



IN THE COURT OF APPEALS OF IOWA

**MERLE ALDINGER and
TERRY ALDINGER,**

Plaintiffs-Appellees,

vs.

LLOYD ALDINGER,

Defendant-Appellant.

Filed September 27, 1983

3-244
2-89101

Appeal from Hardin District Court - Russell J. Hill, Judge.

Defendant appeals from declaratory judgment in plaintiffs' favor concerning a portion of proceeds from the sale of farmland in which he allegedly had a one-fourth remainder interest. **AFFIRMED.**

Steven P. Carroll of Hobson, Cady & Drew, Hampton, for defendant-appellant.

Michael D. Holt of Barker, McNeal, Wiese & Holt, Iowa Falls, for plaintiffs-appellees.

Considered by Oxberger, C.J., and Donielson, Snell, Schlegel, Hayden, and Sackett, JJ.

DONIELSON, J.

Defendant appeals from declaratory judgment in plaintiffs' favor concerning a portion of proceeds from the sale of farmland in which he allegedly had a one-fourth remainder interest. Defendant claims the trial court erred in holding that 1) he was estopped from asserting ownership in the interest because of a 1964 deed in which he conveyed his interest to plaintiffs, and 2) absent such estoppel, he did not prove the existence or need for a constructive trust. Because this action is in equity, our review is de novo. Iowa R. App. P. 4. We affirm.

E. A. Aldinger died in 1963. He was survived by his wife, Hazel, and his four sons: Russell, Kenneth, Merle, and Lloyd. His will left all his property to Hazel for life, with the power to sell or dispose of any of the property, and any remainder to his four sons in equal shares.

Included in the estate were 160 acres of farmland called "the homeplace." On January 3, 1964, at a time when he was in financial difficulty, defendant Lloyd Aldinger and his wife executed a warranty deed conveying Lloyd's one-fourth interest in "the homeplace" to plaintiffs Merle Aldinger and his wife, Terry Aldinger. On the same day, Lloyd and his wife executed a warranty deed conveying to plaintiffs Lloyd's one-half interest in a forty-acre tract of land called "the acreage." Lloyd and Russell were joint owners of "the acreage." Lloyd received a \$10,000 check when the deeds were executed.

In 1975, Hazel sold "the homeplace" to Russell and his wife for \$160,000. In 1979, Hazel died, and plaintiffs filed the present action for a declaratory judgment as to whether certain assets of Hazel's estate were in fact proceeds from assets of E. A. Aldinger's estate and also as to whether plaintiffs were entitled to the portion of the proceeds from the sale of "the homeplace" which were attributable to Lloyd's original one-fourth remainder interest. In a ruling on a motion for summary judgment and a motion to adjudicate law points, the trial court held that

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\$99,836.18 of the assets in Hazel's estate were proceeds from the sale of "the homeplace" and thus belonged to the remaindermen under E. A. Aldinger's will; Russell, Kenneth, Merle were each thus entitled to one-fourth of the \$99,836.18 (\$24,959.04) and either Merle and Terry or Lloyd would be entitled to the remaining one-fourth.

Trial was then held on the issue of the ownership of the disputed \$24,959.04. Lloyd asserted that he was entitled to it because his conveyance of his interest in "the homeplace" to plaintiffs had been made with the understanding that plaintiffs would eventually return the interest to him.

The trial court found 1) Lloyd was estopped from arguing that the conveyance had been made to plaintiffs as trustees for his benefit, because there was no limiting language in the deed; and 2) there was not sufficient evidence to establish the need for a constructive trust. Based on these findings, the trial court entered a declaratory judgment that plaintiffs owned the disputed \$24,959.04. Lloyd brought this appeal.

We agree with the trial court that Lloyd is estopped by deed from arguing that a trust should be imposed for his benefit on the 1964 conveyance to plaintiffs of his one-fourth remainder interest. According to Iowa Code § 557.3, "[e]very conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used." The common-law principle of estoppel by deed is embodied in Iowa Code § 557.4 which provides in part as follows:

Where a deed purports to convey a greater interest than the grantor was at the time possessed of, any after-acquired interest of such grantor, to the extent of that which the deed purports to convey, inures to the benefit of the grantee.

See Sorenson v. Wright, 268 N.W.2d 203, 205 (Iowa 1978). In this case, the 1964 warranty deed from Lloyd to plaintiffs was absolute in form and contained no

indication whatever that plaintiffs were in any way holding that one-fourth remainder interest in trust for Lloyd's benefit. Under these circumstances, the deed passed all of Lloyd's remainder interest to plaintiffs. Mott v. Mott, 156 Iowa 503, 137 N.W. 489 (1912).

Lloyd alleges that he is not estopped from claiming the existence of a constructive trust by virtue of Iowa Code § 557.10:

Declarations or creations of trusts or powers in relation to real estate must be executed in the same manner as deeds of conveyance; but this provision does not apply to trusts resulting from the operation or construction of law. (Emphasis added).

He claims that, since § 557.10 must be read in pari materia with §§ 557.3 and 557.4, the exceptional language in § 557.10 must inferentially apply to § 557.3 and 557.4 as well. Lloyd cites no authority for this novel construction and we are unable to find any. If the legislature wanted to have such language apply to §§ 557.3 and 557.4, it could have done so very easily. Because of the absolute nature of the 1964 deed, Lloyd is estopped from claiming under a constructive trust theory.

Because of our holding that Lloyd is estopped by deed from asserting any interest in the remainder, we need not determine whether he proved the existence of a constructive trust. The trial court's decision is affirmed.

AFFIRMED.