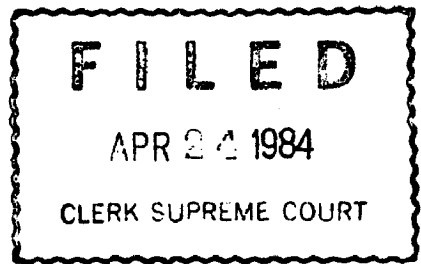


IN THE COURT OF APPEALS OF IOWA



ROBERT W. HALL,

)

Plaintiff-Appellee,

)

Filed April 24, 1984

232

vs.

)

REX G. HALL, DIANE E. HALL,
DELBERT L. CRAWFORD, and
MARY ANN CRAWFORD,

)

3-406
2-68715

)

Defendants-Appellants.)

Appeal from the Iowa District Court for Van Buren County - James P. Rielly, Judge.

Defendants appeal from judgment for plaintiff in a quiet title action.
AFFIRMED.

Craig R. Foss of Foss & Kuiken, Jefferson, and Eli J. Wirtz of Ahlers, Cooney, Dorweiler, Haynie & Smith, Des Moines, for defendants-appellants Hall.

R. Kurt Swaim and D. W. Harris, Bloomfield, for defendants-appellees Crawford.

Gregg A. Pieper, Fairfield, for plaintiff-appellee.

Heard by Oxberger, C.J., and Snell and Schlegel, JJ.

OXBERGER, C.J.

Defendants appeal from judgment for plaintiff in a quiet title action. Defendant Hall asserts: (1) the evidence was insufficient to establish that a warranty deed purporting to convey certain farm property was instead an equitable mortgage; (2) plaintiff's claim that the deed was an equitable mortgage is barred by laches; and (3) the statement of the case in appellee's brief should be stricken due to the inclusion of what is alleged to be improper argument and innuendo. Defendant Crawford asserts: (1) the evidence was insufficient to establish that the warranty deed purporting to convey the farm property was instead an equitable mortgage; (2) the evidence was insufficient to establish that they as subsequent purchasers took possession with notice of plaintiff's assertion of a possessory interest in the property; (3) defendants Halls' conveyance to them should not have been set aside without specific preservation of contractual remedies against the Halls; and (4) half of the costs should not have been taxed against them.

I. Scope of Review. Our review of this equitable proceeding is de novo. We give weight to the findings of the trial court but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Equitable Mortgage. Defendants Hall and Crawford assert that the evidence was insufficient to establish that a warranty deed purporting to convey certain farm property was instead an equitable mortgage. The basic general rule is that a conveyance absolute on its face may, by proper evidence, be shown to be but a mortgage and parol testimony is admissible and competent to establish such fact. Koch v. Wasson, 161 N.W.2d 173, 176 (Iowa 1968). If a deed is to be construed as a security instrument, the supportive evidence must be clear, satisfactory, and convincing. Lovlie v. Plumb, 250 N.W.2d 56, 59 (Iowa 1977). A transaction such as this one will be closely scrutinized, and only where it is perfectly fair, based upon adequate consideration and it clearly and unmistakably appears that an absolute

sale and not a transfer for security only was within the contemplation of the parties, will it be upheld. Koch at 177.

In determining the intent of the parties, courts look behind the form of an instrument to ascertain the actual relationship between participants. Lovlie at 59. Furthermore, a document will be read in light of surrounding circumstances and given such practical construction as is placed thereon by the concerned parties. Id at 59.

Mindful of the foregoing, we turn to the facts of this case. In 1943, a contract for deed was executed in which Robert Hall agreed to buy 200 acres of land for \$6,000 from Christine Knott. Although Robert made payments to Mrs. Knott from time to time, in about 1970 when Mrs. Knott passed away, Robert was quite delinquent on his payments. Robert approached Amos Glendenning in hopes of gaining his assistance in negotiating title to the 200 acres. As a result of the negotiations, Amos agreed to loan Robert \$3,000 to pay off the Knott heirs, additional money to pay off some indebtedness on another 30 acres that he had purchased, and other funds for operating capital on the farm. To secure the loan, the Knott heirs executed a warranty deed to Amos for the 200 acres; Amos also received a quit claim deed to the other 30 acres Robert had purchased. It was undisputed that this was a financing transaction and that the deeds were only mortgages securing payments of funds. Robert continued in possession of the entire 230 acres after these transactions.

In 1972, at Robert's request, Amos conveyed the deeds to defendants Rex and Diane Hall. Amos testified that it was his understanding that Rex "wanted to more or less take my place." Amos questioned what Robert was doing; however, Robert assured Amos that nothing had changed and that the transaction with Rex was a loan, same as before. Rex, on the other hand, testified at trial that the transaction was an outright sale with no strings attached.

One of the major factors in deciding whether the conveyance is a mortgage

is the adequacy of the consideration given for the conveyance in relation to the value of property. Rendleman, Absolute Conveyance As A Mortgage In Iowa, 18 Drake L. Rev. 197 (1969). In this case, Rex paid Glendenning \$5,000 for the deed to the 230-acre parcel. Glendenning testified that he was a real estate agent in 1972 and he expressed an opinion that the fair market value of the 230 acres in 1972 was somewhere between \$300 an acre to \$350 an acre. Ralph Boley, a broker associate, gave his opinion that the land was worth \$85 an acre in 1972, or \$19,550. 235

At either figure, we find the consideration paid was inadequate. However, the fact alone that the property conveyed may have substantially exceeded in value the consideration given for it is not conclusive on the issue of whether the instrument was given for security. Blum v. Keene, 245 Iowa 867, 902, 63 N.W.2d 197, 216 (1954). It is, though, a strong circumstance. Greene v. Bride & Son Construction Co., 252 Iowa 220, 226, 106 N.W.2d 603, 607 (1960).

Another circumstance to be considered is possession. See Wilson v. Patrick, 34 Iowa 362, 370 (Iowa 1872). Ordinarily, where an absolute conveyance is given as security, the grantor will continue in possession of the property. 18 Drake L. Rev. at 203. In this case, Robert had been in possession of the property since he purchased it in 1943. He did not relinquish the property until he received a legal notice to do so from Crawfords in 1981. At that point in time, Robert had never paid rent on the property and had still contended that he was the rightful owner of the property.

Another factor to be considered is whether there is a creditor/debtor relationship. It is not necessary for the relationship to be present at the inception of the transaction; it is enough if the relationship is created by the transaction itself. Koch at 177. In the first instance, Robert needed money to pay off various land and farming debts. Both Glendenning and Robert treated the transaction as giving rise to a creditor/debtor relationship. In the second instance, and for some unstated reason, Robert wanted to pay off Glendenning. Even though there was

no discussion between Robert and Rex as to whether this was a sale or a mortgage, in light of Robert's and Amos's testimony, there seems to be no doubt but that Robert then believed and understood the effect of the deed was to be an actual loan of the money to relieve his indebtedness to Glendenning. Cf. Koch at 177.

We further note that Rex made no improvements on the property after he obtained the deed. Also, Robert cut some trees off of the property and subsequently made a \$500 payment to apply upon the loan Rex received from the bank.

Robert Hall had either leased or owned the majority of the 230 acres since 1929. He contracted to buy the land in 1943 for \$6,000. Common sense tells this court that Robert would not agree to sell the property 40 years later for a lesser amount.

One circumstance standing alone might not have been enough to deem this conveyance a mortgage. However, if we consider the foregoing factors together, we believe the trial court's decision finding the absolute conveyance to be a mortgage is supported by the evidence.

Defendant Hall gives weight to several other factors which he states are indicative of absolute transfer. However, we do not agree that absolute conveyance can be found by such evidence as: (1) the attorney had no recollection of preparing a deed ten years ago; (2) Robert cut some trees on the property and then paid \$500 on Rex's note to the bank; or (3) that Robert did not make periodic payments to Rex.

Furthermore, evidence that Robert did not pay taxes on the property or that he did not discuss his ownership rights seems consistent with his previous behavior.

Therefore, we find the weight of the evidence supports the trial court's finding.

III. Laches. Laches will be applied only where it would be inequitable to permit recovery or it is clearly demanded in the interest of justice. Lovlie at 63.

Each case is governed chiefly by its own set of circumstances. Id. at 63. The general rule provides if complainant had no knowledge of the facts giving rise to the cause of action, the defense of laches does not lie. Shives v. Niewoehner, 191 N.W.2d 633, 637 (Iowa 1971).

We do not agree with defendant Rex that Robert "concealed his claim" for almost ten years. We believe the evidence supports a finding that Robert's actual knowledge of a potential cause of action did not arise until 1981 when Rex contracted with Crawford to sell the land. Robert filed his petition in August of 1981.

Furthermore, up until the time of the sale to Crawford, Rex could claim no disadvantage or harm to himself or anyone else. Therefore, under these circumstances we do not believe Robert to be guilty of laches. See Shives at 637.

IV. Subsequent Purchaser for Value. Defendant Crawford asserts that the trial court committed reversible error in deciding that he was a subsequent purchaser with notice. See Iowa Code § 558.41. It is Crawford's burden to plead and prove that he was a subsequent purchaser for value without notice. See Kindred v. Crosby, 251 Iowa 198, 201, 100 N.W.2d 20, 22 (1959). Since the rules for determining bona fide purchasers are the same as for establishing what purchasers are entitled to protection under our recording act, Iowa Code section 558.41, we will use the terms interchangeably. See Raub v. General Income Sponsors of Iowa, Inc., 176 N.W.2d 216, 219 (Iowa 1970).

Accordingly, a bona fide purchaser, as well as a purchaser under section 558.41, is one who takes a conveyance of real estate in good faith from the holder of legal title, paying a valuable consideration for it without notice of outstanding equities. Id. at 219. In consideration of the status of Crawford, there is no dispute that Crawford purchased the land from the legal titleholder and paid valuable consideration for the deed. However, if circumstances are shown to exist that would lead a reasonably prudent person to investigate the possible existence of

outstanding rights hostile to the grantor's title, and such investigation is not made, then one who claims to be the bona fide purchaser is nevertheless charged with all knowledge which that investigation would probably have disclosed. Id. at 219.

This court follows the rule that possession of land by one other than the grantor is ordinarily sufficient to put parties on inquiry as to the rights of the party in possession. Id. at 221. In fact, the trial court based its decision on such rule of law. However, there is a general exception to this rule which we also observe: possession by the grantor of a recorded deed does not impart such notice. Id. at 221. The occupancy by one who has conveyed his title, at least for a reasonable period, is not inconsistent with the right of the person to whom he has conveyed. Id. at 221. The exception to the rule does not apply, however, where the grantor's possession is for an unreasonable time or is adverse to the titleholder. Davis v. Wilson, 237 Iowa 494, 506, 21 N.W.2d 553, 560 (1946).

Robert was in possession of this land almost a full ten years after his deed to Rex was recorded. Crawford himself testified that excepting the cropland, Robert had been in possession of the 230 acres since 1957. We do not speculate as to what point in time a grantor's possession is still reasonable so as not to put a subsequent purchaser on notice. See Tutt v. Smith, 201 Iowa 107, 114 (Iowa 1925). We do find, however, that ten years possession in this case is unreasonable and that Crawford should have had constructive notice that Robert was not merely holding over as the tenant at will of his grantee. See Id. at 113.

Furthermore, Crawford had ample opportunity to inquire of Robert whether he had any equitable rights in the land. Had he investigated such a possible existence, it is most likely that it would have been disclosed that Robert's interest was adverse to the legal titleholder, Rex.

Therefore, we find that Crawford did not carry his burden and that the record supports the conclusion of the trial court that the Crawfords are not subsequent purchasers for a valuable consideration without notice within the meaning

of Iowa Code section 558.41; accordingly, the title to the property in question is quieted in Robert W. Hall.

V. Contract Remedies. The trial court declared the contract between Rex Hall and wife and Delbert Crawford and wife as set aside, null and void and without effect. Crawford wants this court to preserve any contractual remedies he may have against Rex Hall for breach of contract. However, we are hesitant to do so.

It is probably true that had Rex not claimed ownership in this property, Crawfords may well have not been in this position. However, it is also most likely that had Crawfords made reasonable inquiries of Robert, this situation could have been avoided.

The Crawfords concede they are not left completely without relief; they are still able to pursue various remedies in subsequent litigation against Rex Hall.

Therefore, we leave that portion of the trial court's ruling as it stands. Furthermore, and in the same vein, we affirm the assessment of costs: one-half to each of the defendants.

Defendant Hall requests in his reply brief that this court strike from appellee's brief all matters extraneous to the record and all allegations of bad faith, conspiracy, or criminal intent. Although appellee's brief does appear to contain matter that is argumentative as opposed to factual, we do not think such an order is necessary. Our de novo review enabled this court to properly separate fact from argument.

AFFIRMED.