

IN THE COURT OF APPEALS OF IOWA

No. 3-545 / 12-1522
Filed October 23, 2013

**CURT DANIELS,
Plaintiff-Appellee**

vs.

**JOHN HOLTZ,
Defendant-Appellant.**

Appeal from the Iowa District Court for Lucas County, Carla T. Schemmel,
Judge.

John Holtz contends the district court erred in setting aside a sheriff's sale
based upon his actions during that sale. **AFFIRMED.**

John B. Holtz, Phoenix, Arizona, appellant pro se.

Curt Daniels, Chariton, appellee pro se.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

VAITHESWARAN, J.

The background facts and proceedings that give rise to this appeal are set forth in *Daniels v. Holtz*, 794 N.W.2d 813 (Iowa 2010). In a nutshell, plaintiff Curt Daniels alleged that defendant John Holtz improperly interfered with the bidding process at a sheriff's sale and, as a result, purchased shares of Daniels's Indian Creek Corporation for \$110,000, even though land owned by the corporation had a value in excess of \$1,000,000.

The Iowa Supreme Court reversed a grant of summary judgment in favor of defendants Holtz and his companies, finding a genuine issue of material fact on the question of whether "Holtz's actions at the sale chilled the bidding and unfairly or fraudulently caused another bidder to cease bidding and, therefore, may require a court of equity to set aside the sale." *Daniels*, 794 N.W.2d at 825. The court remanded the case "for trial on this issue." *Id.*

Following trial, the district court found that Holtz approached Monroe Branstad, the only other bidder at the sheriff's sale, and "offered to partner with [him] to purchase the property in an effort to obtain the Indian Creek property at a low price." The court further found

the offer of partnership had no valid purpose other than to stop Branstad from further bidding. Branstad would have paid more than the final \$110,000 price bid and paid by Holtz, and without Holtz's interference, the sale would have resulted in the Indian Creek stock being sold for a higher price, and perhaps a substantially higher price.

The court concluded that Holtz's actions rose "to the level of the irregularity, unfairness, and fraud described in case law" and were "sufficient to conclude this sale must be set aside."

On appeal, Holtz contends the evidence is insufficient to support many of the district court's fact-findings. His argument may be academic because he does "not challenge the Court's ultimate finding setting aside the Sheriff's Sale due to the irregularity caused by Branstad's requested recess." See *In re B.B.*, 826 N.W.2d 425, 428 (Iowa 2013) ("Ordinarily, an appeal is moot if the 'issue becomes nonexistent or academic and, consequently, no longer involves a justiciable controversy.'" (citation omitted)). Giving him the benefit of the doubt, we will proceed to the merits.

As a preliminary matter, we must address the scope of our review. In remanding the case, the Iowa Supreme Court stated the district court would be sitting in equity. *Daniels*, 794 N.W.2d at 825. That would make our review de novo. Iowa R. App. P. 6.907. However, on remand, the district court ruled on objections. This is the hallmark of a law action. See *Bacon ex rel. Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997). Additionally, both sides advocate for "errors of law" review. Accordingly, we will review the issues on error, upholding the district court's fact findings if they are supported by substantial evidence. See *id.*

A sheriff's sale can be invalidated if "there was fraud, unfairness or mistake in the conduct of the sale . . . or . . . the price brought at the sale was so grossly inadequate as to shock the conscience of the court." *Daniels*, 794 N.W.2d at 821 (quoting *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564 (8th Cir. 1997)). The sale may not be set aside for irregularity, unfairness, or fraud unless there is a demonstration of prejudice. *Id.* at 822.

As noted, Holtz takes issue with several of the district court's fact-findings, the most pertinent one being the finding that he offered to partner with Branstad. The evidence on this point was disputed, with Holtz denying that such an offer was made, and Branstad testifying that Holtz "asked [him] what it would take to quit bidding" and said, "Well, would you be interested in partnering?" The district court found Branstad's testimony more credible. Because that court had the benefit of seeing and hearing the witnesses, the court was in a better position to evaluate credibility than we are. See *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). Our job is simply to determine whether substantial evidence supports the findings. *Id.* Branstad's testimony amounts to substantial evidence in support of the finding.

Holtz next challenges the district court's finding that Branstad intended to bid more than Holtz did. Branstad was coy about what his final bid would have been. While he testified he was willing to pay a total of one million dollars to acquire the land owned by Indian Creek Corporation, he refused to be pinned down on whether this figure included the payment of liabilities. He also testified he did not know the amount of those liabilities.

Despite Branstad's unwillingness to disclose his intended maximum bid, he unequivocally stated that he would have bid further but for Holtz's offer to enter into a "50-50" partnership. Again, his testimony amounts to substantial evidence in support of the district court's finding.

Holtz next disputes the district court's finding that "Branstad had access to sufficient monies to provide the funds necessary to purchase the property up to at least \$400,000." That finding is supported by Branstad's testimony. He noted

that he could obtain long-term financing from his bank for over a million dollars. While he admitted he had not secured the financing before appearing at the sheriff's sale and he did not have the requisite amount of cash on hand, he testified that he and his father had the wherewithal to cover \$300,000 or \$400,000. Additionally, a banker who came with Branstad testified that his bank would structure long-term financing for Branstad and Branstad would fund a down payment with a traditional line of credit from another bank. Together, the testimony of Branstad and his banker constitutes substantial evidence in support of the district court's finding that Branstad had access to funding in an amount well over Holtz's bid.

Because substantial evidence supports the relevant findings of the district court,¹ we conclude the court did not err in setting aside the sheriff's sale.

AFFIRMED.

¹ Holtz challenges other fact-findings, which do not bear on the issue that was tried. We find it unnecessary to address those fact-findings.