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IN THE COURT OF APPEALS OF IOWA

No. 0-470 / 90-136

IN RE ESTATE OF RALPH HEBELER, Deceased.

HIGMAN SAND & GRAVEL, INC.,

Appellee,

vs.

WILLIAM HEBELER and **MARY ELLEN POWELL,** as Executors of the Estate of Ralph Hebeler,

Defendants,

and

DEAN HEBELER, as Executor of the Estate of Ralph Hebeler,

Appellant.

Appeal from the Iowa District Court for Plymouth County, Richard J. Vipond, Judge.

Dean Hebeler, one of the executors of Ralph Hebeler's estate, appeals a district court decree granting the plaintiff's request for specific performance of a real estate contract. **AFFIRMED.**

Craig H. Lane of The Lane Law Firm P.C., Sioux City, for appellant.

Jeffrey A. Sar of Baron, Sar, Goodwin, Gill, Lohr & Jarman, Sioux City, for appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

OXBERGER, C.J.

In 1987 Ralph Hebeler owned a farm located in Plymouth County, Iowa. On October 9, 1987, Ralph, at the age of eighty-one signed an agreement to sell his farm to Higman Sand for $101,200 in three installments. Higman Sand made timely payment of the first two installments. The last installment was due January 15, 1989.

In late December 1987, Ralph suffered an incapacitating stroke. Ralph's condition continued to deteriorate and he died on July 12, 1988.

William Hebeler, Mary Power, and Dean Hebeler were appointed executors of Ralph's estate. In January 1989, Higman Sand tendered its last payment on the contract. William and Mary were willing to accept payment, but Dean was not. As a result, Higman Sand filed this petition for specific performance of the contract. Dean resisted this petition, claiming Ralph lacked sufficient mental competence when he entered into the sales contract. The district court granted specific performance and Dean appealed.

We review this equity case de novo. Iowa R. App. P. 4. 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).

A presumption exists that contracting parties were competent when the contract was executed. Sjulin v.

Clifton Furniture Co., 241 Iowa 761, 763, 41 N.W.2d 721, 723 (1950). A contract cannot be avoided on the ground of alleged incompetency unless the evidence discloses that the contracting person lacked sufficient mental capacity to understand it. In re Guardianship of Collins, 327 N.W.2d 230, 233 (Iowa 1982). The party seeking to set aside the contract bears the burden of proving by clear and convincing evidence the contracting party "did not possess sufficient consciousness or mentality when the contract ...were executed, to understand the import of [his] acts." Waitt Bros. Land, Inc. v. Montange, 257 N.W.2d 516, 521 (Iowa 1977)(quoting Costello v. Costello, 186 N.W.2d 651 (Iowa 1971)).

After evaluating the record we agree with the trial court that: "At the time of the sale Mr. Hebeler was able to understand in a reasonable way the nature of the contract and its effects upon his rights and interests." The record indicates that at the time of the sale Mr. Hebeler was an eighty-one-year-old man making rational decisions to best fill his personal needs.

The appellant failed to carry his burden of proving by clear and convincing evidence that Ralph Hebeler lacked sufficient understanding such that he was incompetent to contract with the appellees to sell his farm. Consequently, we affirm the trial court in all respects. Further, in accordance with paragraph 11(d) of the contract

at issue we order the Appellant to pay the Appellee's attorney fees of $2,972.54.

AFFIRMED.