



166

IN THE COURT OF APPEALS OF IOWA

FLOYD CALLISON and
LLOYD CALLISON,

Plaintiffs-Appellants,

vs.

FLORIS M. HART,

Defendant-Appellee.

Filed June 28, 1979

128
2-62235

Appeal from Wapello District Court - Charles N. Pettit, Judge.

Plaintiffs appeal trial court's dismissal of action to set aside deed conveying certain real property to defendant. Affirmed.

John N. Moreland, of Ottumwa, for appellants.

D. W. Harris, of Bloomfield, for appellee.

Submitted to Oxberger, C. J., Donielson, Snell, Carter and Johnson, JJ.

DONIELSON, J.

Plaintiffs appeal from trial court's dismissal of their action in equity to set aside a quit claim deed executed by their mother, Wanda S. Hart, ten months before her death conveying her house in Eldon, Iowa, to her daughter, plaintiffs' sister, Floris M. Hart. Plaintiffs assert that there was clear and convincing evidence to show Wanda Hart was incompetent at the time she signed the deed, and that the transfer was fraudulent and procured as a result of defendant's violation of a confidential relationship with her mother.

The trial court found that plaintiffs had not met their burden of proof as to either issue. Our review is *de novo*, although we give weight to the trial court's findings, for it saw and heard the witnesses. Kunz v. Kunz, 255 Iowa 1087, 1089, 125 N.W.2d 226, 228 (1963); Groves v. Groves, 248 Iowa 682, 692, 82 N.W.2d 124, 131 (1957). We affirm.

I. Competence to convey property. Upon the whole record, we agree with the trial court that plaintiffs have failed to show by clear, satisfactory and convincing evidence that Wanda Hart was so mentally incompetent at the time she executed the deed that she did not understand in any reasonable manner the nature of what she was doing and the consequences and effects upon her rights and interests. Oehler v. Hoffman, 253 Iowa 631, 640, 113 N.W.2d 254, 260 (1962); Else v. Fremont Methodist Church, 247 Iowa 127, 148, 73 N.W.2d 50, 62 (1955).

The evidence disclosed that Wanda suffered a heart attack on February 25, 1974 and was hospitalized in the intensive care unit of St. Joseph Hospital in Ottumwa until March 11, 1974. During the night of March 4, Wanda was confused and disoriented as a result of side-effects she was experiencing from several medications she was receiving. The nurses' notes contained in the hospital records indicate that Wanda thought she was in a log cabin, and thought she saw a rat in another patient's bed. By 7:00 a.m., Wanda was more oriented and was aware that she had been confused during the night. Later in the morning she was sitting up in a chair, and while visiting with Floris prior to executing the deed, laughed about her earlier confusion.

The notary public who witnessed Wanda's signature had no specific recollection of the incident, but as a hospital official, was often asked to notarize patients' signatures. He indicated it was his practice to satisfy himself before proceeding that a patient was

lucid and competent. After the deed was executed, Wanda told her granddaughter that she had signed the house over to Floris on the understanding that Floris would take care of her for the rest of her life. We find that at the time Wanda Hart executed the deed, she was possessed of such mental capacity as enabled her, in law, to effect the transaction. Stephenson v. Stephenson, 247 Iowa 785, 792, 74 N.W.2d 679, 683 (1956).

II. Confidential relationship. A confidential or fiduciary relationship may be said to exist when one person has gained the confidence of another and purports to act or advise with the other's interest in mind. Kunz, 255 Iowa at 1096, 125 N.W.2d at 231. The evidence adduced at trial shows a close family relationship between Wanda and Floris, but a confidential relationship does not arise solely from a blood or family relationship. While assumptions are permissible in cases where a parent is old, feeble, physically handicapped or mentally weak, transactions are not considered fraudulent, or induced by duress merely because they are between parent and child. Kunz, 255 Iowa at 1096, 125 N.W.2d at 231; Burns v. Nemo, 252 Iowa 306, 312, 105 N.W.2d 217, 220 (1960). Wanda was an active and alert 74-year-old woman. There is nothing in the record to indicate that she relied or depended upon her daughter for advice or to conduct her business. Wanda was able to and did independently consult her own lawyer and real estate agent, and she made the decision to sell the house after her release from the hospital without the knowledge of Floris. There was testimony that Wanda was upset about the transaction after her release from the hospital, and that she thought she had signed something other than a deed. Wanda lived for ten months after the deed was executed, however, and she brought no action to recover the property. There is no evidence of a confrontation between Wanda and Floris. When Wanda initiated the sale of the property, she demanded and received Floris' signature on the listing agreement. There is no evidence that Floris was the dominant person in a confidential relationship with her mother, and no evidence of actual fraud or undue influence to warrant setting aside the deed from Wanda to Floris. Groves, 248 Iowa at 694, 82 N.W.2d at 131. The decision of the trial court is affirmed.

AFFIRMED.