IN THE COURT OF APPEALS OF IOWA

No. 1-397 / 10-1784
Filed July 13, 2011

**IN THE MATTER OF THE ESTATE OF
GARY L. STEELSMITH, Deceased.**

MATTHEW DEAN STEELSMITH,
Intervenor-Appellant.

Appeal from the Iowa District Court for Grundy County, Margaret L. Lingreen, Judge.

Matthew Steelsmith appeals the district court's order declaring that he is indebted to his father's estate in the amount of $363,477, plus interest. **AFFIRMED.**

Barry S. Kaplan and Melissa A. Nine of Kaplan, Frese & Nine, L.L.P., Marshalltown, for appellant.

James C. Ellefson, Marshalltown, for appellee United Bank & Trust.

Michael A. Smith and Shean D. Fletchall of Craig, Smith & Cutler, L.L.P., Eldora, for appellee Gregory Steelsmith.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

TABOR, J.,

We are asked to decide whether a son must reimburse his father's estate when the father, who signed as guarantor on his son's bank loan, paid off the loan when the son defaulted. Matthew Steelsmith appeals from the district court's order declaring that he is indebted to his father's estate in the amount of $363,477, plus interest. Matthew's father, Gary Steelsmith, guaranteed a loan for Matthew's business. After Matthew failed to make timely payments, Gary paid the loan off in full. Matthew argues this payment was a gift. Because the estate proved that Gary did not intend the payment as a gift and because a principal obligor has a duty to reimburse a guarantor, we affirm the district court's ruling.

I. Background Facts and Proceedings

Throughout his life, Gary Steelsmith helped both of his sons, Greg and Matthew, in various business ventures. Gary's friend and attorney, Larry McKibben, testified that Gary was a "very astute businessman." In July 2005, Matthew purchased a refuse company and began doing business as Steelsmith Disposal. About one month after purchasing the business, Matthew borrowed $65,000.00 from Wells Fargo Bank. Matthew needed his father to co-sign for the loan. When Matthew later tried to borrow more funds, Wells Fargo requested additional collateral to guarantee a further loan. Gary was unwilling to provide such collateral to the bank. At that time, Matthew and Gary approached Farmers Savings Bank in Marshalltown, where Gary had served as chairman of the board for at least ten years. On December 10, 2008, Matthew Steelsmith, d/b/a

Steelsmith Disposal, borrowed $381,997.90 from Farmers Savings Bank, payable in monthly installments of $5,167.68 for ninety-five months. Gary guaranteed payment of Matthew's obligation to the bank.

The first payment was due on January 17, 2009. Matthew made timely payments on the loan for the months of January and February 2009. Matthew's payment was two days late in March, ten days late in April, and four days late in May. In June 2009, Matthew, who had a history of drug abuse and associated criminal offenses, was arrested and incarcerated for thirty days. Matthew did not make the loan payment in June. During Matthew's incarceration, Gary and Greg operated Steelsmith Disposal and learned the business was not paying its bills. Gary began paying the business's bills from his own checking accounts. Gary frequently indicated on his checks that these payments were a "loan."

Attorney McKibben testified Gary was "terribly distressed" by Steelsmith Disposal's failure to make timely payments on the loan, especially in light of Gary's fiduciary duties to the bank as chairman of the board. On July 15, 2009, Gary paid off Matthew's loan at Farmers Savings Bank in the amount of $363,476.59. Gary's friend, Deanne Henry, testified that Gary never mentioned that the loan was a gift, but rather told her the loan payment would have to be part of Matthew's inheritance and that he needed to revise his will. McKibben testified that Gary did not consult him about making a gift to his son or filing a gift tax return. In addition, McKibben and Greg testified that, after Gary paid off the loan, he began seeking a buyer for Steelsmith Disposal, with the goal of recouping the money he had paid on Matthew's loan. Greg recalled Gary saying,

"I'm responsible for the loan. I'm going to have to pay it off and if there's anything to sell, I want to sell it and get as much money back of it as I can." Greg further testified that Gary had never given money to him without expectation of repayment to support his business endeavors. Matthew also testified that Gary never explicitly told him the loan payment was a gift.

On August 17, 2009, Gary committed suicide. Gary had not prepared a promissory note for execution by Matthew regarding the loan payment nor had he revised his will. Greg and Matthew are the sole beneficiaries under Gary's will, which provides that the two sons take under the residuary clause, "share and share alike, absolutely."

II. Scope and Standard of Review

Our review of a declaratory judgment action depends on how the case was tried. *Van Sloun v. Agans Bros., Inc*., 778 N.W.2d 174, 178 (Iowa 2010). "To determine the proper standard of review, we consider the 'pleadings, relief sought, and nature of the case [to] determine whether a declaratory judgment action is legal or equitable.'" *Passehl Estate v. Passehl*, 712 N.W.2d 408, 414 (Iowa 2006) (citation omitted). We review an action on contract for corrections of errors at law. *Atlantic Veneer Corp. v. Sears*, 232 N.W.2d 499, 502 (Iowa 1975). We likewise review probate matters such as this for legal error. *In re Estate of Voelker*, 252 N.W.2d 400, 402 (Iowa 1977). If the district court's findings of fact are supported by substantial evidence, they will stand. *Id*. But we are not bound by the district court's legal determinations. *Id*.

III. Analysis

The parties dispute whether Gary intended repayment of the bank loan to be a gift or a loan to Matthew. Generally, a voluntary conveyance from parent to child is presumed to be a gift or advancement. *Barth v. Severson*, 191 Iowa 770, 785, 183 N.W. 617, 624 (1921). Matthew argues Gary's estate did not rebut the presumption that Gary's payment was a gift. A gift requires three components: donative intent, delivery, and acceptance. *Raim v. Stancel*, 339 N.W.2d 621, 623 (Iowa Ct. App.1983). The parties agree the loan repayment was delivered and accepted; they disagree on the existence of donative intent.

Of primary importance to the determination of intent is the loan contract signed by Matthew as the primary obligor and Gary as the guarantor.

> Where a guarantor, who has entered into a contract of guaranty at the request of, or with the consent of, the principal obligor, pays . . . his principal's debt, the law raises an implied promise . . . on the part of the principal to reimburse the guarantor, and on the payment of the debt the guarantor at once has a right of action against the principal for reimbursement of the amount which he has paid, with interest thereon at the legal rate.

Halverson v. Lincoln Commodities, Inc., 297 N.W.2d 518, 522 (Iowa 1980). Our supreme court recently affirmed this principle and adopted the Restatement (Third) of Suretyship and Guaranty position on reimbursement, which imposes a duty upon a principal obligor to reimburse the secondary obligor. *Hills Bank & Trust Co. v. Converse*, 772 N.W.2d 764, 772 (Iowa 2009); Restatement (Third) of Suretyship & Guaranty § 22 (1996). A loan is a contractual agreement, *Mosebach v. Blythe*, 282 N.W.2d 755, 761 (Iowa Ct. App. 1979), and the

Restatement affirms that the duty to reimburse also arises from an implied contract. Restatement (Third) of Suretyship & Guaranty § 22 (1996).

Gary's statements regarding the payment and his attempts to find a purchaser for Steelsmith Disposal are consistent with the implied promise obligating Matthew to reimburse Gary, indicating that Gary intended the payment as a loan to Matthew. Gary's efforts to manage Steelsmith Disposal during Matthew's incarceration also reveal Gary's intent to recover the money he paid toward Matthew's loan. Deanne Henry testified that Gary told her the repayment would be part of Matthew's inheritance, further demonstrating Gary did not mean to give Matthew the money outright. Moreover, Gary did not consult his attorney about making a substantial gift to his son or filing a gift tax return.

Although Matthew testified that Gary never explicitly stated his intent, Matthew now argues that several facts support the inference that Gary intended the payment as a gift. Matthew relies upon the fact that Gary previously used promissory notes when loaning money to Matthew, but did not prepare a promissory note for Matthew to sign regarding the Steelsmith Disposal loan repayment. But both Matthew and Greg testified that although Gary occasionally used promissory notes when lending money to his sons, he did not always do so. Matthew also argues that, as an experienced businessman familiar with Matthew's troubled history with drugs and criminal offenses, Gary's intent "must have been that of a gift as opposed to a genuine business dealing."

The court found self-serving Matthew's assertion that Gary would have had Matthew sign a promissory note if he had intended to be repaid. We grant

considerable deference to the district court's credibility determinations. *State v. Boleyn*, 547 N.W.2d 202, 206 (Iowa 1996). The district court concluded the credible evidence in the record did not support Matthew's claim Gary meant the payment as a gift, but that the record reflected Gary's intent to loan the money to Matthew. The district court's determination that Gary intended the repayment as a loan is supported by substantial evidence. We conclude the estate successfully rebutted the presumption that Gary intended the loan repayment as a gift to his son.

The district court also cited authority regarding the theories of advancement and ademption. The law of advancements applies only to cases of intestacy, and therefore does not fit here. *See In re Mikkelsen's Estate*, 202 Iowa 842, 846, 211 N.W. 254, 255 (1926). The theory of ademption applies when a will is available and acts as a presumption that when the testator stands in loco parentis to the legatee, a gift to the legatee is in satisfaction of the legacy. *Id.* at 845, 211 N.W. at 255. The theory of ademption is premised upon the idea that a testator would not intend a child to receive a double portion of the estate. *Id*. Accordingly, the theory of ademption "depends very largely, if not altogether, upon the intent of the testator." *In re Brown's Estate*, 139 Iowa 219, 225, 117 N.W. 260, 263 (1908). Although our case law has not addressed whether a legatee may owe interest on an ademption, the law regarding ademption is very similar to that of advancements, and legatees are not obligated to pay interest on advancements. *See In re Manatt's Trust*, 214 Iowa 432, 437, 239 N.W. 524, 526 (1931).

The estate argues the district court mistakenly applied the rules of advancement and ademption to this case.[1] We do not read the district court's decision as adopting the theory of advancements or ademption; rather the court concluded Gary's payment was a "debt" and a "loan." Agreeing that Gary intended his repayment of the bank loan as a loan to his son, we also decline to apply the theory of advancement or ademption.

Because the estate established that Gary intended his payment as a loan, the implied contract between obligor and guarantor governs this case. In accordance with this implied contract, Gary's repayment of Matthew's loan activated Matthew's duty to reimburse Gary. In effect, Gary's payment was a loan to Matthew, as it created a legally enforceable obligation for Matthew to reimburse Gary the amount Gary paid Farmers Savings Bank on Matthew's behalf.

Notably, Gary paid off the loan before it reached maturity, which exceeded Matthew's current obligation to the bank. "If the secondary obligor performs the secondary obligation before its maturity, it must postpone any action for reimbursement until the date of maturity." Restatement (Third) of Suretyship & Guaranty § 22 cmt. d (1996). The terms of Matthew's loan required a monthly payment of $5,167.68 for ninety-five months. Accordingly, Matthew's obligation to reimburse Gary's estate would not become due until November 17, 2016. It is incumbent upon the parties to determine the appropriate schedule for Matthew's repayment of the loan, taking into account the estate's interest in finalizing probate expeditiously.

[1] Matthew makes no reply to this argument.

We affirm the district court's order holding Matthew indebted to Gary's estate in the amount of $363,477, plus interest.

AFFIRMED.