

IN THE COURT OF APPEALS OF IOWA

No. 7-077 / 06-0614
Filed March 14, 2007

LORENA SCHWAKE,
Plaintiff-Appellant,

vs.

CITY OF ELMA, IOWA,
Defendant-Appellee.

Appeal from the Iowa District Court for Howard County, John
Bauercamper, Judge.

Plaintiff appeals from the district court's refusal to issue a temporary
injunction. **AFFIRMED.**

Lorena Schwake, Elma, pro se.

Richard S. Piscopo, Jr. of Yunek Law Firm, P.L.C., Mason City, for
appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

Plaintiff, Lorena Schwake, appeals from the district court's refusal to issue a temporary injunction to stop the City of Elma (City) from advertising for sale real estate¹ Schwake contends had been sold to her. She contends (1) the defendant's resistance to her request for a temporary injunction did not follow Iowa Rule of Civil Procedure 1.405, (2) the district court improperly allowed the defendant to assert an affirmative defense and present irrelevant evidence, including evidence of which she did not receive proper notice, (3) the court refused to allow her to seek assistance in presenting her case from a person who was not a member of the Iowa Bar, and (4) the district court docket was erroneous. We affirm.

STANDARD OF REVIEW. This temporary injunction was filed in equity and we review the district court's order de novo. *Matlock v. Weets*, 531 N.W.2d 118, 121 (Iowa 1995).

Yet, the decision to issue or refuse a *temporary injunction* rests largely within the sound discretion of the district court Thus, we will not generally interfere with the district court decision unless the discretion has been abused or the decision violates some principle of equity.

PIC USA v. North Carolina Farm P'ship, 672 N.W.2d 718, 722 (Iowa 2003) (citing *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 180-81 (Iowa 2001)).

BACKGROUND. Sometime in the year 2004, the City published a notice which read:

¹ The property was initially advertised for sale as "The Creamery Building." However, it appears from the record that the City sought to sell real estate, not personal property. Thus, for the purpose of this opinion, we consider "The Creamery Building" to be real estate.

The City of Elma is taking bids on the Creamery Building until November 10, 2005.

The City has the right to accept or refuse any and all bids. The two highest bidders will have the opportunity to raise their bid.

Send bids to:
PO Box 497
Elma, IA 50628

Schwake submitted a bid. She and a second bidder tied for highest bidders. Schwake was at the meeting and raised her bid. An unsuccessful attempt was made to call the other bidder. After a discussion, a motion was made "to reject all bids, cap the well, and re-advertise for sale." Schwake, believing she had purchased the building, tendered a check for \$7500.02, the amount of her final bid. The City refused the tender.

On February 13, 2006, the City passed a "Resolution Fixing Date for Public Hearing on Sale of Real Estate² and the Manner and Method of the Sale of the Real Estate Resolution." The Resolution provided for time and place of publication, the acceptance of sealed bids, the manner of accepting bids, and a provision for conveyance by quit claim deed, among other things.

On February 17, 2006, Schwake filed her request for the temporary injunction basically stating she had purchased the building and the district court should enjoin further efforts on the part of the City to sell it because she needed time to sue to enforce what she contended was her contract for the purchase of the property. She attached an affidavit contending, among other things, that the

² It appears this real estate is what was earlier referred to as "The Creamery Building."

Mayor and another council member said it looked like she won the building. The City resisted the application for injunction on February 28, 2006, and stated if the court granted the temporary injunction, Schwake should be required to post a bond of \$9375.02 representing 125% of the sale price. The City also provided affidavits from two people stating they were at the council meeting and no resolution was made to finalize the sale to Schwake. Schwake objected to the City's resistance.

A hearing was held. Schwake attempted to have a person, who was not admitted to practice law in Iowa, assist her. The district court did not allow the person to participate.

Following the hearing, the district court filed an order denying the application for a temporary writ of injunction. The district court found the City owned property known as "The Creamery Building." The court found the only formal action reflected in the council minutes was the following: "Bid open for the Creamery Building. Motion by Haar, 2nd by O'Donnell to reject all bids, cap the well and re-advertise for sale, motion carried." The district court noted that Schwake tendered a check for \$7500.02, the amount of her bid, and the City refused the tender. The district court denied the application after setting forth these two code provisions: Iowa Code sections 364.7 and 364.3(1) (2005). Provisions necessary for the city to sell real estate are set forth in section 364.7:

A city may not dispose of an interest in real property by sale, lease for a term of more than three years, or gift, except in accordance with the following procedure:

1. The council shall set forth its proposal in a resolution and shall publish notice as provided in section 362.3, of the resolution and of a date, time and place of a public hearing on the proposal.

2. After the public hearing, the council may make a final determination on the proposal by resolution.

3. A city may not dispose of real property by gift except to a governmental body for a public purpose. However, a city may dispose of real property for use in an Iowa homesteading program under section 16.14 for a nominal consideration, including but not limited to property in an urban renewal area.

Provisions necessary to bind a city are set forth in section 364.3(1): “The following are limitations upon the powers of a city: 1. A city council shall exercise a power only by the passage of a motion, a resolution, an amendment, or an ordinance.”

ANALYSIS. There is no showing that the statutory procedures necessary for a city to sell real estate have been followed. Even if that were not the case and notice asking for bids followed the statute, the City’s advertisement clearly indicates the City can reject all bids. There are at least three reasons, singularly or collectively, why the City was not bound to sell the real estate to Schwake: (1) the City failed to follow statutory provisions for the sale, (2) the City did not accept Schwake’s bid, and (3) in advertising the sale, the City reserved the right to reject bids. The City was not bound to sell the real estate to Schwake. She does not have an enforceable contract to buy the real estate from the City. We affirm the denial of the injunction.

Schwake also argues that she should have been able to utilize the help of a person not licensed to practice law in Iowa to assist her in presenting her case. The district court did not err by not allowing Schwake’s friend to assist her in the proceedings. He was neither an “interested party” nor a licensed attorney. Iowa R. Civ. P. 1.201; *see also Hawkeye Bank and Trust, Nat. Ass’n v. Baugh*, 463 N.W.2d 22, 25 (Iowa 1990) (noting that due process requires the court system to

be accessible but denied a shareholder who did not hold a license to practice law the right to represent a corporation in court).

We have considered Schwake's other arguments and find them to be without merit.

AFFIRMED.