

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA11-631
NORTH CAROLINA COURT OF APPEALS

Filed: 6 December 2011

COUNTY OF CUMBERLAND and THE CITY OF
FAYETTEVILLE[,] political Subdivisions
of the State of North Carolina,
Plaintiffs

v.

Cumberland County
No. 10 CVD 4694

PHILIP WAYNE BARTON and C. LEON LEE,
II aka CLIFFORD LEON LEE, II, Owners;
WILLIAM T. RAY, Lienholder; MARY P.
RAY, Lienholder; STEVE BUNCE, TRUSTEE;
DEPARTMENT OF THE TREASURY - INTERNAL
REVENUE SERVICE, Judgment Lienholder;
Defendants

Appeal by defendants from judgment entered 16 December 2010
by Judge Kimbrell K. Tucker in the Cumberland County District
Court. Heard in the Court of Appeals 7 November 2011.

*Harvey W. Raynor, III, Attorney for County of Cumberland,
for Plaintiff-Appellees.*

Philip Wayne Barton, Defendant-Appellant, pro se.

C. Leon Lee, II, Defendant-Appellant, pro se.

ERVIN, Judge.

Defendants Philip Wayne Barton and C. Leon Lee, II, appeal
from a judgment authorizing the sale of a tract of real property

owned by Defendants as a result of Defendants' failure to pay county taxes and a city assessment applicable to the property for 2008, 2009, and 2010. On appeal, Defendants contend that the trial court erred by entering judgment in favor of Plaintiffs Cumberland County and the City of Fayetteville on the grounds that the record did not adequately support the unpaid tax amount found appropriate by the trial court. However, given that the foreclosure sale authorized by the trial court's judgment has already occurred, we conclude that Defendants' appeal should be dismissed on mootness grounds.

I. Factual Background

On 25 May 2010, Plaintiffs filed a complaint seeking to reduce unpaid 2008, 2009, and 2010 property taxes and assessments associated with a tract of property owned by Defendants to judgment and requiring the sale of the property in question for the purpose of satisfying the unpaid tax and assessment obligations. On 10 July 2010 and 18 October 2010, Defendants filed answers denying the material allegations of Plaintiffs' complaint. On 21 October 2010, Plaintiffs obtained an entry of default against two individuals who held liens against Defendants' property and the trustee under a deed of trust applicable to that property. On the same date, Plaintiffs filed a certificate indicating that Defendants owed \$8,282.49 in

taxes and assessments relating to 2008, 2009, and 2010 associated with the real property in question as authorized by N.C. Gen. Stat. § 105-374(e).

On 29 October 2010, Plaintiffs filed an amended complaint adding the Internal Revenue Service of the United States Treasury Department as a party defendant as a result of the fact that the Internal Revenue Service held a lien against the property. On 22 November 2010, the Internal Revenue Service filed an answer to Plaintiffs' amended complaint joining in Plaintiffs' request that Defendant's property be sold and requesting that the proceeds of the resulting sale be used to satisfy its lien. On 6 December 2010, Plaintiffs filed a motion seeking an award of legal fees pursuant to N.C. Gen. Stat. § 105-349.

The case came on for trial before the trial court, sitting without a jury, at the 8 December 2010 session of Cumberland County District Court. On 16 December 2010, the trial court entered an order finding that Defendants "are the lawful [o]wners of the real property which is the subject of this action;" that a total of \$8,354.65 in "taxes remain[ed] unpaid for said property for the years 2008, 2009 and 2010;" that "David B. Craig, attorney for the Plaintiff(s), is appointed Commissioner to sell the property at public auction for cash to

the highest bidder;" and that, "after delivery of the deed and collection of the purchase price, the Commissioner shall apply the proceeds as provided by law." On the same date, the trial court entered an order awarding Plaintiffs \$2,500.00 in attorney's fees, with "the Final Report in this matter [to] reflect the payment." On 20 December 2010 and 12 January 2011, Defendants noted appeals to this Court from the trial court's judgment and from the order requiring them to pay Plaintiffs' attorney's fees.

On 21 December 2010, the Commissioner filed a notice indicating that the foreclosure sale required by the trial court's judgment had been scheduled for 12:00 noon on 13 January 2011 at the Cumberland County Courthouse. On 12 January 2011, Defendants filed motions seeking the entry of an order staying the foreclosure sale. On 13 January 2011, the trial court conducted a hearing concerning Defendants' stay motions. Although the record does not contain an order denying Defendants' request that the foreclosure sale be stayed, it does reflect that the Commissioner conducted the sale ordered by the trial court's judgment as scheduled. According to the Clerk's order of confirmation, the real property was sold at a "regularly and lawfully conducted" sale that followed "due

advertisement in accordance with law" on 13 January 2011 for \$95,000.00.

On 26 January 2011, the Commissioner sought confirmation of the sale on the grounds that "more than ten days have elapsed since the sale of the real property described in the judgment in this action and since the report of the sale to the court" and since "no advanced or upset bid has been offered for the real property." On the same date, the Clerk confirmed the sale, authorized the Commissioner to "deliver to the purchaser a deed to the real property in fee simple," and ordered the Commissioner to "file his final report showing the disbursement of the proceeds of the sale in accordance with the judgment heretofore rendered in this action." On 15 February 2011, the Clerk approved the Commissioner's final report, which reflected the delivery of a deed to the purchaser and the making of various disbursements in accordance with the trial court's judgment.

II. Legal Analysis

According to well-established North Carolina law, a case is moot "when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Lange v. Lange*, 357 N.C. 645, 647, 588 S.E.2d 877, 879 (2003) (citation and quotation marks omitted). Put

another way, "[w]hen the questions originally at issue in a case are no longer at issue when the case is on appeal, the appeal is moot and should be dismissed." *In re Hackley*, __ N.C. App. __, __, 713 S.E.2d 119, 121 (2011), *disc. review denied and dismissed as moot*, __ N.C. __, __ S.E.2d __ (2011) (citing *N.C. Press Assoc., Inc. v. Spangler*, 87 N.C. App. 169, 171, 360 S.E.2d 138, 139 (1987)). As a result, this Court held in *Hackley* that, when a court-ordered sale of real property has been completed, the sale has not been stayed, no upset bid was submitted in a timely fashion, no temporary restraining order or preliminary injunction has been entered, and a trustee's deed to the purchase has been executed, delivered, and recorded, any appeal from the order of sale was moot because parties' rights become fixed. *Hackley*, 713 S.E.2d at 121. See also *Austin v. Dare County*, 240 N.C. 662, 663, 83 S.E.2d 702, 702-03 (1954) (stating that, because the real property at issue had already been sold, any appeal from the denial of a temporary restraining order sought for the purpose of preventing the sale of the property raised merely "an academic question" given that "a court cannot restrain the doing of that which has been already consummated"); *Surety Corp. v. Sharpe*, 233 N.C. 644, 645, 65 S.E.2d 137, 138 (1951) (dismissing a plaintiff's appeal where the property at issue had been sold, effectively rendering the

question before the Supreme Court "academic"). In this case, as in *Hackley*, the record clearly establishes that the foreclosure sale required by the trial court's judgment has been completed, that the proceeds of the sale have been applied to eliminate Defendants' tax and assessment liabilities, and that Defendants' real property has been conveyed to the purchaser. As a result, since any decision that we might issue in this case based upon Defendants' challenges to the trial court's order would have no practical effect, Defendants' appeal has been rendered moot and must be dismissed.

APPEAL DISMISSED.

Chief Judge MARTIN and Judge STROUD concur.

Report per Rule 30(e).