

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

U.S. Bank National Association

Court of Appeals No. L-13-1226

Appellee

Trial Court No. CI0201201805

v.

Robert M. Perdeau, et al.

DECISION AND JUDGMENT

Appellant

Decided: January 16, 2014

* * * * *

David A. Wallace and Karen M. Cadieux, for appellee.

Marc E. Dann, Grace M. Doberdruk and Daniel M. Solar,
for appellant.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court upon the motion of appellant, Robert M. Perdeau, seeking a stay of execution of the trial court's judgment on appeal pursuant to App.R. 7(A) pending a resolution of his appeal filed on October 4, 2013. Appellee, U.S. Bank National Association, opposes the motion for a stay and has filed a memorandum in opposition.

{¶ 2} Appellee filed a foreclosure action against appellant and judgment was granted to appellee on June 25, 2012. Appellant filed a motion to vacate the judgment on April 23, 2013. The trial court denied the motion on September 5, 2013, and appellant filed an appeal. Appellant filed a motion to stay the sheriff's sale, which the trial court conditionally granted on November 25, 2013, with the requirement that appellant file a supersedeas bond in the full amount of the judgment, \$36,000. Appellant did not post the bond and appellant's property was sold a sheriff's sale on December 4, 2013. Appellant now seeks a stay of the confirmation of the sale pending appeal. Without explanation, appellant requests that the stay not be conditioned on the posting of a bond or at least conditioned on the posting of a de minimus bond.

{¶ 3} App.R. 7(A) requires that a request for a stay must first be made in the trial court, unless a justifiable reason for not doing so can be shown. Appellant sought a stay in the trial court and his motion was granted on November 25, 2013, but with the condition that appellant post a supersedeas bond in the full amount of the judgment.

{¶ 4} App.R. 7(B) provides that an appellate court may condition the granting of a stay upon the posting of a supersedeas bond. R.C. 2505.09 provides that "an appeal does not operate as a stay of execution until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a supersedeas bond is executed by the appellant to the appellee * * *." The discretionary language of App.R. 7(B) allowing the granting of a stay without a bond seems to be a direct conflict with the language of R.C. 2505.09 which requires a stay and a supersedeas bond. Some

courts have interpreted the language of the rule and statute as providing the appellate court with the power to determine that a sufficient bond is no bond. *Lomas & Nettleton Co. v. Warren*, 11th Dist. Geauga No. 89-G-1519, 1990 WL 93138, *1 (June 29, 1990). Other courts have resolved the conflict by finding that App.R. 7 supersedes R.C. 2505.09 pursuant to Ohio Constitution, Article IV, Section 5(B). *Whitlatch & Co. v. Stern*, 9th Dist. Summit No. 15345, 1992 WL 205071, *9 (Aug. 19, 1992). Under either analysis, the appellate court has the discretion to determine whether to grant or deny the motion for a stay and whether a bond is necessary, as well as the amount of the bond.

{¶ 5} In determining whether to grant or deny a motion for a stay, the appellate court is given the discretionary power to act in any manner it deems appropriate to preserve the status quo and to secure the benefit of the judgment to the party in whose favor it was rendered. Civ.R.62(D); *Buckles v. Buckles*, 46 Ohio App.3d 118, 121-122, 546 N.E.2d 965 (10th Dist.1988), and *Grussell v. Poll*, 5 Ohio N.P. 439, 441, 7 Ohio Dec. 428, 1898 WL 1454 (1898). In the exercise of this discretionary power, the appellate court considers whether (1) substantial justice will be served by preserving the status quo, *id.*, and (2) there is a reasonable question of law presented which would result in reversal of the trial court's decision if found well-taken. *Cincinnati, Hamilton & Dayton R.R. Co. v. Duckworth*, 2 Ohio C.C. 518, 1 Ohio C.D. 618, 1887 WL 420, *1 (1887).

{¶ 6} The issue in this case is whether a bond is necessary. Without a stay of execution and the filing of a supersedeas bond, the trial court retains jurisdiction to issue

an order enforcing the judgment while the judgment is being appealed. *Albertson v. Ryder*, 85 Ohio App.3d 765, 770, 621 N.E.2d 480 (11th Dist.1993), and *State ex rel. Klein v. Chorpening*, 6 Ohio St.3d 3, 4, 450 N.E.2d 1161 (1983). Thus, a supersedeas bond is only necessary where a monetary judgment or other equitable interest was granted that needs to be protected because the appellant has obtained a stay of execution of the judgment of the trial court. *National City Bank N.E. v. Beyer*, 6th Dist. Huron No. H-99-017, 1999 WL 1203742, *3 (Dec.17, 1999) (no supersedeas bond required because appellee had “no interest at stake ‘that could be lost or squandered by’ [appellant] while the appeal is pending”), and *Tuteur v. P. & F. Ents., Inc.*, 21 Ohio App.2d 122, 125-126, 255 N.E.2d 284 (8th Dist.1970).

{¶ 7} Appellant asserts that he intends to argue on appeal that the trial court lacked subject matter jurisdiction over the proceedings and therefore, the order to sell his property was void. Therefore, he seeks to maintain the status quo while the appeal is pending.

{¶ 8} We find that a stay of execution is necessary in this case to preserve the status quo while this appeal is pending. We further find that no supersedeas bond is necessary.

{¶ 9} Appellant’s motion for a stay of execution is well-taken. It is so ordered.

Motion granted.

Arlene Singer, J.

Thomas J. Osowik, J.

James D. Jensen, J.
CONCUR.

JUDGE

JUDGE

JUDGE

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