

IN THE COURT OF APPEALS OF IOWA

No. 8-318 / 96-1940

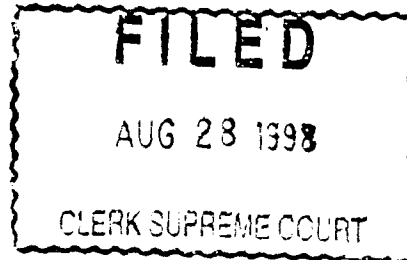
DURWIN HEGG,

Plaintiff-Appellee,

vs.

DAVID and ELAINE HEGG,

Defendants-Appellants.



Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

Defendants appeal a district court ruling affirming a magistrate's judgment entry for forcible entry and detainer dispossessing them of certain real estate.

AFFIRMED.

David Hegg, Mabel, Minnesota, pro se, for appellants.

Robert J. Cowie, Jr. of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellee.

Considered by Cady, C.J., and Streit and Mahan, JJ.

MAHAN, J.

David and Elaine Hegg appeal the decision of the district court finding Durwin Hegg did not violate the terms of a temporary injunction. We affirm.

Ralph and Esther Hegg entered into a real estate contract with their son, David Hegg, in September 1974. Esther obtained sole title to the real estate upon Ralph's death. At some point Esther commenced either a forfeiture or foreclosure proceeding against David (the district court used both terms). On May 18, 1994, Esther formally withdrew the proceeding. On October 10, 1994, Esther conveyed her interest in the contract to Durwin Hegg.

David and his wife, Elaine, leased cattle from Am and Ed Hess Dairy Cattle (the Hesses). As security for the lease, David and Elaine mortgaged the real estate to the Hesses. David and Elaine failed to make any payments on the lease after January 1994. In September 1994, the Hesses sold their interest in the real estate to Durwin for \$38,000.

Durwin served a notice of forfeiture and David sought a temporary injunction, claiming Durwin had to commence new mediation proceedings and could not build from the old proceedings commenced by Esther. The district court granted the temporary injunction and then held a hearing. After the hearing, the district court ruled:

The notice of Esther Hegg having been formally withdrawn several months before the deed and assignment to [Durwin], the Court determines that [Durwin] may not seek foreclosure *without a new*

notice. As such, that foreclosure is a new proceeding. Because it is a new proceeding, mediation requirements must commence anew.

IT IS THEREFORE ORDERED that the Defendant's motion to dissolve the temporary injunction is overruled.

(Emphasis added.) On April 18, 1995, Durwin initiated a new proceeding by serving a new notice of forfeiture of real estate contract. On May 22, 1995, Durwin served a notice to quit. On October 13, 1995, Durwin filed a small claims action alleging David and Elaine were continuing in possession of the property without the right to do so. On December 13, 1995, the small claims court ruled in favor of Durwin.

This matter was further complicated by David and Elaine's bankruptcy proceedings. However, David and Elaine do not raise any of the bankruptcy issues on appeal.

I. STANDARD OF REVIEW. A request for injunctive relief invokes the court's equitable jurisdiction. Iowa R. Civ. P. 320; *In re Luloff*, 569 N.W.2d 118, 122 (Iowa 1997). Therefore, our review is de novo. Iowa R. App. P. 4; *Luloff*, 569 N.W.2d at 122.

II. VIOLATION OF THE INJUNCTION. David and Elaine's brief is exactly that. Their argument is contained in two short paragraphs:

The Injunction, by its express terms, prohibits Durwin Hegg from a forfeiture until the litigation is lifted. The plaintiff was not only aware of the Injunction, but had litigated concerning it. The result of that challenge by Plaintiff was a decision upholding the Injunction without modification. Plaintiff's forfeiture is in violation of the District Court Injunction and his Affidavit in Support of Forfeiture is in violation of the District Court Injunction.

This Injunction with Bond, was in effect until January of 1997, thus prohibiting the forfeiture procedure.

"Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue." Iowa R. App. P. 14(a)(3); *Genetzky v. Iowa State Univ.*, 480 N.W.2d 858, 861 (Iowa 1992). We find David and Elaine have waived this issue.

Even so, we also find Durwin did not violate the injunction when he served a new notice of forfeiture. This was specifically contemplated by the injunction.

For these reasons, we affirm the decision of the district court.

AFFIRMED.