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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

PHILLIP E. LANSING, Defendant - Appellant,	)	Filed June 1, 1979
vs.	)	
EARL LANSING and MARY LANSING, Plaintiffs - Appellees.	)	123 / 2-62183

Appeal from Boone District Court - Milton D. Seiser, Judge.

Defendant appeals order of trial court which cancelled defendant's contract to purchase his parents' farm, based on the breach of a confidential relationship. - Affirmed in part, reversed in part and remanded.

William C. Hoffmann, Des Moines, and James B. Smith, Perry, for Appellant.

T. W. Doran, of Doran, Doran, Courter & Quinn, Boone, for Appellees.

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

OXBERGER, C. J.

This lawsuit arose out of a transaction between plaintiffs, Mary and Earl Lansing, and their son, defendant Phillip Lansing wherein Phillip purchased on contract his parents 100 acre farm. Trial court's judgment cancelled the contract on the grounds that Phillip breached a confidential relationship. Phillip appeals. We affirm in part, reverse in part.

Our review of the case is de novo. Iowa R. App. P. 4. After a careful examination of the record, we find the facts were substantially as follows: for many years Phillip had assisted his parents in the operation of their farm and in the conduct of their business affairs; he enjoyed their trust and confidence; at the time the instant agreement was executed, Mary and Earl possessed the capacity to contract; Mary signed the contract in the mistaken belief that it provided for a purchase price of $80,000 when in fact the stated price was $20,000; Mary did not read the contract prior to signing it, relying instead on Phillip's assurance that the contract price was $800 per acre. Sometime before the trial, Earl Lansing suffered a stroke and was unable to testify; he died during the pendency of this appeal. From the evidence it appears that Earl was aware of the contract's provisions and that he at least tacitly joined Phillip in misrepresenting the true state of affairs to Mary.

One of Phillip's contentions is that Mary was guilty of laches and is thereby precluded from seeking cancellation or reformation of the contract. Phillip does not assert, however, nor does the evidence suggest that he has suffered any disadvantage because of Mary's delay in commencing this suit. Accordingly, we agree with trial court's finding that Phillip failed to establish laches on the part of plaintiffs. See Westcott v. Westcott, 259 N.W.2d 545, 549 (Iowa App. 1977).

Phillip also argues there was no evidence to support a finding that he exerted undue influence on his parents by way of his confidential relationship with them. A confidential relationship has been said to exist "when one has gained the confidence of another and purports to act or advise with the other's interest in mind. It is often found where a family relationship exists." Wagner v. Wagner, 242 Iowa 480 at 482, 45 N.W.2d 508 at 509 (1951). The record shows that Phillip was actively involved in his parents' farming operation; he conducted many of their business affairs. Mary Lansing, who had

only an eighth grade education, testified that she trusted her son in every way. The attorney who drafted the contract was selected by Phillip and he was a stranger to Mary. She was without any independent legal or business advice. We conclude that the relationship between Mary and Phillip was such "as to establish confidence and reliance tending to preclude any transaction between them at arm's length." Sours v. Colvin, 244 Iowa 40 at 47, 55 N.W.2d 462 at 466 (1952).

Once a confidential relationship has been shown, there is a shift in the burden of proof.

> "[The] doctrine, for the purpose of the matter now under discussion, may be stated to be that one who in fact stands in a confidential relationship to another may not retain advantage of a transaction with the cestui que trust which may reasonably be the result of the confidence reposed unless he shows that the cestui acted with freedom, intelligence, and full knowledge of the facts. . . . Proof of active exercise of undue influence in fact, or the existence of mental weakness or incompetency on the part of the cestui, is not essential to the application of the doctrine."

Merritt v. Easterly, 226 Iowa 514 at 519, 284 N.W. 397 at 400 (1939). The farm which was the subject of the instant contract was the only substantial asset of Mary and Earl. The contract price was so far below market value that the result of the sale was a $60,000 gift to Phillip. No evidence suggests that Mary preferred Phillip to her other two children. It is undisputed that Phillip made yearly payments on principal of $2000 which corresponds to Mary's understanding of the terms of the sale, although the contract itself called for principal payments of $1900 per year. Mary testified she never discussed selling the farm to Phillip until the day she was taken to Phillip's attorney's office to sign the contract. The inescapable conclusion from the record is that Mary did not act with full knowledge of the facts when she executed the contract of sale and that Phillip was responsible for her misunderstanding.

The question which remains is to determine the remedy for Phillip's breach. Trial court cancelled the entire contract although it recognized that Earl "may have been a party to the deception" practised on Mary. The evidence, which is not entirely free of doubt, leads us to conclude that Earl was fully cognizant of the terms of the sale and freely assented thereto. For her part, Mary never denied her intent to enter into the contract but instead argued that the terms thereof did not reflect the true

understanding of the parties. Cancellation of the instrument, therefore, would result in a windfall to the plaintiffs because it would ignore Earl's intent to sell the farm at the stated price and would disregard Mary's intent to sell for $80,000. We think the appropriate remedy in this case is reformation of the contract. In In re Estate of Swebakken, 251 Iowa 1358, 1362, 105 N.W.2d 610, 612 (1960), the court held that reformation is authorized when "the instrument fails to express the parties' agreement or intention, either because of mutual mistake or because of mistake, inadvertance, or accident on one side and fraud or inequitable conduct on the other." Here, Mary was clearly mistaken as to the selling price of the farm on account of Phillip's inequitable conduct. Because of the confidence she placed in Phillip, she had no reason to scrutinize the contract before signing it. She should not be penalized for relying on the good faith of her trusted son. In her petition, Mary sought either reformation or cancellation of the contract. We find the appropriate remedy is to reform the contract to reflect Mary's understanding of the purchase price. The case is therefore remanded to the district court for the entry of an order reforming the contract price to $80,000, payable in annual installments of $2000 at 5% interest.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

All judges concur, except Donielson and Snell, JJ., who dissent.

DONIELSON, J. (dissenting)

I dissent. I would not reform the contract on the basis of Phillip's evidence that Earl Lansing may have approved his son's actions, but would set aside the contract in its entirety. Both Earl and Mary Lansing were elderly, had limited educations, and had relied on Phillip for business advice for many years before the instant transaction. There is no question that a confidential relationship existed between the parents and their son. I do not believe the evidence leads to the conclusion that Earl was aware of and approved of Phillip's taking advantage of the confidential relationship for his own profit. The trial court suggested only that this may have been a possibility. See Stout v. Vesely, 228 Iowa 155, 290 N.W. 116 (1940); Merritt v. Easterly, 226 Iowa 514, 284 N.W. 397 (1939).

Phillip boasted to his sister that he could make his mother "do anything"; I find no reason to believe he did not carry out that boast as to both parents. Phillip made all the arrangements with his lawyer who drew up the contract; Earl and Mary had no independent legal or business advice. The sale and gift scheme would deprive Phillip's sisters of any inheritance they might receive from their parents; it would possibly deprive Earl and Mary of adequate means to provide for their own support. Phillip told his parents to keep the transaction a secret. At the suggestion or urging of Phillip, Earl listed his son's machinery as his own, reported the contract payments as rental payments, and continued to insure the property. Phillip claimed the homestead exemption for his parents after they no longer owned the property. These actions were for the financial and tax advantage of Phillip only. They appear to me to be an excellent indicator of the nature of the transaction the trial court set aside after hearing the evidence and observing the witnesses. I agree with the trial court's finding that Phillip should not be allowed to profit by his wrongdoing, and I would affirm.

Snell, J., joins in this dissent.