IN THE COURT OF APPEALS OF IOWA

FILED
MAY 25 1982
CLERK SUPREME COURT

FRANCIS J. MUHR and BERNIECE W. MUHR.	)	
Plaintiffs-Appellees,	)	~~Filed May 25, 1982~~
vs.	)	353
DAVID A. MUHR and SHIRLEY K. MUHR	)	
Defendants-Appellees,	)	2-138 / 2-66528
GLEN E. DITTO and THELMA L. DITTO	)	
Defendants.	)	

Appeal from Guthrie District Court - Ray A. Fenton, Judge.

Defendants Muhr appeal from the trial court's ruling that they purchased and held farmland in a constructive trust for plaintiffs, and that they must transfer title to plaintiffs. - AFFIRMED.

James R. Van Dyke, Carroll, and George Remer, Coon Rapids, for defendants-appellants.

David Neas, Mt. Ayr, and William D. Groteluschen, Audubon, for plaintiffs-appellees.

Heard en banc.

Defendants Muhr appeal from the trial court's ruling that they purchased and held farmland in a constructive trust for plaintiffs, and that they must transfer title to plaintiffs. We affirm.

Plaintiffs owned farmland in Guthrie County, and learned that an adjacent farm owned by defendants Ditto was for sale. Since plaintiffs thought they would be charged a higher price for the farmland because their land bordered the farm that was for sale, they testified they arranged to have defendants David and Shirley Muhr negotiate the purchase and act as the buyers. Defendant David Muhr and plaintiff Francis Muhr are brothers.

The $5000 downpayment was paid by plaintiffs, and the sale was completed on November 26, 1976. Plaintiffs took possession of the property on March 1, 1977, and paid the $20,000 payment that was due at that time. They farmed the land for two years and then leased it out the next two years. Plaintiffs paid the real estate taxes on the property each year, and made the annual contract payments every year until March, 1980. When the house and buildings on the farm were rented, plaintiffs handled the arrangements.

In early 1977 plaintiffs asked the defendants Muhr to transfer their interest in the property to them. They refused, and asserted that they had purchased the farm and that plaintiffs had merely loaned them the money for the downpayment.

Plaintiffs filed the present suit in May 1978, alleging in their petition that the defendants' Muhr refusal to assign title to them was fraud and that they were entitled to have a resulting trust or some other equitable relief entered for them.

After trial to the court, the court created a constructive trust in favor of plaintiffs, and reserved for a later determination the amount of lien the defendants Muhr had against the property. Defendants Muhr appealed the adverse judgment, contending that the trial court erred in finding that a constructive trust should be imposed. 355

A constructive trust is a "creature of equity used by the courts as a remedial device by which the holder of legal title is held to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest." Westcott v. Westcott, 259 N.W.2d 545, 547 (Iowa Ct. App. 1977). A constructive trust can be imposed where there has been fraud or unjust enrichment, Homolka v. Drahos, 247 Iowa 525, 529, 74 N.W.2d 589, 591 (1956), and the evidence to impose a constructive trust must be clear and convincing. Westcott v. Westcott, 259 N.W.2d at 547, citing James v. James, 252 Iowa 326, 330, 105 N.W.2d 498, 500 (1960). We believe that the trial court properly applied these rules of law to this case, and that our decision depends on a determination of the factual questions presented.

In every way plaintiffs acted as the owners of the farm. Although defendants Muhr paid the insurance premiums on the buildings, and made the March 1980 contract payment, all the evidence points to the fact that they acted as gratuitous agents for an undisclosed principal. The plaintiffs exercised control over the property and incurred all the major financial obligations associated with the ownership of property.

Defendants Muhr contend that the plaintiffs were going to "help them out" so they could buy the farm, yet there is no evidence that plaintiffs' payments were to be regarded as loans. Defendants Muhr exercised no control over the property and took little or no responsibility for the farm. They did pay the insurance premiums on the buildings, but plaintiffs did not know that.

In addition, defendants Muhr point to the fact that their real estate agent and the Dittos did not know that anyone but the defendants Muhr were buying the property. Since plaintiffs were trying to keep their identity secret so as to not inflate the price, it is only logical that these people were not told.

The evidence clearly and convincingly shows that title equitably belongs to the plaintiffs who were the true purchasers in this transaction. Permitting defendants to retain title would serve to unjustly enrich them. We affirm the trial court's creation of a constructive trust and affirm the court's order to transfer title from the defendants Muhr to plaintiffs.

AFFIRMED.