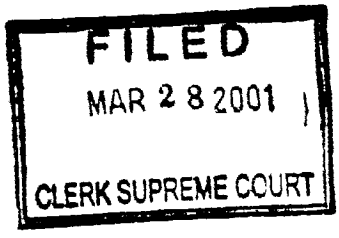
IN THE COURT OF APPEALS OF IOWA

No. 0-805 / 00-164
Filed March 28, 2001

MATTHEW LETNER,
Plaintiff-Appellant,

vs.

DUANE SHUNK,
Defendant-Appellee.



Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith, Judge.

Plaintiff appeals from the district court ruling in favor of defendant in his action for recovery of property. **AFFIRMED.**

Robert Kohorst of Kohorst, Early, Gross & Louis, Harlan, for appellant.

Stephen C. Ebke of Porter, Tauke & Ebke, Council Bluffs, for appellee.

Considered by Sackett, C.J., and Huitink, and Zimmer, JJ.

ZIMMER, J.

Matthew Letner appeals from the district court ruling in favor of Duane Shunk in his action for recovery of property. Letner contends the court erred in refusing to find there was an equitable mortgage between Shunk and him. We affirm.

I. Background Facts and Proceedings. Matthew Letner and his girlfriend, Ardis L. Whitney, owned real estate located at 2832 Valley View Drive, Council Bluffs, Iowa. On July 1, 1996, Letner and Whitney signed a Quit Claim Deed that transferred the property to Duane Shunk. At the time the deed was signed, Letner was incarcerated in the Pottawattamie County Jail. He was being held on a bond of over $11,500 stemming from charges of theft by deception in both Pottawattamie and Harrison Counties. Shunk paid the bond money for Letner to be released pending trial. Although Shunk held the deed, Letner continued to reside on the property after his release.

In October of 1996, Shunk obtained a mortgage on the property. Letner was not part of the mortgage application nor was he involved in any of the final loan documents. Shunk alone was obligated on the note. Shunk made the first four payments on the mortgage. In March of 1997, Letner began making payments directly to the mortgage company in the amount required under the mortgage.[1] He continued making these payments until February, 1999.

On June 11, 1999, Shunk brought an action for forcible entry and detainer and money judgment against Letner. On June 23, 1999, Letner filed an answer and counterclaim. Following a hearing in Small Claims Court on July 2, 1999,

[1] At trial, Shunk claimed these payments were rent on the property. While Letner disputed this claim, he offered no other explanation for the payments.

Shunk's action was dismissed for failure to meet service requirements and Letner's counterclaim was transferred to the district court.

On August 20, 1999, Shunk re-filed his action for forcible entry and detainer and money judgment against Letner. On the same day, Letner filed an amended and substituted petition in the district court, requesting the court establish title in the real estate in Letner and remove the mortgage on the property. Letner also included a claim for monetary damages for interfering with his business.

On September 14, 1999, Shunk's claims were transferred to district court and consolidated with Letner's claims, as both cases were related in fact. A bench trial commenced on September 17, 1999. On December 8, 1999, the trial court entered judgment in favor of Shunk and against Letner for possession of the disputed property. However, the court denied Shunk's claims for money judgment for past due rent and attorney fees. The court also denied Letner's claim for tortious interference with a business relationship.

Letner appeals. He claims the trial court erred in denying his claim that an equitable mortgage was created by the transfer of property from Whitney and him to Shunk.

II. Scope of Review. Our review for cases in equity is de novo. Iowa R. App. P. 4. While weight is given to the trial court's fact findings, we are not bound by them. *Israel v. Farmers Mut. Ins. Ass'n. of Iowa,* 339 N.W.2d 143, 146 (Iowa 1983).

> We first review the grounds on which the trial court reached its decision, affirming if the decree can be supported on the bases relied upon by the trial court. In reviewing de novo, we will affirm if there is a proper basis for the decree entered by the trial court,

> even though the reasons for affirming are different from those upon which the trial court relied.

Id.

III. Equitable Mortgage. The transfer of title will be deemed an equitable mortgage if it is intended as security alone. *Lovlie v. Plumb,* 250 N.W.2d 56, 59 (Iowa 1977). In order to be found an equitable mortgage, the party asserting the existence of the equitable mortgage must prove

> (1) That the consideration for the warranty deed was an existing indebtedness, together with the amount of such indebtedness; and (2) that such indebtedness was not extinguished by the conveyance, but was kept alive.

Steckelberg v. Randolph, 404 N.W.2d 144, 148 (Iowa 1987) (citing *Clark v. Chapman,* 213 Iowa 737, 743, 239 N.W. 797, 800 (1931)). The trial court found Letner failed to present clear, satisfactory and convincing evidence to establish an equitable mortgage. *See Lovlie,* 250 N.W.2d at 59 (holding clear, satisfactory and convincing evidence is needed to find an equitable mortgage). Specifically, the court found Letner presented insufficient evidence as a matter of law that a debt existed, or that any indebtedness claimed was to remain active following the delivery of the quit claim deed. We reach the same conclusion.

The parties gave conflicting testimony at trial. Letner denied he owed Shunk any money. Instead, Letner claimed that Shunk owed him $13,000 from 1991. Letner testified that he deeded the property to Shunk solely for security on his bond. Meanwhile, Shunk claimed Letner owed him money from several transactions. In addition to the $1400 Shunk provided for Letner's bond, Shunk claimed Letner owed him money on a loan Shunk made to Norman Lenz, which Letner supposedly guaranteed. Shunk also testified that Letner owed him $1700

on a loan for rental equipment as well as $633 for paying off his pickup truck. Additionally, Shunk denied owing Letner any money. Shunk contended that Letner deeded him the property in exchange for the bond money and the aggregate amount of the loans, approximately $10,000. Finally, Norman Lenz testified that he did not owe Shunk any money and, in fact, Shunk owed him. Neither party provided the court with any documentary evidence to support their claims.

Because the parties gave such conflicting testimony, we are left with the credibility of the two principle witnesses. If we are to believe Letner's version of events, we could find the deed was security on Letner's bond. If we are to believe Shunk's version of events, we could find the transfer of the deed extinguished Letner's debts and therefore the deed was absolute on its face. Factual disputes that depend heavily on witness credibility are best resolved by the district court. *Tim O'Neill Chevrolet v. Forristall,* 551 N.W.2d 611, 614 (Iowa 1996). The trial court had the opportunity to evaluate the credibility of both parties. *Id.* In its decree, the court found Letner's testimony to be self-serving and lacking in credibility in several respects. It found the testimony of Shunk to be more credible. Upon review of the record, we find no reason to disagree.

An equitable mortgage requires clear, satisfactory and convincing evidence to establish its existence. Because Letner fell far short of meeting this burden, we affirm the decision of the trial court in all respects.

AFFIRMED.