

IN THE COURT OF APPEALS OF IOWA

No. 2-528 / 92-111

FILED

MAY 25 1993

CLERK SUPREME COURT

TOM H. WEGMAN and MARCIA WEGMAN,
Appellees,

vs.

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MARY LEA, a/k/a MARY LEA LEITCH, a/k/a MARY LEA LEITCH
JOHNSTON,
Defendant,

and

CHARLES JOHNSTON, a/k/a CHARLES FRAZER JOHNSTON,
Appellant,

and

LEWIS INVESTMENTS, INC., A Missouri Corporation; et al.,
Defendants.

Appeal from the Iowa District Court for Johnson County,
Lynne E. Brady, Judge.

The defendant, Charles Johnston, appeals from the
district court's decree quieting title to vacant
residential property in the plaintiffs. **AFFIRMED.**

Stephen N. Greenleaf of Lynch, Greenleaf & Michael,
Iowa City, for appellant.

Douglas S. Russell of Stein & Russell, Iowa City, for
appellees.

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

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OXBERGER, C.J.

This case involves a title dispute regarding vacant residential property in Iowa City. In the 1970's, Charles Johnston and Mary Lea Leitch, who were married at the time, purchased residential property, including the lot which is the subject matter of this controversy. A warranty deed establishing their ownership was recorded in 1979. In the same year a quitclaim deed was recorded showing Johnston conveying his rights to the vacant lot to Leitch.

On May 13, 1980, a Nevada divorce decree was entered dissolving the Johnston marriage. The decree awarded the lot to Leitch. Johnston obtained the decree by testifying falsely he was a full-time Nevada resident. He subsequently challenged the decree. In 1982 Johnston claimed he and Leitch signed a written contract which gave him an ownership interest in Lot 6. The contract provided Leitch was to convey one-half interest in the residential property to Johnston on his demand and gave Johnston an option to buy out Mary Lea's interest. The contract became the subject of a declaratory judgment action and the contract was declared valid in the action on April 4, 1990.

In 1986, Johnston contacted an attorney regarding the validity of the marriage and the possibility of filing a dissolution action in Iowa. In November 1986, a dissolution action was commenced in Iowa but the action was not correctly indexed on the lis pendens list. The

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Nevada decree was ultimately determined to be valid and the dissolution action in Iowa was treated as an application to modify the Nevada decree.

In 1986, the Wegmans became interested in the vacant lot for the building of a new home. Prior to the closing, Johnston contacted the Wegmans indicating the property was involved in litigation. He claims he told the Wegmans about the dissolution action and his contract claim. However, the Wegmans claim he only told them about the dissolution action. The Wegmans asked Leitch about the dissolution action. Leitch stated the vacant lot was not involved in the action. Although the Wegmans never informed their attorney about the pending action, the attorney apparently made an independent check on Leitch's marital status and determined she was single. The legal search did not turn up the pending dissolution action because it was not properly shown on the lis pendens index. The Wegmans subsequently purchased the lot for \$30,000 on April 25, 1987.

In 1989, Johnston filed an action seeking specific performance of his alleged contract with Leitch. The action resulted in a finding that the contract was valid and Johnston obtained an order directing Leitch to specifically perform the contract.

The Wegmans were unable to build on the lot because Johnston was continuing to assert a claim on the property.

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In April 1990, the Wegmans commenced a quiet title action claiming that title should be quieted in them because they were bona fide purchasers of the property from the holder of the legal title (Leitch). Johnston disputed the Wegmans' claims, asserting they had notice of his marital and contract claims to the property.

The case proceeded to trial. On October 31, 1991, the district court entered a ruling and decree quieting title to the property in the Wegmans. The court determined they were bona fide purchasers and had taken the property in good faith from the holder of the legal title. The court also determined they had priority in title.

On November 12, 1991, Johnston filed a motion to enlarge pursuant to Iowa Rule of Civil Procedure 179(b). On December 19, 1991, the district court denied the motion.

Johnston appeals.

Scope of Review

This quiet title was brought in equity; thus, our scope of review is de novo. Iowa R. App. P. 4. Although we are not bound by the findings of the district court, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7).

Discussion

Wegman's claim their title is superior to Johnston and all other defendants. Generally, in a quiet title action,

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a plaintiff must recover on the strength of his or her title and not on the weaknesses of a defendant's title. Wilcox v. Pinney, 98 N.W.2d 720, 722 (Iowa 1959).

Wegman's claim their title is superior because they were bona fide purchasers in good faith for value. A bona fide purchaser is one who takes a conveyance of real estate in good faith from the holder of legal title and pays valuable consideration for it, without notice of outstanding equities. Raub v. General Income Sponsors of Iowa, Inc., 176 N.W.2d 216, 219 (Iowa 1970). Wegman's received conveyance of title from the holder of legal title, Mary Lea. They also paid valuable consideration for the property. Thus, the key questions before us involve the Wegman's actual or constructive notice of Johnston's pending claim and their subsequent duty to investigate the potential claim.

Johnston argues he informed Wegmans of the pending dissolution action prior to the date the Wegmans took title to the property. He claims this is sufficient notice to charge the Wegman's with knowledge that title to the property was not clear. We disagree. We recognize a good faith purchaser for value must show he or she made the purchase before receiving notice, actual or constructive, of the claim of another. See Moser v. Thorp Sales Corp, 312 N.W.2d 881, 886 (Iowa 1981). However, "[a] person who has sufficient information to lead him or her to a fact is

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deemed conversant with it, and a person who has notice of facts which would cause a reasonably prudent person to inquire as to further facts is chargeable with notice of the further facts discoverable by proper inquiry." Id. at 887; (quoting Janssen v. North Iowa Conference Pensions Inc. of Methodist Church, 166 N.W.2d 901, 908 (Iowa 1969)) (emphasis supplied).

In this case, the Wegmans acknowledge Johnston contacted them in December 1986, indicating "the property was going to be tied up in litigation for some time," and he was going to attempt to set aside the Nevada divorce. Marcia Wegman then questioned Leitch who assured her the property was not involved in litigation. Tom Wegman learned about the pending dissolution from Marcia but believed his attorney and his attorney's title opinion was sufficient to show clear title.

The Wegmans' attorney, C. Peter Hayek, also investigated the matter, though not at the request of the Wegman's. He asked Leitch's attorney for additional proof of Leitch's marital status. He received an affidavit signed by Leitch and a copy of the Nevada dissolution decree which clearly awarded the property to Leitch. He was also made aware of the 1978 quit claim deed giving the property to Leitch. The Wegmans were made aware of this information.

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Thus, after investigation, the Wegmans knew Johnston had quit claimed the property to Leitch in 1978, knew Johnston and Leitch were divorced in 1980 and the decree awarded the property to Leitch, knew Leitch had signed a sworn statement indicating she was single, knew the title search revealed no clouds and had received assurances from Leitch that the pending litigation did not involve the property. Both Wegmans and Leitch were represented by counsel and neither attorney expressed concern regarding the title. Johnston and his attorney knew about the closing date but made no attempt to communicate with the parties. We find this to be ample evidence of reasonable inquiry on the part of the Wegmans.

Johnston also claims he had a valid contract claim against the property. However, he did not produce the contract until over one year after the Wegmans received title to the property. He never showed the contract to his lawyer throughout the alleged pending dissolution action. In fact, Johnston did not file the alleged contract until February 1989.

Iowa Code section 558.41 (1991) provides:

No instrument affecting real estate is of any validity against subsequent purchasers for a valuable consideration, without notice, unless filed in the office of the recorder of the county in which the same lies, as hereinafter provided.

The Wegmans claim they had no notice of the contract claim. Attorneys for Wegmans, Johnston, and Leitch

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testified they had never heard anything about the contract. The trial court found them credible. In our de novo review, we give weight to the fact findings of the district court, especially when considering the credibility of witnesses. Iowa R. App. P. 14(f)(7). We find the Wegmans did not, in fact, have actual or constructive notice of the alleged contract.

We also note that Johnston filed a mechanics lien in 1983 indicating Leitch was the owner of the property. Although the lien itself may not be good as to the property itself, because of an error in the legal description, it does bear Johnston's signature where he swears Leitch is the owner of the property.

We affirm the decision of the trial court quieting title in Marcia and Thomas Wegman. Costs of this appeal are taxed to Johnston.

AFFIRMED.

Donielson, J., concurs; Hayden, J., concurs specially.

HAYDEN, J. (concurring specially)

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I concur in the result obtained by the majority.