FILED
DEC 28 1977
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CENTRAL NATIONAL BANK AND TRUST COMPANY OF DES MOINES, CONSERVATOR FOR FLORENCE E. WALKER,

Appellee,

vs.

BENFORD WALKER,

Appellant.

Filed December 28, 1977

306
2-59621

Appeal from Polk District Court - A. M. Critelli, Judge.

Defendant appeals decision removing him from farm in forcible entry and detainer action brought by conservator for owner. - Affirmed.

Mary Otteson, of Stewart, Heartney, Brodsky, Thornton & Harvey, Des Moines, for Appellee.

Benford Walker, pro se, Appellant.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

This is an appeal by defendant Benford Walker from an adverse ruling by the trial court in favor of plaintiff, Central National Bank, in an action of forcible entry and detainer of farm land pursuant to chapter 648, The Code. Defendant Benford Walker and his brother Glen have for many years had possession of the 200 acre plus farm owned by their mother, Florence E. Walker. The trial court found and the evidence establishes that Benford and Glen occupied the farm under an oral lease with their mother.

The terms of the lease are vague. Benford Walker testified the terms required they first keep the household up and providing there is any money left after that, they were to pay the taxes and interest on the mortgage and any essential incidental bills. However, the trial court found that the Walkers, as tenants, at least owed their mother the rental obligations of keeping up the household, paying the real estate taxes, together with keeping the mortgage paid.

In November of 1975, after a series of unsuccessful attempts, Charles Walker, another son of Florence and a brother of Benford and Glen, succeeded in having an involuntary conservator appointed to manage Florence's property. The court appointed Central National Bank, plaintiff herein, as conservator over the property of Florence Walker. The trial court found that the appointment came at a crucial time. The conservator's first act was the payment of some $3938.33 in unpaid property taxes in arrears for the years 1972, '73 and '74. Shortly thereafter it purchased the redemption rights from an earlier foreclosure from the Nevada State Bank. This redemption period had already been extended three times and without the actions of the conservator, the farm would in all likelihood have been lost by the Walker's forever. The cost of the sheriff's deed to bring the mortgage current was found to be $21,265.44. At the time of the decree, the 1975 property taxes remained unpaid.

The conservatorship itself had no independent funds from which to make these payments. Therefore, it was necessary for plaintiff to enter into a loan arrangement from its own commercial loan department. At the time of the decree the conservator sought approval in an application pending before the same court for

$30,500 in expenses. The next concern of the conservator was to put the property on a selfpaying basis. In order to accomplish this goal, the conservator entered into and executed a farm lease with Delbert and Mary Ann Murrow, with possession to take effect March 1, 1976.

On February 20, 1976, after notice was sent to all parties, including Benford Walker, a hearing was held seeking court approval of the Murrow lease. Although defendant Benford Walker was present at the hearing, he did not contest the lease, nor did he affirmatively assert the validity of his own oral lease. At the close of the hearing, the court approved the lease and the Walkers did not appeal.

Benford and his brother Glen did not surrender possession of the farm to the Murrows on March 1, 1976. On March 27, plaintiff served Benford with a three day notice to quit as prescribed by § 648.3, The Code, as a condition precedent to a petition for forcible entry and detainer. The petition was then filed on April 2nd. Initially, it alleged that defendant had held over after the termination of his lease. However, after the hearing, the petition was amended to conform to the proof by incorporating the additional ground that defendant had failed to pay rent when due. Section 648.1(5), The Code.

In defending, Benford alleged he had not been served with a notice of termination of a farm tenancy pursuant to § 562.5, The Code. In the alternative, he argued that the thirty day notice required for termination of a tenancy at will was not followed. The trial court rejected both arguments.

There is no dispute that the proper procedure for termination of a farm tenancy was not followed. Sections 562.5-.7, The Code. In fact, it would have been impossible for plaintiff to comply with § 562.7 and its September 1st deadline, since plaintiff's appointment was not until November of 1975. Nevertheless, the trial court rejected defendant's argument of defective notice based on the doctrine of res judicata.

The doctrine of res judicata is well established and it may exist under two situations: (1) as a bar to a second action upon the cause of action, and (2) as a bar to relitigation of particular facts or issues in a different case. Goolsby v. Derby, 189 N.W.2d 909, 914 (Iowa 1971); Third Missionary Baptist Ch. of Davenport v.

Garrett, 158 N.W.2d 771, 774-75 (Iowa 1968). In the instant case, the second form of res judicata was found to exist. This has also been referred to as estoppel by judgment or collateral estoppel. Lynch v. Lynch, 250 Iowa 407, 413, 94 N.W.2d 105 (1959).

The trial court found, and we agree, that the February 20, 1976, hearing was a final determination on the issue of the validity of the Murrow lease. After entering into the lease with the Murrows, plaintiff sought court approval as required by § 633.647, The Code. The application was filed and an order prescribing the method of notice was filed January 29, 1976. The order set the hearing on the lease for February 20 and directed that notice by mail be given all interested parties, including Benford Walker, twenty days prior to the hearing. A copy of the notice and application for approval of the lease was mailed to defendant.

At the hearing on February 20th, the trial court found it was in the best interest of the conservatorship to lease the ward's property to the Murrows. Benford Walker was present at the hearing, but did not raise the issue of his or Glen's lease. The underlying issue in both the February 20th hearing and the subsequent forcible entry and detainer action, the validity of the Murrow lease, was the same. The alleged lease was in existence and according to his testimony, Benford knew its terms. Notwithstanding, he failed to assert his own claim.

Once having had the opportunity for a full and fair hearing on such a vital issue, defendant should not be permitted to relitigate the same issue again. Lynch v. Lynch, 250 Iowa 407, 412-14, 94 N.W.2d 105 (1959). By failing to raise the defense now asserted in the lower court in the earlier hearing, defendant is barred from raising that defense here. To permit otherwise, and allow defendant to silently sit by while a court decides an issue adverse to him and then permit defendant to defeat the original decision in a second proceeding results in endless litigation on the same issue. This is what the doctrine of res judicata seeks to avoid. The trial correct was correct in holding Benford Walker was barred or estopped from attacking the validity of the lease or the sufficiency of the notice.

Benford Walker's occupancy of the farm at the time this action was commenced was, thus, as tenant at will. Section 648.4 provides when the tenancy

is at will and the forcible entry and detainer action is based on the ground of nonpayment of rent, no notice of termination of tenancy other than the three day notice need by given.

Defendant's final contention is that the trial court erred in finding nonpayment of rent when due. Benford testified the only real obligation was the upkeep of the house; the trial court held the obligation of rent went further, at least to the point of paying the real estate taxes and the interest on the outstanding mortgage. From a review of the evidence we agree with the trial court's finding that the rent obligation included more than simple upkeep. Otherwise, the Walkers were in danger of losing the property from foreclosure due to nonpayment. However, even accepting defendant's definition of keeping up the house, there was evidence that the house was not kept up and the farm itself had lost most of its productivity. Although some improvements such as planting of fruit trees were made, the evidence establishes the overall condition of the property deteriorated. The trial court did not err in finding that "rent", in whatever form, was not paid when due.

AFFIRMED.