

[Cite as *Arch Bay Holding, L.L.C. v. Goler*, 2016-Ohio-5418.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103991

ARCH BAY HOLDING, L.L.C.

PLAINTIFF-APPELLEE

vs.

EMILY D. GOLER, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-09-714145

BEFORE: E.T. Gallagher, J., McCormack, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: August 18, 2016

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EILEEN T. GALLAGHER, J.:

{¶1} Defendant-appellant, Emily D. Goler (“Goler”)¹, pro se, appeals from a judgment in foreclosure. She raises the following three assignments of error:

1. The trial court erred by adopting the magistrate’s supplemental order before ruling on the appellant’s objections to the magistrate’s supplementation of the order recorded December 12, 2011.
2. The trial court erred by granting the appellee’s motion to strike the appellant’s motion to set aside magistrate’s decision to supplement the December 12, 2011 order.
3. The trial court erred by confirming the July 7, 2014 sale, ordering a writ of possession issued to the appellees instead of the Glens, and giving instructions to the Sheriff’s Department to allow U.S. Bank, N.A., to purchase the property in consideration for a credit bid without a lien on the property (an association, not a bank) and or decree of foreclosure.

{¶2} We find no merit to the appeal and affirm the trial court’s judgment.

I. Facts and Procedural History

{¶3} In October 2007, Goler purchased a home in Westlake, Ohio. To finance the purchase, Goler executed a promissory note payable to GE Money Bank in the amount of \$387,000. As security for the note, Goler executed a mortgage on property located at 1470 Glen Lyon Dr., Westlake, Ohio (“the property”), in favor of Mortgage Electronic Systems, Inc. (“MERS”), as nominee for GE Money Bank, its successors, and assigns.

{¶4} GE Money Bank endorsed the note to WMC Mortgage Corp., who, in turn, executed an allonge endorsing the note to Property Asset Management. MERS, on

¹ Emily D. Goler is also known as Emily Deloris Goler and Emily Goler Matthews.

behalf of GE Money Bank, executed an assignment of the mortgage transferring the mortgage to Property Asset Management. Property Asset Management later executed a second allonge, thereby endorsing the note and making it payable to Arch Bay Holdings L.L.C. — Series 2008B (“Arch Bay”). Property Asset Management simultaneously assigned the mortgage to Arch Bay. The assignment of the mortgage to Arch Bay was recorded in the Cuyahoga County Recorder’s office in June 2009.

{¶5} In December 2009, Arch Bay filed a complaint in foreclosure against Goler and several codefendants, including the Glens Homeowners Association (“Glens”). Arch Bay alleged that Goler had defaulted under the note and accelerated the indebtedness due thereunder. Arch Bay further alleged it was the owner and holder of both the note and the mortgage when it filed its complaint.

{¶6} Arch Bay filed a motion for summary judgment, which the trial court granted as unopposed several months later. Goler subsequently obtained new counsel, who sought and obtained leave to file an overdue opposition to the summary judgment motion.

Goler, through counsel, argued that Arch Bay lacked standing to prosecute this foreclosure action because it failed to demonstrate that it was the holder of the note and mortgage at the time it filed the complaint. She asserted that the allonge purporting to endorse the note to Arch Bay was invalid because it was neither dated nor attached to the note. Based on Goler’s arguments, the court denied the motion for summary judgment in August 2011.

{¶7} Arch Bay subsequently filed a motion to substitute the party-plaintiff to plaintiff-appellee, U.S. Bank, N.A., as trustee for the RMAC Trust, Series 2013-1T (“U.S. Bank”), and Goler filed a motion to dismiss the complaint. The trial court denied Goler’s motion to dismiss and substituted U.S. Bank as the party-plaintiff. The court also gave the parties leave to file a second motion for summary judgment. Accordingly, U.S. Bank filed a motion for summary judgment supported by an affidavit from an agent of the loan servicer, who averred that U.S. Bank had possession of the promissory note and the mortgage on the property.

{¶8} This time, the court granted the plaintiff’s motion for summary judgment. In its journal entry, dated April 11, 2013, the court explained:

Ohio has come full circle on the issue of standing as it relates to foreclosure actions. As such, the defendant’s ability to challenge perceived inconsistencies in the assignments of the mortgage and/or endorsements to the promissory note have been greatly reduced. *See Bank of New York Mellon Trust Co. v. Unger*, 2012-Ohio-1950. * * * In addition, plaintiff has produced the original note in court as further evidence of holder status. Therefore, defendant’s argument in reference to standing as well as the remaining arguments lack merit.

{¶9} Meanwhile, the Glens filed and obtained summary judgment on its lien on the property. Pursuant to that judgment, the Cuyahoga County Sheriff’s Office scheduled a sheriff’s sale of the property. The sale was canceled, however, because Goler filed a petition for bankruptcy protection. Following a brief stay, U.S. Bank sought another sale, and the property was sold at a sheriff’s sale on February 18, 2014. The court confirmed the sale on March 4, 2014. However, because the court’s April 11, 2013

judgment in favor of U.S. Bank had not been reduced to final judgment, the court, on motion, vacated the sale and confirmation.

{¶10} The docket reflects the property was ultimately sold at a sheriff's sale on July 10, 2014, pursuant to the Glen's judgment in foreclosure against the property. The trial court entered judgment confirming the sale of the property on November 26, 2014. Goler did not appeal the order confirming the sale.

{¶11} Before the court confirmed the sale, the magistrate issued a final, supplemental decision in favor of U.S. Bank on October 17, 2014, on its foreclosure claims. Goler filed timely objections to the supplemental magistrate's decision, and subsequently moved to set it aside. The trial court struck Goler's motion to set aside the magistrate's supplemental decision and adopted the magistrate's decision awarding judgment to U.S. Bank on its foreclosure claim on December 9, 2014.

{¶12} Goler now appeals from the trial court's December 9, 2014 judgment.

II. Law and Analysis

A. Objections to the Magistrate's Supplemental Decision

{¶13} In the first assignment of error, Goler argues the trial court erred in adopting the magistrate's supplemental decision without ruling on her objections to the magistrate's supplemental decision.

{¶14} This court previously adjudicated this issue in *Arch Bay Holdings, L.L.C. v. Goler*, 8th Dist. Cuyahoga No. 102455, 2015-Ohio-3036, ¶ 10. In that appeal, we held that where a trial court fails to rule on timely objections to a magistrate's report, there is

no final, appealable order. *Id.*, citing *In re B.W.*, 8th Dist. Cuyahoga Nos. 96550 and 96551, 2011-Ohio-4513, ¶ 8. Accordingly, we dismissed Goler's appeal for lack of a final, appealable order because the trial court failed to rule on Goler's objections.

{¶15} On remand, the trial court conducted an independent review of the file and overruled Goler's objections. Therefore, the trial court has now complied with the mandate set forth in Civ.R. 53(D)(4)(d) to independently review and rule on timely objections to the magistrate's report.

{¶16} Accordingly, the first assignment of error is overruled.

B. Motion to Set Aside Magistrate's Decision

{¶17} In the second assignment of error, Goler argues the trial court erred by granting U.S. Bank's motion to strike Goler's motion to set aside the magistrate's supplemental decision. She contends the court's order striking her motion to set aside the magistrate's decision violated Civ.R. 53(D)(5).

{¶18} However, Civ.R. 53(D)(2)(b) provides that motions to set aside a magistrate's order "shall be filed not later than ten days after the magistrate's order is filed." As previously stated, the magistrate issued her order on October 17, 2014, and Goler did not file her motion to set aside the magistrate's report until November 5, 2014, 19 days after the magistrate's report was released. Therefore, Goler's motion was untimely.

{¶19} Civ.R. 53(D)(5) provides an extension of time for filing motions to set aside a magistrate's decision in certain circumstances. That rule states, in relevant part:

For good cause shown, the court shall allow a reasonable extension of time for a party to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. "Good cause" includes, but is not limited to, a failure by the clerk to timely serve the party seeking the extension with the magistrate's order or decision.

{¶20} Goler provided no explanation as to why she failed to file her motion to set aside the magistrate's supplemental decision within the ten days prescribed by the rule. Instead, Goler asserted that she filed the motion to set aside the magistrate's decision "as a supplement to the motion Defendant Goler filed in objection to the magistrate's supplementing the final Order on 10/31/14." Yet, she made no argument regarding any alleged errors in the magistrate's decision. Rather, she speculated that because U.S. Bank failed to file a proposed magistrate's decision as ordered by the court, and the court nevertheless issued a decision, U.S. Bank must have given the magistrate a proposed judgment entry ex parte.

{¶21} We find no evidence to suggest that U.S. Bank made any ex parte communications with the court. Moreover, Goler's motion to set aside the magistrate's supplemental decision was untimely. Therefore, we find no error in the court's decision to strike it.

{¶22} The second assignment of error is overruled.

C. Confirmation of Sale

{¶23} In the third assignment of error, Goler argues the trial court erred in confirming the July 7, 2014 sale of the property. She contends the trial court

erroneously allowed the sheriff's sale to proceed before ruling on her objections to the supplemental magistrate's report.

{¶24} R.C. 2329.27 governs the public sale of property in aid of execution of judgment. An order confirming the sale of property pursuant to R.C. 2329.27 is a final, appealable order. *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, 11 N.E.3d 1140, ¶ 39 (“There are thus two judgments appealable in foreclosure actions: the order of foreclosure and the confirmation of sale.”). *See also Sky Bank v. Mamone*, 182 Ohio App.3d 323, 2009-Ohio-2265, 912 N.E.2d 668 (8th Dist.), ¶ 24 (“An order confirming a sale, although a phase of an entire foreclosure action, is itself a final, appealable order.”).

{¶25} App.R. 4(A)(3) provides that “a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry.” Thus, where an appellant fails to file a timely notice of appeal within the 30 days prescribed by App.R. 4, the appellate court lacks jurisdiction to consider the appeal. *Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C.*, 141 Ohio St.3d 542, 2015-Ohio-241, 26 N.E.3d 806, ¶ 7.

{¶26} The trial court confirmed the sheriff's sale of the property on November 26, 2014. However, Goler did not file a notice of appeal until January 7, 2015. Therefore, Goler failed to file a timely appeal of the court's order confirming of the sale of her property, and we lack jurisdiction to consider any issues that could have been raised in a timely appeal.

{¶27} The third assignment of error is overruled.

{¶28} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the common pleas court 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.

EILEEN T. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
MARY J. BOYLE, J., CONCUR