

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 REPLY BRIEF IN FINAL FORM

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SUPPLEMENTAL STATEMENT OF THE FACTS

Appellant Rooney believes that the facts pertinent to this appeal have already been recited and that no further recitation of the facts is necessary at this time.

SUPPLEMENTAL ARGUMENT

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 - Continued)

ACC essentially takes the position that its repeated FED

filings are somehow different causes of action based on different occupancy dates by Rooney and different Notices to Quit served at the behest of ACC. Thus, according to ACC's argument, none of the repeated FED filings and dismissals can possibly operate as a bar to the current FED action under Iowa R. Civ. P. 1.943. The fact remains, however, that each FED action filed by ACC was predicated upon exactly the same statutory ground and, in particular, upon the issuance of the same tax sale deed. Furthermore, each action was filed against the same Defendant, and for the very same relief.

In support of its position, ACC turns to the language of Iowa Code Section 658.1(6) which provides:

A summary remedy for forcible entry and detainer is allowable:

* * *

6. When the defendant or defendants remain in possession after the issuance of a valid tax deed.

Under ACC's strained interpretation of Section 648.1(6), a new cause of action somehow magically renews itself each day that an occupant "remains" in possession after the issuance of a tax sale deed. The more common-sense approach is that a cause of action accrues upon the issuance of a valid tax sale deed. The clause "When the defendant or defendants remain in possession" clause simply seems to serve to identify the class of persons who are subject to removal under Section 648.1 (6). ACC's reliance on various Notices to Quit also does nothing to generate a new or different cause of action which would somehow allow ACC to escape the application of the two-dismissal rule under Rule 1.943. See, Heiple v. Reinhart, 69 N.W. 871, 872-73, 100 Iowa 525, 525 (1897)

The mandate of Rule 1.943 is clear that a dismissal 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, shall operate as an adjudication against that party on the merits, unless otherwise ordered by the court, in the interests of justice. Here, there is no real question that ACC previously filed and dismissed two separate actions for possession of the same property against Defendant Rooney based upon the same tax sale deed.

Neither the dismissal of ACC's first FED nor the dismissal of its second FED was made with the benefit of a court order that in any way excepted ACC from application of Rule 1.943. The dismissal of ACC's second FED therefore constituted an adjudication on the merits against ACC which thus barred the filing of ACC's third FED. The trial court therefore erred in granting ACC's third FED Petition, and its decision must therefore be reversed.

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

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. Section 648.18, Code of Iowa (2020); Thomas v. Brodsack, 215 N.W.2d 503, 503 Iowa 1974). ACC makes no denial that it already knew of Rooney's possession of the subject property even before the issuance of the tax sale deed in question. Instead, ACC raises essentially the same argument in response to the thirty-day peaceable possession defense as it does to the Rule 1.943 defense. ACC essentially argues that, as a tax sale deed holder, its cause of action can never be barred under Section 648.18 because, according to ACC, each day that a

party remains in possession after the issuance of a tax sale deed somehow gives rise to a new cause of action under Section 648.1. ACC seems to further postulate that a new cause of action somehow arises each time that a party in possession is served with a three-day notice to quit.

There can be no real question that ACC's cause of action for forcible entry and detainer first accrued, if at all, when its tax sale deed was issued. As already noted in the preceding Section pertaining to Rooney's Rule 1.943 defense, ACC's interpretation of the interplay between Section 648.1(6), which affords a cause of action for forcible entry and detainer against anyone remaining in possession after the issuance of a valid tax sale deed, and Section 648.18, which effectively imposes a thirty-day statute of limitations for filing such an action once the tax sale deed holder becomes aware of the defendant's possession, is strained and unsubstantiated by law. The Iowa Courts have routinely held that Section 648.18 is enforceable to bar actions for forcible entry and detainer. See, e.g., Petty v. Faith Bible Christian Outreach Center, Inc., 584 N.W.2d 303, 308 (Iowa 1998) (Landlord's FED action to recover possession barred where landlord failed to take action to interrupt 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 to recover possession from allegedly defaulting purchasers under an executory contract for the sale of real estate 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).

Contrary to ACC's strained interpretation of Sections 648.1(6) and 648.18, no new cause of action magically arises with each new day after a cause of action for forcible entry and detainer first arises. Neither Section 648.1(6) nor Section 648.18 suggest any exception when it comes to forcible entry and detainer actions premised upon the issuance of an allegedly valid tax sale deed.

ACC clings to its argument that the service of separate three-day notices to quit somehow distinguish the allegedly separate causes of action stated in its three FED actions. However, the Iowa Courts have clearly held that 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). Thus, contrary to ACC's argument, an action

already barred by the thirty-day peaceable possession defense under Section 648.18 cannot be revived or extended by the service of a new three-day notice to quit.

There is no real dispute that ACC knew by the time it received its tax sale deed that Rooney was in actual occupation of the subject property. There is also no dispute that none of ACC's three FED actions were filed within the thirty-day period following the issuance of ACC's tax sale deed. Thus, all three of ACC's FED actions were barred under the thirty-day peaceable possession rule set forth in Section 648.18, Code of Iowa (2020), including the third FED filing which is the subject of this appeal. The trial court therefore erred in failing to recognize Rooney's defense under Iowa Code Section 648.18, and the trial court should have dismissed ACC's Petition for Forcible Entry and Detainer with prejudice. The decision of the trial court to grant ACC's FED Petition must therefore be reversed.

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

As 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). Rooney further filed his own action to challenge ACC's Tax Sale Deed. (App. pp. 83-86, 174-179). In response, ACC points to Iowa Code Section 448.6(1) which purports to create a presumption in favor of the validity of every purported tax sale deed. However, whatever presumptions of validity may have attached to ACC's tax sale deed under Section 448.6, or otherwise, were destroyed by operation of law when ACC dismissed its second FED and thereby suffered an adverse adjudication on the merits of its claim. At this point, it appears that ACC not only lost any presumption as to the validity of its tax sale deed, ACC actually suffered an adverse adjudication that effectively declared its deed to be invalid as against Rooney. See Iowa R. Civ. P. 1.943.

Furthermore, Rooney properly placed the validity of ACC's Tax Sale Deed in issue when he filed his action to challenge ACC's tax sale deed by following the very procedure outlined in Section 448.6 upon which ACC relies for its claimed presumption of validity. The trial court, in granting ACC's Petition for forcible entry and detainer, found that ACC's tax sale deed was valid despite Rooney's disability assertions. The Court offered virtually no explanation as to how ACC's tax sale deed was supposedly effective to override Rooney's properly asserted redemption

rights as a disabled individual under Iowa Code Sections 447.7 and 447.8. It is therefore unclear whether the Court upheld the validity of ACC's tax sale deed because it failed to recognize the import of Section 447.7 or whether the Court believed that Rooney had simply failed to prove his disability. Either way, the Court was in error. If the Court failed to recognize the import of Section 447.7, then the Court failed to understand that a disabled person's property rights cannot properly be divested through the regular tax sale notification process. Where, as here, the disabled person properly asserts his ongoing redemption rights under Section 447.7, the Court must afford the disabled person an opportunity to redeem even after the issuance of the tax sale deed. See, Iowa Code Section 447.7. Only if the disabled person then fails to redeem after being granted an additional thirty days from the date of the Court's order does the tax sale deed ripen into a valid tax sale deed which would then, and only then, give rise to an action for forcible entry and detainer under Section 648.1(6). See, Iowa Code Section 447.7.

If, on the other hand, the Court simply concluded that Rooney had somehow failed to substantiate his disability claim, the Court failed to fully understand the nature of the proceedings before it and the import of the evidence that was adduced at the hearing. 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).

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, 802 N.W. 905, 906 (1900). All doubts are to be resolved in favor of redemption. See, Smith v. Huber, 224 Iowa 817, ___, 277 N.W. 557, 561 (1938).

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 notices

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). Rooney therefore 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.

Despite the prohibition against deciding disputed titles in a forcible entry and detainer proceeding, and despite Rooney's claims to ongoing redemption rights on account of his alleged disability, the trial court nevertheless proceeded to uphold the purported validity of ACC's tax sale deed and ordered Rooney removed from his longtime home. The trial court even limited the hearing on ACC's FED to a mere thirty (30) minutes. (App. p. 16). The trial court apparently expected that Rooney should somehow fully litigate and be forced to try and prove his claim of disability and his assertion for extended redemption rights during a minimal thirty-minute summary FED hearing on a claim which appeared to be clearly barred by both Iowa R. Civ. P. 1.943 and Iowa Code Section 648.18. Such a limitation clearly deprived Rooney of a complete and full hearing on the merits of his disability claim, including the opportunity to call expert witnesses and family members to attest in greater detail to his alleged cognitive impairments. While FED hearings are intended to be

summary in nature, actions for extended redemption rights under Section 447.7 are to be tried as regular equitable actions, not by summary proceedings. Had the trial court more properly declined to decide the matter of a disputed title based upon such a limited and summary FED hearing, Rooney would have been afforded a full and ample opportunity to present and substantiate his alleged disability and his concomitant claim for extended redemption rights.

For the foregoing reasons, the trial court erred in finding that ACC's tax sale deed was conclusively valid as against Rooney and in ordering Rooney removed from his longtime home. The trial court's decision must therefore be reversed.

CONCLUSION

The Third FED Petition filed by ACC in the case at bar is barred 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 the issuance of the same tax sale deed. 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 had timely and properly asserted his extended redemption rights by the filing of his action to challenge ACC's Tax Sale Deed. The dismissal of ACC's Second FED also operates as an adjudication on the merits against the validity of ACC's Tax Sale Deed, thereby precluding the Trial Court from upholding the validity of ACC's tax sale deed and further precluding the court from granting of ACC's Third FED Petition. Without a valid tax sale deed, ACC simply cannot prevail on its FED claim under any circumstance.

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 under Section 447.7 of the Iowa Code.

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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.

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