

FILED

MAR 23 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE CONSERVATORSHIP)
OF JAMES SHIPLEY, Gerald Fowler, Conservator)
of the Property of James Shipley,)

Plaintiff-Appellee,)

vs.)

DONALD K. DAVIS and SHIRLEY A. DAVIS,)

Defendants-Appellants.)

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Filed March 23, 1982

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2-66256

Appeal from Keokuk District Court - Ira F. Morrison, Judge.

Defendants appeal from trial court's judgment against them in an action for declaratory judgment brought by plaintiff-conservator to determine the validity of a contract to sell real property owned by the ward asserting that trial court erred in determining that the power-of-attorney executed by the ward in favor of his nephew did not empower the ward's nephew to sell real estate owned by the ward and in determining that the ward did not ratify the contract made by his nephew.

AFFIRMED.

Bailey C. Webber of Webber, Gaumer and Emanuel, Ottumwa, Iowa, for defendants-appellants.

Charles Helsten of Spayde, White and Helsten, Oskaloosa, Iowa, for plaintiff-appellee.

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

Defendants, Donald K. and Shirley A. Davis, appeal from trial court's judgment against them in an action for declaratory judgment brought by plaintiff, conservator of the property of the ward, James Shipley, to determine the validity of a contract to sell real property owned by the ward. Defendants assert that trial court erred in determining that the power-of-attorney executed by the ward in favor of his nephew did not empower the ward's nephew to sell real estate owned by the ward. In the alternative, they assert trial court erred in determining that the ward did not ratify the contract made by his nephew. We affirm.

James Shipley was the owner of a 160-acre farm located in Keokuk County. He lived and worked on the farm until, for health reasons, he had to move to a nursing home located in Oskaloosa. This real estate is the subject matter of the contract which gave rise to the instant case.

On January 25, 1975, James Shipley executed a power-of-attorney appointing Tommy Shipley as his attorney-in-fact. The instrument creating this power stated that Tommy Shipley had the power "to pay bills, sign necessary checks therefor, and conduct any and all business matters for me in my behalf." Pursuant to this power, Tommy Shipley performed such acts on behalf of his uncle as depositing social security checks, signing checks to pay his uncle's bills, and renting his uncle's land for \$50 an acre. On February 13, 1979, Tommy Shipley entered into a real estate contract with defendants to sell defendants the 160-acre farm for a total price of \$40,001. The contract called for a down payment of \$1.00 and installment payments of \$5,000 on March 1st and November 1st of each year until paid, commencing in 1979, with interest on the unpaid balance at a rate of 7% per annum. When Tommy Shipley told James Shipley that he had received and banked the Davises' \$5,000 check, James Shipley said that it was not enough money. No further action was taken to return the checks nor did James Shipley declare the contract otherwise unauthorized.

On March 7, 1979, James Shipley suffered a stroke and thereafter was unable to communicate with anyone. Plaintiff subsequently was appointed involuntary conservator. Plaintiff at all times refused tender of the \$5,001 down payment offered by the Davises. On May 18, 1979, plaintiff filed a petition for declaratory judgment which prayed that the real estate contract, executed by Tommy Shipley, be declared void and unenforceable. Following the death of James Shipley, plaintiff was appointed executor and was substituted as party plaintiff in that capacity. On December 10, 1980, trial court entered an order declaring the contract null and void. Trial court concluded:

That the power of attorney . . . granted to Tommy Shipley only the specified powers of paying bills, signing the necessary checks therefore, and to conduct any and all business matters regarding the payment of bills and signing of checks. These powers do not include the sale of real estate.

That although the principal may have ratified the renting of farm land and accepted the payments therefore, he did not and was not in physical or mental condition to ratify the sale of real estate.

Defendants thereafter filed a motion to amend the findings and conclusions and to modify the order, seeking to reverse trial court's adverse findings of fact and to obtain a substitute order finding that the actions of the agent were authorized under the power of attorney and that the contract was ratified by the principal. Trial court overruled the motion and this appeal followed.

L Scope of Review. Actions for the establishment of contested claims are triable in probate as law actions. §§ 633.33 and 633.555, The Code. The legal or equitable nature of declaratory judgment proceedings is determined by the nature of the case below. Henderson v. Hawkeye Sec. Ins. Co., 252 Iowa 97, 100, 106 N.W.2d 86, 88 (1960). Thus, since this case was tried as a law action, our review is for errors at law. Laing v. State Farm Fire & Cas. Co., 236 N.W.2d 317, 319 (Iowa 1975).

II Power of Attorney. Defendants argue that trial court erred in determining that Tommy Shipley's power of attorney was limited to the payment of bills and signing of checks. Specifically, defendants assert that the phrase "all business matters" used in the instrument conveying the power of attorney establishes that James Shipley intended Tommy Shipley to have the power to conduct any business matter for James, including the sale of his land. We disagree.

The law relating to interpretation of language giving another power of attorney is well settled.

General expressions and particularized authorizations

(1) Unless otherwise agreed, general expressions used in authorizing an agent are limited in application to acts done in connection with the act or business to which the authority primarily relates.

(2) The specific authorization of particular acts tends to show that a more general authority is not intended.

Abodeely v. Cavras, 221 N.W.2d 494, 502 (Iowa 1974), quoting Restatement (Second) of Agency § 37 (1958). Comment a to section 37 states that the purpose of this section:

is to make clear that, where general terms are used which literally import to grant great authority, such terms will normally be interpreted as authorizing the agent to act only in connection with the business the agent is to perform. The more specific the enumeration of the acts to be done, the smaller the area to be included in the general statement.

Restatement (Second) of Agency § 37 comment a, as quoted in Abodeely, 221 N.W.2d at 502. General expressions appearing in connection with others which are more specific are to be given the meaning which they bear in light of the latter. 2A C.J.S. Agency § 225 (1972). A grant of authority to act for a principal to "attend to the principal's property or business" does not amount to implied power

to sell real property, even if the land is used to carry on the principal's business." 2A C.J.S. Agency § 223 (1972). Further, with regard to the sale of real property, a power of attorney is generally strictly construed and any doubt as to authority to perform the particular act is resolved against the agent and those dealing with him. 2A C.J.S. Agency § 225 (1972).

In light of these principles, we conclude that trial court correctly determined that the power conveyed to Tommy Shipley was limited to the payment of bills and signing of checks. The general language concerning "all business matters" was drafted in conjunction with the paying of bills and necessary checks therefor, and is thereby limited by that subject matter.

III. Ratification. Defendants also argue that there was not substantial evidence in the record to support trial court's finding that James Shipley was not in physical or mental condition to ratify the sales contract. They assert that James Shipley knew of the sale while still competent and did nothing to repudiate it and thus should be held by its terms. We disagree.

Ratification is defined as follows:

Ratification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the acts, as to some or all persons, is given effect as if originally authorized by him.

Abodeely, 221 N.W.2d at 502, quoting Restatement (Second) Agency § 92 (1968).

Affirmance is defined as:

* * *

(a) A manifestation of an election by one on whose account an unauthorized act has been done to treat the act as authorized, or

(b) conduct by him justifiable only if there was such an election.

Abodeely, 221 N.W.2d at 502, quoting Restatement (Second) Agency § 83 (1968).

The essential elements of ratification and the focus of our inquiry are "(1) acceptance by the principal of the benefits of the agent's act, (2) with full knowledge of the facts, and (3) circumstances or an affirmative election

indicating an intention to adopt the unauthorized arrangement." Abodeely, 221 N.W.2d at 502, quoting 2A C.J.S. Agency § 71 (1963).

In this regard, trial court found that James Shipley was neither in the physical nor mental condition to ratify the sale of the real estate. Trial court's findings of fact have the effect of a special verdict equivalent to a jury verdict; if supported by substantial evidence they are binding upon us and the judgment will not be disturbed on appeal. Iowa R. App. P. 14(f)(1). "A finding of fact is supported by substantial evidence if the finding may reasonably be inferred from the evidence." Briggs Transportation Co. v. Starr Sales Co., 262 N.W.2d 805, 808 (Iowa 1978). The record is reviewed in a light most favorable to the judgment. Pillsbury Co. v. Ward, 250 N.W.2d 35, 38 (Iowa 1977). Ambiguities are construed to uphold rather than to defeat the verdict. Id.

We conclude there is substantial evidence in the record to support trial court's findings. While there was evidence that James Shipley was competent to understand his business matters, it is undisputed that his physical condition impaired his ability to conduct his business affairs with persons outside the Siesta Nursing Home in Oskaloosa. Trial court reasonably could conclude that his failure to affirmatively repudiate the contract was a result of this impairment. We note further that James Shipley stated to his nephew that he was unsatisfied with the amount brought by the sale of the property. In view of the role James's nephew had taken in conducting his business affairs outside the nursing home, we do not view James's failure to communicate a repudiation to the buyers, personally, as acquiescence in the contract. We thus affirm trial court's judgment.

AFFIRMED.