

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000223-MR

NANCY WRIGHT

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BRIAN C. EDWARDS, JUDGE
ACTION NO. 11-CI-401666

DONARD PARK CONDOMINIUM
ASSOCIATION, INC.

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: COMBS, DIXON, AND NICKELL, JUDGES.

DIXON, JUDGE: Nancy Wright, *pro se*, appeals the Jefferson Circuit Court's order confirming report of sale in a foreclosure action. After careful review, we dismiss Wright's appeal as untimely.

In May 2011, Donard Park Condominium Association, Inc. filed a foreclosure action for unpaid assessments against Wright and her mortgagee, Fifth

Third Mortgage Company. Shortly thereafter, Fifth Third filed a crossclaim against Wright to foreclose its mortgage. The Jefferson Circuit Court entered default judgments in favor of Fifth Third and Donard Park and ordered the property to be sold. Fifth Third purchased the property at the master commissioner's sale and assigned its bid to Federal Home Loan Mortgage Corporation (FHLMC). The circuit court confirmed the sale by order entered November 12, 2015, and no appeal was filed.

After the sale was confirmed, Wright did not vacate the property. Two months later, FHLMC petitioned for writ of possession to enforce the court's judgment. On January 26, 2016, the court issued a writ of possession in favor of FHLMC; thereafter, Wright filed a notice of appeal on February 16.

Wright's arguments on appeal relate to the foreclosure and sale of her property. The circuit court's order confirming the sale was a final and appealable order. *Young v. U.S. Bank, Inc.*, 343 S.W.3d 618, 620 (Ky. App. 2011).

Although the court subsequently issued a writ of possession to enforce its prior order, the writ did "not provide a means for attacking the original judgment." *Id.* at 621. To challenge the November 12, 2015, order confirming sale, Wright was obligated to file a notice of appeal within thirty days. CR 73.02(1)(a). "Filing a notice of appeal within the prescribed time frame is still mandatory and failure to do so is fatal to an appeal." *Fox v. House*, 912 S.W.2d 450, 451 (Ky. App. 1995).

Because Wright filed her notice of appeal three months after the judgment was rendered, we must dismiss the appeal as untimely.¹

For the reasons stated herein, this appeal is dismissed.

ALL CONCUR.

ENTERED: April 21, 2017

/s/ Donna L. Dixon
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

Nancy Wright
Louisville, Kentucky

¹ We note, even if Wright had timely filed her appeal, we would nevertheless be compelled to dismiss the appeal for failing to name indispensable parties. In her notice of appeal, Wright failed to name Fifth Third Home Mortgage and FHLMC as Appellees. “[F]ailure to name an indispensable party in the notice of appeal is a jurisdictional defect that cannot be remedied after the thirty-day period for filing a notice of appeal as provided by CR 73.02 has run.” *Browning v. Preece*, 392 S.W.3d 388, 391 (Ky. 2013) (citation and quotation marks omitted).