FILED
SEP 25 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ONSGARD STATE BANK,

Plaintiff-Appellee,

vs.

INGOLF J. OPHEIM and ERNEST J. OPHEIM,

Defendants-Appellants.

Filed September 25, 1986

6-238
85-1237

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Appeal from the Iowa District Court for Allamakee County (No. 21190), James L. Beeghly, Judge.

In this mortgage foreclosure action, defendants are two brothers who appeal from the trial court's order finding one of the defendants competent at the time of execution of a note and mortgage, and from judgment in favor of plaintiff and against mortgaged real estate held jointly by defendants. **AFFIRMED.**

Mary Jane White, Decorah, for defendant-appellant Ingolf J. Opehim.

William S. Hart, Waukon, for defendant-appellant Ernest J. Opehim.

John W. Shafer, Waukon, for plaintiff-appellee.

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

OXBERGER, C.J.

This is an appeal from a mortgage foreclosure action. The defendants, two brothers, each challenge the trial court's judgment in favor of the plaintiff mortgagee. The first defendant contends that the note and mortgage at issue are void as against him because he was mentally incompetent when they were executed. As such, he asserts that the plaintiff is not entitled to recover against him or his interest in the real estate held jointly with his brother. He claims that the trial court erred in failing to apply the proper standard of competency and in finding that he was competent at all times relevant to his transactions with the plaintiff. Because we find no error in the trial court's determination of his competency, we find it unnecessary to address the appellants' additional claims, and affirm.

Our review of this equitable action is de novo. In re Guardianship of Collins, 327 N.W.2d 230, 233 (Iowa 1982). While we are not bound by the trial court's findings, we give them weight, especially concerning the credibility of witnesses. Iowa R. App. P. 14(f)(17); In re Estate of Faris, 159 N.W.2d 417, 420 (Iowa 1968).

A presumption exists that the parties to a contract were competent when the contract was executed. Sjulin v. Clifton Furniture Co., 241 Iowa 761, 763, 41 N.W.2d 721 723 (1950). A contract cannot be avoided on the ground of alleged incompetency to enter it unless the evidence discloses that the person in question lacked sufficient mental capacity to understand it. In re Guardianship of Collins, 327 N.W.2d at 233. The party seeking to set aside the contract bears the burden of proving by clear and convincing evidence that the party in question "did not possess sufficient consciousness or mentality when the contract. . . was executed, to understand the import of [his] acts." Waitt Bros. Land, Inc. v. Montange, 257 N.W.2d 516, 521 (Iowa 1977)(quoting Costello v. Costello, 186 N.W.2d 651, 654 (Iowa 1971)).

Both defendants in the instant case signed the loan agreements[1] in question. Defendant Ingolf Opheim contends that he cannot be held liable in the foreclosure action because he was incompetent when the agreements with the plaintiff were executed. We agree with the trial court's conclusion that the evidence is insufficient to support this assertion. Ingolf himself testified to understanding the terms and implications of the loan agreement. The only evidence offered in support of his alleged incompetency are several letters which he wrote to political officials concerning the farm economy, and the fact that he had previously been institutionalized. We cannot say that the letters indicate Ingolf's inability to understand the contract when it was executed. Similarly, we do not think that his prior institutionalization is of consequence because he had been released as "recovered" and because the conservatorship appointed to handle his affairs had been closed.

Ingolf further contends that the trial court erred in applying an improper standard in determining his competency. In its findings of fact, the trial court stated that Ingolf "knew the value of money, the benefit that he was deriving from the note and mortgage, and knew that the obligation would have to be paid." We do not think that this statement departs from the legal principles set forth above so as to constitute the application of an erroneous standard.

We conclude that the trial court committed no error in finding Ingolf competent at the time that the contract in question was executed. As such, it is unnecessary to address appellant Ernest Opheim's claims asserted in this appeal, which concerned the extent of his liability if his brother were found incompetent.

AFFIRMED.

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[1]The mortgage agreement specifically at issue consolidated three preexisting loans, each signed by both defendants.