IN THE COURT OF APPEALS OF IOWA

No. 3-098 / 12-0066
Filed April 10, 2013

FIRST IOWA STATE BANK,
Plaintiff-Appellant,

vs.

RONNIE L. HAMMOND, et al.,
Defendant-Appellees.

Appeal from the Iowa District Court for Appanoose County, Annette J. Scieszinski (automatic stay, economic reconciliation) and Daniel P. Wilson (emergency motion to quash), Judges.

This consolidated appeal involves the bank's efforts to execute on a foreclosure decree by selling the Hammonds' property. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

John A. Pabst of Pabst Law Firm, Albia, for appellant.

David A. Morse of Rosenberg & Morse, Des Moines, for appellees Ronnie Hammond and Kim Jones-Hammond.

Kimberley K. Baer and Shayla L. McCormally of Baer Law Office, Des Moines, and John E. Casper of Flander, Casper, and Rosien, P.C., Winterset, for appellee Jason Weems.

Heard by Eisenhauer, C.J., and Danilson and Bower, JJ.

EISENHAUER, C.J.

This is a suit in equity by First Iowa State Bank to foreclose a real estate mortgage and execute on its 2008 foreclosure decree by selling the residential homestead of Kim and Ronnie Hammond. Although Kim filed a voluntary petition in bankruptcy the day before the August 2010 sheriff's sale, the sale occurred, and Jason Weems was the highest bidder. A second sale was held in April 2012, and State Bank was the highest bidder.

In this consolidated appeal, State Bank argues the court erred (1) in ruling the August 2010 sale is void due to the bankruptcy automatic stay and (2) in ordering the bank to reimburse Weems. The Hammonds appeal from a district court order denying their emergency motion to quash the April 2012 sale.

We affirm the rulings finding the first sale void and finding Weems is entitled to reimbursement from the bank. Due to the applicable statute of limitations, we reverse the court's denial of the Hammonds' emergency motion to quash the April 2012 sale.[1]

I. Background Facts and Proceedings.

On September 29, 2008, State Bank obtained a foreclosure decree in Appanoose County for the residential homestead owned by Kim and Ronnie Hammond in Madison County. State Bank sought to have the property sold on August 17, 2010, at a Madison County sheriff's sale. The sale notice informed the public the Hammonds "may redeem the property within one year." On August 16, Kim filed for Chapter 7 bankruptcy in the Southern District of Iowa

[1] Accordingly, we need not address State Bank's additional argument based on its motion requesting a sheriff's deed from the April 2012 sale.

Bankruptcy Court. In her bankruptcy filing the Madison County property was listed as property of the estate and State Bank was listed as a creditor.

At the August 17 sheriff's sale, Jason Weems was the high bidder; he exceeded State Bank's bid by one dollar.[2] State Bank, the Madison County Sheriff, and purchaser Weems, at the time of this sale did not know of Kim's bankruptcy filing. On August 18, Weems paid $5207 in property taxes and $675 to insure the property.

On August 23, 2010, State Bank received notice of Kim's bankruptcy filing.[3] State Bank took no action. On August 27, State Bank received a check from the Madison County Sheriff for $106,501.94 in sale proceeds. State Bank cashed the check,[4] and on August 30, 2010, it executed, but did not file, a satisfaction stating its judgment had been paid in full.

Meanwhile, Weems waited for the one-year redemption period to expire. Kim's affidavit states she filed for bankruptcy to stop the sheriff's sale and she "was unaware the sheriff's sale apparently went forward . . . and did not become aware of that fact for more than one (1) year thereafter when Jason Weems knocked on my door and advised me that he believed that he own[ed] the property."

In August 2011, Weems sought a court order for a writ of possession, and Kim filed a motion to set aside the sheriff's sale due to the bankruptcy automatic stay. State Bank resisted while admitting "the filing of a Chapter 7 bankruptcy

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[2] State Bank bid $106,727.38, and Weems bid and paid $106,728.38.

[3] Kim's first bankruptcy attorney sent notice to the wrong county.

[4] The sale proceeds were applied as follows: $106,500.94 (paid to State Bank in August 25 check); $47.27 (publication of notice); $179.17 (sheriff retains as fees); and $1.00 overage (paid to State Bank in August 25 check).

petition automatically stays proceedings." State Bank claimed Kim is barred by an election of remedies from setting aside the sale. It asserted she remained *stealthfully silent* in order to obtain the benefit of a one-year redemption period. As to Weems, State Bank argued he, not the bank, is the real party in interest and Weems now owns the 2008 judgment and he can execute thereon. State Bank alternatively argued if the sale is void, Weems is entitled to his money back from the bank without interest.

On November 18, 2011, the Appanoose County District Court found a "courtesy notice" of the automatic stay did not reach Madison County officials or State Bank due to a miscommunication by Kim's bankruptcy attorney. Further, State Bank "took no corrective action regarding the sale . . . perhaps concluding that the failure of a pre-sale notice of the bankruptcy would absolve it from the duty to act." The district court concluded the August 17, 2010 sheriff's sale is void and without effect due to the automatic stay becoming effective upon Kim's filing of the bankruptcy petition. The district court also ruled relief from the automatic stay can be granted *only* by the bankruptcy court and no such order authorized the August 17, 2010 sale. The court denied Weems's application for writ of possession, granted Kim's motion to set aside the sheriff's sale, and rescinded Weems's certificate of purchase and sheriff's deed. "This case resumes its status as it stood on August 16, 2010; the parties shall financially account to that end, through cooperation of counsel."

On November 28, 2011, State Bank filed (1) a motion to enlarge or amend the court's November 18 ruling and (2) a praecipe requesting the Appanoose

County Clerk of Court issue a writ of special execution to the Madison County Sheriff for the sale of the Hammond property to satisfy its 2008 judgment.

On December 13, 2011, the court denied the motion to amend and enlarge and set a February hearing on economic reconciliation. State Bank appealed the November 18 ruling, and the Iowa Supreme Court ordered a remand "for the limited purpose of the consideration of all requests for declaratory relief related to the economic reconciliation between the bank and Weems." State Bank and Weems stipulated to the applicable rates of interest on the 2008 judgment and on Weems's advances for taxes and insurance.

On March 13, 2012, the district court ruled Weems is entitled to reimbursement from State Bank for "$106,728.38 in bid money on the voided sale," with interest, and to his advances for taxes and insurance "that now operate to the economic benefit of the Bank sitting as a foreclosure-judgment holder," with interest. State Bank appealed this order.

Based on State Bank's November 28, 2011 praecipe, a second sheriff's sale was scheduled for April 10, 2012. On March 27, the Hammonds filed an emergency motion to quash notice of sheriff's levy, sale, and execution. They argued State Bank's attempted execution of its 2008 foreclosure judgment violates the two-year statute of limitations in Iowa Code section 615.1 (2007 Supp. 2008). State Bank resisted arguing its *original* execution was "issued within the two-year limitation of section 615.1."

The court denied the Hammonds' emergency motion to quash, State Bank was the highest bidder at the sale, and the bank filed a motion for issuance of a sheriff's deed. However, on April 23, 2012, the Hammonds appealed the denial

of their emergency motion to quash. On May 2, the district court ruled on State Bank's motion for issuance of sheriff's deed, finding: "The district court is without jurisdiction to address pending disputes on execution, given the appeal taken by the Hammonds."

II. Scope and Standards of Review.

Foreclosure proceedings are tried in equity. *Freedom Fin*. *Bank v*. *Estate of Boesen*, 805 N.W.2d 802, 806 (Iowa 2011). We review de novo. Iowa R. App. P. 6.907. In our de novo review, "we give considerable deference to the district court's credibility determinations because the court has firsthand opportunity to hear the evidence and view the witnesses." *In re Marriage of Berning*, 745 N.W.2d 90, 92 (Iowa Ct. App. 2007). We review a district court's denial of a motion to quash based on statutory construction for errors at law. *War Eagle Vill. Apartments v. Plummer*, 775 N.W.2d 714, 717 (Iowa 2009).

III. November 18, 2011 Ruling—Bankruptcy Automatic Stay Voids Sale.

State Bank argues the August 17, 2010 execution sale at which Jason Weems was the successful bidder is a valid sale. It contends under the bankruptcy automatic stay provisions,[5] this post-petition sale is voidable, rather than void *ab initio*. State Bank also asserts Kim acted in bad faith and remained "stealthfully silent" while seeking the benefit of *both* the bankruptcy automatic stay and her section 628.3 one-year redemption rights, a choice prohibited by Iowa Code section 628.4. It argues: "The sale cannot be set aside after the debtor (Mrs. Hammond) invoked the bankruptcy stay. This violates Iowa Code section 628.4 and the doctrine of election of remedies."

[5] *See* 11 U.S.C. § 362(a).

Iowa Code section 628.3 states a "debtor may redeem real property at any time within one year from the day of sale, and will, in the meantime, be entitled to the possession." However, the debtor's "*statutory rights of redemption* should not be confused with the *equity of redemption.* A mortgage debtor has an equity of redemption until the foreclosure sale, and not afterwards. After the foreclosure sale, the mortgage debtor has the right of redemption if the statute so provides." *Hawkeye Bank & Trust N.A., v. Milburn*, 437 N.W.2d 919, 921 (Iowa 1989).

"The automatic stay provisions of the Bankruptcy Act give the debtor a breathing spell from creditors and *stops all collection efforts and foreclosure actions*." *Id*. at 922 (emphasis added). "If a debtor files a bankruptcy petition before the foreclosure sale, the debtor's equity of redemption is property in the [bankruptcy] estate. The general tolling provisions of the Bankruptcy Act will preserve this property interest until the release of that property by the trustee." *Id*. at 923.

Iowa Code section 628.4 provides a "party who has stayed execution on the judgment is not entitled to redeem." Under Iowa's overall scheme of redemption, "a mortgage debtor who has stayed execution is prohibited from claiming the statutory right of redemption" and an automatic stay resulting from a voluntary petition in bankruptcy is a "stay" within section 628.4 "and acts to bar a debtor's statutory right to redeem from a real estate foreclosure sale." *Milburn*, 437 N.W.2d at 920, 923 (ruling "the statutory homestead right of redemption may be extinguished").

We find no merit to State Bank's statutory election of remedies argument. The fact Kim potentially loses her section 628.3 redemption rights under section

628.4 does not make an invalid sale somehow valid, and State Bank cites no authority so holding. Additionally, upon our de novo review of the record, we agree with and adopt the district court's ruling Kim did not act inequitably. The district court ruled:

> The evidentiary record presented at hearing, as supplemented by judicial notice of the court file, does not demonstrate bad faith on the part of Hammond through her reliance on a belief that the stay was in effect. Her belief arose from what she heard her [first bankruptcy] attorney say, and it was corroborated by her uninterrupted usage of the homestead until Weems pressed for possession a year later. In the course of that time, she received a bankruptcy discharge. When confronted with an unexpected demand for the property [from Weems], she secured new counsel, who now acts on her behalf to acquire acknowledgement of the impact of the bankruptcy stay.
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> The evidentiary record fails to prove that Weems intentionally held information from the court regarding the operation of the stay. It is possible First Iowa State Bank, which acquired actual knowledge that its execution was implemented through Sheriff's sale—despite a bankruptcy stay, may have taken comfort in its receipt of formal notice after-the-fact. [State] Bank may have been waiting for someone else to push the issue.

Thus, the equities do not favor State Bank. It received notice of Kim's bankruptcy filing while Weems received no such notice. Kim believed the sale had not occurred. State Bank is the *only party* who knew all the facts just *a few days after* the sheriff's sale. State Bank could have sought prompt relief from the bankruptcy court. State Bank could have informed Weems of the bankruptcy filing. It chose not to do so. Instead, it kept over $100,000 of Weems's money and remained silent.

We turn to the effect of Kim's filing of a bankruptcy petition. Iowa has long recognized that "[a] stay under 11 U.S.C. section 362 automatically stops execution on a judgment of foreclosure." *First Nat'l Bank v. Matt Bauer Farms*

Corp., 408 N.W.2d 51, 54-55 (Iowa 1987) (stating debtor's bankruptcy petition triggered automatic stay "with respect to all sales or other actions by creditors and prevented the scheduled sheriff's sale"). "Actions taken in violation of the automatic stay provisions . . . are void and without effect." *Butzloff v. Quandt*, 397 N.W.2d 159, 160 (Iowa 1986). "[A]ll state court judicial proceedings must abate immediately when the bankruptcy petition is filed. The fact that the creditor or state court has not received notice of the filing is irrelevant, and the state court must rescind actions taken subsequent to the effective date of the automatic stay." *Id*. (citations omitted).

The Eighth Circuit Bankruptcy Appellate Panel, inclusive of Iowa, discussed automatic stays in *In re Vierkant*, 240 B.R. 317, 321-22 (B.A.P. 8th Cir. 1999). After noting federal circuit "courts are split on whether actions taken in derogation of the automatic stay are void *ab initio* or merely voidable," the *Vierkant* court followed the majority rule: "[A]ction taken in violation of the automatic stay is void *ab initio*." *Id*. at 325. The court explained:

> The automatic stay is . . . designed to protect debtors from *all collection efforts* while they attempt to regain their financial footing. *The stay springs into being immediately upon the filing of a bankruptcy petition*: Because the automatic stay is . . . "automatic"—it operates without the necessity for judicial intervention [and] is triggered upon the filing of a bankruptcy petition *regardless of whether the other parties to the stayed proceeding are aware that a petition has been filed*. The automatic stay cannot be waived. *Relief from the stay can be granted only by the bankruptcy court* having jurisdiction over a debtor's case. In order to secure the important protections of the stay, courts must display a certain rigor in reacting to violations of the automatic stay.
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> . . . Concluding that acts in violation of the automatic stay were merely voidable would have the effect of encouraging disrespect for the stay by increasing the possibility that violators of the automatic stay may profit from their disregard for the law,

> provided it goes undiscovered for a sufficient period of time. This may be an acceptable risk to some creditors . . . .
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> [W]e will not reward those who violate the automatic stay. The Bankruptcy Code does not burden the debtor with a duty to take additional steps to secure the benefit of the automatic stay. *Those taking post-petition collection actions have the burden of obtaining relief from the automatic stay*.

Id. at 320-23 (quotations and citations omitted) (emphasis added).

It is undisputed State Bank took no action in bankruptcy court to obtain relief from the automatic stay. *See In re Donovan*, 266 B.R. 862, 869 (S.D. Iowa 2001) (stating "offending parties may request retroactive relief or annulment of the stay . . . in order to validate a void action"). The burden is on State Bank, the creditor violating the automatic stay by executing on its foreclosure judgment, not the debtor, to seek relief from the automatic stay. *See id*. at 869-70. The fact State Bank and the sheriff lacked knowledge of the automatic stay did not prevent the stay's operation. *See id*. at 868 (finding "automatic stay is a self-executing provision [that] begins to operate nationwide, without notice, once a debtor files a petition"). Based on long-standing precedent, the August 17, 2010 post-petition sale is void *ab initio* and without effect due to the August 16 automatic stay. We affirm the district court on this issue.

IV. March 13, 2012 Ruling—Economic Reconciliation.

State Bank argues the district court erred in ordering it to reimburse Weems for the monies he spent at the sheriff's sale, and the taxes/insurance he paid. State Bank contends while no Iowa cases state a purchaser at sheriff's sale becomes the owner of the judgment, it is inferred from the fact the judgment of the lender is satisfied. "After Weems purchased the property, he became the

owner of the judgment," and State Bank was no longer the owner, the party in interest, or the party responsible for the property.

This argument is without merit. The purpose of the sheriff's sale was to satisfy and execute on State Bank's judgment. The automatic stay stopped *all* collection activity on this judgment, and the sale in violation of the automatic stay is void. The void sale conveyed nothing to Weems. *See id*. at 871 (ruling tax deed issued in violation of automatic stay conveyed no title). We affirm the district court on this issue.

V. April 6, 2012 Ruling Denying Hammonds' Emergency Motion to Quash.

State Bank's foreclosure judgment was obtained on September 29, 2008. Over three years later, on November 28, 2011, State Bank filed another praecipe for special execution on the Madison County property.[6] The Hammonds appeal the denial of their emergency motion to quash the April 2012 sheriff's sale. They argue that under the statute of limitations in Iowa Code section 615.1, State Bank had two years plus an additional ninety-nine days (Kim's bankruptcy stay timeline)[7] to execute on its 2008 judgment. The Hammonds contend State Bank's praecipe was not filed until three hundred and twenty-one days *after* the extended statute of limitations date.

"A judgment is enforced by execution proceedings." *Deaton v. Hollingshead*, 282 N.W. 329, 333 (Iowa 1938). Execution must issue within the

[6] Earlier, on June 3, 2009, State Bank filed a withdrawal of its first execution and directed "the Madison County Sheriff to cancel his Sheriff's sale scheduled [for] June 16, 2009." In January 2010, the clerk of court issued a special execution for the property, but it was not received by the Madison County Sheriff; presumably it was lost in the mail. On May 18, 2010, the court authorized the clerk to issue another special execution, resulting in the August 17, 2010 sale date.

[7] Kim filed for bankruptcy on August 16, 2010, and was discharged on November 23, 2010.

period specified under section 615.1. *Id*.[8] Section 615.1 "provides a special limitation" on judgments entered in an action for the foreclosure of a real estate mortgage. *Id. at 330.* It was enacted during the Depression era to aid judgment debtors by placing limitations on judgments. *Hell v. Schult*, 28 N.W.2d 1, 3 (Iowa 1947). The statute relieves "judgment debtors in financial distress, and [enables] them to get another start freed from the burden of years of judgment liens." *Thorp Credit, Inc. v. Johnson*, 257 N.W.2d 498, 499 (Iowa 1997). Iowa Code section 615.1 provides:

> 1. After the expiration of a period of two years from the date of entry of judgment, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action,[9] a judgment entered in . . . the following action [ ] shall be null and void, all liens shall be extinguished, and no execution shall be issued for any purpose other than as a setoff or counterclaim:
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> a. An action for the foreclosure of a real estate mortgage, deed of trust, or real estate contract upon property which at the time of judgment is [used as] a one-family or two-family dwelling which is the residence of the mortgagor.

State Bank does not dispute the Hammonds' calculations and acknowledges "section 165.1 and the cases interpreting that section state that generally a special execution must issue within two years." State Bank argues, however, the court in *Federal Land Bank v. Lockard*, 446 N.W.2d 808 (Iowa 1989), held section 615.1 is not violated if an execution is promptly issued after the automatic stay in bankruptcy expires. Our reading of the *Lockard* case

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[8] In *Deaton*, "[j]udgment was recovered on January 19, 1935, execution was issued on December 21, 1936, but the sale under the execution did not occur until March 26, 1937, over two years after the entry of the judgment." *See Lincoln Joint Stock Land Bank v. Bundt*, 14 N.W.2d 865, 867 (Iowa 1944). The *Deaton* court ruled an execution *sale* occurring after the two-year bar is valid when the execution was issued within the limitation period. *Deaton*, 282 N.W. at 333.

[9] In 2006, the legislature codified the bankruptcy tolling language by adding the specific reference to bankruptcy. *See* 2006 Iowa Acts, ch. 1132, § 2.

shows no discussion of the interplay between a bankruptcy stay and an execution. Rather, the court discussed the interplay of Iowa Code section 654.6 and the limitations period of section 615.1. *Id*. at 809-10 (ruling unconstitutional the moratorium in section 654.6 that suspended section 615.1 limitation period).

Further, the plain language of section 615.1 unambiguously limits the lifespan of judgments obtained through mortgage foreclosure proceedings to two years, except as setoffs or counterclaims, exclusive of the time attributed to the bankruptcy stay. Legislative intent must be determined from the "words chosen by the legislature, not what it should or might have said." *Auen v. Alcoholic Beverages Div.*, 679 N.W.2d 586, 590 (Iowa 2004). The statute does not provide for a tolling of its provisions for any action other than bankruptcy proceedings. We may not enlarge or change the terms of the statue. *Lacina v. Maxwell*, 501 N.W.2d 531, 533 (Iowa 1993).

We also reject State Bank's argument it could take no action until after the district court's 2011 ruling finding the 2010 sale void. State Bank knew of the bankruptcy filing a few days after the sale. Iowa case law in 1986, 1987, and 1989, along with *applicable* federal case law in 1999 and 2001, unequivocally informed State Bank its post-petition execution sale was void. Further, "[t]hose taking post-petition collection actions have the burden of obtaining relief from the automatic stay." *Vierkant*, 240 B.R. at 323. Rather than accepting this burden, State Bank cashed the sale proceeds check, took no action to seek relief from the automatic stay, and took no action to inform purchaser Weems of the bankruptcy filing. The district court found State Bank "may have been waiting for someone else to push the issue." Therefore, State Bank's silence was a

voluntary choice, and we conclude it must live with the consequences. We find unpersuasive, in these circumstances, State Bank's broad allegation it is entitled to equitable relief from the limitation period in Iowa Code section 615.1. We will not permit State Bank to make use of its protracted silence, a lack of action within its own control, to accomplish a tolling of the limitations period. Such a holding would offer a premium to protracted litigation on execution and would defeat the evident legislative purpose of aiding debtors. *See Schult*, 28 N.W.2d at 3 (stating while the remedy may be harsh, the plain words of the statute make room for no exception).

As a result of the passage of time and of every statutory element being met, State Bank's 2008 foreclosure judgment is "null and void, all liens shall be extinguished, and no execution shall be issued except as a setoff or counterclaim." *See* Iowa Code § 615.1. Accordingly, we reverse the district court and remand for entry of a decree declaring the April 2012 sheriff's sale null and void, returning legal title of the Madison County property to the Hammonds and declaring the 2008 foreclosure judgment null and void as to the Madison County property for any purpose other than setoff or counterclaim.

Costs are assessed to State Bank.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.