

IN THE COURT OF APPEALS OF IOWA

No. 0-059 / 09-0509
Filed February 24, 2010

COMMERCE BANK,
Plaintiff-Appellee,

vs.

DARWIN G. RICE and DIANE RICE,
Defendants-Appellants,

HOME STATE BANK, UNITED STATES OF AMERICA,
Acting through the Farmers Home Administration,
and UNITED STATES OF AMERICA,
Acting through the United States Department of Agriculture,
Defendants-Appellees.

Appeal from the Iowa District Court for Greene County, William C. Ostlund, Judge.

Defendants appeal a district court order concerning the distribution of funds from a sheriff's sale. **AFFIRMED.**

Trevor J. Anderson of Parrish Kruidenier Dunn Boles Gribble Parrish Gentry & Fisher, L.L.P., Des Moines, for appellants.

Nicholas A. Klinefeldt, United States Attorney, and Richard L. Richards, Assistant United States Attorney, Des Moines, for appellee United States, Farm Service Agency.

Vicki R. Copeland of Wilcox, Polking, Gerken, Schwarzkopf & Copeland, P.C., Jefferson, for appellee Commerce Bank.

David A. Hoyt of Hoyt Law Firm, P.C., Jefferson, for appellee Home State Bank.

Considered by Vogel, P.J., Eisenhauer, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ZIMMER, S.J.

The defendant-appellants appeal from an order concerning the distribution of funds following a sheriff's sale. We affirm.

I. Background Facts & Proceedings

Darwin and Diane Rice owned agricultural property in Greene County, Iowa. In 1988 they borrowed money from Home State Bank and gave that bank a first mortgage on their property. In 1994 the Rices borrowed money from the Farmers Home Administration, now known as Farm Service Agency (FSA). FSA obtained a second mortgage on the land already mortgaged to Home State Bank, and obtained a first mortgage on a second tract of land. In 2000, the Rices borrowed \$182,000 from Commerce Bank. This loan was secured by a mortgage on all of the Rices' land. The Rices also borrowed \$200,000 from FSA, and this loan was also secured by a mortgage on all of the land.

On December 2, 2003, Commerce Bank filed a petition for foreclosure of its mortgage because the Rices were in default. The district court issued a judgment and decree of foreclosure in January 2005. The court entered judgment in rem against the mortgaged premises for \$231,913.32, plus costs and interest. The court established the relative order of priority of the existing mortgage liens. The court ordered the proceeds of the sale of the property to be applied first to the costs of the action, then to the sums due to Commerce Bank and to the United States, acting through the Department of Agriculture. The Home State Bank mortgage remained attached to the property.

After the district court denied their post-judgment motions, the Rices appealed the foreclosure decree. The appeal was dismissed as untimely on January 12, 2006. In the meantime, the property was scheduled for a sheriff's sale. The Rices filed for bankruptcy on October 14, 2005. As a result of the bankruptcy filing, the proceedings in state court were stayed until April 8, 2008. Thereafter, the Rices filed several motions seeking to bar a sheriff's sale. These were denied by the district court. Once again, the Rices appealed. This appeal was also dismissed as untimely.

The sheriff's sale was eventually conducted on December 4, 2008. The land was sold to FSA for \$510,980 and FSA received a sheriff's deed to the property.¹ By the time of the sheriff's sale, accumulated interest had caused the debt to Commerce Bank to increase to \$324,072.83. Therefore, there was a surplus above the amount of the debt to Commerce Bank. On January 6, 2009, FSA filed its claim to the surplus remaining after the payment of costs and satisfaction of the debt owed by the Rices to Commerce Bank.

A hearing was held on February 9, 2009, to determine the distribution of the surplus from the sheriff's sale. The mortgagees all agreed that the surplus should be paid to FSA and that the unsatisfied debt owed to FSA was greater than the amount of the surplus. In an order entered March 5, 2009, the district court denied the Rices' claim that they were entitled to the surplus. The court determined the U.S. Government/FSA was entitled to the surplus that was not necessary to satisfy the judgment of Commerce Bank. The court found, "These

¹ The Rices again filed several motions seeking to stay the proceedings. The district court issued an order on January 28, 2009, denying the Rices' motions.

Defendants are as the prior junior lien holders entitled to the surplus not necessary to satisfy the judgment of the Plaintiff, Commerce Bank.” The Rices have appealed from the court’s order.

II. Standard of Review

Mortgage foreclosure proceedings are equitable in nature. *W. Des Moines State Bank v. Pameco, Inc.*, 501 N.W.2d 555, 557 (Iowa Ct. App. 1993). Our review of equitable proceedings is de novo. Iowa R. App. P. 6.907 (2009).

III. Merits

The Rices contend the district court improperly distributed the proceeds from the sheriff’s sale. They claim that the foreclosure of the mortgage held by Commerce Bank extinguished the mortgage lien held by FSA as a junior lienholder. They assert the only remaining lien was the senior lien interest held by Home State Bank. The Rices ask to receive the remainder of the surplus.

We determine Iowa Code sections 654.7 and 654.9 (2007) should be applied in this case. *See First Fed. Sav. & Loan Ass’n v. Blass*, 316 N.W.2d 411, 413-14 (Iowa 1982) (finding chapter 654, not chapter 626, governed the distribution of an overplus resulting after a mortgage foreclosure sale). Section 654.7 provides, “If there is an overplus remaining after satisfying the mortgage and costs, and if there is no other lien upon the property, such overplus shall be paid to the mortgagor.” On the other hand, “If there are any other liens on the property sold, or other payments secured by the same mortgage, they shall be paid off in their order.” Iowa Code § 654.9.

Under these code sections, whether mortgagors, such as the Rices, are entitled to an overplus, or surplus, depends upon whether there are any other liens of the property. Junior liens may be extinguished by the foreclosure of a senior lien. *Norwest Credit, Inc. v. City of Davenport*, 626 N.W.2d 153, 155 (Iowa 2001). If the junior lienholder is a party to the foreclosure and fails to redeem, the lien is extinguished. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d 654, 657 (Iowa 1985). “The extinguishment of the junior mortgage lien, however, does not destroy the debt itself as the mortgagee can later obtain a judgment against the debtor.” *Id.* (citing *Anderson v. Renshaw*, 229 Iowa 93, 99, 294 N.W. 274, 278 (1940)).

Furthermore, our supreme court has concluded, “junior creditors’ liens continue after the foreclosure decree and sheriff’s sale.” *Id.* at 658. A junior lien is not extinguished if during the redemption period the junior lienholder has protected its claim “either by bidding at the foreclosure sale or redeeming in a deliberate manner.” *Id.* In this case, FSA, as a junior lienholder, protected its claim by bidding at the sheriff’s sale. We conclude FSA’s lien was not extinguished by the foreclosure of the senior lien held by Commerce Bank.

Under section 654.9, “If there are any other liens on the property sold, . . . they shall be paid off in their order.” These liens follow the surplus. *First Fed. Savings*, 316 N.W.2d at 414. The supreme court held:

And the doctrine is well established that, when lands are sold on execution, the liens are transferred to, and follow the surplus, at least in equity, and the surplus will be distributed in the order of the liens (whether by judgment or mortgage) on the land out of which it arose.

Id. (quoting *County of Polk v. Sypher*, 17 Iowa 358, 363 (1864)).

The district court followed this procedure and distributed the surplus in the order of the liens. Commerce State Bank was paid first from the proceeds of the sheriff's sale, then FSA was to be paid the remainder. The debt to FSA exceeded the amount it would receive from the surplus. The Rices would be entitled to reimbursement only if there had been remaining funds after the liens on the property had been paid. See Iowa Code § 654.7.

The Rices also claim that FSA is not entitled to the surplus because it did not show the district court precisely the amount it was entitled to from the surplus. The Rices did not raise this issue before the district court, and we determine it has not been preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (noting we do not consider issues raised for the first time on appeal). Even if this issue had been preserved, FSA adequately showed the Rices' debt to FSA exceeded the amount of the surplus remaining after Commerce Bank had been paid.²

We affirm the decision of the district court.

AFFIRMED.

² FSA paid \$510,980 at the sheriff's sale. The debt to Commerce Bank at that time was \$324,072.83, leaving a surplus of about \$186,907. At the time of the mortgage foreclosure decree in 2005, the Rices owed FSA at least \$222,010, plus interest.