

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

THE FEDERAL LAND BANK OF)
OMAHA, A Corporation,)

Plaintiff-Appellee,)

vs.)

JOHN F. TIFFANY, and DONNA)
TIFFANY, husband and wife;)
BRENTON STATE BANK, Jefferson)
formerly, JEFFERSON STATE)
BANK, FORMERS COOPERATIVE CO.,)
FARNHAMVILLE, IOWA; GEORGE)
MOBLEY: KEWA EXPLORATION,)
INC., GREENE COUNTY, IOWA,)

Defendants-Appellants.)

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87-1150

Appeal from the Iowa District Court for Greene County
(16735), Paul Hellwege, Judge.

Defendants-appellants appeal from a district court
ruling rejecting their motion to set aside the sheriff's
sale of real estate. **AFFIRMED.**

Scott H. Hughes, Council Bluffs, for
defendants-appellants.

Richard R. Schenck, Harlan, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

PER CURIAM

Defendants appeal from a district court ruling rejecting their motion to set aside the sheriff's sale of real estate. We affirm.

I.

In 1980 Tiffanys executed a note and real estate mortgage to the Federal Land Bank of Omaha (FLB) covering real estate that did not include Tiffanys' dwelling. There are no buildings on the mortgaged property.

Tiffanys defaulted and foreclosure was commenced on May 6, 1985. On May 7, 1985, Tiffanys leased the mortgaged premises to George Mobley for two years with a March 1, 1987, expiration date. A receiver was appointed for the property on June 25, 1985, and the Mobley lease was terminated effective March 1, 1987.

On May 6, 1986, Mobleys assigned the lease to "Tiffany Farms d/b/a Brian Tiffany." John Tiffany was a partner in "Tiffany Farms." During the 1986 crop season, John Tiffany did some work on the mortgaged farm.

In February 1987 judgment of foreclosure was entered against Tiffanys. Special execution was issued and the property was sold at sheriff's sale on March 24, 1987. Tiffanys were not personally served with notice of the sale but they were present at the time of the sale.

Tiffanys brought this action seeking to set aside the sheriff's sale. Tiffanys contend that they were in actual

occupation and possession of part of the land and, based on this "occupation," contend they were entitled to personal notice of the sale.

The district court refused to set aside the sale. The court found Tiffanys were not in actual occupation of the land based on the lease. See Bennett & Frantz v. Burton, 44 Iowa 550 (1876). The bank also points out the statute requiring notice only says that the sale "may be set aside." Iowa Code § 626.79. Tiffanys have appealed this ruling. We affirm.

II.

Tiffanys assert the district court erred by failing to find they were in actual occupation and possession of the real estate subject to sheriff's sale, thus requiring the plaintiffs to provide at least twenty days' notice of the sheriff's sale to them, as required by Iowa Code section 626.78. This section states:

If the debtor is in actual occupation and possession of any part of the land levied on, the officer having the execution shall, at least twenty days previous to such sale, serve him with written notice, stating that the execution is levied on said land, and mentioning the time and place of sale, which notice shall be served in the manner provided by rule number 56(a) of the rules of civil procedure.

Section 626.79 adds "Sales made without the notice required in section 626.78 may be set aside on motion made within 90 days thereafter." [Emphasis added.] The statute employs the language "may be set aside." This language vests the

lower court with power to review all of the facts, and exercise its sound discretion in confirming or setting aside the sale. See Jensen v. Woodbury, 16 Iowa 515 (1864). We will reverse the trial court's decision only if an abuse of discretion can be demonstrated by the challenging party. South Ottumwa Sav. Bank v. Sedore, 394 N.W.2d 349, 352 (Iowa 1986).

Iowa law erects a strong presumption in favor of an execution sale. In the absence of fraud, collusion, or other substantial and justifiable prejudice, mere irregularities in the procedure leading to or following an execution sale will not support a debtor's motion to set aside the sale. Id. at 351.

In this case, there is no doubt Tiffanys knew the real estate was going to be sold. In fact, Tiffanys attended the actual sale on the Greene County courthouse steps. However, they argue the twenty-day prior notice would have given them time to "prepare" for the sale. Without condoning the sheriff's actions in not serving the notice or determining whether Tiffanys were in actual occupation and possession of the real estate in question, we find Tiffanys have not shown the additional twenty days would have caused a material change in the outcome of the sale. Tiffanys were obviously parties to the foreclosure proceeding. They were well aware the property was going to be sold, and if, in fact, they were going to be able to put

together the funds necessary to redeem the property during this twenty-day period, there is nothing now preventing them from redeeming during the one-year redemption period. Thus, we determine the trial court could have reasonably concluded the facts here did not support Tiffanys' motion to set aside the sale.

AFFIRMED.