FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HOWARD LUCAS and JANICE LUCAS,

Plaintiffs-Appellants.

vs.

DONALD E. O'BRIEN and JANET L. O'BRIEN, et al.,

Defendants-Appellees.

Filed April 21, 1981

0-440
2-64461

Appeal from Lucas District Court. R. O. Frederick, Judge.

Plaintiffs appeal from a judgment for defendants in a quiet title action.

REVERSED.

Louis R. Hockenberg and Fred L. Dorr, of Wasker, Sullivan & Ward, Des Moines, Ia., for plaintiffs-appellants.

Nolden I. Gentry, of Scalise, Scism, Gentry, Brick & Brick, Des Moines, Ia., for defendants-appellees.

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

PER CURIAM

Plaintiffs appeal from a judgment for defendants in a quiet title action. We reverse.

This is an action in equity, see § 649.6, The Code 1979, and therefore review is de novo. Iowa R. App. P. 4. We are not bound by the trial court's findings of fact, but we give weight to them, especially regarding the credibility of witnesses. Iowa R. App. P. 14(f)(7).

Plaintiffs, Howard and Janice Lucas, offered for sale their 417 acre farm located outside Chariton, Iowa. On June 14, 1977 Kenneth Grimm executed a purchase agreement to buy plaintiffs' farm and paid plaintiffs $10,000 toward the purchase price. Under the purchase agreement the closing and transfer of possession the farm were to occur on or before March 1, 1978. Two or three months after the purchase agreement was executed, Grimm exhibited to plaintiffs hesitation as to whether he would execute a contract for the purchase of the farm and suggested that plaintiffs seek other potential buyers in case he was unable to complete the deal. In late January or early February of 1978 defendants Donald and Janet O'Brien contacted plaintiffs about buying the farm. On February 26, 1978, defendants and plaintiffs met in the office of attorney Stanley Lamfers in Chariton. At that time plaintiffs signed a contract prepared by Lamfers for the sale of plaintiffs' farm to defendants. On that occasion defendants did not sign the contract and it was left with Lamfers for safekeeping. Plaintiffs, who are from Sheldon, Iowa, testifed that they put their signatures on the contract during the February 26 meeting so as to save them a trip back to Chariton. Plaintiffs' understanding was that the contract with defendants would not be executed if the agreement with Grimm was carried through.

In the meantime plaintiffs extended the date of closing and transfer of possession on the Grimm purchase agreement to April 1, 1978. Kenneth Grimm subsequently decided not to complete his performance on the purchase agreement. On April 1, 1978, Kent Grimm signed a contract with plaintiffs for the purchase of plaintiffs' farm. Three or four days later the contract was signed by Keith Kuntz, Kent Grimm's brother-in-law. Mark Grimm, Kent Grimm's father, had not signed the contract but has substantially contributed to the purchase of the farm. After the Kent Grimm contract was signed, Lamfers, who was present at the signing, sent a letter to defendants, dated

April 3, 1978, stating:

> I have been instructed by Mr. & Mrs. Howard Lucas to advise you that the Grimms have exercised their purchase agreement dated June 14, 1977 and that a contract of sale [sic] completed in accordance therewith. Therefore the Lucas' [sic] will be unable to sell their farm in Lucas County to you.

Since April 1, 1978, Kent Grimm, Mark Grimm, and Keith Kuntz have paid approximately $140,000 in principal and interest toward purchase of the farm. They took possession of the farm and farmed it through almost two complete crop years and paid approximately $134,000 for the expenses of farming, improving the realty, and for taxes on the realty.

April 10, 1978 Lamfers phoned defendants and informed them of the sale of plaintiffs' farm. On April 13, defendants visited Lamfers' office and procured the contract they left with Lamfers under the pretense of wanting to make a copy of it. Defendants then signed and dated the contract and took it to the county recorder's office, where it was recorded. There is a question as to whether defendants' contract was recorded before the Grimms' contract, but we will not address the question, since we conclude that defendants' contract is invalid and the Grimms are not parties to this action.

Delivery is ordinarily essential to the operation and validity of a written contract. Hayne v. Cook, 252 Iowa 1012, 1022, 109 N.W.2d 188, 193 (1961). Delivery is a matter of intent. Id. Our review of the record convinces us that on February 26 when plaintiffs and defendants met in Lamfers' office, plaintiffs did not intend the contract to be delivered to defendants for their signatures. This conclusion is supported by the fact that plaintiffs left the contract with Lamfers, a good friend, for safekeeping and the fact that plaintiffs did not intend the contract with defendants to become operative if they completed sale of the farm to Kenneth Grimm. At no time after the February 26 meeting did plaintiffs indicate to Lamfers or defendants any desire that the contract be delivered to defendants for their signatures. Since plaintiffs never intended that the contract be delivered to defendants, the February 26 contract is not valid.

Since defendants' contract with plaintiffs is invalid, we hereby reverse the trial court's decision and quiet title to the farm in plaintiffs as against these defendants.

Costs are assessed against defendants.

REVERSED.