FILED
JUN 2 9 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

211

DENNIS REILLY,	)	
Plaintiff-Appellant,	)	Filed June 29, 1988
vs.	)	
SHANE B. REILLY and **VALLEY NATIONAL BANK OF FREMONT COUNTY,**	)	8-179 87-1435
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Fremont County (No. L 21944), Keith E. Burgett, Judge.

Plaintiff appeals a trial court judgment finding that he and his son held property as tenants in common, sharing equally, and that defendant Valley National Bank could execute on the son's interest. **AFFIRMED.**

John M. Johnson of Leonard, Johnson & Graeser, Sidney, for plaintiff-appellant.

Trenton D. Hampton of Frazer, Stryker, Veach, Vaughn, Meusey, Olson, Boyer & Bloch, Omaha, Nebraska, for defendant-appellee Valley National Bank of Fremont County.

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

DONIELSON, P.J.

Plaintiff appeals from a trial court judgment finding that he and his son held property as tenants in common, sharing equally, and that defendant Valley National Bank could execute on the son's interest. We affirm.

Dennis Reilly and Shane Reilly are father and son. In 1986 they bought a rental house as tenants in common. Valley National Bank later obtained a judgment against the son for a debt owed for the purchase of an automobile. The bank executed upon the son's interest in the real estate in question and forced a sheriff's sale where the bank bought an undivided one-half interest in the property.

This appeal is from a judgment by the trial court that the property was held by father and son as tenants in common, sharing equally. The father contends that he owns 100% of the property. He alleges that he paid all of the purchase price and that his son was to live in the house and make monthly payments whereby he would acquire a proportional ownership interest, but that the son left the state before making any of these payments. The father further contends that he never intended to make a gift of any part of this property to his son.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4. Findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). In the construction of written contracts, intent of the parties controls; and except in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 14(f)(14).

In Frederick v. Shorman, 259 Iowa 1050, 1056, 147 N.W.2d 478, 482 (Iowa 1966), a case involving substantially similar facts, the court set forth that plaintiff must overcome three rebuttable presumptions:

> First, a deed is presumed to be that which it purports to be and the burden is on the one asserting otherwise .... Second, there is a presumption that joint tenants hold in equal shares .... Third,

> where a parent causes a deed conveying land to be placed in the names of the parent and a child and the parent furnishes the consideration, the law presumes a gift by the parent or advancement to the child.

These principles relating to joint tenancies may be applied as well to tenancies in common. Cudmore v. Cudmore, 311 N.W.2d 47, 49 (S.D. 1981).

We agree with the trial court that plaintiff failed to overcome the presumption that the deed was what it purported to be. Plaintiff admitted a tenancy in common existed. Plaintiff contends his son had no interest in the property since his son contributed nothing to the purchase price, but yet plaintiff required his son to execute and record a quit claim deed conveying his son's interest to him after the sheriff's sale and after plaintiff initiated the present action.

Furthermore, the deed was executed in January 1986. The son departed from the state in April 1986, without making any payments on the property. It was not until January 1987 the bank levied and executed on its judgment against the son. Plaintiff's occupation deals with insurance and investments. As such, if plaintiff's intent was that he possessed complete ownership of the property, plaintiff should have known when his son made no payments and left the state that a quit claim deed should have been executed at that time.

Plaintiff has not overcome the presumption by a preponderance of the evidence that he did not intend a gift to his son. There was no written instrument evidencing any agreement for the son to make payments on the property.

We agree with the trial court that "[a]t the time of the sheriff's sale, there was no way to determine by examination of the record at the Fremont County Recorder's office that the property was held other than by Shane B. Reilly and Dennis Reilly as tenants in common, sharing equally." The deed was unambiguous: both names were listed as grantees.

Plaintiff requests attorney fees under Iowa Rules of Civil Procedure 293 and 294 governing assessment of fees in partition actions. After review of these rules, we affirm the trial court's denial of plaintiff's request for attorney fees.

For the foregoing reasons, we affirm the judgment of the trial court.

AFFIRMED.