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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

FORD HAWLEY and GRACE CAROL
FRANKLIN,

Appellees-Plaintiffs,

vs.

ROBERT (BOB) HAWLEY, SR.,
THEODORE (TED) HAWLEY, SR.,
GLADYS ANN MORFORD, and
ALICE MARIE HINZE,

Appellants-Defendants.

Filed November 22, 1978

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2-61423

Appeal from Crawford District Court - George Davis, Judge.

Defendants appeal from decree quieting title to 160-acre farm in plaintiffs.
Affirmed.

Thomas E. Gustafson and William Q. Norelius, of Norelius, Norelius & Gustafson,
of Denison, counsel for appellants.

Michael Mundt and E. A. Raun, of Ruan, Franck, Mundt & Nepper, of Denison,
counsel for appellees.

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

DONIELSON, J.

This is an action in equity brought by plaintiffs Ford Hawley and Grace Franklin, the son and daughter of Anna Hawley, to quiet title in them to a 160-acre farm in Crawford County. The defendants are the children of Ted Hawley, a deceased brother of Ford and Grace, and the grandchildren of Anna Hawley. The trial court found that Ford and Grace had absolute title to the farm by reason of an acknowledged joint warranty deed executed in 1960 by Anna conveying title to plaintiffs, subject to a life estate in Anna. Defendants assert on appeal that the warranty deed was not meant to be presently effective as a transfer of title in 1960, that the trial court erred in admitting certain testimony over competency and hearsay objections, and that the trial court improperly "visited" with plaintiffs' witness to the exclusion of defendants' counsel. We affirm.

Our review is *de novo*. Rule 4, Rules of Appellate Procedure. While we look to the finding of the trial court, we review the facts as well as the law and adjudicate the rights and responsibilities of all the parties in the issues properly presented to us. *Scheer v. Swanson*, 209 N.W.2d 53, 56 (Iowa 1973).

L. Effectiveness of Warranty Deed. The primary issue on appeal is whether the trial court erred in finding that Anna Hawley intended the warranty deed dated October 4, 1960 to be presently effective as a transfer of title. The 160-acre farm was conveyed to Anna's son Wilbur Clair in 1929 as part of the settlement of her husband's estate. When Wilbur Clair died intestate in 1931, Anna inherited the farm, and lived on and operated it throughout the rest of her life.

In the deed prepared by attorney John O'Connor in 1960, Anna conveyed the farm to Ford and Grace, reserving in herself the life use, rent and income. Anna, who was 80 years old, visited the home of Ford soon after the deed was executed and informed him of her actions. She kept the deed for a few days, to "read it", and then delivered it to Ford in a sealed envelope marked "Anna Hawley Private Papers to be opened immediately (sic) after my Death." Anna told Ford to keep the deed in his bank safe deposit box, and indicated that she meant to have a "life lease on it as long as I live." When Ford asked her, apparently teasingly, whether the deed was good, Anna replied that "John O'Connor said it is if you've got it." Ford placed the deed in his safe deposit box and there it remained untouched until 1974.

In December 1973, while Anna was in the hospital, she executed a will prepared on her instructions by attorney O'Connor, in which she devised the farm to Ford and Grace, subject to a lien for one-third of its value in favor of defendants. While Ford was aware of the existence of the will, neither he nor Grace knew its contents until after Anna's death.

In July 1974, at Anna's 94th birthday party, Anna and Grace discussed payment on a note Grace held from the 1929 estate settlement which had eventually resulted in Anna's inheritance of the farm. At that time, Anna indicated to Ford and Grace that she would convey the farm to them as soon as a deed could be prepared. The next day, in the presence of witnesses, Ford opened the envelope which had been in his deposit box since 1960, and determined that he was in possession of the deed. A year later, after Anna's death on July 20, 1975, Ford recorded the deed.

Defendants contend that these subsequent actions by Anna rebut the presumption that the deed was delivered and intended to be presently effective in 1960 as a transfer of title. We disagree. For a valid delivery, the grantor must intend the deed to be presently effective as a transfer of title without any reservation of control thereover. *Jeppesen v. Jeppesen*, 249 Iowa 702, 708, 88 N.W.2d 633 (1958). Where a deed reserves a life estate to the grantor, it is presumed that immediate operation of the deed, as a conveyance of a present interest, is intended. *Dyson v. Dyson*, 237 Iowa 1285, 1288, 25 N.W.2d 259, (1946); *McKemey v. Ketchum*, 188 Iowa 381, 175 N.W. 325 (1920). Clear and satisfactory proof to the contrary must be shown to rebut this presumption, *Dyson*, supra at 1287, and it is not present here.

Anna manually delivered the deed to Ford and it was continuously in his possession from 1960. She considered her actions before delivery, keeping in mind advice from her attorney that, once she gave Ford the deed, the conveyance was complete. The abstract to the property was given to Ford. Anna was a businesswoman who conducted her own affairs until 1973. She had a safe deposit box in her own name, separate from her son's, where the deed would have been kept had she not intended delivery and transfer of title. Anna's occupation and active management of the farm from 1960 were not inconsistent with a transfer of title since she had reserved for herself a life estate. The reservation of the life estate itself in the deed indicates Anna intended present

transfer. She could hardly reserve a life estate for herself in a document she considered testamentary in nature. Finally, it is not unreasonable to assume that 93-year-old Anna and her 81-year-old attorney forgot about the execution and delivery of the deed 13 years earlier when she executed her will. We find Anna had clear intent in 1960 to convey title to Ford and Grace. The trial court's decree is affirmed.

II. Evidentiary Objections. Defendants contend that the trial court erred in admitting testimony concerning conversations between Ford and Anna overheard by Ford's wife, Edith. While Ford could testify about his personal observations concerning these conversations, and that they had taken place, § 622.4, The Code, rendered him incompetent to testify as to the substance of the conversations. In *re Palmer Estate*, 255 Iowa 428, 122 N.W.2d 920, 923 (1963). However, since Edith took no part in the conversations and had no interest in the subject, her testimony was properly admitted. See *Carlson v. Bankers Trust Company*, 242 Iowa 1207, 50 N.W.2d 1 (1951); *Edler v. Fick*, 252 Iowa 1367, 110 N.W.2d 665 (1961). There was no error.

III. Judicial Conduct. Finally, defendants contend that the trial court, in conversing privately in chambers with a witness for plaintiffs, prejudiced defendants. The incident is reflected in the record as follows:

MR. NORELIUS: That's all the questions I have.

MR. RAUN: That's all, Doctor.

THE COURT: We'll recess about five minutes, is all. I want to visit with the doctor.

(A short recess was taken).

There is nothing further in the record to indicate who was present during this conversation, the substance of the conversation and whether it concerned the case before the court in any way. Defendants did not object prior or subsequent to the recess, nor did they question the trial court as to what transpired. There is not even an indication that defense counsel was excluded. We find nothing to review here.

AFFIRMED.