[Cite as *Tax Ease OH V, L.L.C. v. Al-Khatib*, 2026-Ohio-3549.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

TAX EASE OH V LLC	:	C.A. No. 30838
Appellees	:	Trial Court Case No. 2024 CV 03175
v.	:	(Civil Appeal from Common Pleas Court)
KHALIL A AL KHATIB ET AL.	:	
Appellants	:	**FINAL JUDGMENT ENTRY & OPINION**

. . . .

Pursuant to the opinion of this court rendered on September 11, 2026, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,

MICHAEL L. TUCKER, JUDGE

LEWIS, P.J., and EPLEY, J., concur.

OPINION
MONTGOMERY C.A. No. 30838

SEAN A. STONE, Attorney for Appellants, Khalil Al-Khatib and Jennifer Al-Khatib
ERIC T. DEIGHTON, Attorney for Appellee Tax Ease OH V LLC
WILLIAM R. MILLER, Attorney for Appellee Property Portfolio, LLC

TUCKER, J.

{¶ 1} Khalil and Jennifer Al-Khatib appeal from the trial court's judgment entry overruling their objections to a magistrate's decision and overruling their motion to vacate a default judgment and set aside a tax-foreclosure sale of real estate.

{¶ 2} The Al-Khatibs contend the trial court erred in finding that appellee Tax Ease OH V LLC ("Tax Ease") properly served Khalil with process and that he failed to rebut a presumption of proper service.[1] The Al-Khatibs also claim the trial court erred in finding that Jennifer was not a necessary party, despite originally being named in the complaint as a "Jane Doe unknown spouse" and holding a dower interest in the subject property. They argue that any judgments or orders affecting the property were void ab initio because Tax Ease failed to serve process on Jennifer.

{¶ 3} We see no abuse of discretion in the trial court's resolution of the service-of-process issue involving Khalil. Tax Ease's failure to serve Jennifer with process also did not invalidate any judgments or orders in the foreclosure proceedings. Accordingly, we affirm the trial court's judgment.

I. Background

{¶ 4} Tax Ease filed a foreclosure complaint against Khalil and Jane Doe as an unknown spouse. The complaint alleged that Tax Ease had purchased tax certificates for

1. For clarity, we will identify the Al-Khatibs by their first names when referring to them individually.

the subject residential property, which was owned by Khalil. The complaint further alleged that the tax certificates created a lien on the property. Tax Ease sought foreclosure, a judicial sale of the property, and distribution of the proceeds according to law.

{¶ 5} Tax Ease requested personal service of the complaint on Khalil and the unknown spouse at their residence. A return was filed indicating successful personal service on Khalil. A second return was filed indicating that the unknown spouse did not exist. Tax Ease obtained a default judgment against Khalil after he failed to answer. Appellee Property Portfolio, LLC, later purchased the property at a judicial sale. The trial court confirmed the sale, ordered distribution of the proceeds, and issued a writ of restitution.

{¶ 6} Shortly thereafter, Jennifer moved to intervene in the action based on a claimed dower interest. The Al-Khatibs also jointly moved to stay the writ of restitution, as well as to vacate the default judgment and set aside the foreclosure sale. On June 30, 2025, the trial court sustained Jennifer's motion to intervene as a party defendant. It also sustained the motion to stay the writ of restitution. Regarding the motion to vacate the default judgment against Khalil and set aside the foreclosure sale, the trial court referred the matter to a magistrate for a hearing.

{¶ 7} At the hearing, Sheriff's Deputy David Cole testified that he personally served Khalil in the driveway of Khalil's Maltbie Road residence at 11:04 a.m. on June 7, 2024. According to Cole, Khalil identified himself as being Khalil Al-Khatib and stated that there was no other "responsible party," such as a spouse. Although the deputy did not check Khalil's identification at that time, he visually identified Khalil during the hearing as the person he had served.

{¶ 8} In opposition to Cole's testimony, Khalil testified that he was at his business on Burkhardt Avenue all day on June 7, 2024. He produced records showing that he opened his store at 7:56 a.m. He testified that he did not go home for lunch and that he remained at work until between 3:00 p.m. and 6:00 p.m. Although Khalil's minor son was home, Khalil testified that the child did not accept service of anything. Kahlil also testified that he and Jennifer had been married since 2006.

{¶ 9} For her part, Jennifer testified that she was working at Starbucks on the morning in question. She produced records showing that she clocked in at 5:24 a.m. and clocked out at 11:04 a.m. Jennifer stated that she then drove home, which took about four minutes. She clarified that she probably did not leave work immediately, meaning that she got home around 11:10 a.m. to 11:15 a.m. According to Jennifer, Khalil was not home when she arrived. She acknowledged that her son was home, but she stated that he did not accept service or mention a deputy stopping at the house.

{¶ 10} Based on the evidence presented, the magistrate found a presumption of valid service on Khalil. The magistrate then found that Khalil and Jennifer had failed to rebut the presumption. The magistrate noted that Khalil's opening of his store early in the morning did not prove his whereabouts at the critical time when Deputy Cole claimed to have served him. The magistrate also noted Jennifer's admission that she did not return home until at least several minutes after 11:04 a.m. The magistrate assessed the witnesses' credibility, finding Cole's testimony to be more credible than the Al-Khatibs' testimony. In assessing credibility, the magistrate noted that the Al-Khatibs both denied having received any foreclosure-related documents by mail, despite having been sent several notices, motions, and judgments. The magistrate did not believe their assertion that they never received anything in the mail. As a factual matter, the magistrate determined that Cole "served Khalil at his residence by handing him the documents on June 7, 2024 at approximately 11:05 a.m."

{¶ 11} The magistrate also rejected Jennifer's claim that any judgments in the foreclosure action were void because Tax Ease had failed to serve her with process. The magistrate cited R.C. 2103.041 for the proposition that her inclusion as a party to the foreclosure proceeding based on her status as a spouse with a dower interest was permissive, not mandatory. The magistrate also cited R.C. 5721.19(F)(1) for the proposition that confirmation of the sale extinguished Jennifer's dower interest even though she was not then a party to the action.

{¶ 12} The Al-Khatibs objected to the magistrate's decision. Among other things, they challenged the magistrate's finding that they did not rebut the presumption of service and the magistrate's conclusion that a lack of service on Jennifer did not invalidate the foreclosure proceedings. The trial court overruled their objections and their motion to vacate the default judgment against Khalil and to set aside the tax-foreclosure sale. Regarding service on Khalil, the trial court noted that the magistrate had found Deputy Cole's testimony to be more credible than theirs. After reviewing the evidence itself, the trial court agreed that the Al-Khatibs had failed to rebut the presumption of proper service on Khalil with sufficient evidence of non-service. As for the lack of service on Jennifer, the trial court agreed with the magistrate's statutory analysis and held that her absence as a party did not invalidate the foreclosure proceedings. The Al-Khatibs timely appealed, advancing two assignments of error.

II. Analysis

{¶ 13} The first assignment of error states:

The Trial Court erred and abused its discretion in finding that Khalil A Al-Khatib was served with process *and* failed to rebut the presumption of service.

{¶ 14} The Al-Khatibs argue that their testimony was more credible than Deputy Cole's. They note that he did not obtain identification from the person claiming to be Khalil who accepted service on June 7, 2024. They also question his ability to remember Khalil's appearance and to identify him in person during a hearing held approximately 15 months later. The Al-Khatibs additionally reason that if Khalil in fact had been served, he would have admitted having a spouse rather than telling Cole no other responsible party, such as a spouse, existed.

{¶ 15} As for their own testimony, the Al-Khatibs stress Khalil's corroboration of his claim that he arrived at work early in the morning with records showing his arrival at 7:56 a.m. They also cite Khalil's testimony that he did not go home for lunch on June 7, 2024, and Jennifer's testimony that he was not home when she arrived around 11:10 a.m. Even if Cole's return of service created a presumption of valid service, the Al-Khatibs claim they rebutted it. They assert that the trial court abused its discretion in finding otherwise.

{¶ 16} Upon review, we conclude that the docketed return of service created a rebuttable presumption that Deputy Cole personally served Khalil on June 7, 2024. *Derrick v. Derrick*, 2003-Ohio-1260, ¶ 9 (2d Dist.). The Al-Khatibs sought to rebut this presumption at the hearing. But the magistrate and the trial court were permitted to find their testimony not credible and to find the presumption of service on Khalil not rebutted. *Discover Bank v. Wells*, 2018-Ohio-4637, ¶ 13 (2d Dist.); *Portfolio Recovery Assocs., LLC v. Thacker*, 2009-Ohio-4406, ¶ 31 (2d Dist.). Credibility determinations primarily are for trier of fact. *Discover Bank* at ¶ 16. We see no basis for disturbing those determinations here.

{¶ 17} Although Khalil documented his arrival at work before 8:00 a.m., only his own testimony supported his claim that he was not home at 11:04 a.m. when Cole claimed to have served him. Jennifer could not say whether Khalil was home then because she admittedly did not arrive until several minutes later. The Al-Khatibs' suggestion that Khalil could not have been the person served because that person denied having a spouse also fails to establish a lack of service. Another possibility is that Khalil denied the existence of a spouse to hinder successful service on Jennifer. Ultimately, the issue came down to a credibility determination between Khalil and Cole. In resolving that issue, the magistrate and the trial court did not abuse their discretion in finding Cole's testimony more believable and finding that he personally served Khalil on June 7, 2024. The first assignment of error is overruled.

{¶ 18} The second assignment of error states:

> **The Trial Court erred in finding that Jennifer Al-Khatib was not a necessary party to the case, despite being included at the outset as a "Jane Doe unknown spouse" and holding a dower interest in the Premises.**

{¶ 19} Although Khalil was the sole record owner of the property, the Al-Khatibs assert that Jennifer had a dower interest, making service of process on her necessary. Without such service, they argue that any judgments or other orders in the foreclosure proceedings were void ab initio. As a result, they seek reversal of the trial court's judgment denying their motion to vacate the default judgment against Khalil and to set aside the foreclosure sale.

{¶ 20} In support of their argument, the Al-Khatibs reason that Jennifer's dower interest made her an "owner" under R.C. Chapter 5721, which applies to delinquent lands. They also assert that R.C. 2103.041, upon which the magistrate and the trial court relied, did not dispense with the need for Jennifer's inclusion in the case. Although the statute makes the spouse of a property owner a permissive party, the Al-Khatibs note that it also entitles the spouse to a share of the proceeds from a judicial sale equal to the value of the spouse's dower interest. The Al-Khatibs claim the trial court failed to award Jennifer any money to account for her dower interest.

{¶ 21} Upon review, we find R.C. 2103.041 to be dispositive of the issue before us, which is whether Tax Ease's failure to serve Jennifer with process rendered void the default judgment against Khalil, the subsequent judicial sale, or any other orders. In relevant part, R.C. 2103.041 provides: "In any action involving the judicial sale of real property for the purpose of satisfying the claims of creditors of an owner of an interest in the property, the spouse of the owner may be made a party to the action, and the dower interest of the spouse, whether inchoate or otherwise, may be subjected to the sale without the consent of the spouse." The statute uses permissive language, stating that a property owner's spouse "may" be made a party to an action involving the judicial sale of real estate. *Compare State ex rel. City of Niles v. Bernard*, 53 Ohio St.2d 31, 34 (1978) (observing that "statutory usage of the term 'may' is generally construed to render optional, permissive, or discretionary the provision in which it is embodied"). Notably, the statute also provides that a spouse's dower interest may be included in the sale without the spouse's consent.

{¶ 22} Although there is relatively little case law addressing R.C. 2103.041, the Eighth District has recognized the statute's discretionary nature regarding a spouse with a dower interest being a party to a case involving a judicial sale of real estate. In *Deutsche Bank Tr. Co. Ams. v. Smith*, 2008-Ohio-2778, ¶ 22 (8th Dist.), the Eighth District reasoned: "Oliver W. Smith did not have to be joined as a party . . . , as R.C. 2103.041, by its very language, does not require a spouse to assert his or her own dower interest, be it inchoate or vested. The specific language states that the dower interest, be it inchoate or vested, may be subject to sale without the consent of the spouse (hence, no real need to join the unknown or known spouse).” The Eleventh District reached the same conclusion in *Jackson v. Moissis*, 2017-Ohio-1000, ¶ 13 (11th Dist.), reasoning: “The language of the statute is permissive, not mandatory. Hence, for purposes of efficiency, inclusion of the owner’s spouse as a party in a foreclosure proceeding may be preferable to establish his or her dower interest. The language of the statute, however, does not require such inclusion.” The statute applies here because the present case is an “action involving the judicial sale of real property for the purpose of satisfying the claims of creditors of an owner of an interest in the property.” R.C. 2103.041. Therefore, Jennifer was not required to be a party prior to the default judgment and judicial sale, and her absence invalidated neither the judgment nor the sale.

{¶ 23} In reaching this conclusion, we are unpersuaded by the Al-Khatibs’ assertion that a spouse holding a dower interest could be an “owner” under R.C. Chapter 5721, which broadly applies to delinquent lands. The Al-Khatibs note that various provisions in Chapter 5721 refer to the “owner,” “titled owner,” and “owner of record.” Although Jennifer was not the “titled owner” or “owner of record” of the subject property, they contend she was an “owner” by virtue of her dower interest. We are unconvinced by the Al-Khatibs’ argument. Dower is an “inchoate and contingent” interest in land that vests in a surviving spouse only on the death of the property-owner spouse. *Stand Energy Corp. v. Epler*, 2005-Ohio-4820, ¶ 11 (10th Dist.); *see also Carne v. Zierolf*, 1994 WL 567549, at *1 (2d Dist. Sept. 9, 1994) (recognizing that “dower is not a property right”). But even assuming arguendo that the legislature intended the distinction the Al-Khatibs make, we fail to see the legal significance of their argument, at least in this case.

{¶ 24} The most relevant portion of R.C. Chapter 5721 is R.C. 5721.19(F)(1), which provides: “Upon confirmation of a sale, a spouse of the party charged with the delinquent taxes or assessments shall thereby be barred of the right of dower in the property sold, though such spouse was not a party to the action." Regardless of whether Jennifer's dower interest could be characterized as ownership, this provision establishes that confirmation of the judicial sale bars her from asserting that interest even though she was not a party to the action. The statute further supports our conclusion that her absence as a party did not invalidate the judicial sale or its confirmation.

{¶ 25} Finally, we turn to the Al-Khatibs' argument that R.C. 2103.041 entitled Jennifer to a portion of the proceeds of the judicial sale equal to the value of her dower interest. While making Jennifer a permissive party to the foreclosure proceedings and judicial sale, R.C. 2103.041 also addresses the disposition of her dower interest upon such a sale. It provides: "The court shall determine the present value and priority of the dower interest . . . and shall award the spouse a sum of money equal to the present value of the dower interest, to be paid out of the proceeds of the sale according to the priority of the interest."

{¶ 26} The Al-Khatibs assert that the trial court has not yet assigned any value to Jennifer's dower interest or paid her anything from the proceeds of the judicial sale. This appears to be true. Following the judicial sale, the trial court filed a May 19, 2025 amended judgment entry confirming the sale and ordering distribution of the proceeds. The distribution order did not mention Jennifer's dower interest or award her any money despite the existence of excess proceeds of $13,778.54 being held by the Clerk of Courts for future distribution.

{¶ 27} We note, however, that the Al-Khatibs' June 10, 2025 motion forming the basis of this appeal was a motion to vacate the default judgment against Khalil and to set aside the judicial sale. They argued that the default judgment and judicial sale were void due to a lack of service of process and the trial court's resulting lack of personal jurisdiction over the

Al-Khatibs. As a result, they asked the trial court to vacate the default judgment, the sheriff's sale, and all subsequent orders. This argument lacked merit because Khalil was served, and under R.C. 2103.041 Jennifer was not required to be a party for the judicial sale to be valid.

{¶ 28} To the extent that Jennifer may be entitled to a portion of the sale proceeds under R.C. 2103.041, we note that the trial court previously allowed her to intervene in the action as a party defendant. Therefore, she now is a party to the case. We note too that the Clerk of Courts appears to be holding excess proceeds of $13,778.54. If Jennifer believes she is entitled to a portion of the sale proceeds based on her dower interest, she may pursue that issue in the trial court. For present purposes, we hold only that the trial court did not err in (1) overruling the Al-Khatibs' motion to vacate the default judgment against Khalil and to set aside the judicial sale and (2) failing to find that any judgments or orders affecting the property were void ab initio because Tax Ease did not serve process on them. The second assignment of error is overruled.

III. Conclusion

{¶ 29} The judgment of the Montgomery County Common Pleas Court is affirmed.

. . . .

LEWIS, P.J., and EPLEY, J., concur.