FILED
JUN 28 1983
CLERK SUPREME COURT



IN THE COURT OF APPEALS OF IOWA

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| **DONALD WEMHOFF and VINCENT WEMHOFF,** | ) | |
| Plaintiffs-Appellants, | ) | Filed June 28, 1983 |
| vs. | ) | |
| **MELVIN L. RICHARDSON and PHYLLIS RICHARDSON,** | ) | 3-101<br>2-68977 |
| Defendants-Appellees. | ) | |

Appeal from Hamilton District Court - M. D. Seiser, Judge.

Plaintiffs appeal from the portion of the trial court judgment awarding defendants compensation under chapter 560 of the Iowa Code for improvements made on property held to be owned by plaintiffs. AFFIRMED.

Carroll K. Wood and Glen W. Kumpala of the Wood Law Office, Webster City, Iowa, for plaintiffs-appellants.

Keith Van Doren of Bottorff & Van Doren, Webster City, Iowa, for defendants-appellees.

Considered en banc.

**PER CURIAM**

Plaintiffs appeal from the portion of the trial court judgment awarding defendants compensation under chapter 560 of the Iowa Code for improvements made on property held to be owned by plaintiffs. On appeal, plaintiffs assert: (1) that defendants did not establish that their improvements to the property were made in good faith, one of the prerequisites to a recovery of the value of improvements under section 560.1; (2) scope of review in this case is **de novo**, because it is an equity action; and (3) defendants' evidence of the value of the improvements was inadequate to support the trial court's conclusion that they were worth $21,722.

In response, defendants contend, inter alia, that their counterclaim under section 560.3 of the Iowa Code is required to be tried, by the terms of the statute, "as in ordinary actions . . . ," and that review of the trial court's factual determinations is therefore to determine whether they are supported by substantial evidence, rather than **de novo**.

Our scope of review of this proceeding is **de novo**, as this was filed and tried as an equity matter in the district court and, accordingly, we treat it as such on appeal.

The factual background of this appeal is as follows. Defendants obtained a house and seventeen acres of land near Webster City by inheritance and by purchase from other heirs. They immediately entered into a transaction with plaintiffs, who are father and son, and are related to the defendants. The plaintiffs paid defendants $14,000 and received a warranty deed in exchange. For some years the property was vacant, but when it was rented defendants collected the rent and forwarded it to plaintiffs. In 1976 defendants moved onto the property to live there. They built a large combination shop and garage building, and made improvements to the house. They paid no rent. The plaintiffs evidently were aware of these improvements, and did not object to them, but did ask at

some point that rent be paid. Defendants then paid $180 per month for about two years. Defendants never paid property taxes or insured the property.

Defendants' attempt to reach an agreement with plaintiffs to buy the property was unsuccessful, so in late 1980 they filed a suit asking that title to the property be quieted in their name, and for a judgment for the value of the improvements. This suit was based on a theory that the deed to plaintiffs was in fact an equitable mortgage. The suit was dismissed, but about a year later plaintiffs filed their own suit to quiet title, and defendants counterclaimed for the value of the improvements under chapter 560 of the code (occupant with color of title who makes good faith improvements and is thereafter judged not to be owner entitled to value of improvements).

The case was placed on the equity docket, given an equity number, and was tried to the court. The court held that the property belonged to plaintiffs, rejecting defendants' equitable mortgage theory. The court also determined that the improvements made on the property by defendants were worth $21,722; offset against this amount was the rent owed by defendants. This reduced the amount of the judgment in favor of defendants to $13,082. The court held that plaintiffs could have possession of the property upon payment of that amount for the improvements, or, alternatively, could elect to deed one acre of the land, including the house, the garage, and reasonable yard area, to the defendants.

I.

Plaintiffs-appellants, hereinafter referred to as Wemhoffs, contend the trial court erred in finding that the defendants-appellees, hereinafter referred to as Richardsons, made valuable improvements in good faith under chapter 560 of the Code of Iowa. We do not agree.

Chapter 560, Code of Iowa, is designed to compensate a party who in good faith expended money in making valuable improvements when he believes himself to be the owner or have "color of title." Betz v. Sioux City, 30 N.W.2d 778, 781

(Iowa 1948). The Iowa Court has given a liberal construction to this code chapter, to do justice between the parties. Meyers v. Canutt, 46 N.W.2d 72, 77 (Iowa 1951).

An occupying claimant under Chapter 560 must (1) have color of title, and (2) have good faith conduct. Id. at 76; Resnick v. City of Fort Madison, 145 N.W.2d 11, 13 (Iowa 1966). The term "good faith" refers to the state of mind, whether so from ignorance or lack of information, and is not given a narrow or technical meaning. Meyers, 46 N.W.2d at 76; Moser v. Thorp Sales Corp., 312 N.W.2d 881, 894 (Iowa 1981). The making of improvements on land at the occupying claimant's own expense is evidence of good faith. Meyers, 46 N.W.2d at 77. Payment of real estate taxes, although evidence of good faith, is not controlling. Moser, 312 N.W.2d at 894; Simpson v. Bostwick, 80 N.W.2d 339, 344 (Iowa 1957).

"Color of title" is defined in section 560.2, Code of Iowa. Applicable to the instant case is § 560.2(2) which provides:

> (2) Occupancy for five years. A person who has by himself or together with those under whom he claims, occupied the premises for a period of five years continuously.

Also applicable to the instant case is § 560.2(3) which provides:

> (3) Occupancy and Improvements. A person whose occupancy of the premises has been for a shorter period than five years, if during such occupancy the occupant or those under whom he claims have, with the knowledge or consent of the real owner, express or implied, made any valuable improvements thereon.

If an occupying claimant can show good faith and color of title, the claimant is authorized to recover reasonable repairs made on the property both before and during the occupancy. Simpson, 80 N.W.2d at 344. The measure of damages is the cost of improvements to the occupying claimant plus reasonable compensation to the claimant for his time in making the improvements. Meyers v. Canutt, 46 N.W.2d 72, 77 (Iowa 1951).

In the instant case the Richardsons made good faith improvements under color of title as defined in the Code totaling $21,722.00. Defendants paid for

these improvements themselves, evidence of good faith. Moser, 312 N.W.2d at 894; Simpson, 80 N.W.2d at 344. They did not make payment of real estate taxes but this alone is not controlling. Moser, 312 N.W.2d at 894.

"Color of title" is clearly shown under Iowa Code § 560.2(2) since the Richardsons occupied the premises for a period of five years continuously or more prior to October 12, 1981, when this suit was filed. They had possession of the premises from December, 1975.

"Color of title" is also established under Iowa Code § 560.2(3) where even if occupancy is for less than five years, "color" exists if the improvements were made with the knowledge or consent of the record titleholder. Melvin Richardson undisputedly made valuable improvements commencing in 1975 and each plaintiff testified that he knew or was aware of the improvements made by Melvin Richardson. Yet they did nothing to stop such improvements and Melvin continued until 1980 to make improvements on the property. These facts show at least implied consent by Wemhoffs and the statutory knowledge requirement.

II.

Wemhoffs also contend Richardsons' evidence was based on conjecture and guess, and was inadequate to support the claim as to the nature and value of improvements made. We disagree.

The record shows that extensive improvements were made to the house and shop by the Richardsons. Some 51 exhibits were offered and accepted by the trial court to support the value of some of the materials used. Melvin Richardson testified on where the materials came from, the cost to him, and the value of his labor in making them. See Exhibits (Defendants') 5-48. Checks and statements were presented showing a total of $8,610.91 expended by defendants on materials alone. Melvin Richardson is a self-employed carpenter by trade, thus qualifying as an expert witness on the value of improvements made.

Defendants claimed and gave evidence that the value of the improvements was $21,722.00. Defendant Richardson also testified that the value of the real estate, exclusive of the improvements, was $25,000.00.

We hold there was sufficient evidence to support the trial court's finding the cost of improvements made by the Richardsons to be in the sum of $21,722.00.

III.

Wemhoffs' last contention on appeal is the trial court erred in its application of chapter 560 rule for the value and worth of Richardsons' improvements. We do not agree.

Section 560.3 (1981 Iowa Code) states in pertinent part as follows:

> The petition of the occupant must set forth the grounds upon which he seeks relief, and state as accurately as practicable the value of the real estate, exclusive of the improvements made thereon by the claimant . . . , and the value of such improvements. . . . the value of the real estate and of such improvements separately ascertained.

Wemhoffs' allege that the trial court erred in allowing credit for Richardsons' labor in making the improvements because it was not performed by Melvin Richardson himself, and that the estimate of $8.00 an hour for his labor was erroneously admitted as evidence over their objection that no proper foundation existed for such estimate.

The court in Meyers v. Canutt, 46 N.W.2d 72, 77 (Iowa 1951), held that an occupying claimant should be allowed reasonable compensation for his own time in making the improvements as well as reimbursement for his expenditures. The "we" referred to in defendants' testimony was for his family efforts, including Mrs. Richardson and his son, Kirk. Given liberal interpretation of chapter 560 by this court in Meyers, it is reasonable to conclude that the Richardsons are entitled to the fruits of their joint efforts and even for hired labor.

Melvin Richardson's testimony about the valuation of his labor services and the real estate in question is acceptable because he had at least color of title and

as such would be considered an owner for evidentiary purposes. An owner is competent to testify as to the value of his real estate. Holcomb v. Hoffschneider, 297 N.W.2d 210, 213 (Iowa 1980). The same is true of personal property. Beneficial Finance v. Black Hawk County, 212 N.W.2d 454, 459 (Iowa 1973). Wages are personal property. Moreover, Iowa is committed to the liberal rule on admission of opinion evidence and its admission is in the sound discretion of the court. Doe v. Ray, 251 N.W.2d 496, 501 (Iowa 1977).

The trial court did not err in allowing the valuation testimony, and that it substantially complied with the rule of chapter 560 (1981 Code of Iowa) and section 560.3 thereof.

AFFIRMED.