FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-045 / 92-975

IN THE MATTER OF THE ESTATE OF LAWRENCE N. HOFFMANN, Deceased,

HELEN V. HOFFMANN, Executrix of Estate of Lawrence N. Hoffmann, Deceased,

Appellant,

vs.

JOSEPH R. HOFFMANN,

Appellee.

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

Helen Hoffmann, the executrix of Lawrence Hoffmann's estate, appeals a district court's order on an application for instructions asking the court to construe a land sale contract between Lawrence Hoffmann and Joseph and Cherie Hoffmann. **AFFIRMED.**

Todd Elverson, Des Moines, for appellant.

LaVerne M. Roberg of Schoenthaler, Schoenthaler, Roberg & Bartelt, Maquoketa, for appellee.

Heard by Hayden, P.J., and Sackett and Habhab, JJ.

SACKETT, J.

The executor of the estate of Lawrence N. Hoffmann appeals a trial court decision directing her to convey title to Clayton County real estate that decedent, Lawrence N. Hoffmann, had contracted to sell to his son, appellee Joseph R. Hoffmann, and his wife, Cherie S. Hoffmann. We affirm.

Decedent agreed to sell his undivided one-half interest in farmland in Clayton County, Iowa, to Joseph and Cherie. The contract fixed the terms and provided under certain conditions the balance on the contract should be forgiven and the farm transferred to Joseph and Cherie on decedent's death. The question was whether the terms for the transfer without further payment on decedent's death had been satisfied.

The contract provided:

> 1. TOTAL PURCHASE PRICE. The buyer agrees to pay for said property the total of $110,250.00, due and payable at such place as may be from time to time designated by Seller as follows:
>
> (a) DOWN PAYMENT of $30,000.00 RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED; and
>
> (b) BALANCE OF PURCHASE PRICE, $80,250.00, as follows: The sum of $3,000.00 of principal, plus interest, to be paid on the 1st day of March, 1985, and on the 1st day of March each and every year thereafter until the 1st day of March, 2009, when all sums due under this Contract shall be paid in full, . . .
>
> Buyer shall be privileged to pay interest only on 5 installment dates during the entire term of the Contract, but no more than 5 such dates during the first 10 years of said Contract. Such principal installment payments are not thereby forgiven, merely postponed.

> In the event all payments have been paid under this Contract as required, and this Contract is in existence at the time of Seller's death, Seller agrees to the full forgiveness of the remaining payments under the Contract, and agrees that the transfer of title as required herein upon full payment shall be made to Buyers regardless of what otherwise would be the remaining balance due under the terms hereof. . . . (Emphasis supplied).

Between March 1986, the date the first payment was due, and December 29, 1991, the date of Lawrence's death, there were payments due on March 1 of 1985, 1986, 1987, 1988, 1989, 1990, and 1991.

Joseph and Cherie made all the interest payments but they were not all timely. Additionally, twice Joseph and Cherie paid no principal and four times they made less than a full principal payment. If they had skipped five principal payments in the first ten years, they would have deferred principal of $15,000. At the time of decedent's death, they had deferred principal of $9,750.

After decedent's death, the issue arose of whether the balance of the purchase price should be forgiven and the farmland transferred to Joseph and Cherie. Joseph and Cherie contended they had made all contract payments and the farmland should be transferred by the estate to them. The executor of decedent's estate contended all payments had not been made and the balance due on the contract should be an asset of the estate. A hearing was held. The trial court found decedent had intended to make a contract

that was advantageous to his son, the contract was ambiguous; decedent had not intended Joseph and Cherie make interest[1] payments annually or all the principal installments be paid. The court determined decedent's failure to require strict compliance with the terms of the contract during his lifetime and the subjective interpretation of "as required" should be used. The trial court directed the estate to transfer the farm to Joseph.

The estate has appealed contending the contract was not ambiguous and Joseph failed to comply fully with the terms. Consequently, the judgment of the trial court should be reversed.

The parties are in agreement that our review is for the correction of errors at law. Therefore, the trial court findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1).

We will affirm the trial court if any reason to do so appears in the record. See State v. Vincik, 436 N.W.2d 350, 354 (Iowa 1989).

The question is should the term "as required" be defined according to the letter of the written contract or, as the trial court found, according to the actions of decedent.

We agree with the trial court finding the contract was intended to give Joseph favorable treatment. We also agree

1. The trial court appears to have mistakenly used interest when it was referring to principal.

with the finding decedent acquiesced in the payments made by Joseph. We further note Joseph and Cherie did miss more than five full payments but the collective amount of the missed payments totaled less than $15,000, that being the amount Joseph was by the contract allowed to postpone in the first ten years of the contract.

The estate contends the words "as required" were not ambiguous and the clear meaning was Joseph and Cherie had to comply with the letter of the written contract in every way in order to obtain the benefits when decedent died.

The trial court found decedent acquiesced in the manner the payments were made. The total of the deferred principal is less than the amount that would have been deferred if five full principal payments had been deferred.

Extrinsic evidence is not admissible to vary terms of a written agreement if the provisions of the agreement are plain and not ambiguous. See M-Z Enters., Inc. v. Hawkeye-Security Ins. Co., 318 N.W.2d 408, 412 (Iowa 1982); City of Des Moines v. City of West Des Moines, 244 Iowa 310, 315, 56 N.W.2d 904, 907 (1953). However, if the contract is ambiguous and the parties had a different sense as to its meaning, then a fact question is generated as to what sense is to prevail against either party in which he or she had reason to suppose the other understood it. See Cannon v. National By-Products, Inc., 422 N.W.2d 638, 640

(Iowa 1988); M-Z Enters., 318 N.W.2d at 412. Evidence of the subjective interpretation of the contract is admissible. Baron v. Crossroads Ctr. of Iowa, Inc., 165 N.W.2d 745, 750 (Iowa 1969).

The trial court did not err in finding the contract ambiguous. Therefore, the trial court was correct in determining the subjective intent of the parties. There is substantial evidence to support the trial court finding Joseph and Cherie had performed the contract as required by decedent. In addition to the reasons advanced by the trial court, we find the fact the deferred principal did not total $15,000 to be relevant. We affirm.

We affirm the trial court.

AFFIRMED.