

[Cite as *Am. Savs. Bank, FSB v. Wrage*, 2016-Ohio-2879.]

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

AMERICAN SAVINGS BANK, FSB, :  
 :  
Plaintiff-Appellee, : Case No. 14CA3665  
 :  
vs. :  
 :  
ERIC A. WRAGE, et al., : DECISION AND JUDGMENT ENTRY  
 :  
Defendants-Appellants. :

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APPEARANCES:

Bruce M. Broyles, Boardman, Ohio, for appellant.

Jeffrey B. Sams, Pickerington, Ohio, and Joshua D. Howard, Portsmouth, Ohio, for appellee.

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CIVIL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED: 4-26-16

ABELE, J.

{¶ 1} This is an appeal from several Scioto County Common Pleas Court judgments entered in a foreclosure action. Eric A. Wrage, defendant below and appellant herein, assigns the following errors for review<sup>1</sup>:

FIRST ASSIGNMENT OF ERROR:

“THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO STAY THE CONFIRMATION OF THE SHERIFF’S SALE IN ORDER TO ALLOW APPELLANT THE OPPORTUNITY TO REDEEM THE PROPERTY.”

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<sup>1</sup> Appellant neglects to set forth in his brief a separate statement of assignments of error. See App.R. 16(A)(3). Thus, we take the assignments of error from the table of contents.

## SECOND ASSIGNMENT OF ERROR:

“THE TRIAL COURT ABUSED ITS DISCRETION IN CONFIRMING THE SHERIFF’S SALE DESPITE IRREGULARITIES THAT WERE DEMONSTRATED TO THE TRIAL COURT.”

{¶ 2} This is an appeal from a foreclosure action. On June 18, 2004, appellant and his wife, Rebecca R. Wrage, executed a “mortgage note” to American Savings Bank, FSB, (American) plaintiff below and appellee herein, in the principal amount of \$180,000, payable in monthly installments with an interest rate of 5.5% interest per annum. As security for that loan, the Wrages conveyed a mortgage interest to American on real estate at 564 Bull Run Road.<sup>2</sup>

{¶ 3} The Wrages defaulted on the payment of the note. Rebecca Wrage filed for bankruptcy and, in 2008, was granted a discharge from her dischargeable debts. American commenced the instant action against appellant on July 11, 2011 and sought judgment on the note and the foreclosure of the mortgage lien. On October 20, 2011, the trial court entered summary judgment for American.

{¶ 4} On January 4, 2012, just hours before the Sheriff’s sale, appellant filed his own notice of bankruptcy and stayed the proceedings. Later, appellant was granted a discharge from his debts and the matter was returned to the trial court’s active docket. On March 26, 2013, American filed a renewed summary judgment motion and argued that it was entitled to judgment as a matter of law. The trial court granted American’s motion on June 19, 2013. Appellant

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<sup>2</sup> Because Eric A. Wrage is the only party who appealed the final judgment, we refer to him as the sole appellant, and to his wife as “Rebecca Wrage.”

appealed that judgment to this Court, and we affirmed the trial court's judgment. See *American Savings Bank v. Wrage*, 4<sup>th</sup> Dist. Scioto No. 13CA3566, 2014-Ohio-2168 (*Wrage I*).

{¶ 5} Notwithstanding appellant's filing of a number of pro se motions, the property was sold at Sheriff's sale on July 30, 2014 for approximately \$155,000. Appellant filed several more pro se motions and asked the trial court to vacate the sale and to deny the confirmation. Counsel for appellant also filed several post-sale motions that included a request to stay the confirmation and to allow extra time to arrange financing to redeem the property. The trial court, however, overruled appellant's motions, both pro se and through counsel, and filed a confirmation entry. This appeal followed.<sup>3</sup>

# I

{¶ 6} In his first assignment of error, appellant asserts that the trial court abused its discretion by overruling his motion to stay the confirmation of sale and to allow him additional time to secure financing to redeem his interest in the property. R.C. 2329.31(A) provides:

“Upon the return of any writ of execution for the satisfaction of which lands and tenements have been sold, on careful examination of the proceedings of the officer making the sale, if the court of common pleas finds that the sale was made, in all respects, in conformity with sections 2329.01 to 2329.61 of the Revised Code, it shall, within thirty days of the return of the writ, direct the clerk of the court of common pleas to make an entry on the journal that the court is satisfied of the legality of such sale and that the attorney who filed the writ of execution make to the purchaser a deed for the lands and tenements. Nothing in this section prevents

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<sup>3</sup> We acknowledge that in a foreclosure action, the judgment and order of sale is typically regarded as the final appealable order. See *First Sentry Bank v. Rose*, 4<sup>th</sup> Dist. Gallia No. 13CA2, 2014-Ohio-594, at ¶5, fn. 3; *Buckeye Supply Co. v. Sandhill Energy, Inc.*, 4<sup>th</sup> Dist. Washington No. 88CA38, 1990 WL 34093, at fn. 1 (Mar. 13, 1990). That is not to suggest, however, that the confirmation entry cannot be appealed as well. Confirmation of a Sheriff's sale is a special proceeding under R.C. 2505.02(B)(2). *PNMAC Mtge. Co., L.L.C. v. Sivula*, 8<sup>th</sup> Dist. Cuyahoga No. 98082, 2012-Ohio-4939, at ¶11; *JP Morgan Chase Bank v. Dewine*, 3<sup>rd</sup> Dist. Logan No. 8–08–20, 2009-Ohio-87, at ¶10. Thus, we have jurisdiction to consider this appeal as we did in *Wrage I*.

the court of common pleas from staying the confirmation of the sale to permit a property owner time to redeem the property or for any other reason that it determines is appropriate. In those instances, the sale shall be confirmed within thirty days after the termination of any stay of confirmation.” (Emphasis added.)

{¶ 7} It is well-settled that the decision to grant or to deny a sheriff’s sale confirmation is reviewed under the abuse of discretion standard. See *Nix v. Williams Family Partnership, Ltd.*, 12<sup>th</sup> Dist. Butler No. CA2013– 05–076, 2013-Ohio-5208, at ¶9; *Third Fed. S. & L. Assn. of Cleveland v. Rains*, 8<sup>th</sup> Dist. Cuyahoga No. 98592, 2012-Ohio-5708, at ¶7. Thus, we see no reason to deviate from that standard to also consider the R.C. 2329.31 “stay” provision.

{¶ 8} Generally, an abuse of discretion implies that a trial court’s attitude is unreasonable, arbitrary or unconscionable. *Landis v. Grange Mut. Ins. Co.*, 82 Ohio St.3d 339, 342, 695 N.E.2d 1140 (1998); *Malone v. Courtyard by Marriott L.P.*, 74 Ohio St.3d 440, 448, 659 N.E.2d 1242 (1996). In applying this standard, reviewing courts may not substitute their judgment for that of the trial court. *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 732, 654 N.E.2d 1254 (1995); *In re Jane Doe 1*, 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181 (1991).

{¶ 9} The gist of appellant’s argument is that the trial court wrongly focused on the length of time this case had been pending and concluded that redemption financing could have been secured long before appellant requested the stay. We, however, disagree with appellant.

{¶ 10} This case was commenced on July 11, 2011. Although Rebecca Wrage filed for bankruptcy before the case was commenced, an argument can certainly be made that this case has been pending for as long as possible to delay collection on the note and the foreclosure of the security interest. Also, we find nothing in the record to indicate that American has received any payment on the debt since 2011. Even after we affirmed the summary judgment and order of

sale in *Wrage I*, appellant continued to file numerous motions in the trial court to either delay the sale or to prevent the sale from being confirmed.

{¶ 11} In support of his request for that stay, appellant asserted that (1) he, his wife and mother were willing to provide the “monetary obligation” he owed, and (2) he was attempting to secure alternative financing. Appellant, however, submitted no evidence to support his various assertions. Appellant did not submit any affidavit, from appellant himself, from any family member or from any potential creditor to indicate that he was actively pursuing financing to redeem his property interest. Appellant also argued in his motion that he should be given additional time to negotiate some kind of an arrangement with American to restructure his loan. However, the fact that American filed a memorandum contra to the motion for stay is a good indicator the bank was apparently unwilling to restructure the loan. Thus, no need existed for the trial court to stay confirmation for that purpose.

{¶ 12} Accordingly, for all of these reasons, we cannot conclude the trial court’s refusal to stay confirmation of the Sheriff’s sale was in any way arbitrary, unreasonable or unconscionable. Thus, we hereby overrule appellant’s first assignment of error.

## II

{¶ 13} In his second assignment of error, appellant asserts that the trial court erred by confirming the sheriff’s sale, despite what he characterizes as “irregularities.” The “irregularities” to which appellant refers concern, in reverse order, the appraisal of the property and the existence of tax liens. We find no merit to either argument.

{¶ 14} As to the appraisal, appellant argues that the three appraisers share the same last name and must be related in some way. Assuming, *arguendo*, that this is the case, appellant

cites no authority to support the proposition that this is improper. Appellant also claims that, if the appraisers are related, that relation may have impeded their impartiality. Again, appellant cites no evidence to support the argument that the appraisers did not act in an impartial manner. Appellant also suggests that the appraisers did not actually “view” the home's interior before making their appraisal. Again, however, appellant points to nothing in the record to substantiate that claim. Appellant also cites, as something suspicious, the fact that the premises was appraised in 2011 at \$159,000 and in 2014 at \$185,000. He continues that, during those three years, he made no improvements to the property and there would have been wear and tear. However, appellant neglects to recognize that home values may have increased during those years.

{¶ 15} Finally, we turn to appellant's arguments that the trial court erred by confirming the Sheriff's sale because it did not take into account tax liens. However, the trial court did address those liens in its October 1, 2014 judgment on appellant's various post-sale motions, but held that federal and Ohio lis pendens statutes barred those liens from attaching to the property because they were filed after the foreclosure had been commenced. Appellant argues this is error. American, however, counters the trial court correctly decided the issue.

{¶ 16} We, however, need not, and do not, address this issue on its merits. The standing doctrine encompasses, among other things, a general prohibition against a party asserting the legal rights of another entity. *Save the Lake v. Hillsboro*, 158 Ohio App.3d 318, 2004- Ohio-4522, 815 N.E.2d 706, at ¶8 (4<sup>th</sup> Dist.). Standing also requires a litigant have a personal stake in the outcome of the controversy. See *Wilkins v. Harrisburg*, 10<sup>th</sup> Dist. Franklin No. 14AP-1028, 2015-Ohio-5472, at ¶39. In other words, a litigant must show that he will

actually be prejudiced by the decision of the court. *Groffre Invests. v. Canton Bd. of Zoning Appeals*, 989 N.E.2d 583, 2013-Ohio-1227, 989 N.E.2d 583, at ¶12 (5<sup>th</sup> Dist.); *Harris v. Pristera*, 194 Ohio App.3d 120, 2011-Ohio-2089, 954 N.E.2d 1272, at ¶23.

{¶ 17} The arguments advanced in appellant's brief belie any contention that he might make that (1) he is asserting his own legal rights, or (2) he will suffer any prejudice by failure to include the subsequent tax liens on the property. In asserting that a "Sheriff's Deed" will not convey clear title unless all parties with a potential are interest are joined[,] he is asserting the rights of the couple who purchased the property at Sheriff's sale. By arguing that the trial court erred by confirming the sale "in the absence of any protection of the State of Ohio's tax lien[.]" he is asserting the rights of the State of Ohio.

{¶ 18} Nowhere does appellant show that he has a personal stake in this particular issue, nor does he suggest how he is personally prejudiced by the trial court's decision to decline to address those tax liens in the confirmation. This is a matter between the lienholders and the new owners, not appellant.

{¶ 19} Generally speaking, parties to a foreclosure do not have standing to assert the rights of junior lienholders. *Emerson Tool, L.L.C. v. Emerson Family Ltd. Partnership*, 9<sup>th</sup> Dist. Summit No. 24673, 2009-Ohio-6617, at ¶¶16-18; also see generally *Settlers Bank v. Burton*, 4<sup>th</sup> Dist. Washington Nos. 12CA36 & 12CA38, 2014-Ohio-335, at ¶54. Thus, appellant has not persuaded us that he has standing to challenge the trial court's ruling on the issue of lis pendens or the validity of the confirmation as to this issue.

{¶ 20} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.



JUDGMENT ENTRY

It is ordered that the judgment be affirmed and appellee to 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 Scioto County Common Pleas Court to carry this judgment into execution.

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

Hoover, J. & \*Klatt, J.: Concur in Judgment & Opinion

For the Court

BY: \_\_\_\_\_  
Peter B. Abele, Judge

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.

\* Judge Klatt from the Tenth Appellate District, sitting by assignment of the Supreme Court of Ohio in the Fourth Appellate District.