IN THE COURT OF APPEALS OF IOWA

No. 1999-545 (9-806) / 98-2192
Filed May 10, 2000

CITY OF DES MOINES, IOWA,
Plaintiff-Appellee,

vs.

IMPERIAL PROPERTIES, INC.,
Defendant-Appellant.

FILED
MAY 10 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

Imperial Properties, Inc. appeals from a district court ruling finding it had constructive notice property it purchased was the subject of a suit by the City of Des Moines. **AFFIRMED.**

Robert A. Nading II of Nading Law Firm, Ankeny, for appellant.

Vicky Long Hill, Assistant City Attorney, Des Moines, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

HUITINK [redacted] Properties, Inc., appeals the district court decision finding it had constructive notice the property it purchased was the subject of a nuisance action by the City of Des Moines. The court found Imperial should be responsible for the costs of inspecting the property. We affirm.

In November 1996 the City inspected a house at 1543 Lyon Street and found it was a public nuisance. At one time the property was owned by Wacile Higgins. On April 15, 1997, the City filed suit against Higgins' heirs, seeking to have the property either renovated or removed.[1] The City also sought to recover costs incurred in the enforcement of the Municipal Housing Code.

No further action was taken in the case until April 13, 1998, when the City filed an amendment to substitute Imperial as the defendant.[2] The City dismissed the previously named defendants from the action. By this time the house had been removed and the City only sought to recover enforcement costs. Imperial claimed it was not responsible for the enforcement costs because it was a good faith purchaser without notice.

The case was tried on July 17, 1998. During the hearing the City argued Imperial had notice of the petition under the *lis pendens* statute.[3] Later, the City learned the petition had not been placed on the *lis pendens* index. In a brief filed

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[1] The City did not file a claim in Wacile Higgins' probate estate, but filed suit directly against Higgins' heirs.

[2] Imperial purchased the property about two months after the petition was filed in April 1997.

[3] Under Iowa Code section 617.11 (1997), when an action has been placed on the *lis pendens* index, "such action shall be considered pending so as to charge all third persons with notice of its pendency."

on November 10, 1998, the City raised a new issue, claiming the following statement in Imperial's purchase agreement, "Agreement void if City of Des Moines demands home to be torn down," showed Imperial had constructive notice of the suit. A copy of the purchase agreement was attached to the brief.

On the same day the City's post-trial brief was filed, the district court entered a decision finding the statement in the purchase agreement showed Imperial had constructive notice of the suit. The court ordered Imperial to pay enforcement costs of $946.50. Imperial appealed.

This case was filed as an equity action. Our scope of review is de novo. Iowa R. App. P. 4. In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the trial court, but is not bound by them. Iowa R. Civ. P. 14(f)(7).

Imperial contends the district court improperly relied on evidence that was not presented during the trial. We do not consider issues based on information outside the record. *Rasmussen v. Yentes,* 522 N.W.2d 844, 846 (Iowa App. 1994). The district court should not have considered Imperial's purchase agreement because it was not presented as an exhibit during the trial. The record was not held open for additional evidence, and the City did not request the court to reopen the record.

We turn then to the question of whether sufficient evidence was presented during the trial to show Imperial was a good faith purchaser without notice. A bona fide purchaser is one who takes a conveyance of real estate in good faith from the holder of legal title, paying a valuable consideration for it without notice

[redacted] equities. *Raub v. General Income Sponsors of Iowa, Inc.*, 176 N.W.2d [redacted] (Iowa 1970). In order to be considered a good faith purchaser, a purchaser has the burden to show the purchase was made before he or she had notice of the claim of another. *Janssen v. North Iowa Conference Pensions, Inc.*, 166 N.W.2d 901, 908 (Iowa 1969).

A party claiming to be a bona fide purchaser must prove good faith; and good faith is lacking if he or she knew or, a reasonably prudent person should have known, others made claims hostile to the grantor's title. *Moser v. Thorp Sales Corp.*, 312 N.W.2d 881, 887 (Iowa 1981). A party is considered to have notice:

> if circumstances are shown which would lead a reasonably prudent person to investigate the possible existence of outstanding rights hostile to the grantor's title. If such circumstances do exist, and if such investigation was not made, then one who claims to be a bona fide purchaser is nevertheless charged with all knowledge which that investigation would probably have disclosed.

Raub, 176 N.W.2d at 219.

At the hearing, the City housing inspector, Richard Bright, testified when notice by mail had not been received, he would post notice on a structure considered a nuisance. In this case, he posted notices on the property it was to be boarded up and cleaned. He testified in spring or summer 1997, someone from Imperial telephoned him concerning boarding up the house. By December 1997, Imperial had removed the house and the lot was vacant.

We find that by the spring or summer 1997, Imperial was aware the City wanted the house boarded up as a nuisance. Imperial's actions show it was aware the City considered the house a public nuisance. A reasonably prudent

person would investigate to determine whether the City had any claim against the property. To determine Imperial is charged with knowledge of the City's claim. Although we base our decision on different reasoning, we affirm the district court decision ordering Imperial to pay enforcement costs of $946.50. Costs of this appeal are assessed to Imperial.

AFFIRMED.