ARKANSAS COURT OF APPEALS

DIVISION I
No. CA08-1514

	Opinion Delivered September 9, 2009
KERRY GLEN NORDIN APPELLANT	APPEAL FROM THE JOHNSON COUNTY CIRCUIT COURT [NO. DR-2006-12]
V.	HONORABLE GORDON W. McCAIN, JR., JUDGE
CONNIE LYNN NORDIN APPELLEE	AFFIRMED

JOSEPHINE LINKER HART, Judge

Appellant, Kerry Glen Nordin, appeals from the circuit court's order setting aside the judicial sale of six of seven tracts of real property owned by appellant and appellee, Connie Lynn Nordin. He asserts that because appellee approved the sale of one of seven tracts sold at the judicial sale, appellee was estopped from asking that the other six sales be set aside. Alternatively, he argues the circuit court erred in setting aside the six sales because it failed to consider whether the price garnered by the sales was grossly inadequate. We affirm the circuit court's order.[1]

[1]Appellee argues that the circuit court has not entered a final, appealable order. She asserts that a confirmation of a judicial sale is a final order that may be appealed, and until six properties have been sold and the sales confirmed, there is no final order and no appeal may be taken. Appellant, however, is appealing from a decree that orders a judicial sale of property and places the court's directive into execution. Accordingly, it is a final order and appealable under Ark. R. App. P.-Civil 2(a)(1). *See Alberty v. Wideman*, 312 Ark. 434, 850 S.W.2d 314 (1993).

A divorce decree ordered the sale at public auction of real property owned by appellant and appellee. Appellee advertised the auction in the newspaper. At the auction, appellant purchased six tracts, and a third party purchased a seventh tract. Following the auction, appellee filed a motion to set aside the sales. Appellee asserted that at the auction, appellant required bidders to have letters of credit, and if appellee had been told that a letter of credit was required, she would have included this requirement in her advertisement. Prior to the hearing on the motion, however, the circuit court entered an order confirming the third-party sale, and the order was approved by both appellant and appellee.

At the hearing, appellant moved to dismiss, arguing that because appellee had agreed and consented to the third-party sale and the sale had been approved by the court, appellee waived her right to contest the other six sales and was estopped from challenging the sales. The court denied his motion, stating in its written order that the "partial sale ... did not constitute a waiver and estoppel does not apply." Further, the court set aside the six sales to appellant, stating in its order that "there was a unilateral change at the time of the previously held auction[,] which made the sale unfair."

On appeal, appellant asserts that appellee took "inconsistent positions" in this case. He argues that the court could not properly confirm the third-party sale and yet set aside the six sales to appellant, as the improper notice was common to all seven sales and the third-party sale cannot logically be isolated from the other six sales. Thus, he concludes that appellee was estopped from challenging the sales and that the court erred in setting aside the sales.

We observe that the doctrine against inconsistent positions preserves and protects the

judicial process by stopping parties from gaining an advantage by manipulating the courts. *Dupwe v. Wallace*, 355 Ark. 521, 140 S.W.3d 464 (2004). The courts have a right to rely on representations and statements that parties make to the court, and the doctrine is applied to knowing misrepresentations and fraud on the court to prevent a miscarriage of justice. *Id.*

We conclude that the circuit court properly declined to apply the doctrine of inconsistent positions. Here, appellant sought confirmation of all seven sales, and appellee agreed to have one of the sales confirmed. An order confirming the partial sale, which was approved by both parties, was entered without objection from appellant. As both appellant and appellee sought confirmation of the sale, there was no unfair advantage gained by appellee and no unfair detriment to appellant. Instead, both parties approved the court's order and both accepted the benefits of the order. Moreover, the circuit court—the entity that the doctrine would protect in this case—acted in a manner that established its implicit finding that it had not been manipulated. Accordingly, we affirm the court's decision not to apply the doctrine.

Appellant further argues that, even if the court's ruling was proper, the court "erred as a matter of law" by setting aside the sales upon a "finding of inequitable conduct" without first reaching the "threshold" issue of whether the price garnered by the sale was "grossly inadequate so as to shock the conscience" of the court. He further observes that in its ruling from the bench and in its order, the court was "completely silent" on the issue. He also observes that "[t]his silence by the court rises, in no small part, from the fact that [appellee] did not meet her burden of proof as to the current value of the land." He argues that

"[w]ithout a specific finding of grossly inadequate price, the sale could not properly be set aside."

As appellant acknowledges, the court did not rule at trial on whether the price was grossly inadequate. Appellant's argument on this point is premised upon the court's failure to do so. However, appellant's failure to obtain a ruling precludes our review, as appellant must seek such findings. *See Smith v. Quality Ford, Inc.*, 324 Ark. 272, 920 S.W.2d 497 (1996) (holding that appellant's argument that the trial court failed to give the required findings needed for a review of determining whether the facts as applied might be due to a misunderstanding of the law was not preserved for appellate review where appellant failed to request that the trial court make specific findings of fact and conclusions of law). Accordingly, we affirm the court's decision.

Affirmed.

GLOVER and MARSHALL, JJ., agree.