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IN THE COURT OF APPEALS OF IOWA CLERK SUPREME COURT

DELIA GROVERT,

Appellant,

v.

PEOPLES BANK & TRUST CO.,
Cedar Rapids, Iowa, et al.,

Appellees.

Filed March 29, 1978

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2-60541

Appeal from Benton District Court - Robert Osmundsen, Judge.

Appeal from decree denying plaintiff's petition to quiet title to real estate.

Affirmed.

Don Boddicker, of Vinton, for appellant.

Ernest F. Pence, of Cedar Rapids, for appellees.

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

PER CURIAM

Plaintiff, Delia Grovert, appeals from an adverse judgment in an equitable action to quiet title in herself to 120 acres of farm real estate. Our review is de novo, Rule 4, Rules of Appellate Procedure. Our decision requires examination of both the will of plaintiff's father and a series of deeds which formed the basis for a family settlement entered into following her father's death.

I. The Will. August Grovert died testate in December of 1925; surviving were his wife Lena and five children; John, Charles, Albert, Emma and Delia. At the time of his death August owned 640 acres of land. By the provisions of his will, probated January 12, 1926, Lena received a life estate in all assets. John and Charles each were devised 200 acres subject to Lena's life estate and were required to pay Albert \$400 annually and Emma and Delia \$300 annually after the death of Lena. In addition, the will provided that John and Charles could not sell or dispose of the land while Albert, Emma or Delia lived. If John or Charles died with issue surviving, said issue were to take their father's interest and continue the payments to Albert, Emma and Delia. If John or Charles died without issue surviving, their interest went to the then surviving children of August, equally, and the payments to Albert, Emma and Delia ceased. The will's residuary clause devised the remaining 240 acres of land to the five children equally, subject to Lena's life estate.

II. The Family Settlement. On January 14, 1926, two days after the August Grovert will was admitted to probate, the children of August, all adults, met and executed five deeds. The deeds divide the 640 acres among the five children in four 120 acre parcels and one 160 acre parcel. Lena's life estate remained intact. Each deed contained the following language:

In consideration of this conveyance the grantee herein agrees not to sell or mortgage during his lifetime any of the above described real estate. . . This deed is given to effect a division of the land belonging to the estate of August Grovert. . .

The conveyances to John and Charles were by quit claim deeds and cancelled their obligations to pay annuities to their siblings after Lena's death. The conveyances to Albert, Emma and Delia were by warranty deeds. The deed to John required him to pay

Delia \$2500 upon the death of their mother. When Lena died in 1955, John paid the \$2500, and Delia executed a release.¹

III. The Dispute. Delia, the plaintiff, is the sole surviving child of August and Lena. The disputed land is that described in the 1926 quit claim deed to John Grovert executed by Delia, Albert, Charles and Emma. Delia now claims entitlement to this land under the will of August. Appellees urge, however, that Delia conveyed away all of her interest in the land by executing the 1926 quit claim deed to John.

To prevail Delia is required to recover on the strength of her own title rather than the weakness of defendants;² she need show title good against defendants, not the entire world. *Sheldon v. Moyer*, 210 N.W.2d 597, 599 (Iowa 1973); *Atkin v. Westfall*, 246 Iowa 822, 825-26, 69 N.W.2d 523, 525 (1955). We agree with the trial court that Delia has not met her burden.

In January 1926, under the will of August Grovert, Delia had a contingent remainder interest in the disputed land. However, her interest was subject to divestment by conveyance. The law permits family settlement agreements of the type involved in the present case. See *In re Estate of Swanson*, 239 Iowa 294, 300-02, 31 N.W.2d 385, 388 (1948). A contingent interest may be conveyed by quit claim deed. *McDonald v. Bayard Savings Bank*, 123 Iowa 413, 98 N.W. 1025 (1904). In effect at the time of the execution of the 1926 quit claim deed to John was § 10042, The Code 1924, which provided:

Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used.

¹ The trial court judgment incorrectly states that Charles also was required to pay Delia \$2500 upon Lena's death. The parties recognize this to be an error; it does not affect the required result.

² It is accordingly without significance (a) whether the proposed family settlement served to cut off the rights of unborn contingent remaindermen, or (b) what interest the disputed conveyance vested in the grantee.

The pertinent quit claim deed shows a transfer of all of Delia's interest in the land to John without reservation. The deed's restrictions on the grantee, John, fail to create any inference that the grantors transferred less than their entire interests in the property. The trial court correctly construed the instruments involved and denied Delia's petition to quiet title.

IV. Rulings on Pleading Motions. The disposition which we have made concerning the merits of the dispute also disposes of Delia's claim that the trial court erred in failing to strike division II and division III of defendants' answer. Division II properly placed in issue the legal effect of the 1926 quit claim deed to John. Because we do not base our holding on an estoppel theory, the ruling as to division III of the answer is without significance in the determination of the case.

We have considered all issues presented and find no basis for reversal.

AFFIRMED.