FILED
AUG 27 1992
CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

No. 2-255 / 91-1780

**GEORGE G. SARRIS and VICKIE S. SARRIS,**

Appellees,

**vs.**

**MARK A. DeVAULT, JACK DeVAULT and RITA DeVAULT,**

Appellants.

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Appeal from the Iowa District Court for Pottawattamie County, Glen M. McGee, Judge.

DeVaults appeal a district court decree quieting title to a disputed portion of an alley to Sarrises. **AFFIRMED.**

Richard D. Crotty, Council Bluffs, for appellants.

Jack W. Peters of Stuart, Tinley, Peters, Thorn, French & Hughes, Council Bluffs, for appellees.

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

**HAYDEN, J.**

This case concerns the ownership rights of a portion of a north-south alley generally dividing the property owned by Sarrises from the property owned by DeVaults.

In April 1980 Sarrises purchased their property, which was located west of the alley. Sarrises received a court officer's deed which included the west half of the north-south alley. Previously, Smiths purchased the lot to the east of the alley by real estate contract. The legal description of Smiths' property did not include the east half of the alley. Apparently, in 1974 Smiths obtained a quitclaim deed from the City of Council Bluffs for the east half of the vacated alley. The deed, however, was never recorded. Later, Smiths' interest in the lot was forfeited. In August 1989 Mark DeVault acquired the east lot by virtue of a real estate contract. Again, the legal description of the property did not include the east half of the alley.

In 1991 Sarrises investigated the title to the east half of the alley. A title search was conducted; officials with the offices of the county auditor, county recorder, and county treasurer were also contacted. Sarrises also contacted an attorney who confirmed the city was the owner of the east half of the alley. As a result, Sarrises made an application with the city to purchase the east half of the alley. In March 1991 Sarrises purchased the east half of the alley from the city and received a deed. Sarrises recorded the deed.

In June 1991 DeVaults obtained a quitclaim deed from Smiths for their interest in the east half of the alley. In July 1991 Sarrises filed a petition to quiet title, to recover possession, and for a temporary and permanent injunction concerning the east half of the alley. DeVaults filed a counterclaim claiming ownership of the alley.

Following a bench trial, the district court quieted title of the east half of the alley to Sarrises. The court concluded Sarrises were bona fide purchasers of the alley for value and without notice of any adverse claim pursuant to Iowa Code section 558.41. DeVaults appealed.

A quiet title action stands in equity; therefore, our review is de novo. Bartels v. Hennessey Bros., 164 N.W.2d 87, 91 (Iowa 1969) (citation omitted); Iowa R. App. P. 4. We give weight to fact findings of the district court, especially when considering the credibility of the witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

DeVaults contend the district court erred in finding Sarrises were bona fide purchasers for value without notice. Appellants claim Sarrises had notice the east half of the alley belonged to owner of the east lot. They argue Sarrises should have contacted Smiths, who were the prior owners of the land, to determine if Smiths had exercised their right in the land before Sarrises proceeded to obtain a deed from the city. Appellants argue Sarrises' failure to contact the prior owners did not demonstrate good faith.

The Iowa Supreme Court has defined a bona fide purchaser as "one who takes a conveyance of real estate in good faith from the holder of legal title, paying a valuable consideration for it without notice of outstanding equities." Raub v. General Income Sponsors, Inc., 176 N.W.2d 216, 219 (Iowa 1970) (citations omitted). The general rule is one who asserts he is a bona fide purchaser must prove his good faith. Id. at 220. Good faith is lacking if the purchaser had notice of claims hostile to his grantor's title. Id. Notice must be either constructive or actual. Constructive notice is given by compliance with the recording statutes. Gilmore v. New Beck Levee Dist., Harrison County, 212 N.W.2d 477, 479 (Iowa 1973). Iowa Code section 558.41 provides: "No instrument affecting real estate is of any validity against subsequent purchasers for valuable consideration, without notice, unless filed in the office of the recorder of the county in which the same lies, as hereinafter provided." Iowa Code § 558.41 (1991). Appellants admit the deed from the city to Smiths was not recorded. In the absence of express notice, the appellees had three sources to which they could refer for information of existing adverse claims:

> (1) the records in the county recorder's office where basic rights involved are recorded; (2) other public records, to discover existence of rights not always disclosed in the county recorder's office, i.e., judgments, liens and taxes; and (3) an inspection of the land itself, to determine by observation any rights which may exist apart from our recording system by virtue of occupancy, use of otherwise.

National Properties Corp. v. Polk County, 351 N.W.2d 509, 511 (Iowa 1984) (quoting Bartels, 164 N.W.2d at 94). The record shows Sarrises researched each source of information. After a thorough investigation, the appellees found no information to put them on notice of the appellants claim. Therefore, we find constructive notice was not given to the appellees.

Actual notice depends on whether circumstances exist which would lead a reasonably prudent person to investigate the possibility of outstanding rights hostile to his own. Raub, 176 N.W.2d at 220. The general rule

> in determining whether a purchaser had notice of outstanding equities or unrecorded interests so as to preclude him from being entitled to protection as a bona fide purchaser, that if he has knowledge of circumstances which, in the exercise of common reason and prudence, ought to put a man upon particular inquiry, he will be charged with notice of every fact which such suggested investigation would in all probability have disclosed had it been properly pursued. The purchaser may not act in contravention to the dictates of reasonable prudence, or refuse to inquire when the propriety of the inquiry is naturally suggested by circumstances known to him.

55 Am. Jur. 2d Vendor and Purchaser § 656 (1975) (citations omitted); see also Raub, 176 N.W.2d at 220. If such facts exist and if such investigation is not made, then one who claims to be a bona fide purchaser is nevertheless charged with all knowledge which that investigation would probably have disclosed. Raub, 176 N.W.2d at 219 (citations omitted).

We have reviewed the record and find no evidence to put the appellees on notice to make further inquiry.

We affirm the district court.

The costs of this appeal are taxed to DeVaults.

**AFFIRMED.**