

IN THE COURT OF APPEALS OF IOWA

FILED

OCT 22 1986

CLERK SUPREME COURT

**LAURA SCHULTZ, MERRITT
WALTON, and BETTY WALTON,**

Plaintiffs-Appellees/
Cross-Appellants,

vs.

FRED M. SCHULTZ,

Defendant-Appellant/
Cross-Appellee.

Filed October 22, 1986

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6-296
85-1859

Appeal from the Iowa District Court for Polk County (CE 22-13020) - Joel
D. Novak, Judge.

Defendant appeals the district court decision imposing a constructive
trust on defendant for the benefit of plaintiff. **REVERSED.**

Arvid D. Oliver, Des Moines, Iowa, for defendant-appellant/cross-appellee.

Robert C. Oberbillig, Des Moines, Iowa, for plaintiffs-appellees/cross-
appellants.

Considered by Donielson, P.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

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Defendant Fred M. Schultz appeals the district court decision imposing a constructive trust on defendant for the benefit of plaintiff Laura Schultz. Laura Schultz and Merritt and Betty Walton have cross-appealed, challenging the district court's refusal to reform the deed. We conclude that the deed in question should be reformed in favor of Laura Schultz and therefore, we reverse the district court.

In 1974 the Waltons decided to sell a house they owned to Betty's sister, Laura Schultz, and Laura's husband, Fred J. Schultz. Betty Walton expressed an intent to keep the house in her family by selling it below market value to her sister, Laura. However, unknown to Laura or to the Waltons, Fred J. Schultz arranged to have the deed made out to himself and his son from a prior marriage, Fred M. Schultz, rather than to himself and Laura. The deed showed Fred J. Schultz and Fred M. Schultz as joint tenants with full rights of survivorship and not tenants in common.

Fred J. Schultz and Laura Schultz occupied the house from 1974 until the death of Fred J. Schultz in 1984. Thereafter, Fred M. Schultz claimed sole ownership of the house pursuant to the 1974 joint tenancy deed.

Laura Schultz and the Waltons filed the present action against Fred M. Schultz, asking either that the 1974 deed be reformed to reflect the intentions of the Waltons or that a constructive trust be imposed on the house for the benefit of Laura Schultz. The district court refused to reform the deed but did impose a constructive trust on the house for the benefit of Laura Schultz.

This case was tried in equity and therefore, the scope of review in this matter is de novo. The remedy of reformation of an instrument is not absolute but lies within the sound discretion of the court of equity and depends upon

whether the remedy is essential to the ends of justice. Kendall v. Lowther, 356 N.W.2d 181, 188 (Iowa 1984). We give weight to the factfindings of the trial court, but we are not bound by them. Iowa R. App. P. 14(f).

One who seeks reformation of a deed has the burden of establishing by clear and convincing evidence that the deed does not reflect the true intent of the parties, either because of fraud or duress, mutual mistake of fact, mistake of law, or mistake of one party and fraud or inequitable conduct on the part of the other. Kendall v. Lowther, 356 N.W. at 187.

The record clearly shows that the Waltons made a mistake by conveying the property to Fred J. (husband) and Fred M. (son) as joint tenants. Betty Walton testified that she thought she was selling the property to her sister, Laura Schultz, and Laura's husband, Fred J. Schultz. Betty also testified that she sold the house at such a low price because she wanted to keep the house in the family and because she had previously agreed with her sister Laura that that would be the price. It is clear that the deed did not express the intention of the Waltons in selling the property; no evidence introduced by appellant suggests otherwise. Therefore, if fraud or inequitable conduct is shown on the part of the other party to the deed, the deed must be reformed.

The trial court did not find inequitable conduct on the part of Fred J. or Fred M. The court said the evidence was not clear and convincing as to this necessary element of deed reformation. We believe the evidence is clear and convincing that Fred J.'s conduct was proven to be inequitable by the clear and convincing evidence presented on the record.

Betty Walton's testimony and the below market value price of the house indicate that Laura Schultz and her husband were to directly benefit from the family relationship by acquiring the property. Betty also testified that Fred J. had told her, apparently untruthfully, that Susie, the daughter of Fred J.

and Laura Schultz, would have the property on Laura and Fred J.'s death. Laura Rynning, a friend of the Schultzes, substantiated this testimony, having heard Fred J. make the same statements.

In 1983, Laura discovered that the deed was not in her name. When she confronted Fred J. with this information he said not to worry about it and that Fred M. would never take anything from her.

The financial arrangements of the couple clearly indicate that Laura considered the house hers and that Fred J. took all of her contributions to the house, household expenses, and home purchase without telling her that she was not to get the house on his death. The trial court found as follows:

Laura began receiving social security benefits in 1974 and she placed her benefits directly into Fred's checking account which was a credit union. Laura felt that in this way she was contributing to the purchase price of the property. Laura continued depositing her social security checks into Fred's credit union account in 1974 until 1981 and approximately \$12,000 of social security benefits were deposited in that account by Laura.

The evidence also showed that a home improvement loan was taken out on the property to provide storm doors and windows. The account was placed in Laura's name as an owner of the property. Some of the payments on this account were paid by Fred out of his credit union account. In March of 1981 when Laura had the social security benefits in her name come directly to her account, she assumed and paid the obligations on the home improvement loan up until this action was started.

It is true that Fred J. paid over the \$12,500 purchase price to the Waltons. However, the evidence clearly and convincingly shows that Laura worked hard to make her own contributions to the house purchase fund, put her extra savings into the fund, and contributed to the maintenance and repair of the house. Fred M., the son, made absolutely no financial contribution to the house purchase. Laura had every reason to think the house would be hers when Fred J. died. The record is replete with evidence that Fred J. acted inequitably in substituting

his natural son as joint tenant in the deed. Plaintiffs met their burden on this element necessary for deed reformation.

The precedent cited by appellant does not require a different solution. Kendall v. Lawther, 356 N.W.2d 181, seen as apposite by the trial court, found that the first element necessary for reformation was not present in that case since plaintiffs did not show what was actually intended in the transfer of land. Id. at 187. The court in Kendall also found no evidence of fraud or inequitable conduct that would justify reformation. Id. In Kufer v. Carson, 230 N.W.2d 500 (Iowa 1975), the court refused to justify reformation of a deed where there was not clear and convincing evidence that the instructions did not express the true intention of the parties. That is not the case here. There is little disagreement over the fact that the Waltons did not intentionally agree to convey their property to the Schultz father and son. There is a great deal of evidence that Fred J. Schultz's conduct was inequitable.

Since we have found that the deed should be reformed so as to give Laura Schultz legal title to the property in question, we need not reach appellant's claim that the court erred in imposing a constructive trust. In a constructive trust, the holder of the legal title is held to be a trustee for the benefit of another, who in good conscience is entitled to the beneficial interest. Westcott v. Westcott, 259 N.W.2d 545, 547 (Iowa 1977). In granting appellee's request that the deed be reformed, Laura Schultz is the holder of the legal title.

REVERSED.

Donielson, P.J., concurs; Hayden, J., dissents.

HAYDEN, J. (dissenting)

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I respectfully dissent.

I find the trial court rightfully imposed a constructive trust for the benefit of plaintiff. I would affirm.