IN THE COURT OF APPEALS OF IOWA

No. 0-329 / 99-1115
Filed August 16, 2000

DALE E. VOS, as Trustee of the Amended and Restated Revocable Living Trust Agreement of Kenneth D. Vos,
Plaintiff-Appellant/Cross-Appellee,

vs.

LORENA M. VOS,
Defendant-Appellee/Cross-Appellant.

FILED
AUG 16 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Jasper County, Gregory A. Hulse, Judge.

Plaintiff appeals from the district court order declaring Lorena Vos to be the sole holder of an option to purchase certain real estate. **AFFIRMED.**

John P. Dollar, West Des Moines, for appellant.

Paul Hietbrink and Miranda Hughes of Brown, Winick, Graves, Gross, Baskerville and Shoenebaum, P.L.C., Des Moines, for appellee.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Plaintiff trustee appeals from the district court order declaring Lorena Vos to be the sole holder of an option to purchase certain real estate and thus entitled to receive $90,000 in proceeds from its sale. The trustee argues Lorena, widow of the trustor, is entitled only to reimbursement of $40,000 she contributed to the construction of a home on the real estate in question. Lorena cross-appeals, contending the trial court should have awarded her the $40,000 reimbursement in addition to the $90,000 in proceeds. We affirm.

Kenneth and Lorena Vos married in 1981 and conducted their marriage in a businesslike manner. Both had been married previously and both had children with their former spouses. In October 1988, Kenneth and Lorena began to lease 1.9372 acres of farmland from George Allen. They planned to build a house on this property. The agreement, entitled "Long Term Lease with Right of Lessee to Destroy Buildings on the Premises and Rebuild" ("lease"), was to last Allen's lifetime. Under the terms of the lease, Kenneth agreed to build a house, pay rent, maintain insurance, and keep all buildings in good repair. The provision in dispute also gave the couple an option to purchase the land on which their newly built home would rest:

> It is further covenanted and agreed that Lessor [Allen] shall give and grant unto Lessee [Kenneth] and Vos [Lorena], or the survivor of them, the absolute and irrevocable right and option to purchase from Lessor his heirs or assigns all of the said premises at and for a sum equal to the appraised value of the land alone, at its 100% appraisal value, at such time and in the event that legal title to the premises shall pass from the Lessor to some third party or third persons, such option to be exercisable by the Lessee and Vos or the survivor of them, or other person holding under them, within sixty (60) days of the happening of such event, by payment of said amount in cash to Lessors' heirs, assigns, or successors.

The lease was drafted by Allen's counsel, Herbert Selby.

Following execution of the lease, on November 4, 1988, Kenneth and Lorena entered into an agreement called "Agreement Regarding Residence Construction Costs" ("cost agreement"). The cost agreement was executed to protect Lorena's contribution of fifty percent of the construction costs of the home. This document was also drafted by Selby, who undertook the task with the belief that this representation in no way affected the lease or his client, Allen. The relevant portions of the cost agreement provide:

> . . . It Is Agreed [sic] by and between the parties hereto that for and in consideration of the contribution of 50% of the construction costs of the residence now to be constructed on land leased to the party of the first part, Kenneth Vos, . . . the said Kenneth Vos does hereby covenant and agree that in the event the party of the second party, Lorena M. Vos, should die during the term of his lease on the property where this residence is to be constructed, then and in that event he will pay and return to the Estate of Lorena M. Vos, her full cash contribution to the construction of this residence; and similarly, if Kenneth Vos should die prior to the termination of his lease on the ground where this residence is to be constructed, his property and estate will be bound with an obligation to re-pay to the said Lorena M. Vos her full cash contribution to the construction of this residence.

Lorena contributed approximately $40,000 to construction costs of the home.

In January of 1995, Kenneth executed an "Amended and Revocable Living Trust Agreement" ("trust"). Kenneth appointed his son, Dale Vos as trustee at Kenneth's death. Article IV(a)(5) of the trust provided:

> At the death of the Trustor's wife, Lorena M. Vos, the Trustee, or the Successor Trustee, shall distribute $40,000.00 of the principle of the Trust to the descendants per stirpes of the Trustor's wife, Lorena M. Vos. Said $40,000.00 is to fulfill the obligation of Kenneth D. Vos, relating to the contribution of Lorena M. Vos to the construction of the new residence, said obligation outlined in a contract, dated November 4, 1988, a copy of which is attached, marked Exhibit B, and by reference made a part hereof.

In May of 1997, Kenneth died unexpectedly. George Allen died approximately six months later. In December of 1997, Lorena sent a letter to the attorney of Doris Allen, George's widow and executor of his estate, indicating Lorena's intent to exercise the option to purchase the land under the lease. There is no dispute the option was validly exercised. After Kenneth's death, Lorena also sought repayment of her $40,000 contribution to the cost of building the home, pursuant to the cost agreement.

On July 6, 1998, Dale Vos, as trustee, filed a petition for declaratory judgment, naming Lorena and Doris Allen as defendants. The petition asked for a determination of the parties' legal rights to the subject real estate. During the pendency of the lawsuit, the property was sold to a third party and the proceeds of approximately $90,000 were placed in trust pending the outcome of the action. As a result of the sale, the parties stipulated Doris Allen should be dismissed from the suit. Trial to the court was held on April 15, 1999.

On June 1, 1999, the district court entered its ruling. It found under the lease, Lorena was the sole holder of the option to purchase the 1.9372 acres. That option having been duly exercised, the court concluded Lorena was entitled to the real estate and thus, all proceeds from its sale. The district court went on to find that Lorena took nothing under the cost agreement because it made no provision for the situation where Lorena succeeds to sole ownership of the property.

The trustee appeals and Lorena cross-appeals. The trustee argues the trial court erred by concluding Lorena was the sole owner of the option. The trustee maintains she was only entitled to reimbursement of her $40,000

contribution to the construction costs. Lorena contends the district court erred by finding that she was not also entitled to $40,000 under the cost agreement, in addition to the $90,000 awarded her under the lease option.

I. Scope of Review. This case was tried in equity. Where a declaratory judgment action was tried in equity in the district court, our review is de novo. *Allamakee County v. Collins Trust,* 599 N.W.2d 448, 451 (Iowa 1999); *Ernst v. Johnson County,* 522 N.W.2d 599, 602 (Iowa 1994) (noting appellate court will review case on appeal in the same manner in which the trial court considered it). Although we are not bound by the trial court's factual findings, we give them weight. *Quality Refrigerated Services, Inc. v. City of Spencer,* 586 N.W.2d 202, 205 (Iowa 1998).

II. Trustee's Appeal. The trustee invokes the contract principle that when two contemporaneous, separate agreements cover the same matters and are between the same parties, the agreements are to be considered together and, if inconsistent, the one later in time prevails. He contends the cost agreement prevails. The trustee asserts the lease was between the Voses and Allen and did not settle any rights between Kenneth and Lorena. Rather, according to the trustee, the cost agreement was the sole expression of Kenneth and Lorena's intent regarding the rights to the house. He maintains the true intent of the parties was to protect Lorena's investment in the house built on property in which she had no legal interest. The trustee contends Lorena is only entitled to $40,000 under the cost agreement and the trust should receive the proceeds of the sale of the real estate.

The trial court found, and the parties agreed, the language of the lease

was unambiguous. In contract interpretation, the parties' intent controls, and unless there is an ambiguity, intent is determined by the language of the contract. *Smith Barney, Inc. v. Keeney,* 570 N.W.2d 75, 78 (Iowa 1997). The language of the lease plainly gives the option to purchase to Kenneth and Lorena, *or the survivor of them.* Lorena, the survivor of the two, exercised her option after Kenneth's death. Therefore, the trial court correctly concluded she was entitled to the real estate. We affirm the award to Lorena of the proceeds of the real estate's sale.

The trustee argues "when two contemporaneous, separate agreements cover the same matters, it is very well established that the agreements are to be considered together," citing *Allison Ford Sales v. Farmers State Bank,* 249 Iowa 261, 86 N.W.2d 896, 898 (1957). However, these agreements were not executed together and do not cover the same matters. They are not even between the same parties. Furthermore, the drafter of both instruments, attorney Herbert Selby, testified that he considered them to have no effect upon one another. This principle of contract interpretation is not applicable.

III. Lorena's Cross-Appeal. Lorena contends the district court erred in finding that she was not entitled to reimbursement of her contribution pursuant to the cost agreement, in addition to the $90,000 in proceeds under the option. The district court found the cost agreement does not deal with a situation where Lorena succeeds to ownership of the real estate. She contends Kenneth's death was the only condition precedent to her reimbursement of costs. Since that condition occurred, she maintains her entitlement to the $40,000 under the cost agreement was triggered.

As with the lease, the trial court found, and the parties agreed, there were no ambiguities in the cost agreement. Looking at the plain language of the cost agreement, it essentially provides for two circumstances. The first is where either Kenneth or Lorena dies during the lease. The second is where Kenneth exercises the option and becomes sole owner of the property. The cost agreement does not specify whether Lorena receives her $40,000 contribution if she should succeed to sole ownership of the real estate. Kenneth and Lorena conducted their marriage in a businesslike manner. Clearly, the sole purpose of the cost agreement was to protect Lorena's contribution to the construction costs of the home in the event of a divorce or some other event where she did not succeed to ownership. This conclusion is further bolstered by the provision in Kenneth's trust reiterating the $40,000 award to her in the event of his death. We construe a contract in light of the surrounding circumstances and will give it such a practical meaning as the parties themselves have placed upon it. *Gildea v. Kapenis,* 402 N.W.2d 457, 459 (Iowa App. 1987). We conclude that because Lorena succeeds to sole ownership of the real estate, her investment is fully protected and there was no intent to repay her cash contribution to construction costs of the home in that circumstance. Accordingly, we affirm the trial court's conclusion that Lorena is not entitled to the $40,000 payment under the cost agreement.

AFFIRMED.