IN THE COURT OF APPEALS OF IOWA

No. 3-557 / 12-1980
Filed July 10, 2013

LLOYD STEGEN and JEREMIAH STEGEN,
Co-Conservators of DANIEL M. HANSON,
Plaintiffs-Appellees,

vs.

BRUCE C. HANSON and KALEEN KIRCHNER HANSON,
Defendants-Appellants.

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

The defendants appeal the district court's order rescinding a warranty deed. **REVERSED AND REMANDED.**

Barrett M. Gipp of Anderson, Wilmarth, Van Der Maaten, Belay & Fretheim, Decorah, for appellants.

James Burns of Miller, Pearson, Gloe, Burns, Beatty & Parrish, P.L.C., Decorah, for appellees.

Considered by Doyle, P.J., and Danilson and Mullins, JJ.

DOYLE, P.J.

Defendants Bruce and Kaleen Hanson appeal the district court's order sustaining the petition of Lloyd and Jeremiah Stegen, co-conservators of Daniel Hanson, and rescinding and annulling a March 2010 warranty deed that conveyed Daniel's one-fifth interest in eighty acres of Allamakee County real estate to Bruce and Kaleen. Because we conclude the facts of this case do not support a finding of mutual mistake between the contracting parties at the time the warranty deed was executed, we reverse the order of the district court and remand for further proceedings not inconsistent with this opinion.

I. Background Facts and Proceedings

Daniel Hanson is now twenty-eight years old. His mother, Lila, was killed in a traffic accident in 1997. Daniel and his four siblings, all minors at the time of Lila's death, were then raised by their maternal grandparents, Lyle and Helen Stegen.

Lyle and Helen owned in excess of 200 acres of farmland in Allamakee County. In 2008, they divided their land into three parcels. They conveyed one parcel each to their sons, Lloyd and Lee, and the third parcel in equal shares to the five children of their deceased daughter, Lila. The parcel conveyed to the grandchildren comprised approximately eighty acres, and included Lyle and Helen's residence, outbuildings, timber, and crop ground. Although they did not legally do so, Lyle and Helen intended to retain a life estate in the property.

Daniel has a history of substance abuse. Although described by his family as bright, he did not complete high school. As an adult, Daniel has lived a

"vagrant or homeless lifestyle in different parts of the county," and has been "unable to hold a job" for any significant period of time.

Sometime in 2010, Daniel was living in Waterloo with his father and came into contact with his paternal uncle, defendant Bruce Hanson. Daniel was "broke" and unemployed. He told Bruce he had land and money[1] for sale. According to Bruce, who was aware of Daniel's history of substance abuse, Daniel was "sober" and "looked pretty good."

Daniel offered to sell his one-fifth interest in the eighty-acre parcel of his grandparent's farm. Bruce investigated public records pertaining to the property and decided he was interested in purchasing Daniel's interest. In his research, Bruce learned the property was assessed at $81,000, with approximately $4000 in liens against it.

When they met again, Bruce told Daniel he was "crazy" to sell the property. Daniel viewed the property as an asset but he did not "derive any income from it" so he was "actively trying to sell it." Bruce tried to trade Daniel a house for the land, but Daniel "turned down that offer." Daniel "planned on leaving town" and did not "want to be tied down" with a house in Waterloo. Instead, Daniel set a price of $750 per acre, for a total of $11,326.50. Daniel and Bruce discussed the sale on several different days before they came to an agreement. In addition, they spoke to Daniel's family members to tell them Bruce was "thinking about buying it." No family member objected except Lee Stegen,

[1] Daniel also tried, unsuccessfully, to sell Bruce future annuity payments owed to him from a structured settlement following his mother's death.

Daniel's maternal uncle, because he wanted to buy it for himself,[2] but Daniel refused to sell it to Lee "for any amount of money." Daniel was "estranged from [that side of the family] and had no desire to be involved with the ownership with them anymore."

Bruce asked his attorney, Mark Mershon, to put together a deed. On March 3, 2010, Daniel and Bruce went to Mershon's office to sign the deed. According to Bruce and Mershon, at the signing, Daniel was "sober," "[l]ooked good," and knew "all about the land" and "what he was doing." Daniel signed the warranty deed conveying the property to Bruce and his wife Kaleen. Bruce gave Daniel a check for $8586.53, and paid $2739.97 to dispose of liens on the property, as they had previously agreed.

In June 2010, Daniel's brother, Jeremiah Stegen, filed a petition for appointment of conservator for Daniel, proposing himself and a maternal uncle, Lloyd Stegen, as co-conservators, and alleging Daniel's "decision-making capacity is so impaired that [he] is unable to make, communicate, or carry out important decisions concerning [his] financial affairs." Daniel opposed a conservatorship. Following a hearing, the district court entered an order appointing Lloyd and Jeremiah as co-conservators of Daniel.

In November 2010, Lloyd and Jeremiah (the "Stegens"), as co-conservators of Daniel, initiated this action seeking to set aside Daniel's sale of his one-fifth interest to Bruce and Kaleen (the "Hansons"), raising claims of lack of capacity to contract, undue influence, fraud, and mistake.

[2] Lee and his wife, Jenny, had also purchased a one-fifth interest in the property from Joseph, Daniel's brother.

A trial was held in July 2012. For the Stegens, the court heard testimony from Helen, Lloyd, and Jeremiah. Attorney Richard Zahasky also testified regarding real estate partition actions. For the Hansons, the court heard testimony from Bruce and Mershon. Real estate broker William Sires also testified regarding the discounted value of a one-fifth interest in property. Daniel did not testify, but the court received into evidence an affidavit from Daniel, dated December 2010, noting Daniel "did not wish to own the property any longer at that time nor be associated with the other family members owning the property," he felt he "received a fair and reasonable benefit for [his] property and had a chance to negotiate the price," and that he "want[ed] the sale to stand."

The district court entered its ruling in September 2012. The court detailed Daniel's personal history, noting he had been committed "approximately four times for substance abuse [but] [t]here is no indication that the commitments lasted for any significant period of time." The court further observed that "[w]ithin a year preceding the date of trial in this case, Daniel was determined to be disabled and eligible for Social Security disability payments." However, the court noted no specific mental deficiencies or disabilities in Daniel, and there is nothing in the record to support such a finding. The court found Daniel "can best be described as a spendthrift."

Turning to the claims before it, the court determined no confidential relationship existed between Bruce and Daniel and that the evidence did not support a finding of fraudulent misrepresentation on behalf of Bruce or any influence by Bruce over the will of Daniel. The court also found no evidence

Daniel was under the influence of drugs at the time of the sale or that he lacked the mental capacity to convey his interest in the property to Bruce.

However, the court concluded "Daniel's conveyance of his interest in the real estate should be rescinded due to mutual mistake," because Daniel and Bruce "mistakenly assumed Daniel's minority ownership interest warranted a discount in value of the real estate."[3] Accordingly, the court rescinded the warranty deed, quieted title in Daniel to the one-fifth interest in the property, and ordered Daniel's conservatorship to pay $11,326.50 to Bruce within sixty days.

Bruce filed a motion to amend and enlarge that the court denied. *See* Iowa R. Civ. P. 1.904(2). Bruce now appeals.[4]

II. Standard of Review

A request for rescission of a contract is an equitable proceeding that is reviewed de novo. Iowa R. App. P. 6.907; *Gouge v. McNamara*, 586 N.W.2d 710, 712 (Iowa Ct. App. 1998). We give weight to the fact findings of district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.904(3)(g).

III. Mutual Mistake

The Hansons contend the district court erred in rescinding the warranty deed based upon a theory of mutual mistake. The court specifically found,

> Daniel and Bruce assumed Daniel's one-fifth interest in the real estate was a minority interest that did not permit him to do anything with the real estate, without the consent of other co-owners. They

[3] The court observed the real estate at issue was assessed at $81,200 in 2010 for tax purposes, and the real estate and structures were appraised at $200,000 in 2007.

[4] We note an all too frequently observed error: failure to place a witness's name at the top of each appendix page where that witness's testimony appears. *See* Iowa R. App. P. 6.905(7)(c).

> further assumed this adversely impacted the value of Daniel's interest in the real estate. Daniel and Bruce mistakenly assumed Daniel's minority ownership interest warranted a discount in value for the real estate. As a result of mutually-mistaken assumption, a severe imbalance resulted, with Daniel receiving a value of $11.326.50, while Bruce received real estate having an approximate value of $40,000.

"A mutual mistake in the formation of a contract occurs when the parties reach and correctly express the contract, yet enter into the contract based on a false underlying assumption." *C & J Vantage Leasing Co*. *v*. *Wolfe*, 795 N.W.2d 65, 81 (Iowa 2011). "'A mistake is a belief that is not in accord with the facts.'" *Nichols v*. *City of Evansdale*, 687 N.W.2d 562, 570 (Iowa 2004) (citing Restatement (Second) of Contracts § 151 at 379 (1981)). "For a mistake to be mutual, it must exist at the time the parties formed the contract and be common to both parties." *C & J Vantage Leasing Co*., 795 N.W.2d at 81. Not only must the mistake be mutual, it must also be material. *Gouge*, 586 N.W.2d at 713. In other words, the mistake must have a material effect on the agreed exchange of performances. *Nichols*, 687 N.W.2d at 571.

Generally, mutual mistake will render a contract voidable by the party who is adversely affected by the mistake when the parties are mistaken on a basic assumption on which the contract was made, unless the adversely affected party bears the risk of mistake." *State*, *Dep't of Human Servs*. *ex rel*. *Palmer v*. *Unisys Corp*., 637 N.W.2d 142, 150 (Iowa 2001). A party bears the risk of a mistake when

> (a) the risk is allocated to him by agreement of the parties, or
> (b) he is aware, at the time the contract is made, that he has only limited knowledge with respect to the facts to which the mistake relates but treats his limited knowledge as sufficient, or

> (c) the risk is allocated to him by the court on the ground that it is reasonable in the circumstances to do so.

Davenport Bank & Trust Co. *v*. *State Cent*. *Bank*, 485 N.W.2d 476, 480 (Iowa 1992) (quoting Restatement (Second) of Contracts § 154, at 402–03 (1981)), *declined to follow on other grounds by Kern v*. *Palmer College of Chiropractic*, 757 N.W.2d 651, 658 (Iowa 2008).

As our sister appellate court in Indiana so aptly put it:

> [W]here both parties share a common assumption about a vital fact upon which they based their bargain, and that assumption is false, the transaction may be avoided if, because of the mistake, a quite different exchange of values occurs from the exchange of values contemplated by the parties. It is not enough that both parties are mistaken about any fact; rather, the mistaken fact complained of must be one that is "of the essence of the agreement, the sine qua non, or, as is sometimes said, the efficient cause of the agreement, and must be such that it animates and controls the conduct of the parties."

Jay County Rural Elec. *Membership Corp*. *v*. *Wabash Valley Power Assoc*., *Inc*., 692 N.E.2d 905, 912 (Ind. Ct. App. 1998) (internal citations omitted). And to clarify further, we set forth the classic illustration of a mutual mistake that would permit avoidance of the contract: parties enter into a contract to sell timbered land believing the timber is still there but in fact the timber has been destroyed by fire. Restatement (Second) of Contracts § 152 cmt. b, illus. 1, at 387.

A mutual mistake must be proven by clear, satisfactory, and convincing evidence. *Gouge*, 586 N.W.2d at 713.

Central to the district court's ruling is its finding Daniel and Bruce mistakenly assumed Daniel's minority interest in the land warranted a discount in its value. We disagree that such an assumption establishes a mistake. William Sires, a real estate broker, testified he did not think the one-fifth interest would be

very salable "in that you would be taking off four other people who may not be in agreement on doing anything. . . . I think it would be discounted, yeah, because of the fact that you'd have four other parties involved." Lack of marketability may warrant a discount in price. *See generally In re Marriage of Muelhaupt*, 439 N.W.2d 656, 660 (Iowa 1989) (discounting value of stock in closely held corporation because it was a minority stock and because it had no ready market). Furthermore, Daniel's grandparents, Lyle and Helen, were living on the farm rent-free, and although they did not legally retain a life estate in the property, there was an understanding that they would reside there for the rest of their lives. Daniel had no control over the operation of the farm, nor did he derive any income from it. Under all these circumstances, we conclude the clear and convincing evidence does not support a finding that Daniel and Bruce *mistakenly* assumed Daniel's minority ownership interest warranted a discount in value for the real estate, for some discount was warranted.

Moreover, the district court found Daniel and Bruce believed nothing could be done with the real estate without consent of at least a majority of the other owners as it appeared neither was aware the real estate could have been partitioned. The court concluded this belief was mistaken because a partition action was available, but the fact that a partition action may have been available to Daniel as a vehicle to dispose of his interest in the property does not alter our conclusion that a discount was warranted. The Stegens' own witness acknowledged that such an action would involve time and expense. In any event, mistake about the existence of a cause of action cannot support rescission

based upon mutual mistake. *See Scott v. Zimmer*, *Inc*., 889 F. Supp. 2d 657, 670 (D. Del. 2012).

Even assuming clear and convincing evidence supports a finding that the purchase price was less than market-value,[5] such a finding does not establish a mistake. Indeed, Daniel and Bruce could agree to whatever purchase price they chose. Daniel was motivated by a number of factors in setting the sales price. His relationship with his family members was strained and he no longer wanted to have anything to do with them. He no longer wanted to own the land with them. He was deriving no income from it. He had no control over the operation of the farm. In short, he saw no benefit in owing the land and he wanted to unload it and sever the ties with his family. The mere belief by the Stegens that the price was not a fair price does not in any way establish a mutual mistake between Daniel and Bruce. We are not cited to any case that suggests a low price, standing alone, supports a finding of mutual mistake in formation of a contract. The Stegens undoubtedly believe Daniel made a bad decision when he sold the property at a discount, but bad decisions are not mistakes that entitle one to avoid legal obligations.

While Daniel's actions may have been improvident, we, upon our de novo review, find no clear and convincing evidence to support a finding that the purchase price was the product of a mutual mistake as to a basic assumption on which the contract was made. *See*, *e.g*., *Nichols*, 687 N.W.2d at 571 (finding

[5] The actual value of the property, including the residence and outbuildings and the amount of the property that is timber versus tillable ground, is unclear. Moreover, the testimony of Zahasky and Sires is conflicting in regard to the effect Daniel's one-fifth interest has on the value of the property.

mutual mistake existed as to sale of property where neither party was aware that sewer lines ran under the property and city would have claimed an easement by necessity to underground utilities); *Montgomery Cnty*. *v*. *Am*. *Emigrant Co*., 47 Iowa 91, 96 (1877) (finding mistake of fact existed as to sale of property where county was not aware of existence of a scrip indemnity, and multiple witnesses testified the county would not have agreed to the sale had the county known of the indemnity). We therefore reverse the district court on this issue.

IV. *Mental Capacity*

The Stegens attempt to save the judgment rendered in their favor by arguing that an alternative ground for relief raised in the district court allows us to affirm the district court's decree. *See Duck Creek Tire Serv*., *Inc*. *v*. *Goodyear Corners*, *L*.*C*., 796 N.W.2d 886, 893 (Iowa 2011) ("It is well-settled law that a prevailing party can raise an alternative ground for affirmance on appeal without filing a notice of cross-appeal, as long as the prevailing party raised the alternative ground in the district court."). Specifically, the Stegens claim the court erred in concluding the evidence was insufficient to establish Daniel was mentally incompetent at the time he conveyed the property, and the warranty deed should be rescinded due to Daniel's incompetency.

Upon our de novo review, we agree the district court's conclusion that Daniel was mentally competent at the time he conveyed his interest in the property to the Hansons, and we decline to disturb that ruling on appeal. We observe the only testimony as to Daniel's mental state and demeanor at the time the agreement was entered was that he was "sober," "[l]ooked good," and knew

"all about the land" and "what he was doing." In addition, the record is devoid of evidence of a mental disability or diagnosis.

V. Conclusion

We reverse the district court's order that the warranty deed be rescinded on the basis of mutual mistake, and we decline to find otherwise the deed should be rescinded on the basis of Daniel's alleged incompetency. We remand for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.