

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

TPI Asset Management, LLC,	:	
Plaintiff-Appellant,	:	
v.	:	No. 14AP-525
	:	(C.P.C. No. 09CV-15665)
Dawna J. Ealey et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on March 3, 2015

Bryan B. Johnson, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} TPI Asset Management, LLC, is appealing from a judgment entry entered in the Franklin County Court of Common Pleas. A single error is assigned for our consideration:

FIRST ASSIGNMENT OF ERROR- THE TRIAL COURT ERRED BY REFUSING TO ORDER APPELLANT'S COURT COSTS AND TITLE INSURANCE PREMIUM COSTS TO BE PAID FROM THE SALE PROCEEDS.

{¶ 2} R.C. 2329.191(B) requires the filing of preliminary and final judicial reports in foreclosure actions. The preliminary report must contain the property's legal description, address, parcel number, owner's name, a reference to the volume and page where the deed was recorded, and the names and addresses of lienholders. R.C. 2329.191(B)(1) through (7).

{¶ 3} The statute further provides that:

Prior to submitting any order or judgment entry to a court that would order the sale of the residential real estate, the party submitting the order or judgment entry shall file with the clerk of the court of common pleas a final judicial report that updates the state of the record title to that real estate from the effective date of the preliminary judicial report through the date of lis pendens and includes a copy of the court's docket for the case. The cost of the title examination necessary for the preparation of both the preliminary judicial report and the final judicial report together with the premiums for those reports computed as required by the department of insurance, based on the fair market value of the real estate, or in the case of a foreclosure, the principal balance of the mortgage or other lien being foreclosed on or any other additional amount as may be ordered by the court shall be taxed as costs in the case.

R.C. 2329.191(B)(1) through (7).

{¶ 4} The purpose of the final report is to update the state of the record title to the property at issue. R.C. 2329.191(B). The legislature's decision to include this mandatory language in the statute evidences the legislature's understanding of the importance of establishing a definitive record of title in a foreclosure action prior to the ultimate sale or disposition of the property. *GMAC Mgt., L.L.C. v. Jacobs*, 196 Ohio App.3d 167, 172-73, 2011-Ohio-1780, ¶ 22 (9th Dist.).

{¶ 5} Here, this foreclosure case was initiated by appellant to foreclose on its judgment lien against property owned by defendants Rueben and Dawn Ealey. Appellant paid the court cost deposits, the title search, and the preliminary and final judicial reports. An order of sale was issued, but later withdrawn because the defendants filed for bankruptcy. Appellant's judicial lien was avoided in the bankruptcy proceeding because it impeded the debtors' homestead exemption.

{¶ 6} After the debtors were discharged in bankruptcy, appellee, Huntington National Bank ("Huntington"), sought to reactivate the case and, was given leave to file an amended answer, counterclaim, cross-claim and third-party complaint.

{¶ 7} Counsel for Huntington circulated a proposed motion for default judgment and decree of foreclosure which appellant's counsel refused to approve unless appellant's court costs and judicial report premiums were included. Huntington's counsel refused,

and appellant filed a memorandum contra to Huntington's motion requesting that its costs be included in the entry granting the motion. Huntington opposed the motion, arguing that it was solely entitled to obtain judgment on its own behalf and was not required to reimburse appellant for costs it incurred in filing for foreclosure on its more junior lien. Huntington also filed its own preliminary and final judicial reports.

{¶ 8} On June 20, 2014, the trial court issued its entry granting default judgment and decree of foreclosure without including appellant's costs in the entry granting the motion.

{¶ 9} Appellant is the only party who filed a brief in this appeal. No other party has filed a brief. We therefore are permitted by App.R. 18(C) to accept the appellant's statement of the facts and issues as correct. We find that in this case, appellant's brief reasonably appears, based on R.C. 2329.191(B), to sustain reversal of the entry in the trial court which failed to order appellant's court costs and title insurance premiums be paid to appellant from the proceeds of the sheriff's sale. To refuse reimbursement of appellant's out-of-pocket court costs would provide a windfall to Huntington who, as far as we can tell from the record, has not paid anything in court costs. Since both appellant and Huntington filed preliminary and final judicial reports, R.C. 2329.191(B) mandates that appellant's court costs and title insurance premiums be reimbursed from the sale proceeds as well as those of Huntington.

{¶ 10} We sustain the single assignment of error and remand the case to the Franklin County Court of Common Pleas to enter a corrected entry.

Case remanded with instructions.

BROWN, P.J., and BRUNNER, J., concur.
