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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

BETTY GAFFNEY, Executor of the Estate of **HARRY J. HICKMAN,**

Plaintiff-Appellant,

v.

ANNA BELLE HICKMAN, Executor of the Estate of **ROBERT J. HICKMAN,**

Defendant-Appellee.

Filed December 23, 1986

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85-1765

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Appeal from the Iowa District Court for Buchanan County (No. CE 1722-0883) - R. J. Curnan, Judge.

Plaintiff appeals from judgment for defendant in a quiet title action, asserting that the evidence was sufficient to establish that the property in question was owned by plaintiff's decedent and that a purchase money resulting trust or a constructive trust should have been established. **AFFIRMED.**

Richard P. Moore of Moyer & Bergman of Cedar Rapids for plaintiff appellant.

Jon Fister of Beecher, Beecher, Holmes & Rathert of Waterloo for defendant-appellee.

Considered by Oxberger, C.J., Snell and Sackett, JJ.

OXBERGER, C.J. 91

In this appeal, the plaintiff in the underlying action to quiet title in a parcel of real estate challenges the district court's judgment in favor of the defendant. The plaintiff contends that the court erred in failing to hold that the evidence was sufficient to establish that her decedent owned the property in question. Relatedly, the plaintiff maintains that the court should have found that the agreement executed by her decedent and the defendant's decedent regarding the property established either a purchase money resulting trust or a constructive trust in favor of the former. We affirm.

I. STANDARD OF REVIEW

Because this is an equitable proceeding, we review the record de novo. Iowa. R. App. p. 4; Baird v. Lovell, 344 N.W.2d 574, 575 (Iowa Ct. App. 1983). Nevertheless, we give weight to the trial court's findings of fact, particularly when those findings involve a determination of the credibility of witnesses. Robinson v. Loyd, 252 Iowa 1086, 1090, 109 N.W.2d 619, 621 (1961). Moreover, we adhere to the principle that an equitable decree will be affirmed "if it can be sustained upon any pleaded basis which is supported by the record, regardless of the basis used by the trial court." Midwest Management Corp. v. Stephens, 353 N.W.2d 76, 78 (Iowa 1984); see also Citizens First National Bank v. Hoyt, 297 N.W.2d 329, 332 (Iowa 1980).

II. OWNERSHIP OF PROPERTY

A brief factual background will aid in an understanding of how this matter arose. The record discloses that the plaintiff's decedent, Harry Hickman, and the defendant's decedent, Harry's son Robert, were partners in a farm operation. In 1945, Harry used funds from the joint farm account which he shared with Robert to purchase a neighboring farm referred to as the "west place"; a deed was recorded conveying the west place from the vendors to Robert.

When Robert died in April of 1982, the west place was included in his estate. In November of that same year, Harry died. After his death, an unrecorded deed which was executed in 1945 purporting to convey the west place to Harry was discovered in Harry's lock box. The deed was recorded by the attorney representing Harry's estate, and the estate subsequently commenced the underlying action claiming title to the parcel.

The pivotal question before us is whether the deed purportedly conveying title to Harry was effectively delivered. Valid delivery is essential to the effectiveness of a deed. Jeppeson v. Jeppeson, 249 Iowa 702, 707, 88 N.W.2d 633, 636 (1958); see also In re Estate of Bright, 215 N.W.2d 253, 255 (Iowa 1974). A duly executed and recorded deed generally raises a rebuttable presumption of delivery. Avery v. Lillie, 260 Iowa 10, 15, 148 N.W.2d 474, 477 (1967). This presumption is weakened, however, when as in the instant case, the deed is not filed until after the grantor's death. Id. at 15, 148 N.W.2d at 477. The party challenging the presumption of delivery bears the burden of proving his allegation by clear, convincing and satisfactory evidence. Id. at 15, 148 N.W.2d at 477; see also Raim v. Stancel, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983).

Although the manual transfer of a deed from grantor to grantee is prima facie evidence of delivery, the intent of the grantor is the controlling consideration. Jeppeson v. Jeppeson, 249 Iowa at 708, 88 N.W.2d at 636. In order for a deed to be validly delivered, the grantor must intend that it is presently effective as a transfer of title, and he must not reserve any control thereover. Robinson v. Loyd, 252 Iowa at 1092, 109 N.W.2d at 622. The grantor's intent is ascertained by examining his words and actions. Jeppeson v. Jeppeson, 249 Iowa at 708, 88 N.W.2d at 636. If the grantor continues to exercise possession and control over the property, and continues to assume the acts of ownership, the presumption of delivery is strongly negated. Robinson v. Loyd, 252 Iowa at

1092, 109 N.W.2d at 522. We find this principle dispositive of the controversy in the case before us.

The evidence clearly establishes that throughout the years following the alleged transfer from Robert to Harry, Robert continued to exercise ownership and control over the west place. Although most of the expenses and disbursements for the west place from 1945-1960 were transacted from the joint farm account, the record reflects that after 1960, when Robert and Harry began maintaining separate accounts, Robert made these payments individually. For example, the record discloses that Robert depreciated the farm buildings on his income tax forms and claimed the homestead exemption. In addition, Robert paid the real estate taxes on the property. Furthermore, after Robert married the defendant, Anna Belle, they moved into the house located on the west place; thereafter, Robert paid for all of the capital improvements and the insurance coverage. Moreover, the record reveals that Robert arranged a contract of sale with the Buchanan County Road Department and granted an easement over the property to the Northern Natural Gas Company.

Given the foregoing, we find this case indistinguishable from several similar cases in which the presumption of delivery was overcome. For example, in Avery v. Lillie, 249 Iowa at 16-17, 148 N.W.2d at 478, the supreme court held that the deed in question had not effectively been delivered where:

> The evidence of both sides indicates that the 85 year old grantor still went back from time to time to visit the house, check on the furniture, see if everything was all right and in summer to stay, if well enough, on her homestead; the land was rented to and worked by her son; she, or her estate, received the income therefrom to the time of her death, homestead exemption during all material times was claimed by or for her, grantor said nothing to indicate that she had transferred present title to grantee or had given up her right to possession.

Similarly, in Robinson v. Loyd, 252 Iowa at 1092, 109 N.W.2d at 623, the court held that the deed had not been delivered with present intent to pass good and effective title. In that case, the grantor was found to have retained possession and control of the property because she continued to collect the rent, paid the taxes, insurance, and maintenance costs, and sold a portion of the realty. Id. at 1092, 109 N.W.2d at 623; see also Jeppeson v. Jeppeson, 249 Iowa at 710, 88 N.W.2d at 638.

The appellant argues that the evidence adduced in the instant case is not as strong as that in the cases discussed above. In support of this contention, the appellant stresses that Robert often sought Harry's advice or approval in making decisions concerning the west place. We think it significant, however, that these decisions concerned the farming operation. There is no dispute that Harry and Robert operated the farm business jointly; their joint decisions in this capacity are inapposite with respect to their intent to transfer the title of the property. Relatedly, the appellant stresses that Robert did not reside on the west place from 1945-1960. We similarly find this assertion inapposite. Irrespective of the actual occupancy of the household, Robert exercised such an extent of control over the parcel in the years after the alleged conveyance that we find clear and convincing evidence negating the presumption of delivery.

Moreover, we find it significant that in a letter written to Anna Belle shortly before his death, Robert wrote as follows:

> You will have to decide where you want to live as I don't think you will want to stay alone on the farm. Try to buy a nice home in town. I don't know how to help you in deciding what to do with the farm.

Harry read this letter several times after Robert's death and never commented upon the disposition of the farm. We think that this is further evidence indicating that Harry and Robert did not intend for the title of the parcel to pass.

The appellant further contends that if no delivery is found, the parcel should still be included in Harry's estate under the theories of either a purchase money resulting trust or a constructive trust. We disagree.

In Slocum v. Hammond, 346 N.W.2d 485 (Iowa 1984), the supreme court discussed in detail the prerequisites to the establishment of a purchase money resulting trust. There, the court stated that such a trust arises "when the purchase price of the property is paid by one person and at his or her direction the vendor transfers the property to another." Id. at 492. The transferee then holds the property in trust for the person who furnished the consideration. Id. We reject the appellant's argument that such a situation existed in this case because the west place was not purchased solely by Harry; rather the joint fund, which had accumulated as a product of Harry and Robert's efforts after fourteen years of farming, was used to purchase the parcel. As such, we think that the trial court was correct in rejecting the appellant's claim that a resulting trust arose in the circumstances of this case.

Finally, we disagree with the plaintiff's contention that Harry's estate is entitled to a constructive trust in the property. A constructive trust is an equitable remedy recognized for the purpose of restitution in order to prevent unjust enrichment. Regae Insurance Co. v. Summit Guaranty Corp., 324 N.W.2d 697, 704-05 (Iowa 1982); see also Slocum v. Hammond, 346 N.W.2d at 493. The constructive trust was further defined in Loschen v. Clark, 256 Iowa 413, 419, 127 N.W.2d 600, 603 (1964) as follows:

> A constructive trust is a creature of equity, defined ... as a remedial device by which the holder of legal title is held to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest. So, the doctrine of constructive trust is an instrument of equity for the maintenance of justice, good faith, and good conscience, resting on a sound public policy requiring that the law should not become the instrument of designing persons to be used for the purpose of fraud.

Moreover, the party seeking the imposition of a constructive trust must establish that the remedy is appropriate by clear, convincing, and satisfactory evidence. Slocum v. Hammond, 346 N.W.2d at 493. We agree with the trial court's conclusion that the plaintiff has produced no clear and convincing evidence illustrating that the defendant was unjustly enriched in the case at bar. Accordingly, the judgment of the trial court is affirmed.[1]

AFFIRMED.

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[1]Because of our conclusion that the deed in question was not validly delivered, we find it unnecessary to address the defendant's assertion that the plaintiff's claims were barred by the doctrine of laches.