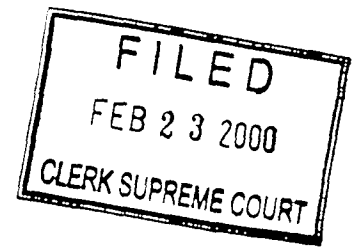


IN THE COURT OF APPEALS OF IOWA

No. 1999-558 (9-819) / 99-101
Filed February 23, 2000



**VIOLET CHUBBIC REVOCABLE TRUST, SUZANNE FLEENOR and
DELORES FUQUA,**
Plaintiffs-Appellants,

vs.

HAROLD WARTBURG,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

Plaintiffs appeal from the district court ruling awarding defendant title to
two disputed tracts of property formerly in the estate of the parties mother.

AFFIRMED.

Jennifer Jaskolka-Brown and Louis R. Hockenberg of Sullivan & Ward,
P.C., Des Moines, for appellants.

Aaron D. Hamrock, Des Moines, for appellee.

Heard by Streit, P.J., Miller, J., and Schlegel, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (1999).

SCHLEGEL, S.J.***I. Background Facts and Proceedings.***

Hazel Wartburg died testate on August 9, 1990, owning parcels of real estate in Polk County including most of the Lewis Place property and some property east of Lewis Place. She died leaving two children, Harold Wartburg and Violet Chubbic. Violet Chubbic, now deceased, was the mother of Suzanne Fleenor and Delores Fuqua and also the grantor of the Violet Chubbic Revocable Trust. Delores Fuqua is the trustee of the Violet Chubbic Revocable Trust.

Hazel Wartburg's last will and testament was admitted to probate, and her children, Violet and Harold, were the duly-appointed and acting executors of Hazel's estate. During the probate process, a dispute arose between Harold and Violet concerning the distribution of the real property. The disputing parties hired an appraiser, John Donahoe, to prepare an appraisal of the different pieces of property within Hazel's estate. After Donahoe prepared his appraisal, the parties used and relied on this appraisal for settlement negotiations to divide Hazel's estate's real property between Harold and Violet, prepare a settlement agreement between them, and prepare a final report and application for final discharge of the executors.

The parties entered into the settlement agreement on September 23, 1992, which described the real and personal property each party was to receive. The numbered parcels on Donahoe's sketch were also referenced in the settlement agreement. In the agreement, each party agreed to receive the following parcel numbers: Harold - parcel numbers 1, 2 and 4; Violet - parcel

numbers 3, 5, and 6. In section 2.3 of the settlement agreement, the parties agreed the legal descriptions in the appraisal may contain certain errors and omissions. On December 30, 1993, the "Order Approving Final Report and Discharging Executors" was entered by the district court.

The present dispute arises over how much property was supposed to be included in parcel number four of Donahoe's appraisal. Parcel number four is divided into three tracts of land. Tract I consists of 28.345 acres, Tract II (the "hump") consists of approximately 14.5 acres, and Tract III consists of fifty-five acres. No one disputes that Harold Wartburg is the rightful owner of Tract III. However, the rightful owner of Tract I is in dispute. Also, the rightful owner of Tract II is in dispute because nowhere in any of the documents is the 14.5 acres (Tract II) legally described or identified.

Thus, Violet Chubbic Revocable Trust filed a petition to quiet title to the 28.345 acres portion of Lewis Place (also known as Tract I). They argue Tract I should have been included in the parcel identified as parcel three in the appraiser's report and settlement agreement that was later renumbered as parcel four in the final report and order. This parcel was granted to Violet Chubbic and then to her children. However, Harold Wartburg argues Tract I was to be included in parcel four identified in the appraiser's report, which parcel was later renumbered as parcel five in the final report order.

In addition to the dispute over Tract I, Harold Wartburg filed a counterclaim on August 6, 1998, seeking to quiet title to a 14.5-acre parcel of real property east of Lewis Place, which is referred to as Tract II. Unfortunately, the

appraiser did not pick up this small piece in his appraisal, although it is represented in his sketch. Following the closing of Hazel's estate, a deed conveyed Tract II from the estate to Violet. On January 4, 1994, Violet signed a warranty deed that conveyed Tract II, along with other properties, to the Violet Chubbic Revocable Trust. On October 24, 1994, Harold discovered what he believed was a mistake regarding Tract II being deeded to Violet. Harold prepared a court officer deed, visited Violet alone, and explained the situation to her. Violet signed the court officer deed transferring Tract II to Harold. On December 21, 1998, the trial court in its findings of fact, conclusions of law and order awarded both Tract I and Tract II to Harold Wartburg.

On appeal, Violet Chubbic Revocable Trust argues the district court erred in ruling that Harold Wartburg is entitled to receive title to Tract I and Tract II.

II. Standard of Review.

Our review of equitable actions is de novo. Iowa R. App. P. 4. In our de novo review we examine the whole record, find our own facts, and adjudicate rights anew on issues properly before us. *Ide v. Farm Bureau Mut. Ins. Co.*, 545 N.W.2d 853, 856 (Iowa 1996). We give respectful consideration to the district court's fact findings, especially when witness credibility is an issue, but we are not bound by those facts. Iowa R. App. P. 14(f)(7).

III. Tract I.

Settlement agreements are essentially contractual in nature. *Phipps v. Winneshiek County*, 593 N.W.2d 143, 146 (Iowa 1999) (citing *Wright v. Scott*, 410 N.W.2d 247, 249 (Iowa 1987)). Settlement agreements are by their very

nature the voluntary resolution of uncertain claims and defenses. *Wright*, 410 N.W.2d at 246. Because parties are unsure about the outcome of litigation, they have a real incentive to accept a compromise settlement agreement, realizing that if they continue they may fare better but they may fare worse. *Id.* It is therefore well settled that to vitiate a settlement, a mistake must be mutual, material, and concerned with a present or past fact. *Id.* Thus, voluntary settlements will not be disturbed for ordinary mistakes of law. In addition, courts have long held that voluntary settlements of legal disputes should be encouraged with the terms not inordinately scrutinized. *Gustafson v. Fogleman*, 551 N.W.2d 312, 314 (Iowa 1996).

Appellants argue the district court erred in ruling that Harold Wartburg is entitled to receive title to Tract I. Appellants argue with respect to Tract I, Violet was supposed to inherit "Lewis Place" and the 28.345 acres was always a part of that parcel. In addition they argue the 28.345 acres was not clearly identified in the settlement agreement or order approving final report as part of parcel number five going to Harold and should be awarded to Violet as was originally intended by Hazel and the parties. We disagree.

The 28.345 acres is not contained in the settlement agreement's legal description of parcel number four, and Tract I is not included in any other legal description. Also, neither Donahoe's appraisal nor any other document makes mention of the "Lewis Place" by that name. In its findings of fact, conclusions of law and order the district court provided:

The lack of continuity of the Lewis Place is particularly consistent with its division under the Settlement Agreement.

Although purchased in 1962 as a single tract, the Lewis Place has since been divided by N.E. 150th Avenue into two parts, one north and one south. The uses of these two parts are distinct - the north is now cropped; the south is rough and treed with a creek running through it. This makes the Tract No. 1 similar to Lots 5,7,8,9 and 10 of Section 17 also contained in Donahoe's parcel Number 4. Each part is also located in separate legal sections of the same township and range. Anyone looking at the two parts now, unless they knew the history, would not connect the two. The Lewis Place at the time of the Settlement Agreement was in no way a single tract.

In this case the Settlement Agreement was freely entered into by Violet and Harold while represented by counsel. The agreement specified the parcels each party agreed to accept to resolve their dispute. Although the appraisal and the following documents were not the product of crystal clear draftsmanship, the information was satisfactory, especially in conjunction with the public records available such as a plat map, to determine the parcels that were to go to Violet and to Harold. The Court concludes that the parties agreed Harold was to receive parcel Number 4, which included the 28.345 acres in dispute.

We have carefully considered appellants' request for title to Tract I and, like the district court, we find the settlement agreement was freely entered into by both parties with counsel present and that the parties agreed Harold would receive parcel four which included the 28.345 acres.

IV. Tract II.

A party seeking reformation of a written instrument has the burden of establishing by clear, satisfactory, and convincing proof that the writing does not express the real agreement between the parties. *Gentile v. Allied Energy Prods., Inc.*, 479 N.W.2d 607, 609 (Iowa App. 1991); see also *Westcott v. Westcott*, 259 N.W.2d 545, 548 (Iowa App. 1977). The proper relief for a mutual mistake of a material fact in a written instrument is reformation of the instrument to reflect the true intentions of the contracting parties. *Gentile*, 479 N.W.2d at 609. To

~~determining whether~~ reformation of the deed is appropriate, parol evidence is admissible ~~as long~~ as the information is relevant and material. *Montgomery Properties Corp. v. Economy Forms Corp.*, 305 N.W.2d 470, 474 (Iowa 1981).

Appellants argue the district court also erred in ruling that Harold is entitled to obtain title to Tract II. This tract consists of 14.5 acres, which is the section of ground located under the "hump" on N.E. 150th Avenue directly north of the fifty-five acres that comprises Tract III. Appellants claim Tract II, the 14.5 acres, was given to Violet in the order approving the final report of Hazel's estate since the estate issued a deed for Tract II to Violet which she in turn conveyed by warranty deed to the Violet Chubbic Revocable Trust. However, Harold filed a counterclaim arguing he was entitled to receive title to Tract II because the settlement agreement and order approving final report in Hazel's estate do not mention the 14.5 acres and it was error for the estate to issue a deed to Violet. We agree.

Donahoe testified it was likely he inadvertently omitted the 14.5 acres, Tract II, due to the fact the ground in that tract lies in section eight instead of section seventeen. Tract II is not found in Donahoe's appraisal and is not accounted for in the settlement agreement, final report or order approving final report. ~~The district court~~ concluded:

~~Although~~ Tract No. 2 is not legally described in Mr. Donahoe's appraisal, it is shown in his sketch of parcel Number 4, since the curve in the road and the property to the south of that road is shown as a part of that parcel. Tract No. 2 is in Section 8, but the curve in the road is primarily above Lots 10, 8 and 7 of Section 17. Even the Plaintiffs do not contest that Lots 5, 7, 8, 9 and 10 of section 17, as part of Donahoe's parcel number 4, were to go to Harold. As indicated elsewhere, the parties' Settlement

Agreement does not indicate that Hazel's real property was to be divided based on number of acres or value of parcels. Based on the location of Tract No. 2, south of the road, its contiguous nature with Lots 10, 8, and 7 of Section 17, and its inclusion in Donahoe's sketch within parcel No. 4, which was awarded to Harold under the Settlement Agreement, the Court can only conclude that the parties intended that this 14.5 acres was to go to Harold.

We agree with the district court's reasons and adopt them as our own. The judgment of the district court is therefore affirmed.

AFFIRMED.