IN THE SUPREME COURT OF IOWA

Supreme Court No. 23-0679

MEDARDO RIVERA,
Plaintiff-Appellant,

v.

CLEAR CHANNEL OUTDOOR, LLC, ET AL.,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE SCOTT J. BEATTIE

FINAL REPLY BRIEF OF PLAINTIFF-APPELLANT

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ARGUMENT

I. THE ARGUMENTS IN RESISTANCE MISS THE MARK BECAUSE THE EASEMENT IS VOID *AB INITIO*

Defendants-Appellees filed a forty-six page resistance, arguing Rivera's quiet title action is barred for four main reasons. For their first and second reasons, they argue the "simple" or "traditional" statute of limitations in Iowa Code § 614.1(5) applies, or at least the "marketable title statute" that is "more akin to a statute of repose" in Iowa Code § 614.17A applies, barring Rivera's claim. In a third main argument, they argue the Iowa Supreme Court's decision in *Hord II* is "controlling" and supports the application of the statute of limitations in the case of a void instrument. Fourth, they argue the Easement should be valid because Defendants-Appellees were "good faith purchasers". But they speak too much, and they fail to come to terms with the consequences of an instrument that is void *ab initio*.

Because the Easement is void *ab initio*, section 614.1(5), section 614.17A, *Hord II*, and the good faith purchaser doctrine do not apply. As a result, the Defendants-Appellees' four principal arguments in resistance, addressed by Rivera in reverse order below, should be rejected under the circumstances here.

A. The Good Faith Purchaser Doctrine Does Not Apply Because the Easement is Void *Ab Initio*

Rivera's argument that the Easement is void *ab initio* is not seriously contested by Defendants-Appellees. Not surprising—based on the equitable conversion doctrine, and as argued in Rivera's Opening Brief, the Easement is void and not merely voidable. Rivera's Opening Brief Part III.A. Defendants-Appellees only rebuttal is to argue that because they were "good faith purchasers," the Easement is valid, or "at most, the Easement is voidable, not void." Appellees Lamar Media Corporation and TLC Properties, Inc.'s Brief ("Resistance") at 39.

But the good faith purchaser doctrine does not apply to void instruments, and it cannot validate what is otherwise a nullity. *See, e.g.*, *Ellis v. Peck*, 45 Iowa 112, 114–15 (1876) (distinguishing good faith purchasers under void and merely voidable instruments, and recognizing that a void instrument does not provide title to a good faith purchaser (citing *Early v. Whittingham*, 43 Iowa 162 (1876))); *see also Kwentsky v. Sirovy*, 142 Iowa 385, (1909) ("It is claimed, however, that the alteration in the decree, even if material, cannot affect defendant Sirovy, for the reason that he purchased the land in good faith from his codefendant Shunka for value, and without any notice of the alleged alteration of the decree. There is no merit in this contention. The alteration made in the decree was without notice to the

adverse party, and the trial court had no jurisdiction to make it. If without jurisdiction, it was void and of no effect, and, if void, no one can rely thereon. A void act is quite different from a voidable one.").[1]

Defendants-Appellees' citation to *Wright v. Howell*, 35 Iowa 288, 291-92 (1872) emphasizes the point, wherein they parenthetically quote the following from the case:

> It is now the settled American doctrine that a *bona fide* purchaser for valuable consideration is protected under these statues as adopted in this country, whether he purchases from a fraudulent grantor or a fraudulent grantee, and that there is no difference in this respect between a deed to defraud subsequent creditors and one to defraud subsequent purchasers. They are voidable only, and not void absolutely.

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[1] *Accord Delsas v. Centex Home Equity Co.*, 186 P.3d 141, 144 (Colo. Ct. App. 2008) (citations omitted) ("There is an important difference between a void deed and one that is voidable. A void deed is a nullity, invalid ab initio, or from the beginning, for any purpose. It does not, and cannot, convey title, even if recorded. . . . The interest of a good faith purchaser under a void deed is not protected."); *Bank of Am., N.A. v. SFR Invs. Pool 1, Ltd. Liab. Co.*, 427 P.3d 113, 121 (Nev. 2018) ("A party's status as a [bona fide purchaser] is irrelevant when a defect in the foreclosure proceeding renders the sale void." (citing *Henke v. First S. Props., Inc.*, 586 S.W.2d 617, 620 (Tex. App. 1979) ("[T]he doctrine of good faith purchaser for value without notice does not apply to a purchaser at the void foreclosure sale."); Baxter Dunaway, Trustee's Deed: Generally, 2 L. of Distressed Real Est. § 17:16 (2018) ("A void deed carries no title on which a bona fide purchaser may rely . . . ."))); *Focarino v. Travelers Pers. Ins. Co.*, No. A-4780-14T3, 2017 N.J. Super. Unpub. LEXIS 1022, at *7 (Super. Ct. App. Div. Apr. 25, 2017) (same doctrine under the Uniform Commercial Code: "The sale to a good faith purchaser for value 'cannot cure void title.'" (citation omitted)); *Underhill Coal Mining Co. v. Hixon*, 652 A.2d 343, 346 (PA. Super. Ct. 1994) (same).

See Resistance at 39–40. In other words, if the fraudulent deeds were instead void absolutely the *bona fide* or good faith purchaser doctrine could not be relied upon. The good faith purchaser doctrine, therefore, cannot help Defendants-Appellees here because the Easement is void, and thus the doctrine does not support the District Court's decision.[2]

B. *Hord II* Does Not State Iowa Code § 614.17A Applies to Void Instruments

Defendants-Appellees argue that "[w]ithout a doubt, the Iowa Supreme Court ruled in *Hord [II]* that even the alleged existence of a void transaction does not preclude application of § 614.17A." Resistance at 18 (referencing *In*

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[2] Moreover, this argument was never ruled on by the district court, and Defendants-Appellees also did not seek a ruling on it: therefore, it is waived. *DuTrac Cmty. Credit Union v. Hefel*, No. 15-1379, 2017 Iowa Sup. LEXIS 8, at *22 (Iowa Ct. App. Feb. 3, 2017) ("[W]e will not decide an issue presented to us on appeal that was not presented to and decided by the district court." (citing *City of Postville v. Upper Explorerland Reg'l Planning Comm'n*, 834 N.W.2d 1, 8 (Iowa 2013))). "For error to be preserved on an issue, *it must be both raised and decided by the district court*." *Id.* (emphasis added) (citing *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 883 (Iowa 2014)). "If a party raises an issue and the district court does not rule on it, the party must file a motion to request a ruling on the issue." *Id.* (citing *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002)). Defendants-Appellees also did not meet the necessary burden to establish they are good faith purchasers. *Moser v. Thorp Sales Corp.*, 312 N.W.2d 881, 886 (Iowa 1981) ("The rule is well established that to be a good faith purchaser for value, *one must show* that he made the purchase before he had notice of the claim of another, express or implied." (emphasis added) (quoting *Janssen v. North Iowa Conference Pensions Inc. of Methodist Church*, 166 N.W.2d 901, 908 (Iowa 1969))). Defendants-Appellees' arguments fail on these bases too.

re Estate of Hord, 836 N.W.2d 1 (Iowa 2013), addressed herein as *Hord II*). However, Defendants-Appellees cite no language from *Hord II* to prove their intended point—that is, that the Supreme Court held section 614.17A applies to void instruments. That is because no such language exists in *Hord II*, or in any other Iowa case. The best Defendants-Appellees offer is that the Supreme Court "*acknowledged* the arguments that the conveyances at issue were void . . . ." *Id.* at 20 (emphasis added). Acknowledging a party's arguments on the one hand, and ruling that the conveyance was void on the other, or even ruling that section 614.17A applies to void instruments, are of course not the same. The Iowa Supreme Court did not find the conveyance void, and did not hold that section 614.17A applies to void instruments.

Instead, the Supreme Court's decision by Justice Appel sidestepped the issue. *See Hord II*, 836 N.W.2d at 7–8. In fact, as argued in Rivera's Opening Brief, the Supreme Court necessarily held the quitclaim deeds were valid because the spendthrift trust (which would have otherwise invalidated the deeds) could not be enforced. *Id.* at 1 ("the applicable statute of limitations bars the remainder beneficiaries *from enforcing the terms of the spendthrift clause of the decedent's will* . . . ." (emphasis added)).

In sum, the Supreme Court has never held, in *Hord II* or elsewhere, that a statute of limitations runs against a void instrument. To the contrary, Iowa

authority, as well as out-of-state authority, holds that a statute of limitations does not apply to a void instrument. *See* Opening Brief at 21–28 (Part III.C.). Notably, Defendants-Appellees take Rivera to task for citing Iowa opinions regarding void tax deeds, and claim these are different and inapplicable. Resistance at 43 n.12. However, to support their arguments, they cite to *Koch v. Kiron State Bank*, 297 N.W. 450 (Iowa 1941) and *Mobbs v. City of Lehigh*, 655 P.2d 547 (Okla. 1982), cases involving tax deeds. Clearly, Iowa law holds that a statute of limitations is inapplicable to a void instrument such as Defendants-Appellees' void Easement.

C. Sections 614.1(5) and 614.17A Are Not Superfluous, and They Do Not Bar Rivera's Claims

Defendants-Appellees argue that the "simple" or "traditional" statute of limitations bars Rivera's claim because "quiet title actions must be brought within ten years" under section 614.1(5). Resistance at 16. That may be true in most cases, and even in cases where a quiet title action involves a *voidable* instrument. But, based on the arguments and authorities cited in Rivera's opening brief, it is not true in cases involving void instruments. Rivera's Opening Brief Part III.C. The statute of limitations does not run against a void instrument.

Defendants-Appellees add that the "marketable title statute" in section 614.17A, which "is more akin to a statute of repose," bars Rivera's claim

because it, at least, must run against a void instrument. Resistance at 25. Their argument is based on their belief that sections 614.1(5) and 614.17A would otherwise be superfluous: "[T]here is no reason at all for the legislature to have enacted 614.17A if it was not meant to act as a bar to claims for real estate brought more than 10 years after a supposedly void transaction because otherwise the simple statute of limitation in 614.1(5) would bar the claim on its own." Resistance at 21–22.

Their argument fails. It is not necessary to hold that section 614.1(5) runs against *voidable* instruments while section 614.17A runs against *void* instruments to bring meaning to the statutory scheme. That is, even if sections 614.1(5) and 614.17A only apply to instruments that are voidable but not void (as Rivera argues in this appeal), they remain meaningful for two reasons: first, section 614.1(5) applies to a broader category of claims than section 614.17A; and, second, the discovery rule applies to section 614.1(5) but not section 614.17A.

Section 614.1(5) normally imposes a ten year statute of limitations period for several categories of claims, including those "brought for the recovery of real property," but the ten-year period for all of those claims only starts "after their causes accrue." Iowa Code §§ 614.1, .1(5). The discovery rule may thus extend the ten-year period for all of the claims subject to section

614.1(5). However, by passing section 614.17A, the legislature effectively removed the discovery rule for the specific types of claims that both statutes address, such as a quiet title action. *See* Iowa Code 614.17A (stating that "an action shall not be maintained"). Section 614.1(5), therefore, is not rendered meaningless by section 614.17A. Section 614.17A merely *modifies* the limitations period for a certain category of claim in section 614.1(5) by removing the discovery period from the calculation of the ten-year period. And that is why it is a marketable title statute that operates more like a statute of repose (and not because it applies to anything and everything, such as a void instrument, as Defendants-Appellees argue).

Defendants-Appellees' also argue that the "Legislature did not carve out an exception to the marketable title statute for situations where a claimant argues the chain of title for the party in possession was based on a void transaction." Resistance at 24. In their view, "[if] the Legislature wanted to allow old claims based on an allegedly void transaction, it could have done so, but it did not." *Id.* But there was no need for the Legislature to make an exception for void transactions because there was already Iowa authority in place that rendered statute of limitations periods inapplicable to void instruments. Rivera's Opening Brief Part III.C. In other words, if the legislature needed to make any "exception," it would have been to state that

section 614.17A specifically applies to cases involving void instruments. But it did not.

In reality, section 614.17A does not expressly state whether it applies in situations involving void instruments, and no Iowa case specifically addresses the issue (which is why, of course, this appeal is appropriate for retention by the Supreme Court). But substantial authority supports the proposition that a void instrument cannot support a statute of limitations defense, and the Defendants-Appellees' arguments otherwise are not persuasive for the reasons discussed herein.[3]

II. REGARDLESS, THE ELEMENTS OF IOWA CODE § 614.17A HAVE NOT BEEN MET

Even if the statute of limitations applied, *quad non*, Defendants-Appellees cannot meet the elements of section 614.17A.

Regarding the first statutory element, that the "action is based upon a claim arising more than ten years earlier or existing for more than ten years": Although Defendants-Appellees argue that Rivera's claim started when he entered into his real estate contract in 2008, the record shows that Rivera

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[3] Defendants-Appellees' arguments relating to a prescriptive easement claim are also unavailing and are inappropriate because those issues are not before this Court. *Hawkeye Land Co. v. Iowa Power & Light Co.*, 497 N.W.2d 480, 486 (Iowa Ct. App. 1993) ("The appellate court will not review issues which were not presented to the district court." (quoting *State ex rel. Iowa Dep't of Human Servs. v. Duckert*, 465 N.W.2d 871, 873 (Iowa 1991))).

received his general warranty deed for the property in 2018. App. at 16. His subsequent receipt of the warranty deed provided him with legal title, and new legal rights. His quiet title action, based at least on the warranty deed that he received in 2018 (and that provided him with an unencumbered fee simple estate, making no mention of any easement), is clearly not "based upon a claim arising more than ten years earlier or existing for more than ten years."

They also cannot meet the second element. This is because Defendants-Appellees failed to establish or seek a ruling from the district court, and have now waived, that they are in possession of any valid instrument, and their good faith purchaser doctrine is also unavailing. *See supra* Part I.A.; *e.g.*, *Schooley v. Prairie Meadows Racetrack & Casino, Inc.*, No. 06-1583, 2008 Iowa App. LEXIS 333, at *2 (Ct. App. May 29, 2008) ("It is axiomatic that issues not raised and decided by the district court are not preserved for review." (citing *Bill Grunder's Sons Constr., Inc. v. Ganzer*, 686 N.W.2d 193, 197 (Iowa 2004))).

Lastly, Defendants-Appellees also cannot meet the "in possession" requirement under the second or third elements. That is because an easement is not a possessory right, as a matter of law. *Brandt Tr. v. United States*, 572 U.S. 93, 105 (2014) (quoting Restatement (Third) of Property: Servitudes § 1.2(1) (1998)); *see* Iowa Code § 614.17A(1)(b) and (c); *Rottinghaus v.*

Lincoln Sav. Bank, 944 N.W.2d 853, 862 (Iowa 2020) ("[S]ection 614.17A is a statute of limitations that bars a certain type of action to enforce a *possessory* interest in real estate." (emphasis added)).

Therefore, Defendants-Appellees fail to meet the elements required to invoke section 614.17A. *See Tesdell v. Hanes*, 82 N.W.2d 119, 120–23 (Iowa 1957) ("Only those who possess a title which complies with the conditions of [section 614.17A] are qualified to invoke its aid.").

CONCLUSION

The Easement is void *ab initio*, and as a result the Defendants-Appellees cannot rely on the good faith purchaser doctrine or *Hord II*, and they cannot invoke a statute of limitations defense or otherwise meet the elements of the statute of limitations under section 614.17A.

Holding that the statute of limitations applies to a void conveyance is impermissible as a matter of law because it would honor what the law already recognizes as a legal nullity. And it should likewise be impermissible as a matter of equity and public policy—property owners should not lose their property rights because of a void conveyance.

For these reasons, the ruling of the district court should be reversed and this matter should be remanded for further proceedings.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa Rule of Appellate Procedure 6.903(1)(g)(1) because this brief contains 2,770 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(g)(1).

This brief complies with the typeface requirements and the type-style requirements of Iowa Rule of Appellate Procedure 6.903(1)(e) and (f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in 14-point, Times New Roman font.

/s/ *Kirk W. Schuler*
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CERTIFICATE OF FILING

The undersigned hereby certifies that Plaintiff-Appellant's Final Reply Brief was electronically filed on November 15, 2023, in accordance with Chapter 16 of the Iowa Rules of Court.

/s/ *Kirk W. Schuler*
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that Plaintiff-Appellant's Final Reply Brief was electronically filed on November 15, 2023, and thus served on:

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