

IN THE COURT OF APPEALS OF IOWA

No. 3-767 / 12-2324
Filed October 23, 2013

**IN THE MATTER OF THE ESTATE OF
RICHARD P. SATTER, Deceased,**
Estate-Appellant,

vs.

ROBERT G. SATTER,
Claimant-Appellee.

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

An estate appeals from the judgment entered against it on a probate claim
to enforce an oral agreement. **AFFIRMED.**

Charles H. Biebesheimer of Stillman Law Firm, Clear Lake, for appellant.

Thomas E. Maxwell of Leff Law Firm, L.L.P., Iowa City, for appellee.

Heard by Vaitheswaran, P.J., and Doyle, J., and Goodhue, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

GOODHUE, S.J.

Robert Satter filed a probate claim against Richard Satter's estate to enforce an oral agreement with the decedent. The district court entered judgment in favor of Robert in the sum of \$82,500 plus interest at the rate of 2.17% from January 20, 2010. The estate appeals.

I. Background Facts and Proceedings

The decedent, Richard G. Satter (Rick), and the claimant, Robert G. Satter (Bob), were twin brothers and had no other siblings. They inherited an eighteen-acre tract with two houses on it in or near Clear Lake from their mother when she passed away December 22, 2004. Before her death Bob had moved into the larger house located on the acreage with his mother, and Rick was living in the smaller house. Rick and Bob inherited equal shares in their mother's estate and were co-executors. The eighteen-acre tract was the major asset in the estate. Rick advanced \$20,000 in cash to pay claims and costs of administration, one-half of which was returned to him from the estate.

On December 5, 2006, in finalizing the estate, the two brothers, as co-executors, signed a court officer's deed conveying the eighteen acres to Rick. Bob testified that he had a substantial child support judgment against him and the property was placed solely in Rick's name to shield it from the judgment. Bob also owed Rick money. Bob testified when the court officer's deed was given there was an oral agreement that the proceeds of any sale were to be divided on a fifty-fifty basis after the deduction of amounts Bob owed Rick. Both brothers were in agreement to sell.

The property was sold for \$285,000 under the terms of an installment contract dated July 15, 2008, and signed by Rick as the vendor. There was a \$10,000 down payment, and Bob received one-half of it. Subsequent payments were made, and in each case Bob received a share. Bob continued to live in the house on the acreage until the sale.

Rick died on August 29, 2009, leaving one child, Chelsea King, who was appointed the administrator of his estate. There was still \$185,000 due on the contract when he died. Bob filed a claim in probate for what he claims is his one-half share of the balance due on the contract.

The trial court entered an order finding that there was an oral contract between the parties whereby the remaining amount due on the contract was to be divided on a fifty-fifty basis and granted Bob's claim of \$82,500 plus interest as filed in the estate.

II. Standard of Review and Error Preservation

Because this is a law action, our review is for correction of errors at law. Iowa R. App. P. 6.907. The trial court's findings of fact are binding on the appellate court if supported by substantial evidence. Iowa R. App. P. 6.904(3)(a). Findings of fact have the effect of a special verdict and the function of the appellate court is limited to correction of errors of law. Iowa R. App. P. 6.907.

In its appellate brief the estate asserts that the statute of frauds, set forth in Iowa Code section 622.32(3) (2009), bars the introduction of evidence to support an oral contract to transfer an interest in lands, and therefore, Bob's claimed oral contract is unenforceable. Assuming this matter involves a transfer

of land, the statute of frauds is an evidentiary rule—not a substantive law—and must be raised by answer or objection to evidence at trial. *Sun Valley Lakes Ass'n v. Anderson*, 551 N.W.2d 621, 630 (Iowa 1996). The record does not indicate the issue was raised prior to the appellate brief. Issues must ordinarily be raised and decided by the trial court before they will be decided on an appeal. *Wilson v. Liberty Mut. Group*, 666 N.W.2d 163, 167 (Iowa 2003).

The estate did raise that portion of the statute of frauds set out in section 622.32(4) in its post-trial brief, but did not brief the issue on appeal. Failure to argue or cite authority on an issue may be deemed waiver of an issue on appeal. Iowa R. App. P. 6.903(2)(g)(3). If in fact the issue was properly raised by the post-trial brief, it was waived by a failure to brief on appeal.

III. Discussion

A. Court's use of hearsay letter

Bob introduced into evidence an April 24, 2009 letter from his attorney to Rick, which purportedly memorializes a conversation Bob's counsel had with Rick. The letter substantially confirms the oral agreement between Bob and Rick, consistent with Bob's testimony. A hearsay objection to the exhibit was granted, but the exhibit was admitted for purposes of "notice"—not for the truth of the matter asserted. On appeal, Rick's estate contends the court improperly used the letter to determine the terms of the oral agreement.

The letter states: "It is my understanding that you intend to split the \$60,000 that you will receive on May 1, 2009, equally with Bob, with the exception that you will withhold a small amount to cover expenses you have incurred that have benefited Bob" The May first payment was divided fifty-

fifty with a small adjustment because of an additional amount due from Bob to Rick. Cashier checks were drawn by the vendor and made payable to each of the brothers their share.

The trial court did refer to the letter in its ruling, but it is clear that the trial court's ruling was based on Bob's testimony and the conduct of the parties—not on the letter. When evidence is admitted for a limited purpose in a bench trial, the assumption is that it was considered solely for the limited purpose offered. *State v. Decker*, 744 N.W.2d 346, 356 (Iowa 2008). The letter set out a “notice” or a plan for dividing the \$60,000. The plan was followed by Rick, and to that extent it was admissible. If error was made, it was merely cumulative of other evidence and therefore harmless. *Vasconez v. Mills*, 651 N.W.2d 48, 57 (Iowa 2002).

B. Oral contract

The estate also challenges the sufficiency of the evidence supporting the oral contract.

In order to be enforceable, oral agreements must be so cogent and clear there is no doubt as to their terms. *Mack v. Linge*, 119 N.W.2d 897, 900 (Iowa 1963). Bob's renditions of the terms of the agreement are complete and clear. He is to receive one-half of the remaining proceeds from the contract. His indebtedness to Rick has been paid.

Bob is attempting to enforce an oral contract with a party now deceased. As such his testimony is to be examined with the closest scrutiny and “jealously and cautiously weighed and considered,” and need not be accepted as true even

though not contradicted. *Laing v. State Farm Fire & Cas. Co.*, 236 N.W.2d 317, 320 (Iowa 1975).

The attorney who handled the mother's estate and drew the court officer's deed did not know about the oral agreement, but did not directly challenge its existence. He testified he did know about Bob's child support judgment and "had to figure out a way to protect everyone's interest." Chelsea, Rick's daughter, expressed her belief that there was no oral agreement, but was also unable to directly challenge its existence. She testified that her father had never mentioned any agreement to her, and she was certain there was no such agreement. She also asserted that Bob owed her father money, maybe as much as \$100,000. Chelsea also mentioned that at the time of the sale, he told her he was "cutting the umbilical cord" with Bob, which to her meant that his financial dealings with Bob were over.

Bob's testimony does not stand alone. No explanation of why Bob would have signed the court officer's deed conveying the property to Rick exists except for Bob's testimony. His explanation that it was placed in Rick's name to shield it from his child support judgment, but by oral agreement he was to retain his interest in the property and a one-half interest in the proceeds from any sale, stands alone. There was no other explanation as to why Bob was permitted to live in the house rent-free until the property was sold. There is no other explanation why the proceeds were divided as they were. The initial down payment of \$10,000 was divided in half by Rick. The next payment of \$50,000 was retained by Rick, except for \$2000 he paid to Bob. The retention of Bob's \$23,000 according to Bob's testimony, was to repay what he owed Rick

personally and moneys Rick advanced to administer their mother's estate. The last payment of \$60,000 was divided fifty-fifty except for a small adjustment for what Bob owed to Rick. Even more telling, the vendor made a cashier's check directly payable to Bob for his share. As the vendor signing the contract of sale, the check would only have been made payable to Bob at Rick's direction. The conduct of the parties is consistent with Bob's testimony as to the terms of the oral contract. Chelsea testified that the sums Bob received from Rick were gifts rather than payments on an oral contract, but she offered no basis for that assertion.

The findings of fact made by the trial court are supported by substantial evidence.

AFFIRMED.