

IN THE COURT OF APPEALS OF IOWA

No. 8-538 / 07-2176
Filed December 17, 2008

**RICHARD F. VERSCHOOR and
PATRICIA A. VERSCHOOR,**
Plaintiffs-Appellants,

vs.

**AUTO CENTRAL, L.L.C., THOMAS
RIDDER, BOJI AUTO FINANCE, INC.,
UNITED COMMUNITY BANK, and
their known heirs, devisees, grantees,
assignees, successors in interest
and the unknown claimants of the
following described real estate
situated in Dickinson County, Iowa:
Lots One (1), Two (2), Three (3),
and Four (4), Block Nine (9), Meyers
Addition to the Town of North Milford,
Dickinson County, Iowa,**
Defendants-Appellees.

Appeal from the Iowa District Court for Dickinson County, Nancy L. Whittenburg, Judge.

Richard and Patricia Verschoor appeal a district court ruling dismissing their action to quiet title. **AFFIRMED.**

Michael H. Johnson of Stoller & Johnson, Spirit Lake, for appellants.

Michael J. Chozen of Chozen & Saunders, Spirit Lake, for appellees Auto Central and United Community Bank.

Michael Bovee of Montgomery, Barry & Bovee Law Offices, Spencer, for appellee Auto Central.

Heard by Huitink, P.J., and Vaitheswaran and Potterfield, JJ.

VAITHESWARAN, J.

Richard and Patricia Verschoor appeal a district court ruling dismissing their action to quiet title.

I. Background Facts and Proceedings

In 1996, Richard and Patricia Verschoor contracted to sell six parcels of real estate to Boji Auto Finance, Inc. Under the terms of the real estate contract, Boji Auto was to make monthly payments until August 2011.

In late 1999, a warranty deed was executed purporting to convey Parcels 5 and 6 from the Verschoors to Boji Auto. The deed was recorded on February 23, 2000.¹ Five years after the recording, the Verschoors sued to quiet title in the two parcels. They alleged their signatures on the 1999 warranty deed were forgeries.

While several defendants were sued, only two participated at trial.² Those two entities, United Community Bank and Auto Central, L.L.C., asserted that Boji Auto transferred a portion of Parcels 5 and 6 to United Community Bank, which in turn, transferred title to Auto Central. These defendants sought summary judgment, claiming, in part, that Auto Central was a bona fide purchaser. The

¹ Parcels 5 and 6, referred to as “the 4-plex,” bore the following legal description: “Lots One (1), Two (2), Three (3) and Four (4), Block Nine (9), Meyers Addition to the Town of North Milford, Dickinson County, Iowa.” One month after signing the real estate contract with the Verschoors, Boji Auto subdivided the 4-plex into two parcels, designated “Parcel A” and “Parcel B.” The Verschoors denied knowledge of this action. Boji Auto sold parcel A to Lora and Eric Bilney who, in turn, mortgaged the parcel to Farmers Trust and Savings Bank. Parcel B is the subject of this litigation. As it is part of Parcels 5 and 6, we will refer to the contested property as “Parcels 5 and 6.”

² Defendants Thomas Ridder and Boji Auto were served notice by publication, but never participated in the proceedings. The Bilneys and Farmers Trust and Savings Bank were later added as indispensable parties, but the Verschoors dismissed with prejudice their claim against them prior to trial.

district court denied the motion after concluding that there existed genuine issues of material fact as to whether the Verschoors' signatures on the 1999 deed were forged and whether an inspection of the deed would have revealed the forgery.

At trial, Richard Verschoor testified that he and his wife did not sign the 1999 warranty deed. Patricia Verschoor similarly testified that the signature on the 1999 warranty deed was not hers. She also stated she would not have signed such a document until the contract price was paid off.

An expert for the Verschoors testified that their signatures on the 1999 deed were forged. An expert for the defendants essentially found a probability or high probability that the signatures on the deed were produced by the same individuals who produced other handwriting samples provided to her.

The district court made extensive findings concerning the handwriting analyses performed by the experts. The court determined that the Verschoors failed to prove forgery. The court further concluded that, absent a forgery, the defendants were entitled to the protections due bona fide purchasers. The court dismissed the Verschoors' petition and subsequently denied their motion for expanded findings and conclusions.

The Verschoors appealed. Our review is de novo. *Fencl v. City of Harpers Ferry*, 620 N.W.2d 808, 811 (Iowa 2000).

II. Analysis

As noted, the district court determined that the 1999 deed was not forged. The Verschoors contend this determination is not supported by the record. On our de novo review, we disagree.

The district court made detailed findings of fact on this question, analyzing the credentials of both expert witnesses, their methodologies, and their conclusions. The court found the Verschoors' expert unpersuasive, stating his "skill, experience and knowledge does not compare to that of the expert witness for the defendants." The court concluded the Verschoors failed to show that their signatures on the deed were forged.

After "a careful examination of the entire record," we are convinced the court's findings have factual support. See *Bibler v. Bibler*, 205 Iowa 639, 647, 216 N.W. 99, 102 (1927); *Amish v. Amish*, 196 Iowa 685, 689, 195 N.W. 359, 361 (1923) ("It is putting the case very mildly to say it falls far short of that reasonable certainty which is properly required to invalidate a deed of land which has been followed by the unbroken and unchallenged possession of the grantee for many years . . ."). Therefore, we affirm the district court's determination that the 1999 deed was not forged.

This brings us to the question of whether the defendants were bona fide purchasers. "A bona fide purchaser is one who takes a conveyance of real estate in good faith from the holder of legal title, paying a valuable consideration for it without notice of outstanding equities." *Raub v. Gen. Income Sponsors of Iowa, Inc.*, 176 N.W.2d 216, 219 (Iowa 1970). A land purchaser has the burden to establish the status of bona fide purchaser. *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 638 (Iowa 1996). To do so, the purchaser must show the purchase was made without either actual or constructive notice of existing rights in the property. *Id.*

The Verschoors contend United Community Bank had actual notice of their claim to Parcels 5 and 6. They rely on the testimony of a bank vice-president, Steve Feld. He, in fact, testified that, when the bank lent money to Boji Auto and secured a mortgage on a portion of Parcels 5 and 6, he had no knowledge that the Verschoors were making a claim to that property. He additionally testified that, to the extent there were filings in bankruptcy court that might have disclosed the Verschoors' claim, he could not "say for sure" whether his attorney informed him of those filings.³ Finally, Feld testified that he was not informed of the Verschoors' claim that the 1999 deed was forged until early May of 2004, several months after Boji transferred title to the bank and the bank, in turn, transferred title to Auto Central. We conclude the bank did not have actual notice of the Verschoors' claim to Parcels 5 and 6.

On the question of constructive notice, Feld testified that the bank performed a lien search in 2002, prior to lending money to Boji Auto. The search disclosed the 1999 deed transferring Parcels 5 and 6 from the Verschoors to Boji Auto. The bank relied on this abstracting. Feld testified that nothing from the lien search would have disclosed that the Verschoors had an interest in any portion of Parcels 5 and 6. Based on this record, we conclude the bank did not have constructive notice of the Verschoors' claim to Parcels 5 and 6.

We further agree with the district court that United Community Bank was a bona fide purchaser, as was Auto Central, the entity to which the bank

³ The principal of Boji Auto, Thomas Ridder, filed a bankruptcy petition listing the Verschoors' interest in Parcels 5 and 6. It is undisputed that the 1999 warranty deed conveyed the property to Boji Auto, not to Ridder.

transferred the property. See *Raub*, 176 N.W.2d at 220; *Govern v. Russ*, 125 Iowa 188, 189-90, 100 N.W. 325, 325 (1904).

The Verschoors also argue that, if the defendants were bona fide purchasers, they were only bona fide purchasers of a portion of Parcels 5 and 6 and some of the balance belonged to them. It is clear, however, that the 1999 deed transferred all of Parcels 5 and 6 to Boji Auto. As we have already affirmed the determination that the deed was not a forgery, we conclude that the deed divested the Verschoors of an interest in Parcels 5 and 6.

The Verschoors finally note that documents transferring portions of Parcels 5 and 6 from Boji Auto to United Community Bank and Auto Central contained inaccurate legal descriptions. These documents do not implicate the Verschoors' claim because after they transferred Parcels 5 and 6 to Boji Auto in 1999, their right to that property was extinguished.

We affirm the district court's dismissal of the Verschoors' quiet title action.

AFFIRMED.