IN THE COURT OF APPEALS OF IOWA

FILED
JUN 2 9 1988
CLERK SUPREME COURT

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BANK OF CRAIG, CRAIG, MISSOURI, a Banking Corporation,	)	
	)	
Plaintiff-Appellee,	)	
vs.	)	Filed June 29, 1988
JOHN E. HUGHES and BETH L. HUGHES,	)	8-17 87-589
Defendants-Appellants.	)	

Appeal from the Iowa District Court for Montgomery County (No. 16802) - J C Irvin, Judge.

Defendants appeal a district court order granting plaintiff's request to have the district court clerk's cancellation of a promissory note between the parties rescinded so as to permit plaintiff's action on the note in Colorado. **REVERSED.**

Andre Keith Silvola, Colorado Springs, Colorado, for defendants-appellants.

Mark D. Swanson of Swanson, Boeye & Bloom, Red Oak, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ., but considered en banc

SACKETT, J.

This appeal involves a nunc pro tunc order issued some thirteen months after a decree was entered in a mortgage foreclosure action. We must determine whether the trial court was correct in issuing the order directing the clerk of court to rescind its cancellation of the promissory note secured by the mortgage on which suit was brought. We determine the trial court should not have issued the nunc pro tunc order. We reverse and quash the order.

Plaintiff-Appellee Bank of Craig, Craig, Missouri, a Banking Corporation, brought suit against Defendants-Appellants John E. and Beth L. Hughes to obtain judgment on a note and for judgment of foreclosure against Iowa farm land which stood as security for the debt. Defendants were personally served in the State of Colorado.

Plaintiff commenced suit on the note and in doing so elected to accelerate the whole amount of unpaid principal and interest in accord with the provision of the note and sought a judgment of foreclosure against the lands for the entire unpaid principal, namely $82,000, plus accrued interest. On October 24, 1985, a default judgment of foreclosure was entered. In the judgment the court determined the bank had elected to accelerate the note and there was owing a principal balance of $82,000 plus accrued interest. The court then went on to find:

> . . . that the judgment of foreclosure should issue on the note and mortgage. . . for $82,000 unpaid principal, accrued interest to date . . . .

(Emphasis supplied.)

and the trial court ordered:

> . . . that plaintiff, Bank of Craig, Craig, Missouri, have judgment on the note and mortgage . . . for the sum of $94,484.50, including interest to date.

The court's judgment noted that "the value of the real estate herein foreclosed upon is less than the amount to which Plaintiff is entitled to judgment, and defen-

dants are no longer within the State of Iowa and are not subject to deficiency judgment in this state." Plaintiff's lien on the land was established for the entire amount of the note.

After the trial court signed the judgment entry the Montgomery County Clerk of Court requested the note in accord with Iowa Rule of Civil Procedure 228, which provides:

> The clerk shall not, unless by special order of the court, enter or record any judgment based on a note or other written evidence of indebtedness until such note or writing is first filed with him for cancellation.

An execution then issued. The land was sold at sheriff's sale for less than the amount of the note. The bank then sued defendants in Colorado for the deficiency and made application to have the clerk's cancellation of the note rescinded contending because they only had judgment in rem the note should not have been cancelled.

Appellants contend the trial court erred in issuing the nunc pro tunc order. The debt on which plaintiff sued was created by the note, not the mortgage. The mortgage is a mere lien, encumbrance or security for the debt. Johnson v Board of Supervisors, 237 Iowa 1103, 1107, 24 N.W.2d 449, 452 (1946). The adjudication of the amount of the debt is the first prerequisite of a foreclosure decree. Schnuettgen v. Mathewson, 207 Iowa 294, 300, 222 N.W. 893, 896 (1929). The petition requested judgment in the entire amount due on the note. The decree of foreclosure entered judgment on the note for the entire principal amount and interest to date. When merged in the judgment the judgment became evidence of the debt. Id.

The judgment had been a final judgment for over thirteen months when the bank sought the nunc pro tunc order. The district court is without jurisdiction to alter a final judgment in a mortgage foreclosure proceeding by way of an

order nunc pro tunc. See Graber v. District Court, 410 N.W.2d 224, 229 (Iowa 1987). The judgment of foreclosure was decisive of the controversy regarding judgment on the note and foreclosure against the land. See In re Marriage of Fairall, 403 N.W.2d 785, 787 (Iowa 1987). Entry of the decree exhausted the district court's authority over the matter, subject only to the authority being reasserted in the manner provided for by law. Id. A final judgment is one that conclusively determines the rights of the parties and is finally decisive of the controversy. If a judgment is final, not only is a right of appeal created, see Iowa R. App. P. 1, 5(a), but absent timely post judgment motions, the district court has no power or authority to return the parties to their original position. Snyder v. Allamakee County, 402 N.W.2d 416, 418 (Iowa 1987).

Ordinarily the authority of the district court to decide substantive issues in a particular case terminates when a final judgment is entered and postjudgment motions have been resolved. Franzen v. Deere & Co., 409 N.W.2d 672, 674 (Iowa 1987). A final judgment, one that conclusively determines the rights of the parties and finally decides the controversy, creates a right of appeal and also removes from the district court the power or authority to return the parties to their original positions. Snyder, 402 N.W.2d at 418; Robco Transp., Inc., v. Ritter, 356 N.W.2d 497, 499 (Iowa 1984).

59 C.J.S. Mortgages § 704, at 1279-80 (1949), states:

> . . . the judgment or decree in a mortgage foreclosure action is res judicata as to all matters in issue or necessarily involved in the adjudication including . . . the existence and amount of the mortgage debt, and the fact it remains unpaid . . . [and] the liability of the obligor for a deficiency . . . .

The clerk was correct in requesting and cancelling the note. A judgment entered in violation of rule 228 is subject to direct attack, for the purpose is to forbid simultaneous existence of the instrument and a judgment on it. See

Webster City Production Credit Ass'n v. Lenz, 268 N.W.2d 182, 184 (Iowa 1978) (quoting Loth, Trial and Judgment, 29 Iowa L. Rev. 35, 43 (1943)). There being no error on the clerk's part in cancelling the note, there is no basis for rescinding the cancellation.

We reverse and quash the order.

REVERSED.