



IN THE COURT OF APPEALS OF IOWA

LAWRENCE STEEGE, Conservator)
of the property of Elizabeth)
Timm, Lawrence Timm, and)
Elsie Timm,)

Filed June 30, 1978

Appellant,)

vs.)

JUSTIN UNDERWOOD and)
MARY JEAN UNDERWOOD,)

503
2-60331

Appellees.)

Appeal from Chickasaw District Court - Joseph C. Keefe, Judge.

Appeal by plaintiff conservator from trial court's refusal to set aside a conveyance of land on ground it was intended as security only. - Reversed and remanded.

Ralph F. McCartney, of McCartney and Erb, Charles City, for Appellant.

Michael K. Kennedy, of Kennedy & Kennedy, New Hampton, for Appellees.

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

PER CURIAM

Plaintiff conservator Lawrence Steege appeals the trial court's refusal to set aside a 1972 conveyance of land by the conservator's wards, the Timms, to the defendants, Justin and Mary Jean Underwood. On its face, the warranty deed appears to be an absolute conveyance of the wards' interest in exchange for \$18,000. However, the plaintiff alleged and the trial court found the wards intended the instrument to be a security interest, i.e. a mortgage, for a loan the wards believed defendant Justin Underwood had agreed to make them.

The trial court considered the general incompetency of the Timms, the lack of adequate legal representation at the time of the conveyance and the questionable consideration exchanged in finding plaintiff met his burden required to set the deed aside. However, the court found it would be completely inequitable to the defendants to set aside the deed and impose a lien in their favor for the purchase price and the improvements made since the contract date. Therefore, the trial court awarded a judgment in favor of plaintiff and against defendants for the difference between the fair market value at the time of the contract and the amount actually paid.

On appeal, plaintiff argues there was sufficient evidence to justify setting the deed aside, that it was properly a security interest, that money damages were inappropriate and that the trial court should have awarded a lien in favor of defendants for the value of the improvements. Alternatively, plaintiff argues if money damages were appropriate, the amount awarded was inadequate. Conversely, in their cross-appeal, defendants argue the consideration paid was not substantially disproportionate from the fair market value at the time of the conveyance thereby disputing the trial court's award of damages.

Our review of this equity matter is de novo. Rule 4, Rules of Appellate Procedure. When considering the credibility of witnesses, this court gives weight to the trial court's findings of fact, but is not bound by them. Rule 14(f)(7), R. App. P. And, written instruments affecting real estate may be set aside only upon evidence that is clear, satisfactory and convincing. Rule 14(f)(12), R. App. P.

A transfer of title absolute on its face, if intended as security only, will be construed as a mortgage. Intent may be shown by parol evidence. In order that a

construed as a mortgage. Intent may be shown by parol evidence. In order that a deed be held a mortgage, the evidence must be clear, satisfactory and convincing. *North v. Manning Trust & Sav. Bank*, 169 N.W.2d 780, 784 (Iowa 1969); *Koch v. Wasson*, 161 N.W.2d 173, 176 (Iowa 1968); *Collins v. Isaacson*, 261 Iowa 1236, 158 N.W.2d 14, 18 (1968). In *Sours v. Colvin*, 244 Iowa 40, 47, 55 N.W.2d 462 (1952), the supreme court stated that an individual's age, physical condition, tendency to be confused mentally at times and being without any independent legal or business advice, are factors to be considered when determining whether the transaction is at arms length or whether it should be set aside. Further, the burden is on defendant to show the entire fairness of the transaction. *Sours*, supra.

Our de novo review of the evidence establishes the trial court was correct in finding plaintiff had carried the burden required to set aside the deed when considering the general incompetency of the Timms, their lack of adequate legal representation and the questionable consideration paid. Similarly, this same evidence as well as the testimony of the various witnesses concerning the Timms' efforts to secure a loan, establishes the intent of the Timms in executing the deeds was the creation of a mortgage as security for the loan they thought they were receiving and not the absolute, outright sale of their property. See *Wilson v. Patrick*, 34 Iowa 362 (1872). The evidence that the deed should properly be held a mortgage is clear, satisfactory and convincing. *North*, supra.

The thrust of plaintiff's appeal is that the trial court erred in granting money damages and instead should have imposed a lien in favor of defendants for the value of the improvements they made to the property. In the alternative, plaintiff argues the damages should have been greater. In his petition, plaintiff asked for cancellation, reasonable rents and such other relief as the court deemed just and equitable under the circumstances.

In *Wagner v. Securities Co.*, 226 Iowa 568, 573, 284 N.W. 461, 463 (1939) the supreme court stated:

While under such a general prayer the court cannot grant relief or make a decree not justified by the facts pleaded, yet relief may be granted different and in addition to that asked in the prayer, if warranted by the facts pleaded. In an action in equity a money judgment may be given under a prayer for general relief even though no specific demand is made therefor. In fact under a prayer for general equitable relief, a party is entitled to any relief in line with the allegations of the petition and sustained by the proof.

Our only inquiry is whether plaintiff was entitled to the relief he claims or whether the money damages awarded are inadequate.

Our review of the record indicates the trial court erred in finding it would be completely inequitable to set aside the deed and impose a lien in favor of defendants for the monies advanced and for the improvements made since the contract date. The Timms never intended to sell the land to defendants; they thought the instruments they executed were security for a loan. Their mental stability and competency is doubtful and their legal understanding and representation at the time of the transaction is highly questionable. Although defendants have expended great amounts of time, effort as well as money in making the property capable of sustaining modern farming practices, the equities are on the side of plaintiff's wards.

Accordingly, the decree of the trial court is reversed so far as the judgment in favor of plaintiff is concerned. Judgment is entered in favor of plaintiff on its petition to set aside the deed and defendants shall execute all documents necessary to restore title to the farm to the Timms through plaintiff. However, the evidence of the value of the improvements provided by defendants is inadequate for this court to determine the value of the lien to which they are entitled.

This action is remanded to the trial court for a determination of the value of the improvements made to the property taking into consideration the value of defendants' labor and the materials provided together with interest since 1972. Defendants are also entitled to a credit for any real estate taxes paid and any insurance premiums expended over the same period. Finally, defendants shall have credit for the amount of the loan given to plaintiff's wards together with the appropriate interest rate applicable in 1972 from the date of the transaction to the date of the trial court's decree on remand determining the value of defendants' liens. At the same time, the trial court shall determine the fair rental value of the property during the period it was occupied by defendants taking into consideration the appropriate condition of the land and set off the amount so determined against the value of defendants' lien.

Defendants' lien shall attach from the date this decree is entered and shall be

satisfied within 90 days of entry. If defendants' lien is not satisfied within 90 days, it shall be subject to foreclosure in accordance with the laws governing foreclosure of mortgages. Because of the result reached herein, we need not consider the issues raised by the defendants on their cross-appeal.