IN THE COURT OF APPEALS OF IOWA

No. 1-157 / 00-0132
Filed June 13, 2001

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CLERK SUPREME COURT

MONROE D. BRANSTAD,
Appellant,

vs.

JEANNE B. GARLAND,
Appellee.

Appeal from the Iowa District Court for Winnebago County, Jon Stuart Scoles, Judge.

The plaintiff appeals a district court order dismissing his action for specific performance of an alleged oral real estate contract. **AFFIRMED.**

Herman P. Folkers of Folkers & Keen, Mason City, and Richard P. Schwarm, Lake Mills, for appellant.

Louis R. Hockenberg and Matthew D. Gardner of Sullivan & Ward, P.C., Des Moines, for appellee.

Heard by Zimmer, P.J., and Miller and Hecht, JJ.

MILLER, J.

The plaintiff, Monroe D. Branstad, appeals from a district court order dismissing his action for specific performance of an alleged oral contract for the purchase of a farm from Jeanne B. Garland. He contends the district court erred in ruling he failed to establish an oral contract existed between the parties. He alleges the case falls under either the "partial performance" or "promissory estoppel" exception to the statute of frauds and he should have been allowed to offer evidence of the oral contract. We affirm.

I. BACKGROUND FACTS

In 1982 Branstad and his brother purchased a farm in Winnebago County, Iowa on contract from Gerald and Barbara Fox. While the brothers purchased the land as a joint venture, Branstad actually farmed the land. Branstad developed financial problems in the mid-1980's and was unable to make the payments on the contract. Branstad then contacted his aunt, the defendant Jeanne B. Garland. Garland eventually purchased the land from the Foxes and the Foxes issued a warranty deed to Garland in 1988 for a purchase price of $150,000.

Branstad had made arrangements, or assisted in making arrangements, under which the farm would be enrolled in the Conservation Reserve Program (CRP) for ten years after Garland purchased it. Branstad testified that at the time of the discussions relating to Garland's possible purchase of the land it was agreed that after the land was released from the CRP she would sell the property to Branstad for the original purchase price of $150,000. Branstad also testified

that he and Garland later agreed that if he was unable to buy the farm when it came out of the CRP he would be given the opportunity to rent it. Branstad alleges that in exchange for this right to purchase (or rent) he agreed to maintain the property while it was in the CRP, including mowing, spraying, repairing tile, picking up rocks and repairing terraces. Branstad testified he, his sons, his father and another individual spent weeks cleaning rock and other materials from about nine thousand feet of roadside ditches. Branstad's father testified he and two grandsons did that work, spending about two weeks on it.

Garland denies that she entered into any oral agreement to sell the farm to Branstad. She alleged she has records establishing that she incurred expenses associated with maintaining the farm while it was in the CRP. However, she failed to produce such records at the time of trial and thus the trial court determined Garland had not incurred any expenses for the maintenance of the property between 1988 and 1997.

The land was released from the CRP in the fall of 1997 and Branstad plowed it that fall. He testified he did so in anticipation of farming it in 1998, based on the oral agreement. However, Garland instructed Branstad not to enter the property again and placed the property for sale. She then received an offer to purchase the property for $335,000 but the deal could not be closed due to the pendency of the present litigation.

Branstad filed a petition in equity for specific performance of the alleged oral real estate contract. Garland asserted the statute of frauds as an affirmative defense. She filed a counterclaim for slander of title and interference with

prospective business advantage. At trial she objected to evidence of the alleged oral agreement, on statute of frauds grounds. As the case was filed and tried in equity, the trial court reserved ruling on such objections and received the evidence subject to the objections. Following a bench trial the court dismissed Branstad's petition for specific performance and Garland's counterclaims. The trial court determined it was unnecessary to determine whether partial performance or promissory estoppel excepted the alleged contract from the statute of frauds, as alleged by Branstad, because "after considering all of the evidence . . . Branstad has failed to meet his burden of proving the existence of an agreement between the parties." The court noted that Branstad conceded the alleged agreement lacked any detail, other than a purchase price.

Branstad appeals, contending he expended and Garland accepted thousands of dollars worth of services in exchange for an option to buy the farm at the end of the ten-year period and therefore the agreement should be excepted from the statute of frauds under both a part performance exception and a promissory estoppel exception. He argues he established the essential terms of the contract and therefore the district court erred in dismissing his petition.

II. STANDARD OF REVIEW

This case was tried in equity and thus our standard of review is de novo. Iowa R. App. P. 4. We give weight to the findings of fact made by the trial court, especially with respect to the credibility of witness but are not bound by the those findings. *Owens v. Brownlie,* 610 N.W.2d 860, 865 (Iowa 2000). We will examine the entire record and determine the parties' rights anew from the

evidence presented. *Builders Kitchen & Supply Co. v. Pautvein*, 601 N.W.2d 72, 74 (Iowa 1999).

III. MERITS

Iowa's statute of frauds provides in relevant part:

> Except when otherwise specially provided, no evidence of the following enumerated contract is competent, unless it be in writing and signed by the party charged or by his authorized agent:
>
> . . .
>
> 3. Those for the creation or transfer of any interest in land, except leases for a term not exceeding one year.

Iowa Code § 622.32 (1987).

> Promises to convey interests in real estate fall within the ambit of the statue of frauds. Those seeking to enforce such promises must do so by a preponderance of clear, satisfactory, and convincing evidence.
>
> Our statue of frauds does not render oral promises to convey invalid. Rather the statute relates merely to the manner of proof. The statute renders incompetent oral proof of such promises. The statute, therefore, is a rule of evidence and not of substantive law. The statute is a defense and must be raised by answer or by objection to evidence at trial.

Sun Valley Iowa Lake Ass'n v. Anderson, 551 N.W.2d 621, 630 (Iowa 1996) (citations omitted); *see* Iowa Code §622.32(3) (1999). Branstad is seeking to enforce an alleged oral agreement between him and Garland regarding an interest in land and thus the alleged agreement falls squarely within the ambit of the statute of frauds. In the absence of a recognized exception to the statute of frauds, an oral contract to create an interest in land is unprovable. *Davis v. Roberts*, 563 N.W.2d 16, 20 (Iowa Ct. App. 1997).

"[B]efore decreeing enforcement, in disregard of the statutory prohibition, the court must be thoroughly convinced that the oral contract was in fact made as alleged." *Peterson v. Petersen*, 355 N.W.2d 26, 28 (Iowa 1984). Therefore, in order for Branstad to succeed here he must prove by a preponderance of clear, satisfactory, and convincing evidence, that the alleged agreement existed. *Sun Valley Iowa Lake Ass'n*, 551 N.W.2d at 630.

> To prove the existence of an oral contract, the terms must be sufficiently definite for a court to determine with certainty the duties of each party, the conditions relative to performance, and a reasonably certain basis for a remedy. Where a contract appears to exist, courts are reluctant to find it too uncertain to be enforceable. However, when the terms are not definite, courts are reluctant to impose reasonable terms on contracting parties.

Gallagher, Langlas & Gallagher v. Burco, 587 N.W.2d 615, 617 (Iowa Ct. App. 1998) (citations omitted). The trial court concluded that it was unnecessary to determine whether the part performance exception or the promissory estoppel exception to the statute of frauds applied because "after considering all of the evidence" that had been presented Branstad had failed to prove the existence of the alleged agreement. Based on our de novo review of the evidence in the record presented we must agree.

Branstad is correct in noting that an agreement need not contain definitely and specifically every fact in detail to which the parties may be agreeing. *In re Guardianship and Conservatorship of Price*, 571 N.W.2d 214, 216 (Iowa Ct. App. 1997). "The agreement need only be 'certain and unequivocal in its *essential terms*' and 'absolute certainty is not required: only reasonable certainly is necessary'." *Id* at 216-17 (quoting 17A Am.Jur.2d. *Contracts* § 197 (1991)).

However, there must be sufficient evidence of the essential terms for the court to determine the duties and obligations of the parties and the conditions established. *Id* at 216. "Moreover, for an oral contract to be found and enforceable, the terms must be so definitely fixed so that nothing remained except to reduce the terms to writing." *Id*. We, as the trial court did, pass the question of whether an asserted exception to the statute of frauds might apply and consider all the evidence presented at trial. For the following reasons we find that Branstad has not proved by a preponderance of clear, satisfactory, and convincing evidence essential terms that would be necessary to allow us to determine the parties' rights and duties and the conditions under which such rights and duties would exist.

Branstad testified on direct examination the parties' agreement was that he would have an "option" to buy the farm, that the purpose of him providing services to Garland on the CRP ground was so that he would have an "option to get to have a chance at buying it at the end or to farm the farm." Later, on redirect examination, he testified that under the alleged agreement he was "obligated to buy the farm." Still later, on recross examination, when asked if it was his position that he "also had the right to rent the farm," he answered, "No," but testified that Garland had told him that if he could not purchase it at the end of the CRP she would rent it to him. However, earlier, on direct examination, Branstad had in effect testified that he had not only the right, but an obligation, to rent the farm if unable to purchase it. He had testified on direct examination

Garland had told him that he would either "have to be able to pay for it and/or you're going to have to rent it . . . ."

An option to buy and an obligation to buy are two very different and inconsistent matters. The first is a right and the second is a duty. An option to rent if unable to buy is not inconsistent with or contradictory to an option to buy, but is inconsistent with and contradictory to an obligation to buy. The plaintiff's evidence thus contains substantial inconsistencies and contradictions concerning basic essentials of the alleged agreement. Further, even if we were to assume Branstad had either some right or an obligation to rent if unable to buy, essential terms of the rental alternative would have to be sufficiently definite for a court to determine with reasonable certainty the duties of each party, conditions relative to performance, and a reasonable basis for a remedy. *Gallagher*, 587 N.W.2d at 617. The record is devoid of, among other things, such basic essentials of any rental arrangement as: (1) the manner in which it would be determined whether Branstad was or was not "able" to purchase the farm (a decision that would have to be made in order to determine whether the rental option or obligation arose), (2) who would decide whether he was or was not able to purchase the farm, (3) how long he would be entitled or obligated to rent the farm, (4) whether his right or obligation to purchase the farm would revive if while renting it he subsequently became able to purchase it, (5) how much rent he would initially pay, (6) whether rental amounts would be subject to change over time, and (7) the manner in which the amount of rent would be determined.

We find Branstad has not proved by a preponderance of clear, satisfactory, and convincing evidence that the alleged contract existed. While it is not required that he prove with absolute certainty every fact in detail to which the parties might have agreed, we find he has failed to prove the essential terms necessary for us to determine the rights and duties of each party. The essential terms were not so fixed that nothing remained except to reduce them to writing. *See Price*, 571 N.W.2d at 216.

IV. CONCLUSION

Based on our de novo review of the record before us, we find Branstad failed to meet his burden of proving, by a preponderance of clear, satisfactory, and convincing evidence, the existence of an oral agreement between the parties. He did not prove the terms of the alleged oral agreement with sufficient definiteness so as to allow us to determine with certainty the duties of each party and the conditions relative to performance. *See Gallagher, Langlas & Gallagher*, 587 N.W.2d at 617. Therefore, because Branstad has failed to prove the existence of an oral agreement between him and Garland we, like the trial court, find it unnecessary to determine whether either the part performance exception or the promissory estoppel exception urged by Branstad are applicable.

AFFIRMED.