

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Edward Leonard, Treasurer,
Franklin County, Ohio,

Plaintiff-Appellee,

v.

Cleo Pilkington,

Defendant-Appellant,

Unknown Spouse of Cleo Pilkington et al.,

Defendants-Appellees.

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No. 14AP-650
(C.P.C. No. 11CVE-5906)

(REGULAR CALENDAR)

D E C I S I O N

Rendered on April 14, 2015

Ron O'Brien, Prosecuting Attorney, and *Mary E. Johnson*, for
appellee Edward Leonard.

Law Offices of Marcell Rose Anthony, LLC, and *Marcell Rose
Anthony*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, Cleo Pilkington, appeals from a judgment of the Franklin County Court of Common Pleas, in favor of plaintiff-appellee, Franklin County Treasurer Edward Leonard. For the reasons that follow, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On May 11, 2011, appellee commenced a statutory foreclosure proceeding, pursuant to R.C. 5721.18, against real property owned by appellant. Therein, appellee

alleges that the Franklin County Auditor has issued a delinquent land tax certificate stating that there are delinquent taxes, assessments, and penalties in the amount of \$19,907.94 due and owing on the property. Appellee seeks a judgment in that amount "together with further interest and penalties chargeable thereon." (Complaint, 2.)

{¶ 3} Summons and complaint were served upon appellant by certified mail on May 18, 2011, but appellant did not file an answer. The trial court granted a default judgment in favor of appellee on November 29, 2011 and issued an order of sale. On April 24, 2012, appellant filed a motion for relief from judgment pursuant to Civ.R. 60(B). At the suggestion of the parties, the trial court vacated the default judgment and granted appellant leave to answer the complaint.

{¶ 4} On February 1, 2013, appellant filed an answer denying the material allegations of the complaint for lack of knowledge. Appellant also asserted a number of defenses including the following: "At all times and continuing, Defendant suffers from mental illness, and therefore, due to Incapacity, a judgment and/or foreclosure cannot be had because it would be a denial of her right to life, liberty and pursuit of happiness, and equal protection under the Fourteenth Amendment of the U.S. Constitution." (Answer, 1-2.)

{¶ 5} Appellant filed a motion with the trial court on October 11, 2013 seeking an order compelling appellee to accept her offer of settlement. Appellee opposed the motion, and on November 13, 2013, the trial court issued a decision denying the motion. Thereafter, on December 31, 2013, appellee filed a motion for summary judgment pursuant to Civ.R. 56(A). In support of the motion, appellee filed the affidavit of Kris McDaniel, foreclosure payoff coordinator of the Delinquent Tax Division of the Franklin County Treasurer's office. McDaniel avers that "[t]he public records of the Franklin County Treasurer * * * reflect that taxes are due to Franklin County in the total amount of \$26,824.78" and that "said records reflect no payment has been made since * * * July 2, 2009." Appellant moved the court for an extension of time to respond to the motion for summary judgment in order to conduct discovery. On January 13, 2014, appellee filed a memorandum in opposition supported by the affidavit of Eric Sells, supervisor of the Delinquent Tax Division of the Franklin County Treasurer's office. Sells avers that the public records reflect that taxes in the amount of \$1,332.56 are now currently due on the

property and that the delinquent taxes are \$14,058.70. Sells avers that the remaining charges against the property are as follows: assessments of \$250.25, penalties of \$2,618.20, and accrued interest of \$8,565.07. The trial court denied appellant's motion for an extension of time, and, thereafter, appellant filed her memorandum in opposition to appellee's motion for summary judgment.

{¶ 6} On May 9, 2014, the trial court denied appellant's motion for an evidentiary hearing to determine "if there is an issue as to Defendant's mental illness(s)/disability." (Mar. 12, 2014 Motion, 1.) On July 7, 2014, appellant filed a motion for summary judgment pursuant to Civ.R. 56(B). Appellant supported the motion with her own affidavit and a number of unauthenticated documents purportedly generated by the Social Security Administration. On July 21, 2014, appellee filed a memorandum in opposition to appellant's motion for summary judgment, and on July 29, 2014, appellee filed a motion to strike the unauthenticated documents attached as exhibits to appellant's motion for summary judgment.

{¶ 7} On July 31, 2014, the trial court issued a decision granting appellee's motion for summary judgment. The trial court decision provides in relevant part as follows:

Plaintiff's 12/31/2013 Motion for Summary Judgment is GRANTED. Plaintiff shall submit a Final Judgment Entry pursuant to Local Rule 25.01. The Judgment shall be in the amount of \$26,824.78 plus any additional taxes, penalties, and interest that are subject to the lien which have become due since 12/31/2013. While that Judgment shall provide for foreclosure of the property to pay off Plaintiff's lien, it shall not include a deficiency judgment against Ms. Pilkington.

(Emphasis sic.) (July 31, 2014 Decision, 1.)

{¶ 8} The decision of the trial court did not contain a ruling on appellant's motion for summary judgment. Accordingly, on August 5, 2014, the trial court issued a decision stating: "Ms. Pilkington's 7/7/2014 Motion for Summary Judgment is MOOT since this Court has granted the Treasurer's Motion for Summary Judgment which resolves all of the claims pending in this case." (Emphasis sic.)

{¶ 9} Thereafter, on August 18, 2014, appellant's counsel filed a letter with the trial court wherein counsel asserted that the parties "cannot agree on a final Judgment Entry," and she requested that the court "not sign [plaintiff's] proposed document, and

provide me until this Friday to submit an appropriate proposed Judgment Entry."¹ However, on that same date, the trial court issued an entry entitled "FINDING OF THE COURT AND ORDER OF SALE" wherein the court entered judgment in favor of appellee and finds that "there is due the plaintiff the sum of \$29,320.75, which includes administrative costs, accrued taxes, assessments, penalties, and charges." (Emphasis sic.) The entry further states: "This is a Final Judgment Entry; there is no just reason for delay."

{¶ 10} Appellant filed a notice of appeal to this court on August 19, 2014.

II. ASSIGNMENTS OF ERROR

{¶ 11} Appellant sets forth the following assignments of error:

I. WHETHER THE TRIAL COURT ERRED BY SIGNING APPELLEE'S PROPOSED FINDING AND ORDER ON THE COMPLAINT AND ANSWER AND ORDERING FORECLOSURE INSTEAD OF SIGNING APPELLANT'S PROPOSED JUDGMENT ENTRIES ON THE COURT'S DECISIONS ON THE PARTIES' RESPECTIVE MOTIONS FOR SUMMARY JUDGMENT.

II. WHETHER THE APPELLANT WAS DENIED DUE PROCESS AND/OR EQUAL PROTECTION BASED UPON MENTAL DISABILITY AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION.

III. WHETHER THE APPELLANT WAS DENIED AN APPEAL AS OF RIGHT ON THE TRIAL COURT'S DECISIONS ON THE PARTIES' RESPECTIVE MOTIONS FOR SUMMARY JUDGMENT BY THE LOWER COURT'S FAILURE TO SIGN AND FILE A JUDGMENT ENTRY ON THE DECISIONS ON THE PARTIES' RESPECTIVE MOTIONS FOR SUMMARY JUDGMENT.

III. LEGAL ANALYSIS

{¶ 12} As a preliminary matter, we note that appellant's assignments of error do not expressly challenge the trial court's ruling on appellee's motion for summary judgment. Appellant's argument in support of the assigned errors is consistent with this reading. Additionally, appellant asserts in her reply brief that she is not challenging the

¹ The letter is dated August 13, 2014.

merits of the trial court's decision to grant summary judgment for appellee. In fact, appellant moved this court to strike the portions of appellee's brief that contain argument in support of the trial court ruling on appellee's motion for summary judgment.² Accordingly, we will confine our review of appellant's assignments of error to the specific arguments raised therein.

{¶ 13} Because each of appellant's assignments of error challenges the validity of the trial court's judgment based upon alleged defects in the form and content of the August 18, 2014 entry, we will consider them together.

{¶ 14} A tax foreclosure action is an action in rem and not in personam. *See Hunter v. Grier*, 173 Ohio St. 158, 161 (1962); *Lorain Cty. Treasurer v. Schultz*, 9th Dist. No. 08CA009487, 2009-Ohio-1828, ¶ 10; *In re Foreclosure of Lien for Delinquent Taxes by Action in Rem*, 7th Dist. No. 06-JE-40, 2008-Ohio-1173, ¶ 18. Thus, it operates on the land itself and not on the title of the one in whose name the property is listed for taxation. *Hunter*.

{¶ 15} Pursuant to R.C. 5721.18(A), "[t]he certificate or master list filed by the auditor with the prosecuting attorney is prima-facie evidence at the trial of the foreclosure action of the amount and validity of the taxes, assessments, charges, penalties, and interest appearing due and unpaid and of their nonpayment." Summary judgment in favor of the county treasurer is appropriate in a foreclosure proceeding brought by the county treasurer for delinquent real estate taxes, pursuant to R.C. Chapter 323 and 5721, where the public records show that the real estate taxes remained unpaid for at least two consecutive semi-annual tax settlement periods and that the complaint was filed at least one year after the parcels were first certified as delinquent. *See Rinehart v. Goberdhan*, 70 Ohio App.2d 270 (10th Dist.1980).

{¶ 16} In appellant's first assignment of error, she claims that the trial court erred when it elected to sign the proposed journal entry submitted by appellee rather than the proposed entry she submitted. Appellant attached a copy of the proposed judgment entry

² On December 18, 2014, appellant filed a motion to strike the portions of appellee's brief which "surreptitiously * * * co[n]vert assignments of error for the purpose of arguing the merits of those Decisions on the parties' respective Motions for Summary Judgment." (Motion, 2.) We denied appellant's motion to strike or, alternatively, to amend her brief, but we granted appellant an extension of time to January 12, 2015 to file her reply brief.

she wished the trial court to sign as an exhibit to her merit brief in this case. The exhibit does not bear a time stamp of the trial court. Nor does the trial court record contain any such proposed entry. We note that in the August 13, 2014 letter from appellant's trial counsel to the court, filed August 18, 2014, counsel acknowledges that she has not yet submitted a proposed judgment entry to the court and asks for additional time to do so. Yet, in her brief to this court, appellant states that she submitted "a letter-fax to the trial court dated August 13, 2014 with the Appellant's proposed Judgment Entries on the court's Decisions on the parties' motions for summary judgment." (Appellant's Brief, 6-7.)

{¶ 17} Based on the foregoing, we are unable to conclude that appellant's proposed judgment entry was before the trial court when it rendered judgment. As a general rule, it is appellant's duty to show error by reference to matters in the record. *JPMorgan Chase Bank, N.A. v. Allton*, 10th Dist. No. 14AP-228, 2014-Ohio-3742, ¶ 22, citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980). " 'A reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter.' " *Id.*, quoting *State v. Ishmail*, 54 Ohio St.2d 402 (1978), paragraph one of the syllabus. Thus, to the extent that appellant's first assignment of error is predicated on the trial court's allegedly erroneous decision to sign appellee's proposed judgment entry rather than her own, the record does not support the assigned error.

{¶ 18} Even if we assume that appellant submitted a proposed judgment entry to the clerk for filing and that the proposed judgment entry was before the trial court when it entered judgment, the crux of appellant's argument in support of her assignments of error is not that the court failed to sign her proposed entry, but that the court's August 18, 2014 entry is so defective as to form and content that it is not a judgment at all. Appellant insists that we remand the case to the trial court with instructions to issue a proper judgment entry. We disagree.

{¶ 19} As noted above, the trial court's July 31, 2014 decision states that: "Plaintiff shall submit a Final Judgment Entry pursuant to Local Rule 25.01." Local Rule 25.04 of the Franklin County Court of Common Pleas, entitled "Contents of the Entry," states that "[a]ll entries *should*: (1) state the reason for the entry; *or* (2) relate the entry to the motion

decided and the date of decision; and (3) indicate whether or not it is a final entry." (Emphasis added.) The August 18, 2014 entry provides in relevant part as follows:

FINDING OF THE COURT AND ORDER OF SALE

This matter is before the Court for hearing *on the motion of the Plaintiff*, Treasurer of Franklin County, Ohio. Defendant(s) Cleo Pilkington filed an Answer. All other defendants have been served and have failed to Answer or otherwise defend this action. Based upon the evidence, the Court finds that the said defendants named herein have been duly served according to law in this case and that the said defendants herein named have been regularly brought before the Court and *the Court grants a finding for the plaintiff as prayed for in his complaint.*

The Court finds that there is due the plaintiff the sum of \$29,320.75, which includes administrative costs, accrued taxes, assessments, penalties, and charges. In addition thereto, any taxes, assessment, penalties, charges and interest not included in this Finding shall be paid pursuant to ORC 323.47. The Court finds that said sums are the first and best lien against their premises described in the complaint and that the plaintiff is entitled to recover the same from the sale of the premises.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that unless the said defendant shall within five (5) days from the date hereof pay or cause to be paid to the plaintiff the sum of \$29,320.75 which includes administrative costs, accrued taxes, assessments, penalties, and charges, that an order of sale shall be issued to the Sheriff of this court directing him to advertise and sell without appraisal and sell without appraisal according to law, as upon execution, the following described premises:

* * *

This is a Final Judgment Entry; there is no just reason for delay.

(Italics added; emphasis sic.)

{¶ 20} The entry expressly states that it is rendered upon a "motion of the plaintiff" and that it is a "Final Judgment Entry." The only dispositive motion filed by appellee in

this case is the December 30, 2013 motion for summary judgment. Thus, the order arguably complies with the local rule. Appellant contends, however, that because the entry does not expressly mention either the July 31, 2014 ruling on appellee's motion for summary judgment or the August 5, 2014 ruling on appellant's motion for summary judgment, the entry is not a judgment at all. While we agree that the entry in question does not expressly refer to the prior decisions of the court, appellant's argument is truly one of form over substance.

{¶ 21} Civ.R. 58(A) and 54(A) require no more than a clear and concise pronouncement of the court's judgment. *Robson v. Quentin E. Cadd Agency*, 179 Ohio App.3d 298, 2008-Ohio-5909 (4th Dist.), citing *Rogoff v. King*, 91 Ohio App.3d 438, 449 (8th Dist.1993). Judgments are to be construed like other written instruments by giving the language of the instrument its ordinary meaning. *Shaver v. Std. Oil Co.*, 135 Ohio App.3d 242 (6th Dist.1999), citing *Elling v. Witt*, 6th Dist. No. 94OT032 (Feb. 10, 1995). The legal effect, rather than the language used, should control. *Boyle v. Stroman*, 92 N.E.2d 693 (8th Dist.1950). Moreover, where a trial judge files a written decision specifying the reasons for a judgment and such reasons do not conflict with the general grounds stated in the judgment entry, a reviewing court should consider the reasons so specified in determining what the trial court meant by the general words stated in the judgment entry. *Pennington v. Dudley*, 10 Ohio St.2d 90 (1967), paragraph one of the syllabus.

{¶ 22} The court's August 18, 2014 entry grants "Final Judgment" in favor of the treasurer in this in rem foreclosure action, recognizes the priority of the state's lien on the subject real property, sets forth the total amount of the lien, and orders the sale of the property in the event that appellant does not timely exercise her right of redemption. Although the entry does not expressly reference either the court's July 31, 2014 decision or the August 5, 2014 decision, the entry is consistent with the trial court's prior rulings on the cross-motions for summary judgment, and it grants the relief requested in the complaint. Thus, this alleged defect in the entry does not impact its legal effect.

{¶ 23} Appellant contends in her third assignment of error that the trial court's August 18, 2014 entry does not qualify as a final appealable order because the trial court

titled the entry as a "finding" rather than a "judgment." Accordingly, appellant claims that the trial court entry effectively denied her the right of appeal. Again, we disagree.

{¶ 24} "In all civil cases appealed to this state's appellate courts, the trial court must prepare a journal entry or order containing the following: (1) the case caption and number; (2) a designation as a decision or judgment entry or both; (3) a clear pronouncement of the court's judgment and its rationale if the entry is combined with a decision or opinion; (4) the judge's signature; (5) a time stamp indicating the filing of the judgment with the clerk for journalization; and (6) where applicable, a Civ.R. 54(B) determination and Civ.R. 54(B) language." *Reid v. Wallaby's Inc.*, 2d Dist. No. 2011-CA 36, 2012-Ohio-1437, ¶ 23, citing *In re Barton*, 2d Dist. No. 96-CA-31 (Apr. 18, 1997), citing *Brackmann Communications, Inc. v. Ritter*, 38 Ohio App.3d 107, 109 (12th Dist.1987). "Only by compliance with the above formalities can [the appellate] court be assured it is correctly and completely informed of the trial court's judgment or other order from which an appeal is being taken." *Brackmann Communications* at 109.

{¶ 25} While " '[a] decision announces what the judgment will be[,] [t]he judgment entry unequivocally orders the relief.' " *In re R.A.W.*, 10th Dist. No. 11AP-1072, 2012-Ohio-4832, ¶ 15, quoting *Holdren v. Garrett*, 10th Dist. No. 09AP-1153, 2011-Ohio-1095, ¶ 11, quoting *Harkai v. Scherba Industries, Inc.*, 136 Ohio App.3d 211, 216 (9th Dist.2000). "Furthermore, '[t]he content of the judgment must be definite enough to be susceptible to further enforcement and provide sufficient information to enable the parties to understand the outcome of the case.' " *Staley v. Allstate Property Cas. Ins. Co.*, 10th Dist. No. 11AP-279, 2011-Ohio-6171, ¶ 14, quoting *In re Adoption of S.R.A.*, 189 Ohio App.3d 363, 2010-Ohio-4435, ¶ 18 (10th Dist.), quoting *Harkai* at 216. Similarly, "a 'judgment must so dispose of the matters at issue between the parties that they * * * will be able to determine with reasonable certainty the extent to which their rights and obligations have been determined.' " *Short v. Short*, 6th Dist. No. F-02-005, 2002-Ohio-2290, ¶ 9, quoting 62 Ohio Jurisprudence 3d (1985), Judgments, Section 27, citing 46 American Jurisprudence 2d, Judgments, Section 67; *Licht v. Woertz*, 32 Ohio App. 111 (8th Dist.1929). *See also CitiMortgage, Inc. v. Guinther*, 10th Dist. No. 12AP-654, 2013-Ohio-4014. A judgment that does not do so is void for uncertainty. *Id.* " 'A void judgment is necessarily not a final appealable order.' " *Short* at ¶ 11, quoting *Reed v.*

Montgomery Cty. Bd. of Mental Retardation & Dev. Disabilities, 10th Dist. No. 94APE10-1490 (Apr. 27, 1995).

{¶ 26} Here, the court's July 31, 2014 decision announces what the judgment will be, and it informs this court of the legal and factual basis for the judgment. Though the trial court did not specifically designate its August 18, 2014 entry as a "judgment entry," this court has no doubt as to the judgment from which the appeal has been taken. The text of the August 18, 2014 entry makes it clear that it is a "Final Judgment," and appellant timely filed her notice of appeal to this court from the "FINDING OF THE COURT AND ORDER OF SALE" rendered August 18, 2014.

{¶ 27} Furthermore, the extent to which the parties' rights and obligations have been determined is certain from the content of the August 18, 2014 entry. As noted above, the entry grants "Final Judgment" in favor of the treasurer in this in rem foreclosure action, recognizes the priority of the state's lien on the subject real property, sets forth the total amount of the lien, and orders the sale of the property in the event that appellant does not timely exercise her right of redemption. The content of the judgment is definite enough to be susceptible to further enforcement, provides sufficient information to enable the parties to understand the outcome of the case, and unequivocally orders relief. Consequently, the August 18, 2014 entry contains all the necessary requirements of a final appealable order.

{¶ 28} Finally, we note that in appellant's second assignment of error she argues that the "procedural and substantive due process clause and equal protection clause were violated by the trial court's refusal to sign and file 'Judgment Entries' on the court's Decisions on the parties' respective motions for summary judgment." (Appellant's Brief, 10.) Appellant bases her constitutional claims on her alleged classification as a poor person with a mental disability. However, having previously determined that the August 18, 2014 entry is a valid judgment and constitutes a final appealable order, appellant's constitutional arguments are moot.

IV. CONCLUSION

{¶ 29} For the foregoing reasons, appellant's first and third assignments of error are overruled and appellant's second assignment of error is rendered moot. Having overruled appellant's first and third assignments of error and having rendered appellant's

second assignment of error moot, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.
