

IN THE COURT OF APPEALS OF IOWA

No. 9-608 / 09-0267
Filed December 17, 2009

RONALD L. WOODS,
Plaintiff-Appellant,

vs.

TAD D. SONNEMAN and JULIE A. SONNEMAN,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II,
Judge.

A buyer appeals a district court ruling denying his request for attorney fees and awarding the sellers attorney fees in a dispute arising from a real estate contract. **AFFIRMED AND REMANDED.**

Patrick W. O'Bryan of O'Bryan Law Firm, Des Moines, and V. Phillip Watson of Phil Watson, P.C., Des Moines, for appellant.

Nathan J. Barber and Michael R. Reck of Belin Lamson McCormick Zumbach Flynn, P.C., Des Moines, for appellees.

Heard by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

VAITHESWARAN, J.

In this dispute arising from a real estate contract, a buyer appeals a district court ruling denying his request for attorney fees and awarding the sellers attorney fees.

I. Background Facts and Proceedings

Ronald Woods agreed to purchase 3.7 acres of Des Moines real estate from Tad and Julie Sonneman. The real estate contract provided that Woods would purchase the land “subject to the following: . . . any easements of record for public utilities, roads and highways.” The contract further provided that

Sellers, at their expense, shall promptly obtain an abstract of title to the Real Estate . . . and deliver it to Buyers for examination. *It shall show merchantable title in Sellers* in or conformity with this contract, Iowa law and the Title Standards of the Iowa State Bar Association.

(Emphasis added.)

Several days after the closing was to occur, Woods’s attorney prepared a title opinion noting the property was subject to “a perpetual easement and right of way for sewer purposes in favor of the United States of America.” This easement, which was granted in 1902, encompassed the entire parcel of land being sold to Woods. Woods’s attorney objected to the title as unmerchantable and “require[d] that a release be obtained from the United States of America and placed of record.” The Sonnemans attempted to obtain a release of the easement but were not immediately successful.

Woods sued the Sonnemans and the United States seeking (1) a declaratory judgment that the easement rendered the Sonnemans’ title unmerchantable; (2) specific performance of the real estate contract with an

abatement from the purchase price for Woods's expenses in removing the easement; and (3) a decree quieting title to the property in favor of Woods and against the United States.¹

The Sonnemans filed an answer and counterclaim seeking specific performance of the real estate contract, damages for breach of that contract, and attorney fees. The United States had the case removed to federal district court and subsequently filed a disclaimer of interest in the easement. The case was remanded to the Iowa District Court, where Woods dismissed his quiet title action against the United States.

Shortly thereafter, the Sonnemans attempted to proceed with the closing, noting that "[a]ll conditions to closing, including any claim to unmarketable title, have been satisfied." Woods responded,

We have the funds in our Trust Account to close this transaction. Our client has incurred in excess of \$10,000.00 in legal fees to get the easement problem taken care of, and believes that your client should contribute to payment of that expense.

The Sonnemans moved for summary judgment. They maintained that Woods's claims against them failed because Woods had agreed to purchase the property subject to all easements and, in any event, the easement in favor of the United States was extinguished. Woods resisted that motion and filed a summary judgment motion of his own. He sought "an abatement of the purchase price in an amount sufficient to cover his costs of removing such easement,

¹ Woods was president of a corporation known as Easter Lake Estates, Inc. That corporation filed a similar lawsuit against Adair Holdings, L.L.C. and the United States with respect to an adjacent piece of property, which was also subject to the same easement. The two cases were later consolidated. These parties reached a settlement and are not involved in this appeal.

which consists of attorney fees, expenses, and court costs.” In the end, the parties agreed to submit the case to the court based only on the court file, “including the motion for summary judgment and the affidavits attached and the exhibits of the parties.”

The district court framed the issue to be decided as follows: “Under the contract[], whether the Plaintiff[] [is] entitled to an award of attorney’s fees from Defendants.” The relevant contractual provision stated: “In any action or proceeding relating to this contract the *successful party* shall be entitled to receive reasonable attorney’s fees and costs as permitted by law.” (Emphasis added.) The court concluded that, while Woods might have been the “successful party” with respect to his claims against the United States, Woods was not the “successful party” as to his claims against the Sonnemans.” The court denied Woods’s claim for attorney fees and dismissed his petition against the Sonnemans. The court did not address the Sonnemans’ claim for attorney fees.

Both parties filed motions for enlarged findings and conclusions pursuant to Iowa Rule of Civil Procedure 1.904(2). Following a hearing, the district court denied Woods’s motion in its entirety and granted the Sonnemans’ request for specific performance of the real estate contract and attorney fees of \$12,170.30.

Woods filed two appeals,² which were consolidated and transferred to this court for disposition. As the only issue before us relates to attorney fees, our review is for an abuse of discretion. *See Capital Fund 85 Ltd. P’ship v. Priority Sys., L.L.C.*, 670 N.W.2d 154, 157 (Iowa 2003).

² The order specifying the amount of fees awarded was not issued until after Woods filed his first notice of appeal, necessitating the filing of a second notice of appeal.

II. Analysis

A. Trial Attorney Fees

Subject to a rare exception, which Woods does not assert is applicable here, “[a] party generally has no claim for attorney fees as damages in the absence of a statutory or written contractual provision allowing such an award.” *Hockenberg Equip. Co. v. Hockenberg’s Equip. & Supply Co.*, 510 N.W.2d 153, 158 (Iowa 1993). The district court correctly noted that the attorney fee claim here is governed by contract and the contract authorized an award of attorney fees to “the successful party.”

Woods was not the successful party vis-à-vis the Sonnemans. First, Woods did not prevail on his underlying declaratory judgment and specific performance claims against the Sonnemans, both of which were dismissed as moot or without merit. Woods does not challenge the dismissal of those claims on appeal. See *Hylar v. Garner*, 548 N.W.2d 864, 870 (Iowa 1996) (“[O]ur review is confined to those propositions relied upon by the appellant for reversal on appeal.”). Second, Woods did not prevail on the Sonnemans’ counterclaim for specific performance of the contract, as the district court found that Woods failed to perform under the contract even after the United States disclaimed its easement. See *Wemer v. Long*, 185 N.W.2d 243, 247 (Iowa 1971) (“The vendee of a contract cannot be heard to complain of a defect in the vendor’s title prior to the time he is entitled to performance under the contract, particularly where the defect is one which may be removed. . . .”). For these reasons, Woods was not entitled to have the Sonnemans pay his attorney fees or to have the fees

deducted from the purchase price of the real estate.³ Accordingly, the district court did not abuse its discretion in denying his claim for attorney fees.

We turn to Woods's assertion that he should not have been ordered to pay the Sonnemans' trial attorney fees. With respect to the Sonnemans' counterclaim, the district court found that the title dispute resolved itself when the United States agreed to disclaim its easement and, at that point, the Sonnemans were entitled to specific performance of the real estate contract. There can be no question then that the Sonnemans were "the successful party" on their counterclaim. Accordingly, the district court did not abuse its discretion in ordering Woods to pay their attorney fees.

B. Appellate Attorney Fees

Both parties request an award of appellate attorney fees. The language of their real estate contract is broad enough to encompass such an award. See *Bankers Trust Co. v. Woltz*, 326 N.W.2d 274, 278 (Iowa 1982). As the Sonnemans were the successful parties on appeal, they are entitled to an award

³ We agree with the district court that abatement of the purchase price was not an appropriate remedy in any event. That remedy has been applied where a seller who agreed to convey good title cannot convey good title, but the buyer is nonetheless willing to accept defective title. *Van Duzer v. Engeldinger*, 209 Iowa 150, 155, 227 N.W. 591, 593 (1929) ("[W]here the vendor cannot make a complete title to all the land sold as agreed . . . the purchaser has an election to proceed with the purchase *pro tanto*, and to have an abatement from the purchase price for the deficiency in the title."). In such a case, the buyer is entitled to "abatement from the contract price by reason of the failure to perform in full." *Id.*; see also *Shell Oil Co. v. Kelinson*, 158 N.W.2d 724, 730 (Iowa 1968) ("[T]he vendee may compel the vendor to convey his defective title or deficient estate, and at the same time have a just abatement out of the purchase price for the deficiency of title, quantity or quality of the estate to compensate for the vendor's failure to perform the contract in full."). Here, the Sonnemans were ultimately able to convey good title to all the land Woods agreed to purchase. Therefore, Woods was not entitled to "an abatement from the purchase price for the deficiency in the title." *Van Duzer*, 209 Iowa at 155, 227 N.W. at 593.

of appellate attorney fees. We remand the case to the district court for an evidentiary hearing to determine an appropriate award of appellate attorney fees.

AFFIRMED AND REMANDED.