FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

DENNIS AND CHARLENE BEHRENS,	)	
Plaintiffs-Appellants,	)	Filed February 26, 1985
vs.	)	
JAMES AND BARBARA GINN, and GARY AND DONA DEVOL,	)	4-525 84-390
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Scott County - J. L. Burns, Judge.

Plaintiffs appeal from an adverse decision of the trial court in a suit to reform a real estate contract. AFFIRMED.

Jack E. Dusthimer of Goebel & Koury, Davenport, Iowa, for plaintiffs-appellants.

Michael T. Pracht, Davenport, Iowa, for defendants-appellees Ginns.

Marc Gellerman of Gellerman & Bribriesco, Bettendorf, Iowa, for defendants- appellees DeVols.

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

Plaintiffs appeal from an adverse decision of the trial court in a suit to reform a real estate contract.

Defendants James and Barbara Ginn made a written offer to purchase real estate owned by plaintiffs, Dennis and Charlene Behrens, on September 17, 1979. On the printed offer form the following language was written in the space provided for payment terms:

> Additional cash at closing of 3,900.00 and the balance to be paid on contract with monthly payments of 274.42 at 10-1/2% interest for 30 years. Balance to be paid in full 3 years closing date or before . . . .

The installment contract of sale executed on October 8, 1979, provides for monthly payments of $280.00 and an interest rate of eleven percent. The contract contains no provision for a balloon payment at the end of three years. It does contain a provision allowing the sellers to declare a forfeiture if the buyers default.

On October 15, 1981, the Ginns entered into an installment contract selling the property to defendants Gary and Dona DeVol. That agreement contains no provision for a balloon payment.

Plaintiffs filed a petition to have their real estate contract with the Ginns reformed to include the provision requiring full payment within three years. Plaintiffs contend that the omission of that requirement from the contract was due to a mutual mistake.

At trial the defendants objected to admission of evidence concerning the offer to purchase and negotiations leading up to the execution of the contract as violative of the parol evidence rule. The trial court allowed the evidence subject to the objection. In ruling against plaintiffs the trial court stated that such extrinsic evidence was inadmissible to vary or add to the final written agreement. In denying plaintiffs' motion for a new trial, the trial court reversed its position

and admitted the extrinsic evidence. However, after considering the evidence the court concluded plaintiffs had not met their burden of showing a mutual mistake.

Our review of this proceeding in equity is de novo. Iowa R. App. P. 4. Although we are not bound by the findings of the trial court, we do give weight to them, especially where the credibility of witnesses is concerned. Iowa R. App. P. 14(f)(7).

Reformation is an equitable remedy invoked not to change an agreement of the parties, but to change the instrument to reflect the real agreement between the parties. Kufer v. Carson, 230 N.W.2d 500, 503 (Iowa 1975). Generally, a writing may only be reformed on the grounds of fraud or duress, mutual mistake of fact, mistake of law, or mistake of one party and fraud or inequitable conduct on the part of the other. Id. at 504. See also Iowa R. App. P. 14(f)(11). However, equity will grant relief if a writing fails to express the true agreement between the parties regardless of the reason. Kufer, 230 N.W.2d at 504. Reformation lies within the discretion of the equity court. Id. "Facts and circumstances must be sufficiently compelling to constitute an effectual appeal to the conscience of the court and prompt it to interfere by reformation to mitigate the rigorous rules of law." Id. The burden is on the party seeking reformation to establish his contention by clear, satisfactory, and convincing proof. Id. at 503. Iowa R. App. P 14(f)(11).

Although parol evidence is usually inadmissible to contradict, vary, or enlarge the terms of a written contract, such evidence is admissible in actions for the reformation of instruments if it is relevant and material. Skubal v. Meeker, 279 N.W.2d 23, 27 (Iowa 1979). See also Montgomery Properties v. Economy Forms, 305 N.W.2d 470, 474 (Iowa 1981). The extrinsic evidence offered by plaintiffs at trial was relevant and material to the issue of whether there was a mutual mistake in the preparation of the contract; therefore, the trial court in its ruling on plaintiffs' motion for new trial properly considered the evidence.

The evidence relied upon by plaintiffs, however, is not conclusive. The offer to purchase is ambiguous at best since in one sentence it refers to the balance of the contract being paid off in thirty years and in another sentence it states the balance of the contract must be paid in full within three years. There is no indication in the offer or in the record of the hearing that the balloon payment was due only in the event of resale of the property. James Ginn testified that this was the first purchase of real property he had ever made, that he did not understand all of the details, and that he relied upon his realtor and attorney. He stated he intended to sign a contract to pay $30,000 over a thirty-year period. Furthermore, there is other evidence that the Ginns did not agree to a balloon payment. Gary DeVol testified that he and his wife agreed to make their payment to the Ginns by the fifteenth of the month because the Ginns' payment to the Behrens was due by the first. However, the contract between the Ginns and the DeVols contains no provision for a balloon payment. It is unlikely that the Ginns would have omitted this provision from the contract with the DeVols had they understood it to be part of their agreement with the Behrens.

We agree with the trial court's decision that plaintiffs have not met their burden of showing a mutual mistake by clear and convincing evidence. All of the defendants were current in their payments. Reformation would not be equitable.

AFFIRMED.