IN THE COURT OF APPEALS OF IOWA

No. 9-216 / 08-0406
Filed May 6, 2009

CHRISTIANA BANK & TRUST COMPANY AS OWNER TRUSTEE OF THE SECURITY NATIONAL FUNDING TRUST,
Plaintiff-Appellee,

vs.

JULIA P. HADDON; and SPOUSE OF JULIA P. HADDON,
Defendants-Appellants.

Appeal from the Iowa District Court for Scott County, John A. Nahra and J. Hobart Darbyshire, Judges.

Julia P. Haddon appeals from a grant of summary judgment in favor of Christiana Bank & Trust Company and a decree foreclosing a mortgage on property she owns. **AFFIRMED.**

William T. McCullough, Davenport, for appellants.

James V. Sarcone Jr. and Margaret C. Callahan of Belin Lamson McCormick Zumbach Flynn, P.C., Des Moines, for appellee.

Considered by Mahan, P.J., and Miller and Doyle, JJ.

DOYLE, J.

Julia Haddon[1] appeals from a grant of summary judgment in favor of Christiana Bank & Trust Company and a decree foreclosing a mortgage on property she owns. She contends (1) there are disputed facts that preclude summary judgment; (2) she was entitled to receive a notice of right to cure default prior to the filing of the foreclosure action; (3) a portion of the home is not subject to foreclosure; and (4) she was entitled to reimbursement for monies she expended to "rescue" the property from condemnation. We affirm the district court.

I. Background Facts and Proceedings.

In January 2006 James L. Liske purchased from Julia Haddon and her husband property located at 1020 Warren Street in Davenport, Iowa. The property is legally described as: "Lot 14 except the South 52.3 feet thereof, and all of Lot 15 in Block 12 of Forrest and Dillon's Second Addition to the City of Davenport, Scott County, Iowa." The purchase price was $150,000.

A purchase money mortgage covering the property was given on January 24, 2006, by Liske to First Street Financial, Inc. The mortgage secured Liske's $127,500 loan from First Street. Another mortgage was given on January 25, 2006, by Liske to Julia Haddon to secure a $10,000 loan. The second mortgage was not recorded.

[1] "Spouse of Julia P. Haddon" was named a defendant in the petition because he is the spouse of the record titleholder of the subject property and a party in possession of the property. An answer was filed on behalf of both defendants, but Julia was the only defendant who participated in the litigation thereafter. We will therefore only refer to Julia in this opinion.

On April 20, 2006, Liske transferred the property to Julia by warranty deed in repayment of loans previously made to Liske by Julia. The loans included personal loans totaling $30,000 for improvements to the home and other expenses.

Liske defaulted on his debt to First Street. A notice of intent to foreclose was sent by First Street to Liske, but he did not cure the default.

On July 13, 2006, First Street filed a petition for mortgage foreclosure and receiver. Julia P. Haddon and "Spouse of Julia P. Haddon" were named as defendants based on Julia's title to the property. An answer was filed on behalf of Julia and her husband. Christiana Bank succeeded to First Street's interest as mortgagee and was thereafter substituted as plaintiff in the action.

Christiana Bank filed a motion for summary judgment on October 23, 2007. The attached supporting affidavit asserted defendants were in default and that a balance of $151,721.66 was due on the mortgage. Julia's resistance was filed January 2, 2008. She did not dispute the validity of the original mortgage, the default thereon, or the amount due. Instead, she complained that she had not received a notice of right to cure prior to suit being filed.

Hearing on the motion was held on January 24, 2008. The court entered its ruling on January 31, 2008. In its analysis, the district court concluded:

> Defendants raise a number of issues in the resistance to Plaintiff's Motion for Summary Judgment. First, Defendants contend that Plaintiff's Petition contains a fatal defect in alleging that it mailed a Notice of a Right to Cure Default to Defendants. Defendants claim they are entitled to a Notice of a Right to Cure under Iowa law. "A creditor . . . shall give the borrower a notice of right to cure. . . ." Iowa Code § 645.2D(2) (emphasis added). It is undisputed that Defendants were not parties to the mortgage. As such, they were not borrowers entitled under Iowa law to the Notice

> of a Right to Cure. Further, Defendants have established no obligation on the part of Plaintiff to make them parties to the mortgage or otherwise afford them the rights available to borrowers under the mortgage.
>
> Defendants also contend that Plaintiff is not entitled to foreclose on the property because the home situated on the lot subject to the foreclosure extends ten feet onto property not subject to foreclosure. The Court makes no finding as to the legitimacy of Defendants' assertions. However, the assertion does not prevent the Court from adjudicating the legitimacy of Plaintiff's security interest to the extent of the legal description provided in the mortgage.
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> Defendants further contend that Plaintiff's actions "misled" and "induced" Defendants to expend funds to preserve the value of the property. Again, the Court makes no finding as to the legitimacy of Defendants' assertions. However, the Court finds that Defendants have not raised sufficient factual allegations to generate any issue of inducement on Plaintiff's behalf.

The court granted summary judgment in favor of Christiana Bank, and a decree of foreclosure was subsequently entered on February 19, 2008. Julia appeals.

II. Scope and Standards of Review.

We review the district court's summary judgment ruling for the correction of errors at law. Iowa R. App. P. 6.4; *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). We review the record in the light most favorable to the party opposing the motion. *Tenney v. Atlantic Assocs.*, 594 N.W.2d 11, 14 (Iowa 1999).

In a mortgage foreclosure action where the facts are not in dispute, summary judgment may be appropriate. *Willow Tree Inv., Inc. v. Wagner*, 453

N.W.2d 641, 642 (Iowa 1990). However, where rational minds could draw different inferences from the facts, summary judgment in a foreclosure action is not appropriate. *First Nat'l Bank v. Kinney*, 454 N.W.2d 589, 592 (Iowa 1990).

III. Discussion.

A. Right to Cure Notice. Julia asserts the trial court erred in determining she did not have a right to receive a notice of right to cure default. She claims Iowa Code section 654.2D (2005) should be construed to require that a lender who has knowledge there is a new owner of the property upon which the mortgage is secured should be required to give notice to that new owner. We do not agree.

Section 654.2D(2) provides in relevant part: "A creditor who believes in good faith that a borrower on a deed of trust or mortgage on a homestead is in default shall give the *borrower* a notice of right to cure as provided in section 654.2B." (Emphasis added.) Julia does not claim to be a "borrower" and, in fact, asserted in her resistance she was not the borrower and did not execute any documents in writing assuming Liske's liabilities and obligations under the promissory note and mortgage, and did not agree to assume Liske's obligations thereunder.

"The goal of statutory construction is to determine legislative intent." *State v. Tarbox*, 739 N.W.2d 850, 853 (Iowa 2007). "Legislative intent is determined from the words chosen by the legislature, not what it should or might have said." *Id.* "Absent a statutory definition or an established meaning in the law, we give words used by the legislature their ordinary and common meaning by considering, among other things, the context in which they are used." *Id*. We

cannot, under the guise of construction, extend, enlarge, or otherwise change the meaning of a statute. *Id*. "When the statute's language is plain and its meaning is clear, we look no further." *Estate of Ryan v. Heritage Trails Assocs., Inc.*, 745 N.W.2d 724, 730 (Iowa 2008).

Here, the language of the statute is plain and unambiguous, and we need not resort to the rules of statutory construction. In any event, Julia does not claim to be a "borrower" on Liske's mortgage. Under the clear terms of the statute, Julia was not entitled to statutory notice of right to cure. The trial court correctly determined the Haddons were not parties to the mortgage, and as such, were not borrowers entitled under Iowa law to the notice of a right to cure.

B. Encroachment of House on Julia's Adjacent Property. Julia next claims the trial court erred in failing "to determine or make allowances for any portion of the property which is owned by [her], and which should not be subject to the foreclosure." In her resistance to the motion for summary judgment, Julia asserted as a material fact in dispute that the most westerly ten feet of the home she sold to Liske is situated on a ten-foot strip of land owned by her. The legal description of the property purchased by Liske does not include the ten-foot strip of land upon which, Julia claims, sits the most westerly ten feet of the home. She asserts on appeal that the trial court should have fashioned "an equitable solution to [her] claim of the house encroaching on her unencumbered lot."

However, Julia made no legal argument concerning this issue in the district court proceedings. Her resistance to the motion for summary judgment only requested the motion be denied, and for "such further relief as is appropriate." She asked for no specific equitable relief concerning this issue.

We have no transcript of the summary judgment hearing, but the trial court's ruling does not suggest Julia sought any relief distinct from her request that summary judgment be denied. "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

Moreover, in its summary judgment ruling, the trial court expressly made "no finding as to the legitimacy of [Julia's] assertions" that Christiana Bank "is not entitled to foreclose on the property because the home situated on the lot subject to the foreclosure extends ten feet onto property not subject to foreclosure." Julia did not file a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) to enlarge or amend findings. *See id.* ("When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal."). Nor does she suggest how she preserved this issue for review. *See* Iowa R. App. P. 6.14(1)(*f*). We therefore conclude Julia's claims regarding the encroachment of the house on her adjacent property are waived.

C. Julia's Expenditure of Funds. Lastly, Julia asserts the trial court erred in not ordering Christiana Bank to reimburse her for costs she incurred to cure outstanding delinquent property taxes and in "rescuing the structure from probable city condemnation and demolition." After the property was returned to her by Liske, Julia asserts she expended monies to cure outstanding delinquent property taxes and sewer liens that were subject to tax sale. She also claims she

spent money to board up the house and replace three doors, fifteen windows, and all of the aluminum siding that had been stolen from the property.

There was nothing in or attached to Julia's resistance to the summary judgment motion to substantiate these claims. Her resistance states "[a] detailed list of all expenses and repairs can be provided to the Court." However, a review of the court file does not reveal any documents to support the claims. The appendix filed with this court does contain two unmarked documents which purportedly show the amount Julia paid for damage repairs and utilities. These documents are not in the court file. The court does not consider issues based on information outside the record. *Rasmussen v. Yentes*, 522 N.W.2d 844, 846 (Iowa Ct. App. 1994). Julia's resistance cites no legal theory or authority for the court to order reimbursement of monies expended.

We have no transcript of the hearing, but the court's ruling suggested Julia argued that "Plaintiff's actions 'misled' and 'induced' defendants to expend funds to preserve the value of the property." The court made no finding as to the legitimacy of Julia's assertions and concluded she did not raise sufficient factual allegations to generate any issue of inducement.

On appeal, Julia raises the doctrine of unjust enrichment. The record before us does not reflect that this issue was raised in the trial court or decided by the court. Julia did not file a rule 1.904(2) motion to enlarge or amend findings. She does not suggest how she preserved the issue for review. We will not consider on appeal issues that were not both raised and decided by the district court. *See Meier*, 641 N.W.2d at 537.

IV. Conclusion.

For all the above reasons, we affirm the district court's grant of summary judgment in favor of Christiana Bank and its issuance of a decree of foreclosure.

AFFIRMED.