition, MCR 1.105 states that the Rules should be construed "to secure the just, speedy, and economical determination of every action...." Appellant should not be denied the chance to appeal this case merely because the probate court did not use the word "order." Therefore, appellant timely appealed the ruling of the probate court, and we have jurisdiction to hear this case under MCR 7.204(A)(1)(b).

II. APPELLEE'S STANDING TO OBJECT

Appellant's first argument on appeal is that appellee did not have standing to object to the inventory of the estate because he is not an heir and not an interested person under MCR 5.125. Whether a party has legal standing to assert a claim constitutes a question of law that this Court reviews de novo. *Heltzel v Heltzel*, 248 Mich App 1, 28; 638 NW2d 123 (2001).

Generally, to have standing, "a party must have a legally protected interest that is in jeopardy of being adversely affected." *In re Foster*, 226 Mich App 348, 358; 573 NW2d 324 (1997). A party raising a claim must have "'some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.'" *Id.*, quoting *Bowie v Arder*, 441 Mich 23, 42-43; 490 NW2d 568 (1992); ; see MCR 5.119(B) ("An interested person may object to a pending petition orally at the hearing or by filing and serving a paper which conforms with MCR 5.113."). Although appellee, as the father of decedent, is not an heir, MCL 700.1105(c) states that "interested person" includes "any other person that has a property right in or claim against a trust estate or the estate of a decedent." Appellee claims an ownership interest in several pieces of property listed in the inventory. Therefore, he is an interested person under MCL 700.1105(c). As an interested person whose legally protected interest could have been adversely affected by the probate process, appellee had standing to object to the pending petition under MCR 5.119(B).

Appellee's alleged ownership stake in the estate property is a real, legally protected interest that could be adversely affected by the probate process. Therefore, we find that appellee has standing to object to the inventory.

III. DISCOVERY SANCTIONS

Appellant next argues that appellee's claims should have been dismissed as a sanction for appellee's failure to comply with the probate court's discovery order. This Court reviews a trial court's decision regarding a discovery sanction for an abuse of discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "Trial courts possess the inherent authority to sanction litigants and their counsel, including the right to dismiss an action." *Id.* A decision is an abuse of discretion if it falls outside the range of principled outcomes. *Id.*

In its Opinion on Motion for Reconsideration, the probate court found that dismissal would be too harsh a sanction under the circumstances. It found no evidence that the violation was willful and that no prejudice resulted to appellant. It also stated that appellee did not have a history of deliberately delaying or failing to comply with discovery requests. The court further noted that appellee responded to some of the discovery requests, at least in part. As a remedy, the court admonished appellee to take discovery more seriously in the future and stated that it would entertain a motion for costs.

On appeal, appellant does not argue that any of the probate court's findings were erroneous and does not provide any reason or authority suggesting why the court should have applied the sanction of dismissal as opposed to some lesser sanction. Appellant merely argues that the court failed to address her request to dismiss appellee's claims as a sanction for failure to comply with the discovery order. However, this argument is unpersuasive because the court in fact addressed the issue on reconsideration. The probate court stated its willingness to entertain a motion for costs, which falls within the range of principled outcomes given the mitigating factors listed by the court, none of which are disputed on appeal. The probate court did not abuse its discretion by refusing to dismiss the case as a discovery sanction.

IV. THE DEAD MAN'S STATUTE AND MRE 601

Appellant also claims that the probate court erred by allowing testimony from appellee regarding a partnership or joint venture between appellee and appellant. Appellant claims the testimony was barred by Michigan's dead man's statute, MCL 600.2166. The dead man's statute makes inadmissible a party's testimony "as to any matter which, if true, must have been equally within the knowledge of the person incapable of testifying, unless some material portion of his testimony is supported by some other material evidence tending to corroborate his claim." MCL 600.2166(1). Appellee counters that the statute was abrogated by the adoption of Michigan Rule of Evidence 601, which states that every person is competent to be a witness unless the court finds "that he does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably." MRE 601. Appellant concedes that several decisions of this Court have held that MRE 601 abrogated the dead man's statute but argues that the statute is nonetheless good law under the analysis required by *McDougall v Schanz*, 461 Mich 15; 597 NW2d 148 (1999).

The constitutionality of a statute is a question of law, which this Court reviews de novo. *McDougall*, 461 Mich at 23. Statutes are presumed to be constitutional unless they are clearly unconstitutional. *Id.* at 24. A statute is unconstitutional if it impermissibly infringes the

Supreme Court's exclusive authority under Const 1963, art 6, § 5, to promulgate rules governing practice and procedure. *Id.* at 18.

In *James v Dixon*, 95 Mich App 527; 291 NW2d 106 (1980), this Court held that MRE 601 abrogated MCL 600.2166. The *James* Court noted that the courts have the power to adopt rules of evidence; therefore, any conflict between the statute and the rule must be resolved in favor of the rule. *James*, 95 Mich App at 530. The Court found that MRE 601 eliminated the incompetency imposed by the dead man's statute. *Id.* at 532; see also *Dahn v Sheets*, 104 Mich App 584, 588; 305 NW2d 547 (1981); *In re Backofen*, 157 Mich App 795, 801; 404 NW2d 675 (1987).

Authority holding that MRE 601 abrogated MCL 600.2166 has not been overruled, but appellant argues that it must be reevaluated in light of *McDougall*. In *McDougall*, the Supreme Court considered the interplay between MCL 600.2169 and MRE 702, each of which involves what expert testimony is admissible. 461 Mich at 24. The Court found that the statute and the rule clearly conflicted and considered whether the statute impermissibly infringed on the Supreme Court's constitutional authority to enact rules governing practice and procedure. *Id.* at 25-26. Because the Court is not authorized to enact rules that modify substantive law, the *McDougall* Court held that the statute would be unconstitutional "only when no clear legislative policy reflecting considerations other than judicial dispatch of litigation can be identified." *Id.* at 30 (internal citations omitted). The Court also briefly discussed what types of rules of evidence are generally procedural in nature.

> In general, those rules of evidence designed to allow the adjudicatory process to function effectively are procedural in nature, and therefore subject to the rule-making power. Examples are rules of evidence designed to let the jury have evidence free from the risks of irrelevancy, confusion and fraud. On the other hand certain rules of evidence are inextricably involved with legal rights and duties. They are substantive declarations of policy, although they may be drafted in terms of the admission or exclusion of evidence. [*Id.* at 31 n 15, citing 3 Honigman and Hawkins, Michigan Court Rules Annotated, 2d ed., p 404 (emphasis omitted).]

The Court then found that MCL 600.2169 was an enactment of substantive law that modified the standard of care element of malpractice. *Id.* at 36.

Appellant argues that the dead man's statute reflects a legislative policy judgment beyond mere dispatch of judicial business. This argument is supported by the federal case of *Electronic Planroom, Inc v McGraw-Hill Cos, Inc*, 135 F Supp 2d 805 (ED Mich, 2001). The court in that case applied the *McDougall* rationale to the dead man's statute and found that the statute has a legislative purpose that witnesses not be permitted to lie about the dead, who are incapable of answering. *Id.* at 816, quoting *Hudson v Hudson*, 363 Mich 23, 31; 108 NW2d 902 (1961). The court found this purpose to reflect a policy judgment beyond mere dispatch of judicial business, and, therefore, found the dead man's statute to be applicable. *Id.* However, federal district court decisions are not binding upon this Court. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 59; 760 NW2d 811 (2008), and we disagree with the *Electronic Planroom* court's reasoning.

The *McDougall* Court suggested that rules designed to "let the jury have evidence free from the risks of irrelevancy, confusion and fraud" are generally procedural in nature. 461 Mich at 31 n 15. Appellant argues that the substantive legislative purpose of the dead man's statute is to prevent the living from lying about the dead. In other words, the statute is meant to prevent fraud and enhance the reliability of testimony in court. Therefore, the dead man's statute is exactly the type of rule that *McDougall* held up as being purely procedural and thus subject to the Supreme Court's rulemaking authority. *Id.* We hold that *McDougall* does not act to revive the dead man's statute, and the probate court did not err by admitting appellee's testimony.[1]

V. PARTNERSHIP

Appellant argues that the evidence does not support the probate court's finding that a partnership existed between appellee and decedent. The determination of whether a partnership exists is a question of fact. *Miller v City Bank & Trust Co, NA*, 82 Mich App 120, 123; 266 NW2d 687 (1978). This Court will not overturn the probate court's findings of fact unless they are clearly erroneous. MCR 2.613(C); *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). Clear error exists when, despite any evidence supporting the finding, this Court is left with a firm and definite conviction that a mistake was made. *In re Mason*, 486 Mich at 152.

The party alleging a partnership has the burden of proving its existence. *Fletcher v Fletcher*, 197 Mich 68, 72; 163 NW 488 (1917). Appellant argues that the burden is stricter when the alleged partners are relatives, citing *Lobato v Paulino*, 304 Mich 668, 670-71; 8 NW2d 873 (1943). That rule first appeared in *Cole v Cole*, 289 Mich 202; 286 NW 212 (1939), which cited to *Fletcher*. However, *Fletcher* states that the burden is heavier in disputes between partners than against outsiders because the partners themselves should be able to produce stronger evidence regarding the existence of a partnership. *Fletcher*, 197 Mich at 72. The *Fletcher* Court did not indicate that it made any difference if the alleged partners were related.

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[1] In addition, it is not at all clear that the dead man's statute would bar appellee's testimony. Material portions of his testimony were corroborated by documentary evidence or by appellant herself. MCL 600.2166(1); *Braidwood v Harmon*, 31 Mich App 49, 57-58; 187 NW2d 559 (1971), quoting Mich Law Rev Comm, First Annual Report, 1966, p 29 ("'if any material portion is corroborated either by testimony of other witnesses or by demonstrative evidence, then the testimony of the survivor should be admitted"'). At the evidentiary hearing, appellee produced a receipt for a planter he purchased, which was listed on the inventory of the estate, and a contract that he entered into to have a field sprayed with pesticide. An aerial photograph was also admitted showing that the barn, which appellee claimed he and decedent built together, sat on both appellee's and decedent's property. Appellee's testimony was also corroborated in part by the testimony of appellant, who agreed that appellee originally purchased the planter, that decedent's cattle grazed on appellee's land, that appellee did not charge rent for pasturage, that decedent did pay rent for another of appellee's fields, and that appellee had contracted on behalf of decedent to have a field sprayed. Moreover, appellant does not identify on appeal any particular testimony by appellee that should have been excluded.

Therefore, the probate court correctly concluded that stricter proofs are not required among relatives. Further, none of the cases defines the "stricter" burden. *See Fletcher*, 197 Mich at 72; *Lobato*, 304 Mich at 674; *Cole*, 289 Mich at 204.

Under Michigan law, "[a] partnership is an association of 2 or more persons, which may consist of husband and wife, to carry on as co-owners a business for profit." MCL 449.6. Two people may have a partnership without being aware that they are partners. *Byker v Mannes*, 465 Mich 637, 646; 641 NW2d 210 (2002). Even the complete absence of subjective intent to form a partnership is not dispositive to whether a partnership exists. *Id.* at 649. The key is that the parties associate themselves to run a business for profit as co-owners, "regardless of their subjective intent to form such a legal relationship." *Id.* at 646. Receiving a share of the profits of a business is prima facie evidence that one is a partner in that business, but not if the profits are received as rent to a landlord. MCL 449.7(4)(b).

Other indicia of a partnership include mutual agency and joint liability, a common interest in the capital used in the business, and the sharing of profits and losses. *Lobato*, 304 Mich at 674; *Miller v City Bank & Trust Co, NA*, 82 Mich App 120, 125; 266 NW2d 687 (1978). It is not necessary that control be exercised as long as it exists. *Miller*, 82 Mich App at 125. An essential element of a partnership is the contribution by the partners of capital, credit, skill, or labor. *Michigan Employment Security Comm v Crane*, 334 Mich 411, 416; 54 NW2d 616 (1952).

The record provides strong support for the conclusion that most of these indicia are present in this case. The probate court found that appellee prepared the land for the new barn and made a deal with some Amish workers to have them erect it, while decedent provided the materials. Decedent purchased a John Deere 60 tractor, but appellee purchased the parts and did the necessary repairs himself. This pattern was repeated with other equipment. Appellee also contracted to have one of the fields sprayed with pesticide. Decedent paid rent for one of appellee's parcels, which was used to grow crops, but did not pay rent for the barns or pasturage. Decedent did the milking, but appellee did the plowing and chopping.

The record supports the probate court's findings on all of these points, and appellant does not object to any of the specific factual findings. The facts clearly show that decedent and appellee each provided substantial capital and labor to the farming operation, by purchasing parts or equipment and working on the farm. The fact that appellee contracted with workers to build a barn for the cows and also to have one of the fields sprayed shows that he had joint authority over the farming operations with his son.

The only element of a partnership that is disputable is whether appellee received a share of the profits and losses. The probate court found that the only compensation received by appellee was rent on one of the parcels being used by the farm. Under MCL 449.7, profits paid as rent to a landlord are not sufficient to constitute prima facie evidence of a partnership. However, the statute does not suggest that payments only as rent disproves the existence of a partnership, especially when all of the other indicia of a partnership are present.

In its Decision of the Court on Objection to Inventory, the probate court stated that "none of the usual indicia of partnership exist." The court appears to have referred specifically to the

absence of a partnership certificate, and perhaps also to the way the farm's finances were handled and the lack of any explicit partnership agreement. Even so, the court found a partnership based on the facts described above. The arrangements in this case, if unusual for a partnership, nonetheless display all of the essential hallmarks of a partnership. It is perfectly reasonable to conclude that appellee and decedent intended to run the dairy farm as co-owners of a business for profit. Although there is an argument that appellee was merely helping out his son and would not have expected an ownership stake if his son had not died, there is enough support for the probate court's holding that this Court is not left with a definite and firm conviction that a mistake was made.

Finally, appellant argues that the probate court did not have the authority to disregard appellee's argument for finding a joint venture and to instead sua sponte find a partnership. However, appellant cites no authority in support of this position, so therefore, we need not consider it. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471; 628 NW2d 577 (2001). Moreover, to the extent that the probate court may have violated appellant's procedural due process rights by raising an issue sua sponte, any error was rendered harmless by appellant's opportunity to address the issue in her motion for reconsideration. *Al-Maliki v LaGrant*, 286 Mich App 483, 485-86; 781 NW2d 853 (2009).

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Cynthia Diane Stephens

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November 2, 2011

Moon v Moon (In re Moon Estate)

490 Mich 903, 804 NW2d 564
Action on Application

Docket No(s) 142743
Lower Court Docket No(s) 294176

MARILYN KELLY, J., would grant leave to appeal.

Next >

On order of the Court, the application for leave to appeal the January 27, 2011 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

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MARILYN KELLY, J., would grant leave to appeal.

STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of MARK E. MOON.

KRISTINA MOON, Personal Representative,

Appellant,

v

MERLIN MOON,

Appellee.

UNPUBLISHED
August 14, 2014

No. 315698
Eaton Probate Court
LC No. 08-045647-DE

Before: SAAD, P.J., and OWENS and K.F. KELLY, JJ.

PER CURIAM.

Appellant, as personal representative of the estate of Mark E. Moon, appeals as of right the probate court's order that denied her motion for summary disposition, which requested that the probate court determine that the estate has a 50 percent partnership interest in real property titled in appellee's name. We affirm.

As a preliminary matter, appellee claims that this Court does not have jurisdiction because not all interested parties appear to have been served with the claim of appeal. However, under MCR 7.204(B), this Court is vested with jurisdiction in an appeal of right by the timely filing of the claim of appeal and the entry fee. Therefore, any alleged failure to serve all interested parties with the claim of appeal does not divest this Court of jurisdiction.

I. FACTS AND PROCEDURAL HISTORY

This case involves a prolonged dispute between appellant and appellee regarding whether certain property belongs in decedent's estate. Decedent and his father, appellee, ran a dairy farm together. During the course of these proceedings, it was determined that the two of them created a partnership. See *In re Mark E. Moon Estate*, unpublished opinion per curiam of the Court of Appeals, issued January 27, 2011 (Docket No. 294176) (affirming the probate court's determination that a partnership to run the dairy farm operation existed between decedent and appellee). Consequently, appellant submitted discovery requests to appellee in an attempt to reevaluate the estate inventory, particularly to include additional real and personal property that may have belonged to the partnership. After a serious of discovery requests and responses,

appellant moved for summary disposition pursuant to MCR 2.116(C)(10), requesting that the probate court determine that the estate has a 50 percent partnership interest in four parcels of real property titled in appellee's name and to require appellee to deliver the proceeds of those properties.

Appellee argued that he owned the property before the farming operation began and it was never his intent for it become partnership property. Appellee argued that the use of the property for the farming operation did not make it partnership property. He further argued that there is a presumption that where property is titled, the named owner is the beneficial owner. Appellant, however, argued that real property does not have to be titled in the names of both partners or in the name of the partnership to be considered partnership property. Rather, appellant argued that the use of the property for the farming operation makes it partnership property.

The probate court denied appellant's motion, finding that the property in question was not partnership property, but was the sole property of appellee. Specifically, the probate court found that the property was titled solely to appellee and was never conveyed to the partnership or anyone else. The probate court also found that there was no evidence that decedent considered the property to be his or that of the partnership. The probate court further found that even though the partnership used the land to farm, the land was also used for other purposes, and the parties treated it very differently than the personal property of the partnership.

Following the probate court's denial of her motion for reconsideration, appellant filed this claim of appeal, arguing that the probate court erred by determining that the property in question was not partnership property.

II. STANDARDS OF REVIEW

"The standard of review on appeal in cases where a probate court sits without a jury is whether the court's findings are clearly erroneous." *In re Estate of Bennett*, 255 Mich App 545, 549; 662 NW2d 772 (2003). "A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id.*

Additionally, this Court reviews de novo a probate court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Id.* at 119. In reviewing the motion, this Court considers "the pleadings, admissions, and other evidence submitted by the parties in a light most favorable to the nonmoving party." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition is properly granted "if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Id.* A genuine issue of material fact exists "when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

Finally, we review questions of statutory interpretation de novo, and discern the legislative intent by focusing on the plain language of the statute. *Cameron v Auto Club Ins Ass'n*, 476 Mich 55, 60; 718 NW2d 784 (2006).

III. ANALYSIS

Section 8 of the Uniform Partnership Act (UPA) defines partnership property as,

> (1) All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property;
>
> (2) Unless the contrary intention appears, property acquired with partnership funds is partnership property;
>
> (3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name;
>
> (4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. [MCL 449.8.]

In this case, the property in question does not fall under this definition of partnership property, as appellee owned the property before the partnership was created, he did not acquire it with partnership funds, and he did not convey it to the partnership.

Whereas here, land is taken in the name of one of the partners, to determine whether that land is in fact partnership property "always depends upon the intent of the parties and the understanding and design under which they acted." *Johnson v Hogan*, 158 Mich 635, 648-649; 123 NW 891 (1909). An express agreement is not necessary to show intent. *Id.* at 649. An agreement may be implied, which is determined by examining the general purpose of the parties, the nature of the partnership business, and the manner in which the parties dealt with the property in question. *Id.* Our Supreme Court reaffirmed these legal principles in *McCormick v McCormick*, 342 Mich 525, 530; 70 NW2d 706 (1955), which appellant relies on to argue that real property does not have to be in the name of both partners to be considered partnership property. While it is "not essential that the record title should stand in the names of all partners," *id.*, contrary to what appellant asserts that fact alone does not determine whether property is in fact partnership property. Rather, the focus is on the intent of the parties. *Id.* In *McCormick*, the Court determined that the fact that the legal title to the property in question stood in the names of various parties at different times did not deprive it of its character as a partnership asset, because the parties treated the property as belonging to all of them. *Id.* at 530-531; see also *Mathews v Wosek*, 44 Mich App 706, 714 n 7; 205 NW2d 813 (1973) (noting that although "there is a presumption of some vigor that the named owner is the beneficial owner," the intent of the parties remains the focus because "title is often taken in individual names when ownership by the firm is intended").

Unlike in *McCormick*, in this case, the record shows that appellee and decedent did not treat the real property as if it belonged to both of them. It is undisputed that the property in

question was titled solely in the name of appellee, but was used for the dairy farm operation by both appellee and decedent. Appellee, however, testified that he owned the property in question well before decedent began using it for the dairy farm operation. Although appellee acknowledged that he supplied the real estate for decedent to use and that the "use of it was for the benefit of the partnership," he also testified that he never intended for the land to become partnership assets. Most significantly, appellee charged decedent rent to use the land, and not only did appellant admit that decedent paid rent to appellee, but also appellee's 2004 through 2007 income tax returns show that he received such rent. Further, the property tax bills were addressed to appellee and there is no evidence that those bills were paid by decedent or the partnership. With the other partnership property, it is clear from the record that the parties shared the costs and maintenance associated with the property, such as making improvements to the buildings and maintaining the equipment. With the property in question, however, there is no evidence that decedent shared in the costs and maintenance associated with the property. Rather, it appears appellee bore that burden. Based on the record there is no indication that the parties treated the property in question as belonging to all the partners, and therefore, we are not left with a definite and firm conviction that the probate court erred by concluding that the property was not partnership property.[1]

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly

[1] Appellant also argues that the probate court erred by interpreting section 25 of the UPA, which refers to "specific partnership property." Although it appears that the probate court's interpretation of the phrase "specific partnership property" was erroneous, we decline to address this issue because it has been determined that the property in question was not partnership property, thus rendering this argument moot, as section 25 clearly address a partner's rights in "specific *partnership* property." MCL 449.25 (emphasis added).