



IN THE COURT OF APPEALS OF IOWA

WILLIAM LEMKE,	)	
Appellant,	)	Filed March 29, 1978
vs.	)	
DORIS ANN LEMKE,	)	395
Appellee.	)	2-59389

Appeal from Buchanan District Court - L. John Degnan, Judge.

Plaintiff appeals from dismissal of his petition for an accounting and entry of judgment for defendant. REVERSED AND REMANDED.

Gene Yaglia, of Lindeman & Yaglia, of Waterloo, counsel for appellant.

Upton B. Kepford, of Kennedy, Kepford, Kelsen & White, of Waterloo, counsel for appellee.

Heard by Albee, C. J., Donielson, Snell, Oxberger and Carter, JJ.

DONIELSON, J.

This appeal presents the third occasion in which the appellate courts of Iowa have been asked to resolve disputes between plaintiff-William Lemke and defendant-Doris Ann Lemke which have arisen, either directly or indirectly, out of their marital relationship. See Lemke v. Lemke, 206 N.W.2d 895 (Iowa 1973). In the instant case, plaintiff appeals from the dismissal of his petition for an accounting and the entry of judgment for defendant.

A brief discussion of the factual background is necessary in order to understand the context in which the instant action arose. A decree of divorce was entered for defendant on August 7, 1969. In conjunction with that decree, the parties entered into a stipulation which attempted to achieve an equitable division of the marital assets and provide for the payment of all indebtedness. According to the provisions of the stipulation, plaintiff received 160 acres of farmland and defendant received 240 acres, with each party assuming the existing mortgage with respect to the real estate each received. At the time of the divorce, a \$38,000 loan which was secured by farm machinery, cattle and existing crops was outstanding. Under the terms of the stipulation, the machinery, cattle and, if necessary, the crops were to be sold and the proceeds applied to the secured loan.

The \$22,819.36 worth of unsecured obligations were to be assumed equally by the parties. The property taxes on all 400 acres were to be paid out of the 1969 crop proceeds, and any debts remaining unsatisfied after the application of the proceeds from the sale of machinery, cattle and crops were to be shared equally by the parties. All of the personal property, including elevator shares and accrued patronage dividends, were to be divided equally.

During the pendency of the divorce action, Doris sought and obtained a restraining order which prevented William from coming on the premises on which she lived during the course of the lawsuit. The stipulation entered into by the parties further provided that the injunction was to continue through the harvest of the 1969 crops.

On May 6, 1970, William filed his petition for an accounting, and on August 20, the district court ordered Doris to furnish such an accounting. Although Doris provided an informal accounting, William requested that the court direct her to file a formal accounting under oath. After a hearing on this request on September 15, 1972, the trial

court ordered Doris to comply. On October 26, 1972, defendant filed her formal statement of account. Plaintiff filed his objections to the accounting and demand for damages on October 30, 1974, and, that same day, he also filed interrogatories directed at defendant, requesting more detailed information with regard to her statement of account.

On November 12, 1974, defendant resisted the interrogatories, asserting laches, *inter alia*. That same day, she answered plaintiff's objections and demands, and on November 12, 1975, a hearing on these matters was begun. On March 24, 1976, the trial court dismissed plaintiff's petition and entered judgment for defendant.¹

On appeal, plaintiff contends that the trial court erred in placing upon him the burden of proof by a preponderance of the evidence and in finding that the evidence supports a judgment for the defendant. Although plaintiff notes at the outset that no Iowa case exists concerning an accounting action identical to the instant one, he asserts that the legal principles employed in analogous cases may be applied here.

William contends that, by virtue of the property settlement stipulation and the injunction, Doris was placed in a position of trust and undertook a fiduciary role with respect to William, in that she was allowed to handle the sale of crops, livestock and machinery to the exclusion of William, who was prohibited from coming on the premises for any reason. According to his argument, once the position of trust or fiduciary relationship was established, the burden of proof should have been cast upon the dominant party, Doris, to prove that she took no advantage of the situation. In other words, once the facts established that Doris had sole responsibility for the sale of the crops, livestock and machinery for the mutual benefit of herself and William, the burden should have been placed upon her to prove that she took no advantage of her position to the detriment of the inferior party, William.

¹ Although the trial court's order appears to be both a dismissal of plaintiff's petition based upon rule 215.1, Rules of Civil Procedure, and a decision on the merits for defendant, we consider the court's resolution of the rule 215.1 issue erroneous, inasmuch as the record reflects that notice of the potential 215.1 difficulty was given to both parties and on two separate occasions, the trial court filed orders that this case not be dismissed under rule 215.1. In the second order filed August 30, 1972, the court ordered that the case be retained on the docket until further order of court.

The law is settled that a confidential or fiduciary relationship is any relation existing between parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. Consequently, a confidential relationship arises whenever a continuous trust is reposed by one person in the skill and integrity of another. *Dibel v. Meredith*, 233 Iowa 545, 549, 10 N.W.2d 28 (1943); *Else v. Fremont Methodist Church*, 247 Iowa 127, 139-140, 73 N.W.2d 50 (1955); *First National Bank in Sioux City v. Curran*, 206 N.W.2d 317, 321-322 (Iowa 1973). In passing upon such transactions, courts of equity will scrutinize with jealous vigilance, and in the end will require the dominating party to a confidential relationship to conduct himself in his dealings with the other with the utmost good faith. *Id.* at 551.

The burden of accounting generally is upon the one seeking an accounting. However, an exception to this rule exists where the proceeding is in the nature of a discovery. In such instances, the burden shifts to the defendant because the proof is peculiarly in the knowledge of the defendant and the plaintiff does not have adequate or equal means of producing it. *Meier v. Johannsen*, 242 Iowa 665, 671-672, 47 N.W.2d 793 (1951); *Randolph Foods, Inc. v. McLaughlin*, 253 Iowa 1258, 1265, 115 N.W.2d 868 (1962). Similarly, once it has been established in a fiduciary relationship that the dominant party has obtained a possible benefit at the expense of the other party, the burden of proof is placed upon the dominant party to prove that no advantage was taken of the inferior party. In *re Estate of Lundvall*, 242 Iowa 430, 437-440, 46 N.W.2d 535 (1951); *Jahn v. Harmes*, 249 N.W.2d 638, 640 (Iowa 1977). When a confidential or fiduciary relationship is shown, the person in whom the trust is reposed is not merely required to go forward with the evidence, he must produce clear, satisfactory and convincing evidence of his entire good faith with respect to the transactions involved. *Moorhead v. Miller*, 171 N.W.2d 295 (Iowa 1969); *First National Bank in Sioux City v. Curran*, *supra*, at 322-323; see 1 C.J.S. Accounting § 19 (1936) and 1 Am. Jur.2d Accounts and Accounting § 52 (1962). Although most, if not all, of the foregoing cases involve confidential relationships concerning a transfer of property from the inferior to the dominant party, we see no compelling reason not to apply these same legal principles with equal force to the instant situation. Consequently, we hold that the trial court erred in placing the burden of proof upon plaintiff.

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Our review in this matter is *de novo*, rule 4, Rules of Appellate Procedure, and, as a result, we must review the record in order to ascertain whether Doris sustained her burden of proof by clear, satisfactory, and convincing evidence. A detailed discussion of the voluminous amount of evidence introduced by both parties would serve no useful purpose here. Suffice it to say, however, that upon reviewing the massive record, one is left with serious doubts about defendant's credibility and veracity.

The record discloses several questionable livestock and crop transactions conducted by Doris. Evidence was presented that corn belonging to Doris' present husband, Wayne Natvig, was commingled with that owned by the parties. Bank accounts that supposedly contained small sums grew rapidly over a relatively short period of time with little or no reasonable explanation. Sales of various farm commodities admitted in pleadings or at trial were completely omitted from the statement of account or were drastically understated. For example, \$218 in sales of hay were reported, yet William and his son, Scott, both testified that more than 2,000 bales of hay, worth between \$1 and \$1.50 per bale, were on the farm in 1969. In addition, no oat sales were mentioned in the statement of account, yet Doris stated in an answer to an interrogatory that 35 acres had been planted in oats.

The most serious discrepancies exist with regard to the corn crop. In her statement of account, Doris listed corn sales of \$11,557. At trial, she testified that 284 acres were planted, with a yield of 70 to 80 bushels per acre. At a sale price of \$1 per bushel, \$21,300 should have been included in the accounting. However, plaintiff's evidence, further strengthened by independent testimony, indicated that a much greater yield of 90 to 100 bushels per acre was a more realistic estimate, especially in view of the fact that this same farmland had yielded 125 bushels per acre the previous year. The record further reveals that machinery ordered to be sold in accordance with the stipulation was not sold, various patronage dividends that were to be divided equally between the parties were retained by Doris, and debts that were to be shared equally were paid by William alone.

Against this factual background, we conclude that defendant failed to sustain her burden of proof in demonstrating her entire good faith in these various transactions. If anything, the evidence points to the contrary. Although plaintiff contends in his brief that Doris should be required to account for an additional \$26,007, in formulating an

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equitable remedy, we are limited by the prayer for relief contained in plaintiff's objections to the accounting and demand for damages. Consequently, we reverse the district court and remand with instructions to enter judgment against defendant for \$8045 with interest at 7% from the date of the accounting, and to order defendant to reimburse plaintiff \$2323.

REVERSED AND REMANDED.