IN THE COURT OF APPEALS OF IOWA

No. 1999-208 (9-432) / 98-1974
Filed October 27, 1999

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CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF DORIS F. CLARK, Deceased,

DANNY CLARK, REX CLARK, RICHARD CLARK, and MILDRED WHICKER, as Beneficiaries of the Estate of Doris P. Clark,
Plaintiffs-Appellants,

vs.

LARRY CLARK,
Defendant-Appellee.

Appeal from the Iowa District Court for Appanoose County, Daniel P. Wilson, Judge.

The plaintiffs appeal a district court's declaratory ruling on their motion for authority to file contract forfeiture. **AFFIRMED.**

Allan C. Orsborn and Bradley M. Grothe of Orsborn, Bauerle & Milani, L.L.P., Ottumwa, for appellants.

Daniel J. Jay, Centerville, for appellee.

Roger M. Griffing of Griffing Law Office, Centerville, for the estate.

Considered by Huitink, P.J., and Streit and Vaitheswaran, JJ.

STREIT, J.

A Clark family squabble erupted between siblings over a disputed balance on a real estate contract entered into by one of the siblings, Larry Clark, and their deceased mother, Doris Clark. The other siblings claimed Larry owed $8300 of the contract, while Larry claimed he owed only $3000. Based on the trial court's credibility findings and Doris Clark's statement on a bankruptcy petition stating only a $3000 interest in the property, we affirm.

I. Background Facts & Proceedings.

On April 12, 1989, Doris Clark entered into a real estate contract with her son, Larry, and his wife, Terri, for the purchase of the family farm. The total purchase price was $14,000 payable in $100 monthly installments. Doris initially kept receipt books tracking the monthly balance due on the contract. Each receipt stated the date of the payment, the amount received, and the remaining balance. The receipt books indicated fifty-seven payments by Larry and his wife. A number of miscalculations were also inadvertently entered.

Doris died on February 23, 1998. Her will appointed Richard Clark, Rex Clark, Danny Clark, Mildred Whicker, along with Larry, as coexecutors of the estate. On July 7, 1998, the estate filed a motion for authority to file a forfeiture of the real estate contract, alleging Larry and the remaining four coexecutors were in dispute over the amount due on the contract. The estate claimed Larry forfeited the contract

due to nonpayment. The four coexecutors maintained Larry owed $8300 on the contract.

At the hearing the four coexecutors offered Doris's receipt books and claimed the remaining contract balance as of September 1995 was $8300. They arrived at this amount by correcting Doris's miscalculations and assuming the fifty-seven payments reflected in the receipt books were the only payments made during the life of the contract. Larry and his wife testified all monthly payments were made since September 1995. They also offered Doris's sworn bankruptcy petition entered on August 30, 1996. Under penalty of perjury, Doris listed only a $3000 real estate interest in the farm. Larry and his wife argued the balance due was best evidenced by Doris's own statement and any discrepancy or missed payment was impliedly forgiven by such statement. The court admitted the bankruptcy petition into evidence as a statement against pecuniary interest under Iowa Rule of Evidence 804(b)(3).

The court concluded the remaining balance on the contract was $3000 based on Doris's statement during the bankruptcy proceeding. The court also concluded the receipt books were only partially accurate and could not be conclusively relied upon to indicate the correct balance. The court gave Larry credit for four $100 payments made in 1998 and ruled the remaining balance due was $2600. The court additionally ruled the contract was not in default as long as Larry continued to make the $100 payments and denied the authority to file a contract forfeiture. The four coexecutors

appeal claiming the evidence overwhelmingly supports a balance on the contract of $8300.

II. Standard of Review.

We review de novo cases tried in equity. Iowa R. App. P. 4. "In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them." Iowa R. App. P. 14(f)(7).

III. The Evidence Supports a Balance on the Contract of $2600.

In a familial battle where unsubstantiated, self-serving claims are volleyed at the opposing side, the trial court's credibility determination is crucial. We give deference to its findings because it has the opportunity to examine firsthand the demeanor of the parties and can better evaluate the quality of each witness's testimony. *See In re Marriage of Daniels*, 568 N.W.2d 51, 53 (Iowa App. 1997). In this case, neither claim is supported by terribly strong evidence, thus bolstering the need for the trial court's credibility findings. The trial court found Larry Clark's evidence more credible, and we agree. Yet this case does not turn on credibility findings alone, both parties involved in the execution of the real estate contract agree the balance due was $3000—Doris by way of her bankruptcy petition and Larry by way of his testimony. The four coexecutors could only offer Doris's receipt books. The receipt books alone cannot be relied upon as accurate when sworn testimony of both contractual parties refute the conclusions drawn from the books' entries. The credibility findings of the trial court as well as the testimonial evidence supports an

end balance of $2600 after substraction of the four recent $100 installments. The trial court is affirmed.

AFFIRMED.