FILED
JUN 25 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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LINDA J. ELSNER, f/k/a LINDA J. BOUSSELOT,

Plaintiff-Appellee,

vs.

LEON BOUSSELOT, ALBERT E. BOUSSELOT, LEONA E. BOUSSELOT, CARGILL LEASING CORPORATION, FEDERAL LAND BANK, FARMERS HOME ADMINISTRATION and EASTERN IOWA PRODUCTION CREDIT ASSOCIATION,

Defendants,

and

EASTERN IOWA PRODUCTION CREDIT ASSOCIATION,

Defendant-Appellant.

Filed June 25, 1986

6-44
85-1111

Appeal from the Iowa District Court for Clinton County (No. CL 8784), J. Hobart Darbyshire, Judge.

Appellant appeals a ruling of the district court that its prior lien on certain real property is subject to the terms of plaintiff's dissolution decree. **REVERSED AND REMANDED.**

Marilyn S. Scheer of Davis, Hockenberg, Wine, Brown & Koehn, Des Moines, for defendant-appellant.

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William Norton and Donald Clark of Norton & Freese, Lowden, for plaintiff-appellee.

Considered by Oxberger, C.J., Donielson, and Hayden, JJ.

OXBERGER, C.J. 77

Appellant (PCA) appeals a ruling of the district court that its prior lien on certain real property is subject to the terms of plaintiff's dissolution decree. We reverse and remand.

Plaintiff (Elsner) seeks to collect proceeds of a farming operation due her under provisions of her divorce decree. Under that decree, Elsner holds interest in an 80-acre parcel as a co-tenant with her ex-husband. The ex-husband retained a 120-acre parcel and farming equipment under the decree.

After numerous, unsuccessful attempts to collect proceeds of the operation, Elsner chose to sever the co-tenancy in the 80 acres and receive her share of the proceeds. The trial court ruled for Elsner and PCA urges reversal. The 80-acre and the 120-acre parcel each are heavily burdened as securitites for various loans from PCA. PCA asserts that its prior liens on the properties should not be subordinate to Elsner's and that the trial court made its ruling based on insufficient evidence as to the amount and extent of liens on the 80-acre parcel. PCA expects that sale of both the parcels will produce proceeds insufficient to satisfy its prior liens.

The district court in its ruling employed an old English equitable doctrine known as marshalling of the assets or the two funds rule. That doctrine is explained in Pallon v. The Agricultural Bank, Freeman's Ch. Rep. 419-424 where the chancellor wrote:

> The general principal is, that where one party has a lien on, or interest in, two estates, and another has a lien on or interest in one of those estates only, the latter is entitled to throw the former upon that estate which he cannot reach, if that be necessary to adjust the rights of both parties, and can be done without prejudice to him who holds the double security.

(emphasis added).

The emphasized portion in the citation above is common in adjudications

involving the two-funds doctrine. Priority of the paramount creditor's lien in time should have no mitigating effect on application of the rule. Priority of the paramount creditor's equity should be immaterial to the case. Ohio Savings Bank & Trust Co. v. Strausz, 14 Ohio Cir. Ct., N.S. 51 (1910). There the court wrote "... where one creditor has recourse to two funds, although his equity be prior, he must exhaust the fund upon which he has the exclusive right, so as not to prejudice the equity or right which is held by the other party." Id. at 54. This principle was echoed by the Illinois Supreme Court in Boone v. Clark, 129 Ill. 466, 21 N.E. 50 (1889), where we find: "The holder of the security on two funds, it is said, is compelled to shape his own remedy so as to preserve, if possible, the equity of the one whose lien extends to but one fund."

The trial court put some emphasis on the fact that PCA continued to advance loans against the properties after the entry of the divorce decree. PCA responds that the record is insufficient to address the question of what loans were delivered prior to the decree and what loans followed the divorce in time. PCA also maintains that it has no objection to sale of the 80-acre parcel held in co-tenancy so long as its security is not held subordinate to Elsner's lien for her share of the farming operation. We find that, however equitable the two funds doctrine be, the trial court should have determined the nature and extent of the liens on the two properties before applying the doctrine. The court, on remand, should determine the amount of indebtedness incurred by Leon Bousselot after the dissolution decree and whether that debt can be rightly held to attach to property Leon held in cotenancy with Elsner. PCA should seek to satisfy its liens out of the 120-acre parcel first before going against the 80-acre parcel.

REVERSED AND REMANDED.