

IN THE COURT OF APPEALS OF IOWA

No. 9-793 / 08-1729
Filed November 25, 2009

CURT DANIELS,
Plaintiff-Appellant,

vs.

**JOHN HOLTZ, WSH PROPERTIES, L.L.C.,
JAMES NERVIG, HUNTERS RETREAT, L.L.C.,
NAVAJO ASSOCIATES, LLC, BRICK,
GENTRY, BOWERS, SWARTZ, STOLTZE
and LEVIS, P.C., JOHN DOES and
JANE ROES 1-5,**
Defendants-Appellees.

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

Curt Daniels appeals from the district court's entry of summary judgment
in favor of defendants. **AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED.**

Curt Daniels, Chariton, appellant pro se.

Billy J. Mallory of Brick Gentry P.C., West Des Moines, for appellees
Holtz, WSH Properties, Hunters Retreat, and Navajo Associates.

Kermit B. Anderson of Finley, Alt, Smith, Scharnberg, Craig, Hilmes &
Gaffney, P.C., Des Moines, for appellees Nervig and Brick law firm.

David L. Wetsch, Des Moines, for Indian Creek Corporation.

Considered by Sackett, C.J., Danilson, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

DANILSON, J.

This is but one of many appeals¹ Curt Daniels has filed, all of which in one way or another stem from a 2001 assessment of a \$95,000 civil penalty for violations of waste handling requirements, which resulted in a judgment against Indian Creek Corporation, the owner of the hog confinement facility,² and Daniels, its only shareholder. The instant appeal is from the district court's grant of summary judgment in favor of all defendants in Daniels's suit to set aside the sheriff's sale of the corporate stock of Indian Creek Corporation. Daniels contends the sale did not comply with Iowa Code section 626.93 (2005) and that the "illegal acts of the defendants before, during and after the sheriff's sale require that the sale be set aside." He also challenges the court's denial of his motion to amend his petition. We affirm in part and reverse in part.

I. Relevant Facts.

The following facts are established by the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" on file. Iowa R. Civ. Proc. 1.981(3). On March 10, 2006, the State of Iowa assigned the \$95,000 judgment to Hunters Retreat, LLC, "includ[ing] the assignment of all right, title and interest of [the State] in the lien of said Judgment on the property of the Defendants." The consideration for the assignment was a \$95,000 cash

¹ Related appeals decided to date of which we are aware include: *WSH Properties v. Indian Creek Corporation*, No. 08-1723 (Iowa Oct. 1, 2009) (summarily affirmed); *WSH Properties, L.L.C. v. Daniels*, 761 N.W.2d 45 (Iowa 2008) (affirming replevin award); *Navajo Assoc. v. Daniels*, No. 09-694 (Iowa Ct. App. Oct. 21, 2009) (affirming foreclosure); *Daniels v. State*, No. 07-1275 (Iowa Ct. App. Oct. 15, 2008) (upholding the dismissal of Daniels's lawsuit in which he claimed the civil penalty was void). Still on file with the appellate clerk: *WSH Properties v. Daniels*, No. 09-0703; *Indian Creek Corporation v. Daniels*, No. 08-1740.

² The hog confinement facility was subsequently purchased by WSH Properties at a tax sale.

payment Hunters Retreat wired to its attorney, the Brick law firm, which in turn issued a trust account check in the amount of \$95,000 to the State of Iowa.

Curt Daniels was at that time the owner of 100% of the stock of Indian Creek Corporation.

To commence proceedings to execute on the judgment, Hunters Retreat filed a praecipe with the Iowa District Court for Jasper County, seeking the sale of the "right, title, and interest of Curt Daniels individually and as owner in Indian Creek Corporation, including but not limited to any certificated or uncertificated stock ownership, corporate books and records regarding said Indian Creek Corporation." A sheriff's sale was set for July 26, 2006.

Three appraisals were received prior to the sale date. P.A. Henrichsen, an attorney and certified public accountant, was appointed by Hunters Retreat as its appraiser of the corporate stock. Henrichsen's original appraisal of the stock was \$52,000. Leland Shelton, a licensed real estate agent, was appointed by Daniels. Shelton determined the only asset of the corporation was 1219 acres of real estate he concluded had a net value of \$769,000.

Wendy Sims, a certified public accountant, was then appointed by the sheriff. This appraisal noted the corporation owned 1225 acres of farmland, assumed the real estate had a reasonable value of \$1300 per acre, listed the known liabilities of the company, and concluded the company had a net value of \$821,018.05. This value was then adjusted for unknown liabilities (because the company had not produced its books or records) and the potential capital gains tax liability of \$586,250 upon any sale of the farmland. Sims opined that the "just appraisal" value of 100% of the common stock of Indian Creek as of July 26,

2006, was \$29,500. Both Henrichsen and Shelton indicated in writing their agreement with this value.

A sheriff's sale of the shares of Indian Creek Corporation was held on July 26, 2006. Hunters Retreat, represented by John Holtz, was the successful bidder, purchasing 100% of the shares of Indian Creek Corporation for \$110,000. The unsuccessful bidder, Monroe Branstad, asked for a recess following Hunter Retreat's \$110,000 bid. After the recess, he informed the sheriff he would not bid further.

Daniels filed a 300-plus-paragraph petition alleging eighteen "causes of action," including, but not limited to, conspiracy, denial of equal treatment, unjust enrichment, intimidation, slander, and abuse of process. Daniels asked that the court declare the sheriff's sale void, enjoin the defendants from interfering with his leasehold interest in the property, and award him actual and punitive damages. All defendants moved for summary judgment. Daniels moved to amend his petition to add an additional nine causes of action, asserting deceit or collusion by the parties and their attorneys in violation of Iowa Code section 602.10113 and attorney disciplinary rules. The district court granted the defendants' motions for summary judgment and denied the motion to amend. The district court essentially concluded that Daniels had not substantiated any of his claims, or should have addressed them in other litigation. Daniels appeals.

II. Scope and Standard of Review.

We review a district court's ruling on a motion for summary judgment for correction of errors of law. *Lobberecht v. Chendrasekhar*, 744 N.W.2d 104, 106 (Iowa 2008); *Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 482 (Iowa 2007).

Summary judgment is appropriate when the moving party shows no genuine issues of material fact exists and it is entitled to judgment as a matter of law. Iowa R. Civ. Proc. 6.981(3). Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. *Lindaman v. Bode*, 478 N.W.2d 312, 317 (Iowa Ct. App. 1991).

III. Discussion.

Although all defendants filed a motion for summary judgment raising just two issues, the trial court, in rendering its ruling, dismissed all claims against all defendants. The defendants' motion for partial summary judgment sought the dismissal of Daniels's petition as it related to his claims that (1) the \$95,000 assignment by the State of Iowa to Hunters Retreat was invalid and (2) the sheriff's sale was illegal and invalid.

For the reasons recited by the trial court, we agree that Daniels's claims alleging the invalidity of the assignment are meritless. We affirm the district court's grant of summary judgment as it related to this ground. See Iowa R. App. P. 6.24(1), (4).

As to the second ground raised for summary judgment, we conclude there are genuine issues of material fact regarding the validity and legality of the sheriff's sale, and we reverse the dismissal of any claims related to that ground.

A sheriff's sale may be set aside by a court in equity "where the price obtained at sheriff's sale is so grossly inadequate as to amount to unfairness or oppression." *Buter v. Slattery*, 212 Iowa 677, 680, 237 N.W. 232, 233 (1931); accord *Francis v. Todd & Kraft Co.*, 219 Iowa 672, 676, 259 N.W. 249, 252 (1935); see, e.g., *Willis v. Farmers State Bank*, 261 Iowa 689, 695, 155 N.W.2d

407, 411 (1968) (finding price was not grossly inadequate); *Federal Land Bank of Omaha v. Reinhardt*, 428 N.W.2d 672, 673 (Iowa Ct. App. 1988) (finding a sale price of \$500 for property valued at \$50,000 was grossly inadequate).

Iowa Code section 626.93 provides some guidance as to what is to be considered “grossly inadequate.”

Personal property . . . must be appraised before sale by two disinterested householders of the neighborhood, one of whom shall be chosen by the execution debtor and the other by the plaintiff . . . who shall forthwith return to said officer a *just appraisal*, under oath, of said property if they can agree; if they cannot, they shall choose another disinterested householder, and with the householder’s assistance shall complete such appraisal, and the *property shall not, upon the first offer, be sold for less than two-thirds of said valuation*; but if offered at the same place and hour of the day as advertised upon three successive days, and no bid is received equal to two-thirds of the appraised value thereof, then it *may be sold for one-half of said valuation*.

(Emphasis added.) Statutorily, a sale price of less than two-thirds (or after three days, less than one-half) of a “just appraisal” is inadequate.

The price obtained at the sheriff’s sale for the Indian Creek Corporation stock was \$110,000, where the appraisal of the stock was \$29,500. The defendants contend that since the sale price exceeded the appraised price we must affirm. For the reasons that follow, we disagree.

There is no dispute that the stock constituted personal property and was required to be appraised as provided by section 626.93. There is also no dispute that the appraisers agreed to discount the value of the stock by a potential capital gains tax liability in the amount of \$586,250, which would occur only upon the sale of the stock’s underlying assets, the farmland. The difficulty with applying

the discount for capital gains liability is that there was no evidence that such a sale of the underlying assets of the corporation was contemplated.

Appraisals required by section 626.93 must be a “just appraisalment.” Although our supreme court has not been called upon to interpret this language, it has determined in a different context that the term “just” carried the ordinary dictionary definition of “reasonable, correct, true, due.” *Wisdom v. Bd. of Supervisors*, 236 Iowa 669, 677, 19 N.W.2d 602, 606 (1945); see *Iowa Land Title Ass’n v. Iowa Fin. Auth.*, 771 N.W.2d 399, 402 (Iowa 2009) (“Absent a statutory definition or an established meaning in the law, we give words their ordinary and common meaning by considering the context in which the word was used.”).

There can be little dispute that a just appraisalment must *begin* with the fair market value of the assets. See *Willis*, 261 Iowa at 695, 155 N.W.2d at 411 (noting estimates of value of land). This sum must then be discounted by all reasonably identifiable and viable encumbrances, *id.*, as well as the risks involved in buying property at a sheriff’s sale. See *generally* 30 Am. Jur. 2d *Executions* § 462, at 389 (2005) (noting test of inadequacy of price is “the price received in comparison with what the property would bring at a fair sheriff’s sale, taking into account liens, encumbrances, and other identifiable risks”). As one Missouri court noted in *Yokely v. Wian*, 877 S.W.2d 179, 182-83 (Mo. Ct. App. 1994), there are many risk factors that may cause further discount in the property value where real estate is involved:

Potential risks that could be considered may include, *inter alia*: unknown or recorded encumbrances, liens, or assessments; unidentified title or possessory claims of others; uncertain quality or condition of any existing structures; latent environment hazards; the potential for legal disputes and legal fees potentially required to

obtain or remain in possession or to defend the sheriff's deed; and potential expense required to effectuate needed repairs, cleaning or removal of non-conforming edifices on the property.

It also noted that the price may be affected by the inability to view the property to determine the conditions and soundness of buildings. *Id.*

In the context of a marital property division, our supreme court has determined that it is unreasonable to discount the value of an asset for tax considerations where there is no evidence that the sale of the asset is pending or even contemplated. *In re Marriage of Friedman*, 466 N.W.2d 689, 691 (Iowa 1991). We find the principles espoused in *Friedman* equally applicable in determining if there has been a just or reasonable appraisal of the stock for purposes section 626.93.

Although the facts in this case are unique in that the stock sold for well in excess of its appraised value, the appraisers inappropriately discounted the value of the stock where the only sale contemplated was the sale of the stock itself. There is no evidence that sale of the corporation's underlying principal asset, the land, was contemplated or imminent. Further whether a buyer at the sheriff's sale would choose to liquidate the corporate assets is mere speculation. We conclude it was improper to deduct for a potential capital gains liability that was speculative and neither pending nor imminent.

We acknowledge, as did the court in *Yokely*, that the property sold at a sheriff's sale will not typically sell near its fair market value due to these risks. However, this sale lacked a just appraisal. Inasmuch as we find that there was no just appraisal, we cannot ascertain whether the price paid at the

sheriff's sale was "grossly inadequate." We reverse and remand for further proceedings consistent with this opinion.

Daniels also argues that the appraisers Sims and Henrichsen did not meet the statutory requirement that they be "disinterested householders of the neighborhood," see Iowa Code § 626.93, and thus there was not substantial compliance with the statute. After consideration of this argument, we find that it is without merit for the reasons adequately stated by the trial court.

Similarly, for the reasons recited by the trial court, we also find no merit in Daniels's contentions challenging the district court's grant of summary judgment to attorney defendants Nervig and the Brick law firm. The trial court's ruling upon these two grounds is affirmed.

IV. Conclusion.

For the reasons recited by the trial court, we agree that Daniels's claims alleging the invalidity of the \$95,000 assignment are meritless. We affirm the district court's grant of summary judgment as it related to this ground. We also affirm the trial court's ruling on the motion to amend and the motion for summary judgment filed by the attorney defendants Nervig and the Brick law firm. As to the second ground raised for summary judgment, we conclude there are genuine issues of material fact, and we reverse the dismissal of claims related to the validity and legality of the sheriff's sale based upon whether there has been a just appraisal of the stock.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.