



1961

Trusts - Sale and Conveyance - Confirmation by Court of Sale by Trustee

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Recommended Citation

Brown, K. M. (1961) "Trusts - Sale and Conveyance - Confirmation by Court of Sale by Trustee," *North Dakota Law Review*: Vol. 37: No. 2, Article 14.

Available at: <https://commons.und.edu/ndlr/vol37/iss2/14>

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normal person.¹¹ Since the chromosome count is established at fertilization, the number of chromosomes necessarily remains constant thereafter.¹²

Scientific data suggests that medical proof will ultimately lead to a complete refusal of recovery in the near future for prenatal injury cases allegedly causing Mongolism. Recovery should have been denied in the instant case.

D. M. DELABARRE.

TRUSTS — SALE AND CONVEYANCE — CONFIRMATION BY COURT OF SALE BY TRUSTEE. — The defendant trustee received an offer from plaintiff to purchase certain trust property which trustee was empowered to sell. The trustee accepted the offer, making the sale subject to the approval of the court. Subsequently the trustee received a larger offer and asked the court to set aside his acceptance and permit him to accept the more substantial offer. The Supreme Court of Wisconsin, two justices dissenting, *held* that an offer or bid upon trust property accepted subject to the approval of the court will not be disapproved merely because more money has been offered. The dissenting justice stated that the courts should have the power to disapprove the sale because of the inadequacy of price whether such price exceeds the appraised value or not, if at that time a better offer or purchase exists. *In Re Strauss' Trust Estate*, 105 N.W.2d 553 (Wis. 1960).

A trustee authorized to sell trust property is under a duty to exercise the care and skill of a reasonable and prudent man in procuring a purchaser price.¹ The general requirements of such a trustee in procuring a purchaser for trust property are that he act in good faith, with ordinary and prudent care to obtain the best terms possible.² There are a wide range of views taken by various jurisdictions concerning judicial discretion and approval by courts of sales of trust property by the trustee. It has been held fundamental that fraud or improper dealing will be sufficient grounds to set aside a contract for sale of trust property,³ as will a sale to a trustee for a sum substantially less than market value.⁴ On the other hand, courts have also said that mere inadequacy of price will not ordinarily warrant setting aside a sale,⁵ nor will the fact that someone else is later willing to pay more.⁶ California has held that where a trustee makes a contract to sell land under a decree subjecting it

11. "It is now well established that the normal chromosome number in humans is 46 and that Mongoloid children have 47 chromosomes." *Supra* note 10, at 413.

12. This necessarily follows from the entire fertilization process presented in medical science. *Supra* note 10.

1. Restatement, Trusts (2d ed.) § 190, comment I, Duty of Care and Skill "Although the trustee is authorized to sell trust property, he is under a duty to the beneficiary to exercise such care and skill in making the sale as a person of ordinary prudence would exercise." N.D. Cent. Code § 59-02-06.

2. *Thompson v. Hays*, 65 N.M. 255, 11 F.2d 244 (8th Cir. 1926); *Cooper v. Ensor*, 270 Ky. 670, 110 S.W.2d 461 (1937); *Security Trust Co. v. Appleton*, 303 Ky. 328, 197 S.W.2d 70 (1946).

3. *In re Reichert's Estate*, 356 Pa. 269, 51 A.2d 615 (1947); *In re Minch's Will*, 71 N.W.2d 144 (Ohio 1946); *Caver v. Gaver*, 176 Md. 171, 4 A.2d 132 (1939).

4. *Waterbury v. Nicol*, 207 Ore. 595, 296 P.2d 487 (1956).

5. *Boyd v. Smith*, 127 Md. 359, 96 Atl. 526 (1916); *Straus v. Anderson*, 366 Ill. 426, 9 N.E.2d 205 (1937); *American Trading & Production Corp. v. Connor*, 109 F.2d 205 (4th Cir. 1940); *Cf. Ist Nat. Bank of Waseca v. Paulson*, 69 N.D. 512, 288 N.W. 465 (1939) "... it must be unreasonable and unfairly inadequate."

6. *Gilden v. Harris*, 196 Md. 32, 78 A.2d 167 (1951); *Cook v. Safe Deposit and Trust Co. of Baltimore*, 172 Md. 398, 191 Atl. 713 (1937); *Cf. Lancaster County v. Schwartz*, 152 Neb. 15, 39 N.W.2d 921 (1949) "Due respect must be given to the right of the successful bidder and the stability of judicial sales generally."

to the approval of the court and before the contract is approved, the trustee receives a better offer, the court may refuse to approve the first offer.⁷ Pennsylvania, it may be noted, has enacted legislation abrogating this rule.⁸ Accordingly, where the decree authorizing a sale did not require the court's approval but the sale was made subject to such approval, it was held an abuse of discretion not to approve a fair sale.⁹ One court expressed the theory that both public and private sales reported by trustees under decrees of court are subject to the approval of the court and until ratified, any sale is only an offer to purchase.¹⁰ Aside from the numerous exceptions recognized in the various jurisdiction, it would appear that the majority rule in this country is that a court will not refuse to confirm a sale which has been regularly held and is free from fraud even though a higher bid is made.¹¹ A scrutiny of the cases appears to reveal that the primary conflict is between the public policy of stability of contract and the fiduciary duty of the trustee. North Dakota would likely adopt the majority rule upholding bids reasonably made and accepted, basing such view on the policy of stability of contracts.

K. M. BROWN.

RECORDS — ACCESS TO RECORDS — RIGHT OF NEWSPAPER TO INSPECT. — Suit was brought by the Grand Forks Herald to compel the county court to submit certain records for inspection to reporters. The North Dakota Supreme Court held that according to the statute,¹ records of the County Court shall be open to inspection by persons having business therewith, but the statute² providing for public access to records of public or governmental bodies of the state did not apply to the records of the county court. *Grand Forks Herald v. Lyons*, 101 N.W.2d 543 (N.D. 1960).

Generally a newspaper has no greater right of inspection than that given to the public.³ The Grand Forks Herald requested the right to inspect county records including marriage licenses,⁴ which are not proceedings of the County Court,⁵ and are not part of nor the subject matter of the inspection statute.⁶ County Courts are not "agencies of the state" within the statute providing for public access to records of governmental bodies.⁷ For these reasons it was held a newspaper does have the right to inspect County Court records.⁸ Records of the County Court are open to inspection "by persons having busi-

7. *In re De La Montanya's Estate*, 83 Cal. App. 2d 322, 188 P.2d 494 (1948).

8. 20 Penn. Stat. § 818, see also *in re Stones Estate*, 358 Pa. 335, 56 A.2d 664 (1948); *Blum v. William Goldman Theatres*, 164 F.2d 192 (3rd Cir. 1948).

9. *Evans v. Hunold*, 393 Ill. 195, 65 N.E.2d 373 (1946).

10. *Whitely v. Whitely*, 117 Md. 538, 84 Atl. 68 (1912).

11. *Odom's Transfer & Storage Co. v. Rochford*, 283 S.W.2d 101 (Tex. Civ. App. 1955); *In re Peoples Cab Co.*, 89 F. Supp. 577 (1950) (judicial sale in bankruptcy).

1. N.D. Cent. Code § 44-04-18. "Access to Public Records. Except as otherwise specifically provided by law, all records of public or governmental bodies, boards, bureaus, commissions or agencies of the state or any political subdivisions of the state, or organizations or agencies supported in whole or in part by public funds, or expanding public funds, shall be public records, open and accessible for inspection during reasonable office hours."

2. N.D. Cent. Code § 44-04-18.

3. *Trimble v. Johnson*, 173 F. Supp. 651 (1959).

4. *Grand Forks Herald v. Lyons*, 101 N.W.2d 543 (N.D. 1960).

5. *State v. Roth*, 57 N.D. 196, 220 N.W. 901 (1922).

6. N.D. Cent. Code § 44-04-18.

7. N.D. Cent. Code § 44-04-18.

8. N.D. Cent. Code § 44-04-18.