

STATE OF MICHIGAN
COURT OF APPEALS

FINANCIAL SUPPORT SERVICES-E, INC,

Plaintiff-Appellant,

v

IKHLAS E. KOURYAKUS,

Defendant-Appellee,

and

ESHAYA D. KOURYAKUS d/b/a FLAMINGO
PARTY SHOPPE and UDORO G.
UWEDJOJEVWE,

Defendants.

UNPUBLISHED

January 19, 2001

No. 217461

Oakland Circuit Court

LC No. 97-547033-CK

Before: Markey, P.J., and Whitbeck and J. L. Martlew*, JJ.

PER CURIAM.

Plaintiff Financial Support Services-E, Inc. appeals as of right from a circuit court judgment rendered in defendant Ikhlas Kouryakus's favor pursuant to MCR 2.116(A) and a subsequent order denying its motion for a new trial. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Financial Support sought to set aside a 1986 quitclaim deed granting Ikhlas Kouryakus the interest of her husband, defendant Eshaya Kouryakus, in the marital home. Financial Support contended that the transfer constituted a fraudulent conveyance under to MCL 566.17; MSA 26.887. The circuit court disagreed and entered judgment in Ikhlas Kouryakus's favor. It subsequently denied Financial Support's motion for a new trial pursuant to MCR 2.611(A)(1)(e).

* Circuit judge, sitting on the Court of Appeals by assignment.

II. Standard Of Review

We review a trial court's ruling on a motion for a new trial on the ground that the verdict is against the great weight of the evidence for an abuse of discretion.¹ In reviewing the trial court's ruling, this Court must engage in an in-depth analysis of the record.²

III. Fraud

MCL 566.17; MSA 26.887, repealed by 1998 PA 434, provides the legal framework for fraud in real estate conveyances and states:

Each conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors.

Fraud will not be presumed but must be affirmatively proved by clear and convincing evidence.³ At issue is whether the transferor had a fraudulent intent underlying the conveyance.⁴ Thus a grantee need not be a party to the fraud in order for the conveyance to be set aside as fraudulent.⁵

The transferor's actual intent may be proved by "badges of fraud," i.e., those circumstances surrounding the transaction that usually accompany an intent to hinder, delay or defraud creditors.⁶ "Often recognized badges of fraud include: lack of consideration for the conveyance; a close relationship between transferor and transferee; pendency or threat of litigation; financial difficulties of the transferor; and retention of the possession, control, or benefit of the property by the transferor."⁷ Another indication of fraudulent intent is when the conveyance renders the transferor insolvent.⁸ These badges are not conclusive evidence of fraud but may be stronger or weaker depending on their nature and number.⁹ The defendant may rebut the circumstantial evidence of fraud with evidence showing the bona fide nature of the

¹ *Bordeaux v Celotex Corp*, 203 Mich App 158, 170; 511 NW2d 899 (1993).

² *Arrington v Detroit Osteopathic Hosp Corp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992).

³ *Wright v Brown*, 317 Mich 561, 574; 27 NW2d 97 (1947); *United States v Rode*, 749 F Supp 1483, 1493 (WD Mich, 1990), aff'd 943 F2d 53 (CA 6, 1991).

⁴ *In re Auto Specialties Mfg Co*, 153 BR 457, 500 (WD Mich, 1993); *In re Otis & Edwards, PC*, 115 BR 900, 913 (ED Mich, 1990).

⁵ *Spencer v Miller*, 279 Mich 194, 201; 271 NW2d 731 (1937).

⁶ *Bentley v Caille*, 289 Mich 74, 77-78; 286 NW 163 (1939).

⁷ *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 660; 513 NW2d 441 (1994).

⁸ *Regan v Carrigan*, 194 Mich App 35, 39; 486 NW2d 57 (1992).

⁹ *Coleman-Nichols*, *supra* at 559-560; *Bentley*, *supra* at 78.

transaction.¹⁰ “The courts will closely scrutinize transactions between a husband and wife when creditors are involved.”¹¹

IV. Analysis

Here, Ikhlas Kouryakus presumably became indebted to Financial Support’s assignor sometime in 1986, if not earlier. However, the date Financial Support’s assignor filed suit against Ikhlas Kouryakus has not been disclosed, so it is not known if the suit was pending at the time of the transfer and there is no evidence that Financial Support’s assignor had threatened litigation at that time. The transfer was made between husband and wife for nominal stated consideration, but Ikhlas Kouryakus assumed sole responsibility for the outstanding mortgage balance of \$40,000 plus taxes, insurance, and other household bills. Moreover, Ikhlas Kouryakus’s testimony showed that Eshaya Kouryakus agreed to transfer the house to her in lieu of paying support for her or the children. It was thus like an award of marital property and child support for the divorce that would have occurred but for Ikhlas Kouryakus’s religious objections to divorce. While Ikhlas Kouryakus did state that she feared that leaving the property in her husband’s name would subject it to the reach of the mortgage lender and other household creditors, the transfer was done to ensure that the debts would be paid and that she and the children would have a roof over their heads.

Moreover, the creditors were not defrauded because Ikhlas Kouryakus assumed responsibility for all household debts and there is no evidence that those debts were not paid. Nor is there any evidence that Eshaya Kouryakus had other outstanding debts at the time or that the transfer rendered him insolvent. Finally, there is no evidence that Eshaya Kouryakus retained possession or control of the house; he was simply allowed to stay there from time to time when in town to visit his children. Thus the evidence did not clearly and convincingly establish that Eshaya Kouryakus actually intended to hinder, delay, or defraud his creditors at the time he transferred the marital home to Ikhlas Kouryakus. Therefore, the trial court did not abuse its discretion in denying Financial Support’s motion for a new trial.

Affirmed.

/s/ Jane E. Markey
/s/ William C. Whitbeck
/s/ Jeffrey L. Martlew

¹⁰ *Bentley, supra* at 78; *Ashbaugh v Sauer*, 268 Mich 467, 470-471; 256 NW 486 (1934).

¹¹ *Regan, supra* at 39.