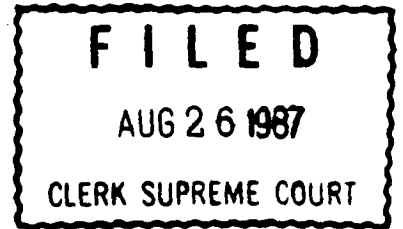


IN THE COURT OF APPEALS OF IOWA



PENNY S. STEPHAN,)

Petitioner-Appellant,)

vs.)

IOWA DEPARTMENT OF HUMAN SERVICES,)

Respondent-Appellee.)

Filed August 26, 1987

$\frac{7-188}{86-1581}$ 389

Appeal from the Iowa District Court for Iowa County (No. 19691) - Lynne E. Brady, Judge.

Petitioner appeals from district court's affirmance of final agency decision terminating shelter cost deductions for a food stamp program. **AFFIRMED.**

Carol L. Lucht and Timothy Fair, Student Legal Intern, Iowa City, for petitioner-appellant.

Thomas J. Miller, Attorney General, and Daniel D. Hart, Assistant Attorney General, for respondent-appellee.

Heard by Oxberger, C.J., and Schlegel, and Sackett, JJ., but decided en banc.

SACKETT, J.

Petitioner Penny S. Stephan appeals from the district court's decision affirming final agency action terminating Stephan's shelter cost deductions for her food stamp program. We affirm.

Stephan is a participant in the food stamp program administered by the Department of Human Services. Prior to 1985, Stephan rented a house from her parents for \$180 per month. Pursuant to 7 C.F.R. §273.9(d)(5)(i) (1985), Stephan's "shelter costs" were taken into consideration in determining her food stamp allotment. 7 C.F.R. §273.9(d)(5)(i) provides that shelter costs include the following:

Continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. (emphasis added).

In 1985, Stephan's parents deeded their house to her. The deed showed consideration was for love and affection. The deed was a warranty deed that warranted the premises were free and clear of all liens and encumbrances. Stephan and her parents made an oral agreement at the time the property was transferred whereby Stephan would pay her parents \$100 per month for a total of 36 months for a total of \$3,600. The \$3,600 was allegedly the purchase price of the property minus rent payments Stephan had already made. After the house was conveyed to Stephan the department terminated her shelter cost deduction. The hearing officer determined the warranty deed "clearly confirms that [Stephan] owns the property in question free and clear of any liens or encumbrances" and therefore the hearing officer found the \$100 per month payments were no longer "leading to the ownership of the shelter." The agency adopted the proposed decision of the hearing officer. Thereafter, Stephan petitioned

to the district court for judicial review. The district court affirmed the agency's final decision and this appeal followed.

Our scope of review in cases arising out of the Iowa Administrative Procedure Act is limited under Iowa Code §17A.20 to the correction of errors of law. Boyd v. Iowa Department of Job Service, 377 N.W.2d 1, 2 (Iowa App. 1985). We review the decision of the district court, also rendered in an appellate capacity, and determine whether the district court applied the law correctly. Endicott v. Iowa Department of Job Service, 367 N.W.2d 300, 302 (Iowa App. 1985). To make that determination this court must apply the standards of Iowa Code §17A.19(8) (1985) provides in a contested case the court shall grant relief from an agency decision which is not supported by substantial evidence in the record made before the agency when that record is viewed as a whole. Myers v. Iowa Department of Job Service, 373 N.W.2d 507, 509 (Iowa App. 1985). In making this determination we are limited to the record made by the hearing officer. Boyd, 377 N.W.2d at 2. We do not make an independent determination concerning the preponderance of the evidence. Budding v. Iowa Department of Job Service, 337 N.W.2d 219, 221 (Iowa App. 1983).

Evidence is substantial when a reasonable person would accept it as adequate to reach a conclusion. Gipson v. Iowa Department of Job Service, 315 N.W.2d 834, 837 (Iowa App. 1981). The question is not whether the evidence might support a different finding but whether the evidence supports the findings actually made. Boyd, 377 N.W.2d at 2. The fact that two inconsistent conclusions can be drawn from the evidence does not mean that one of those conclusions is unsupported by substantial evidence. Myers, 373 N.W.2d at 509.

Stephan asks this court to characterize the issue on appeal as one of law; whether the oral agreement between Stephan and her parents is an enforceable

contract. We determine this court need not reach that far to dispose of this case. Rather, this court need only determine whether there is substantial evidence to support the agency's determination that Stephan and her parents did not consider their verbal agreement for the payment of \$3,600 to constitute a purchase agreement for the house Stephan's parents deeded over to her. Sauer v. Moffit, 363 N.W.2d 269 (Iowa App. 1984). See Severson v. Elberon Elevator, Inc., 250 N.W.2d 417 (Iowa 1977) (Whether negotiations actually ripened into oral contract depends on intention of the parties as gleaned from the facts in the case).

When the court is asked to interpret a contract which the parties made for themselves, the object is to ascertain the meaning and intention of the parties as expressed in the language used. Gendler Stone Products Co. v. Laub, 179 N.W.2d 628, 630 (Iowa 1970). If the language of the contract is clear and unambiguous, the intention therein controls, rather than what is claimed was the intent of the drafters of the contract. Mopper v. Circle Key Life Ins. Co., 172 N.W.2d 118, 124 (Iowa 1969).

In the instant case there is substantial evidence supporting the agency's determination Stephan owns the property in question free and clear of all liens and encumbrances. The language of the deed conveying the house in consideration for love and affection indicates Stephan and her parents viewed the conveyance as a gift. As such, we find substantial evidence to support the agency's determination the oral agreement between Stephan and her parents for \$100 per month payments totaling \$3,600 was a separate agreement which was not part of the contract for sale of the house.

AFFIRMED.

All judges concur except Oxberger, C.J., and Schlegel, J., who dissent.

OXBERGER, C.J. (dissenting)

I respectfully dissent. Interpretation of the real estate contract in this case is a question of law for us to make.

I would find that the contract that requires Ms. Stephen to pay \$3,600.00 for the real estate is a purchase agreement and not a gift. I would reverse and remand.

Schlegel, J., joins this dissent.