

[Cite as *Wells Fargo Bank, N.A. v. Lytton*, 2015-Ohio-2706.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102281

WELLS FARGO BANK, N.A.

PLAINTIFF-APPELLEE

vs.

DEBORAH A. LYTTON, ET AL.

DEFENDANT-APPELLEE

[Appeal by Intervenor Joyce Pring]

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-11-756389

BEFORE: Jones, P.J., E.T. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: July 2, 2015

ATTORNEY FOR APPELLANT

Michael Aten
3800 Lakeside Avenue, Suite 400
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEES

For Wells Fargo Bank, N.A.

Matthew P. Curry
David B. Bokor
John E. Codrea
Manley, Deas & Kochalski, L.L.C.
P.O. Box 165028
Columbus, Ohio 43216

James L. Defeo
Thompson & Hine, L.L.P.
3900 Key Center
127 Public Square
Cleveland, Ohio 44114

Scott A. King
Terry W. Posey, Jr.
10050 Innovation Drive, Suite 400
Miamisburg, Ohio 45342

Justin M. Ritch
Manley, Deas & Kochalski, L.L.C.
P.O. Box 165028
Columbus, Ohio 43216

For Deborah A. Lytton

Mark A. Kaiser
P.O. Box 632
Painesville, Ohio 44077

LARRY A. JONES, SR., P.J.:

{¶1} Intervenor-appellant, Joyce Pring, appeals from the trial court's order denying her motion to vacate the order of confirmation of sale. Finding some merit to her appeal, we reverse and remand for a hearing.

{¶2} Plaintiff-appellee, Wells Fargo Bank, N.A., brought an action in foreclosure against defendant-appellee Deborah Lytton for property she owned located at 14112 Rainbow Avenue in Cleveland. The property, one-half of a conjoined duplex, was occupied by Lytton's son. The other half of the duplex, 14110 Rainbow Avenue, was owned by Pring.

{¶3} On March 3, 2014, Pring submitted the winning bid at sheriff's sale for 14112 Rainbow Avenue. On March 16, 2014, the property was destroyed by a fire that was allegedly caused by Lytton's son. Pring's property was also damaged in the fire. The court was not informed that there had been a fire on the property or of the ensuing damage.

{¶4} On March 20, 2014, less than three weeks after the initial sale of the property to Pring, the trial court issued a decree confirming the sale.

{¶5} On April 3, 2014, Pring moved to intervene in the action and filed a proposed motion for relief from judgment asking the court to vacate the decree. The trial court granted the motion to intervene on May 29, 2014, and deemed Pring's motion for relief from judgment filed as of that date.

{¶6} On October 31, 2014, the trial court denied Pring's motion for relief from judgment, finding:

The intervenor's motion for relief from judgment is denied. Under the doctrine of caveat emptor, or let the buyer beware, the intervenor, Joyce Pring, assumed the risk associated with the property when she purchased the property at the sheriff's sale. While the court is sympathetic to the intervenor's position given the facts at issue, the court cannot vacate the confirmation of a sale that was held in all respects in conformity with the law.

The unfortunate circumstances following the sale were completed [sic] unknown and unrelated to the court of common pleas and the Cuyahoga county sheriff. Pursuant to Revised Code 2329.31, the court of common pleas found that the sale therein was made, in respect, in conformity with sections 2329.01 and 2329.61 of the revised code. The motion for relief from judgment makes no mention of any informality or improper conduct in the sale that violates the Ohio Revised Code. The intervenor has not shown any lack of notice nor violation of due process by the clerk of courts or the sheriff. Due the legality of the sale and the lack of evidence supporting a defense to the enforcement of the confirmation entry, the motion is denied.

{¶7} Pring now appeals, raising one assignment of error for our review:

I. The trial court erred in overruling Appellant's motion to vacate the decree of confirmation of the sale of the subject property herein.

{¶8} A reviewing court will not disturb a trial court's decision regarding a Civ.R. 60(B) motion unless there is an abuse of discretion. *State ex rel. Russo v. Deters*, 80 Ohio St.3d 152, 153, 684 N.E.2d 1237 (1997). To prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party must demonstrate (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (B)(5); and (3) the motion is made within a reasonable time, and where the grounds for relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment was entered. *GTE Automatic Elec. v. ARC Indus.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus.

{¶9} The grounds for relief under Civ.R. 60(B) are (1) mistake, inadvertence,

surprise, or excusable neglect; (2) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Civ.R. 59(B); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment has been satisfied, released, or discharged; and (5) any other reason justifying relief from the judgment.

{¶10} Pring claims that the trial court abused its discretion in denying her motion for relief from judgment, which she filed pursuant to Civ.R. 60(B)(1). According to Pring, although she failed to seek a stay of confirmation after the fire, any neglect should be excused due to the brief time that elapsed between the fire and the confirmation. She also argues that the doctrine of caveat emptor does not apply to her situation because the fire occurred after she purchased the home. Moreover, because she purchased the house at a sheriff's sale, she had no rights to the property prior to confirmation of the sale and could neither access the property nor insure it.

{¶11} Wells Fargo argues that Pring should have appealed the original decree of confirmation instead of filing a motion for relief from judgment, is subject to doctrine of caveat emptor, and had an insurable interest in the property from the time of purchase.

{¶12} Wells Fargo cites *Treasurer v. Kafele*, 10th Dist. Franklin No. 05AP-252, 2005-Ohio-6618, to support its position that the trial court did not err in confirming the sale. In *Kafele*, the property was vandalized in the two months between the sheriff's sale and confirmation. The purchaser intervened and sought to avoid the sale. The trial court agreed, but the foreclosing party appealed. The Tenth District reversed, holding it was an abuse of discretion to avoid the sale. The court noted the exception to general rule that a

purchaser of real estate at a judicial sale who fails to object bears the risk of natural depreciation or of accidental damage to the property that occur due to long delays in the proceedings. *Id.* at ¶ 11, citing *Mid-American Natl. Bank v. Heiges*, 6th Dist. Ottawa No. 94OT025, 1994 Ohio App. LEXIS 5145, *5-6 (Nov. 18, 1994). The exception exists for “preventable damage occurring after the sale, caused by deliberate acts of the owner in possession.” *Kafele at id.* citing *Heiges*.

{¶13} The court noted that the purchaser had only alleged a lack of title; he had not alleged that the defendant was responsible for the alleged vandalism, either through his personal acts or by denying the purchaser access after the sale. *Kafele* at ¶ 12. Therefore, since the purchaser bore the risk of such damage, the trial court’s decision to vacate the sheriff’s sale was an abuse of discretion. *Id.*

{¶14} In *Heiges*, also cited to by Wells Fargo, the Sixth District noted that the doctrine of caveat emptor, applied rigorously to foreclosure actions, pertains only to known defects or reasonably ascertainable defects in the property at the time of sale. * * * In our view, the doctrine would, therefore, not apply to preventable damage occurring after the sale, caused by deliberate acts of the owner in possession.

Id.

{¶15} Pring purchased the property on March 3, 2014. Two weeks later, on March 16 and 17,¹ the property was destroyed by a fire that was allegedly caused by the occupant, Lytton’s son. To show this, Pring attached a copy of the fire report to her motion for relief from judgment. In the report, Lytton’s son told responding firefighters

¹ The fire report indicates the fire started shortly before midnight on March 16. It was not extinguished until March 17.

that he fell asleep and an electric heater started the fire. The report further stated that unidentified family members who appeared on scene stated they had previously lived in the property and the son was a “crackhead” and “heroin junkie,” who fell asleep “all the time smoking and [had] burned the couch before.” The report also indicated that both Lytton’s son and the unidentified family members “disappeared” before they could be further interviewed. The report itself does not conclude how the fire was started or whether there were human factors contributing to ignition.

{¶16} Neither party apprised the trial court of the fire or the damage to the property.

At the time of the fire, Pring, who had an interest in the property, was not a party to the foreclosure case. Three days later, on March 20, the trial court confirmed the sale. Pring filed her motion to intervene in the case and proposed motion for relief from judgment two weeks after the confirmation.

{¶17} Although Wells Fargo argues that Pring should have appealed the March 20, 2014, order of confirmation, she was not made a party to the case until May 29, 2014, after the 30 day time to appeal had passed. *See* App.R. 4. Moreover, an order of confirmation becomes “dispositive as to the propriety of the sale and the sale confirmation procedures unless properly vacated by the trial court pursuant to Civ.R. 60(B).” *Sky Bank v. Mamone*, 182 Ohio App.3d 323, 2009-Ohio-2265, 912 N.E.2d 668, ¶ 26 (8th Dist.), citing *Triple F Invest., Inc. v. Pacific Fin. Servs., Inc.*, 11th Dist. Portage No. 2000-P-0090, 2001 Ohio App. LEXIS 2484 (June 1, 2001). Thus, a trial court may review an order confirming a sheriff’s sale only if its jurisdiction is invoked by means of Civ.R. 60(B). *Id.* citing *Rokakis v. Snipes*, 8th Dist. Cuyahoga No. 73938, 1999 Ohio

App. LEXIS 824 (Mar. 4, 1999). Therefore, a motion for relief from judgment pursuant to Civ.R. 60(B) was a proper avenue by which Pring could challenge the confirmation of sale.

{¶18} It is well settled that an evidentiary hearing is not required where the motion and attached evidentiary material do not contain allegations of operative facts that would warrant Civ.R. 60(B) relief. *See State ex rel. Richard v. Seidner*, 78 Ohio St.3d 116, 177, 676 N.E.2d 889 (1997); *Stafford & Stafford Co., L.P.A. v. Steele*, 8th Dist. Cuyahoga No. 99554, 2013-Ohio-4042, ¶ 21. However, based on the specific facts of this case — the short time frame from time of purchase to fire to confirmation of sale, the allegation that the fire was caused by the former owner’s son who was still living in the property, and the fact that Pring moved to intervene in the case and for relief from judgment shortly after the fire occurred — we find that the trial court abused its discretion when it denied Pring’s motion for relief from judgment without first holding an evidentiary hearing. Pring has shown sufficient operative facts that, if true, could warrant relief from judgment or, at the least, an offset to the purchase price due to property damage allegedly wrought at the hands of Lytton’s son. Thus, because questions of fact remain concerning the cause and nature of the damage, the court erred in denying the motion without a hearing.

{¶19} The sole assignment of error is sustained. Case reversed and remanded for proceedings consistent with this opinion.

It is ordered that appellant recover of appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga

County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LARRY A. JONES, SR., PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR