IN THE COURT OF APPEALS OF IOWA

No. 8-636 / 97-2169

BRENDA PIXLER, n/k/a BRENDA GOULETTE,

Plaintiff-Appellee/Cross-Appellant,

vs.

JANI GOULETTE and SANG NGU a/k/a JOHN NGU,

Defendants-Appellants/Cross-Appellees.

FILED
FEB 24 1999
CLERK OF THE COURT

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Defendants appeal from a ruling in a remanded fraud action. **AFFIRMED.**

Robert B. Deck, Sioux City, for appellant.

Martha M. McMinn, Sioux City, for appellees.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

MAHAN, J.

Jani Goulette and John Ngu appeal from a ruling in a remanded fraud action. They contend Brenda Pixler did not prove her right to or any interest in damages. We affirm.

On June 16, 1987, Wilbert Nelson sold to Douglas and Brenda Pixler a home located at 1117 Floyd Boulevard in Sioux City for $18,000 with monthly payments of $235. For a period of time in 1993, the Pixlers moved to an acreage in the country. Jani Goulette, Brenda's sister, and her husband, John Ngu, moved into the house and made the payments thereon as rent. The Pixlers decided to return to the home and took over possession. Goulette and Ngu were acrimonious about having to move from the home.

The Pixlers separated in February 1994 and Brenda assumed the contract indebtedness. Brenda fell behind in her payments on the house, owing approximately $1500. Nelson served Brenda with a notice of forfeiture dated May 16, 1994.

Brenda went to Goulette to borrow money to cure the default. Goulette agreed to pay Nelson the amount past due on the house for Brenda. As a result of these conversations, Brenda did not make any further attempts to cure the default.

Goulette and Ngu contacted Nelson. Instead of paying the amount past due on the house for Brenda, they agreed to pay off the entire real estate contract after forfeiture of the Pixlers' interest. After forfeiture, Goulette and Ngu paid Nelson $7700, the remaining amount on the forfeited real estate contract.

After acquiring the property, Goulette charged Brenda rent of $235 per month and served notice upon her for past due rent for July 1994. Goulette and Ngu subsequently filed an action for forcible entry and detainer. Following a hearing, the district court entered an order on October 6, 1994, holding Goulette and Ngu were the owners of the property and entitled to possession.

On October 17, 1994, Brenda filed a petition claiming fraud. Goulette and Ngu filed their answer and counterclaims alleging Brenda had assaulted Ngu by kicking him. The district court concluded Goulette and Ngu knowingly gave false assurances to Brenda that they would cure the default. The court found by doing so they obtained the house for $7700. The record shows the house was worth significantly more. The court awarded Brenda $6300 plus interest, representing the court's valuation of the home at $14,000 minus the $7700 already paid by Goulette and Ngu. The court additionally awarded Brenda punitive damages in the amount of $1000. The court dismissed Ngu's claim of assault and battery, holding there was no evidence he had suffered any damages.

On appeal, we found Brenda had proven her cause of action and some damages. However, the record showed Brenda had a one-half undivided interest in the property with Douglas. Brenda had not informed the trial court by any evidence what her interest in the home was following her divorce from Douglas. For that reason, we affirmed in part, reversed in part, and ordered a new trial as to the issue

of the extent of Brenda's interest in the property and damages only. *Pixler v. Goulette*, No. 95-1705 (Iowa App. Dec. 20, 1996).[1]

On retrial, a stipulation and decree was admitted into evidence showing Brenda was awarded "any and all interest the parties may have acquired as to such real property." The district court found the divorce decree filed December 15, 1994, fully incorporated the stipulation as part of the decree. The court further found and concluded Brenda owns 100% of any recovery she obtained as a result of the fraud committed by Goulette and Ngu in light of the provisions contained in the divorce decree which gave her all right, title, and interest to the subject premises. The court found Brenda was, therefore, entitled to $7300, the total amount of damages awarded at the original trial, plus interest.

Our review is for correction of errors at law. Iowa R. App. P. 4. The district court's findings of fact are binding upon us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Goulette and Ngu argue our review should be de novo. We disagree. However, we note our disposition of this case would be the same under either standard.

We ordered a retrial solely to determine the interest Brenda had in the property following her divorce from Douglas. The district court found Brenda was awarded the Pixlers' entire interest in the property in the divorce decree. This finding is

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[1] Goulette and Ngu did not seek rehearing. In addition, their request for further review was denied.

supported by substantial evidence. Thus, as the district court concluded, Brenda is entitled to recover the full amount of damages determined in the original trial.

For these reasons, we affirm the district court's ruling.

AFFIRMED.