

IN THE COURT OF APPEALS OF IOWA

No. 6-059 / 94-1974

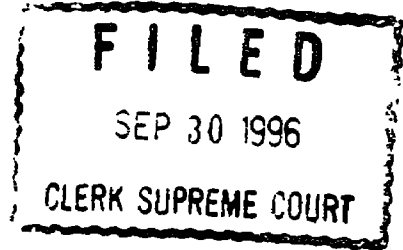
JOHN ALLISON and GERALDINE ALLISON,

Plaintiffs-Appellants,

vs.

**L.E. ALLISON ESTATE, ANNA IRENE ALLISON,
Executor, and ANNA IRENE ALLISON, Individually,**

Defendants-Appellees.



Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel,
Judge.

Plaintiffs appeal a district court judgment dismissing the claim for contribution
from defendant estate and the executor of the estate for payment of a farm debt.

REVERSED.

H. Michael Neary of the H. Michael Neary Law Office, Ottumwa, for
appellants.

Richard H. Elwood of Elwood & Elwood, North English, for appellees.

Considered by Sackett, C.J., and Habhab and Huitink, JJ.

SACKETT, C.J.

The question in this appeal is whether the trial court correctly denied a request for contribution for a debt secured by a remainder interest in an undivided one-half interest in 450 acres of farmland in Keokuk and Poweshiek counties. Our review is de novo. Iowa R. App. P. 4. We find the trial court incorrectly denied contribution and reverse.

Plaintiff John A. Allison and L.E. Allison, now deceased, owned an undivided one-half interest in a remainder interest in a farm. L.E. Allison is now deceased and defendant Anna Irene Allison, his widow, is the executor of his estate. Clela Allison owns the other undivided one-half interest and holds a life estate interest in the balance.

Through a debt restructuring, the remainder interests in the property of John and L.E. were mortgaged to Farm Credit Service in 1988. L.E. was living at that time, and he and John, as well as John's wife, plaintiff Geraldine Allison, and defendant Anna Irene, signed a note and mortgage encumbering the remainder interest in the farm. In 1988, John and L.E. were farming this land, along with other land. The 1988 agreement covered the other land in which the parties had an interest. They no longer own the other land. In 1990, plaintiffs and Anna Irene, individually and as executor of L.E.'s estate, signed a second restructuring agreement.

In 1990, 1991, and 1992, the tenant farming the land, who is a son-in-law of plaintiffs,¹ made payments on the note to Farm Credit Service in the amount of \$47,890. Plaintiffs then brought this action seeking judgment against Anna Irene, individually and as executor, for one-half of that amount. The trial court denied plaintiffs' claim finding defendants were not receiving income from the farm so they should not be required to pay the debt.

Plaintiffs appeal contending the trial court was in error in holding defendants did not have to contribute a share of the debt to plaintiffs.

The doctrine of contribution rests on principles of equity and natural justice. 18 Am. Jur. 2d Contribution § 1, at 8-9 (1985). It arises from the equitable consideration that persons subject to a common duty or debt should contribute equally to the discharge of the duty or debt. *See Licht v. Klipp*, 213 Iowa 1071, 1075-76, 240 N.W. 722, 724 (1932). No one person should be subject to bear more than his or her just share to the advantage of his or her co-obligors. *Daniel v. Best*, 232 Iowa 785, 791, 5 N.W.2d 149, 152 (1942). The equitable principle that undergirds contribution is that the party who seeks payment has conferred an advantage or benefit on the party from whom payment is sought. *Reserve Ins. Co. v. Village of Big Lake*, 304 Minn. 148, 230 N.W.2d 47, 50 (1975). When one of several joint obligors pays the debt, he or she is entitled to contribution from the other solvent obligors. His right

¹ Claim was made the rent the tenant paid was less than the fair market rental value.

is to have contribution. *See Novak v. Dupont*, 112 Iowa 334, 335, 83 N.W. 1062, 1062 (1900). All others who are jointly bound with him and are solvent, not alone the one who pays, must bear their proportion of the loss resulting from the insolvency of one of them. *Daniel*, 232 Iowa at 790, 5 N.W.2d at 152. The obligation to make contribution is one of the implications of the law looking to the equitable apportionment of liability. *See Flickinger v. Price*, 165 Iowa 570, 574-75, 146 N.W. 738, 741 (1914).

Plaintiffs brought the action and have the obligation to prove the elements showing they should have contribution. *Mailliard v. Heffernen*, 418 N.W.2d 85, 86 (Iowa App. 1987).

We disagree with the trial court finding that the fact defendants are receiving no income from the farm relieves them from making contribution. Neither plaintiffs nor defendants currently have the right to any income from the farm. The current income from the farm is that of Clela Allison, who holds the life estate in the undivided one-half remainder interest of these parties and owns the other undivided one-half interest in fee. Clela has no responsibility on this debt. The encumbrance placed there by the remaindermen does not encumber her life estate. *See Reddish v. John*, 190 Iowa 49, 53, 179 N.W. 951, ___ (1920).

Defendants challenge plaintiffs' right to receive contribution contending they have failed to prove they made the payment on the debt. We recognize that the actual

cash payment was made by the tenant on the farm. The unchallenged evidence is that plaintiffs are obligated to him on a note for the amount paid. Plaintiffs have proved they paid the debt.

We agree with plaintiffs that they should recover on their claim of \$23,945.20 for contribution. The judgment should be en rem. We enter judgment in said amount against any and all interest the named defendants have in the 450 acres given as security for the debt. We reverse the trial court.

REVERSED.