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NOV 10 1977
CLERK SUPREME COURT

187

IN THE COURT OF APPEALS OF IOWA

HAZEL N. HUSTEAD,
Appellee,

v.

REX M. KING,
Appellant.

Filed November 10, 1977

272 - 2-59322

Appeal from Van Buren District Court, David B. Hendrickson, Judge.

Appeal by purchaser of bank stock from a trial court order rescinding contract of sale on the basis of undue influence found to have been exerted by one in a confidential relationship. Affirmed.

William H. Napier, of Fort Madison, for appellee.

McGrath and McGrath, of Keosauqua, and Harris and Harris, of Bloomfield, for appellant.

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

PER CURIAM

This is an action in equity for rescission of a written agreement between the parties wherein defendant purchased from plaintiff 44 shares of the capitol stock of the State Savings Bank of Cantril, Iowa. The trial court found that a confidential relationship existed between the parties and that the defendant failed to show the agreement was fair. It accordingly ordered rescission. On our de novo review of the evidence we affirm.

The trial court, relying principally upon Sours v. Colvin, 244 Iowa 40, 46-47, 55 N.W.2d 462 (1952), properly concluded that (1) where one voluntarily assumes a confidential relationship with a person he will not be permitted to deal with the property of such person for his own pecuniary advantage; (2) a confidential relationship is not restricted to any particular association of persons but rather exists whenever there is such trust and confidence, regardless of its origin, that precludes a transaction between the parties from being at arm's length; and (3) the burden of proof to establish the existence of such a relationship falls on the plaintiff but when one party establishes the existence of such relationship the burden then falls upon the other party to establish the fairness of the transaction in order to sustain it. Other authorities supporting these conclusions include: Jahn v. Armes, 249 N.W.2d 638, 640 (Iowa 1977); First National Bank of Sioux City v. Curran, 206 N.W.2d 317 (Iowa 1973); and Curtis v. Armagast, 158 Iowa 507, 138 N.W. 873 (1912).

The defendant is the executive vice president of the bank whose stock is the subject of the contract. The plaintiff is the widow of a deceased director of the bank and was 82 years of age at the time of the transaction in question. Defendant handled plaintiff's routine banking business, chauffeured her around occasionally and had on at least two occasions been taken out to dinner by the plaintiff. The plaintiff had designated the defendant as the executor of her will. Plaintiff's daughter and son-in-law testified that the plaintiff placed trust in defendant. While the evidence tending to establish the confidential relationship in question is not great it is sufficient to support the trial court's findings. In such matters we give weight to the findings of the trial court which had an opportunity to hear the witnesses and evaluate their testimony. Rule 14(f)(7), Rules of Appellate Procedure. We do not disturb the finding that a

confidential relationship existed.

A more difficult issue is presented in passing upon the fairness of the transaction. We note that plaintiff sought the services of an attorney to prepare the agreement in question but it appears that at this point the terms had already been agreed to between the parties. The attorney sought to establish that the price was adequate and apparently satisfied himself that the $150 price per share was consistent with other sales of this closely-held stock. Evidence to this effect was presented at the trial. We cannot say that the price was inadequate for a cash transaction but we agree with the trial court that the other terms and conditions of this sale cast doubt on the fairness of the transaction. Defendant paid only $10 down on the total contract price of $6,600, with no additional payments required until plaintiff's death and no provision for the payment of interest by defendant. While plaintiff was to receive any cash dividends on the stock during her lifetime, the evidence indicates that these might well be less than the legal rate of interest on the contract price. While the issue is close we hold that the trial court correctly ordered rescission of the agreement.

AFFIRMED.