

IN THE COURT OF APPEALS OF IOWA

No. 6-830 / 05-2098
Filed January 18, 2007

**KENNETH JOHNSON, d/b/a
TEAM MANAGEMENT, INC.,**
Plaintiff-Appellant,

vs.

**RANDY RANDOLPH, TAMI C. RANDOLPH,
and POLK COUNTY TREASURER MARY MALONE,**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge.

The plaintiff appeals from the district court's declaratory judgment ruling.

AFFIRMED.

Jane Odland of Walker & Billingsley, Newton, for appellant.

Jeanne K. Johnson, Des Moines, for appellees Randy & Tami Randolph.

John P. Sarcone, County Attorney, and Michael O'Meara, Assistant
County Attorney, for appellee Polk County Treasurer.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

EISENHAUER, J.

The plaintiff, Kenneth Johnson, appeals from the district court's declaratory judgment ruling, in which the court found he failed to comply with the requirements for obtaining a tax sale deed, and canceling the tax sale for the property in question. He contends he is entitled to a tax sale deed, or in the alternative, he should be reimbursed for the sums he advanced to pay the Randolphs' taxes, plus interest. We affirm.

I. Background Facts and Proceedings. Kenneth Johnson is a retired certified public accountant. He buys delinquent tax sale certificates of purchase with the intention of collecting the sums advanced, plus the twenty-four percent annual interest provided by Iowa Code section 447.1 (2003). Over the years, Johnson has bought over eighty certificates of purchase for this purpose.

On June 18, 2001, Johnson purchased a certificate from the Polk County Treasurer for \$1533. The parcel of land in question, 211 NE Broadway Avenue, Des Moines, is owned by Randy and Tammy Randolph. Johnson paid additional taxes and special assessments on the property.

Johnson had until June 17, 2004, to serve notice of redemption on the parties claiming an interest in 211 NE Broadway. See Iowa Code § 446.37. On March 20, 2004, Johnson mailed letters to Randy and Tammy Randolph at the property in question, advising them of his interest in the property and setting forth the amounts necessary for redemption. On May 15, 2004, Johnson mailed notices of redemption to each of the titleholders at the property via both regular and certified mail. The letters mailed via regular mail were never returned. The certified letters were never claimed. Johnson did not send a notice of redemption

to any parties in actual possession, as he had driven past the property and testified at trial he believed it to be abandoned.

Believing he had complied with the requirements of service set forth in Iowa Code section 447.9, Johnson presented his request for a tax sale deed to the Polk County Treasurer on June 3, 2004. The treasurer denied his request on September 8, 2004, for failure to serve notice on the parties in actual possession.

On November 19, 2004, Johnson filed a petition in equity, seeking declaratory judgment. Trial was held on November 22, 2005. On December 14, 2005, the district court found Johnson failed to comply with the requirements for obtaining a tax sale deed, cancelled the tax sale, and dismissed Johnson's petition. Johnson appeals.

II. Scope and Standard of Review. We review declaratory judgment actions according to the manner the case was tried in the district court. *Owens v. Brownlie*, 610 N.W.2d 860, 865 (Iowa 2000). If tried in equity, as in this case, our review is de novo. *Id.* Thus, we give weight to the findings of fact made by the trial court in this case, especially with respect to the credibility of witnesses, but are not bound by those findings. *Id.*

III. Analysis. Johnson first contends the Randolphs' tender of the redemption amount waived all objections to the tax sale. Johnson did not present this claim to the district court. The district court did not rule on it. No motion to reconsider was filed. Accordingly, we will not consider this issue on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002). We do note the tender was contingent on the treasurer determining whether Johnson had complied with all notice requirements.

Johnson next contends the court erred in failing to order the issuance of a tax deed because no one redeemed within the ninety-day redemption period provided by section 448.1. We disagree. Before the redemption period could begin, Johnson was required to serve notice of redemption on all the parties at interest. Iowa Code § 447.9. This includes the titleholder, a mortgagee, and parties in actual possession of the real estate. *Id.* It is undisputed that Johnson did not send notice to the parties in actual possession of the real estate, Capitol City Motors and Ron Hill's Asphalt. The trial court found clear evidence Capitol City Motors and Ron Hill's Asphalt were in actual possession of the property. On de novo review of the record we agree with this finding.

Johnson argues the letters sent to the property that were never returned were sufficient notice to the parties in possession of the real estate. However, the letters were not addressed to the parties in possession. Johnson asks us to assume these parties would have received the letters addressed to Randy and Tami Randolph and would open them. Johnson did not seek to serve notice upon any actual possessors of the land because he stated he did not believe there to be any persons in actual possession. The tax sale was properly cancelled.

Johnson contends, in the alternative, that he is entitled to reimbursement for the sums paid for the tax sale, plus interest. Johnson had three years from the purchase of the tax sale certificate to obtain a tax deed. See Iowa Code § 446.37. He failed to do so, and the tax sale was canceled. See *id.* The property was not redeemed prior to the cancellation, which would have allowed Johnson to be reimbursed for the amounts he paid, plus interest. See Iowa Code § 447.1.

There is no provision in the law allowing Johnson to be reimbursed the certificate purchase price, all additional taxes paid, and interest following the cancellation of the sale. Although Johnson argues public policy requires he be reimbursed, it is his failure to properly serve notice on the parties in interest that has led to the situation he now finds himself. The rewards for investing in tax sale certificates may be lucrative but the investor must assume the risk of loss of the investment if the statutory requirements are not strictly met. *See Hotz v. Page County*, 235 Iowa 585, 587-88, 16 N.W.2d 240, 241 (1945) (holding the statutory requirements are mandatory). We agree with the trial court's decision to not award Johnson the tax certificate purchase price, all further taxes he paid, plus interest.

We affirm the district court's order.

AFFIRMED.

Sackett, C.J., concurs in part and dissents in part.

SACKETT, C.J. (concur in part and dissents in part)

I concur with the majority in all respects except I believe equity demands that Johnson should have monies paid refunded. There is no justice in allowing a delinquent taxpayer to benefit.