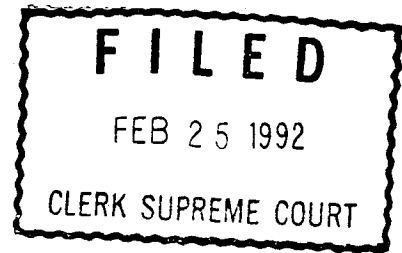


IN THE COURT OF APPEALS OF IOWA

No. 1-440 / 90-1932



FEDERAL LAND BANK OF OMAHA,

Plaintiff,

vs.

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EDWIN J. MEKOTA and MARTHA A. MEKOTA,

Defendants-Appellees,

SWISHER TRUST AND SAVINGS BANK,

Defendant-Appellant,

FS CREDIT CORPORATION,

Defendant.

Appeal from the Iowa District Court for Johnson County,
Kristin L. Hibbs, Judge.

The Swisher Bank appeals from a district court ruling
rejecting its contest of the Mekotas right to redeem their
homestead. **AFFIRMED.**

Richard D. Raymon, Cedar Rapids, for appellant.

Stephen C. Gerard II of Bartley Law Offices, Iowa City,
for appellees.

Considered by Donielson, P.J., and Hayden and Sackett,
JJ.

DONIELSON, P.J.

On September 27, 1985, the Swisher Trust and Savings Bank obtained a judgment against Edwin J. Mekota and Martha A. Mekota on certain promissory notes. Although the notes were secured by a real estate mortgage, the Swisher Bank has not taken any action to foreclose the mortgage.

In May 1988, the Federal Land Bank of Omaha filed a foreclosure action on mortgages executed by the Mekotas. On July 8, 1988, a decree of foreclosure was entered and a sheriff's sale set. On July 11, 1988, an order was entered giving the Swisher Bank a second lien on the foreclosed property.

In September 1988, a sheriff's sale was held on the Mekotas' property. The Mekotas designated, pursuant to Iowa Code section 654.16, a ten-acre portion of the land as their homestead. The property was sold in two parcels: the homestead and a larger ninety-five-acre parcel. The Federal Land Bank bid \$20,000 on the homestead parcel and \$115,904.30 on the non-homestead parcel. It was the high bidder on both parcels.

In June 1989, the Swisher Bank redeemed both parcels from the Federal Land Bank and filed a lienholder's affidavit.

In September 1989, the period of redemption concerning the non-homestead property expired. The Swisher Bank obtained a sheriff's deed to the property.

In August 1990, the Mekotas attempted to redeem their homestead by depositing \$26,362.13 with the clerk of court. The Swisher Bank objected and brought this action contesting the redemption.

Following a hearing, the district court entered its ruling. The district court denied the Swisher Bank's contest of the Mekotas' right to redeem. The court first pointed out that the Swisher Bank's judgment lien did not attach to the homestead parcel, but did attach to the non-homestead real estate. The court also found the Swisher Bank's claims were barred by the two-year statute of limitations found in Iowa Code section 615.3 when the Swisher Bank did not act within two years after its judgment of September 27, 1985. The district court ordered the Mekotas to reimburse Swisher Bank for real estate taxes paid on the homestead. However, the court denied Swisher Bank's request to be reimbursed for attorney fees or abstract fees. Swisher Bank now appeals.

I. In this equity action, our review is de novo. Federal Land Bank of Omaha v. Recker, 460 N.W.2d 480, 481 (Iowa App. 1990). We have a duty to examine the entire record and adjudicate anew rights on the issues properly presented. Id. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Id.

II. The Swisher Bank claims the Mekotas have no right to redeem the homestead until they pay the total amount due

the bank. The Swisher Bank believes the district court's order of July 11, 1988, revived its judgment lien. It also believes it could have a valid judgment lien on the homestead.

Generally, a judgment creditor may not have a lien on a homestead. Brown v. Vonnahme, 343 N.W.2d 445, 446 (Iowa 1984). However, a judgment creditor has a right to redeem a homestead from one who purchases it under the foreclosure of a senior mortgage. Veninga v. Valley State Bank, 443 N.W.2d 721, 725 (Iowa 1989). Upon paying the amount called for by the sheriff's certificate of sale, the judgment creditor becomes an equitable assignee entitled to receive the sheriff's certificate of sale. Id. As to a debtor seeking to redeem it should make no difference who is the holder of the certificate. Id.

Thus, Swisher Bank had the right to redeem the Mekotas' homestead from the Federal Land Bank and become the equitable assignee of the property if its judgment could still be considered valid. However, section 615.3 provides:

Judgments hereafter rendered on promissory obligations secured by mortgage or deed of trust of real estate, but without foreclosure against said security, shall not be subject to renewal by action thereon, and, after the lapse of two years from the date of rendition, shall be without force and effect for any purpose whatsoever except as a setoff or counterclaim.

The purpose of chapter 615 was to relieve judgment debtors in financial distress, and to enable them to get

another start freed from the burden of years of judgment liens. Hell v. Schult, 238 Iowa 511, 514-515, 28 N.W.2d 1, 3 (1947); Thorp Credit, Inc. v. Johnson, 257 N.W.2d 498, 499 (Iowa 1977).

Under the terms of section 615.3, after two years from the date Swisher Bank received its judgment, September 27, 1985, the judgment became without force and effect for any purpose whatsoever except as a setoff or counterclaim. We agree with the district court that Swisher Bank should not have been designated a second lienholder on July 11, 1988, because the Swisher Bank's judgment was already without force. The district court's order of July 11, 1988, could not reactivate the Swisher Bank's judgment. Because Swisher Bank does not have a valid judgment against the Mekotas, it may not seek a full payment of the Mekotas' debt before allowing them to redeem the homestead. We affirm the district court on this issue.

III. Swisher Bank also claims that advancements made by it for the protection of the property should include not only taxes on the homestead but attorney fees and abstract fees. The district court required the Mekotas to pay advancements Swisher Bank had made for real estate taxes attributable to the homestead in order the redeem the property. The court did not allow Swisher Bank's claims for attorney fees and abstract fees.

We also affirm the district court's refusal to assess attorney fees against the Mekotas. For all the reasons stated, we affirm the decision of the district court.

AFFIRMED.