

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

THE COLUMBUS ZOOLOGICAL
PARK ASSOCIATION,

Plaintiff - Appellee

-vs-

PETER A. FINGERHUT, ET AL.,

Defendant - Appellant

Case No. 25 CAE 11 0100

Opinion And Judgment Entry

Appeal from the Delaware County Court of
Common Pleas, Case No. 25 CVE 02 0213

Judgment: Affirmed

Date of Judgment Entry: April 17, 2026

BEFORE: William B. Hoffman; Craig R. Baldwin; Robert G. Montgomery, Judges

APPEARANCES: SCOTT E. NORTH, FRED G. PRESSLEY, JR., and ADANNA M. SMITH, for Plaintiff-Appellee; RICK L. ASHTON and ADAM M. SCHWARTZ, for Defendant-Appellant.

Montgomery, J.

STATEMENT OF FACTS AND CASE

{¶1} This matter concerns a foreclosure action regarding 5902 Shadow Woods Court (the "Property"), a single-family residential home in Delaware County, Ohio. Title to the Property is held by Peter and Joni Fingerhut (husband and wife) as joint tenants with rights of survivorship. The Columbus Zoological Park Association (the "Zoo") holds

a judgment lien against Peter Fingerhut that arises out of his criminal convictions.¹ On December 10, 2024, the Zoo filed a certificate of judgment in the amount of \$639,297.33. Mr. Fingerhut has not paid any amount of the Judgment to the Zoo.

{¶2} The Zoo elected to enforce its Judgment Lien through a foreclosure action, filed in the Delaware County Court of Common Pleas, pursuant to R.C. Chapter 2323. The Zoo subsequently filed a motion for summary judgment regarding its claim to foreclose on its judgment lien. Therein, the Zoo argued it was entitled to sell the entire Property, including Appellant’s half. Appellant opposed the sale of her half-interest and also filed for summary judgment. There was no dispute that the Zoo had the right to foreclose on Mr. Fingerhut’s interest in the Property. Similarly, there was no dispute that the judgment lien encumbers only his half of the Property, meaning that Joni Fingerhut (“Appellant”)² has no judgment against her, and no judgment lien against her interest in the Property. The trial court granted the Zoo’s motion, finding that the record contained undisputed evidence that the Zoo obtained a judgment, filed the judgment in Delaware County where the property is located, and had the certificate properly recorded pursuant to statute.

{¶3} Because the Zoo had a valid judgment lien, the trial court ordered the sale of the entire property.³ In so ordering, the trial court discussed the applicable statute,

¹ On October 29, 2024, as part of his criminal sentence for aggravated theft, twelve counts of tampering with records, two counts of telecommunications fraud, falsification, and conspiracy to engage in a pattern of corrupt activity, the court ordered Mr. Fingerhut to pay restitution in the amount of \$639,297.33.

² Mr. and Mrs. Fingerhut are co-Appellants; however, for ease of discussion in this Opinion, we will refer to Mr. Fingerhut individually. Mrs. Fingerhut will be referred to as “Appellant,” since it is her interest in the Property that is the subject of this appeal.

³ The trial court determined that pursuant to R.C. 2327.02(A)(1), 2329.02, and 2323.07 the Zoo was entitled to foreclose on its lien and have the property belonging to Appellant Peter Fingerhut sold.

R.C. 5302.20(C)(4), and followed the result and reasoning in *White v. Parks*, 2009-Ohio-703 (9th Dist.). In *Parks*, the Ninth District specifically held that a court could sell the entire property interest because R.C. 5302.20(C)(4) did not prohibit such a sale. *Id.*, at ¶ 12. Appellant timely appealed.

ASSIGNMENTS OF ERROR

{¶4} “I. ASSIGNMENT OF ERROR I: THE TRIAL COURT ERRED WHEN IT GRANTED PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENIED JONI'S MOTION FOR SUMMARY JUDGMENT.”

{¶5} “II. ASSIGNMENT OF ERROR II: THE TRIAL COURT ERRED WHEN IT ENTERED THE DECREE AND FORECLOSURE.”

STANDARD OF REVIEW

{¶6} This Court reviews a trial court's award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Summary judgment may be granted if the trial court determines that: 1) no genuine issues as to any material fact remain to be litigated; 2) the moving party is entitled to judgment as a matter of law; and 3) it appears from the evidence that reasonable minds can come to but one conclusion and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317 (1977).

{¶7} Here, the parties agree that the facts are not in dispute. Rather, the issue before this Court is whether the plain language of R.C. 5302.20(C)(4) prohibits a court from ordering the sale of the entire real property jointly owned even though there is a single judgment-debtor. Statutory interpretation is a question of law that is also reviewed de novo. *State ex rel. Natl. Lime & Stone Co. v. Marion Cty. Bd. of Commrs.*, 2017-Ohio-8348, ¶ 14, citing *Ceccarelli v. Levin*, 2010-Ohio-5681, ¶ 8. When construing a statute,

our primary concern is legislative intent. *State v. Marcum*, 2016-Ohio-1002, ¶ 8. "[W]e determine the intent of the legislature by considering the object sought to be attained." *Symmes Twp. Bd. of Trustees v. Smyth*, 2000-Ohio-470.

{¶8} When determining legislative intent, we first look to the plain language of the statute, and if that language is unambiguous and definite, we apply it as written. *Summerville v. Forest Park*, 2010-Ohio-6280, ¶ 18, citing *Hubbell v. Xenia*, 2007-Ohio-4839, ¶ 11; *State v. Pettus*, 2020-Ohio-4836, ¶ 10. If the statute is ambiguous and interpretation is required, "significance and effect should, if possible, be accorded to every word, phrase, sentence and part of an act." *Weaver v. Edwin Shaw Hosp.*, 2004-Ohio-6549, ¶ 13, quoting *Wachendorf v. Shaver*, 149 Ohio St. 231 (1948), paragraph five of the syllabus.

APPLICABLE STATUTES

{¶9} R.C. 2329.01 states: "Lands and tenements * * * and goods and chattels, not exempt by law, shall be subject to the payment of debts, and liable to be taken on execution and sold * * *." R.C. 2329.02 provides:

Any judgment or decree rendered by any court of general jurisdiction * * * within this state shall be a lien upon lands and tenements of each judgment debtor within any county of this state from the time there is filed in the office of the clerk of the court of common pleas of such county a certificate of such judgment * * *.

In turn, R.C. 2327.02(A)(1) authorizes a judgment creditor to execute its judgment against the property of the judgment debtor. When a judgment creditor enforces its lien against the real property of the judgment debtor, the court must order a judicial sale of the property. *See* R.C. 2323.07 ("When a mortgage is foreclosed or a specific lien

enforced, a sale of the property, or a transfer of property * * * shall be ordered by the court having jurisdiction * * *).

{¶10} R.C. 5302.20 governs creditors of survivorship tenancies in Ohio, like the one involved in this case. Section (C)(4) describes how a creditor can enforce its judgment lien against one of the joint tenants. That section provides:

(C) A survivorship tenancy has the following characteristics or ramifications:

(4) A creditor of a survivorship tenant may enforce a lien against the interest of one or more survivorship tenants by an action to marshal liens against the interest of the debtor or debtors. Every person with an interest in or lien against the interest of the debtor or debtors shall be made a party to the action. Upon a determination by the court that a party or cross-claimant has a valid lien against the interest of a survivorship tenant, the title to the real property ceases to be a survivorship tenancy and becomes a tenancy in common. Each tenant in common of that nature then holds an undivided share in the title. The interest of each tenant in common of that nature shall be equal unless otherwise provided in the instrument creating the survivorship tenancy. The court then may order the sale of the fractional interest of the lien debtor or debtors as on execution, and the proceeds of the sale shall be applied to pay the lien creditors in the order of their priority.

R.C. 5302.20(C)(4).

Thus, R.C. 5302.20(C)(4) authorizes the enforcement of a judgment lien against the interest of one or more survivorship tenants.

ANALYSIS

Enforcement of a valid and specific lien

{¶11} Appellant asserts that “sale of the fractional interest of the lien debtor or debtors” as set forth above in R.C. 5302.20(C)(4) is mandatory, meaning it is the sole remedy available to the Zoo to enforce its judgment against Mr. Fingerhut who jointly owns property with Appellant. We disagree.

{¶12} It is well-established in Ohio that, pursuant to R.C. 2329.02, “a lien is immediately created upon the lands of the judgment debtor when a certificate of judgment is filed with the clerk of courts.” *State ex rel. Collier v. Farley*, 2006-Ohio-4901, ¶ 19 (4th Dist.); *Denune v. Carter-Jones Lumber Co.*, 144 Ohio App.3d 266, 268-269 (2d Dist. 2001); *Feinstein v. Rogers*, 2 Ohio App.3d 96, 97-98 (10th Dist. 1981). A valid lien may be enforced in several ways, including a foreclosure action on the judgment debtor's real property. *Sheely v. Gindlesberger*, 2017-Ohio-200, ¶ 19 (5th Dist.).

{¶13} The *Sheely* court held “[t]he Ohio Revised Code provides that a judgment creditor may elect to enforce a judgment against a judgment debtor by either of the alternative methods provided by R.C. Chapter 2323 or R.C. Chapter 2329.” *Id.*, quoting *Denune*, at 269 (“In general, liens may be enforced in several ways, *inter alia*, a[sic] R.C. 2323.07 foreclosure action or a writ of execution pursuant to R.C. Chapter 2329.”); *Toot v. Pitello*, 2006-Ohio-4863, ¶ 26 (7th Dist.); *New Falls Corp. v. Pierson*, 2014-Ohio-567, ¶¶ 10-12 (“The record, therefore, clearly shows that New Falls was a proper judgment creditor in these proceedings and was entitled to enforce its rights through a foreclosure proceeding.”).

{¶14} Thus, a lien established pursuant to R.C. 2329.02 is a specific lien within the meaning of R.C. 2323.07, and a plaintiff who obtains said lien may enforce it through

a foreclosure action, which is simply the enforcement of the debt obligation. *Sheely*, at ¶ 19; *Wilborn v. Bank One Corp.*, 2009-Ohio-306. This Court stated:

RC. 2329.02 is intended to create a specific lien upon the lands and tenements of the judgment debtor which lie within the county at the time there is filed in the office of the clerk of the court of common pleas of such county a certificate of judgment. The lien applies specifically to all such property identified as belonging to the judgment debtor at the time of the filing of the certificate *and may be enforced as a specific lien pursuant to R.C. 2323.07 by a foreclosure action.*

Sheely, at ¶ 21.

{¶15} Here, as stated, it is undisputed that the Zoo had a valid, enforceable lien against Mr. Fingerhut's Property once it properly filed the certificate of judgment in Delaware County. The Zoo then pursued foreclosure under R.C. Chapter 2323. Examining the language of R.C. 5302.20(C)(4), it becomes clear that it is not the sole, mandatory option for the Zoo to enforce its lien as Appellant suggests.

{¶16} Indeed, Section (C)(4) outlines several things that *are* mandatory with use of the word "shall" such as: "[e]very person with an interest in or lien against the interest of the debtor or debtors shall be made a party to the action;" and "[t]he interest of each tenant in common of that nature shall be equal unless otherwise provided . . ." and "[t]he court then may order the sale of the fractional interest of the lien debtor or debtors as on execution, and the proceeds of the sale shall be applied to pay the lien creditors in the order of their priority. R.C. 5302.20(C)(4). Thus, the legislature chose to use the word "may" and "shall" in relation to different actions to be taken by a court or creditor, clearly indicating that ordering the sale of a fractional interest is permissive. *See Crossbridge*

Inc. v. Shank, 74 Ohio App.3d 779, 786 (10th Dist. 1991) (discussing permissive versus mandatory words).

{¶17} As such, the Court is not limited to or required to order the sale of Mr. Fingerhut's fractional interest. The use of the word "may" in R.C. 5302.20(C)(4) makes the sale of Mr. Fingerhut's fractional interest optional. Therefore, the Zoo does not lose access to alternative methods of executing on its lien, e.g. a foreclosure action, simply because Mr. Fingerhut co-owns the Property with his wife. The issue resolves to whether the Zoo may foreclose on the entire Property, even though there is no lien against Appellant.

R.C. 5302.20 Authorizes the Sale of Entire Property

{¶18} Appellant claims the "plain language" of R.C. 5302.20(C)(4) authorizes the sale of the lien debtor's "fractional interest" only and precludes the sale of the entire property. Again, we disagree with Appellant. In fact, Appellant's argument ignores the plain language of the statute.

{¶19} The Ninth District has considered the very issue before this Court. *White v. Parks*, 2009-Ohio-703 (9th Dist.). In *White*, the question was whether R.C. 5302.20 authorizes the trial court to order sale of the entire property owned by joint survivorship tenants when the creditor had a judgment lien against only one of the owners. In affirming the trial court, the Ninth District stated:

Here, the statute unambiguously sets forth how a judgment creditor goes about enforcing its lien against a debtor who owns property as a joint tenant with rights of survivorship. * * * The trial court, too, acted consistent with the statutory framework set forth in R.C. 5302.20(C)(4) in determining that the Whites held a valid lien against property owned by Mr. Parks in a

survivorship tenancy with his wife. Accordingly, the court then ordered the sale of Mr. Parks' interest in the property, as the lien debtor, and preserved Mrs. Parks' interest in the property, as the non-debtor, by ordering that she be paid before any sale proceeds were directed to the judgment creditor. It is worth noting that, while the court can order the sale of the debtor's fractional interest, the lien creditor is not entitled to more than the *debtor's fractional interest* in the property and cannot collect on its judgment from the non-debtor. Stated differently, the judgment creditor can only reach the debtor's interest in the property; a non-debtor could not be ordered to help satisfy the judgment creditor out of his or her foreclosure sale proceeds.

The language of R.C. 5302.20(C)(4) does not prohibit the sale of the non-debtor's fractional interest as Mrs. Parks alleges, nor are we willing to read that additional language into the statute. See *Hubbard*, at 14. Furthermore, as a practical matter, were we to endorse Mrs. Parks' application of the statute, it is unclear how a judgment creditor would ever be permitted to exercise his statutory right to order the sale of a property under R.C. 5302.20(C)(4) in any circumstance other than when the lien debtor was the sole owner of the property.

Id., at ¶¶ 11-13 (emphasis added).

{¶20} Later, in *Wurst*, the court cited the above *Parks* case for its holding regarding R.C. 5302.20(C)(4) despite the issue in *Wurst* being slightly different. The Court stated:

R.C. 5302.20 governs survivorship tenancies. R.C. 5302.20(C)(4) sets forth the procedure for a judgment creditor to enforce its lien against a

debtor who owns property as a joint tenant with rights of survivorship. Under this provision, a trial court may order an entire property sold, including a non-debtor's fractional interest, to satisfy a judgment creditor's lien. See, e.g., *White v. Parks*, * * * 2009-Ohio-703, ¶ 11. However, R.C. 5302.20 does not address situations where a joint tenant debtor predeceases a non-debtor joint tenant.

Wurst v. Naumann, 2022 Ohio Misc. Lexis 2812, *3-4 (Ct. Common Pleas, Lucas Cty.), citing *White*, at ¶ 11; *Pramco Iv v. Lippert*, 2009 Ohio Misc. LEXIS 16221, *8 (Ct. Common Pleas, Summit Cty.) (“A judgment debtor may foreclose and request an order for sale on a fractional interest of the lien debtor pursuant to R.C. 5302.20(C)(4).”); *New Falls Corp. v. Pierson*, 2014-Ohio-567, ¶¶ 11-13 (9th Dist.) (following *White*, supra, and upholding the foreclosure of the entire property held in survivorship tenancy); *In re Lavine*, 2012 Bankr. LEXIS 4333, *6 (N.D. Ohio), citing *White*, supra.

{¶21} In line with *White* and other cases above, we conclude the plain language of R.C. 5302.20(C)(4) does not prohibit a court from ordering the sale of the entire property owned by joint tenants, even if only one tenant is the judgment-debtor. *White*, at ¶¶ 11-13; *Lavine*, supra, at *6. Once the court determines a valid lien exists, the survivorship tenancy terminates and becomes a tenancy in common and each tenant has an undivided share in the whole. The court then “may” order the sale of the fractional interest of the lien debtor or debtors and pay the creditors in order of priority from sale proceeds.

{¶22} It would be impractical to suggest that the trial court could order the sale of only one-half of the interest. Indeed, R.C. 5302.20 protects the non-debtor tenant's interest in the real property from the other tenant's creditors through the mandate that “the proceeds of the sale shall be applied to pay the lien creditors in the order of their

priority.” See *White*, supra, ¶ 12 (stating that “while the court can order the sale of the debtor’s fractional interest, the lien creditor is not entitled to more than the debtor’s fractional interest in the property and cannot collect on its judgment from the non-debtor.”).

{¶23} In other words, the judgment creditor can only reach the debtor’s interest in the property; a non-debtor could not be ordered to help satisfy the judgment creditor out of her foreclosure sale proceeds. *Id.*; *Lippert*, at *8; see also *CitiMortgage, Inc. v. Firestone*, 2012-Ohio-2044, ¶ 12 (9th Dist.). Thus, because the Zoo’s judgment will not be paid from the proceeds until after Appellant’s interest is paid, Appellant’s interest is protected. To hold otherwise renders the foreclosure mechanism useless against any judgment debtor who co-owns property with a non-debtor tenant. For these reasons, **Appellant’s first assignment of error is overruled.**

{¶24} In the second assignment of error, Appellant claims the trial court erred in ordering foreclosure. However, for the same reasons already set forth in this Opinion, the court did not err. The undisputed material facts established that the Zoo was entitled to a decree of foreclosure as a matter of law. **Appellant’s second assignment of error is overruled.**

CONCLUSION

{¶25} Appellant's first and second assignments of error are overruled and the judgment of the Delaware County Court of Common Pleas is affirmed in all respects.

{¶26} Costs to Appellant.

By: Montgomery, J.

Hoffman, P.J. and

Baldwin, J. concur.