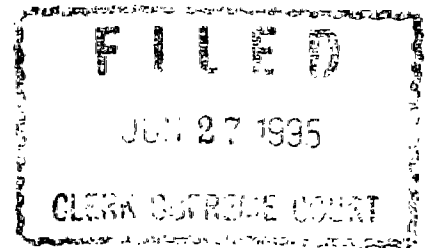


IN THE COURT OF APPEALS OF IOWA

No 5-134 / 94-0393



JAMES J. THEISEN,

Appellee,

vs.

CAROLYN HILL,

Appellant.

Appeal from the Iowa District Court for Polk County, Ross A. Walters, Judge.

Defendant appeals from trial court's judgment finding for plaintiff in a forcible entry and detainer action. **AFFIRMED.**

Robert C. Oberbillig, Des Moines, for appellant.

Roger J. Kuhle of Law Office of Roger J. Kuhle, P.C., Des Moines, for appellee.

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

HUITINK, J.

Carolyn Hill purchased a home from James Theisen on contract in December 1991, for \$41,485.51. Hill made a down payment of \$8000, with the balance to be paid at a rate of 11.5% in monthly installments. A balloon payment for the balance was due November 1, 1992.

Hill lost her job shortly after entering into the contract. She applied for and began receiving social security benefits. Although it was difficult making timely payments, Hill was able to cure some delinquencies. When she could not secure financing for the balloon payment, Theisen extended the payment due date for another year.

In September 1993 Theisen served a notice of forfeiture on Hill for partial nonpayment in June 1993 and nonpayment in July and September. He filed a forcible entry and detainer action. On December 7, 1993, the district court decided the contract had not been legally forfeited because \$550 Hill paid to Theisen in August should have been applied to the amounts owing from June and July. Theisen had applied this amount to "special assessments" including sewer and solid waste payment.

On December 9, 1993, Theisen served a second notice of forfeiture on Hill for partial nonpayment of the July installment, total nonpayment of the September and October installments, failure to pay the November balloon payment, and nonpayment of real estate taxes and special assessments, for a total amount of \$33,258.66. Theisen

commenced a forcible entry and detainer action in February 1994. After a hearing the court ordered Hill's removal from the house.

A forcible entry and detainer action is tried in equity, therefore our review is de novo. *Bernet v. Rogers*, 519 N.W.2d 808, 810 (Iowa 1994). We give weight to the trial court's findings of fact, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). We note that forfeiture statutes are strictly construed against a forfeiture with the burden of proving strict compliance upon the party seeking forfeiture. *Dreesen v. Leckband*, 479 N.W. 620, 622 (Iowa App. 1991) (citation omitted).

Hill first contends the district court erred in finding in favor of forfeiture. We disagree.

The record reveals Hill was delinquent on her contract payments for July, September, and October 1993. In addition Hill had not paid the real estate taxes and the balance owing for the special assessments, as required by the contract terms. She did not cure the default and did not make any payments to cure the deficiencies since Theisen served notice of forfeiture on December 9, 1993.

Hill claims she tendered the September 1993 installment to Theisen during the September notice of forfeiture period, therefore Theisen's refusal to accept this payment affected his right to demand its payment again pursuant to the December 1993 notice of forfeiture. The record shows Hill made no effort to cure any delinquencies after

commencement of the second forfeiture action. We therefore affirm the trial court on this issue.

Next, Hill contends forfeiture cannot be based on her failure to pay the balloon payment. She argues Theisen agreed to suspend indefinitely the balloon payment until she could find an alternative source of financing.

Hill and Theisen were the only witnesses. We believe the trial court was in the best position to determine the credibility of the witnesses because it had the opportunity to view them firsthand. As the trial court noted, Hill testified Theisen stated he would extend the balloon payment "year by year." The court properly concluded such a statement "negates an open ended or indefinite extension."

Even if we assume the balloon payment was not due pursuant to an agreement between the parties, the fact remains Hill was delinquent on several installment payments and other payments due under the contract. Furthermore, Hill did not tender payment of the October payment. Forfeiture was appropriate, and the decision of the district court is affirmed in its entirety.

We determine any other issues Hill may have raised are either covered by this opinion or are without merit. Each party shall be responsible for his or her own costs of this appeal.

AFFIRMED.