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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

H. MICHAEL CUTLER,	)	Filed November 26, 1986
Plaintiff-Appellant/Cross-Appellee,	)	68
vs.	)	6-322 / 85-1462
HELEN V. SHOENING,	)	
Defendant-Appellee/Cross-Appellant.	)	

Appeal from the Iowa District Court for Pottawattamie County (No. 56136) - Keith E. Burgett, Judge.

Plaintiff appeals the trial court's judgment for defendant in an action seeking cancellation of a forfeiture of a contract for the sale of real estate. **AFFIRMED.**

Richard D. Crotty, Council Bluffs, for plaintiff-appellant.

Dean T. Jennings, Council Bluffs, of McGinn & McGinn, for defendant-appellee.

Considered by Snell, P.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

Plaintiff appeals the trial court's judgment for defendant in an action seeking cancellation of a forfeiture of a contract for the sale of real estate. We affirm.

Plaintiff purchased two properties from defendant by installment contracts providing, inter alia, that payments were to be made on the first of the month at the seller's residence or as directed by her. Several notices of forfeiture were served between October, 1981 and January, 1985 based on lateness in payments, but those defaults were cured. Another notice of forfeiture was served on February 6, 1985. In April, 1985 defendant seller attempted to cash checks covering payments due for February, March, and April. The check for April was honored, but the other two were dishonored due to insufficient funds. Defendant subsequently went through with forfeiture of both contracts and plaintiff brought suit seeking cancellation of the forfeiture.

Plaintiff testified that he gave the checks due on February 1, and March 1, to an employee for timely delivery but, upon his discovery that nobody appeared to be home, the employee redelivered them on later dates. Defendant testified that the door to which they were delivered was infrequently used. The employee also testified concerning the deliveries. The trial court entered judgment for defendant finding, inter alia, that plaintiff's testimony was not credible.

This case was tried in equity and therefore, the scope of review in this matter is de novo. The fact that forfeitures are not favored does not mean that they will never be enforced. Miller v. American Wonderlands, Inc. 275 N.W.2d 399, 402 (Iowa 1979).

Plaintiff first contends that the evidence was insufficient to support a finding that an appropriate basis for the forfeiture existed. Plaintiff points to alleged confusion in the delivery of the payment checks to defendant's house.

In equity cases, especially when considering the credibility of the witnesses, the court gives weight to the fact findings of the trial court but is not bound by them. Iowa R. App. P. (14(f)(7). The trial court found plaintiff's testimony not credible as to matters relating to the the late delivery of the checks and delinquent payments on the contracts. We find nothing in the record that suggests that the court's credibility assessment was faulty. Furthermore, even if we were to find plaintiff's testimony credible, the trial court still had sufficient grounds for its finding that a forfeiture existed. Iowa Code section 656.4 specifies that if a vendee performs the breached terms within thirty days of notice of forfeiture, then the right to forfeiture is terminated. Plaintiff received notice of forfeiture on February 6, 1985. Plaintiff did not then cure the default within thirty days. When no effort is made to cure a default prior to the expiration of thirty days as provided in chapter 656, forfeiture is appropriate. Schumacher v. McDonald, 320 N.W.2d 640, 641 (Iowa Ct. App. 1982). We agree with the trial court that an appropriate basis for forfeiture existed.

The plaintiff also contends that the court erred in failing to find that defendant waived her right to forfeit the real estate contracts. The rule in Iowa is:

> . . . [W]here a vendee claims waiver of forfeiture by implication from the conduct of acts of a vendor, the vendee must establish by a preponderance of the evidence unequivocal conduct on the part of the vendor, clearly establishing the vendor regards the contract as in full force and effect subsequent to the forfeiture. The question of waiver is ordinarily a question of fact to be determined from all of the facts and circumstances shown by the record evidence in the case.

Miller v. American Wonderlands, Inc., 275 N.W.2d at 402 (quoting Wemer v. Long, 185 N.W.2d 243, 247 (Iowa 1971)). There is nothing in the record of this case evidencing that the defendant waived forfeiture by implication. Defendant had previously sought legal assistance to make plaintiff comply with the contract

terms. When the February, 1985 payment was not made, defendant again contacted an attorney to serve the notice of forfeiture. When defendant attempted to cash the three checks she finally received, only one was covered by sufficient funds. She then had the notices of forfeiture recorded and returned the money she had received from the one good check. This money received and returned was not enough to cure the default. The facts and circumstances shown by the record evidence in this case do not establish that the vendor waived forfeiture.

Defendant filed a notice of cross-appeal expressing an intent to raise as an issue the trial court's failure to make an award of attorney fees. No such issue was raised or discussed in appellee's brief. Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue. Iowa R. App. P. 14(a)(3). We find the issue waived.

For the foregoing reasons, we affirm the trial court.

AFFIRMED.