

IN THE COURT OF APPEALS OF IOWA

No. 7-607 / 96-2216

000143

IN THE MATTER OF THE ESTATE OF
ALVIN W. DeJONG, Deceased,

ARLENE J. DeJONG, Executor of the Estate
of ALVIN W. DeJONG, Deceased,

Plaintiff-Appellee,

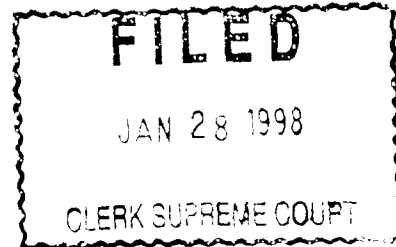
vs.

DONALD E. TUINSTRA,

Defendant-Appellant,

VIRGINIA TUINSTRA,

Defendant.



Appeal from the Iowa District Court for Jasper County, Dale B. Hagen, Judge.

Defendant appeals a district court ruling granting plaintiff's request for quiet title in certain real estate. **AFFIRMED.**

T.J. Rekemeyer, Lois J. Vroom, and John H. Terpstra of Brierly Law Office,
Newton, for appellant.

Jeanie Kunkle Vaudt and David D. Nelson of Davis, Brown, Koehn, Shors &
Roberts, P.C., Des Moines, for appellee.

Heard by Huitink, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

Donald E. Tuinstra appeals the district court's ruling granting Arlene DeJong's request to quiet title. Tuinstra argues: (1) the district court erred in finding any claims he had to the subject property were claims that existed at the time of the filing of his bankruptcy petition and were assets of his bankruptcy estate; and (2) a resulting trust was created when he provided funds to Alvin DeJong to purchase the property to be held in the deceased's name for a future reconveyance to Tuinstra.

Donald Tuinstra formerly owned real property located in Jasper County. That real property is now the subject of this action. In 1984, Tuinstra began delivering money to Alvin DeJong, allegedly for investment. In October 1986, Tuinstra filed a voluntary Chapter 7 bankruptcy petition. He reported his undivided one-half interest in the real property now in question. However, neither Tuinstra nor DeJong reported the money Tuinstra had delivered to DeJong. In August 1988, the bankruptcy court entered a stipulated judgment and decree authorizing Tuinstra's bankruptcy trustee to sell the real property free and clear of all liens and claims of all persons. Tuinstra, through his attorney, approved and stipulated to the decree. The trustee sold the property to Alvin DeJong and delivered a court officer deed to him. Alvin later filed the deed. Alvin died on June 22, 1991. Arlene DeJong, Alvin's wife, was appointed executrix and is the sole beneficiary under his will.

On August 25, 1994, the trustee in bankruptcy filed an adversary complaint against Arlene individually and as executrix of Alvin's estate. The complaint alleged the purchase of the real property was fraudulent and made with cash actually belonging to Tuinstra; the funds previously transferred to Alvin for investment. The trustee later filed a motion to compromise and sell the complaint. The bankruptcy court approved the sale of the complaint over Tuinstra's objection. Dean DeJong purchased the complaint, and Arlene and Dean entered into a stipulation of dismissal with prejudice.

Arlene brought this subsequent action to quiet title in the real property purchased from the bankruptcy trustee. The district court ruled *res judicata* precluded Tuinstra from arguing the DeJongs held the land in a resulting trust because that claim was part of the claim brought by the trustee in the bankruptcy court. We affirm.

I. STANDARD OF REVIEW. An action to quiet title is an equitable action and our review is *de novo*. *Larman v. State*, 552 N.W.2d 158, 161 (Iowa 1996). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. ISSUE PRECLUSION. Issue preclusion, or collateral estoppel, serves a dual purpose. *State ex rel Casas v. Fellmer*, 521 N.W.2d 738, 740 (Iowa 1994).

First, the doctrine protects litigants from the vexation of relitigating identical issues with identical parties or those persons with a sufficient connective interest to the prior litigation. *Id.* at 740-41. Second, it promotes the interest of judicial economy by preventing unnecessary litigation. *Id.* at 741.

For issue preclusion to apply four prerequisites must exist: (1) the issue must be identical to the one previously decided; (2) the issue must have been raised and litigated in the previous action; (3) the issue must have been material and relevant to the disposition of the previous action; and (4) the previous determination made on the issue must have been necessary and essential to the resulting judgment.

Id.

To invoke issue preclusion, a party need only show the other party was so connected in interest with one of the parties in the former action as to have had a full and fair opportunity to litigate the issue and be properly bound by its resolution. *Id.* Upon filing his bankruptcy petition, all of Tuinstra's non-exempt property became property of the estate created pursuant to 11 U.S.C. section 541(a). *Bronner v. Exchange State Bank*, 455 N.W.2d 289, 290 (Iowa App. 1990). Causes of action constitute property rights which are vested in the bankruptcy trustee such that only the trustee has standing to bring claims on debtor's causes of action. *Id.* The trustee may generally pursue a cause of action or, in his best judgment, compromise, settle, or abandon legal claims. *In re American Energy, Inc.*, 49 B.R. 420, 421 (Bankr. D.N.D. 1985). The debtor cannot sue on the cause of action unless abandoned. *Bronner*, 455 N.W.2d at 290.

Further, the debtor in a bankruptcy proceeding is required to provide the trustee with any recorded information relating to property of the estate and to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties. 11 U.S.C. §§ 521(3)-(4) (1997). The trustee filed a claim against Arlene DeJong alleging she was wrongfully in possession of assets of Tuinstra's bankruptcy estate. The trustee also asked the court to cancel the sale of the property now in question. The trustee sold the cause of action and it was later dismissed with prejudice. We agree with the trial court and find Tuinstra was so connected with the trustee in the bankruptcy proceedings that there was full and fair opportunity to litigate the issues regarding any claims against the assets of the bankruptcy estate. Donald is bound by the trustee's actions.

III. RESULTING TRUST. A resulting trust can arise where the party claiming a trust resulted paid the purchase price but the property was conveyed by the seller to another person, who is sought to be held as trustee for the benefit of the party supplying the consideration. *Westcott v. Westcott*, 259 N.W.2d 545, 547 (Iowa App. 1977). A resulting trust also arises where property is transferred without any consideration coming from the transferee and it appears from all the circumstances he is holding the property for the benefit of the transferor. *Id.* The burden rests on the party claiming the trust to establish by clear, certain, satisfactory, and convincing evidence the facts out of which a resulting trust would arise. *Id.*

The necessary facts are: (1) the purchase and payment by the claimant; (2) the intention of the parties in placing the legal title in the alleged trustee; (3) acknowledgment by him of the trust, his assent thereto, or his failure to dissent after knowledge of the claimant's contention.

Id. The trust arises, if at all, from the state of facts existing at the time the legal title to the property is acquired. Tuinstra is foreclosed from arguing he purchased the property discussed above. Even if we were to find this issue was properly before us, we find there is no clear, certain, satisfactory, and convincing evidence of a resulting trust.

We have carefully reviewed the issues and affirm the decision of the trial court.

AFFIRMED.