FILED
MAR 29 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

EDWARD W. LUCAS, Trustee,
Appellee,
v.
WOODROW HOUSER, et al.,
Appellants.

Filed March 29, 1978

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2-60167

Appeal from Johnson District Court - Ansel J. Chapman, Judge.

Appeal from decree subjecting certain real estate to claims of plaintiff, trustee in bankruptcy. Affirmed as modified, and remanded.

Robert C. Gross, of Dumbaugh, Booth, Gross & Chapman, of Cedar Rapids, for appellants.

John T. Nolan, of Iowa City, for appellee.

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

PER CURIAM

This is an action in equity brought by the plaintiff, as trustee in bankruptcy for Woodrow and Doris Houser, to determine the interest of said bankrupts in certain real estate. The matter was tried to the court and a decree entered declaring that title to certain real estate (therein specifically described) be vested in a manner consistent with the findings of the court concerning a farm partnership between the bankrupt husband on the one hand and the husband's brother on the other. The bankrupts, the bankrupt's brother and his wife, and the bankrupt's mother and father (who apparently claim some interest in the real estate) appeal from the decree of the district court. The matter being tried in equity, our review is de novo. Rule 4, Rules of Appellate Procedure.

I. Pursuant to §§ 630.8, 630.16, The Code, a judgment creditor may bring an equitable proceeding to ascertain the nature and extent of the judgment debtor's interests in jointly owned or partnership real estate. Applicable federal law (11 U.S.C. § 110 (c)) confers the status of judgment creditor upon the plaintiff, trustee in bankruptcy. In order to invoke the remedial provisions of these statutes, the plaintiff must show the insolvency of the bankrupt. Drahos v. Kopesky, 132 Iowa 497, 109 N.W. 1021 (1906); Kalona Sav. Bank v. Eash, 133 Iowa 190, 109 N.W. 887 (1906). For purposes of the present proceeding we find said insolvency to have clearly been established by the evidence.

We also conclude that the evidence fully supports the following findings of the trial court. Commencing at least as early as 1962, defendant Woodrow Houser, one of the bankrupts, and his brother Anton formed a true, albeit informal, share and share alike farm partnership. This partnership acquired an interest, as contract purchaser, in a certain farm identified in the evidence as the Becicka Farm and later acquired an interest, as contract purchaser in a second farm identified in the evidence as the Wallace Farm. At or about February 15, 1965, the partnership of operation was informally terminated and replaced by two separate, non-partnership, operations by each of the brothers. Pursuant to the latter arrangement Woodrow and his family lived on and operated the Wallace Farm and Anton and his family lived on and operated the Becicka Farm. Thereafter, although title to the real estate was jointly-owned by the

brothers,[1] each represented by words and deeds that the Wallace Farm was Woodrow's and the Becicka Farm was Anton's. Walter Houser, father of Woodrow and Anton, did not at any time material have an ownership interest in either farm.

Based upon these findings and all of the facts and circumstances as disclosed by the evidence we conclude that the trial court correctly decreed:

> That the real property hereinabove described as the Wallace Farm and Becicka Farm, and one time operated in partnership between Woodrow Houser[2] and Anton Houser and said partnership having been terminated. . . , shall be allocated in accordance with the partnership termination so that the title to the Wallace Farm shall vest in Woodrow Houser and Doris Houser, husband and wife, and the title to the Becicka Farm shall vest in Anton Houser and Susan R. Houser, husband and wife.

The quoted portion of the decree is affirmed.

II. The trial court also made findings and entered a decree with respect to a quit claim deed from defendants Woodrow and Doris Houser to defendants Anton and Susan Houser, executed October 27, 1970. Said deed purported to quit claim all interests of the grantors in and to the Becicka Farm. While a disproportionate portion of the arguments of the parties on this appeal is devoted to the propriety of such findings and decree, we believe the result reached with respect to the wrapping up of the farm partnership effectively moots any issues presented with respect to the validity of this deed as against the plaintiff. The conveyance evidenced by that deed is not inconsistent with the true ownership of the property as found by the trial court. Thus, we hold that that portion of the trial court's decree, nullifying and setting aside said deed, is surplusage as to the claims of the trustee and is overbroad as it purports to set the conveyance aside as to the entire world. We therefore vacate that portion of the decree and affirm the balance.

[1] This was true of the record title until the execution of a quit claim deed dated October 27, 1970, purporting to convey Woodrow's undivided one-half interest in the Becicka Farm to Anton and his wife. This purported conveyance is discussed in division II of this opinion.

[2] This reference was inadvertently stated as "Walter Houser" in the trial court's decree. We have corrected same to accord with the record.

III. Because the decree of the trial court fails to dispose of claims involving partnership personalty and for accounting, which have been placed in issue, and because the record is inadequate to permit de novo determination of these issues on appeal, the cause is remanded for further proceedings on said unresolved issues.

Affirmed as modified, and remanded.