

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT
Filed April 8, 1983**DONALD J. DOYLE AND JOHN ROBERT
DOYLE**, Administrators of the
Walter M. Doyle Estate,

Plaintiffs-appellees,

vs.

**GEORGE HUGHES AND MILDRED O'DOWD
HUGHES**, et al.,

Defendants-Appellants.

2-492
2-68332

Appeal from Fremont District Court, Leo Connolly, Judge.

Defendants appeal from the trial court's adverse orders in plaintiffs' actions seeking to quiet title to certain property in the plaintiffs, and seeking specific performance by defendants on a contract for the sale of the property.

AFFIRMED.

Richard G. Davidson, Clarinda, for defendants-appellants.

Richard B. Maher, Tabor, for plaintiffs-appellees.

Heard en banc.

PER CURIAM

Defendants appeal from the trial court's adverse orders in plaintiffs' actions seeking to quiet title to certain property in the plaintiffs and seeking specific performance by defendants on a contract for the sale of the property. We affirm.

The facts giving rise to the present dispute are substantially as follows. On February 3, 1970, Walter M. Doyle, the buyer, and Cecilia Hughes and George Hughes, the sellers, entered into a contract for the purchase of some real estate. The sellers entered into the contract as joint tenants with right of survivorship. It was stipulated in the contract that the joint tenancy would not be destroyed by the sale.

The contract provided for a \$5,000 downpayment, the buyer's assumption of the unpaid balance of a mortgage in favor of the Federal Land Bank of Omaha in the sum of \$15,691.54, the payment of interest and the remaining balance of the purchase price on an installment basis together with interest.

The buyer took possession of the property, made all of the required payments on the contract and paid the unpaid balance on the mortgage. In addition the sellers assigned federal land bank shares to the buyer. Apparently the shares were applied to the loan for a \$800 credit and the buyer gave a \$400 check for the shares to the sellers. Cecilia Hughes died on August 25, 1974. On August 16, 1979, the buyer died, apparently without obtaining a warranty deed from the sellers.

On December 3, 1981, the plaintiffs as the administrators of the estate of the buyer filed an amended petition in equity to quiet title to the property subject to this contract sale. On the same date the plaintiffs filed a petition seeking specific performance of the contract and seeking a warranty deed conveying the defendants' interest in the real estate and other relief. On December 21, 1981, the defendants filed an answer to the quiet title petition denying the material

allegations of the petition. On December 22, 1981, the defendants filed an answer and affirmative defense to the specific performance petition, denying the material allegations of the petition and asserting that on February 10, 1981, the defendant George Hughes executed a warranty deed concerning his undivided one-half interest in the real estate.

On January 25, 1982, the trial court entered a pretrial order requiring both parties to exchange and file on or before February 5, 1982, copies of exhibits to be introduced. The order provided that unless written objections were filed within ten days after that date the exhibits would be permitted into evidence. The plaintiffs exchanged with the defendants all exhibits offered by the plaintiffs at the time of trial and no objection was filed within the ten-day period.

During the trial the plaintiffs introduced as exhibits checks signed by the buyer and payable to the sellers in order to show that the buyer paid the amounts required by the contract. The defendants objected to the checks as being immaterial and lacking a proper foundation. The defendants stated that they were not introduced by any witness and that if "they were introduced by any member of plaintiff or its family, it would be in violation of the deadmen's statute, . . ." the court overruled the objection.

Plaintiffs also introduced as an exhibit a warranty deed executed by the sellers, which conveyed the property to the sellers as joint tenants. The defendant also objected to the admission of the warranty deed on the ground that it appeared to be immaterial. The trial court overruled the objection.

On March 11, 1982, the trial court entered two orders in these actions. The trial court quieted title to the property in the buyer. The trial court also noted that the defendants had already come forward with the deeds requested by the plaintiffs and ordered the defendants to pay court costs in this matter and to pay any revenue stamps owing in regard to the subject deeds.

On March 30, 1982, the defendants filed notices of appeal and in connection with one notice made a request for consolidation.

Defendants advance five arguments on appeal: (1) that the trial court erred in overruling defendants' objection to the checks admitted as evidence of payment of the real estate contract on the basis that the checks were immaterial, improper foundation was laid for their admission, and their introduction violated Iowa Code section 622.4 (the deadman's statute); (2) that the trial court erred in failing to find that the purchaser was \$400 short in his payment on the contract since he only paid \$400 on the cashing of Federal Lank Bank stock; (3) that the trial court erred in rendering a judgment against defendant George Hughes because he conveyed his interest in the real estate by warranty deed prior to the trial; (4) that the trial court erred in overruling defendants' objection to the admission of the joint tenancy conveyance by the contract sellers as an exhibit on the basis of its immateriality; and (5) that the trial court erred in ruling for the plaintiffs in both the quiet title action and the action for specific performance since the evidence did not support these judgments. Because this is an action in equity, our review is de novo. Iowa R. App. P. 4.

It is our opinion that defendant's arguments on appeal are not only without merit, but border on the frivolous. We therefore will deal with them in short order.

The trial court did not err in overruling defendants' objection to admitting certain checks as evidence. Since whether or not the purchaser paid the amount due on the contract was at issue in the case, the checks were material to show that the payments were indeed made. Furthermore, defendants' objection was not timely made under the requirements of the pretrial order. Iowa R. Civ. P. 136

and 138 provide the court with the authority to set criteria at pretrial conferences on any matter which may expedite or aid the trial. The power to make these orders presumes the power to enforce them. See Rowen v. Le Mars Mutual Insurance Company of Iowa, 282 N.W.2d 639, 646 (Iowa 1979). Defendants waived their objections when they failed to make them within the ten-day period provided in the pretrial order.

The trial court did not err in failing to find that the purchaser was \$400 short in his payments. The checks offered in evidence showed that the entire contract price was paid. There is no mention in the contract of the assignment of the Federal Land Bank shares, and the claimed \$400 shortage has nothing to do with the completion of the real estate contract.

George Hughes was a proper party-defendant in this action. The warranty deed he executed merely transferred his one-half undivided share. Because he and Cecilia owned the land as joint tenants with right of survivorship, he acquired her one-half undivided interest immediately upon her death. This interest was not transferred by warranty deed. The joint tenancy conveyance was material in that it showed that George Hughes and Cecilia owned the property as joint tenants with right of survivorship immediately prior to the sale.

Because the evidence shows that the purchasers met all of their obligations under the contract, the trial court was correct in ruling for the plaintiffs in both the quiet title action and the action for specific performance on the real estate contract.

Plaintiffs have asked us to assess and award reasonable attorneys fees. Generally, there can be no award of attorneys fees unless it is authorized either by statute or by contract. Harris v. Short, 115 N.W.2d 865, 866 (Iowa 1962). We can find no provision which would authorize such an award in the present case. Fees are therefore denied.

AFFIRMED.