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IN THE COURT OF APPEALS OF INDIANA

STAN REKEWEG, LLC, STANLEY REKEWEG, SUSAN K. REKEWEG, EDGAR W. REKEWEG, and ROSELLA M. REKEWEG,	)	
Appellants-Defendants,	)	
vs.	)	No. 90A02-1012-CC-1371
DICKASON TRUCK & EQUIPMENT, INC., n/k/a FSD ENTERPRISES, INC., FRANK W. DICKASON, as Trustee of THE FRANK W. DICKASON TRUST NUMBER ONE, CAROLYN SUE DICKASON, as Trustee of THE CAROLYN SUE DICKASON TRUST NUMBER ONE, and FRANK DICKASON,	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David L. Hanselman, Sr., Judge
Cause No. 90C01-0607-CC-24

November 2, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Edgar and Rosella Rekeweg appeal from the trial court's judgment of foreclosure of real estate in favor of Dickason Truck & Equipment, Inc. n/k/a FSD Enterprises, Inc. (Dickason Truck). Edgar and Rosella present several issues for our review, which we consolidate and restate as follows: Does the evidence support the trial court's findings of fact and do those findings, in turn, support the trial court's conclusions thereon?

We affirm.

In 2005, the owners of Dickason Truck, Frank and Carolyn (Sue) Dickason, decided to sell Dickason Truck after more than thirty years of business. Stanley Rekeweg, Edgar and Rosella's son, was interested in purchasing Dickason Truck from Frank and began discussions with him to that effect. Frank provided Stanley with the company's financial statements and records for the preceding five years and Stanley had them reviewed by his accountant.

On August 9, 2005, Stanley delivered to Frank a letter of intent for the purchase of Dickason Truck's assets, the terms of which were negotiated by attorneys for the two: Anthony Crowell, Dickason Truck's attorney, and Scott Ainsworth, Stanley's attorney. The letter of intent offered to purchase the assets for $500,000 plus the cost of Dickason Truck's inventory, which included the parts and truck inventory. Frank signed the letter of intent on August 11, 2005, and Stanley created Stan Rekeweg, LLC, as the entity that would purchase Dickason Truck's assets.

Ossian State Bank (the Bank) agreed to loan Stanley and his wife, Susan, up to $675,000 for the asset purchase. The financing arrangement provided for $200,000 as a down payment, a $400,000 floor plan line of credit for the truck inventory, and a $75,000 operating line of credit. As collateral for the loan, the Bank required a mortgage on 160 acres of real estate (the Farmland) owned by Edgar and Rosella. On September 19, 2005, Edgar and Rosella signed a mortgage in favor of the Bank to secure the $675,000 promissory note executed by Stan Rekeweg, LLC.

The loan from the Bank was not enough to cover the entire purchase price and the parties agreed that the remainder would be paid by a promissory note to Dickason Truck. Stanley provided Frank with a personal financial statement, but after reviewing it, Frank concluded that he could not agree to the sale of assets unless there was sufficient collateral to secure the promissory note. Ultimately, in October 2005, Stanley informed Frank that he could provide Dickason Truck with a mortgage on another forty acres of the Farmland owned by Edgar and Rosella, and a mortgage on real estate owned by Sharyl Fiechter, (the Fiechter property) as additional security. Crowell and Ainsworth finalized the asset purchase agreement for the parties.

The closing took place at Crowell's office on December 9, 2005. Frank, Sue, Stanley, Susan, Edgar, Rosella, Sharyl, Ainsworth, and Crowell attended the closing. Before any of the documents were executed, Ainsworth told Crowell that he needed to speak with Edgar, Rosella, Sharyl, and Stanley. The meeting lasted approximately thirty minutes.

Following the meeting, Ainsworth told Crowell that everyone was ready to proceed with the closing, and they all went into a conference room to sign the closing documents.

Stanley, on behalf of Stan Rekeweg, LLC, signed a promissory note in favor of Dickason Truck in the amount of $325,000, and Sharyl signed a mortgage for the Fiechter property to secure payment of Stanley's promissory note.

During the closing, Crowell, who was going to notarize the documents, noticed that Rosella did not speak clearly. Crowell asked Edgar about this and inquired of him if she was able to understand the documents she was about to sign. Edgar replied that Rosella had previously suffered a stroke, which had compromised her ability to talk or communicate, but that she understood everything that was being said, and was aware of the transactions that were taking place. Edgar and Rosella then executed the mortgage on additional acreage of the Farmland in favor of Dickason Truck. Crowell, who witnessed Edgar's and Rosella's signatures, notarized the mortgage.

Approximately six months after the closing, Stan Rekeweg, LLC defaulted under the terms of the promissory note to Dickason Truck by failing to make timely payments. On May 22, 2006, Crowell, on behalf of Dickason Truck, sent a notice of default letter to Stan Rekeweg, LLC. Dickason Truck then filed the foreclosure action which is the subject of this appeal.

Edgar and Rosella filed an answer and counterclaim to the foreclosure action, to which Dickason Truck filed its answer and affirmative defenses to the counterclaim. Edgar and Rosella filed a motion for partial summary judgment arguing that the December 9, 2005 mortgage on the additional acreage of the Farmland was void because Rosella was not competent to sign the mortgage. Although it is not clear from the record, that motion appears to have been denied. Edgar and Rosella filed a request for findings of fact and conclusions

thereon prior to the bench trial, which began on May 20, 2010. At the conclusion of the bench trial, the trial court took the matter under advisement, and both parties filed their proposed findings of fact and conclusions thereon. On November 8, 2010, the trial court entered its judgment in favor of Dickason Truck, which included findings of fact and conclusions thereon. Edgar and Rosella now appeal.

Edgar and Rosella argue that this matter should be remanded for a new trial because the trial court's findings of fact were not supported by sufficient evidence and that the findings were inadequate to support its judgment of foreclosure in favor of Dickason Truck. Pursuant to Indiana Trial Rule 52(A), "[o]n appeal of claims tried by the court without a jury . . . the court on appeal shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." When a trial court's judgment is accompanied by specific findings and conclusions, we apply a two-tiered standard of review. *Anthony v. Indiana Farmers Mut. Ins. Group*, 846 N.E.2d 248 (Ind. Ct. App. 2006). We construe the findings liberally in support of the judgment and first consider whether the evidence supports the findings. *Id*. Findings are clearly erroneous when a review of the record leaves us firmly convinced that a mistake has been made. *Id*. Next, we must determine whether the findings support the judgment. *Id*. A judgment is clearly erroneous if the findings of fact and conclusions thereon do not support it. *Id*. We will disturb the judgment only when there is no evidence supporting the findings or the findings fail to support the judgment. *Id*. In performing this review, we do not reweigh the evidence and consider only the evidence favorable to the trial court's judgment. *Id*.

In this case, Edgar and Rosella are appealing from an adverse judgment with respect to the foreclosure action for which they did not bear the burden of proof, and from a negative judgment with respect to their affirmative defenses to the foreclosure action. "A negative judgment is one that was entered against a party bearing the burden of proof; an adverse judgment is one that was entered against a party defending on a given question[.]" *Romine v. Gagle*, 782 N.E.2d 369, 376 (Ind. Ct. App. 2003). When a trial court enters findings of fact in favor of the party bearing the burden proof, we will deem the findings to be clearly erroneous where they are not supported by substantial evidence of probative value. *Garling v. Indiana Dep't of Natural Res.*, 766 N.E.2d 409 (Ind. Ct. App. 2002). We will reverse the judgment even where we find substantial supporting evidence, if we have a definite and firm conviction that a mistake was made. *Id*. A party appeals from a negative judgment where the party bears the burden of proving affirmative defenses, and the trial court finds in favor of the other party. *Mominee v. King*, 629 N.E.2d 1280 (Ind. Ct. App. 1994). A party appealing from a negative judgment must show that the evidence points unerringly to a conclusion different than that reached by the trial court. *Id*. We will reverse the negative judgment only where the decision of the trial court is contrary to law. *Id*. In making the determination whether a trial court's decision is contrary to law, we must determine if the undisputed evidence and all reasonable inferences to be drawn from that evidence lead to but one conclusion and the trial court has reached a different conclusion. *Id*.

Edgar and Rosella challenge the trial court's findings and conclusions on the following restated grounds: (1) that the trial court failed to adequately address the issue of Rosella's competency to execute the December 9, 2005 mortgage and ignored the medical

testimony presented on the issue; and (2) that the trial court failed to adequately address their affirmative defense and arguments under the Indiana Uniform Fraudulent Transfer Act[1] (UFTA).

We note at the outset that the trial court's findings of fact and conclusions thereon are virtually identical to those proposed by Dickason Truck. The practice of adopting a party's proposed findings is not prohibited, but the failure to prohibit such practice should not be interpreted as encouragement of the wholesale adoption of a party's proposed findings and conclusions. *Piles v. Gosman*, 851 N.E.2d 1009 (Ind. Ct. App. 2006). "When the trial judge signs the findings of fact and conclusions of law, they become the court's findings of fact and conclusions of law." *Indiana Tri-City Plaza Bowl, Inc. v. Glueck's Estate*, 422 N.E.2d 670, 674 (Ind. Ct. App. 1981). The trial court is responsible for their correctness, and the findings and conclusions are not weakened because they were adopted verbatim. *Indiana Tri-City Plaza Bowl, Inc. v. Glueck's Estate*, 422 N.E.2d 670. Our inquiry on appellate review in that situation is whether such findings, adopted by the trial court, are clearly erroneous. *Piles v. Gosman*, 851 N.E.2d 1009.

Furthermore, to the extent Edgar and Rosella are challenging the adequacy of the trial court's findings of fact, we note that special findings should contain all of the facts necessary for a judgment for the party in whose favor conclusions of law are found. *Moore v. Moore*, 695 N.E.2d 1004 (Ind. Ct. App. 1998). The purpose of special findings is to provide a theory of the judgment. *Id.*

[1]Ind. Code Ann. § 32-18-2-1 *et seq.* (West, Westlaw current through 2011 1st Reg. Sess.).

Edgar and Rosella argued that the mortgage they executed at the closing should not be enforced because Rosella was not competent. They claim that the trial court's judgment does not adequately address Rosella's competency because there is no mention of the medical evidence and testimony on that subject.

Although Edgar and Rosella presented testimony from doctors who opined that Rosella could not have understood the mortgage document or the transaction in general due to her brain surgery and ensuing stroke, reference to such testimony in the trial court's findings of fact was not necessary to support the theory of the trial court's judgment. The findings do discuss the testimony of witnesses to the transaction who determined that Rosella was competent. The findings are adequate to support the trial court's judgment that Rosella was competent at the time of the closing, thus rendering the mortgage enforceable. The trial court's failure to refer to the medical testimony in the findings reflects the trial court's rejection of that testimony and does not reflect a failure to consider that evidence. "The trier of fact is free to disregard the unanimous testimony of experts and rely on conflicting testimony by lay witnesses." *Galloway v. State*, 938 N.E.2d 699, 709 (Ind. 2010).

Next, Edgar and Rosella challenge the adequacy of the trial court's findings and conclusions in regard to their affirmative defense and arguments under UFTA. They assert that because they entered into the original mortgage with the Bank, they were creditors of Stan Rekeweg, LLC for purposes of UFTA. They contend that they have a claim for reimbursement against Stan Rekeweg, LLC to the extent the mortgage with the Bank was foreclosed on through Stan Rekeweg, LLC's default on the underlying promissory note. They claim that Stan Rekeweg, LLC's purchase of Dickason Truck's assets was a fraudulent

transfer, and that as creditors they are entitled to avoid the obligation of Stan Rekeweg, LLC to Dickason Truck. More simply put, they argue that the payment of the purchase price in return for Dickason Truck's assets should be avoided because it was a fraudulent transfer**,** thus resulting in a release of their mortgage to Dickason Truck.

Ind. Code Ann. § 32-18-2-15 (West, Westlaw current through 2011 1st Reg. Sess.) provides that "[a] transfer made or an obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made. . . ." By UFTA's terms, a debtor is the one who is liable on the claim. I.C. § 32-18-2-6 (West, Westlaw current through 2011 1st Reg. Sess.). A creditor is a person who has a claim. I.C. § 32-18-2-4 (West, Westlaw current through 2011 1st Reg. Sess.). By statute, a claim is a right to a payment. I.C. § 32-18-2-3 (West, Westlaw current through 2011 1st Reg. Sess.). In this case, Edgar and Rosella seek to avoid the mortgage entered into at the closing on December 9, 2005. The trial court correctly concluded that their argument fails with respect to the December 9, 2005 mortgage. The purported debtor, Stan Rekeweg, LLC had no interest in the Farmland, and could not have transferred the property to Dickason Truck. Edgar and Rosella were the parties to the transaction, i.e., the December 9, 2005 mortgage. "If a fraudulent transfer action is successful, '[t]he conveyances continue valid as between the grantor and grantee, and the only effect of the judgment is to subject the property to execution as though it were still in the name of the grantor.'" *Rose v. Mercantile Nat. Bank of Hammond*, 868 N.E.2d 772, 776 (Ind. 2007) (quoting *Beavans v. Groff*, 211 Ind. 85, 90, 5 N.E.2d 514, 516 (1937)). A fraudulent conveyance is neither void nor voidable between the parties to the transaction. *Estates of Kalwitz v. Kalwitz*, 717 N.E.2d 904 (Ind. Ct. App. 1999). Edgar and Rosella

intended to secure Stanley's promissory note to Frank with a mortgage on the additional acreage of the Farmland. This transaction was not fraudulent.

Additionally, in regard to the Dickason Truck purchase, Stan Rekeweg, LLC received a reasonably equivalent value in exchange for the transfer or obligation. Both Stan and Frank had the opportunity to negotiate the purchase price for Dickason Truck's assets. Frank had obtained an appraisal a few years prior to the transaction and Stan had an appraisal conducted in anticipation of the purchase. Stan also had his accountant review Dickason Truck's financial records. At one point in the negotiations, it appeared that the sale would not be consummated. Without any compulsion to complete the sale, Stan was able to secure additional collateral, i.e., the mortgage of the Fiechter property and the mortgage on additional acreage of the Farmland, to complete the transaction. Thus, this transaction did not constitute a fraudulent conveyance. None of the transactions, the individual mortgages to secure loans and promissory notes, or the Dickason Truck asset sale, constituted a fraudulent conveyance, and were each valid and enforceable. We conclude that the trial court's findings and conclusions with respect to this argument are adequate to support the judgment and that the trial court's judgment is not contrary to law.

Judgment affirmed.

BAILEY, J., and BROWN, J., concur.