

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

SUMMIT COUNTY FISCAL OFFICER

C.A. No. 24456

Appellee

v.

THE ESTATE OF ELLEN SUE
BARNETT, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2006-11-7789

Appellants

DECISION AND JOURNAL ENTRY

Dated: May 27, 2009

BELFANCE, Judge.

INTRODUCTION

{¶1} The Summit County Fiscal Officer (“the Fiscal Officer”) filed a foreclosure complaint against Ellen Sue Barnett (later amended to the Estate of Ellen Sue Barnett) for failure to pay property taxes assessed on her condominium. After the property was sold at a sheriff’s sale and the Estate of Ellen Sue Barnett was closed, the Georgetown Condominium Association of Akron (“Georgetown”) moved to intervene. The motion was denied and the instant appeal followed. We affirm the trial court’s denial of Georgetown’s motion to intervene.

FACTS

{¶2} On November 30, 2006, Appellee, the Summit Fiscal Officer filed an action against Ellen Sue Barnett to foreclose on her real property known as 1305 West Market Street, Akron, Ohio 44313. The property is part of a declared condominium association, namely the

Georgetown Condominium Association of Akron. Barnett did not file an answer and the Summit County Court of Common Pleas issued a default judgment against her. The court issued a decree of foreclosure and order of sale on April 11, 2007.

{¶3} On July 23, 2007, Appellant, Georgetown filed a certificate of lien against Barnett's property for unpaid condominium assessment fees.

{¶4} On July 26, 2007, the Fiscal Officer filed a motion to vacate the decree of foreclosure because it had recently learned that Barnett passed away on March 29, 2007. The court granted the motion and the Fiscal Officer issued an amended complaint solely against the Estate of Ellen Sue Barnett ("the Estate"). The Estate filed an answer stating that it did not oppose the foreclosure sale of the subject property. A consent judgment of foreclosure was filed on October 2, 2007. A notice of sheriff's sale was issued to the parties and attorneys of record, and published in the Akron Legal News for a three-week period beginning on February 7, 2008.

{¶5} The property was sold at the sheriff's sale on March 11, 2008. The sale was confirmed approximately one month later and the remaining proceeds of the sale were distributed to the Estate on May 9, 2008. The consent judgment of foreclosure provided that the Ohio Department of Job and Family Services, as holder of a lien against the Estate in an amount in excess of \$150,000.00, would receive the remaining proceeds.

{¶6} On May 19, 2008, counsel for Georgetown contacted counsel for the Fiscal Officer with respect to the foreclosure and Georgetown's lien for unpaid condominium assessments. In a letter dated May 19, 2008, counsel for the Fiscal Officer informed Georgetown's counsel that Barnett's estate remained opened.

{¶7} Barnett's estate was subsequently closed on July 7, 2008.

{¶8} On August 1, 2008, Georgetown filed a motion to intervene in the foreclosure

action that had been instituted on August 8, 2007. Georgetown asserted that it was a necessary party to the action by virtue of R.C. 5311.18(B)(3), which states: “[i]n a foreclosure action the holder of a lien on a unit commences, the holder of that lien shall name the unit owners association as a defendant in the action.” Accordingly, Georgetown argued, the Fiscal Officer had a duty to name Georgetown as a defendant in the original action, but because it did not, Georgetown had a right to intervene. Georgetown did not attach any type of pleading to its motion to intervene.

{¶9} In its brief in opposition to the motion to intervene, the Fiscal Officer contended that Georgetown was barred from intervening by *lis pendens* and laches. The trial court agreed and denied Georgetown’s motion on September 25, 2008. The instant appeal followed.

{¶10} In its sole assignment of error, Georgetown argues that the trial court erred in denying its motion to intervene.

STANDARD OF REVIEW

{¶11} We review a ruling on a motion to intervene pursuant to an abuse of discretion standard. *State ex rel. Boston Hills Property Invests. LLC v. Boston Hts.*, 9th Dist. No. 24205, 2008-Ohio-5329, at ¶4, quoting *In re M.S.*, 9th Dist. No. 22158, 2005-Ohio-10, at ¶30. See, also, *State ex rel. Montgomery v. Columbus*, 10th Dist. No. 02AP-963, 2003-Ohio-2658, at ¶14. But, see, *In re M.N.*, 9th Dist. No. 07CA0088, 2008-Ohio-3049, at ¶5 (holding that the denial of a motion to intervene as of right is reviewed *de novo*). However, the result in the instant matter is the same under either standard of review.

{¶12} A party may move to intervene as of right, or may seek permissive intervention. Georgetown moved to intervene pursuant to Civ.R. 24(A). Civ.R. 24(A) governs intervention of right and states:

“Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

{¶13} Civ.R. 24(C) outlines the procedure for intervening, stating:

“A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Civ.R. 5. The motion and any supporting memorandum shall state the grounds for intervention and *shall be accompanied by a pleading, as defined in Civ.R. 7(A), setting forth the claim or defense for which intervention is sought.* The same procedure shall be followed when a statute of this state gives the right to intervene.” (Emphasis added.)

{¶14} Regardless of whether a party pursues intervention as of right or permissive intervention, the party must comply with the procedural requirements of Civ.R. 24(C). *In re M.N.* at ¶14. In the instant matter, Georgetown filed its motion for intervention and memorandum in support, but failed to include a pleading with its motion. Indeed, the record is devoid of any pleading submitted in connection with its motion to intervene. In light of Georgetown’s failure to fully comply with Civ.R. 24(C), we cannot say that the trial court erred in denying Georgetown’s motion to intervene. *State ex rel. Boston Hills Invests., LLC* at ¶6. See, also, *Tatman v. Fairfield Cty. Bd. of Elections*, 102 Ohio St.3d 425, 2004-Ohio-3701, at ¶11 (denying motion to intervene in original action in the Supreme Court for failure to attach a pleading); *Concord Twp. Trustees v. Hazelwood Builders, Inc.* (Feb. 9, 2001), 11th Dist. Nos. 2000-L-066, 99-L-167, at *3 (reasoning that without a pleading, the trial court is not able to determine if the intervenor has met the requirements for intervention).

{¶15} Although the trial court did not specifically deny Georgetown’s motion to intervene due to the absence of a pleading as required by Civ.R. 24(C), we will not overrule a correct judgment that was supported by different reasoning in the trial court. See, e.g., *Murray v.*

David Moore Builders, Inc., 177 Ohio App.3d 62, 2008-Ohio-2960 at ¶12, quoting *State ex rel. Carter v. Schotten* (1994), 70 Ohio St.3d 89, 92.

{¶16} In light of the above, we are unable to assess the merits of the parties' respective legal contentions. In reaching our decision, we do not in anyway condone the Fiscal Officer's multiple failures to properly name Georgetown in its complaint as it was clearly required to do pursuant to R.C. 5311.18(B)(3).

CONCLUSION

{¶17} Georgetown's sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE

FOR THE COURT

MOORE, P. J.
CARR, J.
CONCUR

APPEARANCES:

JAMES C. WRENTMORE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and REGINA M. VANVOROUS, Assistant Prosecuting Attorney, for Appellee.