FILED
SEP 9 1977
CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

VIRGINIA FUNKHAUSER,

Appellee,

vs.

RONALD T. FUNKHAUSER and LINDA BLANCHARD, a/k/a LINDA FUNKHAUSER,

Appellant.

Filed September 9, 1977

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2-58745

Appeal from Pottawattamie District Court - Harold Martin, Judge.

Appeal from trial court ruling a conveyance of real estate was fraudulent and void. - Affirmed with modification.

Frank W. Pechacek, Jr., of Smith, Peterson, Beckman, Willson & Peterson, of Council Bluffs, for Appellant.

C. R. Hannan, of Council Bluffs, for Appellee.

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

PER CURIAM

Plaintiff Virginia Funkhauser brought suit to set aside an allegedly fraudulent conveyance of real estate by defendant Ronald Funkhauser to defendant Linda Blanchard a/k/a Linda Funkhauser. The trial court ruled the conveyance was fraudulent and void as against the claim of Virginia. Defendant Linda Blanchard alone appeals. We affirm and modify.

The deed of December 17, 1973 is an outright conveyance from Ronald to Linda with no words of trust or reservation for the child Ronee. It was recorded with a recitation of the exception from transfer tax under the Section 428A.2(11), The Code, for "deeds between husband and wife, or parent and child, without actual consideration." The alleged trust agreement of December 6, 1973 was never acknowledged or recorded; neither was it incorporated by reference into the deed. Without any reference to Ronee within the language of the deed, the Section 428A.2(11) exception can only refer to a transfer directly from Ronald to Linda in her own right.

Significantly, the agreement was not approved by a court having jurisdiction to compel support of the child. Section 675.30, The Code, requires such judicial approval in order to render a mother's agreement or compromise of the father's support obligations binding upon the mother and child. There is therefore no merit in Linda's argument that the valuable consideration exchanged for the conveyance was a release of all claims for child support. The agreement has no binding force; indeed, the parties themselves have never executed its provisions.

Linda cannot claim the status of a bona fide purchaser for value since the conveyance was without consideration. Further, it was made while she had knowledge that Ronald had unsatisfied and outstanding obligations under the Nebraska decree to Virginia. The trial court properly found Linda participated in a fraudulent conveyance by accepting the deed. Martin v. Langfitt, 224 Iowa 635-36, 276 N.W. 594 (1937). Under **Martin** even if Linda had no notice of the fraud she had knowledge of the facts sufficient to put her on inquiry, she cannot avoid the effect of a fraudulent transfer. By her testimony she made no attempt to ascertain the extent of Virginia's rights under the Nebraska decree. Such neglect is fatal to

her claim to be a bona fide purchaser.

The relief granted Virginia is affirmed.

The trial court further ordered any excess proceeds from the sale to be paid over to the clerk of court for the benefit of Ronee. This portion of the decree cannot stand. Ronald's support duties for Ronee have not been judicially determined. In Winnebago Auto Co. v. Bilstad, 231 Iowa 613, 1 N.W.2d 704 (1942) the indebtedness of the father to his daughter had been adjudicated by the trial court. Accordingly the trial court order must be modified to provide that any excess proceeds from the sale must be paid over to the grantee Linda Blanchard. Mallow v. Walker, 115 Iowa 238, 88 N.W. 452 (1901).

Affirmed with modification, and remanded for entry of judgment in accord with this decision.