FILED

JAN 27 1988

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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RALPH E. FAUSNAUGH and **ROSELLA FAUSNAUGH,**)

Plaintiffs,)

vs.)

MERRILL J. OSTER, CAROL J. OSTER; LARRY L. HART and **MARY A. HART,** Husband and Wife; **OSTER WHITESIDE FARMS,** An Iowa General Partnership; **LLOYD L. HARMSEN, EUGENE R. HOLST, JAMES R. WILLIAMS,** and **DENNIS L. STOLK,** d/b/a **H.H.W.S. PARTNERSHIP,** An Iowa General Partnership; and **JAMES R. WILLIAMS,**)

Defendants.)

Filed January 27, 1988

DONMAR, INC.,)

Plaintiff-Appellant,)

vs.)

W. D. SINDLINGER; OSTER WHITESIDE FARMS, An Iowa General Partnership; **MERRILL J. OSTER,** A General Partner of Oster Whiteside Farms,)

Defendants-Appellees,)

LLOYD L. HARMSEN, EUGENE R. HOLST, JAMES R. WILLIAMS, and **DENNIS L. STOLK,** d/b/a **H.H.W.S. PARTNERSHIP,** An Iowa General Partnership; **DENNIS L. STOLK** and **DONNA STOLK,** Wife of Dennis L. Stolk; and **EASTERN IOWA PRODUCTION CREDIT ASSOCIATION,**)

Defendants.)

7-216
86-1072

Appeal from the Iowa District Court for Howard County (No. 13691), George L. Stigler, Judge.

Plaintiffs appeal and defendants cross-appeal summary judgment proceedings associated a with foreclosure action **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH INSTRUCTIONS.**

Frank D Elwood of Elwood & Elwood, Cresco, for plaintiff-appellant.

Hugh M Field of Beecher, Beecher, Holmes & Rathert, Waterloo; John T. Flynn of Wells, Brubaker, Flynn & Darland, Davenport, and John P. Murphy of Holleran, Shaw, Murphy & Stoutner, Clinton, for defendants-appellees.

Considered by Oxberger, C J , and Schlegel and Hayden, JJ

SCHLEGEL, J.

This appeal arises from two separate farm foreclosure transactions which were consolidated in the district court. In one case, the plaintiff is a farm family, the Fausnaughs (hereinafter the Fausnaugh case). In the other case, the plaintiff is a family farm corporation, Donmar, Inc. (hereinafter the Donmar case). In each case, the plaintiff sold land on contract to a group of purchasers. Several of the same investors are involved as purchasers in both cases. Before discussing the issues, a recitation of the facts is necessary.

In the Donmar case, the plaintiff sold land to W.D. Sindlinger, who assigned the contract to Oster Whiteside Farms (Merrill Oster, General Partner). The contract was then assigned to Lloyd Harmsen, Eugene Holst, James Williams, and Dennis Stolk (doing business as H.H.W.S. Partnership). That partnership quit-claimed to Dennis Stolk who, along with his wife, Donna, mortgaged the property to the Eastern Iowa Product Credit Association.

In the Fausnaugh case, the Fausnaughs sold a parcel of land to Merrill and Carol Oster on contract. The Osters sold a portion of that land to Larry and Mary Hart. The Osters assigned the balance of their contract to Oster Whiteside Farms. The contract was then assigned to Harmsen, Holst, Williams, and Stolk (doing business as H.H.W.S. Partnership). H.H.W.S. Partnership quit-claimed their interest in the contract to James Williams.

A few years after the sales, the purchasers defaulted on both contracts, and each plaintiff was required to foreclose. At the respective foreclosure sales, each plaintiff bid the full amount of the foreclosure judgment, thereby precluding the possibility of a deficiency judgment. Each plaintiff now characterizes these bids as mistakes resulting from ignorance and inexperience in the bidding process.

The defendants in the Donmar case were Sindlinger, Oster Whiteside Farms, Merrill Oster, Dennis and Donna Stolk, the Eastern Iowa Production Credit Association, and Harmsen, Holst, Williams, and Dennis Stolk (doing business as H.H.W.S. Partnership). The defendants in the Fausnaugh case were Merrill and Carol Oster, Larry and Mary Hart, Oster Whiteside Farms, James Williams, and Harmsen, Holst, Williams and Dennis Stolk (doing business as H.H.W.S. Partnership). After the foreclosure sales, the defendants filed motions for summary judgment in each of the preexisting district court foreclosure actions. The motions for summary judgment alleged that because the bid at each foreclosure sale was for the entire amount of the foreclosure judgment, each judgment was satisfied in full and there remained no possibility of a deficiency judgment in either case.

The plaintiffs responded to these summary judgment motions by filing petitions for declaratory judgment asking that the foreclosure sale bids be set aside on the ground of mistake. In the Donmar case, the district court refused to set aside the foreclosure bid, holding that "the mistake, if any, was as to the legal consequences of known facts and is not a basis for equitable relief." The court granted the defendants' motion for summary judgment and dismissed the foreclosure action on the ground that the foreclosure judgment was satisfied in full. In the Fausnaugh case, however, which involved two parcels of land rather than one, the district court denied the defendants' motion for summary judgment on the ground that a genuine issue of material fact existed as to whether the sheriff should have sold the land as two separate parcels rather than one.

The plaintiff Donmar, Inc., has appealed the district court's order. Donmar reiterates its contention that the foreclosure sale should be vacated because it was based on a mistake rendering it inequitable. The defendants in the Fausnaugh case have cross-appealed, arguing that the district court erred in denying them a summary judgment. As the case was filed in equity, our review is de novo. Iowa R. App. P. 4.

I.

The purpose of a summary judgment is to avoid a trial where no genuine issue of material fact exists. Neoco, Inc. v. Christenson, 312 N.W.2d 559, 560 (Iowa 1981). In reviewing the grant of summary judgment under Iowa Rule of Civil Procedure 237, the question is whether the moving party demonstrated the absence of any genuine issue of material fact and showed entitlement to judgment on the merits as a matter of law. Suss v. Schammel, 375 N.W.2d 252, 254 (Iowa 1985); Brown v. Monticello State Bank, 360 N.W.2d 81, 83-84 (Iowa 1984). The resisting party must set forth specific facts showing there is a genuine issue for trial. Iowa Civil Rights Comm'n v. Massey-Ferguson, Inc., 207 N.W.2d 5, 8 (Iowa 1973); Iowa R. Civ. P. 237(e). The resisting party may not rely solely on legal conclusions to show there is a genuine issue of material fact justifying denial of summary judgment. Byker v. Rice, 360 N.W.2d 572, 575 (Iowa App. 1984). Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied. Adam v. Mt. Pleasant Bank & Trust Co., 355 N.W.2d 868, 872 (Iowa 1984). We examine the record in a light most favorable to the party opposing the motion for summary judgment to determine if movant met his or her burden. Matherly v. Hanson, 359 N.W.2d 450, 453 (Iowa 1984).

II.

Appellant Donmar, a corporation made up of husband and wife Donald and Marilyn Harting, maintains the district court erred in granting summary judgment against them. Donmar successfully prosecuted an earlier foreclosure action against the purchasers of its land. The district court, in the foreclosure decree, expressly reserved jurisdiction of the case as to the potential future issue of a deficiency judgment against the foreclosed parties. Subsequently, Donald Harting attended the sheriff's sale of the foreclosed property and bid in the full amount of the judgment. The defendants in the Donmar case moved for summary judgment, contending that such a bid satisfied the foreclosure judgment and eliminated the possibility of a deficiency judgment against them. The district court agreed and, accordingly, granted their motion. Donmar maintains summary judgment was inappropriate because an issue remained as to whether the foreclosure sale should be set aside. As support for this contention, appellant Donald Harting argues that he bid the full amount of the judgment only because he was confused as to the proper procedure to be followed at the sale and believed he needed to enter the full judgment bid.

A similar claim was presented by a creditor in Aronson v. Hoskins, 201 Iowa 389, 207 N.W. 389 (1926). There the court stated the governing law in the following manner:

> That a party is not entitled to have sheriff's sale set aside because of the mere fact that he has made a mistake in the amount of his bid and suffered injury thereby is a familiar rule, and one which has heretofore been recognized by this court.

201 Iowa at 398, 207 N.W. at 393. Accordingly, Donmar's argument is contrary to the cases and was properly rejected as a matter of law. We agree with the district court that summary judgment was appropriate.

III.

The defendants in the Fausnaugh case maintain the district court erred in refusing to grant their summary judgment motion against Ralph and Rosella Fausnaugh. The Fausnaughs, like Donmar, had attended the sheriff's sale and entered a full judgment bid. The district court denied the summary judgment motion after concluding an issue of fact remained as to whether the land involved, which was sold as a unit, should have been sold in parcels.

Iowa Code section 626.84 (1985) provides as follows:

> At any time before nine o'clock a.m. of the day of the sale, the debtor may deliver to the officer a plan of division of the land levied on, subscribed by the debtor, and in that case the officer shall sell, according to said plan, so much of the land as may be necessary to satisfy the debt and costs, and no more. If no such plan is furnished, the officer may sell without any division.

We think the plain wording of this provision discloses that its concern is limited to the protection of the debtor. There is nothing in the present record which would lead us to believe that the debtor in this case, the Fausnaugh defendants, sought this protection. These defendants specifically point out, on appeal, that they have no complaint regarding the method of sale. Even were they now to allege error, their failure to submit a sale plan prior to sale would render their argument impotent as a matter of law. See Willis v. Farmers State Bank of Lake View, 261 Iowa 689, 695, 155 N.W.2d 407, 411 (1968). Creditors, such as the Fausnaughs, are not afforded even this much statutory protection. Accordingly, we think the absence of the debtors' presale plan rendered the en masse sale immune from creditor complaint and valid as a matter of law. See id.; Iowa Code § 626.84 (1985). No question of fact with respect to the method of sale remained for trial, and the district court's denial of the Fausnaugh defendants' summary judgment motion was error.

We remand this case and direct the district court to enter judgment in favor of the Fausnaugh defendants and against the Fausnaughs. The district court's grant of summary judgment in favor of the Donmar defendants and against Donmar is affirmed.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED WITH INSTRUCTIONS.