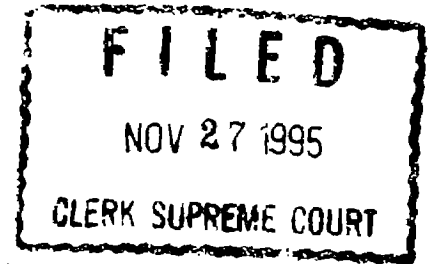


IN THE COURT OF APPEALS OF IOWA

No. 5-339 / 94-0927



**DALE E. GOODALE and GERTIE GOODALE,**

Petitioners-Appellants.

vs.

**GENEVIEVE M. BRAY, DENNIS J. BRAY, SUSAN BRAY, MELVIN W. DAVIS, MYRNA J. DAVIS, HENRY M. HALVORSON, MARILYN HALVORSON, HAROLD W. HUISMAN and KAROLYN HUISMAN,**

Respondents-Appellees.

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Appeal from the Iowa District Court for Mitchell County, Gilbert K. Bovard,  
Judge.

Petitioners appeal an adverse district court judgment in their action to set aside  
a forfeiture of their real estate contract with respondents. **REVERSED.**

Roger L. Sutton of Sutton and Troge Law Office, Charles City, for appellants.

Murray A. Klobberdanz of Kratchmer & Klobberdanz, Osage, for appellees Bray.

Davis, and Halvorson.

Richard H. Gross of Gross & McPhail, Osage for appellees Huisman.

Heard by Hayden, P.J., and Habhab and Huitink, JJ.

**HAYDEN, P.J.**

On March 25, 1988, the petitioner, Dale Goodale, entered into a real estate purchase contract for forty acres of farmland owned by the respondents, Genevieve Bray, Dennis and Susan Bray, Melvin and Myrna Davis, and Henry and Marilyn Halvorson. Goodale was the sole buyer. The total purchase price was \$10,000 with a down payment of \$500. The remaining \$9500 balance was to be paid in monthly installments of \$125, plus interest, until the contract was paid in full.

The contract contained a provision providing for forfeiture of the real estate contract as set forth in the Iowa Code in the event the buyer (Goodale) failed to timely perform his duties under the terms of the contract. Goodale did not keep his payments current, and as of July 1993, he was in arrears in the amount of \$2250.

On July 16, 1993, forfeiture papers were served on Goodale by Deputy Sheriff Klobassa at the request of the respondents. On October 28, 1993, Goodale filed a petition to set aside the forfeiture. He argued service of the forfeiture papers was defective. Goodale also argued his wife should have been served with a copy of the notice of forfeiture, since, as his wife, she was a party in possession of the real estate.

At trial, the parties differed as to the facts. According to appellees, Klobassa served the papers on Goodale and had him sign an acknowledgment of service on each document. The appellees contend, after obtaining the signatures, Klobassa signed a

return of service, indicating service had been perfected and received by Goodale. The papers were subsequently filed in the county recorder's office.

Goodale, on the other hand, claimed he was never served with the actual notice of forfeiture nor was a copy left with him. Goodale claimed Klobassa only showed him a notice for termination of farm tenancy. He argued the first time he heard of the forfeiture was over coffee with neighbors who expressed an interest in purchasing the forty acres.

The district court concluded service had been perfected pursuant to Iowa Code sections 656.1 and 656.2(1) (1993). The court found Goodale signed the acknowledgment of service on the notice of forfeiture. The deputy sheriff signed a sworn statement he completed service pursuant to the Iowa Code. The court noted Klobassa testified regarding the usual procedures employed by his office to give effect to notices of forfeiture. This evidence proved service on Goodale was proper. The court additionally held, because Mrs. Goodale was not a signatory on the contract, she was not entitled to a notice of forfeiture as a party in possession.

The Goodales have appealed. First, the Goodales reiterate their argument about Mr. Goodale not receiving proper notice of forfeiture. Goodale claims, when Klobassa delivered the papers to him, he told the officer he could not read them without his glasses. Consequently, Klobassa read the notice of termination of farm tenancy to him. He further asserts Klobassa only left him with a copy of the termination of farm tenancy

and no other papers. Goodale claims Klobassa tricked him into signing the notice of forfeiture by telling him the remaining documents were copies of the termination of farm tenancy. Secondly, the Goodales contend the district court erred in holding Mrs. Goodale was not a party in interest or possession, thus not entitled to service of notice of forfeiture.

### **I. Standard of Review.**

In this equity action, our review is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. *In re Marriage of Steenhoek*, 305 N.W.2d 448, 452 (Iowa 1981). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

### **II. Service of Process on Mr. Goodale.**

Forfeiture statutes are to be construed strictly against forfeiture, with the burden to show full and strict compliance with the statutory requirements placed upon the parties seeking the forfeiture. *Jamison v. Knosby*, 423 N.W.2d 2, 5 (Iowa 1988). There is, however, a strong presumption obtained in favor of a sheriff's original return as to the time of service of notice on defendant. *Strong v. Jarvis*, 524 N.W.2d 675, 677 (Iowa App. 1994); *Swift v. Swift*, 239 Iowa 62, 68, 29 N.W.2d 535, 539 (1948). This is especially true when the return of service is supported by the sheriff's oral testimony. *Swift*, 239 Iowa at 68, 29 N.W.2d at 539. This presumption cannot be impeached

except by very clear and satisfactory proof. *Strong*, 524 N.W.2d at 677. The burden of proof is upon the person who challenges the return of service to prove it is false. *Ruth & Clark v. Emery*, 11 N.W.2d 397, 402 (Iowa 1943).

The Goodales did not present sufficient evidence to overcome the strong presumption in favor of the return of service. The only evidence of nonservice is the testimony of the Goodales and a friend who claimed he did not see a notice of forfeiture in the papers shown to him by the Goodales. Evidence to the contrary, however, shows Goodale's signature appears on an acknowledgment indicating he did receive a copy of the notice of forfeiture. The deputy serving the papers testified he had no doubt he served Goodale with the notice of forfeiture. Furthermore, the sheriff testified there had never been a problem with service in his thirty years in the sheriff's department. As such, we hold the presumption in favor of return of service by the officer was not rebutted.

### **III. Service of Process on Mrs. Goodale.**

Generally, it is not necessary to serve notice of forfeiture on the contract vendee's spouse if the spouse is not a party to the contract. *Hansen v. Chapin*, 232 N.W.2d 506 (Iowa 1975); *Eastman v. Defrees*, 235 Iowa 488, 17 N.W.2d 104 (1945). Comment to Title Standard 4.4, however, states, "If the spouse is a party in possession, the spouse must be served with notice." Similarly, Iowa Code section 656.2 requires service of a notice of forfeiture on the contract vendee *and persons in possession* of the

real estate. (Emphasis added.) Failure to serve notice of forfeiture upon a person in possession of real estate renders the forfeiture ineffective. *Dreesen v. Leckband*, 479 N.W.2d 620, 622 (Iowa App. 1991).

Mrs. Goodale claims she was a person in possession of the real estate in question during July 1993 and thus was entitled to be served with a notice of forfeiture. Possession requires an act of dominion or control over the property in question. *Jamison*, 423 N.W.2d at 5. In determining what acts demonstrate possession of land, our cases have referred to “conduct which gives notice” to the party claiming title of the property. *Id.* In determining whether a person is in possession, acts demonstrating possession include actual entry onto the land or some objectively observable use or care made of the land. *Dreesen*, 479 N.W.2d at 622. “The element of custody and control is involved in the term possession.” *Id.*

As stated above, equity abhors forfeitures. *Keokuk State Bank v. Eckley*, 354 N.W.2d 785, 787 (Iowa App. 1984). Forfeiture statutes are to be construed strictly against forfeiture, with the burden to show full and strict compliance with statutory requirements placed upon the parties seeking the forfeiture. *Jamison v. Knosby*, 423 N.W.2d at 5. As such the burden of proof is on the appellees to prove compliance with the statute and, consequently, appellees must prove Mrs. Goodale is *not* a party in possession.

The land in this case was undeveloped farmland adjacent to the Goodales' home. Mrs. Goodale has lived in the house with her husband since 1968. Appellees were aware of this relationship. Although the real estate was not the property upon which the house was located, the real estate was connected to the couple's other farmland. The forty acres was treated as one farm along with the other farmland owned. The Goodales shared the farm income from the land in question. Mrs. Goodale helped recapture the property in 1987 and 1988. Mrs. Goodale participated in the mediation meeting regarding the land. Consequently, we conclude Mrs. Goodale was a party in possession of the real estate, and appellees were certainly on notice Mrs. Goodale had an interest in the property.

It is uncontroverted no "service" was made upon Gertie Mae Goodale. Because she was a party in possession of the real estate, the failure to serve her with a notice of forfeiture under Iowa Code section 656.2 renders the forfeiture ineffective. *Dreesen*, 479 N.W.2d at 622; *Jamison*, 423 N.W.2d at 5. We reverse.

**REVERSED.**