

[Cite as *Blisswood Village Home Owners Assn. v. Euclid Community Reinvestment, L.L.C.*, 2018-Ohio-1091.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105854

**BLISSWOOD VILLAGE HOME
OWNERS ASSOCIATION**

PLAINTIFF-APPELLEE

vs.

**EUCLID COMMUNITY
REINVESTMENT, L.L.C., ET AL.**

DEFENDANTS-APPELLANTS

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-853348

BEFORE: E.T. Gallagher, J., Kilbane, P.J., and McCormack, J.

RELEASED AND JOURNALIZED: March 22, 2018

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Euclid Community Reinvestment, L.L.C. (“ECR”), brings this appeal, challenging the confirmation of sale of real property in this foreclosure action brought by plaintiff-appellee, Blisswood Village Home Owners Association (“Blisswood”). ECR raises the following assignments of error for review:

1. The trial court erred as a matter of law when it confirmed the January 9, 2017 foreclosure sale of the real property at issue because the court lacked subject matter jurisdiction over appellee's foreclosure action, therefore rendering all proceedings void, including the Court's judgment in foreclosure and the decree of confirmation itself.

2. To the extent that the trial court's confirmation order renders the within appeal moot on grounds that title to the real property in this case has passed via the Sheriff's sale, the trial court committed reversible error because the purchaser of the property in this case is so closely related to appellee that this Court of Appeals can return title to appellant under the long standing doctrine most recently outlined in *Fannie Mae v. Hicks*.

{¶2} After careful review of the record and relevant case law, we dismiss this appeal as moot.

I. Procedural and Factual History

{¶3} On October 28, 2015, Blisswood filed a foreclosure action in Cuyahoga C.P. No. CV-15-853348 against ECR and other defendants holding or claiming interests in the residential condominium unit located on Clearview Drive in Euclid, Ohio. ECR was the record title owner of Unit E.

{¶4} The foreclosure complaint sought a decree of foreclosure against the unit and requested a judgment in the amount of \$1,541.96, plus interest, for unpaid monthly assessments for common expenses, late fees, interest, and charges for collection costs. Blisswood alleged that it obtained a lien on the property for unpaid monthly assessments, late fees, and other authorized charges including reasonable attorney fees pursuant to R.C. 5311.18. The certificate of lien was filed on September 22, 2015, as Instrument No. 201509220281 in the Cuyahoga County Recorder's Office.

{¶5} On June 15, 2016, Blisswood moved, pursuant to Civ.R. 55, "for default judgment in its favor for the amount and kind of relief prayed for in its complaint." Blisswood argued that

ECR was served with a summons and copy of the complaint, but failed to plead or otherwise defend.

{¶6} On July 6, 2016, the magistrate granted Blisswood's motion for default judgment and entered judgment against ECR. On October 18, 2016, the magistrate issued a decision with findings of fact and conclusions of law, granting a decree of foreclosure in favor of Blisswood. On November 9, 2016, the trial court adopted the magistrate's decision in its entirety.

{¶7} ECR did not appeal from the decree of foreclosure. Instead, ECR filed a motion for relief from judgment on January 5, 2017, arguing:

(i) ECR has a meritorious defense to [Blisswood's] complaint in foreclosure, (ii) [Blisswood] obtained its decree of foreclosure by misrepresenting the authority of its Board of Trustees to impose the underlying liens and assessments that form the basis for its foreclosure complaint, and (iii) this motion has been filed timely, and within one (1) year of the Court judgment in the above captioned case.

{¶8} On January 9, 2017, the underlying real property was sold at sheriff's sale to Blisswood Village Reinvestment, L.L.C. On March 6, 2017, the trial court granted ECR's motion to stay execution of the foreclosure decree pending the disposition of ECR's motion for relief from judgment.

{¶9} Following a comprehensive hearing, the magistrate denied ECR's motion for relief from judgment, finding that ECR failed to demonstrate that it had basis for relief from judgment under Civ.R. 60(B)(3). On April 28, 2017, the trial court adopted the magistrate's decision in its entirety.

{¶10} On May 1, 2017, the trial court entered a decree of confirmation of sale. On May 31, 2017, ECR filed a notice of appeal with this court. Significantly, ECR did not file a motion to stay the confirmation of sale or a motion to stay satisfaction of the judgment pending this appeal. As a result, the proceeds of the sale were distributed on June 7, 2017.

{¶11} On June 16, 2017, Blisswood filed a motion to dismiss this appeal on grounds that the confirmation of sale and distribution of sale proceeds rendered ECR's appeal moot under Chapter 2329 of the Ohio Revised Code.

II. Law and Analysis

{¶12} Before we examine the merits of ECR's assigned of errors, we must address Blisswood's motion to dismiss this appeal.

{¶13} There are two judgments that are appealable in foreclosure actions. *Mulby v. Poptic*, 8th Dist. Cuyahoga No. 96863, 2012-Ohio-1037, ¶ 6, citing *Emerson Tool, L.L.C. v. Emerson Family Ltd. Partnership*, 9th Dist. Summit No. 24673, 2009-Ohio-6617, ¶ 13. The first is the order of foreclosure and sale. The second is the confirmation of the sale. *Id.*

{¶14} On appeal, ECR argues the trial court lacked subject matter jurisdiction over the foreclosure action and, therefore, the trial court's "decrees of foreclosure and confirmation are void ab initio." ECR contends that the trial court lacked subject matter jurisdiction to issue decrees of foreclosure and confirmation "because [Blisswood's] purported statutory lien was not a valid property interest under R.C. Chapter 5311 and therefore not grounds for a valid foreclosure action."

{¶15} Initially, we note that ECR failed to appeal from the trial court's judgment of foreclosure. As reflected in the notice of appeal, this case is limited to a review of the court's May 1, 2017 judgment confirming the sheriff's sale. Because ECR failed to pursue an appeal of the November 9, 2016 foreclosure order, any argument pertaining to that judgment is now barred.

U.S. Bank, N.A. v. Sanders, 8th Dist. Cuyahoga No. 104607, 2017-Ohio-1160, ¶ 16 citing *Beneficial Ohio, Inc. v. LaQuatra*, 8th Dist. Cuyahoga No. 99860, 2014-Ohio-605, ¶ 5, citing *Third Fed. S. & L. Assn. of Cleveland v. Rains*, 8th Dist. Cuyahoga No. 98592, 2012-Ohio-5708,

¶ 10-12. *See also Deutsche Bank Natl. Co. v. Caldwell*, 8th Dist. Cuyahoga No. 100594, 2014-Ohio-2982. Thus, the only arguments that can be considered by this court are those related to the procedures employed in the sale and whether the trial court abused its discretion in confirming the sale. *Sanders* at ¶ 16.

{¶16} After careful review, however, we find ECR's jurisdictional arguments relating to the confirmation of the sheriff's sale to be moot. R.C. 2329.45 provides that, when an appeal is taken from the order confirming the sheriff's sale, the purchaser retains title even if the matter is reversed on appeal. R.C. 2329.45 protects the property rights of the third-party purchaser and provides that the remedy of the party prevailing on appeal of the foreclosure action is limited to restitution from the monetary proceeds of the sale.

{¶17} The language of R.C. 2329.45 does not mention the distribution of the proceeds of the sale. Thus, the statute can only be construed to address appeals that have been taken from the confirmation of sale and the appealing party sought a stay of the distribution of proceeds pursuant to Civ.R. 62(B) and App.R. 7(A). *Sanders* at ¶ 21, citing *Provident Funding Assocs., L.P. v. Turner*, 8th Dist. Cuyahoga No. 100153, 2014-Ohio-2529, ¶ 6. In those situations, although the property has been sold and the sale confirmed, a successful appellant will have the remedy of restitution because the proceeds of the sale are still held under the jurisdiction and control of the court. *Turner* at ¶ 6.

{¶18} In this case, the record reflects that ECR never sought a stay of the distribution of proceeds following the May 1, 2017 confirmation of sale. This court has previously dismissed appeals as moot under similar circumstances. *Wells Fargo Bank, N.A. v. Cuevas*, 8th Dist. Cuyahoga No. 99921, 2014-Ohio-498; *Rains*, 8th Dist. Cuyahoga No. 98592, 2012-Ohio-5708;

Equibank v. Rivera, 8th Dist. Cuyahoga No. 72224, 1998 Ohio App. LEXIS 185 (Jan. 22, 1998).

As this court has stated:

The property has been sold and the deed has been recorded. The order of confirmation has been carried out to its fullest extent. If this court reversed the order of confirmation, there is no relief that can be afforded appellants. An appeal is moot if it is impossible for the appellate court to grant any effectual relief. *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21 (1910).

Cuevas at ¶ 22, *Rivera* at 3.

{¶19} As in *Cuevas* and *Rivera*, the subject property was sold at sheriff's sale, the trial court confirmed the sale, and the proceeds have been distributed. ECR failed to seek a stay, and it did not post an appeal bond. The judgment has been satisfied, and the proceeds of the sale are no longer under the jurisdiction and control of the court. Accordingly, this appeal must be dismissed as moot.

{¶20} In an effort to avoid the issue of mootness, ECR relies on this court's decision in *Fannie Mae v. Hicks*, 2016-Ohio-8484, 77 N.E.3d 380 (8th Dist.). According to ECR, our holding in *Hicks* mandates that ECR have title to the underlying property returned to it because Blisswood Village Reinvestment, L.L.C. was not a good faith, third-party purchaser of the property. After careful review, however, we find *Hicks* to be inapplicable to the facts of this case.

{¶21} In *Hicks*, the issue of mootness was not before this court because the underlying judgment of foreclosure was overturned in a prior appeal. *Hicks* at ¶ 2, citing *Fannie Mae v. Hicks*, 2015-Ohio-1955, 35 N.E.3d 37 (8th Dist.) ("*Hicks I*"). The sole issue before this court in *Hicks* was whether on remand from the reversal of the foreclosure decree, the trial court correctly applied the equitable remedies afforded under R.C. 2325.03 and 2329.45, where the subject property was sold to the plaintiff while the foreclosure appeal was pending. Ultimately,

this court concluded that the protections afforded to good faith purchasers at foreclosure sales under R.C. 2325.03 and 2329.45 do not apply to plaintiff-purchasers. *Id.* at ¶ 13. Therefore, we found the trial court “erred as a matter of law by not vacating the foreclosure sale and by ordering [the plaintiff] to pay [the debtor] restitution” pursuant to R.C. 2329.45. *Id.* at ¶ 19. This court explained that the reversal of the foreclosure order in *Hicks I*, “served to nullify the foreclosure sale and confirmation order.” *Id.* Accordingly, we ordered the trial court to vacate the confirmation of sale and return the deed of the property to the debtor. *Id.*

{¶22} Contrary to ECR’s position on appeal, *Hicks* does not provide additional avenues of relief to a party who fails to file a direct appeal from the foreclosure judgment and, thereafter, fails to seek a stay of distribution pursuant to Civ.R. 62(B) upon appealing the judgment of confirmation. *Hicks* merely speaks to the remedy available to a defendant, following a successful appeal, when the purchaser of the property at a sheriff’s sale is the plaintiff in the foreclosure action. Regardless of who purchased the property in this case, once the proceeds of the sale were distributed, and satisfaction of the judgment occurred, this court lost the authority to provide ECR effective relief from the confirmation of sale. Thus, we find ECR’s reliance on this court’s discussion in *Hicks* regarding the application of the R.C. 2329.45 to plaintiff-purchasers to be without merit.

{¶23} Accordingly, our decisions in *Cuevas*, *Rains*, and *Rivera* are not implicated by our holding in *Hicks*. Blisswood’s motion to dismiss this appeal as moot is granted.

{¶24} Appeal dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, JUDGE

MARY EILEEN KILBANE, P.J., and
TIM McCORMACK, J., CONCUR