FILED
DEC 27 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HOWARD KING and JUNE V. KING,	)	
Plaintiffs-Appellants,	)	Filed December 27, 1979
vs.	)	
ROYCE KING, also known as ROYCE V. KING, and JUDITH A. KING,	)	182 2-61972
Defendants-Appellees.	)	

Appeal from Des Moines District Court - D. B. Hendrickson, Judge.

Plaintiffs appeal trial court's directed verdict in favor of defendants on action to quiet title in land claimed to be held in trust by defendants for plaintiffs. Reversed and Remanded.

Edward W. Dailey of Edward W. Dailey Law Offices, P.C., Burlington, for plaintiffs-appellants.

James M. Adams of Hirsch, Link, Adams, Hoth & Krekel, Burlington, for defendants-appellees.

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

DONIELSON, J.

Plaintiffs, Howard and June King, appeal trial court's directed verdict in favor of defendants, Royce and Judith King. On appeal, plaintiffs contend the trial court erred in sustaining defendant's deadman statute objection and not establishing a trust of some type on the farm owned by the defendants. We reverse and remand for entry of a decree in accordance with our decision.

Our review of this equitable proceeding is de novo. Davidson v. Van Lengen, 266 N.W.2d 436, 438 (Iowa 1978); Iowa R. App. P. 4. We give weight to the findings of fact of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

I.

On February 28, 1959, plaintiffs purchased the farm in question for $30,000 with the aid of a $9,700 bank loan. Prior to 1966, Howard King incurred a $15,000 second mortgage debt on the farm. On January 20, 1967, the plaintiffs, unable to meet the monthly mortgage payments, transferred their farm to June King's father, Orrin Bailey, for at most $1 consideration to allow him to obtain additional money to make these payments by mortgaging the farm. The deed conveyed title in fee simple absolute. The appraised value of the farm when transferred was $42,000. Later that day, Bailey incurred a $20,000 mortgage debt on the farm and paid plaintiffs' indebtedness on their first and second mortgage. Bailey told the plaintiffs all of the farm's income would be applied to pay the debt and they would receive no income from the farm until the debt was paid.

On January 23, 1967, Bailey conveyed, without receiving any consideration, the farm to defendant, Royce King, his grandson. The deed conveyed title in fee simple absolute. In return for the title to the farm, Royce King agreed to provide a home for the plaintiffs rent-free for the rest of their lives and assume responsibility for the repayment of the mortgage obtained by Bailey. Approximately six years after this transfer Orrin Bailey died. Defendants have allowed the plaintiffs to live in the farm house rent free and have fully repaid the mortgage obtained by Orrin Bailey.

Since the time the Bailey mortgage debt was repaid, the plaintiffs have demanded the defendants transfer the farm back to them. The defendants contend the farm is theirs and refuse to transfer it. On January 19, 1977, plaintiffs commenced this action to compel defendants to convey the farm back to them or, in the alternative, to have

defendants declared to be trustees of the farm for the benefit of the plaintiffs. The trial court granted defendants a directed verdict at the close of plaintiffs' case, although defendants had moved to dismiss. We will treat the motion made by the defendants in this equity proceeding as a motion to dismiss.

II.

A motion to dismiss admits all well-pleaded facts in the petition and introduced by plaintiff at trial for testing their legal sufficiency to determine whether the motion should be granted. Sitzler v. Peck, 162 N.W.2d 449, 452 (Iowa 1968); Thompson v. Burke Engineering Sales Co., 252 Iowa 146, 148, 106 N.W.2d 351, 353 (1960). The movant is considered to have admitted the truth of all evidence offered by the other party and every favorable inference that may be fairly and reasonably deduced from it for this purpose. Sitzler, 162 N.W.2d at 452. If there has been offered substantial evidence in support of each element of plaintiffs' cause of action, the motion should be overruled. Id. Once, however, the case reaches the appellate level, the scope of review is determined by Iowa R. App. P. 4; in this equitable proceeding our review is de novo. Id; see Coen & Conway v. Scott County Savings Bank, 205 Iowa 483, 486-87, 218 N.W. 325, 326-27 (1928).

Plaintiffs contend the evidence they introduced at trial concerning the 1967 land transfer to defendants established defendants were holding the farm in either a constructive, express, or resulting trust for plaintiffs, and defendants should not have received a directed verdict at the close of plaintiffs' evidence. We conclude that neither an express or resulting trust were made out; however, we agree a constructive trust was established.

The evidence plaintiffs presented is insufficient to support the establishment of an express trust. Section 557.10, The Code 1977, and the prior code sections from which it was derived require an express trust in real estate be created by a written instrument. McBain v. Sorensen, 236 Iowa 996, 1003, 20 N.W.2d 449, 453 (1945); Hoon v. Hoon, 126 Iowa 391, 393, 102 N.W. 105, 105 (1905). Since the plaintiffs presented no evidence establishing the existence of a written trust agreement, we affirm the trial court's finding that no express trust was created.

In the alternative, the plaintiffs contend that even if no express trust was created by the parties, the court should establish a resulting trust for their benefit. Generally,

there are two types of resulting trusts. One type is where a purchase has been made and the legal estate is conveyed or transferred to one person but the purchase price is paid by another person. The other type is a gift by deed or will to a donee or grantee without pecuniary consideration coming from the grantee but the intent of the instrument is that the legal and beneficial estates are to be separated and the donee or grantee is either to enjoy no beneficial interest or only part of it. Shaw v. Addison, 239 Iowa 377, 383-84, 28 N.W.2d 816, 820 (1947); Westcott v. Westcott, 259 N.W.2d 545, 547 (Iowa Ct. App. 1977). Clearly, the first type of resulting trust is not applicable to this case because plaintiffs do not contend they paid consideration for the farm. The second type of resulting trust is also not applicable because the facts establish the deed transferring the land conveyed title in fee simple. The deed does not show any intention to separate the legal and equitable estates. Hence the type of writing required to find the second type of resulting trust is not present. We must, therefore, affirm the trial court's finding that no resulting trust was created.

Plaintiffs' final argument is that even if no express trust was established by the parties and the court does not find that a resulting trust should be established, the court should establish a constructive trust in their favor because the defendants are not entitled in good conscience to the beneficial interest in the farm. Westcott, 259 N.W.2d at 547. Equity may require the establishment of a constructive trust if a person comes to repose trust in another so that the other has influence over such person, and the two are not at arm's length. First National Bank in Sioux City v. Curran, 206 N.W.2d 317, 321 (Iowa 1973); Curtis v. Armagast, 158 Iowa 507, 520-521, 138 N.W. 873, 878 (1912). This relationship of confidence is present when one person gains the complete confidence of another, purports to act with only the interest of the other party in mind, and discards any selfish advantage for himself. Burns v. Nemo, 252 Iowa 306, 311, 105 N.W.2d 217, 220 (1960).

The evidence presented by the plaintiffs establishes a confidential relationship among the plaintiffs and Orrin Bailey. The record indicates Howard King was in a state of manic depression when he entered into the transaction. The record also indicates Orrin Bailey, Howard's father-in-law, acted as patriarch of the family and had Howard and June's complete confidence. They believed the only reason he suggested the farm

be transferred to him was to allow him to obtain a loan to repay the prior mortgages on the farm, thus preventing the plaintiffs from losing their farm. Orrin Bailey did not intend to gain anything by having the farm transferred to him, nor did he gain anything from the transfer. Bailey paid nothing for the farm, nor did he charge Royce King anything when he transferred the farm to him. Under the circumstances here, Bailey could convey no greater title than he possessed. See Ross v. Ross, 256 Iowa 326, 336, 126 N.W.2d 369, 375 (1969). King having paid nothing for the farm stands in no better position than Bailey. Stout v. Stout, 165 Iowa 552, 559-60, 146 N.W. 475, 476 (1914). We find the evidence presented by plaintiffs at trial established a confidential relationship among the parties by a preponderance of the evidence.

Defendants by moving to dismiss rested their rights on the plaintiffs' evidence and lost any opportunity to prove affirmatively any defense; we are required to determine the merits of the case de novo on the record so made. Sitzler, 162 N.W.2d at 452; Coen & Conway, 205 Iowa at 486-87, 218 N.W. at 327; Dolan v. Newberry, 200 Iowa 511, 518, 202 N.W.2d 545, 548 (1925); Brewster v. Brewster, 194 Iowa 803, 808, 188 N.W. 672, 674-75 (1922). On this record, we hold that the defendants because of their confidential relationship with the plaintiffs were holding the farm in constructive trust for the plaintiffs.

The legal title to the farm shall be reconveyed to the plaintiffs in fee simple absolute. Swearingen v. Neff, 204 Iowa 1167, 1169, 216 N.W. 621, 622 (1928); see Bogert, Trusts and Trustees § 472, at 60-64 (1978). The plaintiffs are also entitled to an accounting so that they may recover any profits defendants made when they sold a portion of the farm or may have made by operating the farm; in the accounting the court should compensate defendants for mortgage payments made from their own funds. See generally Beatty v. Armstrong, 247 Iowa 302, 313, 73 N.W.2d 719, 726 (1956); Howes v. Sutton, 221 Iowa 1326, 1332, 268 N.W. 164, 167 (1936). Appropriate credit should be given for the rent plaintiffs were not required to pay. We, therefore, reverse the decision of the trial court and remand this case to the trial court for entry of a decree in accordance with our decision.

Due to our disposition of this case, we do not decide whether the dead man's objection was timely and properly made as we have ignored the disputed testimony in our consideration.

REVERSED AND REMANDED.

Oxberger, C. J., and Carter, J., dissent.

CARTER, J. (dissenting)

I dissent. It would seem to be established that an appellate court, in an equity matter, may affirm the trial court's dismissal on the basis of insufficiency of plaintiff's evidence to satisfy the finder of fact that plaintiff should recover. Coen & Conway v. Scott County Sav. Bank, 205 Iowa 483, 486-87, 218 N.W. 325, 326-27 (1928). If we treat the present case in this manner, I submit that the result reached by the trial court correctly determined the merits of the case under the evidence.

The deeds from plaintiffs to Orrin Bailey and from Bailey to Royce King are fair on their face. This circumstance brings this case within the rule that written instruments affecting real estate may be set aside only upon evidence that is clear, satisfactory and convincing. Iowa R. App. P. 14(f)(12); McCarter v. Uban, 166 N.W.2d 910, 912 (Iowa 1969). I submit that plaintiffs' evidence falls considerably short of meeting this test.

Even assuming that a confidential relationship existed between plaintiffs and Orrin Bailey, the record contains a full explanation for the challenged transactions which justifies the fairness of the transactions as to all parties involved. Fairness, after all, must be measured by what the parties voluntarily agreed to do. The fact that the transfer from Orrin Bailey to Royce King came so soon on the heels of plaintiffs' conveyance to Bailey, is strongly indicative that this disposition was intended from the beginning. Plaintiffs' claims that they were unaware that the farm was to go to Royce are unconvincing. They waited many years and until after Orrin Bailey died and Royce fully repaid the mortgage before laying claim to the beneficial interest in the farm.

The circumstances surrounding these transactions and the parties' subsequent conduct with respect thereto, support a finding that plaintiffs wanted to relieve themselves from the burdens of this farm, including the financial burdens incident thereto. Orrin Bailey, father of plaintiff June King, agreed to assist with much needed refinancing in order to save the farm from foreclosure. As part of said transaction, the farm was conveyed to Royce. Royce, in turn, was to pay off the new mortgage and provide his parents a home for the rest of their lives. He has fulfilled his part of this bargain.

Because of the relationship which exists between the parties, the fact that plaintiffs, at the time they conveyed the farm, did not receive the value of their equity

therein, is of far less significance than if the transaction were between strangers. Plaintiffs did, after all, receive from the transaction the assurance that they would be provided a home for the rest of their lives. The transaction, as thus characterized, is not unfair and is supported by adequate consideration. I would find from the evidence that the challenged transactions were fully consented to by plaintiffs. The fact that plaintiff Howard King is alleged to have been emotionally unstable at the time of the transaction only serves to strengthen the conclusions reached in this dissent. It furnishes an explanation for placing both the farm and the obligation to pay for it in Royce and to remove such burdens from the plaintiffs.

Lastly, I must note that even if the plaintiffs do have a right to avoid the conveyances to Orrin Bailey and Royce King, a conclusion which I cannot accept, Royce should not be required to account for income he received from the farm prior to the time plaintiffs demanded possession. I would affirm the judgment of the trial court.

Oxberger, C.J., joins in this dissent.