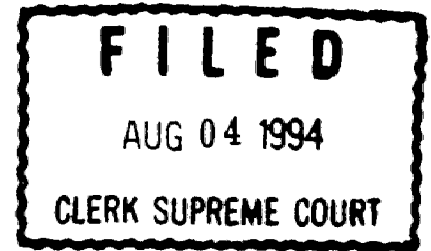


IN THE COURT OF APPEALS OF IOWA

No. 4-201 / 93-966



GLADYS O. BOOTH,

Appellee,

vs.

LOIS E. LANG,

Appellant.

Appeal from the Iowa District Court for Keokuk County,
Robert Bates, Judge.

The defendant appeals the district court's ruling
quieting title to the parties' joint tenancy property in
the plaintiff. **REVERSED AND DISMISSED.**

Dennis A. Bjorklund, Iowa City, for appellant.

Sara Wenke, Legal Services Corp., Ottumwa, for
appellee.

Heard by Donielson, C.J., and Sackett and Huitink, JJ.

HUITINK, J.

Lois Lang appeals the district court's ruling quieting title to the parties' joint tenancy property in Gladys Booth. We reverse.

Lois is Gladys's daughter. After Gladys's health began to fail in 1985, she gave Lois a power of attorney to handle Gladys's affairs. Lois traveled from her Davenport residence to Gladys's home in South English, Iowa, every week to help her. Although Gladys has two other children, Lois was the one who provided assistance to Gladys.

Lois assisted Gladys in her financial affairs, transportation, house cleaning, and purchasing of groceries. During this period of time, Gladys would make cash payments to Lois for her financial assistance.

In 1989 Gladys experienced financial difficulties, and Lois gave her \$12,200. Approximately \$6200 of this amount went to pay off an existing mortgage on Gladys's South English home, and the balance was used to pay outstanding indebtedness. Although Lois considered the payment a loan, Gladys claimed the payment was made because she had assisted Lois in the past.

In January 1990 Gladys's attorney prepared a deed creating a joint tenancy in the property between Gladys and Lois. Although Lois claims she had no prior knowledge of the transfer of the property to a joint tenancy, she was in the attorney's office when the deed was executed on January 23, 1990. Gladys does not remember executing the deed.

During the time when Lois had the power of attorney, she wrote various checks which she claims were used for Gladys's benefit. Additional financial transactions occurred after the joint tenancy conveyance.

In June 1990 Gladys suffered a severe stroke and was hospitalized several months. Lois spent approximately six weeks with Gladys in Des Moines while Gladys underwent rehabilitation. Lois continued to maintain Gladys's home in South English during this period.

In September 1990 Gladys became suspicious about the way Lois was handling her affairs. She claims there were irregularities in the way Lois paid Gladys's bills and revoked the power of attorney. She also commenced a quiet title action to gain sole title of the South English residence.

In April 1993 the district court entered a ruling quieting title to the South English property in Gladys. The court concluded that although Gladys had received independent counseling, it was clear she misjudged the financial circumstances between the parties. The court concluded Lois failed in her burden of proof to overcome the presumption against the validity of the conveyance. The property was subject to a conceded lien to Lois in the amount of the payment for the mortgage.

Our review in equity actions is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings of fact, but we are not bound by them. Iowa R. App. P. 14 (f)(7).

Lois contends the district court erred when it found she breached her fiduciary duty as Gladys's power of attorney when the joint tenancy deed was conveyed. She argues Gladys received adequate consideration and the benefit of independent counsel sufficient to uphold the validity of the deed. We agree.

Where a confidential relationship exists between two parties, a presumption arises against the validity of a conveyance between them. First Nat'l Bank v. Curran, 206 N.W.2d 317, 322 (Iowa 1973) (citations omitted). The burden of proving the fairness of the transaction shifts to the grantee who must show by clear and convincing evidence of good faith on her part and free, voluntary, and intelligent action on the part of the grantor. Id. Several factors bear on the fairness of the transaction: (1) the age of the parties; (2) their physical and mental status; (3) their relationship; (4) the extent of the property conveyed; (5) the existence or absence of adequate consideration; and (6) the opportunity for, and benefit of independent counsel and advice by the grantor at the time of execution of the instrument. Daniels v. Fackler, 244 Iowa 1163, 1165, 58 N.W.2d 309, 311 (Iowa 1953).

It is clear a confidential relationship existed between Gladys and Lois by virtue of the power of attorney given to Lois by her mother. We therefore apply the factors as enumerated to the facts disclosed by the record.

Gladys's attorney, H. Michael Neary, testified he provided her with independent counsel as to the legal effects of a joint tenancy warranty deed. His testimony clearly indicates Gladys was not under any undue influence when she signed the deed. Gladys was not confused, and she did not hesitate in signing. Neary's testimony is entitled to more weight as he has the best recollection of the transaction. We give his testimony greater weight because he was not a partisan witness. He had been Gladys's attorney for a number of years and had performed numerous services for her. Neary was familiar with the nature and context of the financial relationship between Gladys and Lois.

Lois also contends there was adequate consideration given. We agree. The consideration given was in the form of cash and services. The promise to provide future care may be sufficient consideration to uphold a conveyance between parties in a confidential relationship. See id. at 1168, 58 N.W.2d at 312. Lois agreed to provide assistance in financial affairs, to transport Gladys to and from appointments, and to perform house cleaning services for her. The record reveals there was adequate consideration given by Lois to support the conveyance.

Our review of the record indicates Gladys understood the legal consequences of the conveyance and the consideration was fair given the history of the relationship between the parties. The trial court

determined Gladys had repaid Lois; however, it is neither fair nor equitable to characterize this relationship as a debtor-creditor relationship on the basis of this record.

We conclude Lois has established by clear and convincing evidence the conveyance was fair. The ruling of the district court quieting title in Gladys Booth is reversed. We have received but have not considered correspondence from persons who are not parties to this appeal.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. Costs are assessed one-half to each party.

REVERSED AND DISMISSED.