

IN THE COURT OF APPEALS OF IOWA

No. 9-190 / 08-1301
Filed May 29, 2009

LARRY D. SCHAEFER,
Plaintiff-Appellant,

vs.

DALE L. SCHAEFER, LANA G. STORM SCHAEFER,
and ALENE M. SCHAEFER ESTATE,
Defendants-Appellees.

Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge.

Plaintiff appeals the district court's grant of summary judgment to defendants on his claims of breach of fiduciary duty and interference with a contract. **AFFIRMED.**

Peter C. Riley of Tom Riley Law Firm, P.L.C., Cedar Rapids, for appellant.

Randall E. Nielsen of Pappajohn, Shriver, Eide & Nielsen, P.C., Mason City, for appellees Dale and Lana Schaefer.

Darrell J. Isaacson of Esser & Isaacson, Mason City, for appellee estate.

Considered by Vogel, P.J., and Eisenhauer, J., and Beeghly, S.J.*

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

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

August and Alene Schaefer had six children, Carol, Merlin, Larry, Dale, Allan, and Sandra.¹ They had two farms, one north of Rockwell and one south of Rockwell. After August died in 1975, the north farm was transferred to Alene. The south farm was placed in a trust for the benefit of Alene, with the children as remainder persons. In 1996, Dale Schaefer and his wife, Lana Schaefer, entered into a real estate contract to purchase eighty acres of the north farm from Alene.

Alene died in 2005. Alene's will left her estate in six equal shares to her children, with Allan's share going to his wife and child. Dale and his brother, Carol Schaefer were named as co-executors. Thereafter, Dale expressed an interest in purchasing the farm that had been placed in the trust (south farm), while Larry Schaefer expressed an interest in purchasing the farm from Alene's estate (north farm). Dale obtained two appraisals for the trust farm, and his offer to purchase was based on the lesser-appraised amount. Larry objected to the offer. The offer was not approved by the district court.

Larry received notice in December 2006 that the estate planned to sell the estate farm by auction. The auction was held on January 26, 2007, and the estate farm was purchased by Clyde Sturges for \$904,000.

On February 16, 2007, Larry filed a pro se action in equity to void the 1996 real estate contract between Dale and Alene on the ground that the sale price

¹ Allan Schaefer is deceased.

was below fair market value.² Larry filed a petition to expand and amend on April 17, 2007, stating that he had offered to purchase the estate farm for its appraised value of \$560,000 in 2006. He claimed Dale, Carol, and the estate had acted improperly to deny him the ability to purchase the property. The district court granted the motion to amend the petition.

The defendants filed a motion for summary judgment on the amended petition based on several grounds: (1) the petition failed to state a claim upon which relief can be granted; (2) the statute of limitations for estate claims, Iowa Code section 633.410 (2007); (3) the doctrine of estoppel by acquiescence; (4) laches and unclean hands; (5) waiver, release, or forfeiture of claims; and (6) the statute of frauds.

Larry obtained representation by an attorney and resisted the motion for summary judgment. The resistance clarified that Larry believed that in retaliation for his earlier prevention of Dale's purchase of the trust farm based on the lesser-appraised amount, Dale objected to Larry's purchase of the estate farm. The resistance pointed out that Larry was raising claims of breach of fiduciary duty and interference with a contractual relationship.

The district court entered an order on July 11, 2008, granting the defendants' motion for summary judgment. The court determined Larry was attempting to enforce an oral contract to purchase real estate, and his claim was unenforceable under the statute of frauds. The court also found that Larry could not establish a claim of breach of fiduciary duty because he was not claiming the

² Larry does not appeal the district court's grant of summary judgment to defendants on this claim.

co-executors breached any duty to the estate. Furthermore, as a party to the alleged contract, he could not bring a claim of interference with a contract. Larry appeals the district court's decision.

II. Standard of Review

Although this case was brought in equity, our review of a district court's ruling on a motion for summary judgment is for the correction of errors at law. *Kucera v. Baldazo*, 745 N.W.2d 481, 483 (Iowa 2008). Summary judgment may be granted if the moving party establishes "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3). We examine the record in the light most favorable to the non-moving party and draw all legitimate inferences from the evidence. *Kragnes v. City of Des Moines*, 714 N.W.2d 632, 637 (Iowa 2006). If reasonable minds could differ on the resolution of an issue, a genuine issue of material fact exists. *Smith v. Shagnasty's Inc.*, 688 N.W.2d 67, 71 (Iowa 2004).

III. Breach of Fiduciary Duty

Larry contends that as co-executors of Alene's estate, Dale and Carol owed a duty to him, as one of the beneficiaries, to deal fairly with him regarding the sale of the estate farm. During a deposition Dale testified as follows:

Q. Well, let me ask this, if Larry hadn't objected to your purchase of the trust property, would you have been willing to let him buy some of the estate property based on the Greder appraisal? A. Yes.

Larry asserts this testimony shows a breach of fiduciary duty because the co-executors would not agree to sell him the estate farm.

The relationship between executor and heir necessarily gives rise to a fiduciary relationship. *Kurth v. Van Horn*, 380 N.W.2d 693, 696 (Iowa 1986). A fiduciary must manage an estate with the level of care an ordinary prudent person would exercise under like circumstances in their own affairs. *In re Estate of Atwood*, 577 N.W.2d 60, 62 (Iowa Ct. App. 1998). Under Iowa Code section 633.160, a fiduciary is liable for “negligent or willful act[s] or nonfeasance in the fiduciary’s administration of the estate by which loss to the estate arises.” See *Haney v. Kitchen*, 690 N.W.2d 675, 677 (Iowa 2005).

Larry has not alleged that the executors breached a duty to him as an heir. His claim is that the executors should have sold the property to him for \$560,000, thereby permitting him to reap the gain when the value of the property later rose to \$904,000. His claim is not based on his status as an heir to Alene’s estate. We find no error in the district court’s conclusion Larry had not generated a genuine issue of material fact on the issue of breach of fiduciary duty. The court stated, “He has not sustained an actual loss or damage as an Estate heir as the result of the Executors not selling the 160-acre parcel to him as an individual.”

IV. Interference with a Contract

Larry contends he had an existing oral contract with the estate to purchase the estate farm for the appraised value. He asserts Dale and Carol prevented the enforcement of the contract in retaliation for Larry’s objection to Dale’s purchase of the trust farm. He claims their actions were done with the purpose to injure him.

In order to establish a claim of intentional interference with an existing contract, a plaintiff must show: (1) a contract with a third-party; (2) defendant knew of the contract; (3) defendant intentionally and improperly interfered with the contract; (4) the interference caused the third-party not to perform; and (5) plaintiff suffered damages. *Kern v. Palmer College of Chiropractic*, 757 N.W.2d 651, 662 (Iowa 2008). The tort of intentional interference with a contract can only be committed by a third-party, not one who is a party to the contract. *Harbit v. Voss Petroleum, Inc.*, 553 N.W.2d 329, 331 (Iowa 1996).

The district court determined Larry was asserting that Dale and Carol, as executors of the estate, interfered with his contract with the estate, and concluded that his claim was impermissible as a claim of interference with a contract by a party to the contract. On appeal, Larry claims the rule does not apply “to claims involving actions by fiduciaries who have contracted on a fiduciary basis and then take steps because of their personal interest.” We note the Iowa Supreme Court has not recognized any exceptions to the requirement that the tort be committed by a third-party. *See id.*; *Klooster v. N. Iowa State Bank*, 404 N.W.2d 564, 570 (Iowa 1987).

V. Statute of Frauds

The district court additionally found that if there was an oral agreement between Larry and the estate to purchase the property at the appraised value, Larry could not prove his claim under the statute of frauds, Iowa Code section 622.32. The statute of frauds provides that evidence of a contract “for the creation or transfer of any interest in lands, except leases for a term not

exceeding one year” must be in writing. Iowa Code § 622.32(3). Thus, contracts to convey an interest in land fall within the statute of frauds. *Sun Valley Lake Ass’n v. Anderson*, 551 N.W.2d 621, 630 (Iowa 1996). The statute of frauds does not prohibit oral contracts transferring land, but does render such contracts unprovable. *Recker v. Gustafson*, 279 N.W.2d 744, 748 (Iowa 1979).

Larry’s claims are based on his assertion there was an oral contract that he could purchase the estate farm at the appraised value. Under the statute of frauds, Larry is unable to prove the existence of such a contract. We find no error in the district court’s conclusion that the defendants are additionally entitled to summary judgment based on the statute of frauds.

We affirm the decision of the district court.

AFFIRMED.