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Mortgages - Redemption - Whether a Supersedeas Order, in Effect While an Appeal Is Pending from a Decree Approving a Mortgage Foreclosure Sale, Suspends the Running of the Statutory Period for Redemption

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themselves but when present in combination do make the marriage voidable and susceptible to annulment. It was evident, in the instant case,¹⁶ that both aspects were met so no difficulty existed on that score.

A further factor considered was whether the parent was an appropriate party to bring the action.¹⁷ In the case of *Vaughn v. Gideon*,¹⁸ a suit for annulment brought by the father of a minor party to the marriage, it appeared that the child was but fifteen years of age and the ceremony had been performed without parental consent. The court there held that the statutory law of California gave to the non-consenting parent the right to commence annulment proceedings, provided the action was instituted within an appropriate time. Since the parent in the case at hand met all of these qualifications the court experienced no difficulty in concluding that the remedy of annulment was available to him.

While there is little support to be found in precedent for the principal holding, the view taken can be said to be both just and understandable. To permit a parent to be defrauded of his consent would be to deprive him of that control over the marriage of his child which the law has given to him. Marriage, in many respects a civil contract, must stand or fall as any other contract, being voidable for reasons similar to those which render other civil contracts voidable. By allowing cancellation in the instant case, the court reached the only just and equitable conclusion possible in the premises.

E. E. DECHTER

MORTGAGES—REDEMPTION—WHETHER A SUPERSEDEAS ORDER, IN EFFECT WHILE AN APPEAL IS PENDING FROM A DECREE APPROVING A MORTGAGE FORECLOSURE SALE, SUSPENDS THE RUNNING OF THE STATUTORY PERIOD FOR REDEMPTION—A question concerning whether the time for redemption from a mortgage sale would be extended by the presence of a supersedeas order in the case was before a reviewing court of Illinois for the first time in *Fairfield Savings & Loan Association v. Central National Bank in Chicago*.¹ In that case, the petitioners, as equitable owners of the premises, appealed from a decree which had approved a mortgage foreclosure sale of their real estate. The chancellor, at the time he approved the appeal bond,

¹⁶ *West v. West*, 62 Cal. App. 541, 217 P. 567 (1923).

¹⁷ Cal. Civ. Code, § 83, provides that the action to obtain a decree of nullity of a marriage may be brought by a party to the marriage or by a parent or guardian or other person having charge of a non-age male or female at any time before the married minor has arrived at the age of legal consent.

¹⁸ 56 Cal. App. (2d) 158, 132 P. (2d) 529 (1942).

¹ 19 Ill. App. (2d) 465, 154 N. E. (2d) 333 (1958).

had ordered that the bond and the notice of appeal should operate as a supersedeas. This order was in effect for approximately eleven months while the appeal was being conducted. Promptly after the appeal had been decided adversely to them,² but some eighteen months after the date of the sale itself, the petitioners sought to redeem the property. The trial court denied this petition and the Appellate Court for the First District of Illinois affirmed the judgment when it concluded that the one year period for redemption allowed by statute³ was neither affected nor extended by the supersedeas order.

The theory of the petitioners was that the running of the statutory period of redemption had been tolled as of the date of the supersedeas order and had not commenced to run again until the appeal had been decided. If the time which had elapsed during the conduct of the appeal had been excluded, the statutory period for redemption would not have expired and their petition for an order redeeming the premises would have been seasonable. On the other hand, it was the contention of the purchaser that the supersedeas order had no effect on a self-executing decree and, since the decree approving the sale was self-executing in that it did not direct further proceedings but merely approved the sale as conducted by the master in chancery, the period of redemption had expired.

The statute pertaining to redemption from a mortgage foreclosure sale, as originally enacted in 1872, gave to the mortgagor a statutory right to redeem as an addition to his equity of redemption but did not impose a time limitation for so doing.⁴ The following year, however, the statute was amended to provide that the mortgagor could exercise this right of redemption at any time within and up to twelve months from the date of the sale.⁵ Although there have been subsequent amendments to the statute, the pattern so established of permitting a mortgagor to redeem his real estate within a specified period following a foreclosure sale has remained consistent. The statute grants no express exclusions or interruptions in computing the time within which a redemption must be made nor does it mention appeal or supersedeas or the consequence thereof.

Illinois courts, operating under the statute, have taken the position that the right of redemption is a purely statutory right and that a mort-

² See *Fairfield Savings & Loan Ass'n v. Central Nat. Bank*, 13 Ill. App. (2d) 133, 140 N. E. (2d) 739 (1957).

³ Ill. Rev. Stat. 1955, Vol. 2, Ch. 77, § 18, which controlled the instant case, provided that a defendant in a mortgage foreclosure suit might act to redeem the real estate within twelve months from the date of the sale.

⁴ Ill. Laws 1871-2, p. 508.

⁵ Ill. Laws 1873-4, p. 110.

gagor wanting to redeem his realty must take appropriate action to do so within the statutory period.⁶ In only a very few instances have the courts altered from this position and these, typically, have been situations wherein the owner of the premises was induced, by fraud or some improper act on the part of the purchaser, to refrain from redeeming within the statutory period;⁷ where there has been some mistake by the court or one of its officials;⁸ or where the parties themselves, by agreement, have consented to extend the time for redemption from a judicial sale.⁹ In the only other instance, the situation involved the intervention of a federal statute which operated to save the owner by excluding the period of his service in the armed forces from the computation of time provided for under the redemption statute.¹⁰ By contrast, a good illustration of the general position taken by the courts is to be found in the case of *Grove v. Kerr*.¹¹ In that case, an appeal was taken from the foreclosure action but neither the mortgagor, who died during the twelve-month period following sale, nor his executor or devisee had redeemed before the expiration of the statutory time interval. Despite the death of the party most concerned, the court held the failure to redeem within the statutory period cut off all rights in the property.

The authority for the granting of a supersedeas on appeal from a judgment or decree of a lower court is regulated by the Civil Practice Act.¹²

⁶ *Hall v. American Bankers' Ins. Co.*, 315 Ill. 252, 146 N. E. 137 (1924); *Hilton v. Meier*, 257 Ill. 500, 100 N. E. 962 (1913); *Henderson v. Craig*, 179 Ill. 395, 53 N. E. 736 (1899). In the last-mentioned case, it was held that a minor defendant, on becoming of age, could not redeem from a judicial sale if the statutory period had expired in the period of his minority.

⁷ *Odgen v. Stevens*, 241 Ill. 556, 89 N. E. 741, 132 Am. St. Rep. 237 (1909); *Henderson v. Harness*, 184 Ill. 520, 56 N. E. 786 (1900); *Palmer v. Douglas*, 107 Ill. 204 (1883). See also *Woodworth v. Sanden*, 371 Ill. 302, 20 N. E. (2d) 603 (1939), for dictum to the same effect but the petition there was dismissed for failure to establish fraudulent conduct on the part of the purchaser.

⁸ In *Skach v. Sykora*, 6 Ill. (2d) 215, 127 N. E. (2d) 453 (1955), where the owners paid the amount which the master erroneously informed them was required for redemption prior to the expiration of the statutory period and paid the remainder upon the discovery of the error shortly after the end of such period, the court held the owners had effectively redeemed the property. In *Haworth v. Taylor*, 108 Ill. 275 (1884), redemption was allowed from an execution sale after the statutory period had expired where it appeared that the tract in question had been sold along with other land of the execution debtor without his knowledge and no record of the sale had been made in time to allow for redemption.

⁹ *Doner v. Phoenix Land Bank*, 381 Ill. 106, 45 N. E. (2d) 20 (1942).

¹⁰ *Illinois Nat. Bank of Springfield v. Gwinn*, 390 Ill. 345, 61 N. E. (2d) 249 (1945), holding that the provisions of the Soldiers' and Sailors' Relief Act of 1940, 50 U. S. C. A., Appendix, § 501 et seq., had to be regarded as if written into the state statute on redemption and, in effect, had amended the state statute so as to grant an additional period of time for redemption. The owner there concerned, who was in military service at the time of the sale, was allowed to redeem more than twelve months after the date of the sale. It is interesting to note that the court took the position that the federal statute had amended the local one instead of serving to toll its operation.

¹¹ 318 Ill. 591, 149 N. E. 517 (1925).

¹² Ill. Rev. Stat. 1957, Vol. 2, Ch. 110, §§ 82(1), 101.37, and 201.4.

That statute, however, adds nothing to describe the operation and effect of a supersedeas other than to indicate that it serves to suspend the execution of the judgment or decree. The courts have, to some degree, been more helpful for they have concluded that, in general, it is the purpose of a supersedeas to stay all future proceedings until the appeal has been disposed of by the reviewing court.¹³ Nevertheless, they have also held that a judgment or decree which is self-executing is not affected by a supersedeas,¹⁴ since the supersedeas operates only against enforcement of the judgment and not against the judgment itself. In the last-mentioned situation, there is nothing upon which the supersedeas could operate, so it would lack vitality.

The result sought by the petitioners in the instant case invoked a question of importance which went far beyond the interest of the immediate parties. Public policy requires that stability be given to judicial sales.¹⁵ If the presence of appeals and supersedeas orders were held to extend regular statutory periods, wide-spread use of such tactics to obtain extensions of redemption periods would create an intolerable situation in the field of real estate financing. Major revisions in the redemption provisions made by the General Assembly in 1957 would also serve to indicate that the policy is to shorten the period of redemption rather than to extend it.¹⁶ The decision in the instant case, then, appears to be consistent with the Illinois law relating to the redemption of real estate, with respect to appeals and supersedeas orders, and with the cases holding that the mere pendency of an appeal does not postpone the commencement date for the running of a statutory period of limitation.¹⁷ On the basis of the established Illinois law, the result achieved might have been predicted, and it does not appear that there are sufficient reasons for upsetting the principles which produced that result.

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¹³ *People ex rel. Finn v. David*, 328 Ill. 230, 159 N. E. 263 (1927). It was there held that, while an appeal is pending, the judgment may not be disturbed by any action directed against it.

¹⁴ *People ex rel. McDonnell v. Thompson*, 316 Ill. 11, 146 N. E. 473 (1925); *People ex rel. Barry v. Gregory*, 324 Ill. App. 614, 59 N. E. (2d) 106 (1944). See also *Gumperts v. East Oak St. Hotel Co.*, 404 Ill. 386 at 389, 88 N. E. (2d) 883 at 885 (1949), for dictum discussing the operation and effect of a supersedeas.

¹⁵ *Chicago Title & Trust Co. v. Robin*, 361 Ill. 261, 198 N. E. 4 (1935).

¹⁶ Ill. Rev. Stat. 1957, Vol. 2, Ch. 77, §§ 18, 18b, 18c, 18d, 20-2, 24 and 24a. These amendments, while retaining the twelve-month period within which the defendant may redeem, now permit the creditor concurrent rights to redeem after the expiration of nine months. In specified instances, also, the period of redemption may be limited to three months following the sale.

¹⁷ *Geisler v. Benker*, 328 Ill. App. 357, 66 N. E. (2d) 313 (1946). In *Peoria County Board of Sup'rs v. Gordon*, 82 Ill. 435 (1876), it was said that, where a statute of limitations begins to run, it will continue to run until it operates as a complete bar unless there is some saving clause or other qualification in the statute itself.