

[Cite as *MidFirst Bank v. Samad*, 2015-Ohio-2270.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101976

MIDFIRST BANK

PLAINTIFF-APPELLEE

vs.

KHALID A. SAMAD, ET AL.

DEFENDANT-APPELLANT

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-12-786033

BEFORE: E.T. Gallagher, J., Celebrezze, A.J., and Laster Mays, J.

RELEASED AND JOURNALIZED: June 11, 2015

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Khalid A. Samad (“Samad”), appeals the trial court’s confirmation of a foreclosure sale. For the reasons set forth below, Samad’s appeal is dismissed because it is moot.

I. Procedural History

{¶2} On June 28, 2012, plaintiff-appellee, MidFirst Bank (“MidFirst”), filed a foreclosure complaint against Samad. On April 12, 2013, MidFirst filed a motion for summary judgment. On June 5, 2013, the magistrate granted summary judgment in favor of MidFirst. On January 27, 2014, the trial court adopted the magistrate’s decision, and entered a final foreclosure decree on February 3, 2014. Samad did not appeal from the foreclosure order.

{¶3} On February 10, 2014, MidFirst filed a praecipe for order of sale and a sale date was set for April 7, 2014. The property was appraised at \$15,000. Ultimately, the April 7, 2014 sale date was cancelled while MidFirst and Samad engaged in discussions to resolve his default under the note and mortgage.

{¶4} When negotiations proved unsuccessful, MidFirst filed a second praecipe for order of sale on June 25, 2014. The property was sold for \$64,040.16 on August 18, 2014, and a return order of sale from the sheriff occurred two days later. On August 28, 2014, the trial court confirmed the sale of the property.

{¶5} On September 26, 2014, Samad filed a notice of appeal. While his appeal was pending, the county sheriff recorded a deed to the property in favor of MidFirst.

II. Law and Analysis

{¶6} In his sole assignment of error, Samad argues the trial court erred in confirming the sheriff's sale of the subject property.

{¶7} R.C. 2329.31 governs confirmation of judicial foreclosure sales and provides as follows:

Upon 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, inclusive, of the Revised Code, it shall 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 officer make to the purchaser a deed for the lands and tenements. Nothing in this section prevents 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.

The officer making the sale shall require the purchaser, including a lienholder, to pay within thirty days of the confirmation of the sale the balance due on the purchase price of the lands and tenements.

{¶8} This court will reverse a trial court's confirmation of a sale only if the trial court has abused its discretion. *See Ohio Sav. Bank v. Ambrose*, 56 Ohio St.3d 53, 55, 563 N.E.2d 1388 (1990). An abuse of discretion implies an attitude that is "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). In making its decision to confirm a sheriff's sale, a trial court must determine whether the sale was conducted in accordance with R.C.

2329.01 through 2329.61 inclusive. *See* R.C. 2329.31. *See also Sky Bank v. Mamone*, 182 Ohio App.3d 323, 2009-Ohio-2265, 912 N.E.2d 668, ¶25 (8th Dist.).

{¶9} In the case at bar, Samad contends the court erred in issuing a confirmation of sale because MidFirst failed to comply with the requirements of R.C. 2329.20¹ and 2329.26.² Without addressing the merits of Samad’s arguments, however, we note that he did not appeal from the judgment entry of foreclosure and failed to file a motion to stay the confirmation of sale. As this court has stated:

“Appellant never moved to stay the confirmation. The property has been sold and the deed has been recorded. The order of confirmation has been carried out to its fullest extent. If this court reversed the order of confirmation, there is no relief that can be afforded appellants. An appeal is moot if it is impossible for the appellate court to grant any effectual relief. *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21 (1910).”

Wells Fargo Bank, N.A. v. Cuevas, 8th Dist. Cuyahoga No. 99921, 2014-Ohio-498, ¶ 22, quoting *Equibank v. Rivera*, 8th Dist. Cuyahoga No. 72224, 1998 Ohio App. LEXIS 185, *3 (Jan. 22, 1998).

{¶10} As in *Cuevas* and *Rivera*, the property in this case has been sold, the order of confirmation has been carried out, and there is no relief in this action that can be afforded Samad. Therefore, we dismiss this appeal as moot.

{¶11} Case dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

¹ R.C. 2329.20 provides that, subject to certain specified exceptions, “[n]o tract of land shall be sold for less than two thirds of the value” fixed by the appraisal mandated by R.C. 2329.17.

² R.C. 2329.26 requires the sheriff to give public notice of the time and place of the sale.

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

EILEEN T. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
ANITA LASTER MAYS, J., CONCUR