IN THE COURT OF APPEALS OF IOWA

No. 6-528 / 95-1744

DAN SKINNER and
LESLIE SKINNER,
Plaintiffs-Appellees,

vs.

CHARLES SKINNER and
MARIAN SKINNER,
Defendants-Appellants.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

The defendants appeal from the district court's ruling determining that the plaintiffs as legal owners of property on which the defendants had a mobile home were entitled to possession of the property and directing the defendants' removal.

AFFIRMED.

Robert C. Oberbillig, Des Moines, for appellants.

Charles A. Coppola of Coppola, Sandre & McConville, P.C., Des Moines, for appellees.

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

STREIT, J.

The defendants appeal from the district court's ruling determining that the plaintiffs as legal owners of property on which the defendants had a mobile home were entitled to possession of the property and directing the defendants' removal. The defendants claim that they made substantial improvements to the property and own an equitable interest preventing their removal.

The plaintiff, Dan Skinner, is the son of the defendants, Charles and Marian Skinner. The other plaintiff, Leslie Skinner, is the wife of Dan. In 1986 or 1987, Dan permitted Charles and Marian to place a mobile home on property owned by Dan for use as their home. In January 1991, the parties entered into a rental agreement for the property. The lease expiration date was December 31, 1995. By agreement no rent was paid under the lease. On January 12, 1995, Dan served Charles and Marian with a notice to quit asserting they were wrongfully holding over.

In February 1995, Dan and Leslie commenced an action seeking the removal of Dan's parents from the property. After a trial, the district court entered a ruling on September 20, 1995, determining that Dan and Leslie as legal owners of the property were entitled to possession. The court determined that Charles and Marian did not have a written interest in the real estate and did not establish any oral agreement for their continued possession. The court also determined Charles and Marian had not proven they were entitled under the doctrines of equitable estoppel or constructive

trust to keep possession. On October 6, 1995, Charles and Marian filed a notice of appeal. They claim that the district court erred in determining that the defendants did not have a possessory interest in the real estate.

The issue is whether the defendants had an equitable interest in the property and, if they did, what type of equitable interest. Our review is de novo. Iowa R. App. P. 4.

Defendants argue the plaintiffs repeatedly stated they were providing the land as a place for the defendants to live and they would never have to move again. They claim there was part performance, equitable estoppel, and a constructive trust which give them a possessory interest in the land. They do not contend there was an agreement to convey any particular interest, but they did understand they would have a place to live for the rest of their lives.

I. Part Performance. The Defendant's contend their daughter, Janice, paid $7500 to the plaintiffs toward purchasing the land for them to live on. They claim this constituted part performance, taking the contract out of the statute of frauds.

The statute of frauds requires that contracts for the transfer of any interest in land must be in writing and signed by the party to be charged. Iowa Code § 622.32(3) (1997). The provisions of subsection three of section 633.32 do not apply where the purchase money, or any portion thereof, has been received by the vendor, or when the vendee, with the actual or implied consent of the vendor, has taken and held

possession of the premises under and by virtue of the contract, or when there is any other circumstance which, by the law heretofore in force, would have taken the case out of the statute of frauds. Iowa Code § 622.33 (1997). "Purchase money" has been defined to mean "consideration." *Recker v. Gustafson*, 279 N.W.2d 744, 749 (Iowa 1979).

Defendants argue the $7500 constituted purchase money, and thus removed them from the statute of frauds, giving way to an oral agreement allowing them to stay on the property until they die. They further claim they had possession of the property which under the same statute gives them an exception to the statute of frauds.

The reasoning behind this exception is that payment of the purchase price is considered a part performance of the contract. *In re Estate of Lindsey*, 254 Iowa 699, 711, 118 N.W.2d 598, 605 (1962). Any acts, conduct, or circumstance offered to show "part performance" must be referable exclusively and unequivocally to the contract. *Id.* Therefore, evidence of the payment of purchase money may remove a contract from the application of the statute of frauds if the payment follows the making of the contract. *Hawkeye Land Co. v. Iowa Power & Light Co.*, 497 N.W.2d 480, 485 (Iowa App. 1993).

Here, there was no substantial evidence which supports the finding a contract ever existed between the parties. Janice paid $7500 to plaintiffs shortly after the

defendant's moved their mobile home on the property, but there is no indication this payment was intended to be for her parents to live on the property until their death. Since we find no contract existed between the parties, section 622.33 does not apply. The district court correctly determined the defendants did not have an equitable interest in the property based on part performance.

II. Equitable Estoppel. The defendants claim equitable estoppel was established. They argue the plaintiffs knew the defendants were making substantial improvements to the land and their mobile home and they did not tell them to stop or explain to them their stay was not indefinite.

Equitable estoppel is a doctrine invoked to avoid injustice. *Bricker v. Maytag Co.*, 450 N.W.2d 839, 841 (Iowa 1990). The elements of equitable estoppel are:

> 1. A false representation or concealment of facts;
> 2. A lack of knowledge of the true facts on the part of the actor;
> 3. The intention that it be acted upon; and
> 4. Reliance thereon by the party to whom made, to his or her prejudice and injury.

Id.

Plaintiffs allowed the defendants to place their mobile home on the property owned by the plaintiffs. Pursuant to that authority, the mobile home was taken off its wheels and put it on cinder blocks. The defendants expended $49,000 toward transforming the mobile home into a home with a barn-type garage, and landscaping.

All these changes were made in the presence of the plaintiffs. The plaintiffs did not tell the defendants they should refrain from making such improvements.

Although defendants may have lacked the knowledge of the true beliefs on the part of plaintiffs and relied on that knowledge in making the improvements, there is no substantial evidence plaintiffs falsely represented to the defendants they could stay on the property until their deaths or concealed from them this fact. There is also no evidence plaintiffs intended the defendants would act on the lack of knowledge.

III. Constructive Trust. Finally, the defendants claim an equitable trust existed. The constructive trust remedy may be imposed where a defendant has profited inequitably at the expense of a plaintiff.

> A constructive trust is a remedial device by which the holder of a legal title is held to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest. It is an equitable doctrine applied for purposes of restitution to prevent unjust enrichment. There are three categories of constructive trusts: (1) those arising from actual fraud; (2) those arising from constructive fraud; and (3) those based on equitable principles other than fraud.

Neimann v. Butterfield, 551 N.W.2d 652,654 (Iowa App. 1996)(citations omitted). The party who seeks the imposition of a constructive trust must establish the right by clear, convincing, and satisfactory evidence. *In re Estate of Farrell*, 461 N.W.2d 360, 361 (Iowa App. 1990).

The defendants have failed to show there was any actual or constructive fraud on the part of plaintiffs. There is no showing plaintiffs will be unjustly enriched by

retaining the property which they own. If plaintiffs sell the land, there is no evidence they will profit through the efforts of the defendants. There is also no evidence of other circumstances supporting imposition of equitable principles.[1] We find, accordingly, there is no sufficient evidence in this case which supports the finding of the existence of a constructive trust by clear, convincing, and satisfactory evidence.

Plaintiffs provided the defendants with a place to put their mobile home for over seven years, free of rent. The defendants have helped the plaintiffs in return by preserving the land around the mobile home from eroding and making other improvements to the property. The plaintiffs paid off the mobile home mortgage and are not claiming any rights to the mobile home. The defendants have no possessory interest in the land entitling them to continue to stay living there without plaintiffs' authority.

We affirm the district court.

AFFIRMED.

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[1] Other circumstances include bad faith, duress, coercion, undue influence, abuse of confidence, or any form of unconscionable conduct or questionable means by which one obtains the legal right to property which they should not in equity and good conscience hold. *In Matter of Estate of Welch*, 534 N.W.2d 109, 111 (Iowa App. 1995) (citing 76 Am. Jur. 2d Trusts § 201 at 227-30 (1992)); *see also Loschen v. Clark*, 256 Iowa 413, 420-21, 127 N.W.2d 600, 603-04 (Iowa 1964) (holding although no fraud existed, a constructive trust was created when defendant, who held legal title to a farm repudiated an oral obligation to make monthly payments to plaintiff, who had furnished the purchase price of the farm).