

IN THE SUPREME COURT OF IOWA

Supreme Court Case No. 21-0479

Warren County Case No. EQCV038723

ACC HOLDING, LLC,

Plaintiff-Appellee,

v.

TODD ROONEY,

Defendant-Appellant.

Appeal from the Iowa District Court for Warren County

The Honorable Richard B. Clogg, Judge

**APPELLANT'S BRIEF IN FINAL FORM
AND
REQUEST FOR ORAL ARGUMENT**

/s/ David R. Elkin_____

David R. Elkin

Address: 315 East 5th Street, St. 5
Des Moines, IA 50309

Telephone: (515) 244-3188

E-mail: dave@elkin-law.com

Counsel for Appellant

TABLE OF CONTENTS

Cover Sheet.	1
Table of Contents	2
Table of Authorities	3
Statement of Issues Presented for Review	6
Routing Statement	7
Statement of the Case.	8
Statement of the Facts.	10
Argument.	15
Section 1 – Tax Sales and Redemption Rights in General	15
Section 2 - Forcible Entry and Detainer in General	18
Section 3 – Two Dismissal Defense	20
Section 4 – 30 days Peaceable Possession Defense	25
Section 5 – Title in Issue Due to Continuing Redemption Rights	31
Conclusion.	34
Request for Oral Argument.	37
Certificate of Compliance	37
Cost Certificate.	38
Certificate of Filing and Service	39

TABLE OF AUTHORITIES

Cases:

<u>Bernet v. Rogers</u> , 519 N.W.2d 808 (Iowa 1994)	31
<u>Bosworth v. Farrenholtz</u> , 4 Greene 440 (Iowa 1854)	19
<u>Burton V. Hintrager</u> , 18 Iowa 348 (1865)	17
<u>Cagwin v. Chicago & N.W.R. Co.</u> , 86 N.W. 220, 114 Iowa 129 (1901)	19, 32
<u>Cedar Rapids Cold Storage Co. v. Lesinger</u> , 177 N.W. 548, 188 Iowa 1364 (1920)	19, 31
<u>Corning Town Co. v. Davis Loomis</u> , 44 Iowa 622 (1876)	17
<u>Crawley v. Price</u> , 692 N.W.2d 44 (Iowa App. 2004)	19
<u>Denecke v. Henry F. Miller & Son</u> , 119 N.W. 380, 142 Iowa 486 (1909)	32
<u>Fidelity Inv. Co. v. White</u> , 208 Iowa 519, 223 N.W. 884 (1929)	17
<u>Fritch & Himes v. Reynolds</u> , 176 N.W. 297, 189 Iowa 16 (1920)	19, 34
<u>Hawley v. Griffin</u> , 82 N.W. 905 (1900)	18, 33
<u>Heiple v. Reinhart</u> , 69 N.W. 871, 100 Iowa 525 (1897)	27
<u>Kelley v. Kelley</u> , 174 N.W. 342, 187 Iowa 349 (1919)	32
<u>Petty v. Faith Bible Christian Outreach Center, Inc.</u> , 584 N.W.2d 303 (Iowa 1998)	26-27, 29
<u>Porter v. Harden</u> , 891 N.W.2d 420 (Iowa 2017)	20, 26, 31

<u>Robertshaw-Futon Controls Co. v. Noma Electric Corp.</u> , 510 F.R.D. 32 (D.C. Md. 1950)	21
<u>Rudolph v. Davis</u> , 1946, 25 N.W.2d 332, 237 Iowa 1383 (1946)	27
<u>Schuldt v. Lee</u> , 226 Iowa 189, 284 N.W. 89 (1939)	19
<u>Smith v. Huber</u> , 224 Iowa 817, 277 N.W. 557 (1938)	17, 33
<u>Smith v. Lally</u> , 379 N.W.2d 914 (Iowa 1986)	21-22, 24
<u>Thomas v. Brodsack</u> , 215 N.W.2d 503, 503 Iowa 1974).	26-27
<u>Warren v. Yocum</u> , 223 N.W.2d 258 (Iowa 1974)	27, 29
Statutes:	
Iowa Code § 446.7 Annual Tax Sale	15
Iowa Code § 446.29 Certificate of Purchase	15
Iowa Code § 447.1 (2021) Redemption - Terms	15, 17-18, 36
Iowa Code § 447.7 (2017) Minors and Persons of Unsound Mind	7, 9, 16-18, 31, 34
Iowa Code § 447.7 (2021) Redemption by Persons with a Legal Disability	7, 9, 16-18, 31, 34
Iowa Code § 447.8 (2017) Redemption After Delivery of Deed	18, 36
Iowa Code § 447.8 (2021) Redemption After Delivery of Deed	18
Iowa Code § 447.9 Notice of Expiration of Right of Redemption – County Right of Redemption	15
Iowa Code § 447.12 When Service Deemed Complete - Presumption	15

Iowa Code § 447.14 Law in Effect at Time of Sale	17
Iowa Code § 448.1	16
Return of Certificate of Purchase – Execution of Deed – Fees	
Iowa Code § 448.3 Execution and Effect of Deed	16
Iowa Code § 648.1 Grounds (FED)	18, 22, 29-30, 32
Iowa Code § 648.5	21, 26, 31
Venue – Service of Original Notice - Hearing	
Iowa Code § 648.15 How Title Tried.	21, 26, 31
Iowa Code § 648.18 Possession - Bar	8, 25, 28-30, 34
Rules:	
Iowa R. Civ. Pro. 1.943	8, 20-25, 34-35

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Did the trial court err in failing to hold that the ACC's Third FED action was barred under the two-dismissal rule set forth in Rule 1.943 of the Iowa Rules of Civil Procedure?

II. Did the trial court err in failing to hold that the ACC's FED action was barred by the thirty-day peaceable possession rule set forth in Iowa Code Section 648.18?

III. Did the trial court err in determining that ACC's Tax Sale Deed was valid and therefore granting ACC's Third FED Petition despite the questions of title raised by Rooney on account of his claim for extended redemption rights due to his disability or incompetence?

ROUTING STATEMENT

Appellant Rooney urges the Iowa Supreme Court to retain this appeal because: **(i)** the case presents substantial issues of first impression involving the availability of a summary forcible entry and detainer action based on the presumptive validity of a tax sale deed where the validity of the tax sale deed is properly and timely challenged in a separate proceedings under Iowa Code Section 447.7; **(ii)** the case presents fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court in balancing the rights of tax deed holders desiring to obtain possession of parcels purchased at tax sale through summary forcible entry and detainer proceedings as against the extended redemption rights of persons who suffer from some legal disability, are minors, or are of unsound mind; and **(iii)** the case presents substantial questions of enunciating or changing legal principles involving the ever evolving tax sale procedures and the rights of parties affected thereby, including those with a colorable claim of disability.

STATEMENT OF THE CASE

Nature of the Case, Course of Proceedings, and

Disposition of Case in the Trial Court: This is the third in a series of three separate actions for Forcible Entry and Detainer (commonly known as an “FED”) filed by the Plaintiff-Appellee, ACC Holding, LLC (hereinafter referred to as “ACC”), against Defendant-Appellant, Todd Rooney (hereinafter referred to as “Rooney”). [See, App. pp. 30-35, 142-143 (ACC’s First FED), App. pp. 37-46, 185-193 (ACC’s Second FED), and App. pp. 11-12 (ACC’s Third FED)]. In support of each of its Petitions for Forcible Entry and Detainer, ACC claimed, and now still claims, that Rooney is holding over after the issuance a valid tax sale deed in favor of ACC. *Id.* The First and Second FED Petitions were both voluntarily dismissed by ACC without court order. Exhibit 4 –, Exhibit 7 – [See, App. pp. 36,170 (Dismissal of ACC’s First FED) and App. pp. 55, 213 (Dismissal of ACC’s Second FED)].

Rooney answered ACC’s Third FED Petition and raised the following affirmative defenses: (i) a thirty-day peaceable possession defense under Iowa Code Section 648.18; (ii) a bar under the two-dismissal rule set forth in Rule 1.943 of the Iowa Rules of Civil Procedure; and (iii) questions of title based on the contested validity of ACC’s

purported tax sale deed flowing from Rooney's alleged disability and his asserted continuing right of redemption. (App. pp. 23-55). Rooney also filed a Motion for Summary Judgment asserting all three of the affirmative defenses raised in his pleading. Rooney's Motion for Summary Judgment(App. pp. 56-83). In addition to the pleadings and motion filed by Rooney in response to ACC's Third FED Petition, Rooney also filed his own action against ACC challenging ACC's tax sale deed on various grounds, including allegations that Rooney suffers from a legal disability that entitles him to an extended redemption period under Iowa Code Section 447.7. (App. pp. 83-86, 174-179).

A hearing upon ACC's Third FED Petition was scheduled for and held on January 5, 2021. (App. pp. 16-17). At the hearing, the Trial Court granted ACC additional time to file a response to Rooney's Motion for Summary Judgment and also granted Rooney time to reply to ACC's Response. (App. p. 116 - Transcript, p. 26, lines 1-18). Both parties timely filed further filings in support of their respective positions as permitted by the Trial Court. [See, App. pp. 119-125 (ACC's Resistance to Rooney's MSJ) and App. pp. 126-129 (Rooney's Reply to ACC's Resistance)]. At the hearing, the Trial Court also took judicial notice of all filings in the previous two FED actions that had been filed by against

Rooney and dismissed by ACC as well as the case filed by Rooney against ACC challenging the validity of ACC's tax sale deed. (App. p. 116 - Transcript, p. 7, lines 2-12).

On March 14, 2021, the Trial Court entered its ruling and judgment granting ACC's Third Petition for Forcible Entry and Detainer. (App. pp. 131-166). Rooney timely appealed. (App. pp. 137-139). In compliance with the Trial Court's ruling and judgment, Rooney also timely posted a bond to prevent ACC from carrying out the FED order pending resolution of this appeal. (App. p. 140). Additional proceedings at the trial court level will be referenced below as pertinent to the arguments presented.

STATEMENT OF THE FACTS

The real estate which is the subject of this FED action is a residential home located in Warren County, Iowa at 2103 Shady Lane Drive in Norwalk, Iowa and legally described as:

Lot 32, Windflower Plat 8, an Official Plat, now included in and forming a part of the City of Norwalk, Iowa, subject to and together with any and all easements, covenants, and restrictions of record.

(App. p. 11). Appellant Rooney originally purchased the property in 1987 and, except as otherwise noted herein, has continuously owned and

occupied the property as his home from 1987 to present. (App. pp. 58-59). The property was purchased by ACC at tax sale on June 19, 2017 at which time ACC received a certificate of purchase therefor. (App. pp. 70, 147). On or about May 6, 2020, ACC, acting through its attorney, Nathan Runde of Dubuque, Iowa, mailed a Notice to Redeem from Tax Sale to Rooney addressed to Rooney at the property address. Id. ACC, again acting through attorney Runde, filed its Affidavit of Service regarding the Notice to Redeem on May 8, 2020. Id. The only service of the Notice to Redeem upon Rooney, as disclosed by ACC's Affidavit, were the mailings addressed to Rooney at the property address. Id. ACC therefore knew as early as May 8, 2020, or was at least content to assume, that Rooney was in fact actually occupying the subject property.

The subject property was not redeemed, and on August 26, 2020, the Warren County Treasurer issued ACC a purported Tax Sale Deed for the subject property. (App. pp. 18-19, 145-146, 178-179, 187-188). On September 22, 2020, ACC, this time acting through attorney Cameron Wright of Altoona, Iowa, caused a Notice to Quit to be served upon Rooney demanding that Rooney vacate and surrender possession of the premises to ACC within three days after service of the Notice. (App. pp. 162-165). The only reason given in the Notice to Quit for ACC's

demand was that Rooney was allegedly “possessing the property after the issuance of a valid tax deed...” Id.

ACC then commenced its First FED action (hereinafter referred to as the “First FED”) against Rooney on October 1, 2020. (App. pp. 30-31, 142-143). The First FED was filed with the Small Claims Division of the Iowa District Court for Warren County as Case No. SCSC034282. Id. The Petition in the First FED mirrored the Notice to Quit by alleging that Rooney was “possessing the property after the issuance of a valid tax deed...” Id. No other ground for forcible entry and detainer was included in the First FED Petition. Id. Rooney then filed a motion to dismiss the First FED for lack of jurisdiction based on Section 631.1(2) which confers jurisdiction upon the small claims court only over FED cases based on certain specified grounds not involving tax sales. (App. pp. 166-168). On October 16, 2020, ACC voluntarily dismissed the First FED without any order of disposition being entered by the Court. (App. pp. 36, 170).

On October 15, 2020, Rooney filed a separate action of his own against ACC challenging the validity of ACC’s tax sale deed and alleging to be the owner of the subject property with continuing redemption rights in respect to the tax sale, notwithstanding the issuance

of ACC's purported tax sale deed. (App. pp. 83-86, 174-179). Rooney's Petition was filed with the Warren County District Court as Case No EQCV 038648. Id. In support of his Petition, Rooney alleges, among other things, that he is still entitled to redeem because he suffers from a legal disability which prevented him from understanding his obligation to pay the real estate taxes and the consequences that would flow from a failure to do so. Id.

ACC filed its Second FED action in the regular Iowa District Court for Warren County on October 15, 2020 as Case No. EQCV038651 (hereinafter referred to as the "Second FED") once again alleging only that Rooney had failed to vacate the subject premises after the issuance of ACC's purported Tax Sale Deed. (App. pp. 37-46, 194-201). ACC Later amended its Second FED Petition on November 13, 2020. (App. pp. 47-54, 205-212). ACC caused Defendant Rooney to be served with original notice of the Second FED, but for reasons which are not entirely clear, never pursued a hearing. Second FED - Return of Service. ACC ultimately filed a voluntary dismissal of its Second FED on December 22, 2020. (App. pp. 55, 213).

No court order was ever entered in either Case No. SCSC034282 or Case No. EQCV038651 in connection with the disposition

or dismissal of either case. (See, Docket Report Case No. SCSC034282; Docket Report Case No. EQCV038651.) Both dismissals were filed by ACC on its own volition. [App. pp. 36, 170 (Dismissal of ACC's First FED) and App. pp. 55, 213 (Dismissal of ACC's Second FED)].

In an apparent effort to bolster the strength of its FED claim, ACC caused a second three-day Notice to Quit to be served upon Rooney on December 15, 2020. (App. pp. 20-21). ACC then filed the present FED action (hereinafter referred to as the "Third FED") on December 21, 2020. (App. pp. 11-12). Once again, ACC predicates its Third FED solely on the ground that Rooney has allegedly failed to vacate the subject premises after the issuance of ACC's purported Tax Sale Deed. (App. pp. 11-12).

In summary, the material undisputed facts are: (1) that ACC has previously filed and voluntarily dismissed two previous FED actions against Rooney for possession of the subject premises, both of which were dismissed by ACC on its own volition, without any ruling on the part of the Court; (2) that ACC failed to file any of its FED Petitions within the thirty-day period following the issuance of the purported Tax Sale Deed, despite ACC's full knowledge that Rooney was in actual possession and occupancy of the subject premises; and (3) that title to the subject

property remains in issue on account of the fact that the validity of ACC's Tax Sale Deed has not been properly established in light of Rooney's asserted disability, and his claim to extended redemption rights.

ARGUMENT

Section 1: Tax Sales and Redemption Rights in General

In Iowa, parcels of real estate on which taxes are delinquent are offered for sale by the county treasurer on the third Monday in June of each year. Iowa Code § 446.7 (2021). The county treasurer then issues to the successful purchaser a certificate of purchase for each parcel that is sold. Iowa Code Section 446.29 (2021). The certificate holder must then generally hold the certificate of purchase for at least one year and nine months before taking further action to secure an actual deed and title to the parcel. Iowa Code § 447.9 (2021). The certificate holder must then serve the person in whose name the parcel is taxed, all parties in possession, and all other persons having an interest of record in the parcel, with a ninety-day notice of expiration of right of redemption. Id. The certificate holder must then file an Affidavit of such service with the county treasurer. Iowa Code § 447.12 (2021). After the expiration of the ninety days from completed service of the notice, the county treasurer is

to make out a deed for each parcel which has not been redeemed. Iowa Code § 448.1 (2021). Upon surrender of the certificate of purchase by the holder thereof, and payment of applicable fees, the treasurer then causes the tax sale deed to be recorded with the county recorder. Id. The deed generally serves to vest in the purchaser all the right, title, interest, and claim of the state and county to the parcel, and all the right, title, interest, and estate of the former owner in and to the parcel conveyed. Iowa Code § 448.3 (2021).

However, certain persons are afforded extended redemption rights even after a tax sale deed has been issued and recorded. Under the current version of the Iowa Code, any parcel of a person with a legal disability may be redeemed at any time prior to one year after the legal disability is removed by bringing an equitable action for redemption in the district court of the county where the parcel is located, provided, however, that such action could be barred under certain circumstances. Iowa Code § 447.7 (2021). However, the current version of Section 447.7 did not become effective until July 1, 2018, after the tax sale in question had been held. Prior to July 1, 2018, Section 447.7 allowed the parcel of any minor or person of unsound mind to be redeemed at any time within one year after the disability is removed through the filing of an equitable

action with the district court, without any exception by which such action might be barred. Iowa Code § 447.7 (2017). One thing that has never changed is that the law in effect at the time of tax sale governs redemption. Iowa Code § 447.14 (2021). Hence, the 2017 version of Iowa Code Section 447.7 would govern redemption by a minor or person of unsound mind where, as here, the tax sale was held in June of 2018 or before.

It is well-settled in Iowa that tax sale redemption statutes are to be liberally construed in favor of redemption by the taxpayer. Corning Town Co. v. Davis Loomis, 44 Iowa 622, 626 (1876); Burton V. Hintrager, 18 Iowa 348, 351 (1865); Fidelity Inv. Co. v. White, 208 Iowa 519, ___, 223 N.W. 884, 886, (1929); Smith v. Huber, 224 Iowa 817, ___, 277 N.W. 557, 561 (1938). In giving a liberal construction to a substantially similar but outdated version of Section 447.7, the Iowa Supreme Court has stated that, under (what was then referred to as) Code 1873, § 892, if real property of any minor or lunatic was sold for taxes, the same could be redeemed at any time within one year after such disability was removed, applied not only to persons who were afflicted with insane delusions at times, and who had lucid intervals, but to all persons who, by reason of mental derangement, were incapable of comprehending their duty to pay

taxes, and the consequences that would follow from a failure to do so.

Hawley v. Griffin, 82 N.W. 905, 906 (1900).

Once the court determines that a person is entitled to extended redemption rights in an action brought under Section 447.7, the court is to then determine the amount necessary to redeem and grant the person entitled to redeem thirty days from the date of the court's order to actually effect redemption. Iowa Code §§ 447.7, 447.8 (2017). The amount to redeem must include the amount paid by the purchaser at the tax sale, reimbursement for any subsequent taxes paid by the certificate holder, and reimbursement for the value of any improvements made by the purchaser to the property, along with interest on all such sums at the generous rate of two percent per month. Iowa Code §§ 447.1 (2021), 447.8 (2017). Thus, even when redemption is granted following the issuance of a tax sale deed, the tax sale purchaser reaps a substantial return on his investment and loses nothing.

Section 2: Forcible Entry and Detainer in General.

The summary remedy for forcible entry and detainer is allowed under Iowa law where the defendant or defendants remain in possession after the issuance of a valid tax deed. Iowa Code § 648.1(6)

(2021). Although other grounds for forcible entry and detainer are cited in the statute, none of them are involved in this case. Id. The summary remedy of forcible entry and detainer is statutory. Schuldt v. Lee, 226 Iowa 189, 189, 284 N.W. 89, 90 (1939). Statutes providing a cause of action for forcible entry and detainer are enacted to enable parties to obtain speedy determination of the right to the possession of property without having to resort to violence, to preserve the peace, and require the use of judicial process to gain possession. Crawley v. Price, 692 N.W.2d 44, ___(Iowa App. 2004). In an action for forcible entry and detainer, the only issue for trial is the right of possession and not the title to the land. Cedar Rapids Cold Storage Co. v. Lesinger, 177 N.W. 548, ___, 188 Iowa 1364, ___ (1920). The right of possession cannot be determined in an action of forcible entry and detainer. Cagwin v. Chicago & N.W.R. Co., 86 N.W. 220, ___, 114 Iowa 129, ___ (1901). The remedy for forcible entry or detention of real property is not allowable, where the defendant sets up a paramount title, nor when a question of title is involved. Bosworth v. Farrenholtz, 4 Greene 440, ___ (Iowa 1854). Forcible entry and detainer is both a summary remedy and a drastic one, such that the statute conferring the right must be given a strict construction. Fritch & Himes v. Reynolds, 176 N.W. 297, 299, 189

Iowa 16, __ (1920). Hence, it follows that where an action for forcible entry and detainer is predicated upon an allegedly valid tax sale deed, the summary granting of the remedy must be denied where there is any real question whatsoever as to the validity of the tax sale deed upon which the action is based.

Section 3: ACC's Third FED Action for Possession of the Subject Premises is Barred Under Iowa Rules of Civil Procedure 1.943 (The Two Dismissal Rule).

As his First Affirmative Defense, Rooney raised the two-dismissal rule set forth in Iowa R. Civ. P. 1.943 as a bar to ACC's Third FED Petition. (App. pp. 24-25). Rooney further advanced his argument for application of the Rule in his Motion for Summary Judgment. (App. pp. 56, 61-62). Despite the Trial Court's ruling against him, there is no question that Rooney properly raised Rule 1.943 as a defense for purposes of preserving error on appeal. Actions for Forcible Entry and Detainer are equitable in nature. Iowa Code §§ 648.5, 648.15 (2020). Because of their equitable nature, actions for forcible entry and detainer are reviewed de novo. Porter v. Harden, 891 N.W.2d 420, 423-24 (Iowa 2017). Review in this particular case is therefore de novo.

Iowa R. Civ. P. 1.943 provides as follows:

A party may, without order of court, dismiss that party's own petition, counterclaim, cross-claim, cross-petition or petition of intervention, at any time up until ten days before the trial is scheduled to begin. Thereafter a party may dismiss an action or that party's claim therein only by consent of the court which may impose such terms or conditions as it deems proper; and it shall require the consent of any other party asserting a counterclaim against the movant, unless that will still remain for an independent adjudication. *A dismissal under this rule shall be without prejudice, unless otherwise stated; but if made by any party who has previously dismissed an action against the same defendant, in any court of any state or of the United States, including or based on the same cause, such dismissal shall operate as an adjudication against that party on the merits, unless otherwise ordered by the court, in the interests of justice.*

Emphasis added. A Plaintiff therefore has no right to a second dismissal, even before trial. See Official Comment to Rule 1.943. A second dismissal is with prejudice even though the notice of the dismissal may purport to state that it is without prejudice. Official Comment to Rule 1.943, citing to Robertshaw-Fulton Controls Co. v. Noma Electric Corp., 10 F.R.D. 32 (D.C. Md. 1950). The rule is designed to prevent the harassing effect of repeated filings and dismissals by litigants. Smith v. Lally, 379 N.W.2d 914, 916 (Iowa 1986). The determination by the court having jurisdiction over a matter as to whether a dismissal shall constitute an adjudication on the merits must be made before or contemporaneously

with the dismissal. Smith v. Lally, 379 N.W.2d at 916. The filing of a voluntary dismissal therefore deprives the court of jurisdiction to subsequently determine whether the dismissal should have been with or without prejudice. Id.

There is no question that this is the third FED action filed by ACC in an effort to wrest possession from Rooney of Rooney's longtime homestead. There is also no question that both of the first two FED cases filed by ACC were terminated solely as the result of the voluntary dismissals filed by ACC itself. No court order was ever obtained in either of the first two FED's that would allow ACC to avoid application of Rule 1.943. ACC's second dismissal in Case No. EQCV038651 unquestionably constituted a final adjudication on the merits of ACC's claim adverse to ACC. There is no dispute the Rooney is, and has always been in, in possession of the subject property. The one thing that ACC needed to establish in order to prevail on either of its first two FED claims was that its tax sale deed was somehow valid as against Rooney. See, Iowa Code § 648.1(6). Now that it has suffered an adverse adjudication on the merits by reason of Rule 1.943, ACC must accept that its purported tax sale has been adjudicated as invalid, at least as against Rooney. ACC can no longer

maintain, under the current state of the facts, that its purported tax sale deed has any validity as against Rooney. Similarly, ACC can no longer maintain that it has any present right to possession of the subject property or that Rooney's ongoing possession of the property is any way wrongful.

At the Trial Court level, ACC argued that the claims in the various FED's are not the same since they are not all predicated upon the same Notice to Quit. (App. p. 119). ACC suggests that Rule 1.943 applies where cases involve the same parties, the same cause of action, and the same issues. (App. p. 119). The fact that ACC served multiple Notices to Quit upon Rooney does nothing to change the identity of the parties, or the fact that ACC's cause of action is ultimately predicated solely upon the issuance of ACC's tax sale deed and its purported validity, or, for that matter, any other substantive issues of the case. Moreover, Rooney has mounted no real challenge to either of the Notices to Quit. The service of a three-day notice to quit is simply a procedural prerequisite to the filing of an FED. See. Iowa Code § 648.3. While the service of a three-day notice to quit may be a procedural prerequisite to the filing of an FED Petition, whether such a notice was properly given has no bearing on the

underlying substantive issues which, in this case, are quite simply: (i) whether ACC's Tax Sale Deed was effective to cut off Rooney's claim for extended redemption rights; and (ii) whether Rooney wrongfully remains in possession. The parties, the claims, and the issues are identical in all three FED actions,

In its Ruling, the Trial Court took a rather vague approach to the defense by simply concluding that "In this case, dismissal of the previous actions filed by ACC were not final adjudications pursuant to Iowa R. Civ. P. 1.943." (App. p. 134). Apparently, in the Trial Court's view, at least one actual adjudication on the merits must be made by the lower court before Rule 1.943 can somehow come into play. Such an interpretation of the Rule serves to negate the Rule's intent entirely. If an actual adjudication on the merits by the Court was required in either of two previously dismissed cases, there would be no reason to have Rule 1.943 and the Rule would never come into play at all. Second, the Court's ruling amounts to a post second dismissal determination that the prior dismissals were both without prejudice in violation of the Iowa Supreme Court's ruling in Smith v. Lally, 379 N.W.2d at 916. Here, the Trial Court simply had no ongoing jurisdiction to make such a determination after

the Second FED has been voluntarily dismissed by ACC on its own accord. ACC's Third FED filing was and is overly abusive. Rule 1.943 mandates that ACC's Third FED action should have been and must now be dismissed with prejudice.

Neither ACC nor the Trial Court point to any convincing authority or unique facts that would somehow allow ACC to escape the mandate of Iowa R. Civ. P. 1.943. Because the parties and claims, and issues asserted in all three FED actions are identical, and because both of the first two cases ended in voluntary dismissals by ACC, there can be no real doubt that Rule 1.943 operates as a bar to ACC's Third FED Petition.

Section 4. FED is Barred Under Iowa Code Section 648.18 (30 Days Peaceable Possession).

As his Second Affirmative Defense, Rooney raised a thirty-day peaceable possession defense under Iowa Code Section 648.13. (App. p. 24). Rooney continued to advance his argument for the thirty-day peaceable possession defense in his Motion for Summary Judgment. (App. pp. 57, 62-64). Rooney therefore properly preserved error for purposes of this appeal on the assertion of his thirty-day peaceable possession defense under Iowa Code Section 648.18. As already noted,

actions for Forcible Entry and Detainer are equitable in nature. Iowa Code §§ 648.5, 648.15 (2020). Because of their equitable nature, actions for forcible entry and detainer are reviewed de novo. Porter v. Harden, 891 N.W.2d 420, 423-24 (Iowa 2017). Review in this case is therefore de novo.

Under Section 648.18 of the Iowa Code, an action for forcible entry and detainer is barred by thirty days' peaceable possession with the knowledge of the plaintiff after the cause of action accrues. Thomas v. Brodsack, 215 N.W.2d 503, 503 Iowa 1974). Thus, by not taking action to interrupt a tenant's peaceable possession within 30 days of termination of lease, a landlord lost his right to use the summary remedy of forcible entry and detainer to recover possession of his leased property. Petty v. Faith Bible Christian Outreach Center, Inc., 584 N.W.2d 303, 308 (Iowa 1998). Similarly, a vendor's action in a forcible entry and detainer to recover possession from allegedly defaulting purchasers under an executory contract for the sale of real estate was barred by the purchasers' peaceable possession of the property with the vendor's knowledge, for more than 30 days after the vendor's right of

action had accrued. Warren v. Yocum, 223 N.W.2d 258, 263 (Iowa 1974).

“Peaceable possession” of land, such as would bar a forcible entry and detainer action after 30 days' peaceable possession by a defendant with knowledge of the plaintiff after the cause of action accrues, means undisputed or uncontested possession. Rudolph v. Davis, 1946, 25 N.W.2d 332, 334, 237 Iowa 1383, 1386 (1946). Possession is neither disputed nor contested absent some actual affirmative step at ouster. Thomas v. Brodsack, 215 N.W.2d 503, 505 (Iowa 1974). The mere assertion of a rival claim is insufficient. Petty v. Faith Bible Christian Outreach Center, Inc., 584 N.W.2d 303, 307 (Iowa 1998). Litigation relating to the right of possession will forestall or interrupt peaceable possession for the purpose of determining whether a forcible entry and detainer proceeding is barred by the thirty day limitation period. Thomas v. Brodsack, 215 N.W.2d 503, 505 (Iowa 1974). However, the mere service of a notice to quit as required by Iowa Code Section 648.3 is not a sufficient interruption of the occupant's peaceable possession, and unless the action itself is commenced within the 30 days, it is barred. Heiple v. Reinhart, 69 N.W. 871, 872-73, 100 Iowa 525, 525 (1897).

Here, ACC's action would have accrued, if at all, on August 26, 2020 when the purported Tax Sale Deed was issued. ACC already knew as early as May 8, 2020 that Rooney was in actual possession and occupation of the subject property, as evidenced by ACC's Affidavit of Service of the notice of expiration of right to redeem that was filed with the Warren County Treasurer attesting to Rooney's address. (App. pp. 70-71, 1147-148). Because the Tax Sale Deed was issued on August 26, 2020, and because ACC already knew at that point that Rooney was actually in possession, ACC had only up until and including September 25, 2020 to file its FED. However, ACC did not file its First FED until October 1, 2020, its second FED action until October 15, 2020, or its Third FED until December 21, 2020. Since none of ACC's FED actions were filed within the thirty-day period after the Tax Sale Deed was issued, they were all effectively barred at the time they were filed.

In its Resistance to Rooney's Motion for Summary Judgment, ACC simply asserted, without any legal authority for its proposition, that each day that Rooney continues to occupy the subject property somehow creates a new cause of action which can never be barred under Section 648.18. The Trial Court adopted ACC's approach in its Ruling stating:

“The continuing nature of Rooney’s possession of the property gives rise to new causes of action as time passes. The present action is not barred due to the continuing nature of Rooney’s possession of the property.”

Neither ACC nor the Trial Court cited any authority in support of their position. Iowa Code Section 648.18 contains no exception for FED’s involving tax sale deeds. Under Iowa Code Section 648.1(6), the right to maintain an action for Forcible Entry and Detainer accrues immediately upon the issuance of a purportedly valid tax sale deed. The Iowa Courts have consistently and repeatedly invoked Section 648.18 to bar FED actions filed where, as here, the occupant has remained in possession, with the Plaintiff’s knowledge, for more than thirty days after the cause of action accrued. See, e.g., Petty v. Faith Bible Christian Outreach Center, Inc., 584 N.W.2d 303, 308 (Iowa 1998) (landlord lost his right to use the summary remedy of forcible entry and detainer to recover possession of his leased property by not taking action to interrupt a tenant's peaceable possession within 30 days of termination of lease); and Warren v. Yocum, 223 N.W.2d 258, 263 (Iowa 1974) (vendor’s FED action barred by the purchasers' peaceable possession of the property with the vendor's knowledge, for more than 30 days after the vendor's right of action had accrued). To hold that a new cause of action under

Section 648.1(6) somehow accrues each day that a party remains in possession after the issuance of a tax sale deed ignores the plainly stated ground upon which an FED can be asserted against a party in possession, that being the very issuance of the valid tax sale deed itself. ACC's argument, if accepted, would render Section 648.18 useless in every case, regardless of the statutory ground upon which the underlying FED is predicated. According to the theory advanced by ACC and the Trial Court, the thirty-day period under Section 648.18 could only ever begin to run once a defendant has actually vacated the subject property, thereby rendering the statute completely ineffectual.

Since ACC failed to file any of its actions within thirty days after it received its tax sale deed, and, because ACC knew even before the deed was issued that Rooney was in possession, all three of the FED actions filed by ACC against Rooney, including the case at bar, are barred under Iowa Code Section 648.18.

Section 5: Rooney's Continuing Redemption Rights Render FED Improper Procedure to Establish Validity of Tax Title.

For his Third Affirmative Defense, Rooney asserted that he suffers from a legal disability affording him a continuing right of redemption under Section 447.7 despite the issuance of ACC's Tax Sale Deed. (App. pp. 27-28). Rooney further filed his own action to challenge ACC's Tax Sale Deed. (App. pp. 83-86, 174-179). In so doing, Rooney squarely placed the validity of ACC's Tax Sale Deed in issue. Once again, Rooney further forwarded his argument as part of his Motion for Summary Judgment. (App. pp. 57, 64-65). Rooney therefore properly preserved error for purposes of this appeal in regard to his challenge to the validity of ACC's Tax Sale Deed and Rooney's assertion of continuing redemption rights on account of his alleged disability. This FED case is equitable in nature, Iowa Code § 648.5, 648.15 (2020), and is reviewable de novo. Porter v. Harden, 891 N.W.2d 420, 423-24 (Iowa 2017).

The only question involved in an action of forcible entry and detainer is whether the defendant is wrongfully detaining possession of land at time of trial. Bernet v. Rogers, 519 N.W.2d 808, 811 (Iowa 1994). In an action for forcible entry and detainer, the only issue for trial is the right of possession and not the title to the land. Cedar Rapids Cold

Storage Co. v. Lesinger, 177 N.W. 548, 549, 188 Iowa 1364, ___ (1920).

An action of forcible entry is not for the purpose of determining the title or the right to the possession in a broad sense, but to determine whether defendant at the time suit is heard and determined is wrongfully in possession. Kelley v. Kelley, 174 N.W. 342, 344, 187 Iowa 349, ___ (1919). The issue involved in forcible entry and detainer is the fact of possession contrary to this section, rather than the right thereto. Denecke v. Henry F. Miller & Son, 119 N.W. 380, 382, 142 Iowa 486, ___ (1909). Neither the right of possession nor the underlying title to the land can properly be determined in an action of forcible entry and detainer. Cagwin v. Chicago & N.W.R. Co., 86 N.W. 220, 220, 114 Iowa 129, ___ (1901).

Iowa Code Section 648.1 sets forth the various grounds upon which a claimant may base an action for Forcible Entry and Detainer.

The only statutory ground ostensibly available to ACC in this case, and the only one upon which ACC has predicated its multiple FED filings, is found in subsection (6) of Section 648.1 which permits an action for Forcible Entry and Detainer where the Defendant remains in possession after the issuance of a valid tax sale deed. The general availability of Section 648.1(6) therefore turns, at least in part, upon the validity of the

claimant's underlying tax sale deed. The validity of ACC's Tax Sale Deed was squarely placed in issue when Rooney filed his action to challenge the Tax Sale Deed in Case No. EQCV038648. (App. pp. 83-86, 174-179).

At the hearing, Rooney testified that he suffers from a severe reading and learning disability. (App. p. 100 - Transcript p. 10, lines 6-21). Rooney also testified that he was unable to understand any of the notices that were sent to him in regard to the back taxes on his home. (App. p. 101 - Transcript p. 11, lines 6-23). Rooney also appears to have interpreted ACC's Notice to Redeem from Tax Sale as merely an informational notice indicating that the taxes were ninety days late, as opposed to a warning that he could lose his property if he failed to redeem within the stated ninety-day period. (App. p. 104 - Transcript p. 14, lines 18-21). At a minimum, Rooney's testimony suggests that he suffers from some sort of cognitive deficiency that prevents him from understanding notice relating to his obligation to pay his property taxes and/or the consequences that might flow from a failure on his part to do so. See, Hawley v. Griffin, 82 N.W. 905, 906 (1900). All doubts must be resolved in favor of redemption by Rooney. See, e.g., Smith v. Huber, 224 Iowa 817, ___, 277 N.W. 557, 561 (1938). Rooney has made at least a

prima facie case that he may be entitled to relief in the form of extended redemption rights under Iowa Code Section 447.7.

Unless and until the nature and extent of Rooney's disability can be fully ascertained in a fully litigated setting, as opposed to the summary nature of an FED hearing, it would be wholly improper for the District Court to summarily affirm the validity of ACC's tax sale deed and to likewise summarily and drastically order Rooney removed from his long-time home. See, Fritch & Himes v. Reynolds, 176 N.W. 297, 299, 189 Iowa 16, __ (1920).

CONCLUSION

The Third FED Petition filed by ACC in the case at bar is unquestionably barred because under Iowa R. Civ. P. 1.943 because ACC has previously filed and voluntarily dismissed two previous FED actions against Rooney for possession of the subject premises, both of which were dismissed by ACC on its own volition, without any ruling on the part of the Court, and both of which were predicated upon exactly the same ground. ACC's FED action is further barred under Iowa Code Section 648.18 because ACC failed to file any of its actions for forcible entry and detainer within the thirty-day period following the issuance of the

purported Tax Sale Deed, despite ACC's prior knowledge that Rooney was in full possession and occupancy of the subject premises. Furthermore, the FED action was not a proper proceeding in which to summarily determine and affirm the validity of ACC's tax sale deed, particularly in light of the fact that Rooney has timely and properly asserted his extended redemption rights by the filing of his action to challenge ACC's Tax Sale Deed. In fact, under Rule 1.943, the dismissal of ACC's Second FED operates as an adjudication on the merits against the validity of ACC's Tax Sale Deed, thereby precluding the Trial Court's granting of ACC's Third FED Petition. Without a valid tax sale deed, ACC simply cannot prevail on its FED claim under any circumstance.

Upholding the Trial Court's Judgment would result in a catastrophic loss to Rooney of the lifetime investment that he has poured into his homestead while securing to ACC a tremendous and unjust windfall. The setting aside of the Trial Court's FED judgment, on the other hand, will merely afford Rooney the opportunity to fully and fairly litigate his claim for extended redemption rights and thereby promote a final resolution on the merits. Should Rooney actually redeem, as he seeks to do, ACC will still reap a substantial profit from its investment due to the generous two percent per month interest rate afforded it

under Iowa Code § 447.1 (2017). Should Rooney fail to redeem within the thirty-day period allowed under § 447.8, ACC would reap an even greater return because then, and only then, would its Tax Sale Deed be confirmed as valid. See, Iowa Code Section 447.8 (2017).

For all of the forgoing reasons, Rooney respectfully prays that the judgment entered by the district court be reversed, that ACC's Third FED Petition be dismissed with prejudice, that ACC's Tax Sale Deed be declared invalid as against Rooney, and that Rooney be permitted to move forward with his action to redeem his homestead.

/s/ David R. Elkin
David R. Elkin
Address: 315 East 5th Street, Ste. 5
Des Moines, IA 50309
Telephone: (515) 244-3188
E-mail: dave@elkin.-law.com
Counsel for Appellant

REQUEST FOR ORAL ARGUMENT

Appellant hereby requests to be heard in oral argument.

/s/ David R. Elkin

David R. Elkin

Address: 315 East 5th Street, Ste. 5
Des Moines, IA 50309

Telephone: (515) 244-3188

E-mail: dave@elkin-law.com

Counsel for Appellant

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/s/ David R. Elkin

David R. Elkin

Address: 315 East 5th Street, Ste. 5
Des Moines, IA 50309

Telephone: (515) 244-3188

E-mail: dave@elkin-law.com

Counsel for Appellant

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I hereby certify that the cost of printing this document was \$0.00.

/s/ David R. Elkin_____

David R. Elkin

Address: 315 East 5th Street, Ste. 5
Des Moines, IA 50309

Telephone: (515) 244-3188

E-mail: dave@elkin-law.com

Counsel for Appellant

CERTIFICATE OF FILING AND SERVICE

Filed:

Clerk of Supreme Court of Iowa
Judicial Branch Bldg.
111 E. Court Ave.
Des Moines, IA 50319
(e-filed)

Copies to:

Cameron K. Wright
via e-mail at:
cwright@eastpolklaw.com

R. Bradley Skinner
via e-mail at:
bskinner@eastpolklaw.com

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was electronically served upon all parties to the above cause via e-mail addressed to each of the attorney's of record at his or her respective e-mail address as disclosed by the pleadings and set forth above. This service was made on the 28th day of August 2021.

/s/ David R. Elkin
David R. Elkin