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NO. 4-15-0474

FILED
May 26, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FARMERS STATE BANK AND TRUST COMPANY OF MT. STERLING, ILLINOIS, as Administrator of the Estate of DOLLIE CATHERINE KROHE, Deceased, Plaintiff-Appellee, v. MARVIN D. KROHE; BRENDA I. KROHE; MARVIN D. KROHE, JR.; SHARENDA BOLLINGER; and DARRELL KROHE, Defendants-Appellants.	)	Appeal from Circuit Court of Cass County No. 06L5 Honorable Alan D. Tucker, Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court abused its discretion in rescinding the warranty deed that transferred ownership of 120 acres of farmland from a mother to a son as the record does not establish the plaintiff administrator of mother's estate, had no adequate remedy at law.

¶ 2 In March 1998, defendant, Marvin D. Krohe, entered into a sales agreement by which he agreed to purchase farmland from his mother, Dollie Catherine Krohe. The same day Dollie and Marvin executed the sales agreement, Dollie signed a warranty deed conveying the property to Marvin. After Dollie's April 1999 death, plaintiff, the administrator of Dollie's estate, sought rescission of the sales agreement, arguing, in part, Marvin failed to comply with the terms of the sales agreement. In May 2015, the trial court ordered rescission of the sales

agreement and ordered ownership transferred to the estate.

¶ 3 Defendant appeals, arguing the rescission order is improper. We reverse.

¶ 4 I. BACKGROUND

¶ 5 On March 24, 1998, Krohe and Dollie entered into a sales agreement, by which Marvin agreed to purchase 120 acres of property from Dollie for $48,000 plus interest. The terms of the one-page agreement are "$20,000.00 down, and $3,724.00 per year for 10 years, the first payment due on January 1, 1999," with interest computed at 6% per year. Dollie conveyed her interest in the property to Marvin and his wife, defendant Brenda I. Krohe, by warranty deed on March 24, 1998. Dollie died on April 5, 1999.

¶ 6 In July 2006, plaintiff filed its initial complaint alleging defendants breached the sales agreement. In its complaint, plaintiff sought two alternative remedies. Plaintiff requested the full contract amount, including interest, or conveyance of the property to Dollie's estate.

¶ 7 The procedural history is lengthy. It involves changes in estate administrators and trial judges, multiple complaints, multiple motions to dismiss and for summary judgment, separate legal actions, changes in plaintiff's counsel, and a number of continuances and delays. We need not recite the entire history here.

¶ 8 The trial court initially set the matter for hearing on all issues for August 28, 2008. At this hearing, plaintiff withdrew its breach-of-contract claim and filed an amended complaint seeking rescission of the sales agreement. As a condition of allowing the last-minute amended complaint, plaintiff agreed and the trial court ordered plaintiff barred from bringing another breach-of-contract action or citation proceeding. In the amended complaint, plaintiff alleged the same facts as in the original but elected to proceed on a claim of rescission.

¶ 9 In October 2008, on defendants' motion, the trial court dismissed the amended complaint. The court found no allegation the parties could be returned to the *status quo ante* and the complaint failed to establish plaintiff had no adequate remedy at law. The court also denied plaintiff's request to amend its complaint.

¶ 10 In November 2008, plaintiff filed a motion to reconsider the dismissal order and the denial of its request for leave to amend. In the proposed second-amended complaint, plaintiff added allegations the property was appraised in May 2007 as having a market value of nearly $270,000. Plaintiff alleged, due to this value, the recovery at law would be inadequate. Plaintiff alleged the parties could be returned to the *status quo ante* because no payment had been made and the property could be returned to the estate.

¶ 11 In December 2009, the trial court denied the motion to reconsider and plaintiff's request to amend. Plaintiff appealed.

¶ 12 On appeal, this court found leave to appeal should have been granted. See *Farmers State Bank & Trust Co. v. Krohe*, No. 4-09-0916 (June 29, 2010) (unpublished under Supreme Court Rule 23). We observed the allegations in the complaint, which included facts showing defendants in 1998 paid nothing for property worth $270,000 in 2007 and defendants purchased the property from an individual a short time before her death, created a reasonable inference "defendants had no intention of paying for the property in an attempt to take property from future heirs of the decedent for no outlay of resources." *Id.* at 12. We further held the value of the land in 2007 did not show what the value of the land was in 1998, but when considered with the other allegations, "indicate[s] a situation for which breach-of-contract damages may be inadequate." *Id.* at 12.

¶ 13 Plaintiff twice amended its second-amended complaint. The fourth-amended complaint added defendants, Marvin D. Krohe, Jr., Sharenda Bollinger, and Darrell Krohe, who are children of Marvin and Brenda. According to the complaint, Marvin and Brenda executed a quitclaim deed conveying the subject property in April 2010 to Marvin, Jr., Bollinger, and Darrell. Marvin and Brenda reserved a life estate in the property.

¶ 14 The trial on plaintiff's fourth-amended complaint, and its claim for rescission, began in March 2015. At trial, Marvin testified he was born in April 1937. He was the oldest of six children. Marvin testified he had a good relationship with his parents. Dollie's health in January 1998 "was great" for her age. Dollie had broken her hip, but she was recovering. Dollie's mind "was great." Dollie did not suffer dementia or memory loss. In March 1998, Marvin and Dollie entered into a transaction where he would buy the 120 acres his father farmed. It was on that land Marvin was raised. Marvin's father grew mostly melons and "truck crops." The farm was not "produceable" at the time of Marvin's testimony as it was not being irrigated.

¶ 15 According to Marvin, when they were discussing his purchase of the farm, Dollie said she did not want anything for the land. Dollie "wanted to give it to us for everything that we had done for her." Marvin would not take the farm as a gift. He wanted to buy it. Marvin proposed the price of $48,000, with $20,000 down. Dollie agreed. Dollie signed the sales agreement in March 1998. The deed was signed the same day. Marvin drove his mother to a bank in Beardstown to have the deed notarized. Marvin did not make the down payment or any of the other payments as specified in the sales agreement.

¶ 16 Marvin testified he recorded the deed a few days after Dollie's death. Marvin told his siblings he had purchased the property from Dollie. He waited to record the deed until after

her death at Dollie's request.

¶ 17 When presented with a will purported to be Dollie's, Marvin denied drafting the will. He stated it was drafted by a southern Illinois attorney. Marvin admitted signing Dollie's name to the will. He testified he did so after a conversation among all of Dollie's children at the hospital. Someone asked if the will had been signed. No one knew. Marvin stated the following: "[S]omeone had already told us there that if it was signed, somebody would sign it before she died, and nobody, the kids, nobody objected. It would be okay. It would go ahead and be fine." Marvin had a neighbor and that neighbor's guest witness his signature. Marvin did not attempt to probate the will. His sister, Ruby Hess, did.

¶ 18 Marvin testified when he owned the property, he received payments under the Conservation Reserve Program (CRP) over 10 years. CRP payments began in 1999. The payments were approximately $4,400. The first one went to Dollie. When asked if there was a reason these amounts were not used to make the installment payments, Marvin testified, "[t]hey were there ready to be made, but there was no settlement on anything yet." Marvin agreed he had money to make the down payment. Marvin's brother, Henry "Bud" Krohe, moved onto the property after Dollie died. About four or five years later, Marvin evicted Bud.

¶ 19 During Marvin's testimony regarding payments toward the contract, Marvin was asked if he made the required payment of $3,724.00 on January 1, 1999. Marvin responded he did not pay by check but by "CRP payment." Marvin further testified, "I did not write a check for it. I turned my CRP check over to her because it was still in her name, and she applied that to this contract which is what we agreed on to start with. For ten years she was going to take those payments to pay for this." Plaintiff objected, telling the trial court "this is where we get into the

Dead Man's Act." The trial court held the following: "I am going to strike any conversation about CRP payment being paid directly to her. If there are bank deposits that show that going into those records that could explain his statement, but at this point in time I think the agreement has to state the agreement and the question is, Mr. Krohe, did you either by cash, check, money order or other financial document make the payment?"

¶ 20 On cross-examination, Marvin testified in 2002 he attempted to borrow money to satisfy the amount owed under the sales agreement. The loan was denied because of the pending lawsuit. Marvin recalled authorizing his attorney in 2006 to pay the full amount of the sales agreement, plus interest, to the administrator's attorney.

¶ 21 According to Marvin, he was advised by "Attorney Burton" from Rushville to avoid putting the property in his name until after Dollie's death so that she could use the homestead exemption and senior citizen's exemption on the property taxes. Under the will Marvin signed as Dollie, he was to receive the same amount as his siblings. When Dollie died, Marvin received the funds that were in a money-market account.

¶ 22 Marvin farmed the property since before and after his father's 1974 passing. Bud also had "some melons" on the farm. After his father died, Marvin purchased his own equipment to farm the land and rented the land from his mother. Dollie received one-third of the profits, while Marvin received two-thirds. Marvin covered expenses. The testimony over when the rental arrangement began is unclear:

"Q. And did you have an arrangement as far as income from that property with your mother?

A. Yes, while I rented it, yes.

Q. So you paid her rent?

A. She was to receive 1/3 and I received 2/3 and I furnished all the expenses.

Q. And how long had that held true, how long was that arrangement?

A. Every year there was CRP, whatever that was.

Q. Did you do that for more than a decade preceding her death?

A. No.

Q. That arrangement, did it go on for more than ten years where she received a third and you would receive two thirds.

A. I'm sorry.

Q. Your arrangement for compensation from what you got from the farm, when your mother owned it and you farmed it, did that go on during the 1970's?

A. When I farmed it for her, you mean?

Q. Yes.

A. I didn't get any compensation off of that.

Q. Okay, so when did you enter into the arrangement where you would pay for the inputs and the labor?

A. You know, I can't – I know I started farming it on my own after dad died in 1974, and that's when I had to have a tractor

and equipment and I had to buy all that."

¶ 23 Hess, Dollie's daughter and Marvin's sister, testified she learned about Marvin's obtaining the deed after Dollie died. On cross-examination, Hess testified she and her other siblings owed money to Dollie. Dollie did not require repayment, but Hess stated she had planned to repay the loan. Hess did not repay the loan, and no administrator of the estate asked her to do so.

¶ 24 Susan Collier, Dollie's granddaughter and daughter of Marvin's sister Judy Henrickson, testified she visited with Dollie at Dollie's house three to four times a year and Dollie went to Collier's house "all the time." In October 1998, Collier went with her parents to visit Dollie. Marvin and Bud were there as well. During that visit, a conversation occurred about Dollie's selling the farm. Collier stated Dollie mentioned something about having some of the land. Marvin said to Dollie that she sold him the farm. Dollie said she did not.

¶ 25 Larry Henrickson, Collier's father, testified regarding the same conversation. Dollie mentioned the possibility of conveying some land to Bud. Marvin told Dollie she could not do that because he bought the farm. Dollie replied Marvin had not yet paid her any money.

¶ 26 Judy testified regarding the same conversation:

"Q. What did Marvin say at that point, he was talking about giving Bud some land?

A. He said, you can't do that. You have already sold it to me, and she said, no, Marvin, you haven't given me any money down on it.

Q. What did Marvin do then?

A. He said, well, yeah, he said, those CRP payments, something about the CRP payment was how he was paying for it."

¶ 27 On cross-examination, Judy testified she had borrowed money from Dollie. Judy testified she and her husband had paid about $7,000 toward the loan, but $23,000 remained owed to Dollie at her death. No lawsuit was pending by the estate to recover those funds.

¶ 28 Brenda Krohe testified she and Marvin had been married almost 50 years. Brenda saw her mother-in-law Dollie at least every week or twice a week. Dollie did not suffer from dementia. Dollie wanted to sell the farm to Marvin.

¶ 29 In rebuttal, plaintiff called Joyce Dittmer, Marvin's sister. The Krohe family was close, and Dollie was very generous. A few days after Dollie died, the family was at the house. They were "going through some things." Marvin was there. Marvin alleged he was the administrator of Dollie's estate. In the papers, there were promissory notes to Dittmer, Hess, and another sister for money they loaned their father to help purchase a farm in Mississippi for Marvin and Bud to operate. Marvin took the notes, and Dittmer had not seen them since.

¶ 30 On cross-examination, Dittmer testified her father and Dollie were very generous people. They would give money to anyone who asked and would not require repayment.

¶ 31 Judy further testified in rebuttal her parents gave Marvin the seven acres on which he resided in the 1960s. Judy also testified about a $15,000 check for Dollie that was deposited into the First State Bank of Beardstown. Judy stated, "That's where it went until after she died, and then it was gone like everything else." On further cross-examination, Judy testified her parents gave Bud land as well. In addition, Judy had repaid some of the money she owed her parents. At some point Dollie told her not to repay the remaining amounts because Dollie had

already given the others adequate amounts.

¶ 32 The trial court entered judgment for plaintiff. The court found plaintiff proved its case by a preponderance of the evidence. The court ordered rescission of the sales agreement and transfer of ownership to the estate.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 Rescission of a contract is an extraordinary remedy. *Finke v. Woodard*, 122 Ill. App. 3d 911, 916, 462 N.E.2d 13, 16 (1984). Rescission allows the "cancellation of the contract so as to restore the parties to the *status quo ante*, the status before the contract." *Newton v. Aitken*, 260 Ill. App. 3d 717, 719, 633 N.E.2d 213, 215 (1994). Rescission is an equitable remedy, largely left to the trial court's discretion. *Id.*, 633 N.E.2d at 215-16. We review orders granting rescission for abuse of discretion. *CC Disposal, Inc. v. Veolia ES Valley View Landfill, Inc.*, 406 Ill. App. 3d 783, 790, 952 N.E.2d 14, 20 (2010).

¶ 36 A party is entitled to rescission of a contract when it proves the following: (1) a material breach or fraud occurred, and (2) the parties may be returned to the status before the contract. *Newton*, 260 Ill. App. 3d at 719, 633 N.E.2d at 215. Because rescission is an equitable remedy, a party seeking rescission must also establish there is no adequate remedy at law. *Id.* at 720, 633 N.E.2d at 216; see also *CC Disposal*, 406 Ill. App. 3d at 788, 952 N.E.2d at 19.

¶ 37 Regarding the last requirement, this court has held a trial court should make "a specific finding plaintiff had no adequate remedy at law before proceeding to consider equitable relief in the form of a rescission of the contract." *CC Disposal*, 406 Ill. App. 3d at 789, 952 N.E.2d at 19. Here, however, there is no such specific finding. Instead, the trial court, when

ruling on defendant's motion to dismiss at the close of plaintiff's case, found "[t]he plaintiff presented, basically, evidence that [rescission] is the only reasonable remedy in this case." This finding does not meet the above standard as it implies a weighing of options rather than the initial finding of no adequate remedy at law before considering rescission. In addition, the record raises questions of whether the court even considered whether legal damages would be adequate. For example, during argument on defendant's summary-judgment motion, heard the day trial began, the court stated the following to defense counsel: "You indicate that there has been no evidence as to fraud. As I read the [*Newton*] case, it said the plaintiff shall allege facts and establish there has been a substantial nonperformance or substantial breach by another party and, (2) the parties can be placed in status quo *ante* in order to establish a claim for rescission. I don't read anything there about fraud." Not only did the court fail to list the no-adequate-remedy-at-law requirement, but also the court failed to recognize allegations of fraud or other misconduct are relevant to the question of whether an adequate remedy at law exists. See, *e.g.*, *Newton*, 260 Ill. App. 3d at 720, 633 N.E.2d at 216 (finding the remedy at law inadequate when evidence showed, in part, "suspect conduct").

¶ 38 *CC Disposal* establishes, however, a reversal is not required when the trial court fails to make a specific finding regarding the inadequacy of a legal remedy when the record establishes rescission is not an abuse of discretion. *CC Disposal*, 406 Ill. App. 3d at 788, 952 N.E.2d at 19. We thus look to the record and case law to determine whether the evidence here supports a determination plaintiff had no adequate remedy at law.

¶ 39 The case law establishes rescission is not simply an alternative to damages. Some other circumstance in addition to the breach must have occurred either in the formation of

the contract or during its operation that makes damages inadequate and necessitates equitable relief. For example, in *Newton*, the appellate court affirmed an order of rescission upon noting the "suspect conduct on the part of defendants" and the "injustice in sending plaintiff away without compensation" made the remedy at law inadequate. See *Newton*, 260 Ill. App. 3d at 720, 633 N.E.2d at 216. In *CC Disposal*, testimony establishing the plaintiff did not know how to calculate damages due to a breach of contract and the defendant's speculation to the contrary supported a finding the remedy at law was inadequate. *CC Disposal*, 406 Ill. App. 3d at 789, 952 N.E.2d at 19. In addition, a remedy at law is inadequate when a contracted party has been misled into entering a contract. See *Hassan v. Yusuf*, 408 Ill. App. 3d 327, 353, 944 N.E.2d 895, 918 (2011).

¶ 40 Here, the allegations in the complaint created an inference Marvin procured valuable property from a sick or elderly individual with no intent to pay. While allegations of such conduct gives rise to the inference damages may be insufficient to compensate for the breach, the testimony at trial negates this inference. According to the testimony at trial, Marvin acquired the land he had farmed for over 20 years from his mother, Dollie. Dollie financially benefitted from this arrangement. There is no evidence Dollie was unhealthy, physically or mentally. Dollie, a generous woman who loaned large sums of money to her children with no demand for repayment, had earlier given land to her two sons, including purchasing a farm in Mississippi for them to operate. There is no evidence Marvin fraudulently induced or misled his mother into signing the sales agreement or the deed. There is no evidence Marvin attempted to hide the purchase from his siblings until after her death, as he mentioned the sale in front of two of them in October 1998—months before Dollie died. The record also shows Marvin attempted

to testify he signed over the first CRP payment to his mother toward the purchase of his land. While such evidence may have been inadmissible on the issue of whether a breach occurred, it is relevant to Marvin's intent—particularly given Judy's corroborating testimony she heard Marvin remind his mother he was paying for the farm with CRP payments. In addition, plaintiff presented no testimony or evidence for the value of the farm in March 1998, when the sales agreement was signed. We can infer the $48,000 was likely low, but given this is a transfer of family-owned farmland from a parent to the child who farmed the land, the 2007 appraisal is insufficient to establish an inequity needed to be addressed. It certainly does not establish the purchase price was over $200,000 below the value, a fact that would have cast suspicion on the transaction.

¶ 41 We recognize, because plaintiff abandoned its breach-of-contract claim, plaintiff will receive no compensation for the land should rescission be reversed. *Newton* establishes the absence of recourse is a proper consideration when evaluating a rescission claim. See *Newton*, 260 Ill. App. 3d at 720, 633 N.E.2d at 216 ("Although the court did find a breach, it also found suspect conduct on the part of defendants, and it found injustice in sending plaintiff away without compensation."). In this case, the trial court, during argument on defendants' motion for judgment as a matter of law at the close of plaintiff's evidence, indicated it considered this factor: "[I]f I were to grant your motion, is it not a fact then that this 120 acres passes free and clear to your client without paying one penny for it?"

¶ 42 That plaintiff is left with no recourse here, however, does not trigger the equitable remedy. Plaintiff's own gamble resulted in the foreclosure of money damages, as plaintiff elected to seek only rescission. Weighing this factor against defendants in this case would be

inequitable.

¶ 43 Absent evidence of deception or other malfeasance accompanying the breach, we are left with a contract freely entered between a healthy mother and her adult son. The record does not support interfering with Dollie's desire Marvin should own the farmland because Dollie's estate is unhappy with enforcement of the sales agreement's terms. See *Scott & Fetzer Co. v. Montgomery Ward & Co., Inc.*, 129 Ill. App. 3d 1011, 473 N.E.2d 421 (1984) ("It is well settled that it is not the duty nor function of this court to grant rescission of a contract voluntarily entered into between competent parties merely because such an agreement may later be thought unwise or improvident."). Courts "should not interfere with the terms of a contract that parties entered into freely." *In re Marriage of Schlichting*, 2014 IL App (2d) 140158, ¶ 63, 19 N.E.3d 1055; see also *Garrison v. Combined Fitness Centre, Ltd.*, 201 Ill. App. 3d 581, 584, 559 N.E.2d 187, 190 (1990) ("[C]ourts should not interfere with the right of two parties to contract with one another if they freely and knowingly enter into the agreement."). We note because Dollie agreed to the terms, the fact the land appraised in 2007 at nearly $270,000 does not render the legal remedy inadequate. That the land increased in value while the parties battled over the appropriate remedy, particularly when plaintiff's own conduct contributed to the passage of time, does not make rescission an appropriate remedy.

¶ 44 Rescission of the deed is an abuse of discretion, as the evidence does not establish a remedy at law is inadequate.

¶ 45 We recognize Marvin did not argue explicitly the trial court failed to determine or improperly found beach-of-contract damages inadequate. This argument, however, permeates the case. In their brief, defendants assert a number of statements relevant to this inquiry, such as

"[w]here compensation can be made in money, courts of equity will deny forfeitures," "[p]laintiff has presented no evidence that its claim is nothing other than a breach[-]of[-]contract action in disguise," and there was no proof of fraud or inadequate consideration. Moreover, plaintiff continues to proceed as if rescission is a remedy it can choose for breach of contract even if a remedy at law is adequate.

¶ 46 III. CONCLUSION

¶ 47 We reverse the trial court's judgment.

¶ 48 Reversed.