IN THE COURT OF APPEALS OF IOWA

No. 1-641 / 91-886

FILED
SEP 29 1992
CLERK SUPREME COURT

ESTATE OF RODNEY N. WESENBERG,

Appellant,

vs.

A. C. BENTON and **NEVA C. BENTON,** Husband and Wife; and **MAYNARD A. PLAGGE** and **KAREN R. PLAGGE,** Husband and Wife,

Appellees.

Appeal from the Iowa District Court for Franklin County, Jon Stuart Scoles, Judge.

Plaintiff estate appeals the district court decision for defendants in this breach of contract action. **AFFIRMED.**

Lee B. Blum, Hampton, for appellant.

Lawrence B. Gilchrist, Hampton, for appellees.

Considered by Schlegel, P.J., and Sackett and Habhab, JJ.

I.

The parties submitted this breach of contract action to the district court on a stipulation of facts. It is agreed that on November 8, 1980, Rodney and Ruth Wesenberg entered into a real estate contract to sell their farm in Franklin County, Iowa, to two couples, A.C. and Neva Benton and Maynard and Karen Plagge. Rodney Wesenberg owned 75% and Ruth Wesenberg owned 25% of the land sold. The Bentons and Plagges will be referred to collectively as the purchasers.

Rodney Wesenberg died testate on May 6, 1985. His will was admitted to probate. Ruth was named as executor and qualified as such on May 8, 1985. She is also named as the residual legatee of his estate.

In the spring of 1986, the purchasers were in default under the contract. They decided to return the property and cancel the agreement. The purchasers, through their agent, sent a letter to Ruth on February 28, 1986, informing her of their intention to cancel the contract and return to her the farm by quit claim deed. She was advised that the deed would be provided within thirty days. In accordance with this letter, the purchasers, on March 28, 1986, executed and delivered a quit claim deed conveying the entire farm to Ruth Wesenberg. The deed provided:

> This is an absolute conveyance in lieu of foreclosure and is not given as additional security. This Deed is given in satisfaction of a certain Contract dated November 8, 1980 and recorded December 1, 1980, Inst. 801759 in

> Franklin County, Iowa and amended on April 1, 1985, and the consideration for the conveyance is the release of the Grantor(s) from personal liability under said Contract. Grantor(s) do hereby assign, transfer and set over unto Grantee(s) any rights of redemption (he, she, they) have in and to said property as provided by Iowa law. This conveyance is exempt from documentary stamps pursuant to § 428A.2(18), Code of Iowa. (Underlining as in original.)

At that time there was a balance of $145,000 due on the contract. The property had a fair market value of $75,000 and there was $1,143 in real estate taxes which were unpaid.

On April 4, 1986, Ruth (as the owner of the entire fee) leased the property for the 1986 crop year. Three days later she recorded the quit claim deed from the purchasers. On June 5, 1986, again as the sole owner, Ruth mortgaged the property to the Farmers State Bank of Dows. She then, on January 9, 1987, sold on contract the "farm," except for a few acres, to Carolyn Jacobsen for $75,000.

There the matter rested until May 4 and May 5, 1988. On those dates, a series of transactions took place by Ruth, the Jacobsens, and the bank. Carolyn Jacobsen and her husband canceled their January 9, 1987, real estate contract of sale with Ruth by returning the farm to her by a quit claim deed. The deed provided in part: "The purpose of this quit claim deed is to cancel the contract between Ruth E. Wesenberg, Seller, and Carolyn M. Jacobsen, Buyer."

Ruth, as executor of Rodney's estate, then executed a court officer's deed for the small tract of land to herself. She conveyed to the bank by another court officer's deed the remainder of the farm. Ruth, in her individual capacity, also gave a warranty deed to the bank for the remainder of the farm. The bank then sold the farm to Jacobsen on the same terms as the January 9, 1987, contract.

On March 4, 1989, the estate, through its executor, Ruth, brought this suit against the purchasers for breach of contract. It claimed the purchasers owed the estate 75% of the $145,000 balance on the contract, or $108,750, plus interest. The trial court held against the estate and dismissed its petition.

In dismissing the estate's petition, the court held that when Rodney and Ruth executed the real estate contract on November 8, 1980, possession and equitable title to the property became seized in the defendants, while the Wesenberg's interests as vendors became personalty. H. L. Munn Lumber Co. v. City of Ames, 176 N.W.2d 813, 816 (Iowa 1970). The vendors were then treated as holding legal title of the property as trustees for the purchasers. Id. at 816.

The trial court then found that Rodney's 75% interest in the legal title to the property (by virtue of his vendor's interest) passed to Ruth instantly at the time of

his death. It reasoned that, at that time, 100% of the legal title in the property was held by Ruth.

In this respect, Iowa Code section 633.350 provides that when a person dies, title to the person's property, real and personal, passes to the person to whom it is devised by the person's last will, subject to possession by the executor for purposes of administration, pursuant to section 633.351. Case law provides that "[a decedent's] property, real and personal, automatically passed to and title immediately vested in her above named heirs at law, subject only to sale, administration and attendant costs provided by law." In re Estate of Bliven, 236 N.W.2d 366, 370 (Iowa 1975).

The trial court recognized that Ruth's interest in the property was subject to her sale of her vendor's interest in the property, as executor, in order to satisfy legitimate claims against the estate or the specific bequests. It concluded that when Ruth received the quit claim deed, she had fee simple title in the entire property and her acceptance of that deed with the recitations therein contained extinguished the contract. The trial court additionally held that "under the facts and circumstances established in the instant action, . . . that Ruth would be estopped from claiming relief as executor given her actions."

II.

This controversy then centers around the quit claim deed executed by the defendants on March 28, 1986, which identified "Ruth Wesenberg" as grantee and did not refer to her representative capacity as executor of the estate. Ruth concedes, and the estate agrees, that by accepting the quit claim deed and recording it, Ruth effectively released the defendants from personal liability under the contract as to her. Ruth, as the executor of her husband's estate, now argues, however, that the quit claim deed was not given to her in her representative capacity as executor of the Rodney Wesenberg Estate and, accordingly, the estate did not release the defendants from their obligation under the contract. In addition, it is argued the court erred in applying the defense of extinguishment of debt.

As it relates to the defense of extinguishment of debt, the estate contends it is not applicable here and is not supported by the facts. The estate admits a debt is considered to be extinguished if the qualities of debtor and creditor unite in the same person or entity. However, it claims the defense does not apply because the quit claim deed was given to Ruth alone, and the estate should be considered a separate entity.

It is clear that when Rodney died, his interest in the farm immediately passed to Ruth. The rule in Iowa, under Iowa Code section 633.350, is that title to a decedent's real [and personal] property passes instantly to the

devisees under his or her will, subject to possession by the decedent's personal representative during probate proceedings for purposes of administration, sale, or other disposition. DeLong v. Scott, 217 N.W.2d 635, 637 (Iowa 1974). Such title is assignable and transferable by the devisees or heirs immediately on the death of the decedent. See In re Estate of Bliven, 236 N.W.2d 366, 370-371 (Iowa 1975).

We agree with the trial court that the contract was extinguished upon Ruth's acceptance of the quit claim deed. The appellant concedes that when Ruth accepted the quit claim deed, she effectively released the purchasers from any claim she might have under the contract because of her 25% interest; we conclude, since title to her husband's interest passed to her instantly at his death, she effectively released the purchasers from liability under the contract as to her inherited interest.

We need not decide whether the defense of estoppel applies. However, it cannot go unnoticed that even if we were to accept the appellant's argument that an extinguishment and/or release as to the estate did not take place for it was not named in the quit claim deed, the proceeds from a damage award would flow to Ruth under decedent's will. The estate is not resting its claim on a need of proceeds for purposes of administration. We think Ruth, by accepting the deed, fully intended to release the purchasers from all liability under the contract, not only

as to her individual interest, but also as to the interest she inherited from her husband.

As an aside, the purchasers did not specifically plead that the contract had been "extinguished". They did allege the quit claim deed was given in satisfaction of the contract and that the contract was rescinded by this action. The purchasers also set forth sufficient additional facts to allow the district court to reach its decision. While an affirmative defense must be pled, it need not be designated as such; it is enough if the facts relied upon are set out. Johnson v. Pattison, 185 N.W.2d 790, 795 (Iowa 1971). We conclude the purchasers' pleadings were sufficient to raise a defense that the contract was extinguished.

AFFIRMED.