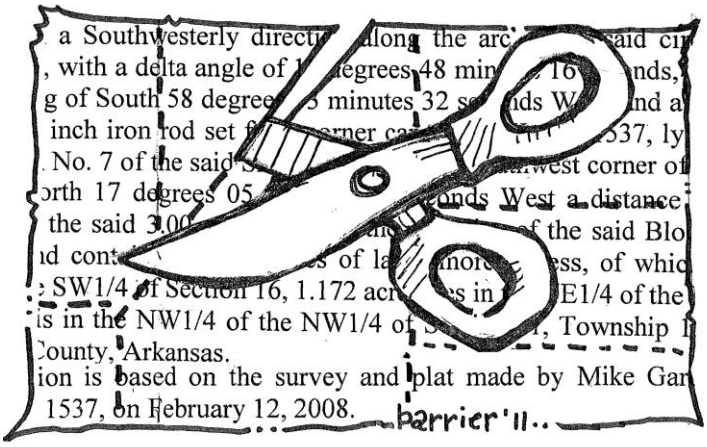
Dirt Law at Ground Level



TOO CLEVER BY HALF (OR EVEN MORE)

By W. Christopher Barrier
Mitchell Williams Selig Gates & Woodyard, P.L.L.C.

The situation most often precipitating a partition action is a devise or gift of real estate to multiple heirs as tenants in common, wherein all of the heirs are given undivided interests in the whole. *Renner* v. *Bonner* (besides involving confusingly similar names) represents an extreme version of that state of facts---a grandfather devised a large parcel in equal shares to his *nine grandchildren*.

The immediate practical result may have been the reverse of what grandfather intended. Rather than preserving the value of the whole, the fractured devise made it impossible for any single heir to make use of the fractional piece, thereby driving down its market value so as to permit a purchaser to buy the pieces separately at a favorable price, which Renner may have done.

Shooting the moon…

However, he ended up with only eight of the nine fractions, the ninth one having been purchased by Bonner, whose interest was not that of a speculator but rather that of an adjoining neighbor who had to use a prescriptive easement over the whole tract to reach his adjoining property.

The case is not clear as to why Bonner was uncertain as to his right to keep using that prescriptive easement, regardless of a partition. Perhaps he felt that owning a right to cross the larger parcel as a co-tenant as well as rights in the easement gave him double protection. Certainly Bonner may have understood that partition is sometimes risky, producing unexpected results.

To sneak or not to sneak…

In any event, Renner's intent to acquire the whole parcel, including the fractions, was clear, which meant he needed to head off a partition in kind. Since he would be buying a much smaller interest than Bonner or a third party, he may have figured out-bidding them would not be hard. To that end, he deeded off a number of small fractions. In the event of a partition in kind, that would require cutting out little pieces, none of them usable in fact.

Commissioners were appointed, in accordance with the relevant statutes, to see if partition in kind were even possible (that being the preferred method, as a matter of law). What they came back with was a proposal to divide the **whole** into **two** parcels separated by Bonner's easement---and sell BOTH parcels at auction, possibly because both would then have road frontage.

Your day in court…

The trial judge approved the proposal over Bonner's objections, not allowing evidence about values, access, competing proposals for partition in kind, or Renner's sneaky conveyances. The appellate court ruled that partition in kind was certainly preferred unless the configuration of the land prevented it or the results were unfavorable to the fractional owners, as to which testimony had been excluded. It also wanted the trial judge to hear about Renner's too-clever tactics.

For our purposes, the case tells us that (1) subject to some restrictions, you can indeed buy an undivided portion of a jointly-owned parcel and force a partition; (2) you cannot predict what proposal commissioners will make, especially in view of the possibility of partition in kind, (3) devises or gifts in co-ownership is almost always a bad idea, making partition likely; and (4) in a partition, being sneaky is an even worse idea.

CHRIS BARRIER practices real estate law in Mitchell Williams Little Rock office. He is a graduate of Hendrix College and Duke University's law school.