

IN THE COURT OF APPEALS OF IOWA

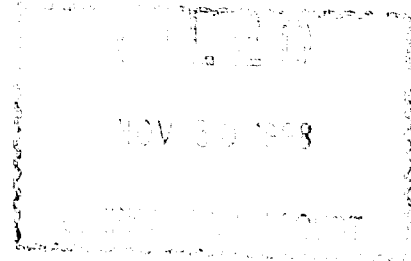
No. 8-265 / 97-0240
Filed November 30, 1998

EUNICE NEWMAN,
Appellee,

vs.

PATRICIA M. NEWMAN,
Appellant,

JAMES E. NEWMAN,
JERALD H. GREENWOOD,
and M. ENTERPRISES, INC.,
Defendants.



Appeal from the Iowa District Court for Dubuque County, R.J. Curnan, Judge.

Patricia Newman appeals from the trial court's ruling quieting Eunice Newman's title in the subject property. **AFFIRMED.**

Stuart G. Hoover of Naylor, Hoover, Peters & Blair, Dubuque, for appellant.

James G. Schilling, Dubuque, until withdrawal, and then John F. Sprole, Des Moines, for appellee.

Heard by Streit, P.J., and Mahan, J., and Hayden, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

STREIT, P.J.

Patricia Newman appeals from the trial court's ruling quieting her mother -in-law Eunice Newman's title in the subject property. Patricia contends the deed was not signed or delivered and, for that reason, did not pass title to Eunice. Because we find the deed was signed and delivered by Patricia, the title of the subject property is Eunice's.

I. Background Proceedings & Facts.

Eunice Newman¹ is married to one of the defendants, Jerald Greenwood². Jerald Greenwood is the owner of a business, M. Enterprises. James Newman, another defendant, is the son of Eunice Newman from Eunice's previous marriage. Patricia Newman is Eunice's former daughter-in-law and was married to James.

James and Patricia owned a plot of commercial real estate in Dubuque. This plot became a subject of contention in their divorce proceedings. Patricia claimed the property was an asset of the marriage and subject to division. James claims the property was not an asset of the marriage because it was owned by his mother, Eunice Newman.

¹ Eunice's current last name is Eunice Greenwood. Her maiden name was Eunice Ernst. At one point she was married to, and then divorced from, a man who's last name was Newman. Her son, James Newman, bears this name. It appears from the record Eunice uses all three names; Greenwood, Newman, and Ernst in different legal documents.

² Jerald has used both the names Jerald Newman and Jerald Greenwood in legal documents.

The confusion in ownership of this property arises from a series of facts disputed by Patricia.

Originally, James and Patricia Newman owned the plot of commercial real estate. On January 15, 1990, the couple executed an agreement to sell the property to James' step-father, Jerald Greenwood, individually and as president of M. Enterprises, Inc.³ This agreement became the subject of litigation. Iowa Glass Depot, Inc., had a right of first refusal on the commercial property. Iowa Glass claimed Jerald Greenwood's offer to buy the property from the Newmans was not bona fide. The litigation resulted in an Iowa Court of Appeals decision determining the offer was not bona fide. The Iowa Court of Appeals remanded the case to the district court with instructions to enter a permanent injunction enjoining the transaction. *See Iowa Glass Depot, Inc. v. Newman*, No. 90-431 (Iowa App. Feb. 26, 1991). A permanent injunction was never entered by the district court.

Regardless of the decision by the Iowa Court of Appeals, in March 1991, Jerald paid James the balance of the purchase price for the commercial real estate. A copy of a special warranty deed indicates on April 10, 1991, James and Patricia executed the deed conveying the property to Jerald and his company, M. Enterprises. The deed purportedly bears Patricia's signature and includes an acknowledgment. Patricia denies signing the special warranty deed. James delivered the deed to Jerald the day it was executed. Jerald executed a deed conveying the property to his wife

³ Patricia does not dispute signing this agreement.

and James' mother, Eunice Newman. Jerald delivered both deeds to Eunice. The deeds were never recorded and the originals have disappeared.⁴

Patricia argued in the dissolution proceeding that the commercial property had never been legally transferred and it was still owned by herself and James. She wanted the property divided as a marital asset.

Seemingly prompted by Patricia's claim in the dissolution proceedings, Eunice brought a quiet title action naming Patricia, James, Jerald, and M. Enterprises, Inc. as defendants. On January 8, 1997, the district court entered an order quieting title in the property by determining Eunice was the owner. Patricia appeals.

II. Action to Quiet Title.

An action to quiet title is an equitable action and our review is *de novo*. *Larman v. State*, 552 N.W.2d 158, 161 (Iowa 1996). We are not bound by the factual findings of the district court nor its legal conclusions. *Bernet v. Rogers*, 519 N.W.2d 808, 810 (Iowa 1994)

Patricia Newman contends the trial court erred in quieting title to the subject property because the deed was not properly executed. For a deed to be properly executed, signing and delivery of the deed are required. 23 Am. Jur. *Deeds* § 105 (1986). Although deeds are sometimes deemed executed when signed and not delivered, delivery is necessary for title to pass. *Id.* Patricia contends the deed in question was not signed or delivered by her.

⁴ Eunice contends Patricia destroyed the original deeds.

A. The Signature. Patricia claims she did not sign the deed transferring title of the property to Eunice. She claims her testimony was credible, Eunice's family had incentive to lie in testifying Patricia signed the deed, and the handwriting expert was uncertain.

The trial court found she had signed the deed. Substantial evidence supports this decision. A handwriting analyst testified "Based on the documents that I had to compare, it's my professional opinion that the signature of this deed dated April 10, 1991, is indeed the signature of Patricia M. Newman." The deed was notarized by a notary public. The notary public testified that she notarized the deed. Eunice and her family testified Patricia signed the deed. Based on this evidence, the trial court did not err in finding Patricia signed the deed.

B. Delivery. James and Patricia executed a special warranty deed on April 10, 1991. The same day, James personally handed the deed to Jerald, and Jerald executed a quit claim deed conveying the property to Eunice. Immediately after execution, he handed both the special warranty deed and the quit claim deed to his wife, Eunice. These actions were sufficient delivery to convey the property to Eunice.

Patricia argues there was no delivery because James was enjoined by the Iowa Court of Appeals decision from making the conveyance. Although the trial court never entered an injunction, Patricia argues this court's remand of the case to the trial court with instructions to order a permanent injunction is tantamount to an injunction having been ordered by the trial court.

The cases cited by Patricia to support her argument stand only for the proposition that reviewing courts are granted the power to remand “with appropriate directions and those directions on remand are binding on lower tribunals.” *See City of Waukee v. City Development Bd.*, 514 N.W.2d 83, 90 (Iowa 1994); *Hetherington Letter Co. v. O. F. Paulson Const. Co.*, 192 N.W.2d 808, 809 (Iowa 1971)(it is the duty of the trial court to comply strictly with mandates of reviewing courts). None of the cases hold or state that a reviewing court’s instructions to a trial court are tantamount to the trial court acting in accordance with those instructions. The fact is the injunction was never issued.

There are numerous reasons the injunction may not have been issued. For one, Iowa Glass did not pursue its remedy in district court. If any party had the right to assert James was enjoined from making this conveyance it was Iowa Glass. Patricia, who is not the real party in interest, has no standing to assert Iowa Glass’s claim. *See Iowa R. Civ. P. 2* (1998). For these reasons, the fact the trial court was instructed by this court to issue an injunction enjoining the conveyance of this property does not negate the delivery of deed.

Patricia argues there was no delivery because the conveyance was a fraudulent transfer. Again, Patricia does not have standing to assert the conveyance was a fraudulent transfer intended to defraud creditors. *See Iowa R. Civ. P. 2* (1998). Even if she had standing to assert this claim, a fraudulent transfer is not presumed but must be shown by clear and convincing evidence. *Production Credit Ass’n of Midlands v.*

Shirley, 485 N.W.2d 469, 472 (1992). Patricia has not met this burden. The delivery of the deed is not negated because it was a fraudulent transfer.

Key to the trial court's ruling the deed was properly executed was the credibility findings of the trial court. The trial court found the evidence the property had been properly executed and conveyed to Eunice more credible than evidence it had not. Appellate courts consistently recognize that factual disputes which depend heavily on the credibility of witnesses are best resolved by the trial court which has a better opportunity to evaluate credibility than the appellate court. *IBP, Inc. v. City of Council Bluffs*, 511 N.W.2d 413, 415 (Iowa App. 1993). We will not redetermine the credibility of the witnesses on appeal when the trial court's findings are supported by substantial evidence on the record.

Because we find, after de novo review, the trial court's findings are equitable, we affirm.

AFFIRMED.