# IN THE COURT OF APPEALS OF IOWA

No. 9-093 / 08-0588
Filed April 22, 2009

**FRED HANSEN, JR. and MARTHA HANSEN,**
Plaintiffs-Appellants,

**vs.**

**DELORES CUPP, RAYMOND HANSEN, ROGER HANSEN, and RICHARD HANSEN,**
Defendants-Appellees.

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Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith, III, Judge.

Plaintiffs appeal the district court ruling finding a deed transferring real estate was absolute on its face and rejecting parol evidence to determine whether the deed was a part of a family agreement that had been partially performed. **REVERSED AND REMANDED.**

Charles R. Hannan of Hannan & Dreismeier, P.L.C., Council Bluffs, for appellants.

Robert V. Rodenburg of Rodenburg Law Offices, Council Bluffs, for appellees-Delores Cupp, Raymond Hansen, and Roger Hansen.

Scott H. Peters of Peters Law Firm, P.C., Council Bluffs, for appellee-Richard Hansen.

Considered by Sackett, C.J., and Potterfield and Mansfield, JJ.

**SACKETT, C.J.**

Plaintiffs Fred Hansen, Jr. and Martha Hansen seek return of farmland conveyed by quitclaim deed to their four children, Delores Cupp, Raymond Hansen, Roger Hansen, and Richard Hansen. They contend the district court erred in (1) finding there was a conclusive presumption the deed was absolute on its face, and (2) failing to consider parol evidence that the deed was a part of a family agreement which has only been performed in part. We reverse and remand.

**SCOPE OF REVIEW.** We note first the parties disagree as to what scope of review applies. Our review on appeal depends on the manner in which the district court tried the case. *See Johnson v. Kaster*, 637 N.W.2d 174, 177 (Iowa 2001). Plaintiffs contend the matter was tried in equity and our review is de novo. The defendants contend this is an action for construction of a deed so the matter is at law and legal questions are reviewed for correction of errors at law. The district court ruled on objections.

"Where there is uncertainty about the nature of a case, a litmus test we use in making this determination is whether the trial court ruled on evidentiary objections." *Ernst v. Johnson County*, 522 N.W.2d 599, 602 (Iowa 1994). We determine this case was tried at law. When a case is tried at law, we review for the corrections of errors at law. *See Molo Oil Co. v. City of Dubuque*, 692 N.W.2d 686, 690 (Iowa 2005).

**BACKGROUND.** The evidence at trial presented the following scenario.[1] Fred and Martha, in reaching their later years, foresaw their assets being dissipated by care and medical cost of their old age. They wanted to assure that their two hundred acre farm would not be used to pay for this care.[2] They wanted their four children to receive the farm, their son Richard to continue to farm it and to have an option to purchase the land when they were gone. Unfortunately their plan has gone astray.

The events at issue began on January 19, 2005, when Martha contacted Attorney Frank Pechacek. Fred had suffered a stroke earlier and was unable to talk or write. Martha conveyed her wishes to Pechacek and he suggested the couple deed the farm to their children and have the children sign a family agreement that the income from the farm would go to Martha until she entered a nursing home and that Richard could rent the farm and have an option to purchase. There was some family dialogue about this proposal and Pechacek was told by one or more family members it was satisfactory so he proceeded to prepare a quitclaim deed and a family agreement. The documents were prepared. As grantors in the deed, Fred and Martha were to convey an undivided one-fourth interest in the land to each of the four children.[3] The deed

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[1] In relating these facts we are considering both evidence the district court considered and evidence the district court did not consider because it found the use of some evidence would be in violation of the parol evidence rule.

[2] Martha wanted to be sure she and Fred would qualify for Title XIX if one or both of them should go in a nursing home as they did not want to use the farm or the income from the farm to pay for nursing home care.

[3] There also is a deed wherein Fred conveyed his interest to Martha but that deed does not appear to have any relevance to this case.

showed consideration of one dollar and other valuable consideration.[4] The family agreement was between the four children, it did not include their spouses, if any, and Fred and Martha were not to be parties thereto. The agreement provided the four children would lease the land to Martha and she should receive the income as long as she was capable of living independently or in assisted living. It gave Richard, who had been farming the land, the right to rent the land at its fair market rental value during his parents' lifetime and at their deaths, if he was living, an option to purchase the land.

On February 16, 2005, Pechacek went to Martha and Fred's home with the quitclaim deed and the family agreement. Pechacek testified he considered the deed and the family agreement a package.[5] The deed was signed by Martha and signed by Fred's "x." Pechacek, acting as a notary public, notarized Martha's signature and Fred's "x." Defendants Delores Cupp and Richard Hansen were at the home and they each signed the family agreement. Roger and Raymond Hansen were not present.

Pechacek took the deed and the family agreement back to his office. On March 22, 2005, Pechacek had the deed recorded. Roger and Raymond had not signed the family agreement and never did sign a family agreement. Pechacek

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[4] It also showed no declaration of value was required as it was a deed between parents and children and the consideration was less than $500.

[5] Pechacek testified:

> Q. At any time during your work on this matter, did you feel that the deed could stand alone on its own without [the family agreement]? A. It was a package deal. No. And I didn't even commence work on those documents until I was told by the family members that the family had all discussed it and it was a go, that it was agreeable.
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> Q. And by that, you mean when you say 'it,' they had discussed that the two documents together were agreeable to all of them? A. Correct.

testified that he recorded the deed quickly for it was without consideration and it would be ineffective with respect to Title XIX benefits for a five year period.[6]

On April 20, 2005, the four children met with Pechacek. This was the first time that Pechacek had spoken with Raymond and Roger. On June 28, 2005, Pechacek sent a letter to Delores sending her a revised family agreement for her signature and the signatures of her siblings. Pechacek testified that the agreement provided the farmland must be appraised if Richard wanted to purchase it and the purchase price would be thirty percent less than the appraised value. He also enclosed a farm lease from the four children to Martha and asked Delores to have everyone sign it and have their signatures notarized. A self-addressed, stamped envelope for Delores to return the signed documents was enclosed. There is no evidence these documents were ever signed or returned to Pechacek. Also enclosed with the letter was the quitclaim deed to the four children for safekeeping.

On April 6, 2006, Pechacek wrote to the four children relating it had come to his attention that there continued to be some controversy concerning the farmland and since Richard's tenancy was not terminated he continued on the same conditions for the 2005 crop year. The letter went on to say:

> At the time the farm was deeded to the four of you, there was an oral agreement that your parents would continue to receive all of the income from the farm unless [ ] both parents were in [a] nursing home or the survivor was in a nursing home. The 2005 crops belong to your parents as to their share. They should continue to pay the landlord expenses consisting of property taxes, insurance,

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[6] We do not by this statement suggest that the deed would take the property out of consideration should the plaintiffs apply for Title XIX assistance. Nor do we suggest such actions should be sanctioned.

> and repairs and maintenance and expenses for their one-half share of the crops during the 2006 crop year.
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> All four of you were in my office and orally agreed to this. Your parents relied on this oral agreement and deeded the farm to the four of you and this makes the oral agreement fully enforceable by your parents and by each of you.

In 2006 Richard paid cash rent for the farm directly to his parents. He was terminated the next year because one or more of the other three children found someone who would pay more and apparently Richard would not meet that price.

**PROCEEDINGS.** This suit was filed in December of 2006 and came on for trial in December of 2007. The parties agreed at the commencement of the trial that there would be a standing objection and a standing response to parol evidence of any agreement and that the district court would rule on the objection in its final ruling. In March of 2008 the district court entered its ruling. It noted plaintiffs put forth two arguments: (1) the deed was not valid because of lack of consideration and (2) the deed was fraudulent. The court found there was a conclusive presumption the deed was absolute on its face as the deed recited there was valid consideration and made no mention on its face of a family agreement and the deed was not fraudulent under Iowa Code section 249F.1(2)(a) (2005). The court further found the family relationship and love and affection were sufficient consideration for the deed. The court found a partly performed binding oral agreement of the defendants to provide income from the farm to Martha and Fred during their lifetimes.[7] The court determined the

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[7] Plaintiffs did not request this relief. It also did not conform to the family agreement signed by Delores and Richard that provided Martha would get the income and then, only as long as she was capable of living independently or in assisted living.

plaintiffs could not use parol evidence to show that part of the consideration for the deed was Richard's purchase option agreement.

**ISSUES ON APPEAL.** Fred and Martha's brief randomly raised a number of arguments that do not necessarily conform to their "Statement of Issues Presented for Review." Richard has not filed an appellee's brief. Delores, Raymond and Roger have. Their brief, to their credit, makes an effort to define the issues and respond to them and correctly notes that several of the issues now raised were not preserved for our review.

We see Fred and Martha's focal argument to be that the district court erred in finding a conclusive presumption that the deed was absolute on its face and that the district court should have considered the oral testimony that the deed and family agreement were one package and the conveyance was not intended to be absolute but conditional.

In order to overcome the presumption arising from the possession of the legal title or of the deed, the evidence must be clear, convincing, and satisfactory. *Miller v. Armstrong*, 234 Iowa 1166, 1169, 15 N.W.2d 265, 266-67 (1944). Presumptions are rebutted when facts to the contrary are established, making the ultimate question whether the record presents a fact situation where the court can determine as a matter of law that the presumed fact does not exist. *See Dyson v. Dyson*, 237 Iowa 1285, 1288, 25 N.W.2d 259, 261 (1946).

There is parol evidence which, if believed, could be found to rebut the presumption. The district court considered some but not all of the parol evidence.

The district court considered parol evidence in finding that the four children's agreement to give the farm rents to their parents was enforceable because the agreement was supported by consideration and had been partially performed. Both plaintiffs and defendants agree that the rent from the farm was to go to the plaintiff parents.

The district court rejected oral testimony as to whether or not Richard had an option to purchase the farm noting there was no signed written agreement and evidence of an oral agreement violates Iowa Code section 622.32. While recognizing that part performance excepts a contract from the statute of frauds under section 622.33, the court found there was not part performance of the lease and option to purchase.

Under our statute of frauds, evidence of certain types of contracts is inadmissible, unless it is "in writing and signed by the party" sought to be charged. Iowa Code § 622.32. One type of contract included within the statute is a contract creating or transferring an interest in real estate other than leases for a term less than one year. *Id.* § 622.32(3). The statute "does not void such oral contracts," but "makes oral proof of them incompetent." *Pollmann v. Belle Plaine Livestock Auction, Inc.*, 567 N.W.2d 405, 407 (Iowa 1997). There are exceptions to the statute of frauds.

Iowa Code section 622.33 provides an exception for contracts that involve the sale of real estate. It removes oral agreements from the domain of the statute under two circumstances. *Id.* The first circumstance is where the vendor of a real estate contract has received "the purchase money, or any portion

thereof . . . or when the vendee, with the actual or implied consent of the vendor, has taken and held possession of the premises under and by virtue of the contract." Iowa Code § 622.33. This language permits the statute of frauds to be avoided where a party has rendered the type of part performance described in the statute. *See Gardner v. Gardner*, 454 N.W.2d 361, 363 (Iowa 1990). The rationale for the part performance exception lies in the principles of estoppel and fraud. *Miller v. Lawlor*, 245 Iowa 1144, 1152, 66 N.W.2d 267, 272 (1954). This exception prevents fraud that would occur if the defendant were permitted to escape performance of his or her part of the oral agreement after permitting the plaintiff to perform in reliance upon the agreement. *See id.* Part performance is not a substitute for evidence of a written contract, but is grounded in the theory that the defendant is estopped to assert the statute of frauds as a defense. *See id.*

There is evidence that the family agreement was a part of the package with the deed. The district court found part performance of part of the family agreement. We do not believe we can segregate the two parts of the family agreement to determine if there was partial performance. The district court should have considered evidence that the parties' intention was the deed and the family agreement were one package and that the land while being transferred, would be subject to a promise to rent and sell the land to Richard as a part of the conveyance of the property. It appears from the district court's ruling that it did not consider the Pechacek's testimony providing that the land was being transferred with the understanding that defendants would have the property if

they leased it to Martha and allowed Richard to rent it and purchase it when his parents died, and that the deed and family agreement were a package. Nor did the district court consider Martha's testimony that they signed the deed, agreement, and lease at the same time and it was their intent that the lease and agreement were to be signed prior to recording the deed as they did not intend otherwise. We reverse the district court's ruling and remand to the district court for the purpose of considering oral testimony as it relates to the lease and option of Richard.

Plaintiffs also contend that the district court addressed their claim of fraud under chapter 249F when their pleadings indicate they were claiming fraud under chapter 684. We agree that plaintiffs pleaded fraud under chapter 684. However, plaintiffs failed to file a post-trial motion. This issue was not addressed by the district court. We only decide appeals within the framework of the issues raised, and we leave it to the district court on remand to determine the viability of any portion of its judgment not challenged in this appeal. *See City of Johnston v. Christenson*, 718 N.W.2d 290, 303 (Iowa 2006). We reverse and remand.

**REVERSED AND REMANDED.**

Potterfield, J., concurs. Mansfield, J., dissents.

**MANSFIELD, J.** (dissenting)

I would affirm the district court. The four children never signed either version of the written "family agreement." In addition, as of March 2005, the four children had not agreed orally on a family agreement. In the absence of such an agreement, attorney Frank Pechacek nonetheless went ahead and recorded the deed transferring the property to the four children. He did so because he wanted to get the clock running for Title XIX Medicaid purposes. There is no dispute that his action was authorized by the parents, who were his clients. Subsequently, in April 2005, the children did agree orally to pay the income from the farm to the parents during their lifetime, but as a group they never agreed—either orally or in writing—on an option that would allow Richard to buy the farm.[8]

These are the findings of the district court, and they are all supported by substantial evidence. I also believe the district court sorted through the legal implications of these facts correctly when it (1) refused to set aside the deed while (2) enforcing the children's oral agreement to pay the income from the farm to the parents.

The only claim pled in this case is fraudulent conveyance. The parents did not prove a fraudulent conveyance case. I do not see evidence in the trial record that the parents were actually made insolvent by the transfer, nor do I

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[8] Notably, in his April 2006 letter Pechacek does not claim there was an oral agreement regarding an option to allow Richard to buy the farm. Rather, Pechacek refers only to an oral agreement that the parents would continue to receive the income from the farm until both parents were in a nursing home or their survivor was in a nursing home. The district court's findings are largely consistent with that letter. The only difference is that the district court found the income agreement was for the "lifetime" of the parents. That finding is supported by the record, including testimony of son Roger Hansen under questioning by the parents' attorney.

believe that a transferor (as opposed to a creditor) has standing to complain about a transfer under chapter 684.

Even if the parents had pled some other claim, such as for cancellation or rescission of the deed, I do not think it would be valid. There might be circumstances where one could use parol evidence to prove that a deed that appears to be absolute on its face was actually part of a broader oral agreement. *See, e.g., Gardner v. Gardner*, 454 N.W.2d 361, 363 (Iowa 1990). But the district court found that the parties never agreed orally that the conveyance of the property was subject to such an agreement.

Contrary to the majority, I believe the district court did consider all the parol evidence and made findings regarding that evidence, which are supported by substantial evidence. The district court found there never was a "package deal." Rather, Pechacek recorded the deed, by his own admission, without having spoken to two of the children. Later, according to the court's findings, the children agreed to turn over the farm income to the parents, but they did not agree to give Richard an option to buy the farm.

Also, I do not consider the examples cited by the majority to be valid forms of parol evidence. Neither Pechacek's "understanding" nor Martha Hansen's "intent" (which are inconsistent with each other) can be used to establish an oral agreement where one does not otherwise exist.

For the foregoing reasons, I respectfully believe that it is inappropriate to reverse and remand here, and would instead affirm.