

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 21-0479
Warren County No. EQCV038723

ACC HOLDING, LLC,
Plaintiff/Appellee,

vs.

TODD ROONEY,
Defendant/Appellant,

APPEAL FROM THE IOWA DISTRICT COURT FOR WARREN
COUNTY
THE HONORABLE RICHARD B. CLOGG, DISTRICT COURT
JUDGE

APPELLEE'S BRIEF

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PROOF OF SERVICE AND CERTIFICATE OF FILING

I, Cameron K. Wright, hereby certify that on the 18th day of August, 2021, I served this document by e-filing it on the State of Iowa's Electronic Data Management System in the above-titled matter. All other parties in this matter are registered filers in this system and are served by said e-filing.

I further certify that on the 18th day of August, 2021, I filed this document with the Clerk of the Supreme Court, Iowa Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319, by e-filing it in the State of Iowa's Electronic Data Management System in the above-entitled matter.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. RULE 1.943 OF THE IOWA RULES OF CIVIL PROCEDURE DOES NOT BAR ACC'S FORCIBLE ENTRY AND DETAINER ACTION.

Bernet v. Rogers, 519 N.W.2d 808, 811 (Iowa 1994)

Bloom v. Steeve, 165 N.w.2d 825, 827 (Iowa 1969)

City of Eagle Grove v. Cahalan Investments, LLC,
904 N.W.2d 552, 558 (Iowa 2017)

Iowa Code §648.1(6)

Iowa R. Civ. P. 1.943

II. ROONEY DID NOT HAVE 30 DAYS' PEACEABLE POSSESSION SUCH THAT IOWA CODE § 648.18 BARS ACC'S FORCIBLE ENTRY AND DETAINER ACTION.

Bernet v. Rogers, 519 N.W.2d 808, 811 (Iowa 1994)

City of Eagle Grove v. Cahalan Investments, LLC,
904 N.W.2d 552, 558 (Iowa 2017)

Iowa Code §648.1(6)

Iowa Code §648.18

III. THERE IS INSUFFICIENT EVIDENCE TO SUPPORT ROONEY’S TITLE CLAIM AND THE VALIDITY OF THE TAX SALE DEED SHOULD BE UPHELD.

Ashpole v. Delaney, 253 N.W. 30, 31 (Iowa 1934)

Capital Funds 85 Ltd. Partnership v. Priority Systems, LLC, 670 N.W.2d 154, 158 (Iowa 2003)

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ROUTING STATEMENT

The Supreme Court should retain this case as it involves substantial issues of first impression. Iowa R. App. P. 6.1101(2)(c).

STATEMENT OF THE CASE

This case considers the validity of a tax sale deed in favor of ACC Holding, LLC (ACC) and whether the district court properly decided certain procedural issues raised by Defendant-Appellant, Todd Rooney (Rooney).

Rooney, after remaining in possession after the issuance of a valid tax sale deed, was served with a 3-day notice to quit on December 15, 2020. Exhibit 2 – Notice to Quit. (App. pp. 20-21) ACC filed a Petition for Forcible Entry and Detainer on December 21, 2020. Petition for Forcible Entry. (App. pp. 11-12) ACC's Third Petition for FED. Rooney answered the petition and filed a motion for summary judgment, raising the three issues that are the subject of this appeal: (1) Rooney's purported thirty days' peaceable possession; (2) an alleged bar under Iowa Rule of Civil Procedure 1.943; and (3) potential title issues stemming from Rooney's alleged disability.

Rooney's Answer and Affirmative Defenses, Rooney's Motion for Summary Judgment (App. pp. 23-29, 56-82)

Hearing was held by the district court on ACC's petition for forcible entry and detainer and Rooney's motion for summary judgment on January 5, 2021. Judgment Entry Forcible Entry and Detainer. (App. pp. 131-136) The district court, after an evidentiary hearing on the issues in question, ruled in favor of ACC and ordered that Rooney be removed from the subject property and that a writ of possession issue on April 14, 2021. Judgment Entry Forcible Entry and Detainer. (App. pp. 131-136)

STATEMENT OF THE FACTS

The real estate that is the subject of this appeal is locally known as 2103 Shady Lane Drive, Norwalk, Iowa, and is legally described as:

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

(the “subject property”). ACC’s Third Petition for FED 1 (App. pp. 11-12)

ACC, or its predecessor in interest, purchased the fiscal year 2015 taxes for the subject property at tax sale on June 19, 2017. Exhibit 1 – Tax Sale Deed, 1. (App. pp. 18-19) A certificate of purchase was duly issued by the County Treasurer of Warren County, Iowa. Exhibit 8 – ACC’s Affidavit of Service re Notice to Redeem from Tax Sale, 1. Proper notice to redeem from tax sale was delivered to Rooney and an affidavit of service and application for deed was filed on May 8, 2020. *Id.* (App. pp. 147-153)

The taxes for the subject property were not redeemed, and on August 26, 2020, the Warren County Treasurer issued a tax sale deed to ACC. Exhibit 1 – Tax Sale Deed, 1-2. (App. pp. 18-19)

Rooney, after remaining in possession of the subject property after the issuance of a valid tax deed, was served with a three-day notice to quit on December 15, 2020. Exhibit 2 – Notice to Quit. (App. pp. 20-21) A petition for forcible entry

and detainer was filed on December 21, 2020. ACC's Third Petition for FED. (App. pp. 11-12)

ARGUMENT

Actions for forcible entry and detainer are governed by Iowa Code chapter 648. Forcible entry and detainer is a summary remedy "to enable a person entitled to possession of real estate to obtain such possession from any one illegally in possession of the same." *Bernet v. Rogers*, 519 N.W.2d 808, 811 (Iowa 1994) (quoting *Rudolph v. Davis*, 30 N.W.2d 484, 486 (Iowa 1948)). The statute must be liberally construed with a view to promote that object. *Id.* "The only question in a forcible entry and detainer action is whether the defendant is wrongfully detaining possession of the real property at the time of trial. *Id.*

Tax sale deeds executed by the county treasurer are presumptively valid. Iowa Code § 448.6(1) (2021). The holder of a tax sale deed is entitled to a judgment for forcible entry and detainer against any person that "remain[s] in possession after the issuance of a valid tax deed." Iowa Code § 648.1(6).

Rooney is wrongfully in possession of the subject property after the issuance of a valid tax deed and the district court did not err in awarding ACC possession of the property.

I. RULE 1.943 OF THE IOWA RULES OF CIVIL PROCEDURE DOES NOT BAR ACC’S FORCIBLE ENTRY AND DETAINER ACTION.

A. Scope of Review and Standard of Review

Actions for forcible entry and detainer are tried as equitable actions. Iowa Code § 648.5(1). Review of actions tried in equity is de novo. *City of Eagle Grove v. Cahalan Investments, LLC*, 904 N.W.2d 552, 558 (Iowa 2017) (citing Iowa R. App. P. 6.907; *City of Waterloo v. Bainbridge*, 749 N.W.2d 245, 247 (Iowa 2008)). However, weight is given “to the factual findings of the district court, especially with respect to determinations of witness credibility.” *Id.* (citing *Green v. Wilderness Ridge, L.L.C.*, 777 N.W.2d 699, 702 (Iowa 2010)).

B. Analysis

Adjudication under Iowa R. Civ. P. 1.943 is based on res judicata principles which require the different cases to “involve

(1) the same parties or parties in privity, (2) the same cause of action and (3) the same issues.” *Bloom v. Steeve*, 165 N.W.2d 825, 827 (Iowa 1969). The current cause of action was brought based upon the notice to quit served on Rooney on December 15, 2020, which had never been the subject of litigation. Further, Rooney continues to “remain in possession [of the subject property] after the issuance of a valid tax deed,” giving rise to the current cause of action. Iowa Code § 648.1(6). Therefore, the current case does not involve the same cause of action as any previous case and is not barred by Iowa R. Civ. P. 1.943.

Rooney argues that ACC’s filing and subsequent voluntary dismissal of two actions for forcible entry and detainer precludes the district court from hearing the current case. Rooney’s Answer and Affirmative Defenses, 2-3. (App. pp. 24-25) Rooney’s argument fails because the current case does not involve the same cause of action of any previous case.

The current action for forcible entry and detainer is based upon Rooney remaining in possession of the subject property after the issuance of a valid tax deed. ACC’s Third

Petition for FED, 1. (App. pp. 11-12) Rooney asserts that this cause of action arises by an act of the county treasurer, and not an act of Rooney. Appellant's Proof Brief, 18 ("ACC's cause of action is ultimately predicated *solely upon the issuance of ACC's tax sale deed.*" (emphasis added)).

A plain reading of Iowa Code § 648.1(6) leads to only one conclusion, that it is the act of Rooney "remain[ing] in possession" that creates a cause of action and not the county treasurer issuing a tax deed. The phrase "after the issuance of a valid tax deed" defines when a defendant's act of remaining in possession gives rise to an action for forcible entry and detainer. See Iowa Code § 648.1(6). This interpretation of the statute is supported not only by a plain reading of the statute, but also by this Court's precedence of liberally interpreting Iowa Code chapter 648 with a view towards enabling "a person entitled to possession of real estate to obtain such possession from any one illegally in possession of the same." *Bernet*, 519 N.W. 2d at 811 (quoting *Rudolph*, 30 N.W.2d at 486).

Since it is the action of Rooney, and not the action of the county treasurer, that gives rise to a cause of action under

Iowa Code § 648.1(6), it must be determined when Rooney remained in possession of the subject property. Rooney does not deny that he “remain[ed] in possession” of the subject property when ACC caused a three-day notice to quit to be served upon Rooney on December 15, 2020. *Id.*, Exhibit 2 – Notice to Quit. (App. pp. 20-21) The tax sale deed was issued to ACC on August 27, 2020. Exhibit 1 – Tax Sale Deed. (App. pp. 18-19) There has been no assertion that December 15, 2020, is not after August 27, 2020. Therefore, Rooney’s possession of the property on December 15, 2020, gave rise to a cause of action pursuant to Iowa Code § 648.1(6).

As the trial court found, “[t]he continuing nature of Rooney’s possession of the property gives rise to new causes of action as time passes.” Judgment Entry Forcible Entry and Detainer, 4. (App. pp. 131-136) Therefore, the subject cause of action is not barred by Iowa R. Civ. P. 1.943 because it does not involve the same cause of action as the previously dismissed cases.

C. Conclusion

The trial court did not err in finding that the current cause of action was not barred by Iowa R. Civ. P. 1.943.

II. ROONEY DID NOT HAVE 30 DAYS' PEACEABLE POSSESSION SUCH THAT IOWA CODE § 648.18 BARS ACC'S FORCIBLE ENTRY AND DETAINER ACTION.

A. Discussion on Scope of Review and Standard of Review

Actions for forcible entry and detainer are tried as equitable actions. Iowa Code § 648.5(1). Review of actions tried in equity is de novo. *City of Eagle Grove v. Cahalan Investments, LLC*, 904 N.W.2d 552, 558 (Iowa 2017) (citing Iowa R. App. P. 6.907; *City of Waterloo v. Bainbridge*, 749 N.W.2d 245, 247 (Iowa 2008)). However, weight is given “to the factual findings of the district court, especially with respect to determinations of witness credibility.” *Id.* (citing *Green v. Wilderness Ridge, L.L.C.*, 777 N.W.2d 699, 702 (Iowa 2010)).

This appeal is taken from an equitable action for forcible entry and detainer and therefore should be reviewed de novo, with weight being given to the factual findings of the district court.

B. Analysis

“Thirty days’ peaceable possession with the knowledge of the plaintiff after the cause of action accrues is a bar to” an action for forcible entry and detainer. Iowa Code § 648.18. Therefore, the Court must first determine when ACC’s cause of action accrued.

The current action for forcible entry and detainer is based upon Rooney remaining in possession of the subject property after the issuance of a valid tax deed. ACC’s Third Petition for FED, 1. (App. pp. 11-12) Rooney asserts that this cause of action arises by an act of the county treasurer, and not an act of Rooney. Appellant’s Proof Brief, 18 (“ACC’s cause of action is ultimately predicated *solely upon the issuance of ACC’s tax sale deed.*” (emphasis added)).

A plain reading of Iowa Code § 648.1(6) leads to only one conclusion, that it is the act of Rooney “remain[ing] in possession” that creates a cause of action and not the county treasurer issuing a tax deed. The phrase “after the issuance of a valid tax deed” defines when a defendant’s act of remaining in possession gives rise to an action for forcible entry and

detainer. See Iowa Code § 648.1(6). This interpretation of the statute is supported not only by a plain reading of the statute, but also by this Court’s precedence of liberally interpreting Iowa Code chapter 648 with a view towards enabling “a person entitled to possession of real estate to obtain such possession from any one illegally in possession of the same.” *Bernet*, 519 N.W. 2d at 811 (quoting *Rudolph*, 30 N.W.2d at 486).

Since it is the action of Rooney, and not the action of the county treasurer, that gives rise to a cause of action under Iowa Code § 648.1(6), it must be determined when Rooney remained in possession of the subject property. Rooney does not deny that he “remain[ed] in possession” of the subject property when ACC caused a three-day notice to quit to be served upon Rooney on December 15, 2020. *Id.*, Exhibit 2 – Notice to Quit. (App. pp. 20-21) The tax sale deed was issued to ACC on August 27, 2020. Exhibit 1 – Tax Sale Deed. (App. pp. 18-19) There has been no assertion that December 15, 2020, is not after August 27, 2020. Therefore, Rooney’s possession of the property on December 15, 2020, gave rise to a cause of action pursuant to Iowa Code § 648.1(6).

C. Conclusion

ACC's current cause of action arose on December 15, 2020. ACC filed its petition for forcible entry and detainer on December 21, 2020. ACC's Third Petition for FED. (App. pp. 11-12) Therefore, Iowa Code § 648.18 does not bar ACC's action for forcible entry and detainer.

III. THERE IS INSUFFICIENT EVIDENCE TO SUPPORT ROONEY'S TITLE CLAIM AND THE VALIDITY OF THE TAX SALE DEED SHOULD BE UPHELD.

A. Discussion on Scope of Review and Standard of Review

Actions for forcible entry and detainer are tried as equitable actions. Iowa Code § 648.5(1). Review of actions tried in equity is de novo. *City of Eagle Grove v. Cahalan Investments, LLC*, 904 N.W.2d 552, 558 (Iowa 2017) (citing Iowa R. App. P. 6.907; *City of Waterloo v. Bainbridge*, 749 N.W.2d 245, 247 (Iowa 2008)). However, weight is given "to the factual findings of the district court, especially with respect to determinations of witness credibility." *Id.* (citing *Green v. Wilderness Ridge, L.L.C.*, 777 N.W.2d 699, 702 (Iowa 2010)).

This appeal is taken from an equitable action for forcible entry and detainer and therefore should be reviewed de novo, with weight being given to the factual findings of the district court.

B. Analysis

The primary object of Iowa Code chapter 648 is to “enable a person entitled to possession of real estate to obtain such possession from any one illegally in the possession of the same.” *Ashpole v. Delaney*, 253 N.W. 30, 31 (Iowa 1934). Historically, this Court did not permit parties to prove title in an action for forcible entry and detainer. *See, e.g., Cedar Rapids Cold Storage Co. v. Lesinger*, 177 N.W. 548, 549 (Iowa 1920) (“The action for forcible entry and detainer does not involve a question of title.”); *Emsley v. Bennett*, 37 Iowa 15, 17 (1873) (“In this action the question of title or *right* of possession is not involved and cannot be tried.”) (emphasis in original).

However, previous reluctance of the Courts to determine questions of title was based on earlier statutory restrictions that are no longer present. *Capital Fund 85 Ltd. Partnership v.*

Priority Systems, LLC, 670 N.W.2d 154, 158 (Iowa 2003). In fact, Iowa Code § 648.15 specifically contemplates that title may be put in issue and requires that the same be tried by equitable proceedings. Thus, it was proper for the trial court to hear and decide the title issue raised by Rooney.

Tax sale deeds issued by the county treasurer are presumptively valid. Iowa Code § 448.6(1). In order to rebut that presumption, Rooney asserts that he has a legal disability as contemplated in Iowa Code § 447.7 and is therefore entitled to redeem after the delivery of a tax sale deed. In order to support his claim of legal disability, Rooney must show that his disability renders him “incapable of comprehending his duty to pay taxes, and the consequences that follow a failure to pay.” *Hawley v. Griffin*, 82 N.W. 905, 906 (Iowa 1900). After an evidentiary trial on the issue raised by Rooney, the trial court found that there was insufficient evidence to support Rooney’s claim. Judgment Entry Forcible Entry and Detainer, 4. (App. pp. 131-136)

At trial, Rooney testified that he has had trouble reading since the fourth grade. Transcript p. 10, line 7. He further

testified that he had not tried to read any of the notices and other documents associated with this case, but that if he were to try and read the notices, he would be unable to understand their content. Transcript p. 11, lines 10-11 and 17-19.

Rooney graduated from college in 1985. Transcript p. 19, lines 14-17. After that, he operated his own business for more than 20 years, at times having up to 16 employees. Transcript p. 19-20, lines 18-4. When he was operating his business, Rooney handled the company's books and correspondence. Transcript p. 20, lines 5-8. Rooney also files his own personal income taxes. Transcript p. 20-21, lines 19-4. Rooney also testified that he had previously attempted to pay his property taxes but decided not to follow through when his payment was returned due to being twenty dollars short. Transcript p. 15, lines 6-21.

At trial, Rooney demonstrated an ability to understand his need to pay property taxes and had attempted to do so previously. Further, Rooney testified that his disability did not prevent him from successfully running a business for more

than 20 years. For those reasons, the trial court properly found that Rooney could not support a claim of legal disability.

C. Conclusion

The tax sale deed in favor of ACC is presumptively valid, and Rooney did not present sufficient evidence at trial to establish a legal disability such that he would have a right to redeem after the issuance of the deed.

CONCLUSION

For the reasons stated herein, the Supreme Court should uphold the district court's ruling and order that Todd Rooney be removed from the subject property and that ACC Holding, LLC, be put in possession thereof.

REQUEST FOR ORAL SUBMISSION

Appellee hereby requests this Court hear oral arguments on this matter.

Respectfully submitted,

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