FILED
MAR 22 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MARCENE H. HENDLEY,)
Appellant,) Filed March 22, 1979
vs.)
CAROLYN M. BLY,) 40 / 2-62228
Appellee.)

Appeal from Worth District Court - J. W. Frye, Judge.

Plaintiff, seeking to partition land which he claims he jointly owns with defendant, appeals judgment dismissing his petition. - AFFIRMED.

Phillip N. Norland, Northwood, for Appellant.

Craig Ensign, of Ensign & Ensign, Northwood, for Appellee.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff Marcene Hendley appeals trial court judgment dismissing his petition to partition land which he claimed was jointly owned by himself and defendant Carolyn Bly. We affirm.

Under a 1970 divorce decree, defendant was awarded the real estate at issue herein as her sole property. The decree further provided that in the event the property was sold, defendant's ex-husband, Raymond Mace, would be entitled to one half of the proceeds. Defendant's deed to the property expressly stated that it was subject to the terms and conditions of the divorce decree. When Mace became delinquent in support payments owed to defendant, she obtained a judgment and execution for the amount due. The sheriff then mistakenly advertised for sale Raymond Mace's "one-half interest" in the above described property. In fact, Mace had no such interest. Plaintiff, who was Mace's employer and personal friend, purchased Mace's interest at the sheriff's sale.

Our review of the instant case is de novo. Bowman v. Bennett, 250 N.W.2d 47, 49 (Iowa 1977). It is a well established principle that a purchaser under a valid execution sale takes whatever interest the defendant in the execution had, no more and no less. 33 E.J.S. Executions § 287 (1942). Plaintiff cannot, by virtue of the sheriff's sale, claim better title than the judgment debtor possessed. In Iowa, the rule of caveat emptor applies to a purchaser at an execution sale. Emmert v. Neiman, 245 Iowa 931, 935, 65 N.W.2d 606, 608 (1954). "The purchaser must examine, judge, and test for himself." Id. Defendant's deed, which was properly filed of record, clearly disclosed the relative interests of defendant and Mace in the subject property. As grantee under the sheriff's deed, plaintiff purchased "subject to such rights and equities of which he had actual notice, or of which he is constructively charged." Frum v. Kueny, 201 Iowa 327, 330 207 N.W. 372, 373 (1926).

As a defense, plaintiff argues that defendant is estopped from asserting that plaintiff purchased anything less than a one-half interest in the property. Assuming arguendo that the estoppel issue was effectively raised below, plaintiff had the burden of showing (1) a false representation or concealment of material facts, (2) his lack of knowledge of the true facts, (3) an intent on defendant's part that plaintiff would rely

on the representation and (4) his reliance on such false representation or concealment. Dierking v. Bellas Hess Superstore, 258 N.W.2d 312, 314 (Iowa 1977). The record shows that defendant's deed was a matter of public record. An inspection thereof would have revealed that Mace did not own a one-half interest in the property. Since plaintiff is charged with constructive knowledge of the deed, he cannot claim to have been unaware of the "true facts". As an alternative to the four factor test set forth in Dierking, plaintiff maintains that an estoppel automatically arose once defendant accepted proceeds from the judicial sale. The cases cited in support of this proposition are all factually distinguishable from the instant situation. We agree with trial court's conclusion that estoppel is not available to plaintiff. The judgment is affirmed.

AFFIRMED.