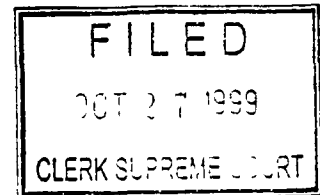


IN THE COURT OF APPEALS OF IOWA

No. 9-397 / 98-0858
Filed October 27, 1999



**JOY J. PITSTICK, Trustee of the Joy J. Pitstick Trust,
and DAVID A. SERGEANT, Trustee for the
Ver Dell Cox Bankruptcy,**
Plaintiffs-Appellees/Cross-Appellants,

vs.

PRITCHARD BROTHERS, INC.,
Defendant-Appellant,

CITIZENS STATE NATIONAL BANK,
Defendant/Cross-Appellant,

**DENNIS MAILE d/b/a DYMLE CONSTRUCTION, and
as Claimed Assignee from ROTH & ASSOCIATES, INC.;
RITEWAY ROOFING & HOME IMPROVEMENT CO.;
WINONA STUDIO OF LIGHTING, INC.; GRANT'S
MECHANICAL, INC.; and MONTE WESTRUM d/b/a
WESTRUM CONSTRUCTION,**
Defendant/Cross-Appellee.

Appeal from the Iowa District Court for Buena Vista County, Frank B. Nelson,
Judge.

Defendant Pritchard Brothers, Inc., appeals from the district court order denying a ~~motion~~ to set aside a default judgment against it in plaintiffs' action to quiet title to certain real estate. Plaintiffs and defendant Citizen's State National Bank cross-appeal from the court's judgment recognizing a lien in favor of defendant Dennis Maile, d/b/a Dymle Construction. **AFFIRMED.**

David J. Kaniuk of Hastings & Gartin, L.L.P., Ames, for appellant and cross-appellee.

Dan Connell of Murray & Murray, P.L.C., Storm Lake, Frank A. Baron of Baron, Sar, Goodwin, Gill & Lohr, Sioux City, Laura L. Pattermann of Sheldon M. Gallner Law Offices, P.C., Council Bluffs, and Alvin J. Ford, Sioux City, for appellees and cross-appellants.

Heard by Huitink, P.J., and Mahan and Hecht, JJ.

MAHAN, J.

Defendant Pritchard Brothers, Inc., appeals from the district court order denying a motion to set aside a default judgment against it in plaintiffs' action to quiet title to certain real estate. Plaintiffs and defendant Citizen's State National Bank cross-appeal from the court's judgment recognizing a lien in favor of defendant Dennis Maile, d/b/a Dymle Construction. We affirm.

In October of 1982, Maile, Pritchard, and other lienors foreclosed their mechanic's liens and obtained judgment liens on property then owned by John Pitstick in case 21255. In 1986, Pitstick transferred a one-half undivided interest in the property, subject to the judgment liens, to Ver Dell Cox. Citizen's State National Bank had previously obtained a judgment against Cox which became a lien on Cox's interest in the property which was junior to the earlier judgment liens. Cox filed bankruptcy in 1986 which automatically stayed actions involving the property.

In September of 1992, lienors Roth & Associates, Riteway Roofing and Home Improvement Company, Winona Studio of Lighting, Inc., Grants Mechanical, Inc., and Monte Westrum d/b/a Westrum Construction allegedly assigned their interests to Maile. ~~Written~~ documentation of these assignments were filed in the record of the original ~~foreclosure~~ action, case 21255. Maile attempted to timely levy on the property in October of 1992, however, the sheriff's sale was stayed and the levy was quashed due to the Cox bankruptcy proceedings.

The sheriff's sale was continued in September of 1993. In December of 1995, an action to quiet title to the property was filed by the trustees of the Joy J. Pitstick Trust and the Ver Dell Cox bankruptcy estate. Relief from the automatic stay was granted, and the quiet title action went to trial in August of 1997. On August 28, 1997, a default judgment was entered against all of the defendants except for Maile and Citizen's Bank. On April 2, 1998, a judgment and decree on the action to quiet title was entered. The district court had determined the assignments to Maile were valid and enforceable, and Citizen's Bank's lien was inferior to Maile's lien and the assigned liens. Subsequently, the plaintiffs filed a 179(b) motion to reconsider requesting the district court amend its findings of fact to find the only lien proven was Maile's lien and not any of the assigned liens. The 179(b) motion was denied.

Plaintiffs and Citizen's Bank cross-appeal.

I. STANDARD OF REVIEW. Our review of an action to quiet title is de novo. *Larman v. State*, 552 N.W.2d 158, 161 (Iowa 1996). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. MOTION TO SET ASIDE DEFAULT JUDGMENT. This issue was ~~withdrawn and dismissed~~ at the time of oral argument. Therefore, the only remaining issue is the validity of the assignments to Dennis Maile, d/b/a Dymle Construction, which was raised on cross-appeal.

III. EVIDENCE OF VALIDITY OF ASSIGNMENTS. Plaintiffs and Citizen's Bank contend the district court improperly relied upon inadmissible evidence as the basis of finding Maile had valid and enforceable assignments from five other lienors. We disagree.

At trial, Maile offered the written documents to prove the existence of the assignments. The district court sustained an objection to these documents because they could not be authenticated by Maile. We do not interpret the ruling excluding these exhibits because of Maile's hearsay testimony concerning the events surrounding the execution of these assignments as excluding other evidence of the assignments or an adjudication of their validity. The assignments were part of the court file in case number 21255, of which the district court took judicial notice. Also admitted into evidence were three checks written by Maile to three of the alleged assignees. These checks were cashed and bear the notation "country kitchen lien" or "lien" on the memo line. Finally, we note the plaintiffs and Citizen's Bank stipulated at trial the assignment from Grant's Mechanical was valid. We conclude the district court's findings were not based upon inadmissible evidence. Accordingly, we affirm.

AFFIRMED.