FILED
NOV 2 7 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-460 / 88-1887

Carroll County No. 30024

342

PRODUCTION CREDIT ASSOCIATION OF THE MIDLANDS, as Successor in Interest to Perry Production Credit,

Appellee,

vs.

LEO F. FIEDLER, MARTHA REGINA FIEDLER, a/k/a JEAN FIEDLER,

Appellants,

and

THE CITY OF CARROLL, IOWA,

Defendant.

Appeal from the Iowa District Court for Carroll County, Ronald H. Schechtman, Judge.

Appellants appeal from a district court order granting the the appellee's motion for summary judgment and foreclosing its real estate mortgage against them. **AFFIRMED.**

Robert Kohorst of Kohorst Law Firm, Harlan, and Arthur Neu of Neu, Minnich & Comito, Carroll, for appellants.

Steven H. Krohn of Smith, Peterson, Beckman & Willson, Council Bluffs, for appellee.

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

SCHLEGEL, P.J

213

The Fiedlers appeal a district court order granting Production Credit Association's (PCA's) motion for summary judgment and foreclosing its real estate mortgage against the Fiedlers. We affirm the district court.

Appellant's contend an issue of fact exists as to Martha's statutory right of dower. Appellants argue the district court erred in foreclosing the mortgage since Martha Fiedler had not waived her dower rights in the property under Iowa Code section 633.212. The PCA contends this inchoate dower right was subject to extinguishment through judicial sale and inferior to the PCA's rights to the property.

In 1963, Leo and Martha Fiedler executed an antenuptial agreement. The agreement provided that the parties waive any dower rights they might acquire. The agreement was recorded in 1975.

In November 1980, Leo Fiedler executed a real estate mortgage on certain real estate. Leo was the sole title-holder of the property and the property was not the parties' homestead. In 1985, Leo executed a promissory note to the PCA secured by the mortgage. Martha did not sign either the mortgage or the note. Leo defaulted on this note.

In 1987, the PCA brought suit seeking to foreclose its mortgage on the subject real estate. The PCA moved for

summary judgment. The district court granted the motion and the Fiedlers appeal.

On this appeal from summary judgment our task is to determine only whether a genuine issue of material fact exists and whether the trial court correctly applied the law. Adam v. Mount Pleasant Bank & Trust Co., 355 N.W.2d 868, 872 (Iowa 1984).

Appellants contend the antenuptial agreement did not waive Martha Fiedler's dower right in the property. "As a general rule antenuptial contracts are favored in the law and should be construed liberally to carry out the intention of the parties. The courts will uphold them if they are fair between the parties and fairly, freely and understandingly entered into." Norris v. Norris, 174 N.W.2d 368, 369 (Iowa 1970). In addition, dower is an inchoate right and is generally subject to formal waiver or relinquishment. Bowman v. Bennett, 250 N.W.2d 47, 51 (Iowa 1977). If the antenuptial agreement is fair on its face and not procured by fraud it is as legal and enforceable as other contracts. Estate of Ascherl, 445 N.W.2d 391, (Iowa App. 1989).

The record fails to show any evidence of unfairness in the contract itself or on the part of Mr. Fiedler and his attorney toward Mrs. Fiedler. Even if there was evidence of coercion, there is nothing to show the PCA as a bona fide purchaser had notice of it. There is no genuine issue

of material fact to present to the jury. Once the agreement was valid, the dower rights were waived, and therefore the district court properly granted the motion for summary judgment.

AFFIRMED.