

IN THE DISTRICT COURT OF CUSTER COUNTY, NEBRASKA

**LEE M. ALLEN, Personal Representative
of the Estate of Gladys I. Christensen,**
Plaintiff,

vs.

**GEORGE G. HAYNES, DAPHNE Y.
HAYNES, TEDD C. HUSTON, BARBARA
A. STAAB and CUSTER COUNTY
FOUNDATION, INC.,**
Defendants.

Case No. CI98-76

**ORDER DENYING MOTION
FOR NEW TRIAL**

DATE OF HEARING: April 23, 2001.
DATE OF RENDITION: June 28, 2001.
DATE OF ENTRY: Date of file stamp/date by court clerk per § 25-1301(3).
TYPE OF HEARING: Telephone (per Rule 8-4, no evidence or record).
APPEARANCES:
For plaintiff: William C. Nelson.
For defendants:
Haynes & CCF: Edward D. Steenburg.
Huston: No appearance.
Staab: No appearance.
SUBJECT OF HEARING: Motion of defendants Haynes and CCF for new trial.
PROCEEDINGS: At the hearing, the following occurred:

Attorney Steenburg represented that all of the other defendants or their counsel waive appearance. Arguments of counsel were heard. The motion for new trial was taken under advisement. The said defendants verbally requested the court to consider the matter of a supersedeas bond. Without objection, the matter was considered. Arguments of counsel were heard. Supersedeas bond to be set in the amount of \$70,000.00.

MEMORANDUM:

1. The defendants George C. Haynes, Daphne Y. Haynes, and Custer County Foundation (the Hayneses and CCF) move for new trial asserting three grounds: (1) insufficient evidence to support the judgment for plaintiff on the second cause of action, (2) the judgment on the second cause of action is contrary to law, and, (3) error in the assessment of the amount of recovery.

2. Limited argument was addressed to the first two grounds. Nothing raised during argument casts any doubt on the court's view of the evidence and the applicable law regarding these issues.

3. The third ground, error in the assessment of recovery, was addressed in two aspects. First, the Hayneses argued that they should not have judgment entered against them for the full amount of rents and profits because of the interest of CCF. Second, the Hayneses and CCF argue that the prayer for relief on the second cause of action did not include imposition of a constructive trust and for recovery of rents and profits.

4. Of course, as the Nebraska Supreme Court recently restated in *Genetti v. Caterpillar, Inc.*, 261 Neb. 98, 621 N.W.2d 529 (2001), a party may not have double recovery for a single injury, or be made more than whole by compensation which exceeds the actual damages sustained. For the same reason, where several claims are asserted against several parties for redress of the same injury, only one satisfaction can be had. *Id.*

5. The fraudulent transfer to the Hayneses included the entire property. Consequently, they are liable for the entire interest in the rents and profits. But, of course, there can be no more than a single recovery, so the Hayneses are entitled to credit on the judgment for the amounts recovered from or on behalf of their transferee, CCF. But the potential entitlement to satisfaction of the judgment in that way does not affect the propriety of the judgment. The court concludes that the defendants' contention, regarding the amount of the judgment against the Hayneses, lacks merit.

6. An action to set aside a deed is equitable in nature. *Brtek v. Cihal*, 245 Neb. 756, 515 N.W.2d 628 (1994).

7. Although a prayer for relief is part of the petition, it is not a portion of the statement of facts required to constitute a cause of action. *In re Interest of Rondell B.*, 249 Neb. 928, 546 N.W.2d 801 (1996). In a law action, the office of the ad damnum in a pleading is to fix the amount beyond which a

party may not recover on the trial of his action. *Kroeger v. Safranek*, 161 Neb. 182, 72 N.W.2d 831 (1955). However, in an equitable action, a prayer for general relief is as broad as the pleadings and the equitable powers of the court, and is sufficient to authorize any judgment to which a party is entitled under the pleadings and the evidence. *Sullivan v. General United Life Ins. Co.*, 209 Neb. 872, 312 N.W.2d 277 (1981); *Standard Reliance Insurance Co. v. Schoenthal*, 171 Neb. 490, 106 N.W.2d 704 (1960); *Miller v. Knight*, 146 Neb. 207, 19 N.W.2d 153 (1945); *Kelley v. Wehn*, 63 Neb. 410, 88 N.W. 682 (1902).

8. Because the prayer of the petition is not part of the allegations of fact constituting a cause of action, where the facts alleged state a cause of action and are supported by the evidence, the court will grant proper equitable relief even though such relief may not conform to the relief requested. *Bowman v. City of York*, 240 Neb. 201, 482 N.W.2d 537 (1992); *Waite v. Samson Devel. Co., Inc.*, 217 Neb. 403, 348 N.W.2d 883 (1984). The fact that the pleader in an equity suit may have prayed for less or more than that to which he is entitled in no manner affects the stated cause of action, where the prayer asks for general equitable relief. *Standard Reliance Insurance Co. v. Schoenthal, supra*.

9. The plaintiff's second cause of action stated facts alleging a cause of action for equitable relief. The prayer on that cause of action requested certain specific relief, but also requested general equitable relief. Because the court concludes that the facts alleged in the second cause of action of the petition state a cause of action for equitable relief, and concludes that the allegations are supported by the evidence, the applicable precedent cited above empowers the court to grant proper relief even though such relief may not conform to the specific relief requested. The court concludes that the defendants' argument, regarding relief granted though not specifically requested, lacks merit.

10. Because the arguments do not support the defendants' request for new trial, the motion must be denied.

11. Supersedeas should be set as determined at the time of the hearing on the motion.

ORDER: IT IS THEREFORE ORDERED that:

1. The motion for new trial is denied.
2. Supersedeas bond is set in the amount of \$70,000.00.

Signed in chambers at Ainsworth, Nebraska, on June 28, 2001.
DEEMED ENTERED upon the date of filing by the court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties.
Done on _____, 20____ by _____.
- Note the decision on the trial docket as: [date of filing] Signed "Order Denying Motion for New Trial" entered.
Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge