

IN THE COURT OF APPEALS OF IOWA

No. 9-323 / 88-1158

FILED

OCT 05 1989

CLERK SUPREME COURT

AETNA LIFE INSURANCE COMPANY, A Connecticut Corporation,

Plaintiff-Appellee,

vs.

EUGENE A. WUCHTER and LOUISE WUCHTER, Husband and Wife,

Defendants-Appellants,

ERIC J. WUCHTER, THORP CREDIT, INC., RICHARD J. FOUST, GLENN
E. WITTENBURG, RYAN CO-OPERATIVE, and SMOTHERS EQUIPMENT,
INC.,

Defendants.

Appeal from the Iowa District Court for Delaware County
(2098), Alan L. Pearson, Judge.

The Wuchters appeal from a district court order denying
their application to determine the fair market value of the
homestead portion of Wuchters' property being foreclosed.

AFFIRMED.

Thomas P. Reznicek of Legal Services Corporation of
Iowa, Iowa City, for defendants-appellants.

James M. Adams of Hirsch, Adams, Hoth, Krekel, Putnam &
Cahill, Burlington, for plaintiff-appellee.

Considered by Oxberger, C.J., and Sackett and Habhab,
JJ.

OXBERGER, C.J.

The Wuchters appeal from a district court order denying their application to determine the fair market value of the homestead portion of Wuchters' property being foreclosed. Our scope of review in such equity matters is de novo. Iowa R. App. P. 4. We affirm.

In August 1986 Aetna filed suit to collect a note executed by Eugene Wuchter and to foreclose the mortgage on the Wuchters' farm securing the note. A judgment and foreclosure decree was entered on September 2, 1987. The district court ruled, inter alia, that the sheriff's sale be held without designation of homestead since the residence of the Wuchters, amounting to a parcel of land less than one acre, was not subject to the foreclosure. The Wuchters appealed from this decree on October 1, 1987. The appeal was dismissed for failure to prosecute pursuant to Iowa R. App. P. 19(a) on January 19, 1988.

Prior to the sheriff's sale, the Wuchters again asserted a homestead interest in approximately 39 acres of the land to be sold. On December 8, 1987, the district court authorized the sale of the property in separate tracts, with one 40-acre parcel, but if the judgment remained unsatisfied, a sale en masse was approved. The mortgaged property was sold en masse on February 16, 1988.

In March 1988 the Wuchters filed this action seeking an opportunity to redeem their homestead, consisting of the one acre unmortgaged residence and 39 acres of mortgaged

property sold at the sheriff's sale, pursuant to Iowa Code section 654.16. The district court rejected the Wuchters' application. The court found the prior dismissal of the Wuchters' appeal preclusive as to this issue.

On appeal the Wuchters contend that the district court erred by determining their homestead could not be simultaneously composed of land partially encumbered by a mortgage and partially unencumbered. Further, Wuchters argue that their homestead protection rights, provided by Iowa code section 654.16, have not been previously raised on appeal.

Iowa recognizes the doctrine of the law of the case. This doctrine provides that "when an issue is appealed and decided, it cannot again be appealed by the parties." H & S Ltd. v. Andreola, 363 N.W.2d 592, 593-94 (Iowa App. 1984). Furthermore, when an appeal is dismissed for want of prosecution, a second appeal is barred. Id. at 594. This bar affects only those questions actually presented in the earlier appeal. Id. at 595.

In State v. Grosvenor, 402 N.W.2d 402, 405 (Iowa 1987), the Iowa Supreme Court addressed the doctrine of the law of the case and stated:

The principle is not applicable, however, if the facts before the court upon the second trial are materially different from those appearing upon the first Likewise, the doctrine does not preclude consideration of issues that could have been, but were not, raised in the first appeal.

The facts presented in Wuchters' second trial are the same as those presented in the first. We believe the doctrine of the law of the case to be applicable and therefore bars the consideration of the homestead issue in the present appeal.

The district court declined to receive evidence on the issue of value based on the conclusion that the dismissal of the earlier appeal was subject to issue preclusion. There are four prerequisites for issue preclusion:

1. The issue must be identical;
2. The issue must have been raised and litigated in the prior action;
3. The issue must have been material and relevant to the disposition of the prior action; and
4. The determination of the issue in the prior action must have been necessary and essential.

Jorge Const. Co. v. Weigel Excavating & Grading Co., 343 N.W.2d 439, 444 (Iowa 1984).

The homestead issue was raised and litigated in the prior action. The Wuchters, in their answer to Aetna's petition, asserted an affirmative defense claiming "a homestead exemption, free and clear of claims of . . . [Aetna], of a total of 40 acres, which tract encompasses the[ir] residence." Further, the Wuchters requested this same homestead exemption in their offer of proof to the court. Additionally, the district court's judgment provided that the sheriff's sale would be conducted without designation of homestead because the Wuchters' residence was not subject to the foreclosure. The establishment of

the Wuchters' homestead was material and relevant in the prior action and was necessary and essential to the resulting judgment.

In rejecting the Wuchters' application to value the homestead the district court stated:

It is the fact of this case that the mortgage subject to these foreclosure proceedings did not include the home and farmstead buildings of the defendants. From this, we conclude as a matter of law that the mortgage property sold as a result of the judgment and foreclosure could not be a homestead. The homestead must include at a minimum the home of the parties asserting the homestead status. Because the property sold at Sheriff's sale in this proceeding was not a homestead, the defendants are not entitled to any valuation proceeding.

We agree with the district court. The first appeal involved the establishment of homestead, its dismissal precluded a second appeal raising the homestead issue. Accordingly, we affirm the judgment of the district court.

AFFIRMED.