

[Cite as *Rokakis v. Bowman*, 2010-Ohio-4666.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92950

JAMES ROKAKIS, AS TREASURER

PLAINTIFF-APPELLEE

VS.

TED BOWMAN

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-591756

BEFORE: Stewart, P.J., Dyke, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: September 30, 2010

ATTORNEY FOR APPELLANT

James Alexander, Jr.
Pittman & Alexander
Rockefeller Pointe at Mayfield
2490 Lee Boulevard, Suite 115
Cleveland Heights, OH 44118-1255

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Gregory B. Rowinski
Assistant County Prosecutor
The Justice Center
1200 Ontario Street, 9th Floor
Cleveland, OH 44113

MELODY J. STEWART, P.J.:

{¶ 1} Defendant-appellant, Ted Bowman, appeals from a judgment that found him delinquent in paying taxes on a parcel of property and ordering foreclosure of the property in order to satisfy the debt. He complains that the court failed to make an independent determination of the amount of taxes owed on the property, that the evidence does not support foreclosure, and that the court proceedings deprived him of due process. We lack jurisdiction to hear the appeal and dismiss.

{¶ 2} Plaintiff-appellee, James Rokakis, the treasurer of Cuyahoga County, filed a complaint for collection of delinquent taxes in the amount of \$17,869.86. The complaint sought penalties and interest, and also requested foreclosure on the property to satisfy the tax assessment. Bowman answered pro se, admitting that he had not paid the taxes assessed against him but claiming that the county auditor improperly assessed taxes on the subject property. He suggested that the parties meet to “parlay what is owed to whom” on the basis of an “accurate” valuation of the property. The county responded by noting that Bowman had failed to challenge the valuation of the property through the board of revision.

{¶ 3} A magistrate heard the matter and found that Bowman’s claims relating to the valuation of the property was not properly before the court because Bowman should have sought reassessment of the property value before the board of revision. Noting that Bowman admitted in his answer that he owed “some tax,” the magistrate found real estate taxes were “due and unpaid,” that penalties and interest were due, that the county had a “good and valid first lien against the parcel,” and that the lien should be foreclosed.

{¶ 4} Bowman objected to the magistrate’s decision on grounds, among others, that the magistrate failed to state the amount of taxes due. The

court overruled this and Bowman's other objections and ordered the property into foreclosure.

{¶ 5} An argument raised in Part I(B) of Bowman's brief — that the court failed to set forth an ascertainable amount of tax due in its judgment entry — implicates the finality of the court's judgment and hence our jurisdiction to hear this appeal.

{¶ 6} The treasurer's complaint asked for judgment in the amount of \$17,869.86 plus \$380.00 for the preliminary judicial report. At no place in the magistrate's decision, as adopted by the court, is there an ascertainable amount of taxes owed. The magistrate's decision states: "As set forth in the delinquent tax certificate, real estate taxes on PPN 291-10-007 are found due and unpaid along with money payable for assessments, penalties and interest are found to [sic] due, unpaid and payable and a good and valid first lien against the parcel." There is no delinquent tax certificate in the record, although the treasurer maintains that one was sent to the county prosecuting attorney as required.

{¶ 7} A judgment entry that orders a foreclosure sale *and* determines the amounts due to all claimants is a final appealable order. See *Third Natl. Bank of Circleville v. Speakman* (1985), 18 Ohio St.3d 119, 120, 480 N.E.2d 411, citing *Oberlin Sav. Bank v. Fairchild* (1963), 175 Ohio St. 311, 194

N.E.2d 580. The order granting foreclosure does not determine the amount due to the county.

{¶ 8} The treasurer concedes that the court failed to state an amount of judgment, but argues that judgment decrees in tax foreclosures are different from mortgage foreclosures because in addition to interest charges, penalties and charges are subject to change over time. We disagree because there is no practical basis for distinguishing between mortgage foreclosure and tax foreclosure. R.C. 5721.18(A) states that foreclosure proceedings on the lien of the state shall proceed in the same manner as provided by the law governing foreclosures of mortgages to land. Interest and penalties can accrue on unpaid mortgages just as they do on unpaid tax liens. In the end, the treasurer is reduced to arguing that Bowman has shown no interest in paying his taxes, but that point is immaterial to the issue of whether there is a final order.

{¶ 9} The treasurer's complaint prayed for a specific dollar amount. The court's judgment granting foreclosure did not specify a dollar amount. It follows that the court's judgment is not a final, appealable order under R.C. 2505.02, so we lack jurisdiction to hear this appeal.

Appeal dismissed.

It is ordered that appellee recover of appellant his 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 Cuyahoga County Court of Common Pleas to carry this judgment into execution.

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

MELODY J. STEWART, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., CONCURS;

ANN DYKE, J., DISSENTS WITH SEPARATE
OPINION

ANN DYKE, J., DISSENTING:

{¶ 10} I respectfully dissent as the record indicates that there is a delinquent land certificate in the amount of \$17,869.86 for permanent parcel number 291-10-007, in Olmsted Falls, Ohio.