

[Cite as *State ex rel. Olmsted Falls v. Bowman*, 2016-Ohio-5851.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104154

STATE OF OHIO EX REL. CITY OF
OLMSTED FALLS

RELATOR-APPELLEE

vs.

TED BOWMAN

RESPONDENT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-835343

BEFORE: Stewart, P.J., Boyle, J., and Blackmon, J.

RELEASED AND JOURNALIZED: September 15, 2016

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MELODY J. STEWART, P.J.:

{¶1} Respondent-appellant, Ted Bowman, appeals from a trial court order authorizing a receiver to sell at auction certain chattel owned by Bowman that was the subject of a nuisance action. For the following reasons, we affirm the decision of the trial court.

{¶2} In 2014, the relator, the city of Olmsted Falls, brought a nuisance action against Bowman for allegedly using his property located on Columbia Road in the city of Olmsted Falls, Ohio as a dumping and storing ground for construction and demolition debris, as well as a storage ground for various abandoned and inoperable motor vehicles. The city alleged that the use of the property as a storage and dumping ground violated several municipal ordinances and posed a potential health and safety threat to persons residing in the surrounding neighborhoods. In response to the complaint, Bowman filed an answer denying the allegations and asserting several defenses. Following discovery, the parties entered into settlement negotiations where Bowman eventually agreed to abate the nuisance. In the judgment entry filed with the trial court, Bowman agreed to remove certain items from the Columbia Road premises by dates specified in the agreement. The agreement further stated:

In the event Respondent Bowman fails to perform according to the timeline above, Relator and/or its agents and assigns shall thereafter have the right to enter upon the subject real property for the purpose of causing the chattel

property to be removed, cleared, disassembled, warehoused and/or auctioned in a timely and cost effective manner that shall be within the sole discretion of Relator City of Olmsted Falls. Any proceeds from the auctioning or sale of the subject chattel property shall be applied toward the cost of removal.

{¶3} When Bowman failed to remove the items as outlined in the agreement, the city filed a motion to show cause why Bowman should not be held in contempt for failing to comply with the court order. At the hearing on the motion, the city acknowledged that by the terms of the agreed judgment entry, it had the right to go onto Bowman's property and remove the items so that they may be sold at auction. Nevertheless, the city decided to file a motion to show cause out of an abundance of caution so that the court could order the removal of the items. The court found Bowman in contempt of the court order and appointed a receiver to oversee the removal and auctioning of the property.

{¶4} The receiver worked closely with an auctioneer and his company to inventory and remove the offending personal property located on the premises, which included among other things, numerous construction vehicles and machinery, a semitrailer, utility trucks, and dump trucks. This was not an easy process for the receiver as transcripts from several court proceedings in the fall of 2015 establish that Bowman attempted to thwart the inventory and removal process by refusing to hand over title to the vehicles until ordered by the court to do so, and by providing the wrong keys to the vehicles and machinery. On November 30, 2015, the court found Bowman in contempt and remanded

him to county jail. Bowman was released the next day after complying with the court's order to turn over the proper keys.

{¶5} In January 2016, the receiver submitted a detailed, written, receiver's report with the court. The report summarized the actions he took and inventoried the property he removed from the premises and the property that he had title to but which remained on the premises. The report also included reference to certain property that was not removed because Bowman indicated that he was not the true owner of those items. The receiver's report indicated that he had notified potential interested parties that the property would be removed and sold if they did not claim it. The report further provided the address where the property was being held awaiting auction, and explained that none of the property had been sold. In a journal entry dated February 16, 2016, the court ordered the receiver to "proceed with auction of items already removed from property as soon as possible." Subsequently, some of the property was sold at auction.

{¶6} In his sole assignment of error, Bowman contends that the trial court abused its discretion by ordering the asset sale. Specifically, Bowman argues that the court failed to oversee the receiver's management of the receivership estate by authorizing the receiver to sell the assets at his sole discretion, without the court's prior approval, and without notice to interested parties of the time, place, and manner of the sale or specific identification of the property to be sold. We disagree.

{¶7} Once duly appointed, a receiver has the authority to sell and transfer real or personal property under his or her control. *See* R.C. 2735.04(B)(5). A court supervising

a receiver has broad discretion to limit or expand the receiver's power as it deems appropriate. Pursuant to R.C. Chapter 2735, there are no statutory “restrictions on what the court may authorize when it issues orders regarding receivership property.” *Hummer v. Hummer*, 8th Dist. Cuyahoga No. 96132, 2011-Ohio-3767, ¶ 17, citing *Quill v. Troutman Ents., Inc.*, 2d Dist. Montgomery No. 20536, 2005-Ohio-2020, ¶ 34. A receiver is at all times subject to the court's order and direction, and the trial court maintains a duty to independently monitor and evaluate the conduct of the receiver in relation to the duties assigned to him or her. *Id.* at ¶ 18, citing *Park Natl. Bank v. Cattani, Inc.*, 187 Ohio App.3d 186, 2010-Ohio-1291, 931 N.E.2d 623, ¶ 10 (12th Dist.).

{¶8} From the facts contained in the record, including the transcripts of proceedings and docketed journal entries, we cannot conclude that the trial court failed to provide sufficient oversight of the asset sale. To begin, by the terms of the agreed judgment entry, the city had full discretionary authority to enter the Columbia Road premises, remove the offending items (which had been painstakingly chronicled in the agreement) and then sell them at auction. Bowman never disputes this fact. However, rather than moving forward under the authority granted to it in the original order, the city filed a motion to show cause so that the court could find Bowman in contempt and issue an order specifically allowing the city to enter the premises and abate the nuisance. It was at this contempt hearing that the court considered the appointment of a receiver to oversee the removal and sale of the property — the judge's reason being, in his own words, “I'm not quite sure that I like the city deciding who's going to come in and

remove, who's going to hold the auction, how the auction's going to be held.” Therefore, it is clear that the court evidenced its oversight authority.

{¶9} Once appointed, the receiver remained in contact with the judge and the judge's staff attorney. In fact, between the time that the court appointed the receiver in September 2015 and the time that the assets were sold five months later in February 2016, the court held three different hearings both to discuss the receiver's progress and Bowman's uncooperative behavior. The transcript shows that the court had discussions with the receiver regarding the relative worth of certain items removed from the premises and whether those items would generate more profit being auctioned or scrapped based on the auctioneer's appraisals. During this time, the docket also reveals that the court ordered numerous conference calls to be held between the receiver, the parties, and the court's staff attorney, where presumably they discussed the progress of the removal and impending auction as well as any current or foreseeable problems. By the time the court ordered the sale, it had in its possession the receiver's progress report listing all the items he had removed from Bowman's property. Thus, there is simply no indication in the record that the court failed to properly supervise the receiver and provide oversight for the sale.

{¶10} Moreover, Bowman's contention that the court authorized the receiver to sell the property in his sole discretion and without prior approval, is belied by the record.

The receiver obtained prior approval for the sale through a judgment entry ordering the auction after the court received several status updates on what property was removed

from the premises, where it was being held, and its relative worth. Further, because this was a publicly advertised auction, the then current market value for each piece of property determined its resale price, not the receiver.

{¶11} Lastly, the record establishes that Bowman had notice of the time, place, and manner of the sale sufficient to comport with the due process requirements of a receivership asset sale. Statutory notice of the date and time of sale is not required for receivership sales, rather, actual notice of the sale is sufficient to meet a party's constitutionally protected due process rights. *See Huntington Natl. Bank v. Motel 4 BAPS, Inc.*, 191 Ohio App.3d 90, 2010-Ohio-5792, 944 N.E.2d 1210, ¶ 19 (8th Dist.) We know that Bowman had actual notice of the auction in this case because he asked this court to stay the sale pending appeal. With his request, Bowman attached a copy of the advertisement of sale that included the date, time, and location of the sale. Accordingly, we cannot find that Bowman's due process rights were violated by lack of notice.

{¶12} Judgment affirmed.

It is ordered that relator-appellee recover of respondent-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 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.

MELODY J. STEWART, PRESIDING JUDGE

MARY J. BOYLE, J., and
PATRICIA ANN BLACKMON, J., CONCUR