

IN THE SUPREME COURT OF IOWA

NO. 19-1689

WAYNE JOSEPH MLADY,
Appellant-Cross Appellee,

vs.

SUE ANN DOUGAN,
Appellee-Cross Appellant.

Appeal from the Iowa District Court for Howard County
The Honorable John J. Bauercamper
No. EQCV017058

APPELLANT'S BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE DISTRICT COURT ERRED WHEN IT DETERMINED DOUGAN WAS ENTITLED TO REDEEM AND OBTAIN TITLE WITHOUT MAKING ANY DETERMINATION AS TO WHETHER DOUGAN’S REDEMPTION WAS TIMELY UNDER CHAPTER 628 AS DIRECTED BY THE COURT OF APPEALS ON REMAND.

A. Preservation of Error and Scope of Review.

Bank of Am., N.A. v. Schulte, 843 N.W.2d 876 (Iowa 2014)

Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)

Decorah State Bank v. Wangsness, 452 N.W.2d 438 (Iowa 1990)

Citizens Sav. Bank v. Sac City State Bank, 315 N.W.2d 20 (Iowa 1982)

B. The District Court Failed to Meet its Obligations on Remand.

In re Marriage of Davis, 608 N.W.2d 766 (Iowa 2000)

5 Am. Jur. 2d Appellate Review § 784 (1995)

Glenn v. Chambers, 56 N.W.2d 892 (Iowa 1953)

3 Am. Jur. Appeal and Error § 1234 (1936)

City of Okoboji v. Iowa Dist. Court for Dickinson Cty., 744 N.W.2d 327 (Iowa 2008)

1. The district court failed to consider the full opinion of the Court of Appeals and the circumstances the opinion embraced.

Iowa Code Chapter 628

Great W. Bank v. Clement, 928 N.W.2d 168 (Iowa Ct. App. 2019)

First Nat'l Bank of Glidden v. Matt Bauer Farms Corp., 408 N.W.2d 51 (Iowa 1987)

Iowa Code § 628.3

Iowa Code § 628.25

Iowa Code § 626.13

- 2. The district court failed to provide proper factual or legal analysis of the issue it was mandated to decide in its Remand Ruling.**

Iowa Code § 628.13

Federal Land Bank of Omaha v. Bryant, 445 N.W.2d 761 (Iowa 1989)

Waterloo Sav. Bank v. Carpenter, 9 N.W.2d 818 (Iowa 1943)

Olson v. Sievert, 30 N.W.2d 157 (Iowa 1947)

First Nat'l Bank of Glidden v. Matt Bauer Farms Corp., 408 N.W.2d 51 (Iowa 1987)

Iowa R. Civ. P. 1.904

- 3. The undisputed facts demonstrated that Dougan did not and could not meet her burden to prove she timely redeemed.**

Iowa Code § 628.21

- 4. While Dougan attempted to shift blame to the district court for her failure to timely redeem, Dougan's negligence bars any grant of equitable relief from the statute's requirements. No Iowa case provides otherwise.**

Iowa R. Civ. P. 1.904

Iowa Code § 628.21

Tharp v. Kerr, 119 N.W. 267 (Iowa 1909)

Olson v. Sievert, 30 N.W.2d 157 (Iowa 1947)

Wakefield v. Rotherham, 25 N.W. 697 (Iowa 1885)

First Nat'l Bank of Glidden v. Matt Bauer Farms Corp., 408 N.W.2d 51 (Iowa 1987)

Northwestern Mutual Life Ins. Co. v. Hansen, 218 N.W.2d 502 (Iowa 1928)

Iowa Code § 628.13

- 5. The district court still failed to provide proper factual or legal analysis of the issue it was mandated to decide on remand when it ruled on the parties' Rule 1.904 motions.**

Iowa R. Civ. P. 1.904

Berger v. Amana Soc., 120 N.W.2d 465 (Iowa 1963)

First Nat'l Bank of Glidden v. Matt Bauer Farms Corp., 408 N.W.2d 51 (Iowa 1987)

II. WHETHER THE DISTRICT COURT ERRED WHEN IT DETERMINED DOUGAN'S OBLIGATION TO PAY INTEREST ON THE SHERIFF'S SALE PURCHASE PRICE CEASED ON MAY 23, 2018.

A. Preservation of Error and Scope of Review.

Iowa R. Civ. P. 1.904

Bank of Am., N.A. v. Schulte, 843 N.W.2d 876 (Iowa 2014)

Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)

Decorah State Bank v. Wangsness, 452 N.W.2d 438 (Iowa 1990)

B. Per Diem Interest Accrues Until the Time of Full Redemption.

Iowa R. Civ. P. 1.904

Wakefield v. Rotherham, 25 N.W. 697 (Iowa 1885)

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Fed. Land Bank v. Bryant, 445 N.W.2d 761 (Iowa 1989)

Fed. Land Bank of Omaha v. Sleister, 444 N.W.2d 504 (Iowa 1989)

Iowa Code § 628.13

C. Equity Also Supports an Award of Interest to Mlady Through the Date of Redemption.

Waterloo Sav. Bank v. Carpenter, 9 N.W.2d 818 (Iowa 1943)

ROUTING STATEMENT

This case involves application of existing legal principles and thus should be routed to the Iowa Court of Appeals for consideration. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

This is the second appeal between the parties regarding redemption of foreclosed agricultural property.

After foreclosure and entry of default judgment, Wayne Mlady (“Mlady”) purchased the property via sheriff’s sale. The agricultural property debtor assigned his right to redeem the property to Sue Ann Dougan (“Dougan”). The district court found the assignment invalid and unenforceable, such that Dougan was not eligible to redeem, leading to the first appeal.

The Court of Appeals reversed and remanded to the district court for entry of a judgment consistent with its opinion that the assignment was valid and enforceable but directing the district court to determine whether Dougan’s redemption was timely.

On remand, the district court failed to properly follow the appellate court’s mandate to determine whether Dougan’s redemption was timely and

improperly determined Dougan's obligation to pay interest on the sheriff's sale purchase price ceased on May 23, 2018.

The issue before the district court was straightforward:

Did Dougan timely redeem the property by paying the sale price plus the remaining amount of the certificate holder's lien, including costs and interest within the one year redemption period?

As set forth herein and previously, Dougan did not timely redeem.

STATEMENT OF THE FACTS

Background Facts and Prior Proceedings

On May 22, 2017, Mlady purchased foreclosed agricultural property¹ via sheriff's sale. May 31, 2019 Hearing Transcript, Ex. A: Sheriff's Certificate of Purchase ("Certificate of Purchase") (App. 595-597). On March 28, 2018, the debtor assigned his right to redeem to Dougan.

On March 30, 2018, Dougan provided funds in the amount of \$1,690,000.00 to the Clerk of District Court. *Id.* at Ex. 1A (App. 601). On April 2, 2018, Dougan sought declaratory judgment recognizing her right to redeem via assignment. Dougan Post Trial Brief, Attachment A (App 87-91). On April 25, 2018, the district court denied Dougan's petition, finding

¹ The foreclosure was based on two unpaid promissory notes ("Notes"). May 31, 2019 Hearing Transcript, Ex. 3A and Ex. 4 (App. 603-604 and 605-606). Because the Notes were, and are, in default, the applicable contract rate specified by the Notes is 21.000%. *Id.*

the assignment invalid. Mlady Closing Brief, Attachment 1 (App. 69-77).

On May 9, 2018, Dougan moved for new trial, reconsideration, or stay.

On May 21, 2018, Dougan deposited additional funds in the amount of \$247,001.00 (App. 602) to the Clerk of District Court, bringing her total tender in support of the redemption to \$1,937,001.00.

On May 23, 2018, the district court denied Dougan's request for a stay and did not address the motion for a new trial or 1.904(2) motion. On May 23, 2018, Mlady obtained the Sheriff's Deed. Sheriff's Deed (App. 609). Dougan subsequently dismissed her district court motions and appealed.

On March 20, 2019, the Iowa Court of Appeals reversed and remanded for entry of a judgment consistent with its opinion that "Dougan's assignment was valid and enforceable." *Great W. Bank v. Clement*, 928 N.W.2d 168 (Iowa Ct. App. 2019). The trial court was further instructed to determine "whether the redemption was timely under chapter 628, an issue raised below by Mlady." *Id.* The Court of Appeals' specific instruction to the trial court to determine timeliness of redemption indicates that while Dougan had the *right* to redeem, *a question remains as to whether she properly did so*. In short, if Dougan did not timely exercise her right of redemption, then her attempted redemption fails.

On May 17, 2019, procedendo issued and the district court set the matter for hearing on May 31, 2019. Procedendo (App. 168-171); Order for Hearing (App. 172-173).

May 31, 2019 Hearing on Remand

As relevant to this appeal, Dougan testified: (1) On March 30, 2018, she paid \$1,690,000 to the clerk [May 31, 2019 Hearing Transcript at 16:11-15 (App. 532)]; (2) Dougan intended her deposit to reflect the 4.25 interest rate from the promissory notes [*Id.* at 18:9-18 (App. 534)]; (3) To determine the March 30, 2018 deposit amount she relied on calculations from amortization schedules prepared by her attorney [*Id.* at 20:3-25 (App. 536)]; (4) after the district court's April 25, 2018 Order denying her Petition, Dougan made a second "protective deposit to effect a redemption in case the Court would ultimately determine 21 percent was the applicable contract rate" [*Id.* at 21:23-22:8 (App. 537-538)]; (5) Dougan relied on the advice of her counsel and not the advice of the clerk when she determined the amount of her second protective deposit [*Id.* at 33:21-34:1 (App. 549-550)]; and (6) She acknowledged that she has a ruling from the Court of Appeals that entitles her to redeem *if the trial court determined that she paid the proper amount of money* [*Id.* at 36:2-7 (App. 552)].

The district court further heard testimony from an accountant hired by Dougan to present expert testimony as to the amortization schedules prepared by Dougan's counsel. As relevant to this appeal, the accountant confirmed that if the 21% interest rate applied, the total amount of principal and interest using the per diem rate of \$933.33 would be \$1,938,799.79. *Id.* at 55:18-56:7 (App. 571-572). As such, Dougan's expert confirmed that she underpaid \$1,798.79. *Id.*; *see also id.*, Exhibit D (App. 600).

The district court also heard testimony from Mlady. As relevant to this appeal, Mlady testified as to costs in connection with his purchase at the sheriff's sale. May 31, 2019 Hearing Transcript at 68:18-69:16 (App. 584-585); *See also* Certificate of Purchase (App. 595-597). Mlady testified: (1) he understood from the mortgage that the default rate was 21% and relied on recovering that interest rate if the property were redeemed [May 31, 2019 Hearing Transcript at 69:19-70:9 (App. 585-586)]; (2) he would not have purchased the property if the regular 4.25% interest rate had been applied [*Id.* at 70:10-13 (App. 586)]; (3) he currently holds a sheriff's deed and planted crops in 2018 based on that deed [*Id.* at 70:16-20 (App. 586)]; and (4) he has not received nor does he have access to any of the money Dougan has deposited with the clerk [*Id.* at 71:15-20 (App. 587)].

At the hearing the parties agreed that in the event of a final non-appealable judgment in favor of Sue Dougan, Sue Dougan will be entitled to the 2019 rent in the amount of \$66,250 minus \$8,795 for the taxes to be paid in June of 2019 by Wayne Mlady. *Id.* at 75:11-15 (App. 591). The parties agreed to submit post hearing briefs and copies of past appellate briefs for the court’s consideration. *Id.*

June 12, 2019 Remand Ruling

After the hearing on remand, the district court determined the following: (1) the applicable rate of interest for redemption was the default rate of 21%; (2) Dougan was not entitled to a reduction in the \$933.33 per diem interest rate based upon her later, second payment to the clerk on May 21, 2018 (made to correct her insufficient initial tender on March 30, 2018); and, (without any analysis or conclusions of law as to whether Dougan had, in fact, properly redeemed under the statute) (3) that the clerk pay over the funds received for redemption to Mlady—and upon payment, Dougan would become the legal titleholder by operation of law. June 12, 2019 Ruling on Remand (“Remand Ruling”) (App. 318-322). Both parties filed motions to amend and enlarge.

Rule 1.904 Motions

Mlady argued: (1) Dougan did not timely exercise her right of redemption; and (2) Dougan's failure to timely exercise her right of redemption entitled Mlady to the sheriff's deed. Mlady Rule 1.904 Motion (App. 349-362).

Dougan argued: Dougan's obligation to pay Mlady interest on the sheriff's sale purchase price paid by Mlady following the special execution sale of May 22, 2017, ceased on May 23, 2018 when Mlady surrendered the certificate of sale to the sheriff and obtained a sheriff's deed to the farm. Brief in Support of Sue Ann Dougan's Motion to Reconsider, Enlarge, and Explain Pursuant to I. R. Civ. P. 1.904(2) ("Dougan Rule 1.904 Motion Brief") at 2-6 (App. 371-375).

While the district court's ruling was pending, on June 17, 2019, Mlady paid \$8,795.00 in property taxes.² June 24, 2019, Respondent Mlady's Written Statement Regarding Distribution of Funds Held by Clerk, Ex. A: Affidavit of Wayne Joseph Mlady (App. 341-348).

² Additional costs associated with this action include: \$235.00 (court costs) \$175.00 (accrued costs) and \$189.24 (Sheriff Fees). Certificate of Purchase (App. 595-597).

Ruling on Rule 1.904 Motions

On September 28, 2019, the district court denied Mlady's motion and granted Dougan's motion, in part, ruling: (1) Dougan's obligation to pay accruing interest to Mlady on the redemption balance ended as of May 23, 2018 and (2) Mlady is entitled to a payment of **\$1,938,799.79** for the Certificate of Purchase. Order on Rule 1.904 Motions (App. 414-418).

Mlady Appeals and Dougan Cross-Appeals

Mlady filed his Notice of Appeal on October 4, 2019, and Dougan filed her Cross Appeal on October 8, 2019. Mlady Notice of Appeal (App. 419-421); Dougan Notice of Appeal (App. 430-431).

ARGUMENT

I. THE DISTRICT COURT ERRED WHEN IT DETERMINED DOUGAN WAS ENTITLED TO REDEEM AND OBTAIN TITLE WITHOUT MAKING ANY DETERMINATION AS TO WHETHER DOUGAN'S REDEMPTION WAS TIMELY UNDER CHAPTER 628 AS MANDATED BY THE COURT OF APPEALS ON REMAND.

A. Preservation of Error and Scope of Review.

Mlady initially preserved error by way of his Rule 1.904 motion. (App. 349-362); *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 884 (Iowa 2014) ("To preserve error on even a properly raised issue on which the district court failed to rule, 'the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.'") (quoting *Meier v.*

Senecaut, 641 N.W.2d 532, 537 (Iowa 2002)). Mlady timely filed his Notice of Appeal on October 4, 2019 from the Ruling on Remand filed on June 12, 2019 (App. 318-322) and Order filed on September 28, 2019 (App. 414-418), and all adverse rulings and orders entered therein. Mlady Notice of Appeal (App. 419-421).

Review of a case tried in equity is de novo. *Decorah State Bank v. Wangsness*, 452 N.W.2d 438, 439 (Iowa 1990) (citing *Citizens Sav. Bank v. Sac City State Bank*, 315 N.W.2d 20, 24 (Iowa 1982)). To the extent issues of statutory construction are raised on appeal, the standard of review is for the correction of errors at law. *Bank of Am., N.A.*, 843 N.W.2d at 880.

B. The District Court Failed to Meet its Obligations on Remand.

The Iowa Supreme Court has set forth a specific playbook for district courts to follow when presented with “a mandate on remand,” noting:

[T]he practice is very circumscribed. On remand, the jurisdiction of the case is returned to the district court for the purpose of doing the act authorized or directed by the appellate court in its opinion “and nothing else.” [In re Marriage of Davis, 608 N.W.2d 766, 769 (Iowa 2000)]. If the district court proceeds contrary to the mandate, its decision is viewed as null and void. *Id.* Thus, the district court is only vested with jurisdiction on remand “to the extent conferred by the appellate court's opinion and mandate.” 5 Am. Jur. 2d Appellate Review § 784 (1995). In this way, *the question whether the district court has properly followed the mandate cannot only involve the proper construction of the mandate by the district court, but also the jurisdiction of the district court to act. Id.* The district

court has “no power but to obey the judgment of the appellate court.” *Glenn v. Chambers*, 244 Iowa 750, 754, 56 N.W.2d 892, 895 (1953) (quoting 3 Am. Jur. Appeal and Error § 1234 (1936)).

City of Okoboji v. Iowa Dist. Court for Dickinson Cty., 744 N.W.2d 327, 331 (Iowa 2008) (emphasis added).

The district court’s first task was “to determine the precise action directed to be done by the appellate court.” *City of Okoboji*, 744 N.W.2d at 331–32. The district court noted:

[T]he case was remanded for entry of a judgment consistent with the appellate ruling that the assignment was valid and Dougan *could* exercise the borrower’s right of redemption. The trial court was *further instructed to determine whether the redemption was timely*.

Remand Ruling (App. 318) (emphasis added).

Where, as here, the first part of the appellate mandate simply instructed the district court to “proceed consistently with the appellate court decision” then the district court “must not read the mandate in a vacuum, but must consider the full opinion of the appellate court and the circumstances the opinion embraces.” *City of Okoboji*, 744 N.W.2d at 332.

1. The district court failed to consider the full opinion of the Court of Appeals and the circumstances the opinion embraced.

As noted by the Court of Appeals, Iowa Code Chapter 628 provides a *right* of redemption with the caveat that: “Because “[t]he right to redeem is

purely statutory[,] . . . it may be exercised only by those to whom the statute gives the right and *in the manner which the statute prescribes.*” *Great W. Bank*, 928 N.W.2d at 168 (emphasis added) (quoting *First Nat’l Bank of Glidden v. Matt Bauer Farms Corp.*, 408 N.W.2d 51, 53 (Iowa 1987)). Having determined that Dougan had the *right* to redeem, the Court of Appeals’ directive to the district court was to determine whether she timely exercised that right, i.e. *in the manner which the statute prescribes*.

The Court of Appeals opinion provided the statutory redemption framework under Iowa Code § 628.3:

The 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 thereof; and for the first six months thereafter such *right of redemption is exclusive*. Any real property redeemed by the debtor shall thereafter be free and clear from any liability for any unpaid portion of the judgment under which said real property was sold.

Great W. Bank, 928 N.W.2d at 168 (emphasis in opinion) (citation omitted).

The Court of Appeals thus determined that Dougan, as assignee, could stand in the shoes of the debtor and redeem within the one year of the sale. *Id.* (exclusive right of redemption under section 628.3 and the foreclosure decree likewise applied to Dougan as the debtor’s section 628.25 assignee). The Court of Appeals made no determination as to whether Dougan timely

redeemed, instead leaving that analysis for the district court. The court outlined the applicable framework to determine timeliness:

During that time, “the debtor may redeem the property by paying the sale price plus the remaining amount of the certificate holder’s lien, including costs and interest.” *First Nat’l Bank of Glidden*, 408 N.W.2d at 53 (discussing section 626.13). If the debtor fails “to redeem during the one-year redemption period,” the certificate holder is entitled to a sheriff’s deed. *Id.*

Great W. Bank, 928 N.W.2d at 168.

As noted in Mlady’s Statement of the Case, the issue before the district court was straightforward: Did Dougan timely redeem the property by paying the sale price plus the remaining amount of the certificate holder’s lien, including costs and interest within the one year redemption period?

2. The district court failed to provide proper factual or legal analysis of the issue it was mandated to decide in its Remand Ruling.

In its June 12, 2019 ruling on remand the district court stated, in relevant part for this section:

Dougan decided to redeem the property by paying the sheriff the balance due on the judgment in order to obtain title to the real estate.

On March 30, 2018, Dougan provided a check for \$1,690,000.00 to the Clerk of District Court in order to redeem the real estate.

On May 21, 2018, Dougan provided a second check for \$247,001.00 to the Clerk of District Court, bringing her total tender in support of the redemption to \$1,937,001.00.

With a principal balance of \$1,600,001.00, using a 365/360 basis for calculating interest, at a rate of 21% per year, the per diem interest payable is \$933.33.

The applicable rate of interest for redemption is the default rate of 21% not the original note rate of 4.25%. Section 628.13 provides that redemption is based upon the contract rate as on the certificate of sale from the sale date. The original note rate was contractually increased by the terms of the note to the default rate. See *Federal Land Bank of Omaha v Bryant*, 445 N.W.2d 761 [Iowa 1989].

Dougan is not entitled to a reduction in her per diem interest rate based upon the later, second payment to the clerk made to correct the *insufficient initial tender*. See *Waterloo Savings Bank v. Carpenter*, 9 N.W.2d 818 [Iowa 1943] and *Olson v. Sievert*, 30 N.W.2d 157 [Iowa 1947].

Based upon the ruling of the appellate court, Dougan is entitled to redeem and obtain title. Since Mlady has already received a sheriff's deed in exchange for his certificate of purchase, the sheriff no longer has the authority to issue a deed. The clerk will be ordered to pay over the funds received for redemption to Mlady. Upon payment, Dougan is now the legal titleholder by operation of law. Therefore, the court will order the clerk of court to issue a report of change of title in Dougan's name.

Remand Ruling (App. 318-320) (emphasis added).

The facts and conclusions of law set forth in the district court's ruling do not support a determination that Dougan "has validly exercised the right to redeem the real estate." *Id.* Entitlement to redemption is not the equivalent of valid redemption—these are two separate statutory requirements. *First*

Nat'l Bank of Glidden, 408 N.W.2d at 53 (the right to redeem “may be exercised only by those to whom the statute gives the right *and in the manner which the statute prescribes*”).

The district court could not fulfill its mandate by simply citing to the appellate court’s opinion. The Court of Appeals only determined that Dougan had a right to redeem—*not that she validly redeemed*. Rule 1.904 required the trial court “find the facts in writing, separately stating its conclusions of law, and direct an appropriate judgment.” To be an appropriate judgment, the conclusion of law must be supported by the facts.

Here, the district court explicitly acknowledged Dougan’s March 30, 2018, payment as insufficient. *See* Remand Ruling (App. 320) (“Dougan is not entitled to a reduction in her per diem interest rate based upon the later, second payment to the clerk made to correct the *insufficient* initial tender.”) (emphasis added) (citations omitted). The district court did not (and could not) find the second payment corrected the insufficient initial tender. The district court failed to acknowledge that Dougan failed to pay the sale price plus the remaining amount of the certificate holder’s lien, including costs and interest within the one year redemption period. Such a failure to so find was contrary to the remand mandate directed to the district court.

Mlady filed his Rule 1.904 Motion to Enlarge and Reconsider the Court's Remand Ruling (App. 349-362) asking for enlargement and reconsideration, arguing: (1) Dougan did not timely exercise her right of redemption because she did not pay the full, statutorily prescribed amount by the deadline; and (2) Dougan's failure to timely exercise her right of redemption entitles Mlady to the sheriff's deed.

Dougan bore the burden of proof to prove she paid the correct redemption amount, on time, as required by statute. *E.g., Waterloo Sav. Bank*, 9 N.W.2d at 821.

3. The undisputed facts demonstrated that Dougan did not and could not meet her burden to prove she timely redeemed.

Iowa Code § 628.21 provides that in the event there is a dispute as to the right to redeem or the amount to be paid for redemption, the person claiming the right or looking for the court to rule on a dispute is required to deposit the necessary amount for redemption with the Clerk and file an affidavit identifying the issue for the court. Dougan failed to follow this procedure.

As of Dougan's first payment, on March 30, 2018, the amount due to redeem was at least \$1,891,199.96.³ As of her second payment on May 21, 2018, Dougan's own expert confirmed the amount due to redeem was at least \$1,939,799.79, which meant Dougan's payment fell short by \$1,798.79.⁴ May 31, 2019 Hearing Transcript at 55:18-56:7 (App. 571-572).

Dougan could not and cannot claim ignorance of the amount in dispute that should have been deposited with the clerk. The foreclosure judgment (App. 69-77) and the Notice of Sheriff's Levy and Sale ("Sheriff's Notice") (App. 599) specifically set the per diem interest at \$933.33.⁵ The interest rate was also identified as disputed in Mlady's April 19, 2018 Answer to Dougan's initial petition. Answer (App. 92-95).

³ This deficiency results from the amount of the certificate (\$1,600,001.00) with per diem interest of \$933.33 for 312 days (from May 22, 2017 to March 30, 2018) and does not include costs.

⁴ This deficiency results from the amount of the certificate (\$1,600,001.00) with per diem interest of \$933.33 for 364 days (from May 22, 2017 to May 21, 2018) and does not include costs.

⁵ Minor rounding error on foreclosure judgment as it should state \$933.33 rather than \$933.34.

4. While Dougan attempted to shift blame to the district court for her failure to timely redeem, Dougan’s negligence bars any grant of equitable relief from the statute’s requirements. No Iowa case provides otherwise.

Dougan first blamed the district court for her failure to pay the correct redemption amount. Resistance to Mlady’s Motion to Enlarge the Court’s Remand Ruling (“Dougan Resistance to Mlady 1.904 Motion”), at 3 (App. 365).

Ultimately, however, Dougan *admitted it was her negligence in miscalculating the amount required for redemption*, rather than any failure by the trial court, that caused her to not deposit enough to redeem. See July 22, 2019 Hearing Transcript at 3:20-24 (App. 613) (acknowledging “her attorney miscalculated the second provisional payment of \$247,001 deposited with the clerk on May 21, 2018, and underpaid that by \$1,798.79”) and Dougan Rule 1.904 Motion Brief (App. 370-375) (again admitting her attorney’s error in computing interest).

Dougan’s negligence in not adhering to the procedure specified in Iowa Code § 628.21 and *Tharp v. Kerr*, 119 N.W. 267, 268 (Iowa 1909) bars Dougan from redemption and equitable relief. The Iowa Supreme Court has consistently held that equitable relief is not proper in the case of *the redeemer’s own negligence*. *Tharp*, 119 N.W. at 269 (emphasis added). Cases in which Iowa courts have equitably allowed late redemption were

cases in which the error or mistake was made by the clerk, rather than the redeemer. *Olson*, 30 N.W.2d at 159 (allowing late redemption where error made by deputy clerk rather than the redeemer and redeemer's failure to discover the clerk's error was not negligent); *Wakefield v. Rotherham*, 25 N.W. 697, 698 (Iowa 1885) (allowing late redemption where error made by clerk and redeemer "was guilty of no negligence in the matter").

In this case, Dougan can neither shift blame to the district court nor the clerk. This Court has long-held; "[t]he right to redeem is purely statutory. . . . [I]t may be exercised only by those whom the statute gives the right and in the manner which the statute prescribes." *First Nat'l Bank of Glidden*, 408 N.W.2d at 53. And because the right to redeem is statutory, "the provisions of the statute relative thereto must be strictly complied with." *Northwestern Mutual Life Ins. Co. v. Hansen*, 218 N.W.2d 502, 505 (Iowa 1928). This Court has specifically held "[t]he statute confers on the court no discretion nor power of mercy in relation thereto." *Id.* "During the one-year redemption period, the debtor may redeem the property by paying the sale price plus the remaining amount of the certificate holder's lien, including costs and interest." *First Nat'l Bank of Glidden*, 408 N.W.2d at 53 (citing Iowa Code § 628.13) (emphasis added).

“Failure on the part of the debtor to redeem during the one-year redemption period entitles the certificate holder to a sheriff’s deed.” *Id.* Accordingly, failure to strictly comply with Iowa’s redemption statutes—including full payment of the redemption amount plus interest and costs—within the one year redemption period is fatal to such redemption, and entitles the certificate holder to a sheriff’s deed.

Here, *Dougan admitted her negligent failure to pay the amount necessary to redeem.* May 31, 2019 Hearing Transcript at 22:5-7 (App. 538). She testified did not rely on any advice from the Clerk. *Id.* at 33:17-34:1 (App. 549-550). No Iowa court has allowed untimely redemption due to a redeemer’s own negligent failure to pay the full redemption amount. This Court should similarly so find.

5. The district court still failed to provide proper factual or legal analysis of the issue it was mandated to decide on remand when it ruled on the parties’ Rule 1.904 motions.

In its September 28, 2019 Order on the parties’ Rule 1.904 motions, the district simply concluded, in relevant part to this section: “The trial court confirms its prior holding that Dougan has properly and timely exercised the right of redemption.” (App. 416).

The district court provided no findings of fact or conclusions of law in *support* of this statement, despite the mandate presented to it on remand.

Berger v. Amana Soc., 120 N.W.2d 465, 467 (Iowa 1963) (“One of the primary purposes of this section is to advise counsel and the appellate court of the basis of the trial court’s decision in order that counsel may direct his attack upon specific adverse findings or rulings in the event of an appeal.”).

Instead, the only portion of the district court’s Order that addresses whether Dougan timely redeemed by paying the proper redemption amount compels an opposite ruling. The district court ordered: “Mlady is entitled to a payment of \$1,938,799.79 for the certificate of purchase.” The redemption amount is *more* than the amount the court acknowledged was deposited with the clerk: “On May 21, 2018, Dougan provided a second check for \$247,001.00 to the Clerk of District Court, bringing her total tender in support of the redemption to \$1,937,001.00.”⁶

Comparing the ordered payment to the amount tendered to the clerk, clearly demonstrates a deficiency. In other words, the district court’s order plainly acknowledges Dougan did not pay the full amount required to redeem and the district court still provided no authority to support the bald conclusion that she “timely and validly exercised the right of redemption.”

⁶ By making this argument, Mlady does not assert or concede that the district court’s calculation of the amount necessary to redeem is accurate. Instead, Mlady simply points out that the district court’s order is in direct conflict with its findings of fact.

The plain language of the statute and related precedent holds otherwise. *First Nat'l Bank of Glidden*, 408 N.W.2d at 53 (Iowa 1987) (noting that the right to redeem must be exercised only “in the manner which the statute prescribes”).

Having failed to follow its mandate, this Court should reverse the district court’s holding and pursuant to its de novo review, hold that Dougan failed to timely redeem under the statute. As such, Mlady requests this Court hold that Mlady is entitled to retain the Sheriff’s Deed. *Id.* at 53 (“[f]ailure on the part of the [redeemer] to redeem during the one-year redemption period entitles the certificate holder to a sheriff’s deed.”).

II. THE DISTRICT COURT ERRED WHEN IT DETERMINED DOUGAN’S OBLIGATION TO PAY INTEREST ON THE SHERIFF’S SALE PURCHASE PRICE CEASED ON MAY 23, 2018.

A. Preservation of Error and Scope of Review.

Mlady initially preserved error by way of his Rule 1.904 motion. (App. 349-362); *Bank of Am., N.A.*, 843 N.W.2d at 884 (Iowa 2014) (“To preserve error on even a properly raised issue on which the district court failed to rule, ‘the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal.’”) (quoting *Meier*, 641 N.W.2d at 537 (Iowa 2002)). Mlady timely filed his Notice of Appeal on October 4, 2019 from the Ruling on Remand filed on June 12, 2019 and Order filed on

September 28, 2019, and all adverse rulings and orders entered therein.
Mlady Notice of Appeal (App. 419-421).

Review of a case tried in equity is de novo. *Decorah State Bank*, 452 N.W.2d at 439 (citation omitted). To the extent issues of statutory construction are raised on appeal, the standard of review is for the correction of errors at law. *Bank of Am., N.A.*, 843 N.W.2d at 880.

B. Per Diem Interest Accrues Until the Time of Full Redemption.

In its Order on Rule 1.904 motions, the district court concluded, without citation to any legal authority:

Mlady has had the benefit of the possession, use, and profits from the land since obtaining the Sheriff's Deed on May 23, 2018. Therefore, interest to Mlady should stop accruing on May 23, 2018.

Dougan's obligation to pay accruing interest to Mlady on the redemption balance ended as of May 23, 2018.

As noted previously, the terms of redemption and the mode of doing so "are prescribed by statute." *Wakefield*, 25 N.W. at 698. The district court's holding is contrary to the terms of redemption set forth in Iowa Code § 628.13(1):

The terms of redemption, when made by the titleholder, shall be the *payment into the clerk's office* of the amount of the certificate, and all sums paid by the holder thereof in effecting redemptions, added to the amount of the holder's own lien, or the amount the holder has credited on the lien, if less than the

whole, *with interest at contract rate on the certificate of sale from its date*, and upon sums so paid by way of redemption from date of payment, and upon the amount credited on the holder's own judgment from the time of the credit, *in each case including costs*.

Emphasis added.

Under the statute, *Dougan's obligation to pay accruing interest and costs is to the clerk's office*, not Mlady. *Id.* This obligation was properly reflected in the district court's initial Remand Ruling, where the district court confirmed the contract interest and per diem rate be paid as follows:

The clerk of district court shall pay over the redemption funds paid to that office by Sue Ann Dougan to the purchaser at the sheriff's sale, Wayne Maldy (sic), in the amount of \$1,600,001.00, plus interest from the date of the sheriff's sale on May 22, 2017 based upon an interest rate of 21% per anum, which computes to a per diem payment of \$933.33, *computed to the date a check is issued to Wayne Mlady*.

(App. 320-321).

The clerk thus calculated the following as due *as of June 14, 2019*:

2017 days 5/22/17 to 12/31/19	224
2018 days	365
2019 days 1/1/19 to 6/14/19	<u>165</u>
Total days	754

X

Times per diem rate per order	<u>\$933.33</u>
Amount of interest	\$703,730.82
Amount of judgment per order	<u>\$1,600,001.00</u>
Total due	\$2,303,731.82

Clerk's Memo of Funds Held in Trust (App. 325). The clerk's calculations comply with the Iowa Supreme Court's consistent statutory interpretation that a redeemer's interest obligation continues through redemption or the final adjudication of redemption rights.

In *Wakefield*, the plaintiff failed to pay the full amount required to redeem *due to a mistake by the clerk*. 25 N.W. at 697 (emphasis added). As in the present case, the defendant paid the full amount, acquired the Certificate of Purchase, and obtained the sheriff's deed to the property. *Id.* The plaintiff filed a petition alleging his failure to pay the full amount was the fault of the clerk and offered to pay the additional amount. The district court agreed that he could pay the remaining balance and that upon such payment title would be quieted in him. *Id.* at 698.

On appeal, the court considered "whether plaintiff can now be permitted to perfect the redemption by paying the balance of the money required to be paid in redeeming the property." *Id.* The defendant argued that since the redemption was not perfected by the initial deposit, the plaintiff should be required to pay the balance plus interest to the date of final payment. *Id.* at 699. The court agreed and remanded for modification of the district court judgment to provide for payment of the additional amount along with "interest thereon up to the time of final payment." *Id.*

Similarly in *Olson*, where the district court allowed untimely redemption due to a mistake by the clerk in computing the amount necessary to redeem, the district court ordered the party who had acquired the property through foreclosure “to accept the amount held by the clerk *plus additional interest*” to the date of the final adjudication of redemption rights. 30 N.W. 2d at 158 (emphasis added).

In *Waterloo Sav. Bank*, the court noted that provision of insufficient tender does not “deprive [the holder of a certificate of sale] of his right to interest.” 9 N.W.2d at 821 (citing *Cnty. Sav. Bank v. W. Sur. Co.*, 8 N.W.2d 427, 429 (Iowa 1943)). In *Waterloo*, a property owner conveyed his property to a third-party (the “Redeemer”) who attempted to redeem the property from a junior lien holder who previously redeemed the property from a senior lien holder. *Id.* at 818–19. The senior and junior lenders foreclosed and obtained certificates of sale (the “Senior Certificate” and “Junior Certificate,” respectively). *Id.*

The Redeemer attempted to redeem the property by making two payments to the clerk of court. *Id.* The first payment covered the amount due on the Senior Certificate plus interest accrued from the date of sheriff’s sale to the date of payment. *Id.* The second payment covered the amount due on the Junior Certificate plus interest, but the amount was “to be held by the

clerk subject to the adjudication of the rights of the contending parties” as opposed to being paid for redemption. *Id.* Because the Redeemer did not tender payment in full, interest continued to accrue on the full amount of the Senior Certificate and the full amount of the Junior Certificate. *Id.* at 821.

In *Kupper v. Schlegel*, the court considered whether an assignee of partial interest in a foreclosed property could pay to the clerk an amount of money proportionate to such partial interest rather than the full amount necessary to redeem. 224 N.W. 813, 813 (Iowa 1929). The court noted that the statute did not provide for partial redemption and thus an assignee of partial interest “is compelled to pay the full redemption price, with interest and costs.” *Id.* at 815 (emphasis added).

Similarly, “[i]n cases involving redemption after foreclosure of fixed rate mortgages, [the Iowa Supreme Court has] held that the mortgage rate, not the statutory judgment rate of interest, prevailed, and *a redeeming party was required to pay interest at that rate until the time of redemption.*” *Fed. Land Bank v. Bryant*, 445 N.W.2d 761, 763 (Iowa 1989) (emphasis added) (citing *Waterloo Sav. Bank*, 9 N.W.2d at 821).

In *Fed. Land Bank of Omaha v. Sleister*, the court acknowledged that Iowa Code § 628.13, Iowa’s general redemption statute, provides that a redeemer “pay both accrued interest...and all protective advancements for

real estate taxes.” 444 N.W.2d 504, 505 (Iowa 1989). The court further acknowledged Iowa Code § 628.13’s requirement that interest accrues after the sale, thus affirming the district court’s requirement of the same. *Id.*

As set forth herein, the district court’s September 28, 2019 ruling that Dougan’s interest obligation ceased on May 23, 2018 was contrary to statute and this Court should determine the district court thus erred in its ruling. It was not a matter of whether Mlady is entitled to the interest, instead it is a matter of what amount Dougan is required to pay should this Court allow her to untimely exercise her right of redemption. Iowa courts are in accord that Iowa Code § 628.13(1) requires Dougan pay interest until full payment is made.

C. Equity Also Supports an Award of Interest to Mlady Through the Date of Redemption.

This is not a case involving an unsophisticated debtor facing the prospect of losing the family farm. Dougan owns and leases in excess of 3,000 acres. May 31, 2019 Hearing Transcript at 61:1-3 (App. 577). Dougan paid no money to receive the assignment from the debtor and instead acted as a creditor. *Id.* at 27:22-28:8 (App. 543-544). She did not innocently rely on representations made by the clerk and had the assistance of two attorneys in handling this transaction, one in Iowa and one in Minnesota. *Id.* at 33:17-34:1 (App. 549-550). Other than the assignment, Dougan has no connection

to the land and has spent no money on the property other than her deposits to the clerk. *Id.* at 31:24-32:5 (App. 547-548).

In contrast, Mlady has invested time and money into the property. He properly purchased the property in a sheriff's sale in 2017. Certificate of Purchase (App. 595-597). He has dutifully cultivated and farmed the land and is an innocent purchaser who was not involved in the underlying foreclosure action. Mlady testified that he understood from the mortgage that the default rate was 21% and relied on recovering that interest rate if the property were redeemed. *Id.* at 69:19-70:9 (App. 585-586). He obtained a valid sheriff's deed in 2018. Sheriff's Deed (App. 609).

He has been obligated to pay rent on the land in order to continue farming while this dispute continues. May 31, 2019 Hearing Transcript 75:11-15 (App. 591). So, in other words, he has been deprived of the use of his money *and* the full use of the property. Further, Mlady has, and has had, no access to the funds paid to the Clerk of Court. *Id.* at 71:15-20 (App. 587).

If courts allowed potential redeemers to make partial payment, without requiring contract interest on the principal amount, such a pronouncement would discourage individuals from purchasing foreclosed property. This is so because those purchasers would no longer receive the contract interest rate, and unlike a bank, will not receive the benefit of the

partial payment made. In *Waterloo Sav. Bank*, the Iowa Supreme Court recognized such inequity in an analogous situation where the court determined that where one party paid less than the amount required for redemption and was “legally in the wrong,” the court “required payment of interest on [the amount of certificate of sale]” going forward because the party who purchased the property at the execution sale “should not be penalized by the loss of the use of the money to which he was entitled.” 9 N.W.2d at 821.

Similarly here, even if the Court should determine that equity should dictate Dougan be allowed to untimely redeem—she is still legally in the wrong. Mlady purchased the foreclosed property with the Sheriff’s Notice stating that the per diem interest is \$933.33. (App. 599). He relied on that statement in making his bid and purchasing the property. At the time he purchased the property based on this representation, Mlady knew that if the property was redeemed within the year, Mlady would receive the full amount of his purchase back, plus a \$933.33 per diem. As set forth previously, Dougan admitted that she negligently failed to pay the full amount required for redemption. Taking the land back from Mlady, an innocent purchaser, without payment of the per diem interest, would be both contrary to Supreme Court precedent, and inequitable.

If, however, this Court should decide to grant equitable relief and allow Dougan to untimely exercise her right to redeem, the Court should order Dougan to pay the statutorily proscribed amount, which includes per diem interest and costs through the date Dougan fully redeems or remand for entry of judgment as to the same.

CONCLUSION

WHEREFORE, Mlady respectfully requests this Court (1) reverse the district court's unsupported finding that Dougan timely and validly redeemed and enter an Order confirming Mlady's entitlement to the Sheriff's Deed or remand to the district court for entry of the same, or in the event this Court allows Dougan to untimely redeem (2) reverse the district court's unsupported finding that Dougan's obligation to pay accruing interest on the redemption balance ended as of May 23, 2018 and order Dougan to pay the statutorily proscribed amount, which includes per diem interest and costs through the date Dougan fully redeems or remand for entry of judgment as to the same.

REQUEST FOR ORAL ARGUMENT

Pursuant to Iowa Rule of Appellate Procedure 6.903(2)(i), Wayne Joseph Mlady, Appellant-Cross Appellee, requests oral argument.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I certify that, on May 5, 2020, I electronically filed the foregoing with the Clerk of Court of the Supreme Court using the Iowa Electronic Document Management System, which will send notification of electronic filing to the following opposing counsel. Per Iowa Rule 16.317(1)(a)(2), this constitutes service of the document for the purposes of the Iowa Court Rules.

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CERTIFICATE OF COMPLIANCE WITH TYPE REQUIREMENTS

This brief complies with the typeface requirements and type-volume limitation of IOWA RS. APP. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14-point Times New Roman and contains 6,759 words, excluding the parts of the brief exempted by IOWA R. APP. P. 6.903(1)(g)(1).

/s/ Dawn M. Gibson

May 5, 2020
Date