IN THE IOWA SUPREME COURT
NO. 19-1689

GREAT WESTERN BANK,	:
	:
Plaintiff,	:
v.	:
	:
CONRAD D. CLEMENT; MANACO, CORP.; and PARTIES IN POSSESSION,	:
	:
	:
Defendants.	:
WAYNE JOSEPH MLADY,	:
	:
Appellant-Cross Appellee	:
v.	:
	:
SUE ANN DOUGAN,	:
	:
Appellee-Cross Appellant	:

APPEAL FROM THE IOWA DISTRICT COURT
FOR HOWARD COUNTY
THE HONORABLE JOHN BAUERCAMPER
NO. EQCV017058
APPELLEE-CROSS APPELLANT'S
APPLICATION FOR FURTHER REVIEW
FROM THE DECISION OF THE
THE IOWA COURT OF APPEALS
FILED DECEMBER 16, 2020

HEINY, McMANIGAL, DUFFY,
STAMBAUGH & ANDERSON, P.L.C.

John L. Duffy AT0002227
11 Fourth Street NE
P.O. Box 1567
Mason City, Iowa 50402-1567
Telephone: 641-423-5154
Facsimile: 641-423-5310
Email: jduffy@heinylaw.com

ATTORNEYS FOR APPELLEE-CROSS APPELLANT

QUESTIONS PRESENTED FOR REVIEW

(1) Whether the "contract rate" on the Certificate of Purchase is the "base rate" or the "default rate" expressed in the underlying Promissory Notes under § 628.13 of the Iowa Code.

(2) Whether Dougan should be granted equitable relief to redeem after the one-year redemption period expired where she petitioned for safe harbor relief under § 628.21 prior to the expiration of the period of redemption, was mistakenly denied the right to redeem by an erroneous District Court decision, and promptly paid the shortage after the District Court ruled on her Petition on remand.

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STATEMENT SUPPORTING FURTHER REVIEW

The Iowa Supreme Court has never before distinguished between the "base rate" or "default rate" in determining the "contract rate" payable on a certificate of purchase under § 628.13. In her Routing Statement, Dougan requested that the Supreme Court retain this case for consideration since it presented the above question as a substantial issue of first impression. (Dougan Final Brief filed May 12, 2020, p. 6). The Court of Appeals decision requires a redeeming debtor to pay the default rate to redeem which includes interest accrued at the default rate on the judgment paid off by the foreclosure sale, contrary to public policy favoring redemption by the foreclosed upon farmer, promoting redemption, and failing to recognize that the judgment, including interest already accrued at the default rate, has been paid by the Sheriff's Sale and is, therefore, included in the amount of the Certificate of Purchase.

The Court of Appeals decision fails to grant Dougan the equitable relief to redeem despite that she has filed for safe harbor relief under § 628.21 prior to the expiration of the period of redemption, had been denied redemption by an erroneous District Court decision, and she paid the full amount to redeem based upon the ruling on remand by the District Court after the appeal. The full amount to redeem at the 21 percent default rate is available for payment to Mlady. The Iowa Supreme Court has never before been asked to grant equitable relief to a redeemer under this unprecedented set of facts.

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BRIEF

Issue One: Whether the "contract rate" on the Certificate of Purchase is the "base rate" or the "default rate" expressed in the underlying Promissory Notes under Code § 628.13 of the Iowa Code.

In her Routing Statement, Dougan requested that the Supreme Court retain this case for consideration since it presented the above question as a substantial issue of first impression. The Supreme Court has never before distinguished between "base rate" or "default rate" in determining the "contract rate."

This issue is key to the interpretation and enforcement of Iowa redemption policy under Chapter 628.

Great Western Bank's foreclosure petition was based on two promissory notes. Both notes provided for a variable rate of interest at 4.25 percent per annum and a default rate at 21 percent. Both notes provided that "Upon default, including failure to pay . . . the interest rate on this Note shall be increased to 21.000% per annum based on a year of 360 days." App. p. 603 and 605.

The foreclosure decree provided that judgment was entered on the two promissory note and substituted for them and the "Lender's Mortgage" was foreclosed against all defendants and barred and foreclosed against the real estate "except for statutory redemption rights." App. p. 74.

Wayne Mlady purchased the farm at sheriff's sale on May 22, 2017, for $1,600,001. The Certificate of Purchase stated that the sheriff had sold the real estate for $1,600,001. It did not state a rate of interest. App. p. 595. The Sheriff's Deed delivered to Mlady on May 23, 2018, stated that it was "given upon the surrender of the Sheriff's Certificate of Purchase." App. p. 609.

On March 30, 2018, Dougan paid the Clerk of Court $1,690,000 in order to redeem. On April 2, 2018, she filed her Petition to determine the applicable rate of interest on the Certificate of Purchase and to ratify and confirm her redemption pursuant to § 628.21 together with her Affidavit of Redemption, Clement's Assignment of Exclusive Right of Redemption and her Acceptance of the Assignment.

She also filed her Brief in Support of Redemption citing the only two applicable cases dealing with the issue of applicable contract rate, Waterloo Sav. Bank v. Carpenter, 233 Iowa 671, 9 N.W.2d 818, 821 (Iowa 1943) and Federal Land Bank of Omaha v. Bryant, 445 N.W.2d 761 (Iowa 1989). Neither case dealt with nor discussed default. Both noted the applicable contract rate was that provided in the promissory note. App. pp. 603-606.

§ 628.13 provides that redemption is made by payment to the clerk the amount of the certificate of purchase "with interest at contract rate . . ."

Thus, neither the applicable cases nor the applicable statute are helpful in assisting the Court in deciding what the "contract rate" is on the Certificate of Purchase.

The Court has a choice. To Dougan's knowledge, the Supreme Court has never distinguished between the default rate and the base rate in making a choice on this issue. The Court of Appeals agreed with the District Court of Howard County that the 21 percent default rate applied solely because,

"The notice of sheriff's levy and sale quoted a per diem interest rate in dollars based upon the 21 percent interest rate." Ruling p. 5.

The reference was to documents used to conduct the sheriff's sale which occurred on May 22, 2017, when Mlady purchased the real estate for $1,600,001 and received the Certificate of Purchase.

Dougan requested the Court of Appeals to consider the Royal Manor Apartments, LLC v. Federal Nat. Mortg. Ass'n., 614 F. App'x 228, 235-236 (6th Cir. 2015) in making its choice, but the Court of Appeals did not refer to the case.

The Michigan case is an unpublished opinion but involved facts similar to the instant case. The Michigan statute provided for redemption based upon the interest rate provided in the mortgage, equivalent to the contract rate as required by Iowa law. In Royal Manor, the debtor argued that because the mortgage ceased to exist upon a foreclosure sale that default interest no longer applied. The mortgagee argued

that the default interest rate was applicable because at the time of the sheriff's sale the debtor was in default.

The Sixth Circuit held that the debtor "has the better of this argument. 'When property is purchased at a foreclosure sale for an amount equal to the amount due on the mortgage, the debt is satisfied' and the mortgage is extinguished." Royal Manor, p. 236.

These are the facts of the instant case. Mlady's purchase at sheriff's sale paid off the judgment, except for a deficiency, to which the Certificate of Purchase does not apply. It only applies to the sold real estate.

The Sheriff's Sale eliminated the default on the promissory notes paid by the sheriff's sale. The Certificate of Purchase took the place of the judgment, mortgage, and promissory notes. As stated in the Foreclosure Decree, statutory redemption rights took their place. App. p. 74.

Therefore, the reference by the District Court and the Court of Appeals to the notice of sheriff's levy and sale as justification for choosing the default rate instead of the base

rate for the applicable contract rate is not appropriate or relevant. They are documents used to prepare for and conduct a sheriff's sale. But, the Sheriff's Sale eliminated the default.

The question being asked the Court is what is the contract rate on the Certification of Purchase which **accrues interest after** the default has been eliminated by the Sheriff's Sale. As stated in the Certificate of Purchase, the judgment has been paid off (except for a deficiency which is irrelevant to this case) and the Certificate issued to the highest bidder.

Why should the Court choose the base rate?

The answer to this question, in addition to the fact that the default has already been eliminated by payment of the judgment at Sheriff's Sale, is the legislative policy provided by the statutory scheme of redemption.

§ 628.3 grants the exclusive right to redeem to the debtor. § 628.25 states the debtor can transfer that right to redeem. Clearly, the Iowa legislature has decided that it is a good idea economically and for society to allow the foreclosed

upon farmer to redeem to buy the farm back himself or for his benefit. Chapter 628 is aptly named redemption. The debtor is statutorily given the first opportunity to buy the farm back. Further, he is given the opportunity to transfer that right to another person if he is not able to do so or if there is some economic benefit for him to do so.

This policy is mentioned in Tansil v. McCumber, 206 N.W. 680, 686 (Iowa 1925), a case cited by the Court of Appeals, stating "The right to have the security foreclosed and the method provided by statute and the right to the period allowed by law for redemption, are a part of those humane provisions established by law for the production of improvidence for the protection of improvidence and the unfortunate and their helpless dependents. Such statutes exemplify the public policy of the state, and are in the interest of the community and for the purpose of protecting the public from pauperism."

This statutory policy indicates that the Iowa legislature has thought it to be good business and sound economic policy

for the farmer to buy his farm back at the original contract rate used to buy the farm, which is the 4.25 percent originally negotiated by Clement and Great Western, not the default rate computed on the debt after it went into default. Mortgages are foreclosed because the underlying promissory note is in default; otherwise, there would be no foreclosure. The debtor farmer should not be required or expected to buy back at the default rate of 21 percent which result would force Iowa redeemers to pay a default rate of interest based upon a judgment which includes interest accrued at a default rate which was paid off at Sheriff's Sale and replaced by the Certificate of Purchase. Such a result is contrary to the statutory policy of encouraging redemption by the debtor farmer or his or her assignee. It requires as a universal rule the redeemer to pay default interest on default interest in order to redeem.

In addition to the statutory scheme designed to entice the debtor to redeem, there is a well established common law holding that "the right of redemption is favored by the law"

which would be frustrated by imposing a default rate of interest in every foreclosure case. See Olson v. Sievert, 30 N.W.2d 157, 159 (Iowa 1947).

Issue Two: Whether Dougan should be granted equitable relief to redeem after the one-year redemption period expired where she petitioned for safe harbor relief under § 628.21 prior to the expiration of the period of redemption, was mistakenly denied the right to redeem by an erroneous District Court decision, and promptly paid the shortage after the District Court ruled on her Petition on remand.

Among other cases, the Court of Appeals cited Sibley State Bank v. Zylstra, No. 19-0126, 2020 WL 4814072 at *1 (Iowa Ct. App. August 19, 2020) in support of the proposition that "Failure to act within a one year redemption period puts the holder of a right of redemption "beyond the reach of equitable relief"" referring to Tharp v. Kerr, 119 N.W. 267, 268 (Iowa 1909). Ruling p. 7.

Notably, the Court of Appeals did not refer to Dougan's attempt at safe harbor relief under § 628.21, nor the prevention of her right to redeem on May 22, 2018, as a result of a mistake in District Court ruling which held she did not

have the right to redeem, nor her prompt payment of the shortage of $1,798.79 after the Court ruled on her Petition on remand on September 28, 2019.

The judgment of Judge Tabor in Zylstra, on the other hand, indicates that there is room for equity in this case if the Court were to decide that the 21 percent rate applies. Judge Tabor cited Olson v. Sievert, 30 N.W.2d 157, 158 (Iowa 1947) and Wakefield v. Rotherham, 25 N.W. 697, 699 (Iowa 1885) for the proposition that it is within the Court's equitable powers "to permit redemption after expiration of the time fixed by the statute in cases of fraud, mistake, or other circumstances." Zylstra, at *7.

In those cases, equity allowed redemption where the clerks misstated the amounts required to redeem.

Judge Tabor did not, however, allow Zylstra's attempt at redemption because "the mistake in calculating the payoff amount here was Zylstra's fault alone." Zylstra, at *7. Here Dougan's attorney did not calculate the 21 percent default rate on the 360 day year basis resulting in a shortage of $1,798.79,

but the mistake was not his alone. As noted above, on April 2, 2018, Dougan filed her Petition to determine the applicable rate of interest on the Certificate of Purchase and to ratify and confirm her redemption pursuant to § 628.21 together with her Affidavit of Redemption, Clement's Assignment of Exclusive Right of Redemption, and her Acceptance of the Assignment, in addition to her Brief.

As stated by the Court of Appeals, "almost eleven months later," (referring to the Sheriff's Sale) "Sue Ann Dougan filed a Petition in the case essentially seeking entry of a declaratory judgment in her favor." Great Western Bank v. Clement, No. 18-0925, 2019 WL 1294797 (Iowa Ct. App. 2019) p. 4.

Had the District Court correctly ruled on Dougan's Petition on April 25, 2018, and not mistakenly denied her right to redeem and failed to rule on her Petition, this case would not have happened. Dougan would have redeemed as required by the ruling prior to expiration of the one-year right of redemption on May 22, 2018. (See the District Court Order

dated June 14, 2019, regarding calculations of the redemption amount. App. p. 323).

Because of the Court's mistake, Dougan could not redeem until after September 28, 2019, when the District Court ruled on her § 628.21 Petition after which she promptly paid the shortage of $1,798.79.

Judge Tabor examined the "additional record" to determine if there was any equitable basis to grant Zylstra relief and found none. Notably, the District Court had found that the additional record was "devoid of any evidence explaining why Zylstra failed to take advantage of the safe harbor provided by Iowa Code § 628.21 . . ." Zylstra, at *7.

Here Dougan filed her Petition under § 628.21 requesting the Court to determine the applicable interest rate and amount to redeem on April 2, 2018, prior to expiration of the one year period of redemption and had been denied the right to redeem until September 28, 2019, by erroneous decision of the District Court until September 28, 2019, after the appeal

to the Court of Appeals and the corrected decision on remand by the Trial Court.

Further, Judge Tabor quoted from Tharp v. Kerr, 119 N.W. 267, 269 (Iowa 1909) that "although equity will always seek to relieve against the consequences of accident or mistake, it must guard itself that it offer no premium to neglect or default. Nor can it make too light of the statutory rights of the adverse party." Zylstra, at *7.

The implication of this language in Zylstra is that equity is possible and should be granted under the right circumstances.

This case presents circumstances for which equity should allow Dougan to redeem.

This is not a case of Dougan trying to get by with paying less than the necessary amount to redeem like the cases referred to in the Court of Appeals decision: as in Nw. Mut. Life Ins. Co. v Hansen, 218 N.W. 2d (Iowa 1928) where the redeemer purposely paid only two-thirds of the amount necessary to redeem; as in Iowa Loan & Tr. Co. v. Kunsch, 135

N.W. 426 (1912) where the debtor did not deposit enough with the clerk to pay a prior lien, and withdrew the deposit prior to redemption; as in Case v. Fry, 59 N.W. 333 (Iowa 1894) where the redeemer chose only to pay a proportion amount of the judgment allocated to the tract he wished to purchase, knowing it was not enough to satisfy the judgment; or in Gates v. Ives, 183 N.W. 406 (Iowa 1921) where the redeemer knowingly did not pay real estate taxes paid by the receiver in a foreclosure case; nor Sibley State Bank v. Zylstra, No. 19-0126, 2020 WL 4814072, where Zylstra failed to pay interest and taxes to the clerk.

In none of these cases had the debtor applied for safe harbor relief under Iowa Code § 628.21 prior to expiration of the period of redemption. In none of these cases had the District Court mistakenly denied the debtor's right to redeem prior to expiration of the period of redemption.

Thus, this is not a case where granting Dougan the equitable right to redeem would offer a "premium to neglect or default." Zylstra, at *7. From the very beginning, Dougan

sought to redeem in full, used the appropriate statutory relief under Chapter 628 to obtain a declaratory ruling of the proper amount to redeem as stated by the Court of Appeals, but was denied that right until September 28, 2019, after the Court of Appeals had corrected the erroneous District Court decision.

Further, applying the concern of Tharp v. Kerr that a Court not "make too light of the statutory rights of the adverse party" Dougan promptly paid the additional $1,798.79 on October 9, 2019, thus depositing funds with the clerk of court in the amount of $1,938,799.79 as required by the District Court ruling on September 28, 2019. Zylstra, at *7.

In accordance with § 628.21, those funds are still on hand to pay Mlady in full, which is the purpose of 628.13. Mlady has not been harmed. He has had use of the farm since surrendering his Certificate of Purchase for the Sheriff's Deed on May 23, 2018.

This case presents appropriate circumstances for application of the first portion of the statement from Tharp v. Kerr cited by Judge Tabor, that is the reference that "Although

equity will always seek to relieve against the consequences of accident or mistake" indicating that under appropriate circumstances equity should grant the right to redeem. Zylstra, at *7.

Dougan's diligent attempt to redeem in full and her success at doing so which was delayed only by the mistaken District Court ruling corrected on appeal is the basis for granting equitable relief.

CONCLUSION

If the 4.25 percent default rate is applied, Dougan requests that:

(1) The Court order a refund paid to her pursuant to § 628.20 of $270,609.86 based upon the following computation:

$1,938,799.79
- $1,668,189.93
$ 270,609.86 *

* ($1,600,001 plus interest at 4.25% of $68,188.93 from May 22, 2017, to May 23, 2018, plus interest on refund as provided in the Agreed Order filed November 8, 2019. App. p. 444.

(2) The Court order the Clerk of Court to immediately issue to her a Change of Title to the Real Estate suitable for recording.

If the 21 percent default rate is applied, Dougan requests that:

(1) The Court grant Dougan the equitable right to redeem and order the Clerk of Court to immediately issue to her a change of title to the real estate suitable for recording and order payment of the funds held on deposit with the Clerk of Court to Mlady.

Respectfully submitted,

HEINY, McMANIGAL, DUFFY, STAMBAUGH & ANDERSON, P.L.C.

By: _____

John L. Duffy AT0002227
11 Fourth Street NE
P.O. Box 1567
Mason City, Iowa 50402-1567
Telephone: 641-423-5154
Facsimile: 641-423-5310
Email: jduffy@heinylaw.com

ATTORNEYS FOR APPELLEE-CROSS APPELLANT SUE ANN DOUGAN

CERTIFICATES OF COST, SERVICE, AND COMPLIANCE

CERTIFICATE OF COST

The undersigned attorney for Appellee-Cross Appellant certifies that the amount actually paid for printing and duplicating the necessary copies of this Application was **$0.00.**

CERTIFICATE OF SERVICE

The undersigned attorney for Appellee-Cross Appellant certifies that on the date referenced below he filed this Application with the Clerk of the Supreme Court by EDMS on counsel for Appellant-Cross Appellee at:

Lynn Wickham Hartman
Simmons Perrine Moyer Bergman PLC
115 Third Street SE, Suite 1200
Cedar Rapids, IA 52401

Dawn Marie Gibson
Simmons Perrine Moyer Bergman PLC
115 Third Street SE, Suite 1200
Cedar Rapids, IA 52401

CERTIFICATE OF COMPLIANCE

1. This Application complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this Application contains 3,261 words, excluding the parts of the Application exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 with 14 point Bookman Old Style font.

Submitted and served this 23rd day of December, 2020.

HEINY, McMANIGAL, DUFFY, STAMBAUGH & ANDERSON, P.L.C.

By: _____
John L. Duffy AT0002227
11 Fourth Street NE
P.O. Box 1567
Mason City, Iowa 50402-1567
Telephone: 641-423-5154
Facsimile: 641-423-5310
Email: jduffy@heinylaw.com

ATTORNEYS FOR APPELLEE-CROSS APPELLANT SUE ANN DOUGAN

IN THE COURT OF APPEALS OF IOWA

No. 19-1689
Filed December 16, 2020

GREAT WESTERN BANK,
Plaintiff,
vs.

CONRAD D. CLEMENT; MANCO, CORP.; and PARTIES IN POSSESSION,
Defendants.

WAYNE JOSEPH MLADY,
Appellant/Cross-Appellee,

vs.

SUE ANN DOUGAN,
Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Howard County, John J. Bauercamper, Judge.

Both parties appeal the court's ruling on redemption of property bought at a sheriff's sale following foreclosure proceedings. **AFFIRMED IN PART AND REVERSED IN PART ON APPEAL; AFFIRMED ON CROSS-APPEAL.**

Lynn Wickham Hartman and Dawn M. Gibson of Simmons Perrine Moyer Bergman PLC, Cedar Rapids, for appellant/cross-appellee.

John L. Duffy of Henry, McManigal, Duffy, Stambaugh & Anderson, P.L.C., Mason City, for appellee/cross-appellant.

Heard by Doyle, P.J., and Tabor and Ahlers, JJ.

DOYLE, Presiding Judge.

This is the second appeal concerning redemption of real property after foreclosure and a sheriff's sale. In the first appeal, we held that a mortgage debtor can assign an exclusive right of redemption to a third party. *Great W. Bank v. Clement*, No. 18-0925, 2019 WL 1294797, at *3-4 (Iowa Ct. App. Mar. 20, 2019). On remand, the district court determined that the assignee timely exercised the right of redemption. We are asked to review that conclusion, as well as the court's determination of the accrual of interest on a sheriff's certificate of sale.

I. Background Facts and Proceedings.

The property at issue was once owned by Conrad Clement and subject to a mortgage from Great Western Bank. When Clement failed to meet the terms of the mortgage, the bank instituted foreclosure proceedings. In its March 24, 2017 decree of foreclosure, the court decreed that a sheriff's sale "may take place immediately" and "there shall be a one-year period of redemption exclusive to [Clement] following any such sheriff's sale."

The sheriff's sale took place on May 22, 2017. Wayne Mlady bought the property for $1,600,001.00. On March 30, 2018, Sue Ann Dougan tendered a check for $1,690,000.00 to the clerk of court to redeem the property.

This action began on April 2, 2018, when Dougan petitioned the court asserting that Clement assigned his exclusive right to redeem the property to her effective March 28, 2018. She asked the court to declare that the assignment was valid and to ratify her redemption. Following a hearing, the district court denied Dougan's petition, finding the assignment of the right of redemption was not valid and enforceable because it was exclusive to Clement. Dougan provided a second

check to the clerk of court in the amount of $247,001.00 on May, 21, 2018, to increase the total amount tendered in support of redemption to $1,937,001.00. On May 23, 2018, a year after the sheriff's sale, the Howard County Sheriff issued a sheriff's deed conveying the real estate's title to Mlady. Dougan appealed the district court's ruling. Holding the assignment valid and enforceable, we reversed on appeal and remanded to the district court to determine whether Dougan's redemption was timely. *Great W. Bank*, 2019 WL 1294797, at *4. Our supreme court denied further review.

On remand, the district court held that "[b]ased upon the ruling of the appellate court, Dougan is entitled to redeem and obtain title." It also determined the applicable interest rate for redemption to be 21%. Mlady moved the court to amend its ruling to find that Dougan failed to timely exercise her right of redemption "because she did not pay the full, statutorily prescribed amount by the deadline." Dougan also moved the court to amend its ruling, arguing that her obligation to pay interest on the sheriff's sale purchase price ceased when Mlady obtained the sheriff's deed on May 23, 2018. The district court denied Mlady's motion, stating, "Dougan has properly and timely exercised the right of redemption." The court agreed with Dougan that interest should stop accruing as of May 23, 2018, because "Mlady has had the benefit of the possession, use, and profits from the land since obtaining the sheriff's deed." Thus, the court held that Mlady was entitled to a payment of $1,938,799.79 for the certificate of purchase. Dougan deposited another $1798.79 with the clerk of court on the day she filed her notice

of appeal so that the total amount of her redemption funds would comply with the court's order. Both Mlady and Dougan appeal.[1]

II. Discussion.

On appeal, Mlady contends Dougan's redemption attempt was untimely because she paid only $1,937,001.00 of the $1,938,799.79 due before expiration of the redemption period. He also challenges the court's determination that interest stopped accruing when he obtained a sheriff's deed, arguing it accrues until the time of full redemption. On cross-appeal, Dougan challenges the rate of interest determined by the district court.

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[1] Mlady certified his reply brief contained 7474 words. It is over-length. The appellate procedure rules limit reply briefs to 7000 words. Iowa R. App. P. 6.903(1)(g)(1) ("If a required brief uses a proportionally spaced typeface it shall contain no more than 14,000 words. A reply brief shall contain no more than half of the type volume specified for a required brief."). Dougan's reply brief includes a non-authorized sur-reply—it replies to Mlady's reply to Dougan's response to issues first raised in Mlady's opening brief. The rules contemplate a brief, a responsive brief, and a reply brief—no more. *See* Iowa R. App. P. 6.901(1)(a), (b), (c). The rules do not contemplate a reply to a reply brief. In cases with cross-appeals,

> [t]he brief of the appellee/cross-appellant shall respond to the brief of the appellant and then address the issues raised in the cross-appeal. The appellant/cross-appellee shall file a reply brief responding to the issues presented by the cross-appeal or a statement waiving the reply brief. The appellee/cross-appellee may file a reply brief responding to the appellant/cross-appellee's reply brief.

Iowa R. App. P. 6.903(5). In other words, the rules limited Dougan's reply brief to issues presented in the cross-appeal. Dougan was not entitled to another bite at the apple regarding issues first raised in the appellant's brief. Dougan had already responded to those issues in his opening brief. These rules infractions added length to the briefs. At this stage of the game, there appears to be no practical remedy available to address the infractions. We just mention this to remind appellate practitioners that these infractions caused the need for more reading. Additional unnecessary reading contributes to judge fatigue, particularly for judges on a high-volume court.

This matter was tried in equity, and our review is de novo. *See Carroll Airport Comm'n v. Danner*, 927 N.W.2d 635, 642 (Iowa 2019). On de novo review, we accord weight to the trial court's findings. *See id.*

A. Interest Rate.

Because the amount of interest accrued following the sheriff's sale affects the total amount of the redemption payment, we begin with the parties' arguments about the rate of interest and period in which interest accumulates. The interest rate is governed by Iowa Code section 628.13 (2018), which sets forth the requirements for redemption by the title holder. It requires payment in the amount of the sheriff's certificate of sale "with interest at contract rate on the certificate of sale from its date." Iowa Code § 628.13(1).

The promissory note on Clement's mortgage provides two interest rates—a variable interest rate of 4.25% per annum and an interest rate of 21% per annum on default. Dougan argues that section 628.13 requires repayment at the 4.25% interest rate, noting that the cases addressing the rate of interest on redemption of a certificate of sale have never showed the court used a default interest rate. But the district court noted, "The notice of sheriff's levy and sale quoted a per diem interest rate in dollars based upon a 21% interest rate." The court thus applied the default interest rate of 21% and calculated the daily rate of interest to be $933.33.

We agree that the rate of interest must be calculated at the default rate of 21%. The promissory note states, "Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased to 21.000% per annum based on a year of 360 days" and lists commencement of foreclosure proceedings as an event constituting default. The order granting default judgment on the bank's

foreclosure action decrees Clement owes "[p]rincipal, interest, late charges and fees as of the 21st day of March, 2017 in the aggregate amount of $1,791,695.84" and "[i]nterest accruing per day as against the Notes in the aggregate daily rate of $933.94[2] from and after the 21st day of March, 2017." The notice of sheriff's sale states, "Accruing Costs: PLUS 933.94 per day from 03/21/2017 = $57,904.28." The $933.33 daily rate of interest corresponds to the default interest rate. We affirm the denial of Dougan's motion to enlarge or amend the findings of the June 12, 2019 order, which determined the interest rate on the sheriff's certificate of sale is 21%.

Mlady challenges the district court's determination that interest stopped accumulating on May 23, 2018, when he surrendered his certificate of sale in exchange for a sheriff's deed. In view of our disposition of the case, we need not address the issue.

B. Timeliness.

We turn to whether Dougan timely exercised her right to redemption. Because "[t]he right to redeem is purely statutory," it can be exercised only "in the manner which the statute prescribes." *First Nat'l Bank of Glidden v. Matt Bauer Farms Corp.*, 408 N.W.2d 51, 53 (Iowa 1987). The statute allows redemption for a period of "one year from the day of sale." Iowa Code § 628.3. "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

[2] The $933.94 daily rate set forth in the foreclosure decree and the notice of sheriff's sale is apparently in error. There appears to be no disagreement between the parties to this appeal that the correct per diem rate is $933.33 (based on a 21% interest rate).

interest." *First Nat'l Bank*, 408 N.W.2d at 53 (citing Iowa Code § 628.13). If the property is not redeemed within that period, the certificate holder is entitled to a sheriff's deed. *See* Iowa Code § 626.98.

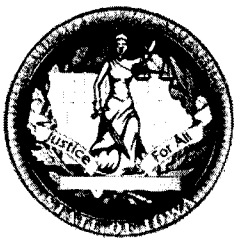
The statutory right to redeem set forth in Iowa Code section 628.3 dates to 1851. *See Farmers Tr. & Sav. Bank v. Manning*, 359 N.W.2d 461, 464 (Iowa 1984). Since that time, our supreme court has observed that the redemption statute "must be strictly complied with." *Nw. Mut. Life Ins. Co. v. Hansen*, 218 N.W. 502, 505 (Iowa 1928). Failure to act within the one-year redemption period puts the holder of a right of redemption "beyond the reach of equitable relief." *Tharp v. Kerr*, 119 N.W. 267, 268 (Iowa 1909). Under such circumstance, the court has "no discretion nor power of mercy" to allow redemption. *Cent. State Bank v. Lord*, 215 N.W. 716, 718 (Iowa 1927).

The parties agree that if interest on the certificate of sale is calculated at a rate of 21% per annum from the date of sale until May 23, 2018, the $1,937,001.00 Dougan paid before the one-year redemption period is $1798.79 short of the amount due. Mlady argues that this shortfall renders Dougan's attempt to redeem the property untimely. Several cases, support his position. *See, e.g.*, *Hansen*, 218 N.W. at 505-06; *Tansil v. McCumber*, 206 N.W. 680, 686 (Iowa 1925) ("Defendants cannot redeem except on condition of paying the whole debt actually owing."); *Gates v. Ives*, 183 N.W. 406, 407 (Iowa 1921); *Iowa Loan & Tr. Co. v. Kunsch*, 135 N. W. 426, 427 (Iowa 1912); *Case v. Fry*, 59 N.W. 333, 334-35 (Iowa 1894). Our court recently addressed this issue in *Sibley State Bank v. Zylstra*, No. 19-0126, 2020 WL 4814072, at *1 (Iowa Ct. App. Aug. 19, 2020). In that case, a mortgage debtor assigned a right of redemption on two properties to Robert Zylstra

on the final day of the redemption period. *Zylstra*, 2020 WL 4814072, at *1-2. Zylstra failed to ascertain the exact amount due to redeem the properties, instead tendering payment for $1,384,284.00, the amount of the winning bids at the sheriff's sale. *Id.* at *2. Shortly after the redemption period ended, Zylstra learned the total amount to redeem the properties—including interest, taxes, insurance, and legal costs—was $1,648,747.00. *Id.* at *3. Although Zylstra tendered a second check to pay the difference, the district court held his attempt to redeem the properties was ineffective because the payment he made during the redemption period was insufficient. *Id.* We affirmed on appeal, declining to extend the redemption period to encompass Zylstra's second payment. *Id.* at *7.

Dougan failed to strictly comply with the statutory requirement to pay the full amount due within the redemption period. As a result, the redemption attempt was untimely. We reverse the denial of Mlady's motion to enlarge or amend the findings of the June 12, 2019 ruling, which concluded Dougan timely redeemed the property.

AFFIRMED IN PART AND REVERSED IN PART ON APPEAL; AFFIRMED ON CROSS-APPEAL.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
19-1689	Great Western Bank v. Clement

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