

IN THE COURT OF APPEALS OF IOWA

No. 9-397 / 88-1603

FILED
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CLERK SUPREME COURT

KENNETH ROBINSON, CAROL ROBINSON, DEBORA KAY SEBRANEK,
BILLY L. DAVIS AND MARGARET E. DAVIS,

359

Appellees,

vs.

WILLIAM A. COMSTOCK AND JUANITA M. COMSTOCK,

Appellants.

Appeal from the Iowa District Court for Jasper County,
Robert O. Frederick, Judge.

The defendants appeal from a district court order granting plaintiffs' declaratory judgment by determining that the defendants had no right to any distributions of a Department of Transportation check. **AFFIRMED.**

Eugene Knopf of Walker, Knopf & Billingsley, Newton,
for appellants.

Dennis F. Chalupa of Brierly, McCall, Girdner, Chalupa,
McCall & Otto, Newton, for appellees.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

The defendants William Comstock and Juanita Comstock appeal from a district court order granting plaintiffs' declaratory judgment by determining that the defendants had no right to any distributions of a Department of Transportation (D.O.T.) check. The D.O.T. check was in lieu of condemnation of a portion of real estate. Defendants contend that their rights to a portion of the check proceeds is superior to any claims for child support by one of the plaintiffs since they received an assignment of a vendor's interest in the real estate contract without notice of any outstanding claims. We affirm the decision of the district court.

Our scope of review is for correction of errors at law. Iowa R. App. P. 4. The fact findings of the district court have the effect of a special verdict and are considered binding if supported by substantial evidence. Grinnell Mut. Reinsurance Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988); State Sav. Bank v. Allis-Chalmers Corp., 431 N.W.2d 383, 385 (Iowa App. 1988).

In 1977, Kenneth and Carol Robinson sold some property to Michael and Debora on contract. In May 1981, Michael and Debora sold the property on contract to Billy and Margaret Davis.

In July 1982, Michael and Debora were divorced in Oklahoma. Pursuant to the decree, Michael and Debora continued to own an undivided one-half interest in the real

estate. However, the decree provided that the contract proceeds would be paid directly to Debora as a credit on Michael's child support obligations.

In November and December 1987, Michael assigned his interest in the real estate to his father, William Comstock and Juanita Comstock. This assignment was in satisfaction of certain debts Michael owed his father.

In April 1988, a journal entry was filed in Oklahoma finding Michael Comstock delinquent in the amount of \$8,500 for child support and medical expenses due under the divorce decree.

At some point the State, through the D.O.T., issued a check for \$4,500 in lieu of condemnation of a portion of the property. A dispute arose as to whether the defendants, as assignees of an interest in the property, had a valid claim to a portion of the check proceeds or whether those proceeds were due Debora Sebranek (Comstock) pursuant to the divorce decree. The district court found for the plaintiffs, and Debora and the defendants appeal.

The defendants contend the district court erred in finding that they had no right, title or interest in the D.O.T. proceeds. The defendants argue that William Comstock was a bona fide purchaser of an assignment of the real estate contract and that by his recording of the assignment has priority over Debora's claim. We disagree.

In an assignment an assignee's rights are no greater than the rights of an assignor. Klassie v. Holt, 10 N.W.2d 540, 541-42 (Iowa 1943); see also Van Maanen v. Van Maanen, 360 N.W.2d 758, 762 (Iowa 1985) (assignee takes subject to any defenses, setoff, or counterclaims assignor was subject to). As noted, the district court's finding of fact is equivalent to a special verdict. It is binding on us if supported by substantial evidence, and it is so supported if it may be reasonably inferred from the evidence. Allis-Chalmers Corp., 431 N.W.2d at 385. "When evaluating the sufficiency of evidence, we will 'view it in the light most favorable to sustaining the trial court's judgment, whether or not it is contradicted.'" Id.

A "bona fide purchaser" is a purchaser in good faith for valuable consideration and without notice of any adverse claims by third parties. All three elements must be satisfied. Although past consideration is insufficient as consideration, a pre-existing or antecedent debt is a sufficient and valuable consideration. Coomes v. Finegan, 7 N.W.2d 729, 732 (Iowa 1943); Gannon v. Graham, 211 Iowa 516, 519, 231 N.W. 675, 676 (Iowa 1930); see also Carson v. Chevron Chemical Co., 635 P.2d 1248, 1259 (Kan. App. 1981); 6A C.J.S. Assignments § 61, at 689 (1975).

In an assignment,

[i]n order to deprive an assignee of standing as a bona fide purchaser, it is not necessary to show that the assignee had actual knowledge of the equity at the time of the assignment to him; it is sufficient to prove knowledge by the

assignee of facts sufficient to put him on inquiry which, if pursued, would lead to actual knowledge.

6A C.J.S. Assignments § 101, at 759 (1975) (citations omitted).

The district court specifically found that:

William A. Comstock and Juanita M. Comstock took an Assignment of the contract, executed only by Michael James Comstock and at the time they took said Assignment, they were fully aware that all contract payments were assigned to Debora K. Comstock for her one-half interest, plus Michael James Comstock's interest to be applied against child support payments.

The district court further found:

that provisions of the Divorce Decree and that the claim of Plaintiffs are first and prior to that of Defendant and that until such time as Michael James Comstock is no longer obligated for support of the minor child all contract payments shall be paid to Debora K. Comstock.

We believe substantial evidence exists from which the district court could reasonably conclude that William A. Comstock and Juanita M. Comstock had notice and actual knowledge of the divorce proceedings. We affirm the decision of the district court in all respects.

AFFIRMED.