IN THE COURT OF APPEALS OF IOWA

No. 7-661 / 96-1851

LLOYD L. KROTZ and CONSTANCE R. KROTZ,

Plaintiffs-Appellees,

vs.

ALVIN J. SATTLER; JAMES A. SATTLER a/k/a JIM SATTLER; MICHAEL J. SATTLER; SATTLER HOMES, INC.; SATTLER HOMES REALTY L.C.; JIM SATTLER CONSTRUCTION CO., INC.; and NORTHLAND DEVELOPMENT L.C.,

Defendants-Appellants,

HALL & HALL ENGINEERS, INC., MID-STATE CONSTRUCTION CO., CITY OF CEDAR RAPIDS, IOWA; and LINN COUNTY, IOWA,

Defendants.

FILED
MAY 29 '98

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge.

Defendants appeal from the district court decree granting plaintiffs' petition to quiet title. **REVERSED.**

Eugene J. Kopecky of Ackley, Kopecky & Kingery, Cedar Rapids, for appellants.

Thomas R. Pence of Irvine & Robbins, Cedar Rapids, for appellees.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

SACKETT, P.J.

Defendants-appellants Alvin J. Sattler, James A. Sattler, Michael J. Sattler, Sattler Homes, Inc., Sattler Homes Realty L.C., Jim Sattler Construction Co., Inc., and Northland Development L.C.[1] appeal from a trial court order quieting title in plaintiffs-appellees Lloyd L. Krotz and Constance R. Krotz to property defendants agreed to purchase from plaintiffs under a written contract executed on April 29, 1985. The trial court found, because of the unreasonable length of time that had passed since the 1985 contract, title to the property should be quieted in plaintiffs.

Defendants contend the evidence does not support a finding, among other things, they have no rights under the April 29, 1985 contract. We agree and reverse.

Actions to quiet title are equitable proceedings. Iowa Code § 649.6 (1997); *Hosteng Concrete & Gravel, Inc. v. Tullar*, 524 N.W.2d 445, 448 (Iowa App. 1994). Our review is de novo. Iowa R. App. P. 4. The trial court correctly tried this quiet title action as an equitable proceeding. *Kendall v. Lowther*, 356 N.W.2d 181, 183 (Iowa 1984); *Moser v. Thorp Sales Corp.*, 312 N.W.2d 881, 886 (Iowa 1981); *Helms v. Helten*, 290 N.W.2d 876, 879 (Iowa 1980). 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). Equity jurisdiction allows a court the necessary flexibility to determine the equities between the parties. *Farmers Sav.*

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[1] Hall & Hall Engineers, Inc.; Mid-State Construction Co.; City of Cedar Rapids, Iowa; and Linn County, Iowa, defendants in the original action, are not parties to this appeal.

Bank, Joice v. Gerhart, 372 N.W.2d 238, 245 (Iowa 1985). A court sitting in equity has considerable flexibility in framing a remedy. *Iowa Dep't of Social Servs. v. Blair*, 294 N.W.2d 567, 570 (Iowa 1980). Equity is not bound by forms, fiction, or technical rules, but will seek and determine the true situation. *Tri-State Ref. & Inv. Co. v. Opdahl*, 481 N.W.2d 710, 712 (Iowa App. 1991). Any situation that is contrary to equitable principles and can be redressed within the scope of judicial action may have a remedy devised to meet it, even though no similar relief has ever been given. *Hosteng*, 524 N.W.2d at 448.

The real estate in question, a former railroad right-of-way legally described as:

> The SE-ly ½ of the former Chicago and Rock Island and Pacific Railroad Right-of-Way lying within the NE 1/4 SE 1/4 of Section 1-83-8, Linn County, Iowa,
>
> AND
>
> All that part of the former Chicago and Rock Island and Pacific Railroad Right-of-Way lying within the SE 1/4 SE 1/4 of Section 1-83-8, Linn County, Iowa, which lies East of the West line extended North of Lot 1, Auditor's Plat No. 456, Linn County, Iowa.

was one of three parcels contracted to be sold in the April 29, 1985 contract. The written contract, signed by the parties, provided for a purchase price of $8000 an acre for the acres sold. The acres were not specified but were to be determined by a survey by Hall & Hall, an engineering and land surveying company in Cedar Rapids, Iowa.

There was no specified closing date. The absence of a closing date appeared to be the result of plaintiffs' difficulty in delivering clear title to the railroad right-of-way. The right-of-way was intended to revert to plaintiffs when abandoned

by the railroad, but there were a number of problems. Plaintiffs then became aware tax law changes effective January 1, 1987, would jeopardize capital gains treatment of the sale proceeds, so a closing was scheduled before the end of 1986. There continued to be problems with title to the railroad right-of-way that could not be resolved at that time.

There is no evidence the survey contemplated to be made by Hall & Hall was completed. However, on April 14, 1986, Hall & Hall by letter had indicated the approximate acreage in the real estate being sold, including the railroad right-of-way and any existing roads, was 22.9 acres. At the December 30, 1986 closing, defendants payed the amount of $8000 an acre for 22.5 acres and a deed was given for the other two parcels. No deed was given to the railroad right-of-way.

There followed communications indicating there were problems clearing title to the railroad right-of-way. Plaintiffs took action concerning the title problems and indicated by letter there would be additional payment for the right-of-way parcel. The trial court concluded this, together with other evidence including certain credibility findings, indicate it was not intended the railroad right-of-way be included in the December 30, 1986 transfer. We give credence to these findings and agree.

There is no evidence defendants approved the title to the railroad right-of-way or plaintiffs made any demand or notified defendants of the claimed balance due. There is no evidence defendants attempted to tender any amounts in satisfaction of the contract for the sale of the railroad right-of-way.

In 1992, defendants put a sanitary sewer across the railroad right-of-way, and in April of 1992, plaintiffs sent defendants a letter objecting to the sewer. The right-of-way was sold at tax sale on June 1, 1993, and plaintiffs paid the back taxes and filed this suit July 26, 1995.

We agree with the trial court's findings that: (1) a contract for the sale of the railroad right-of-way was made on April 29, 1985; (2) title to the right-of-way was not intended to be transferred on December 30, 1986; (3) the money paid December 30, 1986, did not satisfy defendants' obligation to plaintiffs for the purchase of the right-of-way; and (4) plaintiffs made further attempts to clear title to the right-of-way.

Defendants contend the railroad right-of-way is theirs because it was intended it be transferred for the consideration paid on December 30, 1986. We agreed with the trial court's conclusion it was not.

Defendants contend they continue to hold an interest in the railroad right-of-way under the April 29, 1985 contract. With this we agree. When a purchaser breaches a land contract, the vendor has three alternative remedies. He may rescind, or he may tender compliance with the contract and bring an action for specific performance, or he may retain the land and bring an action for damages for loss of the bargain. *Gordon v. Pfab*, 246 N.W.2d 283, 287 (Iowa 1976); *Prichard v. Mulhall*, 127 Iowa 545, 547-48, 103 N.W. 774, 775 (1905). Plaintiffs have failed to take any of the above actions.

Defendants' interest under the contract, when signed, became realty and plaintiffs' became personalty. *See In re Estate of Bernhard*, 134 Iowa 603, 606, 112 N.W. 86, 87 (1907); *see also Cumming v. First Nat'l Bank*, 199 Iowa 667, 668-69, 202 N.W. 556, 556 (1925).

Defendants maintain a contract to purchase the railroad right-of-way from plaintiffs. The contract never having been forfeited or foreclosed, defendants continue to hold ownership of the right-of-way subject to plaintiffs' vendor interest. The decree declaring plaintiffs to be absolute owners in fee is reversed and plaintiffs' petition to quiet title is dismissed at plaintiffs' cost.

REVERSED.