IN THE COURT OF APPEALS OF IOWA

No. 9-1044 / 09-0315
Filed March 10, 2010

JUNIOR L. DILLENBURG and
LUCILLE DILLENBURG,
Plaintiffs-Appellees,

vs.

ARTHUR CAMPBELL, HOPE A.
HOLLAND-MULLINS and WAC N HAC, L.L.C.,
Defendants-Appellants.

Appeal from the Iowa District Court for Union County, John D. Lloyd, Judge.

The defendants appeal from the district court's order granting the plaintiffs' request for specific performance of an option contract for the purchase of real estate. **AFFIRMED.**

John P. Dollar of Wilson, Deege, Dollar, Despotovich & Riemenschneider, West Des Moines, for appellants.

Jerrold B. Oliver and G. Stephen Walters of Jordan, Oliver & Walters, P.C., Winterset, for appellees.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

I. Background Facts and Proceedings.

On March 27, 1997, Junior L. Dillenburg and his wife, Lucille Dillenburg, entered into a lease agreement with Florence Campbell for farmland. According to the lease agreement, the Dillenburgs were to rent farmland in Union County from Florence for a period of ten years. Florence died in 2004, and her will was admitted to probate in Union County on June 15, 2004. Florence's children, Arthur Campbell and Hope Holland-Mullins, served as executors of the estate.[1] Notice of probate of Florence's will, of appointment of executors, and notice to creditors was published in a local newspaper on June 29 and July 6, 2004. *See* Iowa Code § 633.304 (2003) (requiring notice to be published). The executors did not provide notice by mail to the Dillenburgs. *See id*. (requiring notice by mail at any time during the administration to known claimants). Florence's estate was closed on November 3, 2006. Arthur and Hope received title to the farmland from the estate, by way of a court officer deed. They later quit claimed their interests to WAC n HAC, L.L.C., which Arthur and Hope had formed to hold title to the property.

In February 2007, Junior notified Arthur and Hope that he was exercising his option to purchase the farmland. Arthur and Hope responded that they had no knowledge of an option contract and because the estate was now closed, Junior was prohibited from making any claim against the estate. Junior and Lucille filed suit against Arthur, Hope, and WAC n HAC, L.L.C., seeking specific

[1] Additionally, Florence's will, which was executed in 1990, also nominated Junior to serve as co-executor if an Iowa-resident co-executor was required.

performance of the option to purchase contract.[2] Arthur and Hope answered and asserted the Dillenburgs were prohibited from exercising the option because the claim was barred by the statute of limitations governing claims in estates. Arthur and Hope also raised the defenses of undue influence and fraud in the formation of the contract.

A trial was held on January 12, 2009. Junior testified that he had rented the farmland for thirty to forty years, first from Florence's mother and then from Florence. In 2001, Junior and Florence entered into a written agreement whereby Junior had the option to purchase the farmland for $420 per acre until two years following the expiration of the lease. In exchange for the option to purchase, Junior was to pay $500 to Florence annually.[3] According to Junior, at Florence's request, he kept the option "quiet," not telling anyone about it until after Florence's death. The agreement was signed by both Junior and Florence and was notarized by someone at First National Bank. None of the parties disputed the authenticity of the signatures; however Junior testified Florence typed the option contract, whereas Hope and Arthur testified Florence's eyesight was so poor that she would not have been able to do that. The option contract was never recorded.

Junior made annual payments in the amount of $500 to Florence from 2001 to 2003 and then to Hope or to Hope and Arthur during the administration

[2] Alternatively, the Dillenburgs sought reimbursement for tiling installed on the farm. The district court found that the Dillenburgs were entitled to a judgment in the amount of $5335 for the tiling. However, based upon the parties' stipulation, because the Dillenburgs were entitled to exercise the option, the district court did not enter judgment on their alternative claim for reimbursement.

[3] The contract was unclear as to whether $500 was to be paid each year or whether it was intended as a one-time payment.

of the estate, from 2004 to 2006. Each check had the word "option" written in the memo line. Hope also testified that she had taken care of her mother's banking since 2002, and had seen the annual checks from 2002 to 2006 with the word "option" written in the memo line, but claimed to not know the significance of the notation.

On January 30, 2009, the district court granted the Dillenburgs' request for specific performance of the option contract. The district court found Hope had sufficient knowledge of the option contract and as co-executor was required to give notice of probate of Florence's estate to Dillenburg. Because the executors had not given the required notice to Junior, Junior's claim was not barred by Iowa Code section 633.410.[4] Further, the district court found Arthur and Hope failed to establish either fraud or undue influence as a defense to enforcement of the option contract. Arthur and Hope appeal.

II. Analysis.

This is an equity action and therefore, our review is de novo. *In re Estate of Claussen*, 482 N.W.2d 381, 383 (Iowa 1992); *see also Breitbach v. Christenson*, 541 N.W.2d 840, 843 (Iowa 1995) (noting the plaintiff's request for specific performance of a contract is an action in equity and review is de novo).

Arthur and Hope assert that the Dillenburgs' claim for specific performance of the option contract is barred by the statute of limitations set forth in Iowa Code section 633.410(1). Under Iowa Code section 633.304, an

[4] The parties did not dispute that Junior attempted to exercise the option to purchase within the time set forth in the contract.

executor is required to provide published notice and notice by mail of the admission of a will to probate. Regarding notice by mail, this section provides:

> [A]t any time during the pendency of administration that the executor has knowledge of the name and address of a person believed to own or possess a claim which will not or may not be paid or otherwise satisfied during administration, provide by ordinary mail to each such claimant at the claimant's last known address . . . .

Iowa Code § 633.304. Further, Iowa Code section 633.410(1) provides for a statute of limitation on claims:

> All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address.

Therefore, if an executor fails to give notice to a reasonably ascertainable claimant, section 633.410(1) does not bar the claimant's claim. *Stewart v. DeMoss*, 590 N.W.2d 545, 548 (Iowa 1999) ("[I]f the identity of a claimant is reasonably ascertainable, the claimant's claim is not barred until one month after service of notice by ordinary mail to the claimant's last known address.").

The parties agree that Junior was not given notice by mail, nor did he make a claim against Florence's estate. If Junior was a claimant entitled to notice by mail, then his claim is not barred. The evidence demonstrated that in 2002, Florence moved to Wisconsin, where both Arthur and Hope resided. After Florence's move, Hope took care of Florence's financial affairs. In October 2002 and September 2003, Hope received and deposited two checks from Junior.

Both of these checks were made out to Florence in the amount of $500, and had the word "option" written in the memo line. Hope did not question Florence about these checks. After Florence's death, Hope received two checks from Junior in October 2004—one for rent and one in the amount of $500 with the word "option" written in the memo line. Additionally, Hope and Arthur received a single check in 2005 and one in 2006, with the words "rent" and "option" written on the memo line of the checks. Although Hope testified that she "never saw the word option" and "assumed this $500 was CRP," there was evidence indicating otherwise. According to the itemized billing records of the attorney for the executors, on April 17, 2006, he had a "[c]onference with Hope regarding [the Dillenburg] lease/claim of right to buy." This was prior to the estate closing on November 3, 2006.

We agree with the district court that the executors of Florence's estate should have provided notice by mail to Junior. It is clear that during the pendency of the administration of the estate, Hope became aware of the option contract entered into between Junior and Florence. *See* Iowa Code § 633.304 (requiring notice be given at any time during the pendency of the administration that the executor has knowledge of a claimant); *see also Connolly v. Des Moines & Cent. Iowa Ry. Co.*, 246 Iowa 874, 892, 68 N.W.2d 320, 331 (1955) (discussing that the city took a conveyance of land knowing of another party's option, but remained silent because it stood to win if the option was not exercised, and equity demanded the option conveyance be superior to the city's conveyance). In addition to the option checks received, the record demonstrates that Hope had a conference with the attorney representing her and Arthur in

administrating the estate regarding Junior's lease and option to purchase. As a result, Junior was a "reasonably ascertainable" claimant, to whom the executors were required to provide notice by mail. Because the executors failed to provide such notice, the Dillenburgs' claim is not barred by Iowa Code section 633.401(1).

Additionally, Arthur and Hope assert that the option contract should be set aside because it was the product of Junior's undue influence over Florence and/or fraud. The district court found that there was insufficient evidence to support the required elements of these asserted defenses. *See Mendenhall v. Judy*, 671 N.W.2d 452, 454 (Iowa 2003) (setting forth the elements of undue influence as: (1) the grantor is susceptible to undue influence, (2) an opportunity on the part of the grantee to exercise such influence and effect the wrongful purpose, (3) a disposition on the part of the grantee to influence unduly for the purpose of procuring an improper favor, and (4) the result must clearly appear to be the effect of undue influence); *Wilden Clinic, Inc. v. City of Des Moines*, 229 N.W.2d 286, 292 (Iowa 1975) (stating that the elements of fraud are: (1) representation, (2) falsity, (3) materiality, (4) scienter, (5) intent to deceive, (6) reliance, (7) resulting injury and damage). We agree with the district court that Arthur and Hope did not produce sufficient evidence of either undue influence or fraud in the creation of the option contract.

We therefore affirm the district court's order. Costs on appeal are assessed to Arthur Campbell and Hope Holland-Mullins.

AFFIRMED.