

IN THE COURT OF APPEALS OF IOWA

No. 1-505 / 10-2051
Filed July 27, 2011

**BETTY M. BILLINGSLEY and
BETTY M. BILLINGSLEY TRUST,**
Plaintiffs-Appellees,

vs.

TRISTAN FRANK and TF 14,
Defendants-Appellants.

Appeal from the Iowa District Court for Jasper County, Gregory A. Hulse,
Judge.

Appeal from the district court's grant of summary judgment. **APPEAL
DISMISSED.**

Michael D. Ensley of Hanson, Bjork & Russell, L.L.P., Des Moines, for
appellants.

Colin D. Crowe of Gaudineer, Comito & George, L.L.P., West Des Moines,
for appellees.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

SACKETT, C.J.

The plaintiffs filed this action to set aside a tax sale deed issued to the defendants, alleging they were not served with a notice of expiration of the right of redemption as required by Iowa Code section 447.9 (2009). Subsequently, both the plaintiffs and the defendants filed motions for summary judgment. The district court granted the plaintiffs' motion. The defendants contend the court erred in ruling in favor of the plaintiffs, "contract vendor[s] with no remaining actual interest in the property." We dismiss the appeal.

Background and Proceedings. The plaintiffs entered into a contract for sale of the property to the current possessor in 1989. The contract was recorded. The buyer paid the full amount due under the contract. The sellers had not recorded a satisfaction of the contract or issued a deed to the buyer at any time relevant to this case. The defendants purchased the property at a tax sale on June 18, 2007, and were issued a tax sale certificate. On June 1, 2009, the defendants caused notice of the expiration of the right of redemption to be served on the contract buyer, who was the party in possession, and numerous other persons and entities. No notice was sent to the plaintiffs. On October 5, 2009, the county treasurer issued a tax deed to the defendants. On January 14, 2010, the plaintiffs filed this action to set aside the tax deed. On August 9, the plaintiffs moved for summary judgment. On August 20, the defendants also moved for summary judgment. On October 11, the district court issued its ruling on the motions. The court ruled:

The plaintiffs are the owners of record and were not served with notice. Since neither Iowa Code section 447.9 nor section

448.15 were complied with by the defendants, the deed is found to be void until such time as proper notice is given to all parties required by Iowa Code section 447.9 and the affidavit supporting service has been filed. The plaintiffs' Motion for Summary Judgment should be granted.

The court denied the defendants' motion for summary judgment.

On October 26 the defendants served, and on October 27 filed, a motion to reconsider or enlarge pursuant to Iowa Rule of Civil Procedure 1.904(2). They asserted the court did not properly apply the relevant statutory and case law in granting the plaintiffs' motion for summary judgment. They asked the court to enter a substituted ruling, granting summary judgment in their favor. Alternatively, they asserted the court must amend its ruling to comply with Iowa Code section 447.8(4), which provides, in relevant part:

If the court determines that notice was not properly served and that the person maintaining the action is entitled to redeem, the court shall so order. The order shall determine the rights, claims, and interests of all parties, including liens for taxes and claims for improvements made on or to the parcel by the person claiming under the tax title. The order shall establish the amount necessary to effect redemption.

On November 17, the court denied the motion requesting the ruling be modified to grant summary judgment in favor of the defendants. But the court agreed with the defendants that it should have proceeded to determine the rights, claims, and interests of all the parties and establish the amount necessary for redemption. See Iowa Code § 447.8(4). Because the parties had not supplied the court with the information necessary for it to make the required determinations, it set a hearing for December 29.

On December 14, the defendants filed their notice of appeal. The district court then cancelled the hearing scheduled for December 29.

On May 10, 2011, the supreme court filed an order addressing the plaintiffs' claim in their brief that the appeal should be dismissed as untimely. Although the court determined the appeal was timely, it noted the appeal may not be from a final order because the district court had scheduled the hearing to address the amount necessary to effect redemption. The supreme court ordered the parties to file statements "addressing whether this appeal is interlocutory and, if so, whether an appeal in advance of final judgment should be allowed." The court ordered the statements of the parties to be submitted with the appeal.

Accordingly, we first address whether this appeal is interlocutory and, if so, whether to allow it.

The defendants contend their appeal is not interlocutory because the district court "had issued its final ruling with regard to the substantive legal issues involved in this case." They assert the December 29 hearing was a procedural hearing, "as the issues that remained relative to Iowa Code section 447.8(4) arise in equity and are merely those powers of the court reserved to implement the decisions made" on the substantive legal issues.

The plaintiffs contend the appeal is interlocutory because the court's order expressly noted it lacked the information necessary to determine the rights of the parties and the order does not "finally adjudicate the rights of the parties." They also contend we should not grant an interlocutory appeal because the defendants will not be deprived of any right that could not be protected by an appeal from what they contend would be the final judgment issued after a hearing on the determinations the court must make under section 447.8(4).

Ordinarily, a grant of summary judgment that is not dispositive of the entire case is not a final judgment for purposes of appeal. *Mid-Continent Refrigerator Co. v. Harris*, 248 N.W.2d 145, 146 (Iowa 1976). A ruling is not final when the district court intends to act further before signifying its final adjudication of the issues. *Flynn v. Lucas Cnty. Mem'l Hosp.*, 203 N.W.2d 613, 614-15 (Iowa 1973).

The district court's order at issue here was not dispositive of the case and indicates the court intended to enter further orders. We consider the appeal an application for interlocutory appeal. Iowa R. App. P. 6.108. We must determine, therefore, whether to allow the interlocutory appeal. See Iowa R. App. P. 6.104(2).

The supreme court "has traditionally been parsimonious about allowing interlocutory appeals." *Mason City Prod. Credit Ass'n v. Van Duzer*, 376 N.W.2d 882, 886 (Iowa 1985); see also *In re J.J.A.*, 580 N.W.2d 731, 736 (Iowa 1998). Appeal of a ruling prior to a final ruling may be granted on a finding that "such ruling or order involves substantial rights and will materially affect the final decision and that a determination of its correctness before trial on the merits will better serve the interests of justice." Iowa R. App. P. 6.104(2).

Defendants have not satisfied us that the interests of justice would better be served by an immediate appellate determination of the correctness of the summary judgment than will be accomplished if the final judgment is appealed after the district court proceedings are at an end. The hearing under section 447.8(4), which is to determine the "rights, claims, and interests of all parties," will provide the final resolution of issues that cannot be decided on the record

before us. Even if we were to grant the interlocutory appeal and decide the issue raised, we might have to decide a later appeal of issues not yet addressed by the district court in the (now cancelled) hearing. “Piecemeal appeals often contribute little more to the judicial process than additional expense and delay.” *Mason City Prod. Credit Ass’n*, 376 N.W.2d at 887.

This appeal is interlocutory and premature.

APPEAL DISMISSED.