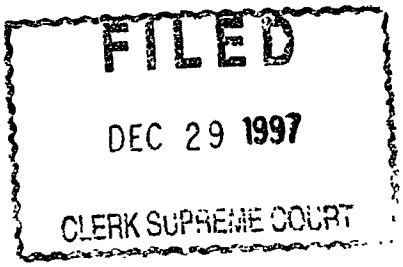
IN THE COURT OF APPEALS OF IOWA

000103

No. 7-404 / 96-0952
Filed December 29, 1997



LESTER ERICKSON, JR., RUSSELL THOMPSON, and DAWN ERICKSON,
Appellants,

vs.

DALE DOUGHERTY,
Appellee.

Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

The plaintiffs appeal a district court ruling dismissing their action for accounting and monetary damages against the defendant. **AFFIRMED.**

James Burns of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellants.

Richard D. Zahasky of Zahasky Law Office, Decorah, for appellees.

Heard by Cady, C.J., and Huitink and Streit, JJ.

STREIT, J.

I. Background & Facts.

In the winter of 1993-94, Lester Erickson, Sr. approached Dale Dougherty, the defendant, and asked him to engage in a farming operation with Erickson's family. Erickson's 460-acre farm was sold at a sheriff's auction in a foreclosure action. Erickson's right of redemption was about to expire and he requested Dougherty's assistance in redeeming his farm. The parties agreed Erickson would exercise his right of redemption and then sell the 460-acre farm to Dougherty. Dougherty would then allow Erickson to repurchase the farm within a reasonable time period for the actual cost of the farm plus three percent. The parties agreed Lester, Jr., his wife Dawn, and her son, Russel, would provide the farm labor.

To finance his obligation, Dougherty got a loan from the bank. Part of his financing required he receive cash input from Erickson of $25,250. To satisfy this requirement, Erickson and Dougherty agreed Dougherty would rent the land to Erickson for $25,250. Erickson told Dougherty he had access to $100,000 from the conservatorship funds of Thompson and his sister to pay the rent and the cost of crop inputs for the upcoming planting season.

In March of 1994 Erickson exercised his right of redemption, delivered a warranty deed to Dougherty, and paid him $25,250 cash rent out of the trust fund. Several weeks later, Lester Jr.'s wife, Dawn Erickson, came to Dougherty and said she had to have the $25,250 back. She feared criminal charges for taking these funds

out of her childrens' trust fund. Dougherty resisted giving the money back but eventually did. He got a loan from his family to pay the trust fund $25,250.

With the planting season quickly approaching, Dougherty and Erickson entered into a crop/livestock share arrangement for the 1994 season. The terms of the agreement are in dispute. Whether by agreement or desperate attempt to protect his investment, Dougherty financed the farming operation. He paid for the crop inputs and livestock purchases and provided farm machinery. Lester Jr., Dawn, and Russel charged the cost of buying crop inputs for the 460-acre farm, and for the "Faldet farm," to Dougherty's account at the supply store. Dougherty did not give permission to the Ericksons to make the charges, but paid the bill. Thompson, Lester Jr., and Dawn executed a promissory note in the amount of $11,000, secured by a lien against the crops on the Faldet farm to pay Dougherty back. Dougherty also discovered an unsatisfied federal income tax lien of $2933 on the Ericksons' farm property. Dougherty paid the tax lien in order to obtain clear title.

When it came time for an accounting in the latter part of 1994, the parties did not agree how the Ericksons should be compensated for their farm labor. The Ericksons filed a petition in equity for an accounting in March of 1995, arguing Dougherty owed them approximately $34,340 for their labor and services. Dougherty filed a counterclaim against the Erickson's and a third-party petition against Lester Erickson Sr. for judgment on a note and security agreement. In defense to the Ericksons' allegations, Dougherty argued, and the district court found, Dougherty was

owed more by the Ericksons than he owed them. The court concluded the Ericksons' accounting was less credible than Dougherty's. They were denied monetary damages. Because Dougherty did not assert any accounting against the Ericksons, the court did not assess a monetary judgment in favor of Dougherty even though the Ericksons still owed him money. Lester Jr., Thompson, and Dawn filed a rule 179(b) motion which was denied. They appeal.

II. Equitable Accounting.

A petition for an accounting is an equitable proceeding. *Medd v. Medd*, 291 N.W.2d 29, 32 (Iowa 1980) Cases tried in equity are reviewed de novo on appeal. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7); *Lemmon v. Hendrickson*, 599 N.W.2d 278, 279 (Iowa App. 1997). The fact Dougherty's counterclaim is an action at law does not change our de novo review. *Terrel v. Star Coal Co.*, 327 N.W.2d 771, 773 (Iowa App. 1982).

The decisive issue presented on this is entirely factual. The only real question is whether the plaintiffs or the defendants are to be believed regarding the terms of the agreement for working on the farming operation. If the Ericksons are believed, Dougherty owes them money. If Dougherty is believed, the Ericksons owe him money. Although the credibility of witness testimony is not everything to a case, when the plaintiffs are relying on their testimony to establish their claims, their testimony must be believable.

In judging the credibility of the Ericksons, we give weight to the findings and decree of the trial court, especially on conflicting testimony. *See Owen v. Wilden Hospital, Inc.*, 245 Iowa 382, 388, 62 N.W.2d 186, 190(1954). It has always been recognized by appellate court's that the trial court has a better opportunity, from seeing and hearing the witnesses, to pass more accurately upon the credibility of their testimony. *Id.*

The trial court found and concluded after being presented with the evidence that Dougherty was owed more by the Erickson's then he owed them for labor. We reach the same conclusion as the trial court on de novo review of the entire record.

The Ericksons are not credible. The whole structure of the farming operation in Lester Erickson Sr.'s name was to conceal from Lester Jr.'s creditors the fact he had a financial interest in the farming operation. The Ericksons complain that just because they are untruthful to creditors does not mean they are not credible when they testify to what the agreement between them and Dougherty was.

However, the record is replete with examples of untruthfulness by the Ericksons in dealing with Dougherty. The Ericksons represented to Dougherty they had access to the funds located in Russel Thompson's trust fund. They did not. After agreeing to pay $25,250 to Dougherty for cash rent, they insisted they have the money back. Dougherty had to get a loan to pay them back. The Ericksons told Dougherty they had paid off the IRS lien which was attached to the farm property. They had not. Dougherty had to pay the IRS to clear the title of the property. The Ericksons charged

the cost of crop input to Dougherty's account, not only for the 460-acre farm, but for the "Faldet farm" owned by Dawn Erickson. They had no prior permission to make these charges to Dougherty's account.

Not only was the trial court justified in not believing the Ericksons' testimony after their repetitive displays of untruthfulness, but the documentary evidence of the Ericksons was far less convincing than that offered by Dougherty. Dougherty offered an itemization of accounts that had been paid for and canceled checks showing payment of the accounts. He substantiated his contention he suffered a substantial loss in that year by providing his tax returns. The Ericksons offered only their own calculations of how much Dougherty owed them for their services and goods they bought for the farm.

After de novo review, we agree with the trial court the Ericksons owe Dougherty more than he owes them. Dougherty has not requested an accounting. The decision and judgment of the trial court is affirmed.

AFFIRMED.