IN THE COURT OF APPEALS OF IOWA

FILED
OCT 2 0 1988
CLERK SUPREME COURT

CONNELL & DUFFY, P.C.,	)	
Plaintiff-Appellant,	)	
vs.	)	
WILLIAM VENINGA,	)	
Defendant.	)	15
VALLEY STATE BANK,	)	
Plaintiff-Appellee,	)	8-230 87-1261
vs.	)	
WILLIAM VENINGA, et al.,	)	
Defendants,	)	
JIM SCHWIESOW, Sheriff of Sioux County,	)	
Intervenor.	)	

Appeal from the Iowa District Court for Sioux County (748), Edwin L. Mitchell, Judge.

Plaintiff appeals the district court order determining intervenors were entitled to rents from real estate of defendant. **REVERSED AND REMANDED.**

John P. Duffy of Connell & Duffy, Storm Lake, for plaintiff-appellant.

Thomas L. Flynn of Wimer, Hudson, Flynn, & Neugent, Des Moines; and Bradley K. DeJong of Klay, Veldhuizen & DeJong, Orange City, for plaintiff-appellee.

Considered by Hayden, P.J., and Sackett and Habhab, JJ.

16

SACKETT, J.

We address the claim of plaintiff-appellant Connell & Duffy, P.C., that the trial court incorrectly held a judgment obtained by plaintiff-appellee Valley State Bank against William Veninga on a promissory note established a lien in the bank's favor against rents from William's undivided one-half interest in a farm to the exclusion of Connell & Duffy, P.C., who had held a judgment against William and had levied on the rents. We reverse and remand.

Valley Bank sued William Veninga and his brother Louis Veninga seeking judgment on a note and foreclosure of a deed of trust to farmland owned by the brothers as tenants in common. The deed allegedly was given to the bank by both brothers as security for the note. After suit was commenced the trial court at the banks request appointed a receiver to take charge of the farmland.

On June 6, 1986, the bank's suit was tried. The trial court entered a decree and found Louis had signed the deed of trust but William had not signed the deed of trust. The trial court found the brothers jointly and severally liable on the note and entered judgment on the note against them jointly and severally. Foreclosure against Louis' undivided one-half interest in the real estate was ordered

The court went on to find the bank had a judgment lien against William's undivided one-half interest in the real

estate. The court also said in the event Louis' and William's interest in the farm did not sell for an amount sufficient to satisfy the judgment, the rents and profits which may accrue from the land should be applied to the judgment to the extent necessary to satisfy it. The receiver continued to serve.

On October 9, 1986, Connell & Duffy obtained a confession of judgment from William. The clerk issued an execution on Connell & Duffy's judgment and Connell & Duffy directed the sheriff to levy on one-half of the rents in the receiver's possession. It is the position of Connell & Duffy half of the rents accrued from land belonging to William. They contend these rents are available to satisfy their judgment against William.

The bank, which had never levied on the rents, intervened claiming the June 6, 1986 decree gave them a claim to the rents from William's undivided one-half interest superior to the claim of Connell & Duffy. The district court accepted the bank's argument and determined the bank had a claim to the rents superior to the levy of Connell & Duffy. Connell & Duffy appeal contending their claim is superior to the bank's.

When it was determined William had not signed the deed of trust, the trial court could only enter a judgment against him on the note. The judgment when entered against William became a lien against his undivided one-half

interest in the real estate in accordance with Iowa Code section 624.23(1) (1987) which provides:

> Judgments in the appellate or district courts of this state, or in the circuit or district court of the United States within the state, are liens upon the real estate owned by the defendant at the time of such rendition, and also upon all the defendant may subsequently acquire, for the period of ten years from the date of the judgment.

The judgment became a lien on interests William has in real estate. See Stiles v. Bailey, 205 Iowa 1385, 1388, 219 N.W. 537, 540 (1928); Berg v. Shade, 203 Iowa 1352, 1354, 214 N.W. 513, 514 (1927). The judgment in the law action on the note only gave the bank the right to levy on William's land to the exclusion of subsequent adverse interests. Stiles, 205 Iowa at 1388, 219 N.W. at 540.

The lien against the real estate being conferred by statute became effective only in the manner, at the time and upon the conditions and limitations imposed by the statute. Lamb v. Shays, 14 Iowa 567, 569 (1863). Being a strict legal right it must stand or fall on the statute which creates it. Beatty v. Cook, 192 Iowa 542, 544, 185 N.W. 360, 361 (1921). It was not a specific lien upon any real estate but was a general lien upon all subject to prior liens or equities. Burns v. Burns, 233 Iowa 1092, 1096, 11 N.W.2d 461, 463, 150 A.L.R. 306, 310 (1943). It was not a property right but merely gave the judgment creditor a lien on the land enforceable by levy and sale. Hunter v. Citizens' Savings & Trust Co., 157 Iowa 168, 171, 138 N.W. 475, 478 (1912).

There is no statutory provision similar to section 624.23(1) creating a lien on a judgment debtor's interest in personal property. There was no basis for the June 6, 1986 decree to create a lien on the rents because there was no contract between the bank and William giving the bank any right to the rents and profits. The bank did not levy on the rents. In the absence of a statute, a personal judgment at law is never a lien upon the defendant's property without levy of execution and when such a statute exists the lien so provided for is measured and controlled by its terms. Payette v. Marshall County, 180 Iowa 660, 665, 163 N.W. 592, 594 (1917). Executions are not liens on chattels until an actual levy is made. Reeves & Co. v. Sebern, 16 Iowa 234, 237 (1864).

The bank had no right to the rents until they had levied. See Wright v. Dudgeon, 138 Iowa 510, 514 (1908). The judgment lien against the land did not give the bank any rights to the rents. Because a judgment lien on land constitutes no property right in the land itself, a judgment debtor prior to levy has a right to harvest crops and when harvested they become his or her personal property and do not pass by execution sale. See Independent School Dist. of West Point v. Werner, 43 Iowa 643, 644 (1876).

We do not construe the June 6, 1986 decree to do that which it had no basis to do. We reverse and remand.

REVERSED AND REMANDED.

Habhab, J., concurs; Hayden, P.J., dissents.

HAYDEN, J. (dissenting)

I respectfully dissent.

I would affirm the trial court for the following reasons.

William Veninga did not appeal the decree nor did he seek an enlargement order pursuant to Iowa Rule of Civil Procedure 179(b). As this court has stated, a party must move under applicable rule to enlarge findings and conclusions of the trial court in order to preserve error on a claim the court failed to make findings and conclusions sufficiently specific. Starling v. State, 328 N.W.2d 338 (Iowa App. 1982). Further, a party that does not make such a motion is precluded from complaining of the absence of specific findings. Franke v. Junko, 366 N.W.2d 536 (Iowa 1985). Because William Veninga failed to make a 179(b) motion following the court's judgment or to appeal from the judgment, Connell & Duffy, P.C., standing in the shoes of William Veninga, cannot now raise the issue of the absence of sufficient particularity in the court's decree. Franke, 366 N.W.2d at 538. Accordingly, the decree is res judicata as against William Veninga (and in this case, Connell & Duffy) and any interest of William Veninga in the rents and profits from the subject property belongs to Valley State Bank.

In as much as William Veninga had no interest in the rents and profits, Connell & Duffy P.C. has no interest VanMaaren v. VanMaaren, 360 N.W.2d 758 (Iowa 1985).