IN THE COURT OF APPEALS OF IOWA

No. 1-506 / 91-120

FILED
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CLERK SUPREME COURT

367

DONALD P. LACINA and **MARILYN J. LACINA,**
Plaintiffs-Appellees,

vs.

JEFFREY L. MAXWELL,
Defendant-Appellant,

and

BRENDA SUE MAXWELL n/k/a BRENDA SUE STRIEF,
Defendant,

and

LYLE ZIMMERMAN CONSTRUCTION CO., INC., LYLE ZIMMERMAN, Individually,
Defendants-Appellants,

and

STEVE PRYBIL, TOM PRYBIL and **WEST LIBERTY STATE BANK,**
Defendants.

Appeal from the Iowa District Court for Washington County, James P. Rielly, Judge.

Lyle Zimmerman Construction Company appeals a district court order approving the Lacinas' conduct and accounting as receivers and closing the receivership. **AFFIRMED.**

William L. Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City, for appellant Maxwell.

Michael R. Mullins of Morrison, Lloyd, McConnell & Mullins, Washington, for appellants Zimmerman.

Bruce Walker of Phelan, Tucker, Boyle, Mullen, Bright & Walker, Iowa City, for appellee.

Heard by Oxberger, C.J., and Schlegel and Habhab, JJ.

SCHLEGEL, J.

In February 1981 Donald and Marilyn Lacina, as sellers, executed a real estate contract with Lyle Zimmerman Construction and Jeffrey and Brenda Maxwell as buyers. The buyers failed to make payments in January 1987. In April 1987 the Lacinas filed a petition for foreclosure and appointment of receiver. The Lacinas were subsequently named receivers.

In December 1988 a decree of foreclosure and judgment for around $468,000 were entered. Two months later the subject property was sold at sheriff's sale to Donald Lacina for $265,000. In March 1990 the Lacinas filed an application for approval of receivership accounting, approval of negotiation of receivership asset, and to close receivership. Maxwell and Zimmerman Construction filed responses and resistances concerning the Lacinas' conduct as receivers for the property.

Defendants claimed the Lacinas failed to adequately account for certain payments made, or not made, to the receiver and that much of their conduct was without court approval. Defendants also argued the deficiency judgment should be erased due to the Lacinas' breach of their fiduciary duties as receivers. Following the district court order approving the accounting, as modified, Jeffrey Maxwell and Lyle Zimmerman Construction both filed an appeal. Jeffrey Maxwell has subsequently dismissed his appeal.

Our review in this equity case is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, but are not bound by them. Iowa R. App. P. 14 (f)(7). The issue in this case is whether the conduct of the receivers was properly modified and approved. We determine the trial court acted properly in its modification, approval, and subsequent closing of the receivership.

Zimmerman argues the Lacinas engaged in self-dealing, breach of fiduciary duties, bad faith, and committed "other acts and omissions without prior approval of the court." Zimmerman concedes there is no Iowa case law prescribing sanctions for receiver misconduct. It argues, however, the receivers should be ordered to turn over to it all proceeds from the receivership, and the receivers should be ordered to cease all attempts to collect the deficiency judgment arising out of this case.

On the issue of alleged misconduct the trial court noted "[t]hat the Receiver's conduct at times lacked court approval prior to the conduct taken but that the Receivers tried to communicate their wishes to obtain necessary approval or seek proper guidance from their attorney, Peter C. Riley." The court modified the accounting to charge the Lacinas, as tenants of the property, the full amount of the previous rent; in addition, the court applied an interest rate of thirteen percent instead of twelve percent. The court approved the receiver's conduct as modified and

applied the receivership's modified net income to the deficiency judgment.

Evidence shows Donald Lacina hired Peter Riley to handle the legal aspects of the receivership. Prior to taking action, Lacina sought Riley's advice and requested he obtain the necessary court approval. When Lacina received no reply from Riley in each instance, Lacina believed his conduct was approved. Lacina did fail to obtain advance court approval for most of his actions.

The trial court acted properly in holding Lacina personally liable for the unauthorized acts by deducting amounts (with interest) that should have been in the receivership. A receiver is to be held personally liable for improper conduct, not unjustly punished for errors. Miller v. Everest, 212 N.W.2d 522, 525 (Iowa 1973). In addition, the court should construe the accounting against the receiver. 76 Am. Jur. 2d Trusts § 508 (1975). The trial court did exactly that in its modification of Lacina's receivership accounting. The court increased the interest rate on borrowed money, increased the rental value for 1988 from $33,000 to $35,000, increased the rental value for 1989 from $1 to $35,000, credited a condemnation check as an asset of the receivership, and denied Lacina a receivership fee. We determine the trial court applied the proper legal standard. Since Lacina had an outstanding deficiency judgment against Zimmerman, the court properly credited the receivership assets and Lacina's personal liability against the deficiency judgment.

Zimmerman's request to punish Lacina for his conduct is denied. The proper procedure is to hold the receiver personally liable for the loss of the receivership assets. See Miller, 212 N.W.2d at 525. We affirm the trial court's modification, acceptance, and closing of the receivership.

AFFIRMED.