

**IN THE COURT OF APPEALS OF IOWA**

No. 8-931 / 08-0560  
Filed May 6, 2009

**SANDRA DORALE,**  
Plaintiff-Appellee,

**vs.**

**RAY DORALE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Monona County, Mary Jane Sokolovske, Judge.

The defendant appeals a district court judgment quieting title to real estate in the plaintiff. **AFFIRMED.**

Joseph Halbur, Carroll, for appellant.

Julie Schumacher, Denison, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

**MILLER, J.**

Ray A. Dorale and Sandra K. Dorale, then husband and wife, on March 1, 1997, leased from Viola Dorale for ten years a legally described quarter section of land located in Monona County, Iowa. The lease granted them an option to purchase the real estate for \$600 per acre on the landlord's death, or earlier at the landlord's option. They later exercised the option. Although it is not clear from the record, it appears the exercise of the option occurred after Viola Dorale's death.

In July 2005 Sandra sought and secured an order protecting her from Ray's domestic abuse.<sup>1</sup> Two days after Sandra filed her petition for relief from domestic abuse, Ray filed a petition for dissolution of marriage. An October 2006 decree dissolving their marriage awarded Ray "the west half of the Viola Dorale property option," and awarded Sandra "[t]he east half of the Viola Dorale option." The 160 acres had been appraised at \$448,000 in September 2006. The East and West halves were of equal value, so the eighty acres awarded to Sandra had a September 2006 value of \$224,000.

Ray wished to own the entire 160 acres, which he had farmed for years. The existing protective order prohibited him from, among other things, "communicat[ing] with [Sandra] in person or through any means including third persons." Ray nevertheless made efforts, by communicating through Sandra's father, to purchase Sandra's interest in the eighty acres that had been awarded to her.

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<sup>1</sup> The order prohibited Ray from having contact with Sandra, was later extended, and according to the parties remained in effect in March 2007.

Raymond's efforts culminated in events on March 12, 2007. On that evening he visited Sandra's father's home to talk to him. Unplanned, Sandra also arrived to visit with her father. Discussions and arguments, contentious and sometimes heated, ensued for approximately four hours. At or near the conclusion of the evening's events Ray wrote, and Ray, Sandra, and Sandra's father signed, a paper that stated:

The divorce decree will not be changed. Ray Dorale will pay Sandy Dorale \$125,000 plus \$48,000 for the East half "80 acres" of the Viola Dorale farm. Sandy Dorale will give Ray the "Deed" to the farm and get paid at the same time at the United Bank of Iowa in Charter Oak Iowa.

3-12-07.

About a month later Ray again signed the paper, having his second signature notarized. On May 14, 2007, Ray had the paper filed in the office of the Monona County Recorder.

Sandra later received an offer to purchase her eighty acres. The purchaser's attorney opined that the "interloping document" filed by Ray rendered Sandra's title unmerchantable. Sandra filed this action in equity seeking to have title quieted in her. Ray answered, denying material allegations of Sandra's petition. He also asserted a counterclaim in equity, alleging the parties had entered a binding contract for Sandra to sell her interest in the eighty acres to him. Sandra answered the counterclaim, denying material allegations thereof. Evidence at trial, including Ray's testimony, shows that the value of the 160 acres had increased substantially during the six months between the September 2006 appraisal and the events of March 12, 2007.

Following trial, the district court quieted title to the eighty acres to Sandra and denied Ray's petition for specific performance. In doing so it concluded that Sandra's signature on the document in question was the product of duress, the purported contract was thus voidable, and the document was therefore unenforceable as a contract for the sale of the property in question. The court further concluded that the document in question did not constitute an enforceable contract for the sale of land because it lacked essential terms of such a contract.

Ray appeals. He claims

THE DISTRICT COURT ERRED IN FAILING TO ORDER SPECIFIC PERFORMANCE ON THE WRITTEN AGREEMENT MADE BY THE APPELLANT AND APPELLEE FOR THE SALE OF APPELLEE'S EIGHTY (80) ACRES TO THE APPELLANT.

Our review in these combined equity actions is de novo. Iowa R. App. P. 6.4; *Krotz v. Sattler*, 586 N.W.2d 336, 338 (Iowa 1998) (quiet title action); *Breitbach v. Christenson*, 541 N.W.2d 840, 843 (Iowa 1995) (specific performance). We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

The decision to grant specific performance is within our sound discretion; it is not to be granted as a matter of right. It is to be granted only in extraordinary, unusual cases in which irreparable harm will result in its absence, not as a matter of grace. In determining whether to grant a request for specific performance, we must examine the particular facts of the situation and will generally grant the request when it would subserve the ends of justice and deny to do so where it would produce a hardship or injustice in either party.

*Breitbach*, 541 N.W.2d at 843.

While a court trying a case in which specific performance is sought has considerable discretion in granting or withholding such a remedy, the discretion is not absolute. *Incorporated Town of Wahpeton v. Rocklin*, 254 Iowa 948, 953, 119 N.W.2d 880, 883 (1963). Any inequitable conduct on the part of the party seeking specific performance will justify its denial. *Youngblut v. Wilson*, 294 N.W.2d 813, 817 (Iowa 1980). “A greater degree of certainty of contract is required for specific performance in equity than is necessary to establish a basis of an action at law for damages.” *Kelley v. Creston Buick Sales Co.*, 239 Iowa 1236, 1241, 34 N.W.2d 598, 601 (1948).

Ray claims the trial court erred in concluding Sandra signed the paper in question under duress. In so concluding the court quoted and relied on Restatement (Second) of Contracts sections 175 and 176. Those provisions state:

§ 175. When Duress By Threat Makes A Contract Voidable

- 1) If a party’s manifestation of assent is induced by an improper threat by the other party that leaves the victim no reasonable alternative, the contract is voidable by the victim.
- 2) If a party’s manifestation of assent is induced by one who is not a party to the transaction, the contract is voidable by the victim unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction.

§ 176. When A Threat Is Improper

- 1) A threat is improper if
  - a) what is threatened is a crime or a tort, or the threat itself would be a crime or a tort if it resulted in obtaining property,
  - b) what is threatened is a criminal prosecution,
  - c) what is threatened is the use of civil process and the threat is made in bad faith, or
  - d) the threat is a breach of the duty of good faith and fair dealing under a contract with the recipient.

- 2) A threat is improper if the resulting exchange is not on fair terms, and
- a) the threatened act would harm the recipient and would not significantly benefit the party making the threat,
  - b) the effectiveness of the threat in inducing the manifestation of assent is significantly increased by prior unfair dealing by the party making the threat, or
  - c) what is threatened is otherwise a use of power for illegitimate ends.

Restatement (Second) of Contracts § 175, at 475-76; § 176, at 481-82 (1981).

In arguing the trial court erred, Ray focuses on the provisions of section 175(1), which concerns an improper threat by the other party to a contract, and section 176, which describes when such a threat is “improper.” We, however, read the trial court’s decision as finding the purported contract in this case to be the result of duress under not only section 175(1), but also duress under section 175(2), which concerns a manifestation of assent induced by one not a party to the contract, here Sandra’s father, Warren Thies. Our reading is based on the fact that the court cited and quoted not only section 175(1) but also section 175(2), and the court’s conclusions that: “Mr. Theis [sic] testified that the parties were arguing and he wanted the thing to end before someone got hurt. To that end he repeatedly encouraged his daughter to settle with [Ray].”

Prior to the parties’ recent divorce Sandra had been the victim of domestic abuse by Ray and she feared him. She testified that he had threatened her physically concerning the land. Ray’s post-divorce approaches to Sandra’s father, Mr. Thies, to get Mr. Thies to convince Sandra to sell the eighty acres to him, were in apparent violation of the protective order issued in the domestic

abuse proceeding. When Sandra unexpectedly arrived at her father's residence while Ray was there, Ray did not leave. He instead seized the opportunity to invoke Mr. Thies's assistance, over a period of some three to four hours, to convince Sandra to sell the eighty acres to him.

According to Sandra, her father was fearful and wanted Ray to leave. Mr. Thies feared someone would get hurt. Ray demonstrated anger and an unwillingness to leave unless and until he got what he wanted. Sandra was fearful and crying. Mr. Thies pressured Sandra to give Ray what he wanted in order to end the situation and get him to leave. After lengthy pressure, including a great deal of pressure from her own father, Sandra signed the paper purporting to agree to sell to Ray for \$173,000 her eighty acres. This land had six months earlier appraised at \$224,000, and according to the evidence had thereafter increased substantially in value.

Upon our de novo review we find that Sandra's manifestation of assent was induced, in large part if not entirely, by her father, not a party to the transaction, and that Ray was well aware of the pressure exerted on Sandra by her father. We conclude Sandra's manifestation of assent was the product of duress, as described in Restatement (Second) of Contracts, section 175(2), and is thus voidable and unenforceable. We need not and do not decide whether the contract is also voidable pursuant to section 175(1). We have considered all issues presented, and find any not expressly addressed herein either controlled by the foregoing or unnecessary to resolution of the appeal. We agree with the

trial court's denial of Ray's petition for specific performance and grant of a decree quieting title in Sandra.

We affirm the judgment of the trial court. Costs on appeal are taxed to Ray.

**AFFIRMED.**