IN THE COURT OF APPEALS OF IOWA

No. 1-541 / 91-462

FILED
FEB 25 1992
CLERK SUPREME COURT

**THE NATIONAL BANK OF WATERLOO, Conservator of Property of Sam Gall, a/k/a Silferious Gall,**

Appellant,

451

vs.

**ROBERT A. OJILE and JEANNETTE L. OJILE,**

Appellees.

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Appeal from the Iowa District Court for Des Moines County, Robert Bates, Judge.

The conservator challenges the district court's ruling in a quiet title action. **REVERSED AND REMANDED.**

Craig D. Warner of Aspelmeier, Fisch, Power, Warner & Engberg, Burlington, for appellant.

William Bauer and Mary Ann Brown of Ruther, Bauer, Schulte, Hahn, Swanson & Crowley, Burlington, for appellees.

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

**HAYDEN, J.**

Silferious Gall (Sam), was born on June 20, 1899. Sam lived in Burlington, Iowa, where he resided in a home he had built. Sam has survived his wife and his two children.

Jeannette Ojile is Sam's niece. After Sam's daughter's death in 1979, Sam befriended Jeannette and her husband, Robert. When the Ojiles sold their home in 1987, Sam invited them to live with him at his residence. Eventually, Sam agreed to deed his property to the Ojiles in exchange for the Ojiles agreeing to care for Sam and maintain his residence for the remainder of Sam's life. The Ojiles moved in with Sam in September 1988.

Prior to this transaction Sam was diagnosed as having diabetes in 1986. Sam began seeing Dr. Bedi in 1987. At that time Sam's diabetes was under control with five milligrams of insulin per day. Sam also suffered from depression. During 1987 and 1988 Sam's diabetes was basically under control. By June 1989, however, Sam's blood sugar level had substantially increased, and his insulin had to be increased to twenty-five milligrams per day. Sam's depression also worsened during this time. Dr. Bedi prescribed an antidepressant for Sam and on many occasions counseled the Ojiles about the importance of a proper diet for Sam.

Sam informed two of his nieces who lived in Waterloo, Alberta Barton and Rosann Farkus, he wanted to get away from the Ojiles. On October 4, 1989, Alberta and Rosann

went to Burlington to visit Sam. They found Sam to be shaking and unsteady on his feet. Sam complained of a funny feeling in his head and not feeling well. Sam told Alberta and Rosann if he stayed with the Ojiles any longer he would not live very long.

Alberta and Rosann removed Sam from the home and took him to Waterloo. Sam has not returned to Burlington since that date. Alberta and Rosann took Sam to Dr. Karlowski, a Waterloo physician. Dr. Karlowski determined Sam's diabetes was out of control and admitted him to the hospital. Sam was discharged approximately two weeks later and has since been living with Alberta and Rosann. Sam's diabetes has remained under control ever since he left the hospital and began living with Alberta and Rosann.

Sam subsequently asked that a conservatorship be opened by the National Bank of Waterloo. The conservator sent a demand letter to the Ojiles asking them to return the property to Sam. When the Ojiles did not relinquish the property, the conservator commenced a quiet title action. The trial court determined there was no undue influence and the parties' agreement was valid. In addition, the trial court determined there had been no substantial breach of the agreement amounting to a failure of consideration and dismissed Sam's petition.

The conservator appeals, claiming the trial court erred in failing to conclude the Ojiles' level of care constituted a substantial breach in the parties'

agreement. The conservator also asks us to return the parties to status quo.

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. In re Marriage of Steenhoek, 305 N.W.2d 448, 452 (Iowa 1981). 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).

Where the consideration for a conveyance is an agreement to care for or support the grantor and there has been a substantial breach of such agreement, this amounts to a failure of consideration. Snider v. Godfrey, 232 Iowa 1, 4, 4 N.W.2d 380, 382 (1942). Relief is granted on the theory no other remedy is adequate. Id. In determining the applicable level of care, the focus is on the level of care necessary for the recipient and his or her particular needs. Patterson v. Patterson, 81 Iowa 626, 628, 47 N.W. 768, 769 (1891). Thus, simply providing food, clean clothing, and shelter may not be sufficient to meet the standard of care required to fulfill the obligation.

In the present case Sam had a particular need. He needed a special diet appropriate for a diabetic. Sam's physician testified Sam's diet played a significant role in controlling his diabetes. Dr. Bedi counseled the Ojiles many times about the importance of a proper diet for Sam.

The Ojiles, however, neglected to follow Dr. Bedi's medical advice. Ojiles contend Sam's deteriorating health was the product of his disease progressing and his advanced age. The record is clear since Sam left the Ojiles' environment his diabetes has been under control. We are mindful switching Sam's medical care to another physician may also have contributed to his improved health. Nevertheless, seeking appropriate medical care was a responsibility the Ojiles undertook when they agreed to provide care for Sam. Finally, Sam stated he felt he would not live much longer if he stayed with the Ojiles. A level of care which renders life intolerable for the recipient is as much a breach of their agreement as grantees' failure to care for grantor. McDowell v. Greenland, 259 S.W.2d 305, 309 (Tex. Civ. App. 1953).

We determine the evidence was sufficient to show the Ojiles' level of care constituted a substantial breach of the parties' agreement. We reverse the judgment of the trial court and remand so the parties' interests may be adjusted. In making the adjustments the trial court shall consider the Ojiles' forfeited $650 in rent, they expended $5,000 in remodeling Sam's home, and other factors necessary to return the parties to their respective positions prior to entering the agreement.

Costs of this appeal are taxed to Robert and Jeannette Ojile.

**REVERSED AND REMANDED.**