IN THE COURT OF APPEALS OF IOWA

No. 1-562 / 00-1865
Filed October 24, 2001

CITIZEN'S FINANCE CO.,
Plaintiff-Appellee,

vs.

KEITH RATH d/b/a NETWORK STRATEGIES,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler (temporary injunction hearing) and K.D. Briner (replevin hearing), Judges.

Defendant appeals from the district court ruling dismissing plaintiff's replevin action following plaintiff's successful repossession of defendant's pick-up truck. **AFFIRMED.**

Keith A. Rath, Shellsburg, pro se.

Chad C. Leitch of O'Connor & Thomas, P.C., Dubuque, for appellee.

Considered by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

PER CURIAM

Defendant appeals from the district court ruling dismissing plaintiff's replevin action as moot following plaintiff's successful repossession of defendant's pick-up truck. Defendant contends: (1) plaintiff had no right of self-help repossession once the replevin action was filed; (2) the court erred by failing to require plaintiff to post a bond in connection with the replevin action; and (3) the court erred by dismissing the replevin action as moot, and his counterclaim along with it, thereby depriving him of personal property without due process of law.

I. *Background Facts and Proceedings*

On July 28, 1999, defendant Keith Rath, doing business as Network Strategies, Inc., obtained a loan of $23,773.20 from Citizen's Finance Company (Citizen's) for the purchase of a new pick-up truck. To secure repayment of the loan, Citizen's perfected a security interest in property belonging to Rath, including the recently purchased 1999 Dodge pick-up truck.

In April of 2000, Rath was in default on his promissory note. At that time, Citizen's was unable to utilize its remedy of self-help repossession because it could not find the pick-up truck. Therefore, on April 27, 2000, Citizen's filed a replevin petition to regain possession of its secured collateral. Citizen's did not seek a prejudgment writ of replevin. On May 19, 2000, Rath filed an Answer, Counterclaim, and Crossclaim. On June 9, 2000, Citizen's moved for summary judgment. Following a hearing, the court found that although Rath had not complied with the requirements of the Rules of Civil Procedure, his oral argument

raised issues of material fact which precluded summary judgment. A trial regarding the replevin action was scheduled for October 19, 2000.

On August 29, 2000, Citizen's utilized its self-help remedy under section 554.9503 of the Iowa Code and obtained possession of the pick-up truck. In an attempt to stop the sale of the vehicle, Rath filed an application for temporary injunction. Citizen's resisted, noting Rath had failed to comply with the applicable Rules of Civil Procedure, including the requirement that he post a bond when seeking temporary injunctive relief. At the hearing on Rath's application, the court informed Rath of the requirement of bond and gave him additional time to post the necessary bond. Rath did not post the bond required to stop the sale of the repossessed collateral.

On October 19, 2000 the replevin matter came before the court for hearing. Because Citizen's had already exercised its self-help remedy to retrieve the secured collateral, it moved to dismiss its replevin petition as moot. The district court granted the motion. Rath's counterclaim was also dismissed by the court following hearing.

Rath appeals claiming the trial court erred in (1) finding Citizen's had a right to self-help after it filed the replevin action; (2) requiring him to post bond for temporary injunction, but not requiring Citizen's to do so before it engaged in self-help repossession, and (3) dismissing the replevin action and his counter-claim. He also claims he was denied his right to due process of law.

II. *Scope of Review*

We review a district court's ruling for correction of errors at law. Iowa R. App. P. 4. Where the trial court sits as fact finder, its findings have the effect of a

jury verdict and bind us if they are supported by substantial evidence. *Bazal v. Rhines*, 600 N.W.2d 327, 329 (Iowa Ct. App. 1999). Evidence is substantial when a reasonable mind could accept it as adequate to reach the same findings. *Id.* We view the evidence in a light most favorable to upholding the district court's judgment. *Benson v. Webster,* 593 N.W.2d 126, 129 (Iowa 1999). However, we are not bound by the district court's legal conclusions, and we may examine whether the district court's ultimate conclusions were materially affected by improper conclusions of law. *Fausel v. JRJ Enterprises, Inc.*, 603 N.W.2d 612, 617 (Iowa 1999).

III. *Discussion*

The appeal issues raised by Rath address the district court's treatment of the replevin action filed by Citizen's. However, in repossessing Rath's pick-up truck, Citizen's did not rely on the remedy of replevin. Instead, it proceeded under its right to self-help. Iowa Code section 554.9503 provides: "Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without a breach of the peace. . . ."

Rath contends Citizen's had no right to proceed under this self-help provision after it initiated the replevin action. The Code, however, provides that a secured party's rights and remedies upon a debtor's default are cumulative. *See* Iowa Code § 554.9501. Furthermore, in *Interfirst Bank v. Hanson*, 395 N.W.2d 857, 861 (Iowa 1986), the supreme court held that self-help repossessions and replevin actions are alternate methods of regaining secured collateral. The initiation of a replevin action does not foreclose a secured party's right to proceed

under the alternate remedy of self-help. *Interfirst Bank*, 395 N.W. 2d at 861. *Id.* We find no reason to distinguish this case from *Interfirst Bank*, and accordingly hold Citizen's right to regain secured collateral by self-help existed even after it filed the action for replevin. Rath makes no allegation of a breach of the peace, so we conclude the bank properly repossessed the pick-up truck according to the remedy provided in Iowa Code section 554.9503. The district court did not err in dismissing the replevin action as moot. In addition, the court properly dismissed Rath's counterclaim because no counterclaim is allowed on a petition for replevin. *See* Iowa Code § 643.2 (1999). Rath's other arguments are rendered moot by our conclusion.

AFFIRMED.