

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0435**

Lillian V. Simmons,
Appellant,

vs.

Quincy J. Mason,
Respondent,

Highland Bank, et al.,
Third-Party Defendants.

**Filed January 9, 2023
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CV-20-6045

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Minnesota (for appellant)

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Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Appellant Lillian Simmons and respondent Quincy Mason ended their romantic relationship and began disputing possession of a residence they owned in joint tenancy. The unmarried parties had cohabitated in the home and shared household expenses for four years. The district court resolved Simmons's action to quiet title by ordering the property

partitioned. Simmons contests the result, arguing that the district court should not have ordered the sale proceeds to be divided equally, should not have ordered the referee costs to be divided equally, and failed to meet its statutory duty to order a presale appraisal. Because the district court acted within its discretion by ordering the equal division of sale proceeds and referee costs, and because the applicable statute did not require the district court to order a presale appraisal, we affirm.

FACTS

Lillian Simmons and Quincy Mason were coworkers who began a romantic relationship in early 2016. Simmons purchased a house in November 2016, and Mason moved into the house with his four children. Simmons conveyed the property by quitclaim deed to herself and Mason as joint tenants one month later. Mason and his children lived in the home with Simmons until the parties, who never married, ended their romantic relationship in early 2020. During the time the parties lived together, Simmons paid from her bank account all but one of the mortgage payments and all utility payments. Mason gave Simmons \$800 monthly to cover shared household expenses, and he paid for food and family outings.

After the breakup, Simmons sued to quiet title. Mason filed a counterclaim alleging unjust enrichment, and he filed a third-party complaint seeking partition of the property. The district court dismissed the quiet-title and unjust-enrichment claims, but it granted Mason's partition claim and ordered that the property be sold. Its order contemplated alternative dispositions of the property. It stated that Mason should privately convey his interest in the property to Simmons "if possible," and otherwise the property would be

conveyed in a public sale as directed by referees, after which the parties would each receive an equal share of the proceeds and pay an equal share of the referee costs.

Simmons appeals.

DECISION

Simmons does not challenge the decision to partition the property but challenges aspects of the partition order. She maintains that the partition process ordered by the district court violates the partition provisions of Minnesota Statutes sections 558.01–.32 (2022). She forwards three arguments: that the district court improperly ordered the parties to equally divide any home-sale proceeds rather than allow a referee to apportion the value of the home; that it improperly ordered the parties to equally share referee expenses; and that it erroneously failed to order an appraisal. None of Simmons’s arguments lead us to reverse.

I

Simmons first argues that the district court improperly ordered the parties to equally divide the sale proceeds in the event the partition led to public sale. The decisions of a district court in dividing assets in partition are discretionary, and we therefore review them for an abuse of discretion. *Glenwood Inv. Properties, L.L.C. v. Carroll A. Britton Fam. Tr.*, 765 N.W.2d 112, 117 (Minn. App. 2009). We rely on the district court’s fact findings unless they are clearly erroneous. *County of Blue Earth v. Turtle*, 593 N.W.2d 258, 260 (Minn. App. 1999). Simmons argues that she should have been credited with making the entire down payment from her own funds. But she presented no evidence or argument in the district court regarding either the amount of the down payment or who contributed to

it. The district court found that, although both parties made payments toward various home expenses, neither specified what payments each made toward utilities, repairs, or maintenance. The quitclaim deed reveals only shared ownership by joint tenancy. We cannot say from this record that the district court clearly erred by failing to find that Simmons made a greater contribution to either the down payment or any other expenses. The district court therefore did not abuse its discretion by ordering that the parties equally share in any sale proceeds.

We are not persuaded otherwise by Simmons's related contention that the district court should have left the distribution decision to the referees. The argument overstates the power of referees. Referees must partition the property according to the court's judgment based on the rights of the parties; it is not up to the referees to determine the rights of the parties or the amount each is owed. Minn. Stat. § 558.04 (“[T]he rights of the parties shall be established by evidence or by the written stipulation of the parties . . . [and] the court shall render judgment that partition be made accordingly, and shall appoint . . . referees to make partition . . . *as determined by the judgment.*”) (emphasis added); *see also Kauffman v. Eckhardt*, 263 N.W. 610, 611 (Minn. 1935), *amended*, 264 N.W. 781 (Minn. 1936) (“Where partition is to be made, the court must determine the rights and interests of all parties to the action in the property to be partitioned, whether such interests consist of liens, taxes paid, advances, or improvements made.”). We see nothing in the partition statutes that purports to divest the district court of its discretion to divide the assets based on the parties' rights.

II

Simmons next argues that the district court exceeded its statutory authority by directing the parties to split referee costs equally, relying on Minnesota Statutes section 558.06:

When partition is made, the referees shall divide the property, and allot the several portions thereof to the respective parties, quantity and quality relatively considered, according to their respective rights The expenses and fees of the referees, including those of a surveyor and assistants, when employed, shall be paid by the plaintiff, and may be allowed as part of the charges.

We consider de novo whether the district court erroneously applied a statute. *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008). We conclude that section 558.06 does not apply here because it addresses a partition in kind, not a partition by sale. Although caselaw colloquially refers to a “partition by sale,” the partition statute never uses that phrase. It instead differentiates between a “partition” and a “sale,” as in section 558.01:

When two or more persons are interested . . . in real property . . . an action may be brought by one or more of such persons against the others for a partition thereof according to the respective rights and interests of the parties interested therein, or for a sale of such property, or a part thereof, if it appears that a partition cannot be had without great prejudice to the owners.

Minn. Stat. § 558.01. Throughout the related sections, a “partition” is a physical division of property (commonly called a “partition in kind”) while a “sale” is a monetary division of proceeds when the physical division of the property is impossible. The legislature’s use of the term “partition” in section 558.06 informs us that the section applies only to a physical partition, not a partition by sale.

Section 558.16 applies here instead. That section expressly refers to the “proceeds of the sale of the property” rather than to a partition, and, unlike section 558.06, it does not assign referee costs to the plaintiff. It directs that the property owners receive “the residue” of the sale proceeds according to their respective shares only after paying various administrative costs, including “the costs of the reference.” Minn. Stat. § 558.16. The district court did not violate the statute or otherwise abuse its discretion by directing the parties to equally share any referee costs.

III

Simmons finally argues that the district court violated section 558.17 by failing to order the property appraised before directing the parties to negotiate a private sale. The operative portion of that section does not support her argument:

If a private sale be ordered the real estate shall be appraised by two or more disinterested persons under order of the court, which appraisal shall be filed before the confirmation of the sale by the court. No real estate shall be sold at private sale for less than its value as fixed by such appraisal.

Minn. Stat. § 558.17. Reviewing the application of the statute de novo, *City of Morris*, 749 N.W.2d at 5, we conclude that, because the district court did not order a private sale, the section does not apply. The district court directed the parties only to consider a private sale; it did not order a private sale. It urged Simmons to privately purchase Mason’s interest but stated that if the parties could not come to terms, the property would be sold by public sale. The district court gave the parties 30 days to attempt to agree on terms of a private sale without referees, and an additional 30 days to agree on “the appointment of three referees to determine the value of the Property . . . and to administer the partition of the Property

by private sale” if the initial negotiation for a private sale failed. The referees would then prepare and submit their report for the court’s review, after which Simmons would have 30 days more to buy out Mason’s interest according to the terms in that report. If Simmons did not purchase Mason’s interest under those terms, the referees would then proceed with a public sale. Because the district court did not actually order a private sale but proposed a private sale followed by various outcomes if private-sale negotiations failed, an appraisal was not mandatory under section 558.17. We are not persuaded to a different conclusion by Simmons’s argument that section 558.17 requires any property sold by private sale to be appraised and prohibits a property from being sold for less than the appraised value. The legislature’s use of the word “such” in section 558.17 conditions the appraisal directive on the ordering of a private sale. There having been no order requiring a private sale here, the district court did not erroneously fail to order an appraisal under the section.

Affirmed.