**IN THE COURT OF APPEALS OF IOWA**

No. 9-110 / 08-0963
Filed May 29, 2009

**K-PORK, INC. and DAYLE KUHLEMEIER,**
Plaintiffs-Appellants,

**vs.**

**MICHAEL L. KUHLEMEIER and JANET KUHLEMEIER,**
Defendants-Appellees.

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Appeal from the Iowa District Court for Cerro Gordo County, Chris Foy, Judge.

K-Pork, Inc. and Dayle Kuhlemeier appeal from the declaratory judgment ruling of the district court. **AFFIRMED.**

James M. Stanton of Stanton & Sorensen, Clear Lake, for appellants.

Janet Kuhlemeier, Rockwell, pro se.

Scott D. Brown of Brown, Kinsey, Funkhouser, and Lander, Mason City, for appellees.

Heard by Sackett, C.J., Vogel, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**NELSON, S.J.**

K-Pork, Inc. and its majority shareholder, Dayle Kuhlemeier, [1] appeal from the district court's ruling in this declaratory judgment action finding the property at issue is owned by Michael Kuhlemeier. Dayle contends the district court erred in refusing to set aside the 2005 warranty deed with which Dayle and Janet Kuhlemeier transferred the hog confinement and building site to Michael Kuhlemeier. In the alternative, Dayle contends the confinement facility must be re-transferred under the terms of the parties' escrow agreement. We affirm.

**I. Background Facts and Proceedings.**

Dayle and Janet Kuhlemeier were, at all times material to this action, husband and wife engaged in various farming activities.[2] Michael is one of their five offspring. Dayle and Janet raised cash crops on roughly 1000 acres and had livestock. Some of their farming activities were carried on in Dayle's and Janet's individual names. Other activities were conducted through K-Pork, an Iowa corporation organized on January 20, 2000, of which Dayle and Janet are the only shareholders and officers. Still other farming activities were conducted through Kuhlemeier Farms, Inc. As the trial court found, "[n]o clear rules define which person or what entity will receive the revenues from a particular farming activity or bear responsibility for payment of the expenses associated with that activity."

Dayle and Janet, as well as some of their children and children's spouses, have worked the family farming operation together for many years. Their

[1] For convenience, we will refer to the appellants, K-Pork and Dayle Kuhelmeier, collectively as "Dayle."

[2] At the time of trial, however, a dissolution action was pending.

daughter, Diane Logan, assisted with the care and feeding of livestock. Michael and another son, Robert, both worked in the farming operation for about two decades.

In 1995 and 1996, the Kuhlemeiers constructed the hog confinement and building site at issue here—consisting of five confinement buildings and an office building—on about seven acres of land located near Dayle and Janet's marital residence ("confinement facility"). Dayle and Janet owned the site on which the facility was constructed, but Michael and Robert were involved in the design, construction, and eventual operation of the facility. Each of the five confinement buildings holds about 1000 hogs. Dayle, Janet, Michael, and Robert first used the confinement facility to custom feed hogs under a contract with Land O'Lakes, Inc. That relationship ended, and the Kuhlemeiers entered into a contract with Triple Edge Pork. From September 2002 to the time of trial, the confinement facility was used to custom feed hogs under contracts K-Pork had with Squealers Pork, Inc.[3] Although K-Pork does not own and has never owned the confinement facility, it is named as the grower and the party entitled to compensation in each of the contracts with Squealers Pork. The day-to-day care of the hogs was provided primarily by Dennis Love; Diane Logan; Diane's husband, Brian Logan; Robert; and Michael.

Michael and Robert did not receive regular compensation for their efforts with the family grain or hog confinement operations, but both expected they would at some point receive a portion of the farm assets. At the end of 2003, Robert apparently gave up on the idea that he would receive a fair share of the

[3] Squealers Pork owns the hogs, and K-Pork provides husbandry services.

family farm operation and ended his participation. In March 2004 an attorney for Robert sent a letter to Dayle and Janet's attorney claiming Dayle and Janet owed Robert in excess of $500,000 for machinery, equipment, and two of the five hog buildings. No legal action has followed.

Michael and Diane continued to contribute their labor to the family farming operations, including the confinement facility. Michael began to speak more often with his parents about receiving a tangible return on his contributions to the family operations. Michael also began to spend more time hauling feed and market-weight hogs. Eventually, he formed M & K Trucking, Inc., so he could segregate the revenues from the trucking operations and insure that revenue would be available to cover the expenses of the trucking business and compensate him for his efforts. He continued, however, to be engaged in the operation of the confinement facility, supervising and training all employees who were engaged in the day-to-day operations of the hog confinement.

On March 4, 2005, Dayle and Janet signed a warranty deed conveying the confinement facility to Michael. No cash or other consideration accompanied the transfer. When title to the confinement facility was transferred to Michael, he began to pay the real estate taxes due on the confinement facility.

In September 2005 Michael and his wife, Kelly, delivered an "Escrow for Deed" to Dayle and Janet's attorney, along with a warranty deed conveying the confinement facility back to Dayle and Janet. The "Escrow for Deed" instructed the attorney to

> deliver the attached deed to the grantees, or the surviving grantee in the event of death of one grantee, as named therein when any of the following events occur:

> (A) Upon the death of Michael L. Kuhlemeier;
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> (B) When Michael L. Kuhlemeier abandons or ceases to actively operate the hog facility located upon the premises;
>
> (C) When Michael L. Kuhlemeier attempts to sell, transfer or convey the premises to persons or entities other than the grantees herein, or
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> (D) At such time as the hog facility remains inactive for a period of more than nine (9) months. The facility shall be deemed inactive when it is not used for purposes for which it was designed, constructed and intended for the production of hogs.

On March 20, 2007, K-Pork commenced this action seeking temporary and permanent injunctive relief to restrain Michael from obstructing, interfering with, or otherwise meddling in its ordinary business affairs. A temporary injunction was granted *ex parte*, but was later vacated having been entered without notice to Michael. The petition was amended to add Dayle as a plaintiff and inserted a request for declaratory judgment regarding Dayle and Michael's relative rights of ownership of the confinement facility. A second amendment asserted alternative grounds for declaratory judgment. A third amendment added Janet as a defendant. Michael and Janet answered, and Michael asserted a counterclaim asking for declaratory judgment regarding his ownership of and possessory rights to the confinement facility.

After trial, the district court denied Dayle's requested relief, concluded Michael was entitled to sole possession and control of the confinement facility, and established a time table for the discontinuation of K-Pork's operations at the confinement facility.

Dayle appeals. First, Dayle argues that the 2005 warranty deed should be set aside because it was conditional in nature and should be presumed to be fraudulent because Dayle transferred the confinement facility to Michael to keep

it out of Robert's hands. In the alternative, Dayle argues that Michael has ceased to "actively operate" the hog facility and therefore transfer of the facility is required under the terms of the escrow agreement.

**II. Scope and Standard of Review.**

Our review of actions for declaratory judgment depends upon how the action was tried to the district court. *Passehl Estate v. Passehl,* 712 N.W.2d 408, 414 (Iowa 2006). Whether a declaratory judgment action is considered legal or equitable in nature is determined by the pleadings, the relief sought, and the nature of the case. *Gray v. Osborn,* 739 N.W.2d 855, 860 (Iowa 2007). Because this case was tried in equity, our review is de novo. *See* Iowa R. App. P. 6.4; *Allamakee County v. Collins Trust,* 599 N.W.2d 448, 451 (Iowa 1999). We give weight to the district court's factual findings, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

**III. Discusssion.**

*A. 2005 Warranty Deed.*

Dayle seeks to set aside the 2005 transfer by warranty deed of the confinement facility to Michael. Dayle contends the transfer was without consideration and was fraudulent with respect to Robert Kuhlemeier. The district court rejected both grounds, as do we.

> [A] deed is presumed to be that which it purports to be and the burden is on the one asserting otherwise. When a deed sufficient to vest title is executed and delivered, the law raises the presumption of an intent to pass the title in accordance with its terms and the burden rests on the one who avers a different intention.

*Frederick v. Shorman*, 259 Iowa 1050, 1056, 147 N.W.2d 478, 482 (1966). Dayle contends the 2005 warranty deed was not intended as an unconditional transfer. As was the situation in *Frederick*, Dayle is attempting to "change or overcome the presumption arising from the terms of the deed" he caused to be executed and delivered. *Id.* at 1057, 147 N.W.2d at 483. His burden in this attempt is heavy one.

> When one attacks a deed such as this in an attempt to show it does not properly express the real intent of the grantor, either by an action for reformation on the grounds of mistake, fraud, duress or the like, or to prove a resulting trust, the burden thus assumed is always a heavy one requiring the stated quantum of proof. This is particularly so when the deed is carefully drawn and solemnly executed and acknowledged before a notary. The presumptions of validity and regularity attaching to such a document *require clear and convincing evidence to preponderate against them*.

*Id.* at 1058, 147 N.W.2d at 483 (emphasis added). Dayle has not met his burden.

The district court found it clear that Dayle and Janet intended to transfer the confinement facility to Michael and did so without requiring consideration. Our de novo review leads us to the same conclusion. The warranty deed was prepared by Dayle and Janet's attorney who had handled their legal matters over the years. The deed specifically recites that no consideration was given or required; was signed by both Dayle and Janet; was notarized by their attorney; and on April 29, 2005, was duly recorded in the auditor's books. Michael testified that the transfer was in recognition of his past contributions to the family farming operation, but Dayle asserted the purpose of the transfer was to shelter the facility from a potential claim by Robert. The district court specifically found

Michael's testimony was more credible. We give weight to that credibility finding and expressly approve of the reasoning enunciated by the court.

Dayle argues that the lack of consideration gives rise to a presumption of fraud. However, Dayle relies upon case law wherein a creditor may seek to set aside transfers without due consideration that are not applicable here. The lack of consideration here is not legally significant. *See id*. at 1057, 147 N.W.2d at 483 ("Consideration is not necessary to support a gift; after delivery—which in the instant case was by the execution and recording of the deed—the gift is irrevocable except, of course, upon mutual agreement of the parties.").

Dayle also argues that his intent was to defraud Robert and, therefore, the transfer to Michael should be set aside as a fraudulent transfer. We conclude Dayle has no legal basis for asserting his own fraudulent intent as a means to set aside the transfer.

In *Opperman v. M. & I. Dehy, Inc.*, 644 N.W.2d 1, 6 (Iowa 2002), our supreme court enunciated the clean hands maxim as a bar to setting aside a transfer even though it was without consideration.

> [W]henever a party who seeks to set the judicial machinery in motion and obtain some equitable remedy has violated conscience or good faith, or another equitable principle in prior conduct with reference to the subject in issue, the doors of equity will be shut, notwithstanding the defendant's conduct has been such that in the absence of circumstances supporting the application of the maxim, equity might have awarded relief.

In *Opperman*, 644 N.W.2d at 6, Elizabeth Opperman asked the court to rescind and set aside a mortgage given to a corporation (M. & I., owned by Elizabeth's son) on property owned by another corporation (Delray, owned by Elizabeth's husband). *Opperman*, 644 N.W.2d at 3-4. The supreme court refused to set

aside the mortgage, even though it found the transfer was without consideration. *Id.* at 6.

> Elizabeth is seeking affirmative relief to rescind and cancel the mortgage. She is claiming the Manning property under [her husband] Ivan. The clean hands maxim would bar Ivan from any affirmative relief to cancel the mortgage because it was given to hinder his creditor. The same maxim likewise bars Elizabeth who claims the Manning property under Ivan.

*Id.* Moreover, our supreme court concluded that M. & I., the "alter ego" of Elizabeth's son, John, was also barred any relief "having been a party to the scheme to hinder" Ivan's creditor. *Id.* at 7.

The district court did not err in rejecting Dayle's attempt to set aside the 2005 warranty deed on the ground his intention was fraudulent as to Robert. We leave these parties "in the position in which they have placed themselves." *Id.*

*B. Escrow Agreement.*

Dayle asserts, in the alternative, that under subsection B of the escrow agreement, Michael has ceased to "actively operate the hog facility located upon the premises" and thus the deed in escrow must be delivered. We agree with the district court that this assertion is without merit.

Michael continues to be as engaged and involved in the operation of the hog facility as he has been since the escrow agreement was delivered to Dayle and Janet's attorney. We agree with the trial court's findings and conclusions in this regard and deem further discussion unnecessary.

**IV. Conclusion.**

The district court did not err in finding the 2005 warranty deed transferred title of the confinement facility to Michael and that he is thus entitled to

possession and control. Transfer of title under the terms of escrow agreement is not warranted. We affirm.

**AFFIRMED.**