FILED
OCT 23 1984
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

294

MARY FRANCIS ELLIOTT,)

Plaintiff-Appellee,)

Filed October 23, 1984

vs.)

WAYNE ECTON ELLIOTT,)

Defendant,)

and CARMEN KRIEGER,) 4-187
83-677

Defendant-Appellant.)

Appeal from the Iowa District Court for Polk County - Ray Hanrahan, Judge.

Defendant appeals from a decree granting enforcement of a judgment lien against property she owns. AFFIRMED.

Mark C. Smith and Janet Bryan-Galloway, West Des Moines, Iowa, for defendant-appellant.

James V. Sarcone, Jr., of Grant, Lozier & Sarcone, Des Moines, Iowa, for plaintiff-appellee.

Heard by Donielson, P.J., Schlegel, and Hayden, JJ.

Defendant, Carmen Krieger, appeals from a decree granting enforcement of a judgment lien against property she owns. We affirm.

Krieger's property was transferred to her for $1 in June, 1974, by defendant Wayne Elliott. At the time of the transfer, the property was subject to a judgment lien arising from the decree entered dissolving the marriage of Wayne and plaintiff, Mary Elliott. The dissolution decree had ordered Wayne to pay alimony and to pay the mortgage payments due on the house awarded to Mary. At the time Krieger obtained the property Wayne was delinquent on most of his alimony payments and had not paid any of the mortgage payments.

In 1975 Krieger had a well, a garage, and a home built on the property in question. She and Wayne have lived on the property since that time. On November 6, 1980, Mary filed this action to execute her lien against the property owned by Krieger. On April 12, 1983, the trial court issued an amended decree granting judgment against the property in the amount of $9,574.03. The amount was calculated by assessing interest at the statutory rate on the amount of $6,213.33, which was the amount secured by lien on the date the property was transferred to Krieger. Krieger appeals that decree, urging several allegations of error.

Our review in this equity action is de novo; however, we give weight to the fact findings of the trial court, especially when considering credibility of witnesses. Iowa R. App. P. 4, 14(f)(7).

I. Date of Transfer. Krieger argues the court erred in finding the property was transfered to her on June 7, 1974. She points out that Wayne signed the deed on November 2, 1973 and urges us to presume the deed was delivered the same day. See Richardson v. Estle, 214 Iowa 1007, 1009, 243 N.W. 611, 613 (1932) (delivery on day of execution presumed absent evidence to contrary). The presumption fails, however, because Wayne, in answering an interrogatory, stated

the property was transferred in June of 1974. At trial he was a witness and affirmed the statement in the interrogatory. The deed to the property was recorded June 7, 1974. Therefore, we affirm the trial court's finding of fact.

II. Interest. Krieger contends the trial court erred in awarding interest on the amount subject to lien when the property was transferred. We disagree.

Before the property was transferred to Krieger it was owned by Wayne and subject to a judgment lien. Upon execution of that lien, the proceeds of the property would have been used to satisfy not only the judgment, but also interest and costs of sale. Iowa Code § 626.41 (1973). We do not believe the result should be different simply because the property was transferred to Krieger.

> [A] vendor can, as against third persons having superior legal interests, . . . convey only such interest as he himself has, and the purchaser takes subject to the intersts of such third persons. Under this rule, the purchaser can acquire no greater legal interest than the vendor possesses.

77 Am. Jur. 2d, Vendor and Purchaser § 611 (1975).

Because Wayne's interest in the property was subject to interest on the judgment lien, Krieger's interest in the property is also subject to interest on the judgment lien.

III. Mortgage Payments. Krieger contends the trial court erred in determining that the mortgage payment obligations of Wayne were a judgment lien on the property when it was transferred to her. She argues the dissolution decree's order to pay the mortgage obligations was not a judgment. We disagree.

The order to pay the mortgage obligations was an allocation of marital debts. It, therefore, was part of the property division. In re Marriage of Johnson, 299 N.W.2d 466, 467 (Iowa 1980). A property division is subject to modification only if a party shows fraud, duress, coercion, mistake, or other grounds that justify setting aside a decree in any kind of case. Id. at 468 (citing Knipfer v. Knipfer, 259 Iowa 347, 356, 144 N.W.2d 140, 145 (1966)). In short, a property division is treated like other judgments. See id.

Krieger argues, however, that the order regarding mortgage obligations was not a judgment because it did not require "payment of a definite and certain amount of money." Slack v. Mullenix, 245 Iowa 1180, 1184, 66 N.W.2d 99, 101 (1954). The dissolution decree ordered "the mortgage balance . . . in the approximate amount of $2,000 to be paid by [Wayne]." We do not believe use of the words "approximate amount" defeats the judgment status of the order. There is no indication that the mortgage balance was contingent on some happening. Therefore, we must assume the balance was a fixed amount at the time of the decree and could be definitely ascertained. The trial court properly concluded that the order to pay the mortgage constituted a judgment lien on the property when it was transferred to Krieger.

IV. Other Contentions. Krieger asserts that the alimony payments Wayne payed after she received the property should have been credited to the unpaid debt that had created the judgment lien on her property. Even though our review is de novo, we do not review questions not presented to and passed upon by the trial court. Cole v. City of Osceola, 179 N.W.2d 524, 527 (Iowa 1970). Because Krieger did not raise the issue of allocation at trial, we do not consider it here. We have reviewed Krieger's other assertions of error and find them to be without merit. The trial court's decision is affirmed.

AFFIRMED.