

IN THE COURT OF APPEALS OF IOWA

No. 1-458 / 91-292

JAMES L. MUFF, DANIEL L. MUFF, and CARL J. MUFF,

Appellants,

vs.

LINDA RICKERS,

Appellee.

FILED

APR 28 1992

CLERK SUPREME COURT

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Appeal from the Iowa District Court for Crawford County, Terry L. Huitink, Judge.

Plaintiffs appeal the district court's judgment on the plaintiffs' application for entry of judgment and award for additional damages in plaintiffs' action for specific performance of a real estate contract. **AFFIRMED.**

Reed H. Reitz of Reimer, Lohman & Reitz, Denison, for appellants.

Terry Rickers of Brierly Law Office, Newton, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab, JJ.

OXBERGER, C.J.

In 1988, plaintiffs, James L. Muff, Daniel L. Muff, and Carl J. Muff, entered into a purchase agreement regarding the sale of a 150-acre farm owned by Linda Rickers. The contract provided that if the sellers failed to fulfill the agreement, the buyers could take legal action with the sellers agreeing to pay costs and attorney fees. Linda's husband, Robert, refused to sign the agreement. Linda was expecting a tax-free exchange on the property. This failed to occur. The real estate transaction was never closed, although the Muffs took possession of the property for the 1988 crop year.

The Muffs filed a petition requesting specific performance of the purchase agreement. Linda counterclaimed, seeking the rental value of the property for the 1988 crop year. The district court found the tax-free exchange was a condition precedent for execution of the contract and denied the request for specific performance. Judgment was entered in favor of Linda on her claim for damages. Linda then took possession of the land for the 1989 crop year.

The case was appealed. In an unpublished opinion, we reversed the district court's decision and directed specific performance of the real estate contract. The case was remanded back to the district court for further proceedings in district court.

The Muffs filed an application for entry of judgment and for award of additional damages seeking, in part, return of the original damages paid to Linda, compensation for attorney fees, and compensation for lost profits.

On November 15, 1990, the district court entered its judgment. The court held that the grant of specific performance required the parties to be placed in the position they would have been if the agreement had been carried out. The court concluded Linda was entitled to the full amount of the purchase agreement, plus interest from the date of the agreement. The court determined the Muffs' lost profits from not having possession of the land in 1989 were \$14,500. The court vacated the previous judgment award to Linda. The Muffs were awarded attorney fees for the original action, for the resistance to the further review proceeding in the supreme court, and for the prosecution of this action in district court. In addition, the court ordered Robert to join in the execution of the real estate contract.

The court denied the Muffs' post-trial motion. The Muffs then appealed.

I. A specific performance action, which is equitable in nature, is reviewable de novo. Becker v. Central States Health & Life Co., 431 N.W.2d 354, 356 (Iowa 1988). In equity cases we give weight to the fact-findings of the trial court, but are not bound by them. Id.

II. The Muffs contend they should not be required to pay interest from the date of the execution of the purchase agreement when Robert did not join in the execution of the agreement. They believe they should be required to pay interest only from the date Robert relinquishes his dower right.

Under Iowa Code section 633.238, Robert held an inchoate statutory dower right in Linda's land. See Bowman v. Bennett, 250 N.W.2d 47, 51 (Iowa 1977). A dower interest, while inchoate, remains in the nature of an encumbrance on the property. Helms v. Helten, 290 N.W.2d 876, 883 (Iowa 1980). Upon the death of the land-owning spouse, the dower interest ceases to be inchoate and becomes an undivided interest in the property. Id. A dower right may be waived or relinquished. Bowman, 250 N.W.2d at 51.

The Muffs rely on the case of Peddicord v. Peddicord, 242 Iowa 555, 47 N.W.2d 264 (1951). This case provides:

It is the rule in this state that upon the refusal of the vendor's wife to release inchoate dower in land, the vendee may elect to enforce specific performance to the extent of the vendor's ability to perform, with allowance of an amount proportionate to the highest contingent interest of the wife, to be held by the vendee without interest and to be paid over by him only if and when the inchoate right is released by the wife or the marriage is terminated during the life of her husband by her death or by operation of law.

Id. at 562, 268.

Peddicord also provides, however, that a court will not presume a spouse will refuse to release the dower interest. Id. at 563, 269. In this case there is no showing Robert has presently refused to release his dower interest. The Muffs' inability to obtain possession of the property previously was not due to Robert's refusal to waive his dower interest, but the parties' disagreement about whether a provision of the purchase agreement was a condition precedent to the execution of the contract. We conclude the Muffs should be responsible for the entire amount of interest due under the terms of the purchase agreement.

III. The Muffs claim they are entitled to lost profits of \$32,559. They believe the district court improperly calculated the profits they lost by not having possession of the land for the 1989 crop year. The district court looked at the amount of profits Linda received from renting the property. The Muffs feel they would have received a greater profit because they intended to farm the land themselves.

The figures presented by the Muffs do not take into consideration operational costs for their farm machinery or the interest on debt for owning the land. Furthermore, the Muffs did not consider property taxes. Based on these factors, we affirm the district court's award of damages for lost profits.

IV. Finally, the Muffs ask for attorney fees for their post-trial motion and this appeal.

Attorney fees may be recovered as damages where they are provided for in a written contract. Suss v. Schammel, 375 N.W.2d 252, 256 (Iowa 1985). The purchase agreement between the parties here provided for attorney fees if the sellers failed to fulfill the agreement.

We find the Muffs have already received attorney fees for enforcing the purchase agreement. We deny their present request for attorney fees. Costs are assessed to the appellants.

We affirm the district court on all issues.

AFFIRMED.