

**IN THE COURT OF APPEALS OF IOWA**

No. 0-391 / 09-1393  
Filed October 6, 2010

**WILLIAM A. ARMSTRONG and  
RESTU E. (Emma) ARMSTRONG,**  
Plaintiffs/Counter Claim Defendants-Appellants,

**vs.**

**MARGARET J. ARMSTRONG,  
JONATHAN H. CHESTER, JAMES M.  
ARMSTRONG and ELLEN A. MEHOS,**  
Defendants/Counter Claim Plaintiffs-Appellees.

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Appeal from the Iowa District Court for Story County, William J. Pattinson,  
Judge.

The plaintiffs appeal from the district court ruling regarding the partition of  
real estate. **AFFIRMED.**

John F. Fatino and Erik S. Fisk of Whitfield & Eddy, P.L.C., Des Moines,  
for appellants.

Robert W. Goodwin of Goodwin Law Office, P.C., Ames, for appellees.

Heard by Vogel, P.J., and Doyle and Mansfield, JJ.

**VOGEL, P.J.****I. Background Facts and Proceedings.**

William Armstrong, Margaret Armstrong, and James Armstrong are siblings who, along with their spouses, owned real property and other business interests in Ames. On August 28, 2007, William and his wife, Restu Armstrong, filed a petition naming Margaret and her husband, Jonathan Chester, and James and his wife, Ellen Mehos, as defendants. In an attempt to settle their disputes the parties entered into negotiations. Although they were able to reach agreements as to some issues, the parties failed to reach a settlement agreement as to some remaining assets and litigation ensued.

On June 17, 2008, the district court appointed a Master pursuant to Iowa Rule of Civil Procedure 1.935. On August 5, 2008, the Master completed a report that provided resolution for the parties' remaining disagreements regarding (1) personal property; (2) real property owned by the parties located at 2904 and 2922 South Duff Avenue and 340 Dayton Avenue; and (3) two limited liability corporations—121 Beach, L.L.C. owned by William and Jonathan, as well as Armstrong Properties, L.L.C. The report stated that the parties agreed that a public partition sale of the real estate was not in the best financial interests of the parties and that the real property and 121 Beach, L.L.C. should be sold by and among the parties. Accordingly, William was to purchase the South Duff and Dayton properties, with the defendants receiving "\$291,000.00 net for the [South Duff] property" and "\$150,000.00 net for the [Dayton property]"; Margaret was to purchase William's interest in 121 Beach, L.L.C. for "\$280,000.00 net." The wind up and dissolution of Armstrong Properties, L.L.C. was also detailed.

The report stated that the amounts for the real property and L.L.C.s were part of a “global resolution of this case” that was “just and equitable in order to fully dissociate all parties in the case from each other.” Further,

[t]he Master acknowledges that the timing and nature of the transfers are significant and could be a never-ending source of disputes between the parties. To that end, the Master finds with respect to the [South] Duff and Dayton properties, the Defendants should be responsible for the preparation of the warranty deed, declarations of value, and groundwater hazard statement. . . .

Given that any potential proration of the taxes, insurance, etc. for the properties could be a source of dispute, the Master find that the properties should be transferred without proration. That is, there shall be no proration taken into account for the property taxes, recording fees, revenue stamps, or like deductions.

Subsequently, the defendants filed a motion seeking to have the district court enter judgment on the Master’s findings while the plaintiffs objected to some of the Master’s findings. Responsive filings followed, precluding the immediate entry of judgment on the Master’s report.

On July 17, 2009, nearly a year after the Master’s report was completed, the district court entered judgment, confirming the Master’s findings regarding the sale of the real property and the transfer of interests or winding up of the two L.L.C.s. Both parties filed motions to amend or enlarge pursuant to Iowa Rule of Civil Procedure 1.904(2). The defendants’ motion requested that district court amend or enlarge the judgment to relate back to the date of the Master’s findings of August 5, 2008. The defendants asserted that the Master’s report intended the transactions to be the net dollar amounts as of the date of his findings. However, in the interim, real estate taxes for the second half of the fiscal year 2007-2008 (accruing January 1, 2008, through June 30, 2008) for the South Duff and Dayton properties became delinquent on March 31, 2009. As the person to

receive these properties in the Master's report, William paid for one-third of the taxes, but refused to pay the remaining balance of \$12,823.12. In order to avoid a tax sale, the defendants paid the balance due and requested that district court order the plaintiffs to reimburse them so that they receive the net amount provided for in the report. On August 7, 2009, the district court ruled on the parties' motions, finding in part:

The Defendants want the term "net" as used in both the Judgment Entry and Master's report construed and applied so that they received credit for the \$12,823.12 they paid in back taxes on the South Duff Avenue property. Under the Judgment Entry's terms, William was to purchase this real estate from the Defendants for \$291,000 "net" and without any tax proration.

Apparently William paid one-third of the taxes that were due and owing on the property in March 2009 but left a balance of \$12,823.12. The Defendants paid that amount in order to avoid the problems associated with a tax delinquency.

There was to be no proration of taxes for any of the transfers. Instead, and as I understood the Master's report, the "purchasers" in the various inter-related transactions were to be themselves responsible for any and all accrued real estate taxes.

Accordingly, and to accurately implement the terms of the Judgment Entry, the final accounting should reflect a credit in favor of the Defendants and against William for the \$12,823.12 taxes Defendants paid.

The plaintiffs appeal and only challenge the district court's ruling regarding the credit in favor of the defendants for \$12,823.12.

## **II. Standard of Review.**

This is an equity action; therefore, our review is de novo. Iowa R. App. P. 6.907.

## **III. Error Preservation and Waiver.**

We first address the parties' error preservation and waiver claims. The plaintiffs assert that the defendants failed to raise the issue of the real estate

taxes before the Master and therefore, were not allowed to raise it in a motion pursuant to rule 1.904(2). The Master considered the issue of taxes, noting that if a judgment was not entered promptly there could be further disagreement, and found that the defendants should receive a net amount of \$291,000 and \$150,000 for the properties. As the report predicted, further disagreement ensued when the property taxes became delinquent after the Master's report was filed but before the district court ruled. The district court order confirmed the findings in the Master's report as to the South Duff and Dayton properties. However, due to the delay in entering judgment on the Master's findings, the findings did not take into account the taxes that became due prior to the entry of judgment. We find that the defendants properly raised this issue in their rule 1.904(2) motion. See *Meier v. Senecaut*, 641 N.W.2d 532, 538 (Iowa 2002).

Similarly, the defendants assert that the plaintiffs have waived this issue of the credit for the \$12,823.12. They assert that because the plaintiffs did not object to the Master's report or appeal the judgment entry requiring the plaintiffs to pay the "net" amounts of \$291,000 and \$150,000, this would have required the defendants to pay any future property taxes. As discussed above, due to the passage of time, the figures contained in the Master's report did not take into account the accruing 2007-2008 taxes. The plaintiffs appealed the district court judgment requiring the plaintiffs to pay the defendants a "net" amount of \$291,000 and \$150,000 and crediting the defendants with \$12,823.12. We find that the plaintiffs properly appealed the district court's ruling and did not waive the issues on appeal.

Further, the defendants argue that because the plaintiffs paid property taxes that became due in September 2009 after the district court judgment, the plaintiffs fully complied with the order and waived the issue on appeal. See *Millsap v. Cedar Rapids Civil Serv. Comm'n*, 249 N.W.2d 679, 683 (Iowa 1977) (“Generally compliance with a judgment is deemed a waiver of the right to appeal.”). However, the issue on appeal is the credit the defendants received in the amount of \$12,823.12 for the property taxes paid, which the defendants do not assert the plaintiffs complied with. The issue is not the payment of property taxes that became delinquent after the district court judgment. We find the plaintiffs have not waived the issue on appeal.

#### **IV. Merits.**

The plaintiffs assert that the district court should not have given the defendants a credit for the \$12,823.12. The Master was appointed pursuant to Iowa Rule of Civil Procedure 1.935 and filed a report on August 5, 2008. This report was not binding on the court and was not a judgment of a court. See *Nelson v. Barnick*, 245 Iowa 982, 989, 63 N.W.2d 911, 915 (1954) (“The report of the master is advisory only and is without effect until confirmed by the court.” (quoting *D.M.W. Contracting Co. v. Stolz*, 158 F.2d 405, 407 (D.C. Cir. 1947))). Under Iowa Rule of Civil Procedure 1.942, the court had authority to “adopt, reject or modify the [Master’s] report wholly or in any part, or recommit it with instructions.” Nearly a year after the Master’s report was completed, the district court issued a judgment adopting the Master’s report. However, during the time lapse, the property taxes for the second half of the fiscal year 2007-2008 did become delinquent and the defendants paid \$12,823.12 to avoid a tax sale. The

Master's report languished and became outdated. In its subsequent rule 1.904(2) order, the district court modified the Master's report to account for the taxes that became due between the report being completed and the judgment being filed. This modification was necessary because the figures utilized in the Master's report did not include taxes becoming due prior to the entry of the judgment. Although the plaintiffs argue that this change to the Master's findings was contrary to the Master's findings,<sup>1</sup> the Master's findings did not account for a year passing before entry of judgment and taxes becoming due—the district court implemented the Master's findings while accounting for the passage of time. Further, the plaintiffs argue that the defendants were obligated to pay the property taxes in order to present good and merchantable title and because the defendants were responsible for the property taxes as titleholders. Again, the Master's findings were outdated by the time the judgment was entered on the findings. This was an equitable ruling to account for that delay. We find that the district court properly modified the Master's report and that modification was equitable.

**AFFIRMED.**

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<sup>1</sup> The plaintiffs also state that “the plain terms of the Order are not retroactive, and a judgment is typically ‘effective between the parties from the time it is rendered.’” The Master's findings are not a judgment. The district court implemented the Master's findings in its judgment, with the ruling on the rule 1.904(2) motion correcting the district court judgment to account for the passage of time between the Master's findings and judgment. This is not “retroactive” relief, but rather the ruling accounted for the passage of time and made the calculations current.