IN THE COURT OF APPEALS OF IOWA

SANDRA HOLLERBACH and DOROTHY FLOTT, Conservators of Fern Shaw,

Plaintiffs-Appellants,

vs.

FRED L. SHAW AND DIANE E. SHAW, Husband and Wife, and THE FEDERAL LAND BANK OF OMAHA, A Corporation,

Defendants-Appellees.

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Appeal from Cass District Court - E. F. Hanson, Judge.

Plaintiffs appeal from judgment for defendants in an action to set aside a real estate contract and warranty deed, under which defendants acquired certain real estate from the ward, claiming that the ward was incompetent to enter into the transaction, that the contract and deed were procured through defendants' undue influence arising from a confidential relationship between them and the ward, and that the contract price was unreasonably low. AFFIRMED IN PART; REVERSED AND REMANDED IN PART.

Raymond E. Pogge of Pogge, Root & Steege, Council Bluffs, Iowa, for plaintiffs-appellants.

Ronald W. Feilmeyer of Cambridge, Feilmeyer, Landsness, Rutherford & Chase, Atlantic, Iowa, for defendants-appellees.

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

PER CURIAM

Plaintiffs, conservators of the ward's estate, appeal from judgment for defendants in this action to set aside a real estate contract and warranty deed under which defendants, son and daughter-in-law of the ward, acquired certain real estate from the ward. Plaintiffs claim that the ward was incompetent to enter into the transaction, that the contract and deed were procured through defendants' undue influence arising from a confidential relationship between them and the ward, and that the contract price was unreasonably low. We affirm the judgment of the trial court in part and reverse in part.

Plaintiffs, Sandra Hollerbach and Dorothy Flott, received their letters of appointment as conservators of the estate of Fern Shaw, their mother, on May 18, 1978. On the same day they filed a petition in equity stating that on February 10, 1971, Fern executed a real estate contract in which she agreed to sell her 240 acres of farm land to defendants, Fred and Diane Shaw (her son and daughter-in-law), for $92,000, or approximately $380 per acre. Plaintiffs alleged that Fern was incompetent and of unstable mind at that time and that the contract was procured through defendants' undue influence and misrepresentations. Fern also was alleged to be incompetent on June 5, 1974 when she executed a warranty deed transferring title to the 240 acres to defendants.[1] Defendants' answer, filed on May 25, 1978, denied plaintiffs' allegations and further stated that their claims were barred by laches, estoppel, waiver and the statute of limitations (although no reference to any specific statute was made).

Trial to the court was held November 20-21, 1979. In its decree, dated December 28, 1979, the court found that the contract sale price was reasonable and that Fern was competent when she signed the contract, understanding its nature and terms. The court also found that Fern understood the nature and terms of the 1974 warranty deed and that there was no credible evidence to support a finding of undue influence. Trial court therefore entered judgment in favor of defendants and quieted title to the farm land in them. Plaintiffs' appeal followed.

I. Standard of Review. Since this petition was filed in equity, our review is **de novo.** Iowa R. App. P. 4.

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[1] The petition also named as a defendant the Federal Land Bank of Omaha, owner of a mortgage on the farm land given by defendants in return for a $100,000 loan. On October 15, 1979, the trial court granted the Bank's motion for summary judgment; plaintiff's petition as to the Bank was dismissed. That order was not appealed.

II. Existence of Confidential Relationship. Plaintiffs claim trial court erred in finding that Fern was competent to execute the contract and the deed and that defendants did not use undue influence to procure the same. Normally, the burden of proving undue influence and incompetence is on those who make such allegations; here, plaintiffs. See Wait Brothers Land, Inc. v. Montange, 257 N.W.2d 516, 521 (Iowa 1977); In re Koch's Estates, 258 Iowa 1251, 1255, 142 N.W.2d 541, 544 (1966). However, if plaintiffs prove that a confidential relationship existed between Fern and the defendants when the contract and deed were executed, the burden then shifts to defendants to prove the absence of undue influence. The rule is stated as follows in 26A C.J.S. Deeds § 190 (1956) at page 31:

> The relationship of the parties or the circumstances surrounding the execution of the deed may be such as to throw on the grantee the burden of showing that the grantor knew and understood the character and effect of the instrument, to show the fairness of the transaction, or that the conveyance was not procured by fraud, artifice, or other undue means.

See also Jacobson v. Byrd, 185 Iowa 1107, 1110, 71 N.W. 595, 596 (1919); Fitch v. Reiser, 79 Iowa 34, 40, 44 N.W. 214, 215 (1890). Where a confidential relation is shown to exist, a presumption of fraud or invalidity will attach when it appears that a transaction between the parties results in an advantage to the dominant party at the expense of the weaker party. Matter of Estate of Herm, 284 N.W.2d 191, 200 (Iowa 1979); Vorse v. Vorse, 186 Iowa 1091, 1100, 171 N.W. 186, 189 (1919). To overcome this presumption, the dominant party must provide clear, satisfactory and convincing evidence that the advantage was procured without undue influence. Estate of Herm, 284 N.W.2d at 200; Moorhead v. Miller, 171 N.W.2d 295 (Iowa 1969).

The elements comprising a confidential relationship were summarized in Utterback v. Hollingsworth, 208 Iowa 300, 302-03, 225 N.W. 419, 421 (1929):

> The relationship must be such as to enable the one charged with having abused it to have exercised it to his advantage. It must appear expressly or by implication that trust or confidence was reposed. The supposed trustee must be shown to have been in a position of advantage or superiority such as to imply a dominating influence over the cestui.

Although the mere fact that a blood relationship exists between the parties involved does not in itself create a confidential relationship, Jensen v. Phippen, 225 Iowa 302, 303, 280 N.W. 528, 529 (1938), the latter relationship is particularly likely to exist where family members are involved. Merritt v. Easterly, 226 Iowa 514, 518, 284 N.W. 397, 399 (1939).

With these principles in mind, we examine the record to determine whether a confidential relationship was in fact established between Fern and the defendants. There is much evidence that Fern placed a great deal of reliance on and was in some degree intimidated by the defendants. Fern was worried about financial problems and how she was going to manage the farm following her husband's death in 1964. Fred apparently took over the farming operation after his father's death. Stanley, Fern's youngest child, testified that Fern relied completely on Fred to operate the farm and that she seemed to do everything he told her to; "she done that on fear, more or less." Stanley once told her that he did not think he was being treated fairly by her; she responded that she was afraid there was nothing she could do about it. She also told Stanley at one point that she was afraid of Fred. Plaintiff Sandra Hollerbach testified that Fern told her of Fred's "terrible temper"; Fern testified herself that she was sometimes afraid of Fred.

After considering all of the evidence, we are satisfied that there was a confidential relationship between Fern and the defendants at the times the contract and deed were executed. It therefore was incumbent on defendants to rebut the presumption of undue influence.

III. Ward's Mental Competence. Before we determine whether defendants came forward with the requisite evidence to rebut the presumption that both the 1971 contract and the 1974 warranty deed were invalid and fraudulent, we must consider the issue of Fern's competence. "Mental strength of the person dominated has a direct bearing on the issue of undue influence." Herm, 284 N.W.2d at 200. The evidence shows that, in the mid-1950's, Fern was admitted to the mental hospital in Clarinda to undergo treatment for depression. Dr. Karl Catlin, a psychiatrist who was still treating her at the time of trial, was the superintendent at the Clarinda institution from 1953 to 1966 and testified that she was in a depressed state in January, 1955. He characterized her condition as manic depression and said that people in that state "become inordinately dependent on others during the depressed phase, are easily influenced, indecisive."

Fern's depression appears to have continued intermittently from her hospitalization in the mid-1950's to the present time. Stanley testified that in early 1971 (when the contract was executed) she sometimes "would be depressed and just wouldn't feel like doing nothing then. She just couldn't get herself motivated during the day to carry on normal household activities." In May and June of 1972 Fern was hospitalized with a diagnosis of psychotic depressive reaction. She was confined to the Mental Health Institute at Clarinda with a diagnosis of manic depression from November, 1972, through February, 1973, and again in 1975 and 1976 with a diagnosis of involutional melancholia.

Dr. Catlin further testified that Fern was still manic depressive in 1975, that she has had only brief intervals of normalcy since her depression started, and that it was "quite unlikely" that she would have understood the terms of the 1971 contract or the 1974 deed. He thought that she was "very likely" incompetent at those times even though, for example, she may have appeared to discuss the contract intelligently with her banker. Grace Thrasher, one of Fern's friends, said that Fern did not have the strength to fight back if things upset her. Stanley Shaw testified that she appeared to be upset about the sale.

Defendants, on the other hand, both testified that Fern knew what she was doing at the relevant times and that she was not at all depressed. They also focus on the fact that at various times during the late 1960's and early 1970's, Fern worked part-time at a nursing home and did cooking for harvesting crews. She also consulted on a regular basis with her banker, Mr. Richard Jones, and discussed the sale of the farm with him, her lawyer, and members of the family besides defendants.

Trial court rejected Dr. Catlin's testimony, finding it "was completely incredible and . . . [could] not be accepted in any respect." Although we are to give special weight to an equity court's findings regarding the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7). Thus, while we do not accept his testimony in total, we cannot accept the court's findings regarding Catlin's credibility. We note that Fern has been under Catlin's care since at least 1972 and that he also apparently examined her during her prior hospitalization in Clarinda. The trial court gave significant weight to the testimony of Phil Porter, a psychologist, who testified that he thought Fern was competent to enter into these transactions. Porter admitted, however, that he never examined her as did Catlin and that he is not a medical doctor as is Catlin. We think Catlin's testimony is entitled to some consideration, especially as it relates to conditions since 1972.

After reviewing the evidence, we find that Fern was not legally incompetent to contract at the pertinent times, but the fact that her competence was in question made defendants' burden of disproving undue influence more difficult.

IV. Presumption of Undue Influence. We finally consider whether defendants have met their burden to rebut the presumption of undue influence arising from the confidential relationship. We will address the contract and warranty deed separately.

A. 1971 Contract. Plaintiffs allege that the contract sale price of $92,000 was inadequate and that this is a controlling factor. Considering the family situation and the contributions made by defendants, trial court found the price was fair and reasonable. We agree with trial court in this regard. There is independent evidence, as

well as testimony by defendants, that Fern agreed to an $18,000 credit for improvements defendants had made to the property. If the selling price is calculated at $110,000, defendants paid approximately $450 per acre. Although plaintiffs' witness said that the land should have brought close to $600, there was credible evidence that $450 per acre was fair and reasonable.

We further note that Fern had not been hospitalized since 1957 when she executed the contract in February, 1971. She was working on a regular basis and was doing well at her job. She had discussed the possibility of the sale to defendants with disinterested third parties, including her banker and her lawyer. She also testified that she understood what she had done by signing the contract.

In light of the entire record, we believe defendants met their burden with regard to the contract and conclude that trial court properly found it to be valid and enforceable.

B. 1974 Warranty Deed. Contrary to trial court's finding, however, we find that the circumstances in 1974 under which the warranty deed was signed were considerably different from those under which the contract was signed. Fern does not remember signing the deed. There is no independent evidence that she had outside advice or consultation. Defendant Diane Shaw drove her to the defendants' attorney's office where the deed was executed. Other members of the family were unaware of the transaction which, as a result, permitted defendants to obtain a $100,000 mortgage, enabling them to repay some $59,360.18 of debt to the Production Credit Association. Fern received an unsecured note for $54,282.00, although she testified that she knew nothing of the note which was kept in defendants' safety deposit box.

The nature of this transaction is further complicated by Fern's deteriorated mental condition beginning in 1972. We believe Dr. Catlin's testimony is relevant in this regard.

After carefully reviewing the evidence, we conclude that defendants failed to present the necessary clear, satisfactory, and convincing evidence to rebut the presumption of undue influence surrounding execution of the warranty deed. Trial court erred in holding that the deed was valid.

V. Defenses of Statute of Limitations, Laches, Estoppel and Waiver. We have considered defendants' asserted defenses and find them to be without merit under the facts of this case.

We affirm that portion of trial court's judgment finding the contract valid and enforceable. We reverse that portion of the judgment pertaining to the warranty deed and remand that part of this case with instructions to enter an order consistent with this opinion.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.