FILED 314
MAR 24 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

NED M. CHIODO, by Joe Chiodo, Conservator of Ned Chiodo, Plaintiff-Appellee,	)	Filed March 24, 1981
vs.	)	0-398 2-64430
THE FRIENDSHIP SALES, INC., (an Iowa Corporation), and **JULIE HOLCOMB**, individually and as President of The Friendship Sales, Inc. Defendant-Appellants.	)	

Appeal from Polk District Court - Ray Hanrahan, Judge.

Defendants appeal from the trial court's judgment rescinding a contract for the sale of real estate. AFFIRMED.

William B. Serangeli, of Smith, Schneider & Stiles, Des Moines, for defendant-appellants.

Charles A. Coppola, of Coppola, Coppola & Clark, Des Moines, for plaintiff-appellee.

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

PER CURIAM

Defendants, The Friendship Sales, Inc. and Julie Holcomb, appeal from the trial court's judgment rescinding a contract for the sale of real estate. We affirm.

On August 4, 1977, Ned Chiodo entered into contracts for the purchase of real estate with The Friendship Sales, Inc. as seller. In mid October 1977, Chiodo's family became aware of the contracts and notified defendants of their intent to rescind. This action was initiated in January 1978 by the conservator of Chiodo. Plaintiff alleged Chiodo was mentally incompetent at the time of contracting with defendants. (Defendants in this case are the corporation and Holcomb, who at the time of contracting was the sole shareholder and sole officer of the corporation). The trial court found Chiodo was mentally incompetent at the time of contracting and ordered rescission. The court further ordered Holcomb as well as the corporation to be personally liable for the return of $27,100 received as down payment on the contract. Defendants appeal the incompetency finding and rescission order, and Holcomb as an individual appeals the personal liability order. Our review of the equity matter is de novo. Iowa R. App. P. 4.

I. Rescission

Defendants argue the remedy of rescission is not available because of the impossibility to return all parties to the status quo. Prior to the contract between these parties, defendants possessed an enforceable contract with a realty firm as purchaser. The firm breached the contract. Defendants were in the position of taking action on the breach when the contract between the present parties arose. Defendants did not pursue legal action against the realty firm.

The plaintiff notified defendants approximately two months after the contract execution that he sought to rescind the agreement and would be making no further payments. Defendants re-took possession of the property and have collected all income since that time.

Defendants allege they have lost their remedy against the realty firm and the return to the status quo is impossible. The trial court found the breach action was not relevant to establishing the status quo between the parties in this action

The return to status quo requires each part to return what they have received. Killpatrick v. Smith, 236 Iowa 584 (1945), 19 N.W.2d 699. Chiodo did not receive defend-

ants' rights under the first contract, therefore, he had nothing but the land to return. There was no agreement barring defendants from seeking whatever remedy they had against the realty firm in exchange for Chiodo's purchase. Furthermore, defendant's remedy has not been lost by this action. Whatever recourse the defendants had at the time of the Chiodo contracts is still available to them. Certainly, it was available when plaintiff first sought rescission, only two months later. We find defendants' action on the breach of contract was not relevant to the parties' position at the time of contracting and rescission is properly sought between the present parties.

II. Competency to Contract

The trial court in its findings noted that Chiodo had no reasonable perception of the transaction but was, at most, seeking to please a woman he believed he loved.

Holcomb and Chiodo had been acquainted since 1974. Their relationship reached marital considerations, at least on Chiodo's part. Chiodo had since 1964 experienced an episodic mental disorder characterized as manic-depression. In the midst of their growing relationship, Chiodo was involuntarily hospitalized for treatment of this disorder. During his treatment, Holcomb proved to be his single, steadfast friend. Shortly after Chiodo's release from hospitalization, Holcomb eased the relationship and, aside from contacts with other family members, did not see Chiodo for two years. Chiodo was again hospitalized during this two year period.

In July of 1977, the parties met by chance. Holcomb at that time was evaluating the consequences of the realty firm breach. After a brief discussion of Holcomb's situation, Chiodo contacted her and proposed that he purchase the property. He also sought to purchase adjacent parcels of land. Holcomb and Chiodo met several times to negotiate the terms at the Chiodo family resident and twice in the presence of an attorney who drafted the sales contracts at Chiodo's request.

The contracts called for $27,000 down payment and the purchaser to pay certain closing expenses of $100. Chiodo used $7,000 of his savings and borrowed $20,000 from his bank. The total sales price of the combined contracts was $360,000. Chiodo had been unemployed since 1975, taking an early retirement because of his mental problems. His only income consisted of disability payments amounting to $790 a month and $298 a month on a prior real estate contract. The result of this agreement was not merely a bad bargain but beyond the realm of Chiodo's financial possibilities. Holcomb pointed

out to Chiodo this transaction involved a large sum of money but did nothing more to check his financial ability.

Holcomb, although aware of Chiodo's mental history, made no inquiry into his present state. Dr Allan Silberman, a clinical psychologist was the only expert to testify concerning the type of mental disorder Chiodo suffered. His testimony related that the symptoms of the manic-depressive condition are expressed in widely varying episodic behavior. Although the behaviors are episodic, the disorder is part of the person and usually remains throughout the person's life. The behaviors range from agitation, confusion, grandiosity and delusional thinking in the manic phase to lethargy, remorse and self depreciation in the depressed state. Thought to be partially chemically related, the extreme behaviors can usually be controlled by careful drug treatment for the majority of the time in moderate cases. There is impairment of judgment and a possible loss of reality in the manic phase. Silberman allowed that it is difficult to identify when a person is in a manic episode. The episodes do not have a rapid, definite onset but build to the extreme gradually. During an episode, a person may be capable of clear thinking one moment and incapable the next. Dr. Silberman opined Chiodo had not lost reality contract in early August 1977. He offered this opinion tentatively based on two visits totaling five to six hours. Chiodo's treating physician at the time of contracting was deceased at the time of trial.

In early October, Chiodo's father noticed Chiodo pacing back and forth in the home. The elder Chiodo asked what was wrong; to which Chiodo responded, "I don't know what I'm going to pay." Chiodo then told his father about the deal he had made. Chiodo's father subsequently paid off the bank loan. It was during the month of October the family became aware that Chiodo's mental condition was again beyond control.

To avoid the contract based on mental incompetency, plaintiff must prove by clear and convincing evidence that Chiodo did not possess sufficient consciousness or mentality when the contract was executed to understand the import of his acts. See Waitt Bros. Land, Inc. v. Montange, 257 N.W.2d 516, 521 (Iowa 1977). A higher degree of mental competence is required for the making of contracts than is necessary for making a will. Id. Mental weakness not amounting to incompetence is not enough to set aside a contract unless accompanied by evidence of a grossly disadvantegeous contract, fraud

or undue influence. Id.

Undue influence as the sole basis to avoid a contract must operate to deprive a party of his free will. Stetzel v. Dickinson, 174 N.W.2d 438 (Iowa 1970). Evidence of four elements are sufficient to make out a prima facia case of undue influence. First, facts showing susceptibility of the party influenced. Second, evidence of the opportunity to exercise influence such as would exist in a confidential or close relationship. Third, evidence of the influencer's actions toward the influenced party. Fourth, evidence of the disadvantageous result to the influenced party. Calamari & Perillo, Law of Contracts, § 9-10 (2nd H. B. 1970).

Where the two conditions, mental disorder and undue influence, co-exist in a situation, a much lesser showing of the external influence is required. See Wilkie v. Sassen, 123 Iowa 421, 99 N.W. 124 (1904), where fraud was the factor involved along with mental weakness. See also, Green, Fraud, Undue Influence and Mental Incompetency, 43 Col. L. Rev. 176, 190-96 (1943).

While we do not find Holcomb unduly influenced Chiodo in a manner sufficient to avoid the contract on that basis alone, we find the combination of Chiodo's serious mental disorder, the subjective influence arising from the relationship, the failure of Holcomb to make further inquiry and the extremely detrimental transaction sufficient to clearly show Chiodo's incompetence at the time of contracting.

III. Personal Liability

Holcomb argues the trial court erred in finding her to be individually and personally liable for the return of down payment money. The trial court concluded the actions of the corporation were the actions of Holcomb and they were one and the same. We do not find the evidence sufficiently supports this alter ego conclusion. Nevertheless, we reach the same result as to Holcomb's personal liability, albeit for a different reason. It is settled that a court decision proper on any ground will not be disturbed merely because the decision is based on an erroneous reason. Schnabel v. Vaughn, 258 Iowa 839, 845, 140 N.W.2d 168, 172 (1966).

The evidence in this case supports the conclusion that Holcomb was acting in a dual capacity, a corporate officer and an individual, at the time the contracts were executed. She testified she purchased and procured financing for the property in her own name as well as the corporation. She testified her intent to transfer these

interests, corporate and individual, to Chiodo by the sale to him. The sale included all parcels of the property; none were retained by the defendants.

In order to carry out her intent to divest herself of all interest, Holcomb was acting in an individual capacity in addition to her corporate status when she sold the property to Chiodo. Therefore, she now stands individually liable to return the $27,100 received. We affirm the result reached by the trial court on this issue and affirm the aforementioned issues raised.

AFFIRMED.