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NO. COA01-203

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

WADE S. LAMBERTH and wife,  
LOUISE F. LAMBERTH,  
Plaintiffs

v.

Iredell County  
No. 96 CVD 449

ROLAND ALTON McDANIEL and  
wife, RITA S. McDANIEL,  
Defendants

Appeal by plaintiffs from judgment entered 4 May 2000 by Judge James M. Honeycutt in Iredell County District Court. Heard in the Court of Appeals 8 January 2002.

*David P. Parker for plaintiff-appellants.*

*Homesley, Jones, Gaines, Homesley & Dudley, by L. Ragan Dudley, for defendant-appellees.*

HUNTER, Judge.

Wade S. Lamberth and Louise F. Lamberth ("plaintiffs") appeal the entry of judgment directing them to convey to Roland Alton McDaniel and Rita S. McDaniel ("defendants") a certain parcel of real property upon defendants' tendering of the purchase price pursuant to an equitable right of redemption.

The facts underlying this appeal are set forth in detail in *Lamberth v. McDaniel*, 131 N.C. App. 319, 506 S.E.2d 295 (1998) (hereinafter "*Lamberth I*"). In short, defendants purchased a

parcel of real property from plaintiffs pursuant to an installment sales contract on 14 June 1990. In 1995, defendants fell behind on their payments to plaintiffs. Plaintiffs initiated this action in March 1996, arguing that defendants' failure to make timely payments resulted in a forfeiture of the installment sales contract, and that plaintiffs were entitled to recover possession, past due payments, and ad valorem taxes. In *Lamberth I*, this Court affirmed the trial court's determination that defendants were entitled to exercise the equity of redemption. *Id.* at 322, 506 S.E.2d at 297. We upheld the trial court's judgment which ordered plaintiffs to convey the property to defendants upon receipt of the balance of the purchase price, interest, and ad valorem taxes. *Id.*

In April 1999, following *Lamberth I*, defendants filed a motion for contempt, alleging that defense counsel had contacted plaintiffs and their attorney several times to inform them defendants were ready to tender the balance of the purchase price, interest, and taxes, but that plaintiffs were uncooperative. Defendants' attorney sent a letter to plaintiffs on 18 February 1999, stating that defendants were ready to tender the money owed, requesting verification of the balance due, and asking when plaintiffs would be available to settle the matter. When plaintiffs failed to respond, defense counsel sent a second letter on 16 March 1999, informing plaintiffs that a closing had been scheduled for 25 March 1999, at which defendants would tender the money owed in accordance with *Lamberth I*, and that plaintiffs would be expected to convey the land to defendants. Plaintiffs' attorney

thereafter informed defense counsel that plaintiffs would not attend the closing.

Defendants' motion for contempt was heard before the trial court in June 1999. On 1 July 1999, the trial court entered an order finding plaintiffs to be in contempt for failure to allow defendants to proceed with a closing for the sale of the property in accordance with the initial order of the trial court, and this Court's decision in *Lamberth I*. The trial court allowed the parties until 2 July 1999 to agree upon the purchase price to be tendered, and ordered that plaintiffs could purge themselves of contempt by appearing at a closing upon ten days' notice. Plaintiffs have not appealed from this order of the trial court.

On 2 May 2000, the matter again came before the trial court for the sole purpose of setting the amount of the purchase price. The trial court entered an order on 4 May 2000, concluding defendants owed plaintiffs the purchase price of \$13,099.94, and that defendants would have forty-five days to tender the amount. The court ordered that plaintiffs would have ten days after notice to convey the property to defendants in accordance with the 1 July 1999 order of the trial court. From this 4 May 2000 order, plaintiffs appeal.

Plaintiffs maintain on appeal that defendants should not now be able to exercise the equitable right of redemption because there are "time limits" for payment under this right, and defendants have failed to timely tender the amount owed. Plaintiffs argue that defendants failed to tender the balance of the purchase price,

interest, and taxes following the original trial court order entered 20 October 1997, following *Lamberth I*, and following the trial court's 1 July 1999 order. Thus, plaintiffs argue, they have not received payment on the land since 1995, and defendants should not now be able to exercise the equity of redemption.

Plaintiffs evidently overlook the fact that any delay in payment has resulted from their own actions. Defendants did not tender the purchase price, interest and taxes following the original trial court order of October 1997 because plaintiffs appealed the order to this Court. The record reveals that following our decision in *Lamberth I*, wherein we upheld the October 1997 order, defendants made several attempts to arrange delivery of the amount owed to plaintiffs. Plaintiffs were uncooperative, and refused to attend a closing scheduled for 25 March 1999. Plaintiffs were thereafter held to be in contempt of court for their failure to appear at the 25 March 1999 closing. Defendants have not yet tendered the amount owed to plaintiffs even after the trial court set the exact amount owed because, again, plaintiffs have appealed that order to this Court.

Even if plaintiffs can support their assertion that there are "time limits" on exercising the equitable right of redemption, for which they have failed to cite any authority, the record is clear that defendants have repeatedly attempted to exercise this right, and that any delay in the tendering of the amount owed has been plaintiffs' fault. We reject this argument.

Plaintiffs also object to being ordered to attend a closing of the matter, contending that they have no obligation to tender the property to defendants until defendants have first tendered the amount owed. Specifically, plaintiffs argue that exchange of the property and money in a single closing transaction which would allow defendants to use the property as collateral for financing amounts to plaintiffs' having to tender the property prior to physically receiving defendants' money owed. Although this may be true, this type of closing transaction involving the use of a closing agent where the deed is tendered simultaneously with payment and recording of the deed of trust are standard practices, and we do not agree that such a transaction violates the principles governing the exercise of the equity of redemption.

In any event, plaintiffs have not preserved this argument for appeal where they failed to appeal from the 1 July 1999 order of the trial court which determined that plaintiffs could purge themselves of contempt by appearing at a closing of the matter upon ten days' notice. The sole purpose of the 4 May 2000 order on appeal here was to determine the purchase price which defendants owe plaintiffs. Plaintiffs have not argued that the trial court's determination of the purchase price owed was in error, and we therefore affirm the order.

Affirmed.

Judges GREENE and TYSON concur.

Report per Rule 30(e).