

IN THE COURT OF APPEALS OF IOWA

No. 1-826 / 11-0542
Filed December 21, 2011

**BANK OF THE WEST, Successor-in-
Interest to COMMERICAL
FEDERAL BANK,**
Plaintiff-Appellee,

vs.

**AIRPORT PLAZA, L.L.C., JODY M.
WALTERS, DANIEL J. STANBROUGH,
and PARTIES IN POSSESSION,**
Defendants,

and

DAVID M. WALTERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom,
Judge.

David Walters appeals from an order determining Iowa Code section
628.4 (2011) applied to bar his redemption rights to certain real property.

REVERSED AND REMANDED WITH DIRECTIONS.

Jerrold Wanek of Garten & Wanek, Des Moines, for appellant.

Jonathan Kramer of Whitfield & Eddy, P.L.C., Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

David Walters, a judgment debtor, appeals the district court's order determining Iowa Code section 628.4 (2011) applied to bar his redemption rights to certain real property after a stay of execution on the judgment had been entered. Because David was not a party who stayed execution on the judgment and because the statute does not contemplate "de-facto" stays, we conclude, under the record before us, section 628.4 is inapplicable to David, and we therefore reverse and remand with directions.

I. Background Facts and Proceedings.

David and Jody Walters each executed commercial guarantees guaranteeing payment of indebtedness of Airport Plaza, L.L.C. to Bank of the West. Bank of the West obtained a default judgment against Airport Plaza, L.L.C. in a foreclosure action. After a bench trial, the Walterses were determined to be liable to Bank of the West for the debt they guaranteed, and on December 14, 2009, Bank of the West obtained a \$2,021,203.24 judgment against the Walterses.

In January 2010, Jody filed a Chapter 7 bankruptcy petition in federal bankruptcy court. She then filed a notice of bankruptcy in the foreclosure action in district court. The district court subsequently entered an order staying all proceedings until further order of the court.

In October 2010, Bank of the West filed a motion to vacate the stay and to determine the period of redemption. It claimed Jody received her discharge in bankruptcy and there was no further need for the stay. It alleged the Walterses jointly owned certain real property in Pleasant Hill, Iowa, and collection against

the property was stayed by Jody's bankruptcy filing and the district court's "much broader stay of collection efforts against all defendants." Further, Bank of the West alleged David's fraudulent conduct in holding assets in the name of others and inaccurate testimony given at his judgment debtor examination "operated as a stay." Bank of the West requested the court to apply Iowa Code section 628.4 and declare the Walterses had no period of redemption on the Pleasant Hill property.

In response to the motion, the Walterses moved to strike, claiming only the stay in bankruptcy had been extended. The district court continued the stay as to Jody, finding Jody indicated a stay remained in place as to the determination of her rights. However, the court found there was no such order regarding the other defendants, including David, and it lifted the stay regarding judgment execution as against all other defendants. Additionally, the court ordered:

Because there was a stay entered in this matter, the court finds that Iowa Code section 628.4 is applicable as against [David] and that he shall have no period of redemption regarding the [Pleasant Hill] property in the event such property is eventually sold at execution sale pursuant to this judgment.

David appeals.

II. Discussion.

This appeal requires an interpretation of Iowa Code section 628.4. Asserting he did not file the petition in bankruptcy and did not request the stay entered by the district court, David argues section 628.4 is not applicable to him and the district court erred in so finding.

We “review for correction of errors at law the district court’s interpretation of applicable statutes.” *Schneider v. State*, 789 N.W.2d 138, 144 (Iowa 2010).

When tasked with interpreting a statute:

[O]ur primary goal is to give effect to the intent of the legislature. That intent is evidenced by the words used in the statute. When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms. In the absence of legislative definition, we give words their ordinary meaning.

Anderson v. State, 801 N.W.2d 1, 3 (Iowa 2011) (internal citations and quotations omitted).

Section 628.4 bars the redemption rights of a party who has stayed execution on the judgment. Specifically, Iowa Code section 628.4 reads: “A party who has stayed execution on the judgment is not entitled to redeem.” This statute has been a part of the Iowa Code since 1873. See *Farmers Trust & Sav. Bank v. Manning*, 359 N.W.2d 461, 464 (Iowa 1984). It has been said that the provisions of this section are “so plain that there is no room for construction.” *Dobbins v. Lusch, Carton & Co.*, 53 Iowa 304, 308, 5 N.W. 205, 208 (1880). Our supreme court has further stated:

Because of the clear legislative mandate, the statutory right of redemption is barred whenever the debtor secures a stay of execution on the judgment, regardless of how the stay is obtained. It is clear the intent of section 628.4 is that a debtor who obtained a stay order should not be entitled to have the benefits of both the delay of the foreclosure sale and the statutory right of redemption.

Hawkeye Bank & Trust N.A. v. Milburn, 437 N.W.2d 919, 923 (Iowa 1989). The right of redemption and the right to stay proceedings pending an appeal are “purely creatures of statute.” *First Nat’l Bank v. Matt Bauer Farms Corp.*, 408 N.W.2d 51, 53 (Iowa 1987). “A stay may be given by statute, or effectuated by

order of court or by agreement of the parties.” *Id.* at 54. An automatic stay resulting from the filing of a voluntary petition in bankruptcy is a stay under section 628.4. *Id.* at 55. It is against this backdrop that we review the appeal before us.

There is no dispute that stays of execution stopping or arresting execution on the judgment were obtained; one given by bankruptcy statute¹ and the other by order of the district court. Having concluded section 628.4 was applicable to David, the district court implicitly and necessarily found David was a party who secured or obtained a stay of execution on the judgment.² But David was not a party to Jody’s bankruptcy filing that resulted in an automatic stay of collection and other actions against Jody and the Walterses’ jointly owned Pleasant Hill property. Jody was the only debtor listed in the bankruptcy proceeding. And it was only Jody, not David, who filed the notice of bankruptcy in the federal Iowa district court. In response thereto, the district court entered an order staying all proceedings in this action until further order of the court. There is nothing in the record to indicate David requested or caused entry of this broader stay of collection efforts against all defendants. It was Jody, not David, who obtained or secured the stays. Accordingly, under its plain language, Iowa Code section 628.4 is not applicable as against David under the record presented in this case, and the district court erred in so finding. However, our inquiry does not end here.

¹ See 11 U.S.C. § 362 (2011).

² Because no motion for enlargement of finding was made under Iowa Rule of Civil Procedure 1.904(2), we assume as fact any unstated finding that is necessary to support the court’s ruling. See *Hubby v. State*, 331 N.W.2d 690, 695 (Iowa 1983).

We may uphold a district court ruling on a ground other than the one upon which the district court relied provided the ground was urged in that court. *DeVoss v. State*, 648 N.W.2d 56, 61-62 (Iowa 2002). In its motion, Bank of the West contended David's fraudulent conduct in holding assets in the names of others and giving inaccurate testimony at his judgment debtor examination operated as a stay, and his statutory right of redemption was therefore barred by application of section 628.4. These grounds were not relied upon by the district court for its ruling.³

Bank of the West argues the statutory right of redemption is barred whenever the debtor secures a stay of execution on the judgment, "regardless how the stay is obtained." It asserts David engaged in conduct deliberately thwarting collection efforts, therefore creating a de-facto stay of execution. We disagree.

A stay may be given by statute, or effectuated by order of court, or by agreement of the parties. *First Nat'l Bank*, 408 N.W.2d at 54 (citing *Farmers Trust & Savings Bank*, 359 N.W.2d at 464; Black's Law Dictionary 1267 (5th ed. 1979)). Bank of the West does not cite us to any statute, court order, or agreement by the parties giving David a stay as a result of the alleged conduct. Nor are we directed to any case law that would infer a de-facto stay under the circumstances, or that such a creature is even recognized in our jurisprudence. In any event, our case law indicates that the only stays contemplated by section 628.4 are those given by statute, effectuated by court order, or by agreement of

³ Because the district court found section 628.4 was applicable pursuant to the court's previous stay, it concluded it need not address Bank of the West's alternative arguments.

the parties. *Id.* at 54. With none shown, we therefore find Bank of the West's argument on this point without merit.

III. Conclusion.

Under the record before it, the district court erred in invoking Iowa Code section 628.4 against David and in finding he has no period of redemption regarding the Pleasant Hill property. We accordingly reverse and remand for a ruling consistent with this opinion.

REVERSED AND REMANDED WITH DIRECTIONS.