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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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AUDREY L. REECE, ARCH ANGELL, CHARMAINE REECE POBLANO, BRIAN REECE, MELANIE REECE, and **ROBERT REECE,** Plaintiffs-Appellants, vs. **GARY L. MORROW,** Individually, **GARY L. MORROW,** As Executor of the Estate of Edith McCann Angell, Deceased, **R. LYNN MORROW,** and **SHERRILL DILLMAN,** Defendants-Appellees.	Filed June 4, 1986 6-55 84-1407

Appeal from the Iowa District Court for Lucas County (Equity No. 21042) - Thomas S. Bown, Judge.

Plaintiffs appeal from judgment for defendants in an action seeking rescission of a real estate contract. **AFFIRMED.**

William L. Shelton of Shelton & Dunahoo, Chariton, and A. V. Hass, Chariton, for plaintiffs-appellants.

Robert W. Reynoldson of Reynoldson, Van Werden, Kimes, Reynoldson, Lloyd & Wieck, Osceola, for defendants-appellees.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ.

DONIELSON, J.

Plaintiffs appeal from judgment for defendant in an action seeking rescission of a real estate contract, asserting: (1) that the evidence was sufficient to establish a fiduciary and/or confidential relationship and that the burden therefore should have been shifted to defendants to prove the validity of the contract; (2) that the evidence was sufficient to establish breach of fiduciary duty, mental incapacity of the vendor, and/or undue influence; and (3) that the evidence was insufficient to support the trial court's finding that contract payments were forgiven to the extent not made.

Edith Angell was in her early eighties when, in 1980, she conveyed her 160-acre farm to her grandson, defendant Gary Morrow. Following her death in 1982, an action seeking rescission of the contract was commenced by a daughter, her surviving spouse, and four grandchildren, each of whom was among the beneficiaries under a will executed by Edith in 1977 naming Gary as executor.

Gary farmed the property beginning in approximately 1975 and saw Edith more regularly than other family members. He did not manage her business affairs. Two plaintiffs testified that Edith's state of health was poor in 1980 and that she was then taking various drugs. Six non-party witnesses testified that deterioration of her health did not become marked until 1981.

The real estate contract was drafted by Gary's attorney, who testified that he explained the terms to Edith and that she manifested her assent. The sale price was less than market value and the rate of interest of 6% was less than the then-prevailing market rate. Gary and his attorney testified that Edith forgave contract payments to the extent that they were not made by Gary.

The trial court in particular found that:

> Edith did not discuss business matters with Gary L. Morrow very often, indeed, she was rather secretive about her business affairs. Gary Morrow did not at any time have

> a power of attorney for his grandmother. He did not at any time attempt to petition for conservatorship for his grandmother. He was not a joint owner with her of any bank accounts, stocks, bonds, real estate, or any other property. Gary was not authorized to sign checks on any of his grandmother's accounts. Edith McCann Angell had accounts with Arch Angell. Both Edith and Arch wrote checks on their joint checking account. [Further] Gary Morrow testified that he recalls that shortly after July of 1980, Edith McCann Angell said she was going to sell the farm. Gary Morrow testified that Edith McCann Angell asked him if he was interested in buying the farm. At first, he expressed no interest. His grandmother talked to him at some point later and asked him again and, according to Gary Morrow's testimony, she said she would give him the property. Gary Morrow testified that he told her he didn't want to take a gift of the property. Gary Morrow further testified that Edith McCann Angell wanted a place for her and Arch to live for the rest of their lives. Gary Morrow also testified that Edith expressed some interest in having the residence on the farm available for other members of the family to live if they wanted. Edith and Gary discussed terms of a potential purchase on his part and Edith and Gary subsequently agreed upon a contract sale price of $500 per acre, resulting in a total sale price of $80,000. They talked in terms of a ten to twenty-year contract with Gary's right to pay off the contract in advance with no penalty. Gary Morrow discussed these matters with his attorney, Paul Christophers of Chariton, Iowa. Paul Christophers expressed some reservations to Gary about putting in a contract a reservation of life use of the house on the farm to several different relatives. Gary related these concerns to Edith. Gary and Edith agreed that contract would not contain any such provision. Gary Morrow testified that, in any event, he orally promised Edith that he would allow the relatives to live in the house on the subject farm as long as they wanted. Gary Morrow testified that Edith asked him to have somebody draw the papers up and that Edith McCann Angell did not direct him to take the matter to a particular attorney nor did she ask for an attorney of her choice to look over the contract.

After this recitation of facts concerning the transaction, the trial court entered judgment for defendants.

Our review is de novo. Iowa R. App. P. 4. Especially when considering the credibility of witnesses, the court gives weight to the fact finding of the trial court, but is not bound by them. Iowa R. App. P. 14(f)(7).

Iowa law requires the plaintiff must show by clear and convincing evidence that a confidential relationship existed. King v. King, 291 N.W.2d 22, 24 (Iowa 1980) (citing Kunz v. Kunz, 255 Iowa 1087, 1089, 1096, 125 N.W.2d 226, 228, 232 (1963); Barber v. Powell, 248 Iowa 785, 792, 82 N.W.2d 665, 669 (1957); Groves v. Groves, 248 Iowa 682, 692, 82 N.W.2d 124, 130 (1957); Else v. Fremont Methodist Church, 247 Iowa 127, 140, 73 N.W.2d 50, 57 (1955)). If plaintiff makes this showing, then the burden of persuasion shifts to the defendant to show by clear and convincing proof that the advantage was procured without undue influence. In re Estate of Herm, 284 N.W.2d 191, 200 (Iowa 1979).

While the sales price may have been less than the typical arm's length commercial transaction due to the familiar relationship, we cannot find the plaintiffs proved by clear and convincing evidence that a confidential relationship existed.

We are not convinced a confidential relationship existed because Edith was very independent and of sound mind when the conveyance was entered. Edith was engaged in the farming and turkey business for many years. The testimony as to the value of the farmland was disputed (between $1,250 and $640); however, we cannot find that the agreed-upon price of $500 per acre was patently unfair to Edith's interests. The fact Edith and Gary were close does not, by itself, establish that a confidential relationship existed. See Curtis v. Armagest, 158 Iowa 507, 522, 138 N.W. 873, 879 (1913) ("While the relation of parent and child is nearly always given as an illustration of confidential relations, it does not follow that all transactions between persons occupying that relation are presumptively invalid.").

Plaintiffs' major contention centers on Gary's alleged handling of the $10,000 down payment. The trial court found Edith was given a check but did

not negotiate it. Testimony indicated it was not out of Edith's character to act in this manner.

The record as presented does not contain enough evidence of sufficient grounds to contest the transfer so as to warrant a reversal of the trial court's decision. Plaintiffs suggest that all of Gary's actions should be cast in a dark shadow, and while such a perspective is plausible, we cannot find error in the trial court's determination that Gary did not engage in any wrongful or manipulative behavior.

Finally, plaintiffs claim that if the contract is not rescinded, then at least they are entitled to the value of payments Gary did not make between 1980 and 1982. As to plaintiffs' allegation that Gary did not make certain payments and that such nonpayment, if any, was not forgiven by Edith, we conclude that even if certain payments were not made, the record contains sufficient evidence to find that she did forgive such payments.

Because of plaintiffs' failure to follow Iowa R. App. P. 16(a) by not copying on both sides of the paper, we tax all printing costs on plaintiffs.

AFFIRMED.