

IN THE COURT OF APPEALS OF IOWA

No. 1-038 / 10-1314
Filed February 23, 2011

**IN THE MATTER OF THE ESTATE OF
ONE LO LOVAN, Deceased**

SHERRI POLLARD,
Executor-Appellee,

vs.

SAMMY LOVAN,
Intervenor-Appellant.

Appeal from the Iowa District Court for Polk County, Ruth B. Klotz,
Associate Probate Judge.

Sammy Lovan appeals the probate court's decision that the decedent had
an undivided one-half interest in certain real estate. **AFFIRMED.**

Thomas T. Tarbox of The Law Office of Thomas T. Tarbox, Des Moines,
for appellant.

Kimberly M. Murphy of the Law Office of Kimberly M. Murphy, Altoona, for
appellee.

Considered by Doyle, P.J., Tabor, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.**I. Background Facts & Proceedings**

Sammy Lovan, also known as Hay Kvengloundara, is the son of One Lo Lovan and Vong Lovan.¹ Sammy and One Lo obtained a warranty deed for 3315 4th Street in Des Moines. The deed was filed on May 3, 1990, and provided they held the property as joint tenants with full right of survivorship. Both Sammy and One Lo signed the promissory note and mortgage for the property. Sammy testified One Lo lived in the home with him from 1990 to 1992, and at other times he could not specifically remember. Sammy's sister, Paulina Thongvanh, testified One Lo returned to Laos from October 2005 until March 2006, and otherwise lived in the United States with various family members. From 2005 to 2007 Sammy declared One Lo as a dependent on his income tax returns.²

The home was refinanced in 2003, and again Sammy and One Lo signed the mortgage.³ A quit claim deed was filed on September 30, 2003, transferring the property from Sammy, One Lo, and Vong to Sammy and One Lo.⁴ Because

¹ Sammy moved to the United States from Laos in 1981. His parents moved to Des Moines, Iowa, from Laos in 1984. Sammy moved to Des Moines from Michigan in 1989. He obtain a job at Parr Manufacturing, where One Lo was working at the time.

² The estate requested all of Sammy's income tax returns. He provided copies for only the years 1992, and 2005 to 2007.

³ The parties did not provide a signed copy of the promissory note from the 2003 refinancing. Sammy's attorney stated the mortgage company held the original note, and Sammy was only provided with an unsigned copy at the time of the closing. There was no indication of whether he had attempted to obtain a signed copy from the mortgage company.

⁴ The 1990 warranty deed listed One Lo as single, although she was married at the time. It is not clear what property rights Vong had to transfer to Sammy and One Lo, but whatever rights he had they were conveyed by the quit claim deed which he and the others signed. *Mack v. Tredway*, 244 Iowa 240, 246, 56 N.W.2d 678, 681 (1953) ("A quit claim deed is effectual to convey whatever interest the grantor has in the property sought to be conveyed."). Vong died on May 28, 2005.

the deed did not express an intent that the property continued to be held in joint tenancy with rights of survivorship, Sammy and One Lo became tenants in common. See *In re Estate of Stamets*, 260 Iowa 93, 98, 148 N.W.2d 468, 471 (1967) (holding a presumption exists that conveyances of real estate or transfers of personalty to two or more persons create a tenancy in common, rather than a joint tenancy with right of survivorship, unless a contrary intent is expressed). There were subsequent mortgages on the property in November 2003, March 2004, and November 2007 that were signed by Sammy and One Lo.

One Lo died intestate on June 30, 2008. An estate was opened for her and Sherri Pollard was named as the administrator. The administrator found One Lo had only one real asset, valued at \$57,800, which was her one-half interest in the house at 3315 4th Street that had an assessed value of \$115,600.⁵ Sammy disputed the administrator's determination that One Lo had an interest in the house, stating she signed various documents only to assist him to obtain financing. The Iowa Department of Human Services filed a claim in probate, under Iowa Code section 249A.5(2) (2009), for \$88,598.68 for the recovery of medical assistance provided on One Lo's behalf.

The administrator filed a motion requesting the probate court to determine One Lo's interest in the real estate. Sammy testified that he made only \$4470 in 1989, and he needed his mother's signature in order to obtain financing to purchase the house at 3315 4th Street. He stated that when he refinanced in 2003, he was the only one that signed the promissory note. However, One Lo

⁵ At a hearing held on June 28, 2010, Pollard testified the assessed value of the property had increased to \$116,000.

did sign the mortgage in 2003. Sammy stated he made all of the mortgage payments, and provided copies of four checks. Sammy provided evidence he carried insurance on the home, and that utilities were in his name. He also produced a copy of a homeowner's insurance policy showing that he alone was listed as the insured.

Kenekham Sangxeyarath testified he was Sammy's cousin and had lived with Sammy for four or five months. He stated he made the arrangements with Sammy and paid rent to him. Sompong Psuaisong testified she was Sammy's sister-in-law, and she had lived with Sammy for two years. She stated she made arrangements with Sammy to live there, and she believed it was Sammy's house. Duangta Khanthavongsa testified he was Sammy's friend and he believed Sammy owned the house.

The probate court found One Lo was the record title holder of an undivided one-half interest in the real estate. It noted there existed a presumption of ownership that could only be overcome by clear and convincing evidence. The court concluded Sammy had not presented sufficient evidence to overcome the presumption. The court noted One Lo continued to obligate herself for many years. The court stated the parties could have corrected the ownership if it were not the intent for One Lo to remain as an owner of the property. Sammy appeals the probate court's decision.

II. Standard of Review

This action was tried in equity. See Iowa Code § 633.33. In equitable actions our review is de novo. Iowa R. App. P. 6.907. We give weight to the

factual findings of the district court, especially when considering the credibility of witnesses, but are not bound by those findings. Iowa R. App. P. 6.904(3)(g).

III. Merits

A party's record title raises a presumption of ownership that may be overcome only by clear and convincing evidence. *State ex rel. Iowa Dep't of Natural Res. v. Burlington Basket Co.*, 651 N.W.2d 29, 34 (Iowa 2002); see also *Shine v. State*, 458 N.W.2d 864, 866 (Iowa Ct. App. 1990) ("The presumption of ownership which follows legal title can be overcome only by evidence which is clear and convincing."). Clear and convincing evidence is evidence leaving no serious or substantial doubt about the correctness of the conclusion drawn from it. *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983). It requires the establishment of facts by more than a preponderance of the evidence, but less than the establishment of a factual situation beyond a reasonable doubt. *Id.*

The quit claim deed raises a presumption that Sammy and One Lo held the property as tenants in common. While Sammy presented indicia of his ownership—maintaining insurance, paying utilities, collecting rent payments—these do not show he was the sole owner because he could have accepted these responsibilities as a co-owner. See *Thorp Credit, Inc. v. Wuchter*, 412 N.W.2d 641, 644 (Iowa Ct. App. 1987) (noting possession of an asset was not the only indicia of ownership because parties may have pooled resources to purchase the asset).

We find Sammy's credibility to be questionable. We note that Sammy was somewhat evasive in answering questions on cross-examination about times

One Lo had lived in the home with him and when he had declared her as a dependent. Sammy did not produce all of his tax returns that he was requested to produce, and offered no explanation for his failure to do so. He produced copies of four checks for mortgage payments, but the earliest of these checks was dated November 10, 2008, several months after One Lo passed away. All that the checks show is that he paid the mortgage after One Lo died. Additionally, although he claimed that he alone signed the promissory note at the time the house was refinanced in 2003, the copy of the promissory note he provided had no signatures on it.

As the probate court noted, One Lo signed not only the original mortgage, but continued to sign a succession of mortgages. While Sammy could have needed her signature back in 1990 in order to get financing for the first mortgage, it is not clear that situation continued throughout the years. His Social Security statement shows that during 2003, when the house was refinanced, he earned more than \$39,000. The probate court found that if it were not the intent of Sammy and One Lo that One Lo remain an owner of the house, they could have corrected the ownership at any time over the years, and particularly at the time they executed the quit claim deed in 2003. We conclude, as the probate court did, that the facts Sammy and One Lo were both listed as owners on the original deed, they reaffirmed that they each had an ownership interest through the 2003 deed, and they both apparently signed all mortgages on the property, shows an intent by Sammy and One Lo that they owned the house together.

On our de novo review, we concur in the probate court's conclusion that Sammy did not present clear and convincing evidence to overcome the presumption that Sammy and One Lo held the property as tenants in common, as evidenced by the quit claim deed. We affirm the decision of the probate court.

AFFIRMED.