IN THE COURT OF APPEALS OF IOWA

FILED
AUG 23 1989
CLERK SUPREME COURT

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JOHN W. SNOOK, BILLY J. SNOOK, FRANCES K. SNOOK, BEVERLY J. SNOOK, and **AMY E. SNOOK,**	)	
Plaintiffs-Appellants,	)	
vs.	)	
KANSAS CITY LIFE INSURANCE COMPANY,	)	9-103 88-431
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Wayne County (21017), J.W. Jordan, Judge.

The Snooks appeal from a district court judgment rejecting their petition to set aside the sheriff's sale of their land. **AFFIRMED.**

Marlyn S. Jensen, Osceola, for plaintiffs-appellants.

James M. Holcomb and Kenneth R. Munro of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for defendant-appellee.

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

OXBERGER, C.J.

Plaintiffs-appellants, the Snooks, are appealing from the district court judgment rejecting their petition to set aside the sheriff's sale of their land. Our scope of review in such equity matters is de novo. Iowa R. App. P. 4. We affirm.

On April 5, 1985, appellee Kansas City Life Insurance Company (KCL), received a decree of foreclosure and judgment against the Snooks in the amount of $227,575.31. A sheriff's sale was held April 9, 1986, and bids were taken on nine tracts of land pursuant to a plan of division submitted by John Snook. At the time of the sale Billy Snook was living on Tract 8. The sheriff gave Billy notice to plat his homestead but neither Billy or the sheriff did so. Amy Snook did plat Track 9 as her homestead pursuant to the sheriff's notice of her right to do so. All nine tracts were individually offered in numerical order. A token $1 bid was made by Billy Snook on behalf of his wife on each tract. No other bids were made. The sheriff then offered the land en masse and KCL bid $252,596.57, the entire amount of its judgment with interest. The Snooks did not seek to redeem the property following the sale and KCL was issued a sheriff's deed for the land. On June 15, 1987, the Snooks filed a petition to set aside the sale which was denied.

On appeal the Snooks contend the district court erred in finding (1) the sale was in substantial compliance with the requirements for a sheriff's sale of homestead and nonhomestead property, and (2) the doctrine of laches is applicable and operates to bar the Snooks from trying to set aside the sale more than one year after the sale given the expiration of the redemption period.

In Prudential Insurance Company of America v. Westfall, 219 Iowa 1119, 1130, 260 N.W. 344, 349 (1935), the court held:

> [T]he proper procedure to be followed in the sale of real estate under special execution in the foreclosure of mortgages covering real estate, which includes a homestead, should be that the property other than the homestead shall first be offered in tracts of forty acres or less, and, if no bids are received, or if the bids received when so offered in the aggregate are insufficient to pay the mortgage debt, interest and costs, the entire tract other than the homestead shall then be offered en masse, and when so offered, if no bid is received, or if the bid received is insufficient to satisfy the total amount of the debt, interest, and costs, then the homestead tract shall be offered separately, and, if the aggregate of the bids received for the property other than the homestead and the homestead property, when thus offered separately, is equal to, or greater than, the full amount of the judgment debt, interest and costs, the property other than the homestead and the homestead property shall be sold separately, but, if said aggregate of bids, when offered separately, is not equal to or greater than the total amount of the debt, interest and costs, then the entire property shall be offered en masse, and, if it is thus ascertained that a greater amount can be realized for said mortgaged premises when so offered as a whole, then the entire tract, including the homestead, shall be sold en masse.

The parties' applications and district court's rulings filed after February 15 appeal was perfected are not a part of this appeal. We note these matters also concerned the distribution of proceeds. When an appeal is perfected, the trial court loses jurisdiction over the merits of the controversy. Hulsing v. Iowa Nat. Mut. Ins. Co., 329 N.W.2d 5, 7 (Iowa 1983).

We now address Mr. Harvey's contentions of error in the district court's rulings prior to the February 15, 1988 notice of appeal. The day of the hearing on Antonette's application to enforce the sale of the house, the district court overruled Mr. Harvey's motions for continuance, dismissal, and stay of execution.

We find the court's denial of the motions well within its discretion. The denial of the stay was based, in part, on the court's determination that Mr. Harvey was in no position to post a supersedeas bond and the court later denied Mr. Harvey waiver of the filing of such a bond. Given the need to act on the offer to buy with some expediency or perhaps lose the offer, we find the district court again acted appropriately when denying the stay. Any of Mr. Harvey's claims of error dealing with the temporary Iowa Supreme Court stay of execution are moot as that stay order expired when Mr. Harvey failed to post bond as ordered. We note the district court entered no orders during the time this stay was pending.

The next contention of error was the district court's determination the $52,000 offer to buy was fair and reasonable. The record reveals Antonette also received a second offer of $51,250. Mr. Harvey testified an FHA appraiser valued the property at $59,950 in 1983. The parties listed the house at sale for $56,900 in 1984 and were told it should be selling at $54,900. Mr. Harvey presented no expert testimony as to the reasonableness of the offers contending he could not afford to do so. Antonette's evidence as to the value of the house included the offers to buy and the testimony of a lender indicating a willingness to provide financing for a $52,000 bid but not the original $55,000 bid.

The district court noted, and the record clearly reveals, Mr. Harvey was opposed to the sale from the beginning because he wanted to have possession of the home and felt his pending appeal of the dissolution decree regarding the home would be successful. Based on this evidence, we find the district court was correct in concluding the $52,000 bid was fair and reasonable. The court had authority to enforce the sale of the house pursuant to the decree as Mr. Harvey did not post a supersedeas bond. Lutz v. Darbyshire, 297 N.W.2d 349, 352 (Iowa 1980). Given Mr. Harvey's refusal to cooperate in completing the sale and deed forms, the district court had no choice but to appoint a commissioner for conveyance of

stated earlier, the evidence does not support the finding a separate redemption of the homestead would have been an option even if the proper procedures were followed. The vague offer to buy a portion of the property mentioned in the letter, and not produced during the trial in this matter, is certainly not the proof of financial ability to redeem Chapman seems to indicate is necessary to prove injury or damages. We determine the sale should not be set aside.

AFFIRMED.

Schlegel, J. concurs; Sackett, J. specially concurs without opinion.