

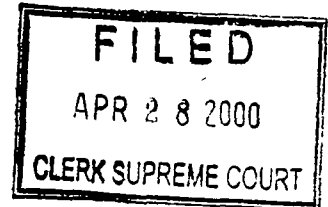
IN THE COURT OF APPEALS OF IOWA

No. 0-183 / 99-1191
Filed April 28, 2000

**JERRY BUCKMASTER and JUDY BUCKMASTER,
Plaintiffs-Appellants,**

vs.

**ROGER OLSEN and DORIS RULE,
Defendants-Appellants.**



Appeal from the Iowa District Court for Pottawattamie County, Timothy J. O'Grady, Judge.

The plaintiffs appeal a district court ruling in favor of the defendants on their petition for declaratory judgment. **AFFIRMED.**

Robert J. Laubenthal and Daniel L. Fretheim of Smith, Peterson Law Firm, Council Bluffs, for appellant.

G. William Smits of Gross & Welch, P.C., Council Bluffs, for appellees.

Heard by Streit, P.J., and Zimmer and Hecht, JJ.

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ZIMMER, J.

Plaintiffs Jerry and Judy Buckmaster appeal a district court ruling in favor of **defendants** on plaintiffs' petition for declaratory judgment and injunction concerning the forfeiture of a real estate contract. We affirm.

I. Background Facts and Proceedings. In April 1984, Jerry Buckmaster contracted to purchase a residence in Council Bluffs, Iowa from Elna Olsen. The purchase price was \$50,000. The contract called for an initial payment of \$8,000 and an additional \$7,000 prior to June 30, 1984, the date of possession. An additional payment of \$325 was due on July 5, 1984. This left a balance of \$34,675 which was to be paid in monthly installments of \$325 commencing August 5, 1984, until paid in full. Buckmaster agreed to pay interest of ten percent per annum upon unpaid balances. The contract allowed for additional payments without penalty and contained a routine provision providing for forfeiture of the sale in the event the buyer failed to perform.

Buckmaster and Olsen each received an amortization schedule showing all of the monthly payments to be made under the contract. The amortization schedule confirmed an unpaid balance of \$34,675, the amount of each payment going to principal and interest, and the principal balance. Buckmaster assumed possession of the house on or about July 1, 1984. He made monthly payments under the contract through March 1998. At that time, Buckmaster contended for the first time that he had paid more down payment money to Elna Olsen than the \$15,000 called for in the contract. Buckmaster claimed his financial obligations under the contract had been paid in full.

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Elna died sometime in 1998. Her son, Roger, and her daughter, Doris, (collectively, "Olsens") took over the contract. After reviewing various bank records and amortization ledgers kept by Elna, Roger and Doris claimed the Buckmasters still owed \$22,126.51. In November 1998, they filed a notice of forfeiture, alleging monthly payments from April through November 1998 had not been paid. Buckmasters responded with a petition for declaratory judgment and injunction, seeking a declaration that the contract was paid in full. The district court granted the Buckmasters a temporary stay of forfeiture pending trial. The Olsens counterclaimed, asking the court to declare the Buckmasters in default for failure to make payments on and after March 5, 1998, find the principal amount owing on March 5, 1998, was \$22,126.51, and set a date by which delinquent payments would be made or the contract forfeited.

At trial, Buckmaster claimed he paid \$20,000 or \$23,000 to Elna as a down payment in 1984 rather than the \$15,000 required by the contract. The trial court disagreed and ruled in favor of Roger and Doris. It concluded the Buckmasters still owed \$22,267.95 on the contract and they were in default for failing to make payments from April 1998 to April 1999. The court ordered the Buckmasters to cure the default within 30 days or the contract would be forfeited.

The Buckmasters appeal, asserting the court erred in: (1) concluding they did not pay the additional down payments; (2) ruling they were in default; (3) failing to order Roger and Doris to execute a warranty deed to the property; and (4) admitting Elna's bank statements into evidence. During oral argument, the Buckmasters withdrew their objection to admission of Elna's bank statements.

II. Scope of Review. Both parties agree this case was tried in equity. According to our review is de novo. See Iowa R. App. P. 4; *Donald Newby Farms, Inc. v. Stoll*, 543 N.W.2d 289, 291 (Iowa App. 1995) (stating review of trial court's judgment in mortgage foreclosure action reviewed de novo). In equity cases, especially when considering the credibility of witnesses, we give weight to the fact findings of the trial court, but are not bound by them. *Donald Newby Farms*, 543 N.W.2d at 291.

III. Discussion. Our de novo review of the record leads us to the same conclusion reached by the trial court. The weight of the evidence simply does not support Buckmaster's contention he paid more down payment than called for by the contract. Buckmaster claims he paid at least \$20,000 and perhaps as much as \$23,000 to Elna as a down payment, rather than the \$15,000 required by the contract. The contract itself recites that \$8,000 was paid when the contract was executed. The defendants do not dispute Buckmaster paid \$8,000 at the time the contract was executed. Buckmaster purchased a bank money order in the amount of \$8,000 on April 25, 1984, payable to Elna. A deposit slip for Elna's checking account shows she made an \$8,000 deposit on April 25, 1984. Clearly Buckmaster made a payment of \$8,000 on that date.

A central issue in this case is the proper interpretation of Exhibit 1, a copy of a receipt dated "May-June 1984" in which Elna acknowledged receipt of \$9,000 from Buckmaster. Exhibit 2 is a copy of a receipt dated "June 28, 1984" in which Elna acknowledged receipt of \$3,000 from Buckmaster. Buckmaster testified he made another payment of \$3,000 to Elna in the summer of 1984 for which he can find no documentation. He also claims he made an \$8,000

payment in cash to her during the month of May using 100-dollar bills. Buckmaster testified that after the payment of \$8,000 by money order on April 25, 1984, all further payments to her were made in cash.

Elna's bank records show she made deposits of \$8,000 on April 25, 1984, \$1,000 on June 6, 1984, and \$2,800 on June 28, 1984. There were no other deposits matching the payments Buckmaster claims to have made. No other documents corroborate payments made by Buckmaster under the contract. As noted, the defendants do not dispute Buckmaster paid \$8,000 at the time the contract was executed. They contend Exhibit 1 represented the \$8,000 paid on April 25, 1984, and the \$1,000 Elna deposited in her checking account on June 6, 1984. They further contend a receipt for \$3,000 dated June 28, 1984, matched the \$2,800 deposit Elna made to her checking account that same date. The defendants contend Buckmaster made a \$12,000 down payment along with payments of \$325.00 per month between July 5, 1984, and February 5, 1989.¹ After carefully considering the evidence, the trial court concluded the receipt labeled Exhibit 1 covered the original \$8,000 paid with the contract along with the \$1,000 payment made June 6, 1984. We agree with the trial court's conclusion.

We further find the original amortization schedule prepared to accompany the contract provides powerful evidence Buckmaster did not make more than the additional down payment called for by the contract. The schedule was based on a beginning balance of \$34,675 and an interest rate of 10%. Elna Olsen faithfully noted all of Buckmaster's monthly payments on the schedule. The records

¹ Although defendants contend Buckmaster actually made a smaller down payment than called for by the contract, they have not appealed the trial court's conclusion that the full down payment of \$15,000 was made.

maintained by Elna Olsen strongly suggest the original down payment and nothing more was made. Elna's 1984 tax return also supports the conclusion of the trial court. The return shows Elna reported interest income of \$1,442 from the real estate contract. This amount is consistent with the amount of interest she would receive according to the original amortization schedule utilized by the parties. If Buckmaster had made an additional down payment of \$8,000, Elna's interest income from the contract would have been significantly less than she reported on her tax return. We agree with the trial court's conclusion the balance owed under the contract was \$34,675 when Buckmaster began making his monthly payments in 1984.

Buckmaster's contention he paid \$23,000 down on his contract is undermined by the fact that he did not approach Roger Olsen until 1998 with his claim that his financial obligation under the contract had been met. If Buckmaster had actually paid \$8,000 more than was called for in the contract or shown on the amortization schedule, his contract would have been paid off more than two years before he approached Olsen. We conclude the principal balance owing under the contract after Buckmaster's final payment was \$21,128.51.²

The Buckmasters' remaining arguments are rendered moot by our conclusions. We affirm the trial court's order of May 3, 1999, in all respects.

AFFIRMED.

² The parties agree the trial court's judgment entry contains a minor clerical error. The principal balance owing after Buckmaster's final payment under the original amortization schedule is \$21,128.51, not \$22,267.95.