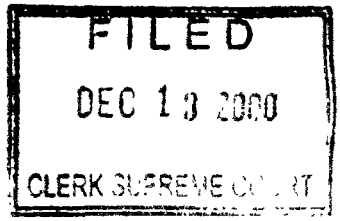
IN THE COURT OF APPEALS OF IOWA

No. 0-638 / 00-160
Filed December 13, 2000



CHRISTOPHER JAMES KRISE,
Plaintiff-Appellant,

vs.

RITA COTA and FREDA LILLIBRIDGE,
Defendants-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, G.C. Abel, Judge.

The plaintiff appeals a district court order granting the defendants' motion to dismiss the plaintiff's quiet title action. **AFFIRMED.**

Christopher Krise, Neola, pro se, for appellant.

Eric C. Hansen of Law Offices of Sheldon M. Gallner, P.C., Council Bluffs, for appellee.

Considered by Huitink, P.J., and Mahan and Vaitheswaran, JJ.

HUITINK, P.J.

I. Background Facts and Proceedings.

This is an action to quiet title to the following real property: "Lots 15 and 16, Block 19, City of Neola, Pottawattamie County, Iowa." Plaintiff Krise, who appears pro se in this matter, claims to be the owner of this land and asserts that the record title of the defendants, which is based upon a tax sale, is void. The only allegation Krise made in support of this claim is

> [T]he Defendants failed to exercise due diligence to assure that the Internal Revenue Service followed the Congressionally mandated procedures in Title 26 in order to perfect a lawful seizure, levy, and sale of Plaintiff's real property, and because the Certificate of Sale issued to the Defendants is invalid and defective upon its face.

The defendants filed a motion to dismiss. The district court granted this motion, finding the plaintiff, not the defendants, had the duty to supervise the tax sale. Krise appeals.

II. Standard of Review.

A motion to dismiss is properly granted only if a plaintiff's petition on its face shows no right of recovery under any state of facts. *Tate v. Derifield,* 510 N.W.2d 885, 887 (Iowa 1994). Allegations in the petition are viewed in a light most favorable to the plaintiff. *Schaffer v. Frank Moyer Constr., Inc.*, 563 N.W.2d 605, 607 (Iowa 1997). Facts not alleged cannot be relied on to aid a motion to dismiss nor may evidence be taken to support it. *Id.* While a motion to dismiss admits the truth of all well-pleaded, issuable and relevant facts, it does not admit mere conclusions of fact or law not supported by allegations of ultimate facts. *Bailey v. Iowa Beef Processors, Inc.*, 213 N.W.2d 642, 647 (Iowa 1973). This

court cannot sustain a motion to dismiss on grounds not asserted in the district court. *Haupt v. Miller,* 514 N.W.2d 905, 907 (Iowa 1994).

III. The Merits.

In sustaining defendants' motion the district court relied on *South Ottumwa Savings Bank v. Sedore,* 394 N.W.2d 349, 352 (Iowa 1986) to find that if the debtor knew or should have known of an irregularity, he must raise it prior to sale or the passing of the redemption period. Although we view the allegations in the petition in their most favorable light, we must ignore those facts not properly-pled by the plaintiff. *See Winneshiek Mut. Ins. Assoc. v. Roach,* 257 Iowa 354, 365, 132 N.W.2d 436, 443 (1965). Because Krise fails to allege not only whether he knew of an irregularity prior to sale, but also whether there was an irregularity in the sale at all, we must find that he failed to state a claim upon which relief can be granted. *See Kubik v. Burk*, 540 N.W.2d 60, 63 (Iowa App. 1995) ("We do not utilize a deferential standard when persons choose to represent themselves. . . . If lay persons choose to proceed pro se, they do so at their own risk.").

The decision of the district court is affirmed.

AFFIRMED.