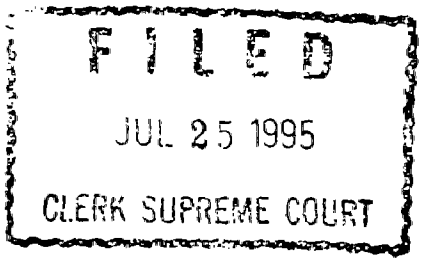
IN THE COURT OF APPEALS OF IOWA

No. 5-047 / 94-614



LEONARD F. TIGGES and MARGIE L. TIGGES,

Appellants,

vs.

CARROLL COUNTY CONSERVATION BOARD, an Agency of Carroll County, Iowa, and CARROLL COUNTY, IOWA,

Appellees.

Appeal from the Iowa District Court for Carroll County, Joel E. Swanson, Judge.

Plaintiffs appeal the district court's ruling in their quiet title action upholding their transfer of certain real estate to the defendant. **AFFIRMED.**

Donald L. Carr II and Edward G. Parker of Smith, Schneider, Stiles, Wimer, Hudson, Serangeli, Robinson, Mallaney, Shindler & Scalise, P.C., Des Moines, for appellants.

Anne L. Clarke and Hugh J. Cain of Hopkins & Huebner, P.C., Des Moines, for appellees.

Considered by Donielson, C.J., and Habhab and Huitink, JJ.

HUITINK, J.

Leonard and Margie Tigges owned about 160 acres of land in rural Carroll County. The Tigges were elderly and were no longer interested in personally farming the property. In 1986 they placed the property in the federal Conservation Reserve Program (CRP) for ten years.

After they attended a local meeting of Pheasants Forever in 1987 they became interested in creating a wildlife conservation area on eighty acres of their property. They told Kenneth Snyder, the president of the local chapter of Pheasants Forever, they wanted to see to it that their land was never cultivated again.

After contacting the Carroll County Conservation Board and the Iowa Department of Natural Resources, the Tigges decided to work with the Board. They entered into negotiations with David Olson, the director of the Board. Olson contacted Mark Ackelson, vice-president of the Iowa Natural Heritage Foundation to assist in creating a plan to achieve the Tigges' goals. After discussing the situation with Ackelson, the Tigges told him they wished to give the property to the Board and retain a life estate. Ackelson sent the Tigges a rough draft of a deed which would achieve this goal. In the cover letter Ackelson stated. "You should also feel free to discuss this with an attorney."

The Tigges did not retain independent legal counsel. The actual deed was drawn up by an assistant county attorney. On November 18, 1987, Olson took the deed out

to the Tigges' farm for their signatures. The Tigges signed a warranty deed which specified the transfer was a gift and there was no consideration. At the Tigges' suggestion, the deed contained an option for the Board to purchase additional property for $100 per acre.

On March 16, 1988, the Board and the Tigges entered into a second agreement. This agreement provided:

> [T]he County shall manage the entire approximately 160 acres in order to verify its compliance with the Conservation Reserve Program over the next ten years. It is further understood by the parties that the Tigges or the Tigges family will maintain the property at the direction of the County. In the event the maintenance of the property is not done by the Tigges or their family, the work shall be completed by the County for a fair and reasonable price as determined by the parties.

The Tigges received the CRP payments for the property and any notices of noncompliance with the program sent by the Agricultural Stabilization and Conservation Service (ASCS). When the Tigges received a notice from the ASCS that the property needed to be mowed or that weeds needed to be removed they would contact Olson, and Board employees would do the work. The County never charged the Tigges for this work. Additionally, the County did not charge for 4000 small trees which they planted on the property.

Eventually, the Tigges became unhappy with Olson's work in managing the property. In May 1990 the Tigges and Olson had an argument. On May 15, 1990, the Tigges placed this notice on the parties' 1988 agreement:

> This agreement is no longer binding, due to the failure of the Carroll County Cons. Board to comply with Conservation Reserve Program rules in regard to the maintenance of the property, and refusal to manage.

The Tigges have not asked the Board for assistance since this time, and the Board has not entered the property. The Tigges asked the Board to voluntarily transfer the land to them. The Board refused.

The Tigges filed the present petition to quiet title to the property. They claimed they had transferred the property to the Board in exchange for the Board's promise to manage all 160 acres of their property. They also claimed that because the Board failed to manage the property, the transaction was not supported by consideration. Although not pled, at trial plaintiffs raised the further claim that they had a confidential relationship with Olson, and the transfer was void due to undue influence.

The district court determined title to the property should be quieted in the Carroll County Conservation Board. The court concluded there was no confidential relationship between the Tigges and Olson. The court also concluded there was no evidence of fraud or undue influence in the execution of the deeds. The court found the Tigges were strong-minded and the deeds substantially achieved their goal of keeping the property free from cultivation.

The court also concluded there was no credible evidence to establish a conditional gift. The court found the only conditions in the deeds were that the land would be used, upon the Tigges' deaths, for demonstration of conservation practices,

enhancement of wildlife habitat, and public recreation. Because the Tigges were still alive at the time of the trial, these conditions had not yet become effective. Plaintiffs appealed the district court decision.

I. An action to quiet title is in equity, and our review is de novo. *Notelzah, Inc. v. Destival*, 489 N.W.2d 744, 746 (Iowa 1992). While we are not bound by the findings of the trial court, we do give them weight, especially where the credibility of witnesses is involved. Iowa R. App. P. 14(f)(7).

II. Plaintiffs claim they did not make a valid gift of their property to the Board. They state they did not intend to make an outright gift of the property but intended to make the gift conditional on the Board's management of their 160 acres of property in the CRP.

In order for a deed to constitute a valid gift, there must be: (1) donative intent; (2) delivery; and (3) acceptance. *Raim v. Stancel*, 339 N.W.2d 621, 623 (Iowa App. 1983). If a condition as to the vesting of title is attached to the delivery of the gift, the gift fails. *Id.* In order to be valid, the delivery of a gift must be nonconditional. *Id.* at 623-624. Once an unqualified transfer to the donee is proven, the person asserting the delivery was made on some condition has the burden of establishing such condition. *Fierro v. Hoel*, 465 N.W.2d 669, 671 (Iowa App. 1990).

Here, the deed made an unqualified transfer of the property as a gift to the Board. The Tigges do not dispute this is the clear wording of the deed. This then places the burden upon the Tigges to establish the transfer was conditional.

We agree with the district court that they have not met their burden. The only evidence to support the Tigges' claims is their own testimony. Olson testified there was no agreement to manage the property as a condition for delivery of the deed. Snyder and Ackelson, who also discussed the matter with the Tigges prior to the signing of the deed, testified the Tigges never stated the transfer was conditional on the Board's promise to manage the property

We conclude the Tigges have failed to show the deed was invalid because it was a conditional gift.

III. Plaintiffs contend the deed is invalid because it was the result of undue influence. They claim they had a confidential relationship with Olson and this relationship tainted the transfer of the property.

The law of confidential relationship states if a person trusts another so that the other has so much influence over the person that the two are not at arm's length, equity will regard transfers between them as presumptively invalid and cast upon the dominant person the burden of upholding the transfers. *Hoelscher v. Sandage*, 462 N.W.2d 289, 292 (Iowa App. 1990). A confidential relationship arises whenever a continuous trust is reposed by one person in the skill and integrity of another. *Citizens Savings Bank*

v. *Wild*, 512 N.W 2d 799, 802 (Iowa App. 1993). A confidential relationship exists where one person comes to rely on and trust another in his or her important affairs. *Id.*

We agree with the district court that there is insufficient evidence in the present case to show a confidential relationship between the Tigges and Olson. The evidence showed the Tigges had decided to create a conservation area on their property before they met Olson. While the Tigges did not obtain the advice of independent counsel, they did discuss the matter with Snyder and Ackelson. Furthermore, the evidence showed the Tigges made their own suggestions concerning the deed, as shown by their decision to give the Board the option to purchase additional land. The Tigges admitted the deed was not the result of coercion.

Because we have found there was no confidential relationship between the Tigges and Olson, the deed is not presumptively invalid. We conclude the Tigges have failed the show the deed was invalid because it was the result of a confidential relationship.

IV. As an alternative to the argument the deed was a conditional gift, plaintiffs argue the deed was part of a contract. They claim they promised to deliver the deed to the Board and in exchange the Board promised to manage the property. They believe the contract is invalid due to lack of consideration because the Board has not fulfilled its promise.

The district court found the transaction was a gift and not a contract. We agree. The gift of the deed was completed when accepted by the Board in 1987. The later agreement in 1988 could not be considered to be made in exchange for the deed. Consideration is not necessary to support a gift. Therefore, any lack of consideration to support the transfer of the deed does not invalidate the deed.

We conclude plaintiffs have failed to show the deed was invalid because it was *not supported by consideration.*

After considering all issues raised in this appeal, we affirm the decision of the district court. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.