IN THE COURT OF APPEALS OF IOWA

No. 9-525 / 88-1738

FILED
JAN 2 5 1990
CLERK SUPREME COURT

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MARGARET ARDUSER a/k/a MARGUERITE ARDUSER,

Plaintiff-Appellee,

vs

RAY ARDUSER a/k/a RAYMOND D. ARDUSER; JENNIFER ARDUSER a/k/a JENNIFER S. ARDUSER; and ALAN F. ARDUSER; and JONES COUNTY, IOWA,

Appellees,

RICK YOUNG and RICK YOUNG by His Parent and Next Friend WANDA YOUNG,

Defendants-Appellants.

Appeal from the Iowa District Court for Jones County, Thomas M. Horan, Judge.

The defendant appeals a decision of the district court holding that the plaintiff held a valid mortgage against the farmland owned by her son Ray Arduser, and such mortgage was foreclosed against all other claims of interest in such land. **AFFIRMED.**

Charles C. Brown, Jr. of Tom Riley Law Firm, P.C., Iowa City, for appellants.

Robert F. Shimanek of Shimanek, Shimanek & Bowen, Monticello, and David L. Baker of Riccolo & Baker, P.C., Cedar Rapids, for appellee Margaret Anderson.

Nick Strittmatter of Locher, Locher & Strittmatter, Monticello, for appellees Ray and Jennifer Arduser.

Connie Ricklefs, Jones County Attorney, for appellee Jones County.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J. 10

The defendant, Rick Young, appeals a decision of the district court holding the plaintiff, Margaret Arduser held a valid mortgage against some property owned by her son, Ray Arduser. The court further held the mortgage was foreclosed by Margaret and she had a valid first lien on the property. Young contends the district court erred in entering a decree of foreclosure because Margaret's transactions with her son and daughter-in-law were fraudulent conveyences. We affirm.

In 1983, Raymond and Jennifer Arduser had discussions with Raymond's mother, Margaret Arduser, regarding the possibility of their moving into the vacant farmhouse that Margaret owned. The house was in considerable disrepair and would need substantial work to be habitable.

Margaret agreed to let Raymond and his wife live in the house, and they agreed to be responsible for the repairs. In August, 1983, Ray and Jennifer obtained a mortgage from Guaranty Bank and Trust of Cedar Rapids, Iowa, but the bank required Margaret to co-sign the note and mortgage as owner of the land. Although the original loan was for $26,000, a second loan was required. On June 15, 1984 a new mortgage was executed for $61,000 and the first mortgage was released.

In January 1984, Rick Young, Raymond's nephew, filed a civil lawsuit by and through his parent and next friend

Wanda Young, alleging that Raymond had sexually abused him over a lengthy period of time.

Raymond and Jennifer made all payments from June 1984 through May 1985, when they were unable to make the full payment because a bowling alley they owned filed for bankruptcy in the spring of that year. Margaret provided a partial payment to enable the couple to make that month's mortgage payment.

On July 5, 1985 Margaret borrowed $61,545.47 from the Citizens State Bank of Hopkinton and paid off the Guaranty mortgage. At that time Raymond and Jennifer executed a promissory note for the amount of $61,545.47 at 13 1/2% interest, payable to Margaret.

On October 15, 1985 the couple signed a mortgage encumbering 145 acres of farmland they owned in favor of Margaret Arduser to secure the promissory note.

On October 28, 1985, the sexual abuse trial against Raymond commenced and at its conclusion the jury returned a verdict against Raymond in the amount of $100,000.

In July 1986, Margaret filed a corrected real estate mortgage which was signed by Raymond and Jennifer.

Ray and Jennifer made no payments on the note. In November 1986 Margaret filed a petition for foreclosure and petition for equity. Rick Young filed an answer to the foreclosure action and cross-claimed against Raymond and Jennifer and counterclaimed against Margaret, alleging the

transactions were fraudulent in that they were entered into to prevent Raymond's land from being acquired by his creditors. The trial court ruled Margaret's mortgage was valid and based on sufficient consideration, and ordered a foreclosure in favor of Margaret on Raymond's land. Young has appealed.

Young contends the transactions were fraudulent. He alleges there was no consideration for the July 5, 1985, promissory note signed by Raymond and Jennifer, since they received no benefits from signing the note. Young argues the promissory note as originally signed was inadequate and signed just days before the sexual abuse trial was to begin. Young maintains that rather than have the real estate leave the Arduser family, Margaret and Raymond invented a sham mortgage to defraud him of his potential interest in Raymond's only real estate.

Since this case was tried in equity, our review is de novo. Iowa R. App. P. 4. Proof of fraud necessary to set aside this mortgage must be clear, satisfactory, and convincing. Rouse v. Rouse, 174 N.W.2d 660, 669 (Iowa 1970); Travelers Indemnity Co. v. Cormaney, 258 Iowa 237, 138 N.W.2d 50, 55 (Iowa 1965).

Young points this court toward several indicia or "badges of fraud" which, he asserts, should convince us the mortgage was fraudulent. He contends the transaction, which was between mother and son, lacked adequate

consideration; was intentionally concealed until days before the trial and most importantly, was an attempt by Ray and Jennifer Arduser to mortgage the only real asset they had, in an effort to defeat the claim of Young.

A determination of whether or not a conveyance is fraudulent is decided upon the particular facts of each case. The court deals with badges or indices of fraud, not absolutes. Rouse v. Rouse, 174 N.W.2d at 667. When the transaction occurs between parents and a child, a presumption of fraud is not created. Id. It does, however, require a critical examination of the attending circumstances. Id. The circumstances must ordinarily be considered together, and the force and weight to be given them are that of them in combination. Id.

A review of the record, taking into consideration the combined effect of all the surrounding circumstances convinces us this was not a fraudulent conveyance.

A valid debt existed between Raymond and Jennifer Ardsuer and Margaret. The couple agreeed to be responsible for the costs associated with fixing up the house on Margaret's land. The notes at Guaranty Bank were in Ray and Jennifer's name. Margaret was required to co-sign as owner of the property. At that time Ray and Jennnifer were obligors of the bank. When Margaret repaid the loan to Guaranty Bank by obtaining a loan from another bank, Ray and Jennifer were no longer parties to that obligation.

However, they were indebted to Margaret for the amount of the loan.

The transaction which established the original debt occurred months before Young filed his suit. Both the note and the mortgage were supported by adequate consideration. Ray and Jennifer received the benefit of improving a house they wanted to live in. The funds necessary to accomplish this were advanced by Margaret, whose detriment was a $61,000 liability and a mortgage on her property. The mortgage was supported by the consideration of a valid pre-exisitng debt, which is sufficient consideration for the giving of security by debtors to creditors. Rouse v. Rouse, 174 N.W.2d at 669.

We do not accept Young's assertion the failure to record the mortgage was concealment. The mortgage was dated July 5, 1985. Testimony indicated the July 5th date was to have the mortgage correspond with the date of the promissory note. The document was signed on October 15, 1985, and filed on October 18, 1985. There was no concealment.

Young has failed to prove fraud existed by clear, satisfactory and convincing evidence. The trial court is correct the mortgage lien is a valid first lien on the real estate and Young's claim is junior, inferior and subsequent to Margaret's.

AFFIRMED