[Cite as *Hall v. Vance*, 2009-Ohio-4945.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

CHARLOTTE ELAINE HALL a.k.a. CHARLOTTE ELAINE INGLE,	:	
Plaintiff-Appellant,	:	Case No. 08CA16
vs.	:	**Released: September 15, 2009**
SHARON DELORES VANCE, et al.,	:	DECISION AND JUDGMENT ENTRY
Defendants-Appellees.	:	

APPEARANCES:

Dwight D. Brannon and Matthew C. Schultz, Brannon & Associates, Dayton, Ohio, for Appellant.[1]

Philip M. Collins and Ehren W. Slagle, Philip M. Collins & Associates Co., LPA, Columbus, Ohio, for Appellees.[2]

Per Curiam:

{¶1} This is an appeal from a judgment by the Highland County Court of Common Pleas confirming the sale of a five hundred fifty (550) acre family farm, which was ordered to be sold at auction in connection with the filing of a complaint in partition by Plaintiff- Appellant, Charlotte Hall. On appeal, Appellant contends that the trial court erred by confirming the sale of

[1] Appellant was represented by different counsel at the trial court level.
[2] Philip M. Collins and Ehren W. Slagle filed a Notice of Substitution of Counsel for Defendants-Appellees with this Court on March 27, 2009. The Appellees' appellate briefs, however, had already been prepared and filed by John W. Slagle, who withdrew from the case on March 27, 2009.

the property to Defendant-Appellee, Charles Steven Chrisman, Appellant's brother. Because we find that the trial court did not abuse its discretion in confirming the sale of the farm, we overrule Appellant's sole assignment of error. Accordingly, we affirm the decision of the trial court.

FACTS

{¶2} The parties herein, Appellant, Charlotte Hall, and Appellees, Sharon Vance and Charles Steven Chrisman, are siblings, each of whom owned a one-third interest in an approximately five hundred fifty (550) acre family farm, formerly owned by their mother. When Appellant's attempt to jointly purchase Appellee Vance's interest with Appellee Chrisman failed, Chrisman purchased Vance's interest by himself, eventually owning a two third's interest in the property.[3] On August 14, 2007, Appellant filed an action to partition the property. In response, Appellees Vance and Chrisman, along with Chrisman's wife, Helen Chrisman, filed an answer, as well as various counterclaims alleging that Appellant had unlawfully retained certain property belonging to the parties' deceased mother, that Appellant had breached an agreement to purchase Appellee Vance's interest, that they were entitled to the profits and rents from the property and that Appellant had failed to pay the real estate taxes on the property.

[3] As Vance no longer owns an interest in the subject property, she has not participated in the current appeal; however, she remains a party to the underlying action, which has been stayed by this Court pending the outcome of this appeal.

{¶3} When it was determined that the property could not be partitioned without diminishing it value, and because Appellant and Appellee Chrisman both elected to take the farm, the trial court ordered the farm to be sold at public auction. Rather than resorting to a Sheriff's sale, the parties agreed to hire an auctioneer. The parties also agreed to certain terms of the sale, specifically that all interested bidders, including parties to this action, must provide an irrevocable letter of credit in the amount of $1,655,000.00 on the day of the sale and that the winning bidder must pay ten percent of the sale price on the day of the sale. The terms of the sale agreed to by the parties were memorialized in a judgment entry issued by the trial court on March 10, 2008.

{¶4} The auction was subsequently held on April 7, 2008. The record indicates that Appellee Chrisman was present at the sale, initially with a letter of credit for only $551,666.67, representing the full value of the one third interest he would need to purchase, as he was already two thirds owner of the property. When questions were raised by Appellant at the auction, the record reflects that Appellee's banker stepped forward and increased Appellee's letter of credit to the full amount as required by the parties agreed judgment. The evidence further reveals that this was done prior to taking any bids on the property. Another bidder also appeared with the necessary

letter of credit and was issued a bidder's number, along with Appellee. The record further indicates that another individual by the name of Dwight D. Brannon was also present at the auction and requested a bidder's number. However, Mr. Brannon did not possess a letter of credit, in any amount, and apparently was unable to reach his bank in order to obtain one prior to the auction. As a result, he was refused a bidder's number and was not permitted to bid on the property.

{¶5} The sale was held with Appellee Chrisman placing the only bid. As such, the property was sold to him for the minimum bid of $1,103,333.33. As required by the agreed order, Appellee wrote a personal check for ten percent of the purchase price, which was $110,333.33. Although Appellant offered testimony below that when her attorney called to verify funds availability with Appellee's bank she was informed there were insufficient funds available to cover the check that was written, Appellee testified that after the sale his wife immediately transferred sufficient funds into his account from a separate line of credit and that at the time of the hearing, the check had cleared his account.

{¶6} Sometime after the sale and before leaving the premises on the day of the sale, Appellant signed a document entitled "Confirmation of Sale." The document was essentially a purchase agreement related to the

sale of the property and provided, in a section entitled "Binding Effect" that "[t]his Agreement and the covenants contained herein shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties and their respective successors, heir, legal representative, and assigns, time being of the essence. Nevertheless, Appellant filed a motion to vacate the sale later that day. Conversely, Appellee filed a motion to confirm the sale and several hearings were held as a result.

{¶7} During hearings held on April 9, 2008, April 18, 2008, April 23, 2008, and June 2, 2008, the parties argued their respective motions[4] and presented evidence in the form of witnesses to the auction, bank representatives, as well as a video of the auction. After hearing all of the evidence, the trial court confirmed the sale in a judgment entry dated July 3, 2008. The trial court subsequently issued a final appealable summarizing its decision on August 1, 2008. It is from this judgment that Appellant filed her timely notice of appeal, assigning a single assignment of error for our review.

[4] In addition to the motion to vacate the sale, Appellant also filed a motion asking the judge to recuse himself, claiming Appellee had improper ex parte communications with the judge. Although the judge adamantly denied that he had any ex parte communications with Appellee, he recused himself and another judge was appointed to hear the case.

ASSIGNMENT OF ERROR

"I. THE TRIAL COURT ERRED BY CONFIRMING THE SALE OF THE PROPERTY TO DEFENDANT CHARLES STEVEN CHRISMAN."

LEGAL ANALYSIS

{¶8} In her sole assignment of error, Appellant contends that the trial court erred by confirming the sale of the property to Appellee, Charles Steven Chrisman. Appellant advances two arguments under this assignment of error: 1) that the trial court abused its discretion by materially altering the terms of the agreed order of sale without Appellant's consent; and 2) that Appellant has been severely prejudiced by the trial court's abuse of discretion because the sale confirmed by the trial court was for the minimum price for the land. Appellee, Steven Chrisman, contends that the decision whether to confirm the sale was within the sound discretion of the trial court and that Appellant was not prejudiced by the trial court's decision. Appellee also argues that Appellant waived any irregularities that may have occurred during the sale when she signed a confirmation of sale document after the sale.

{¶9} In considering Appellant's assignment of error, we adhere to our former reasoning set forth in *Merkle v. Merkle*, (1961), 116 Ohio App. 370,

188 N.E.2d 170, with regard to the proper standard of review of the issues raised herein. In *Merkle*, we reasoned as follows:

> "There is no question in the minds of our profession that confirmation of a judicial sale is a matter entirely within the sound discretion of the trial judge, *be it sale on execution, foreclosure or partition*. The law requires the trial judge to fully examine the proceedings, and, if they are regular, the sale must be confirmed. Failure to so confirm when the proceedings are regular amounts to an abuse of discretion. This is borne out by a long line of cases. See, *Ohio Life Ins. & Trust Co. v. Goodin*, 10 Ohio St. 557; *Lemert v. Clarke*, 1 Ohio Cir.Ct. R., 569, 1 Ohio Cir.Dec., 318; *Reed v. Radigan*, 42 Ohio St. 292; *Niles v. Parks*, 49 Ohio St. 370, 34 N.E. 735; *Ozias v. Renner*, 78 Ohio App. 168, 64 N.E.2d 324; and *Mitchell v. Crain*, 108 Ohio App. 143, 161 N.E.2d 80. This same principle is drawn from the following secondary authorities: Merwine's Judicial Conveyance of Real Estate, Sections 118 and 320; 22 Ohio Jurisprudence (2d), 168, 277, Sections 243 and 406; 32 Ohio Jurisprudence (2d), 520, 526, 527, Sections 79, 84 and 86; and 41 Ohio Jurisprudence (2d), 645, 669, Sections 111 and 137." (Emphasis added).

{¶10} We have further reasoned that "[i]t becomes apparent that the question of exercise of sound judicial discretion must be bottomed upon the factual situations surrounding each sale." *Merkle* at 372. Additionally, in *Merkle* we noted that "'an order confirming a sale of real estate made by the sheriff will not be reversed on the weight of the evidence, where the evidence on the motion for confirmation was conflicting, for the trial judge is better able to consider the credibility of the witnesses than a reviewing court.'" Id., citing *Duckwitz v. Komito*, (1905), 16 Ohio Cir.Ct., R. N.S.,

180, 31 Ohio Cir.Dec., 483, 1906 WL 1203.[5] Thus, we must fully examine the proceedings to determine their regularity and will only reverse the trial court's confirmation of the sale if we determine that the trial court's confirmation was unreasonable, arbitrary or unconscionable.

{¶11} Here, the parties were involved in a partition of their inherited family farm. Because more than one of the parties filed an election to take the farm, the court ordered that the farm be sold. As set forth above, instead of having the farm sold at a Sheriff's sale, the parties mutually agreed that the farm would be sold at auction instead. The terms of the auction were agreed to by the parties and the trial court issued a judgment entry summarizing the agreed terms.

{¶12} Appellant argues that the trial court, in confirming the sale to Appellee at auction, in effect modified the agreed terms of the sale. First, Appellant contends that the agreed order required that "[a]ll potential bidders, whether or not a party to these proceedings, shall, on the day of the auction, present irrevocable letters of credit guaranteeing their ability to secure financing and/or cash in the amount of $1,655,000.00." Appellant argues that because Appellee only had a letter of credit for $551,666.67 at the beginning of the auction, he should not have been issued a bidder's

[5] Although the sale at issue was conducted by a hired auctioneer rather than the Sheriff, we apply the same reasoning set forth in *Merkle* and *Duckwitz*.

number and should not have been allowed to bid. Appellant also argues that when Appellee was issued a bidder's number without the letter of credit in the required amount, another bidder who appeared the day of sale without the required letter of credit should have also been issued a bidder's number and should have been permitted to bid. Appellant argues that she was prejudiced by the manner in which the sale was conducted, claiming that the bidder that was turned away may have bid higher than Appellee, thereby increasing the amount she would receive for her share of the property.

{¶13} Secondly, Appellant contends that the agreed order required that "[t]he successful bidder, whether or not a party to these proceedings, shall pay for said property by depositing the sum of ten (10%) percent of the purchase price, in cash, on the day of the auction, with the remaining balance of the purchase price payable in full within thirty (30) days after the confirmation of the sale by this Court." Appellant argues that in confirming the sale, the trial court modified the terms agreed upon by the parties, because the account upon which Appellee wrote his check had insufficient funds at the time the check was written.

{¶14} After reviewing the record in this matter, we conclude that the trial court did not abuse its discretion in confirming the sale of the farm at auction. First, although Appellant argues that Appellee did not have a letter

of credit in the amount of $1,655,000.00 at the beginning of the auction, as required by the agreed entry, the record reveals that Appellee had his banker present at the auction and that his banker stepped forward and increased his letter of credit to the required amount before the sale began. In response to Appellant's argument that the other bidder should have been issued a bidder's number, the record reveals that that bidder had no letter of credit at all and was unable to reach his bank to obtain one in time for the sale. As such, he did not meet the bidding requirements.

{¶15} Further, with regard to Appellant's argument that she was prejudiced by these events, we disagree. The record indicates that another qualified bidder was issued a bidder's number, but did not bid on the property. Thus, the evidence demonstrates that Appellee was issued an amended letter of credit that satisfied the agreed entry, that another bidder was issued a bidder's number but chose not to bid on the property and that a third person was properly refused a bidder's number because he did not have and was unable to obtain a letter of credit. Accordingly, in light of the evidence in the record, we reject Appellant's argument that she was prejudiced by the manner in which the sale was conducted and that the trial court abused its discretion in confirming the sale.

{¶16} Secondly, although Appellant argues that Appellee's check for $110,333.33, representing ten percent of the purchase price, was written on an account with insufficient funds, based upon Appellee's testimony during the June 2, 2008, hearing we conclude that the trial court did not abuse its discretion in confirming the sale. The record reveals that when questioned about this issue, Appellee testified that the source of the funds for the purchase was a separate line of credit, different from his checking account. He testified that he could not have known how much money to transfer into his checking account until the sale was completed. He further testified that his wife transferred the funds into the account immediately after the sale. Appellee also testified that the check had cleared his account at the time of the hearing. Thus, we find no irregularities in the manner in which the sale was conducted. As such, we cannot conclude that the trial court abused its discretion in confirming the sale.

{¶17} Further, and of importance, we conclude that Appellant waived any irregularity that may have occurred during the sale when she signed a confirmation of sale document after the auction. Although Appellant testified below that she did not know what she was signing and would never have confirmed the sale, the record reveals that she did, in fact, sign the document. There is no evidence to suggest that she was mislead into signing

the document in any way and further, the evidence reveals that she had the opportunity to consult with counsel before signing the document, but apparently chose not to. "[F]ailure to read the terms of a contract is not a defense to the enforcement of the contract." *Gartrell v. Gartrell*, 181 Ohio App.3d 311, 2009 -Ohio- 1042, 908 N.E.2d 1019; citing *Haller v. Borror Corp.* (1990), 50 Ohio St.3d 10, 552 N.E.2d 207; See, also, *Hadden Co., L.P.A. v. Del Spina*, Franklin App. No. 03AP-37, 2003-Ohio-4507 (holding that "[o]ne of the most celebrated tenets of the law of contracts is that a document should be read before being signed, and the corollary to this rule is that a party to the contract is presumed to have read what he signed and cannot defeat the contract by claiming he did not read it."). As a result, Appellant is bound by the terms of the document she signed and cannot rescind the document as a result of her own negligence in failing to read it before signing.

{¶18} In light of the foregoing, we overrule Appellant's sole assignment of error and affirm the decision of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that the Appellees recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Harsha, J., Abele, J., and McFarland, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Judge William H. Harsha

BY: _____
Judge Peter B. Abele

BY: _____
Judge Matthew W. McFarland

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.