

IN THE COURT OF APPEALS OF IOWA

No 4-529 94-247

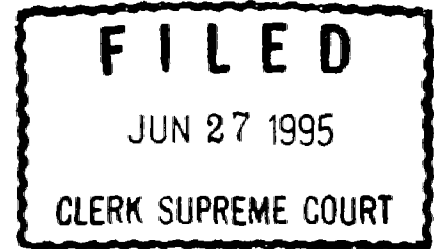
LEWIS GOINGS, JUANITA GOINGS
and NELLIE JENSEN,

Appellants,

vs.

DAVID GOINGS and JEAN GOINGS,

Defendants-Appellees.



Appeal from the Iowa District Court for Chickasaw County, James L. Beeghly,
Judge.

The plaintiffs appeal the district court decision denying their action for recovery
on an alleged oral loan. **AFFIRMED.**

Christopher F. O'Donohoe of Elwood, O'Donohoe, O'Connor & Stoehl, New
Hampton, for appellants.

Jerry Folkers of Dunkelberg, McKinley & Folkers, Osage, for appellee Jean
Goings.

No appearance by David Goings.

Considered by Hayden, P.J., Cady, J., and Perkins, S.J.*

*Senior judge from the 5th judicial district serving on this court by order of the
Iowa Supreme Court.

CADY, J.

This is an appeal by plaintiffs in their action for specific performance and for the breach of an agreement for the payment of money. The district court granted specific performance, but dismissed the remaining claims. We affirm.

Plaintiffs Lewis and Juanita Goings are the parents of defendant David Goings. Plaintiff Nellie Jensen is the mother of Juanita and the grandmother of David. David was previously married to defendant Jean Goings.

Lewis and Juanita owned and lived on a 400 acre farm in Chicasaw County. David began farming with his parents in about 1973. After David and Jean were married in 1975, they entered into a farming partnership with Lewis and Juanita, which was drawn into a written agreement by an attorney.

By 1989 the farm was in serious financial trouble and the Federal Land Bank threatened foreclosure. Lewis and Juanita wanted to remain in their home on the farm. They asked David and Jean if they could purchase the farm so it could remain in the family.

After negotiations, on February 7, 1989, Lewis and Juanita transferred the house to the Federal Land Bank and David and Jean purchased the house on the same day. David and Jean used all of their savings plus \$35,700 obtained from Lewis and Juanita as a down payment. They also borrowed \$103,000 from a bank. In addition, they deeded a seventy-three acre tract of land to the Farmers Home Administration. David and Jean agreed Lewis and Juanita could live on the homestead.

In April 1989, David obtained \$9,500 from Nellie. He used this money to pay Mark Eldridge, who had facilitated the negotiations with the Federal Land Bank. Jean was unaware of this transaction.

Jean filed a petition for dissolution of marriage in 1991. While the dissolution was pending she became aware David was claiming that the \$35,700 from Lewis and

Juanita in excess of the value of the homestead was actually a loan from his parents. In addition, she learned of the \$9,500 payment from Nellie and that David also claimed this was a loan. David sought to have these loans set off against the marital assets. At the dissolution hearing David, Juanita, and Nellie all testified they considered the transactions to be loans. In the dissolution decree, entered on September 28, 1992, the district court made the following factual finding:

David also claims that the parties owe his parents \$34,000 in connection with the purchase of the farm and that they also owe his grandmother \$8,000. No notes, mortgages, or loan agreements were signed by the parties documenting the existence of a loan. Cancelled checks were presented to prove that the money was received by the parties. The Court finds that these transactions were gifts rather than loans.

Lewis, Juanita, and Nellie filed the present action against Jean and David on April 16, 1993. Lewis and Juanita sought specific performance of the defendants' agreement to transfer the homestead. They claimed the homestead was worth \$17,000 and alleged defendants had agreed to repay them \$18,700 ($\$35,700 - \$17,000 = \$18,700$). Nellie claimed defendants had agreed to repay her \$9,500. David did not contest the claims of his parents and grandmother.

The district court found Lewis and Juanita were entitled to specific performance on the agreement to transfer the homestead to them, but determined they were not entitled to recover the \$18,700. The court found Jean had never agreed to repay this amount, and that Lewis and Juanita had received the benefit of their bargain, which was that they would pay \$35,700 in exchange for the homestead.

The district court found Nellie's claim was barred by the doctrine of res judicata because it had been addressed in the dissolution decree. The court noted Nellie's position was essentially the same in both trials.

I. Our review is de novo. See Iowa R. App. P. 4. In an equity action we review the facts as well as the law to determine rights anew from the credible evidence on issues properly presented and preserved. *Insurance Agents, Inc. v. Abel*, 338 N.W.2d 531, 533 (Iowa App. 1983). While we give weight to the findings of the trial court, especially where the credibility of witnesses is involved, we are not bound by them. *Id.*.

II. Lewis and Juanita contend it is not reasonable to conclude they would pay far more than the fair market value of the homestead when they were in poor financial condition at the time the agreement was entered into. They believe the amount of \$35,700 in excess of the fair market value of the homestead must either be characterized as a loan or a gift. They claim there is insufficient evidence to support a finding that the payment of \$35,700 to defendants was a partial gift, and therefore, it must be a loan. They argue there is no evidence of donative intent because Lewis, Juanita, and David all testified the transaction should be considered a loan.

We are not convinced by Lewis and Juanita's original assumption that we must find there was a gift or a loan because they paid more than the fair market value for the homestead. The parties here entered into an agreement that Lewis and Juanita would pay David and Jean \$35,700 and in exchange, David and Jean agreed to transfer the homestead to them. The general rule is that a court will not ordinarily inquire into the relative value of the consideration for a contract. *Hubbard Milling Co. v. Citizens State Bank*, 385 N.W.2d 255, 258 (Iowa 1986).

The legal sufficiency of a consideration for a promise does not depend upon the comparative economic value of the consideration and of what is promised in return. *Hart v. Hart*, 160 N.W.2d 438, 444 (Iowa 1968). In other words, the relative values of a promise and the consideration for it do not affect the sufficiency of the consideration, and whatever consideration a promisor assents to as the price of the

promise is legally sufficient. *Id.* Each party to a contract may, ordinarily, exercise his or her own discretion as to the adequacy of the consideration. *St. Peter v. Pioneer Theatre Corp.*, 227 Iowa 1391, 1400, 291 N.W. 164, 170 (1940). Therefore, anything which fulfills the requirements of consideration will support a promise whatever may be the comparative value of the consideration, and of the thing promised. *Hart*, 160 N.W.2d at 444.

Thus, the parties here were free to exercise their discretion as to the adequacy of their mutual promises at the time the agreement was made. As Jean points out, there were several reasons why Lewis and Juanita may have agreed to pay more than the fair market value for the homestead. If they did not financially assist David and Jean, ownership of the farm would have passed out of the family. If the farm had been sold to a third-party, it was unknown whether Lewis and Juanita would have been able to buy back the homestead. Lewis and Juanita had emotional ties to the homestead, where they have lived since 1952. Furthermore, the location of the homestead was convenient for Juanita, because she worked as a hostess at the Little Brown Church in Nashua, which was one-fourth of a mile away.

We agree with the district court's conclusion that Lewis and Juanita are only entitled to receive the benefit of the bargain they actually made. We affirm the court's decision that Lewis and Juanita are not entitled to recover from defendants their claim for the difference between \$35,700 and the fair market value of the homestead.

III. Nellie contends the district court should not have applied the doctrine of issue preclusion to prohibit her from litigating her claim for \$9,500. She points out that she was not a party to the dissolution action, and thus, was not able to call witnesses or cross-examine witnesses.

Four factors must be satisfied to apply the doctrine of issue preclusion: (1) the issue precluded must be identical; (2) the issue must have been raised and litigated in

the prior action: (3) the issue must have been material and relevant to the disposition of the prior action, and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment. *Hunter v. City of Des Moines*, 300 N.W.2d 121, 123 (Iowa 1981). Moreover, we recognize that the doctrine may be applied defensively to nonparties when the party against whom it is invoked was so connected in interest with one of the parties in the former action that the law can conclude the nonparty had a full and fair opportunity to litigate the relevant claim or issue. *Opheim v. American Interinsurance Exchange*, 430 N.W.2d 118, 120 (Iowa 1988).

We disagree with the district court that the doctrine of issue preclusion prevented the litigation of Nellie's claim. Nellie had no relationship of control or privity with David or Jean, and no opportunity to control the litigation of the issue at the divorce trial. Under the circumstances, we do not believe the divorce case afforded Nellie a full and fair opportunity to litigate the issue.

Notwithstanding, we agree with the district court's alternative finding that the money transferred by Nellie to David was a gift. A pragmatic review of the evidence and circumstances of the parties supports a finding that the money was a gift. Nellie's motive in providing the money was to benefit Lewis and Juanita. Moreover, there was no written contract or note executed, and no terms of repayment. Nellie never discussed the matter with Jean, and Jean was not aware that Nellie was claiming the existence of a loan until the divorce trial.

We affirm the district court on all issues presented in this appeal. Costs of this appeal are assessed to plaintiffs.

AFFIRMED.