

IN THE COURT OF APPEALS OF IOWA

FILED

FEB 23 1989

CLERK SUPREME COURT

PATTIE, HINSHAW & DANIELSON, P.C.,)

Plaintiff-Appellee,)

vs.)

ANGIE L. DOUPE, THEODORE E.)

DOUPE, KATHRYN SCHMIDT, and)

LESTER SCHMIDT,)

Defendants-Appellants.)

300

9-14
88-430

Appeal from the Iowa District Court for Marshall County
(No. 36468), Carl D. Baker, Judge.

Defendants appeal from a district court decision finding the transfer of real estate by the Doupes to the Schmidts fraudulent and void and determining plaintiff had a prior lien on the property to the extent of its judgment against the Doupes. **AFFIRMED.**

Defendants-appellants appeared pro se.

Brian L. Danielson, of Pattie, Hinshaw & Danielson, P.C., Marshalltown, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

OXBERGER, C.J.

391

This is an appeal from a district court decision finding the transfer of real estate by the defendant Doupes to the defendant Schmidts fraudulent and void and determining plaintiff had a prior lien on the property to the extent of its judgment against the Doupes. Our review of this equitable action is de novo. Iowa R. App. P. 4. We give weight to the findings of fact by the trial court especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We affirm.

Angie and Theodore Doupe owned real estate in Marshall County. Lester Schmidt is Angie's brother. In December 1986 plaintiff filed a small claims action against the Doupes for legal fees. On January 12, 1987, Angie Doupe signed over a deed to the Marshall county property to Kathryn Schmidt. This deed was never recorded. On January 26, 1987, the small claims court entered judgment in plaintiff's favor against the Doupes for almost \$1,700. Later that same day, Angie and Theodore executed a deed to their property to Kathryn and then recorded the transfer.

Plaintiff then brought this action seeking to set aside the Doupes' conveyance of their property and to have its claim deemed superior to any claim of the Schmidts. The defendants argued the Doupes agreed to transfer the property to the Schmidts prior to plaintiff's action. The Doupes canceled two promissory notes executed by the

Schmidts in 1986 in consideration of this transfer. The district court found for the plaintiff and the defendants appealed. Following the appeal, the real estate was sold at sheriff's sale to Lester Schmidt.

Plaintiff claims defendants' actions in purchasing the subject property at sheriff's sale waives the defendants' right to appeal. Formerly the rule was quite strict concerning waiver upon payment or acceptance of payment of a judgment. Wederath v. Brant, 319 N.W.2d 306, 310-11 (Iowa 1982). More recently these waiver rules have been relaxed. Id. See also Johnson v. Johnson, 301 N.W.2d 750, 752-53 (Iowa 1981); Poulsen v. Russell, 300 N.W.2d 289, 293 (Iowa 1981); Medd v. Medd, 291 N.W.2d 29, 32 (Iowa 1980); Yeager v. Durflinger, 280 N.W.2d 1, 4 (Iowa 1979); Starke v. Horak, 260 N.W.2d 406, 407-08 (Iowa 1977); Millsap v. Cedar Rapids Civil Service Comm., 249 N.W.2d 679, 683 (Iowa 1977); In re Marriage of Abild, 243 N.W.2d 541, 543 (Iowa 1976); Hegtvedt v. Prybil, 223 N.W.2d 186, 188-89 (Iowa 1974); Sound Storm Enterprises, Inc., v. Keefe, 209 N.W.2d 560, 565 (Iowa 1973); Vermeer v. Sneller, 190 N.W.2d 389, 395 (Iowa 1971). Implicit in the appellate waiver doctrine is the requirement that the waiver be made voluntarily, intentionally and with knowledge of the circumstances. Vermeer v. Sneller, 190 N.W.2d at 395.

Plaintiff argues by virtue of the defendants' redemption of the subject property, the validity of the

sale, which is the subject of the judgment, can no longer be questioned. The plaintiff asserts defendants' actions were voluntary as an alternate remedy of filing for a supersedeas bond under Iowa Rule of Appellate Procedure 7 would have served to stay the proceedings.

Defendants appear in this action pro se. While the defendants' actions in redeeming their property may have been voluntary, we fail to find anything in the record to indicate defendants intentionally and with knowledge of the circumstances waived their right to appeal.

Defendants also fail to cite any authority in their brief. Iowa Rule of Appellate Procedure 14(a)(3) provides that failure to state, to argue, or to cite authority in support of an issue may deem that issue waived. Thus, we could dispose of the issues on this basis. We, however, elect to proceed to the merits of this case.

In determining whether a conveyance is fraudulent against a creditor, we look for certain badges or indices of fraud such as inadequacy of consideration, insolvency of the transferor, and pendency or threat of third party creditor litigation. Muelenthaler v. DeBartolo, 347 N.W.2d 688 (Iowa App. 1984) (citing Rouse v. Rouse, 174 N.W.2d 660, 667 (Iowa 1970)). And though blood relationship is not per se a badge of fraud, it may strengthen the inference arising from the circumstances, requiring strict proof of consideration and fairness of the transaction.
Id.

The trial court found the conveyance from the Doupes to Kathryn Schmidt was one designed to avoid the small claims judgment against the Doupes. Evidence of this conclusion can be found in the defendants' surprise that the trial court's decision was filed earlier than expected and prior to the conveyance. Further, the testimony of Angie Doupe revealed she knew little about the details of the transaction. The record reveals Lester Schmidt was in control of the entire plan. Upon our de novo review of the record, having given weight to the trial court in its assessment of credibility of the witness, we affirm.

AFFIRMED.