IN THE COURT OF APPEALS OF IOWA

No. 3-565 / 13-0063
Filed August 21, 2013

ALLAN SMITH,
Plaintiff-Appellant,

vs.

DAVID J. SMITH; CHIEF FARMS, LLC; and DONALD SMITH;
Defendants-Appellees.

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

Allan Smith appeals from the district court's grant of summary judgment in favor of David J. Smith; Chief Farms, LLC; and Donald Smith. **AFFIRMED.**

Thais Ann Folta and Andrew Strick of Elwood, O'Donohoe, Braun & White, L.L.P., Cresco, for appellant.

Marion L. Beatty of Miller, Pearson, Gloe, Burns, Weatty & Parrish, P.L.C., Decorah, for appellee Donald Smith.

Stephen F. Avery and Andrea M. Smook of Cornwall, Avery, Bjornstad & Scott, Spencer, for appellees David Smith and Chief Farms, L.L.C.

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

POTTERFIELD, J.

Allan Smith appeals from the district court's grant of a motion for summary judgment in favor of David J. Smith; Chief Farms, LLC; and Donald Smith. We affirm, finding the district court properly granted the motion for summary judgment.

I. Facts and proceedings.

On August 2, 2011, Clem and Judy Smith (mother and father of Allan, Donald, and David) entered a real estate contract with David for the purchase of two-thirds of their family farm for 1.8 million dollars. The other one-third interest was conveyed to David as a gift. Before the conveyance, Allan had farmed the land with his father under a crop-share arrangement for several years.

Allan filed suit against Donald; David; and Chief Farms, LLC (David's company) in March 2012. He claimed the contract between his father and brother was unconscionable, the brothers tortiously interfered with his business (his farm lease was terminated when his father sold the land to his brother), the brothers tortiously interfered with his inheritance, the brothers intentionally or negligently inflicted emotional distress, the contract constituted conversion of the land due to inadequate consideration, and various corporate alter ego allegations.[1]

Donald and David (personally and on behalf of the LLC) filed motions for summary judgment the following October. Depositions were taken of Clem, Judy, Allan, and Allan's wife Diane. Judy and Clem both testified to their

[1] David conveyed the farm to Chief Farms, LLC. Allan alleged the LLC was a "sham" and a "corporate fiction" and that the conveyance was made to "hinder, delay, or defraud" Allan.

competency and their satisfaction with the real estate agreement. A hearing was held on the motions for summary judgment, and the motions were granted in December 2012. The court found the following in its well-reasoned opinion:

> 1. Plaintiff Allan Smith and Defendants David Smith and Donald Smith are brothers. Their parents are Clem and Judy Smith.
> 2. Clem and Judy Smith owned farmland in Howard County, Iowa. The land was held in trust, with Clem and Judy both trustees.
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> On or about August 2, 2011, Clem and Judy entered into a real estate contract, for the sale of a two-thirds interest in their farmland to their son David J. Smith for the sum of $1,800,000. The contract also included machinery, tools, and equipment to be transferred by sellers to buyer. The real estate contract called for payments to begin December 12, 2012, and end December 12, 2026. The contract was recorded in the office of the Howard County Recorder on August 11, 2011. Also on August 2, 2011, Judy and Clem Smith, as trustees of their respective trusts, executed trustee warranty deeds conveying the trusts' remaining one-third interest to David Smith. This transfer was a gift. The trustee warranty deeds were recorded in the office of the Howard County Recorder on August 11, 2011.
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> 3. Trustee warranty deeds were also signed on August 2, 2011, whereby Judy and Clem Smith, trustees, conveyed the trusts' two-thirds interest in the farmland being sold under contract to David Smith. Those deeds were recorded in the office of the Howard County Recorder on February 23, 2012, and note that each was given in satisfaction of the real estate contract dated August 2, 2011.
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> 4. [Allan] asserts Defendant David Smith paid approximately $2,500 per acre for the two-thirds interest purchased pursuant to contract. [Allan] asserts the fair market value of the property is at least $9,000 per acre.
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> [Allan] asserts that, for more than the last 15 years, [Allan] and his father Clem Smith operated the real estate as a joint venture, on a 50/50 basis. He asserts he and Clem Smith own machinery together, which they used to farm the land, and have also shared machinery. [Allan] states neither Defendant has been actively involved in the farming business regarding the land in question. [Allan] notes he was not a party to the real estate contract and he was not informed the land was going to be sold. [Allan] states his father assured him the land would be divided equally among the father's three sons.
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> 5. [Allan] brings suit on the following causes of action: unconscionability, tortious interference with business, tortious interference with inheritance, intentional and/or negligent infliction

of emotional distress, conversion, request for injunction, and corporate veil/alter ego/fraudulent conveyance. The Court finds support in the record for Defendants' Statements of Undisputed Material Facts. In the materials supporting "[Allan]'s Statement of Disputed Facts" is the affidavit of Allan Smith. At numbered paragraph four of the affidavit, Allan Smith states that in May, 2011, "Mom and Dad went to David's and so did my brother Donald and his wife. I stayed home and planted the crop." In the affidavit of Jean Kreitzer, a sister to [Allan], as well as Defendants, Jean Kreitzer states David mentioned the price for the farm would be $5 or $6,000,000, but she later learned David only paid $1.8 million. David refused to discuss with her how the price had changed. She also states that on Ash Wednesday, 2012, she took her dad to see her mother at the nursing home. She writes it was planned to meet later in the date with Uncle Denny at Joe Bouska's office in Decorah.

When they arrived at the nursing home, David and Donald were there. She states she heard dad tell David, Don and mom numerous times that he wanted to rescind the contract. Neither David nor Donald would leave her alone with mom or dad. She states her dad had to go into the bathroom in order to have privacy to make a phone call. The next day, she learned that dad had stayed in town overnight with Donald and David, rather than going home to the farm, and that it was on this date the deeds to the farm were signed.

There is also an "Affidavit of Dennis Smith" as part of the materials supporting "[Allan]'s Statement of Disputed Facts." In his affidavit, Dennis Smith identifies himself as Clem Smith's brother and an uncle to Allan, David and Donald Smith. Dennis Smith states he was present on Clem Smith's farm in approximately February of 2012 for a planned trip to Joe Bouska's office. He writes they were scheduled to discuss with Mr. Bouska the transaction between David and Clem and Judy for the sale of the farm. Dennis Smith notes Clem received several telephone calls during the course of the conversation and the calls were from David Smith and Donald Smith. Dennis Smith states after a series of calls, Clem commented he wished he could stand up to David and Don. Dennis Smith reports that, as they left for the meeting with Mr. Bouska, Clem said he wanted to stop and talk to Judy. He did and then contacted Dennis Smith and advised Dennis he would not be going to Bouska's office.

In resisting the summary judgment motions, [Allan] includes these affidavits to support his contention there are material facts in dispute and Defendants are not entitled to judgment as a matter of law. However, the statements in the affidavits, on their face, do not provide a factual basis for [Allan]'s claims. It appears [Allan] makes inferences from the facts.

The court sustained the motions for summary judgment and dismissed the action against all defendants. Allan appeals, arguing the court erred in failing to allow inferences as a basis for defeating his brothers' motion for summary judgment and arguing he presented facts supporting the inferences necessary to defeat the motion for summary judgment.

Our review is for the correction of errors at law. *Butler v*. *Hoover Nature Trail*, *Inc*., 530 N.W.2d 85, 88 (Iowa Ct. App. 1994).

> Summary judgment does not result merely because the parties do not dispute the underlying facts. A jury issue may be presented in a case based upon undisputed facts if reasonable minds could draw different inferences or conclusions from the uncontested evidence. However, an inference based upon speculation or conjecture does not generate a material factual dispute to defeat summary adjudication. Inferences may be drawn in favor of the party opposing the summary judgment only if they are rational, reasonable, and otherwise permissible under the governing substantive law.

Id. After reviewing the depositions, affidavits, and pleadings of all of the parties in this case, we agree with the district court that the inferences Allan asks us to draw to avert summary judgment are simply not reasonable.

On appeal, Allan makes a general argument about the impropriety of summary judgment in this case. He makes a specific "example" only regarding his unconscionability claim, contending the contract between his parents and his brother was unconscionable as shown by the facts contained in the affidavits he presented in the district court. Allan is not a party to the contract. Unconscionability is determined at the time of the contracting. *C & J v*. *Wolfe*, 795 N.W.2d 65, 80 (Iowa 2011). The parties presented testimony that they were satisfied with their agreement. None of the facts presented on summary

judgment, nor any inference from those facts, can change the fatal flaw that Allan was not a party to the contract he seeks to set aside as unconscionable. The same rationale applies to his claim of conversion based on inadequacy of consideration. "Conversion is the act of wrongful control or dominion over chattels in derogation of another's possessory right thereto." *Welke v. City of Davenport*, 309 N.W.2d 450, 451–52 (Iowa 1981). Allan has shown no wrongful control in derogation of *his* former leasehold interest. Whether he thinks his parents sold their land for too low of a price is irrelevant.

In order to recover under a theory of tortious interference with contract, a third party's behavior must be improper. *Fin. Mktg Svcs., Inc. v. Hawkeye Bank & Trust of Des Moines*, 588 N.W.2d 450, 458 (Iowa 1999). In evaluating impropriety, the court looks to several factors including: the nature of the actor's conduct, the actor's motive, the interests of the other with which the actor's conduct interferes, the interests sought to be advanced by the actor, the social interests in protecting the freedom of action of the actor and the contractual interests of the other, the proximity or remoteness of the actor's conduct to the interference, and the relations between the parties. *Id.* There is always a risk when farming land under a lease that someday, the land will be sold to someone else. The element of an improper purpose focuses on the motivation of the third party to interfere with the contracting party's interests—mere adverse effect is not enough. *Id.* at 459. Allan has put forth no facts which support the theory that his brothers entered into the contract to buy land from his parents for the purpose of interfering with his lease agreement.

Our supreme court has recognized a cause of action for tortious interference with a bequest. *Frohwein v. Haesemeyer*, 264 N.W.2d 792, 795 (Iowa 1978). However, in *Frohwein*, the court quoted Prosser's The Law of Torts (fourth edition) noting such an action is appropriate where the expectancy has become almost certain: "as in the case of incompetency of the testator to make a change, or suppression of the will after his death, recovery has been allowed." *Id.* (internal quotation marks omitted). Allan's interest was still uncertain he presented no reliable evidence his parents planned to leave the land to him or that they were incompetent to make a change to their will.

Finally, he argues intentional and/or negligent infliction of emotional distress. Recovery for emotional distress is appropriate "when there has been an invasion of some legally protected interest by way of willful and malicious conduct." *Clark v. Estate of Rice ex rel. Rice*, 653 N.W.2d 166, 170 (Iowa 2002). Allan presented no evidence of an invasion of a legally protected interest of his by willful and malicious conduct.[2] We affirm the district court's well-reasoned opinion.

AFFIRMED.

[2] We also find no competent evidence was presented to support the proposition that any conveyance by David to the LLC was made with the intent to "hinder, delay or defraud" Allan. As we have ruled, Allan presented no viable claim opposing the conveyance. He is not a creditor of the transfer. *Schaefer v. Schaefer*, 795 N.W.2d 494, 498 (Iowa 2011). Therefore, his fraudulent conveyance claim also fails.