FILED
FEB 21 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

345

HOWARD KING, By His Conservator, **ROBERT J. TODD**,

Plaintiff-Appellant,

vs.

ROYCE KING, a/k/a **ROYCE V. KING**, and **JUDITH A. KING**,

Defendants-Appellees,

and

DANVILLE STATE SAVINGS BANK, Danville, Iowa,

Defendant.

Filed February 21, 1984

3-437
83-652

Appeal from the Iowa District Court for Des Moines County - D. B. Hendrickson, Judge.

Plaintiff appeals from a judgment of the trial court dismissing his petition for breach of contract. AFFIRMED.

David A. Hirsch and Robert J. Todd of the Edward W. Dailey Law Offices, P.C., Burlington, Iowa, for plaintiff-appellant.

James M. Adams and William J. Cahill of Hirsch, Link, Adams, Hoth & Krekel, Burlington, Iowa, for defendants-appellees.

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

HAYDEN, J.

Plaintiff appeals from a judgment of the trial court dismissing his petition for breach of contract. We affirm.

In 1967 plaintiff, Howard King, and his wife, June, were experiencing financial problems. They were told by a bank officer that they could not obtain a mortgage on their farm. In order to secure additional financing, they transferred the 129-acre farm to Orrin Bailey, plaintiff's father-in-law for consideration of one dollar. Bailey mortgaged the property for $20,000. Three days later Bailey conveyed the property to Howard and June's son, Royce King, the defendant in this case. Royce paid no consideration for the farm, but took it with the understanding that he would assume the $20,000 mortgage and provide Howard and June with a home for the rest of their lives.

During this time Howard was having emotional problems. He and June were subsequently divorced. In 1978 Howard brought suit to recover the farm on a constructive trust theory. The supreme court rejected the constructive trust argument and held that Royce owned the farm. King v. King, 291 N.W.2d 22 (Iowa 1980).

Royce paid the taxes on the property and allowed Howard to live in the house from 1967 until 1981. In 1981 the house burned. There was no insurance on the house at the time of the loss. Royce had paid insurance premiums until 1979 when the insurer cancelled the policy following a barn fire. Royce testified that he discussed insurance with two companies and was told that any insurance he could get would be high risk and quite expensive.

Howard's claim in the present suit is that Royce's refusal to provide him with a place to live violates the oral agreement between Royce and Bailey of which Howard is a third-party beneficiary. His prayer is for damages in the amount of the fair rental value of the house times his life expectancy reduced to its present value.

The trial court found that there was an oral agreement between Royce and Bailey. However, the court concluded that it was not the intent of the parties that Royce furnish any house, but rather that he allow Howard to live in the family farmhouse. The court concluded that since the particular house which was the subject matter of the agreement burned, Royce was relieved of any further obligation under the doctrine of impossibility of performance.

We review this law action on assigned errors. Iowa R. App. P. 4. We view the evidence in the light most favorable to the judgment. Findings of fact by the trial court have the effect of a special verdict and are binding on us if supported by substantial evidence. However, we are not bound by the trial court's interpretation of the law. Nora Springs Cooperative Co. v. Brandau, 247 N.W.2d 744, 747 (Iowa 1976).

Howard challenges the trial court finding that the intent of the parties to the agreement was to allow him to live in the specific house which burned. He insists that the parties primarily intended to assure him a place to live and just assumed that the farmhouse was the logical place for him to be. Although the evidence is conflicting, the trial court decree lists numerous pieces of evidence upon which the finding is based. We conclude that there is substantial evidence supporting the finding, which is, therefore, binding upon this court.

The next question is what obligation Royce owes once the house is destroyed. Restatement (Second) of Contracts section 261 provides:

> Where, after a contract is made, a party's performance is made impracticable without his fault and by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicated to the contrary.

The doctrine of impossibility of performance is recognized in Iowa. Yager v. Farmers' Mutual Telephone Co., 323 N.W.2d 245, 249 (Iowa 1982); Associated Grocers of Iowa Cooperative, Inc. v. West, 297 N.W.2d 103, 108 (Iowa 1980); Nora

Springs Cooperative Co. v. Brandau, 247 N.W.2d 744, 747 (Iowa 1976). One of the classic cases of impossibility exists where the subject matter of the contract is destroyed. Restatement (Second) of Contracts section 263 states:

> If the existence of a specific thing is necessary for the performance of a duty, its failure to come into existence, destruction, or such deterioration as makes performance impracticable is an event the non-occurrence of which was a basic assumption on which the contract was made.

Since we are bound by the trial court's finding that this specific house was contemplated by the parties, we conclude that the destruction of this house discharged Royce from any further liability under the agreement.

AFFIRMED.