

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001114-MR

HALIFAX FINANCIAL GROUP, L.P.

APPELLANT

v. APPEAL FROM WOLFE CIRCUIT COURT
HONORABLE FRANK ALLEN FLETCHER, JUDGE
ACTION NO. 11-CI-00184

KELLY LAWSON; ROBERT HARRIS;
PAULA HARRIS; COMMONWEALTH OF
KENTUCKY, COUNTY OF WOLFE

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * ** * ** *

BEFORE: CAPERTON, COMBS, AND DIXON, JUDGES.

CAPERTON, JUDGE: Halifax Financial Group, L.P. appeals the trial court's bench order which set aside a court-ordered sale on the basis that the assessed value of the property was insufficient to reflect the true value of the property.

On appeal, Halifax argues that the court erred when it *sua sponte* concluded that the appraised value was insufficient to reflect the true value of the property and set

aside the judicial sale. After a thorough review of the parties' arguments, the record, and the applicable law, we believe that remand is necessary for an evidentiary hearing on the irregularity of the proceedings. Accordingly, we reverse and remand this matter for an evidentiary hearing.

Kelly Lawson was the owner of land in Wolfe County, Kentucky. In 2001, he executed an oil and gas lease.¹ In 2004, Lawson deeded the real estate to attorney Barbara Anderson for payment of legal fees. The land deeded was comprised of two tracts.² The real estate was subsequently sold to Appellees, Robert and Paula Harris. Central Bank loaned money to the Harrises to purchase the real estate.³ The title search attorney for Central Bank found several royalty tax obligations which had not been paid by Lawson pursuant to an oil lease but failed to discover the tax owed for 2001.

In March of 2009, Halifax purchased a Certificate of Delinquency on a mineral interest located in Wolfe County, Kentucky. This certificate was for 2001 delinquent taxes, with the named taxpayer being Kelly Lawson. The amount due for the taxes was \$104.52. Halifax paid \$250.36 for the certificate of delinquency. Halifax filed a complaint in foreclosure against Lawson in

¹ The Harrises argue that the deed reserved the Lawson conveyance of an oil and gas lease owned by Hooker Investments LTD., d/b/a Ravenna Oil Company. On remand, the court will need to determine if this entity was a necessary party to the action.

² On remand, the court will have the opportunity to assess whether the correct tract was involved in the lease. We remind the Harrises that the real property was not ordered to be sold; the sale was only of the gas and mineral rights.

³ It appears that the attorney for the Appellees believed that Central Bank had a mortgage on the property and had not been notified of the action. It was later learned that the mortgage on the property had been released in 2007, prior to Halifax's purchase of the Certificate of Delinquency.

September 2011. After obtaining discovery from the Kentucky Department of Revenue, Halifax learned that the current owners of the mineral interest were the Harrises. Halifax filed an amended complaint on February 15, 2012, which added the Harrises as defendants. The Harrises filed an answer stating that there was no valid foreclosure lien and denied all claims except the allegation that tax on royalties for the year 2001 had not been paid.

On April 2, 2012, Halifax filed a motion for judgment and order of sale. It was noticed to be heard on April 19, 2012. The motion was passed.⁴ A renewed motion for judgment and order of sale was made and on August 23, 2013, the court heard Halifax's counsel. The Harrises did not respond to the motion or attend the hearing. Counsel for the Harrises asserts that they were not provided notice of the hearing or served the judgment as reflected in the record, to which Halifax disagrees. Additionally, counsel for the Harrises argues that neither counsel nor the Harrises were served with the order referring the case to the Master Commissioner, the appraisal notice of sale or the Master Commissioner Report of Sale. The court entered a default judgment against Lawson, granted summary judgment against the Harrises and ordered the sale of "all undivided gas and oil mineral rights and royalty interests formerly owned by Kelly Lawson and now owned by Robert Harris and Paula Harris in the lands covered by the Booth Rdg Unit-South Lease, Lease #4813550268, formerly Lease # 7333550262, in Wolfe County, Kentucky."

⁴ Both parties allege various improprieties against the other concerning the motion hearings. On remand, the trial court will be able to address these concerns. Moreover, the court can entertain the arguments concerning whether Halifax provided the Harrises with the payoff amount.

Thereafter, the oil and mineral rights and royalty interests were sold at a judicial sale conducted at the courthouse. The appraised value was approximately \$11,239.00. Halifax purchased this property interest for approximately \$7,500.00. The Harrises claim that the first notice they received of the action was when they received the notice that objections to the sale must be made within ten days. The Harrises filed objections to the report of the sale. The parties then filed multiple responses. Included therein were the assessment values of the oil and mineral rights from 2006-2012 from \$28,781.00 to \$46,748.00.⁵

The court heard counsels' arguments and on April 19, 2013, set aside the sale citing that the assessed value was too low. Halifax argues that the court improperly reconsidered the assessed value and entered an order setting aside the judicial sale *sua sponte* and, accordingly, they appeal this order.

⁵ We believe that these assessments were for tax purposes.

On appeal⁶ Halifax argues (1) the trial court erred when it set aside the judicial sale and (2) the court had no basis under the law for doing so. The Harrises argue (1) the court did not err when it set aside the judicial sale pursuant to exceptions filed by the Harrises;⁷ (2) the court was entitled to set aside the judicial sale when the appraisal was so low as to be unconscionable and when the foreclosure sale was performed pursuant to the wrong statute.⁸

At the outset we note “[I]t is within the sound discretion of the circuit court to confirm or vacate a sale and that the court's exercise of that discretion will

⁶ We note the slightly confusing positions taken by the parties on this appeal. Halifax argues that the proper recourse for the Harrises was to appeal the order of sale and not through a bill of exceptions to a subsequent report of the sale. We note that the Harrises have not appealed. We agree with Halifax that an order of sale may be considered final and appealable. *See Security Federal Savings & Loan Association of Mayfield v. Nesler*, 697 S.W.2d 136, 138 (Ky. 1985). However, an order confirming or refusing to confirm a judicial sale is also a final and conclusive judgment. *See Maynard v. Boggs*, 735 S.W.2d 342, 343 (Ky. App. 1987); citing *Moore v. Waltman's Adm'x.*, 288 Ky. 258, 156 S.W.2d 100 (1941). In *Charles White Co., Inc. v. Percy Galbreath & Sons, Inc.*, 563 S.W.2d 478, 481 (Ky. App. 1978), the court explained:

P. A. Blackwell & Co. v. Canoe Creek Coal Co., 217 Ky. 778, 780, 290 S.W. 700, 701 (1927) explains the status of a judicial sale prior to court approval:

Until the chancellor acts upon the report of sale, and accepts the bid and approves and confirms the report of sale, the bidder is not a purchaser, but only a proposer, whose proposition may be accepted or rejected . . . His bid may be rejected at any time by the court for cause shown, but when confirmed he then acquires and assumes burdens for which he cannot be easily discharged.

Sub judice we note that Halifax properly appealed the refusal of the court to confirm the judicial sale and that the Harrises have not appealed any order. Thus, we confine ourselves to the issues presented by Halifax.

⁷ We note that the specific reason relied upon by the trial court was not raised by the exceptions; however, given the convoluted nature of the case and the irregularity thereof, coupled with the trial court's belief that the appraisal value was low, we believe it appropriate to remand this matter for further consideration by the trial court.

⁸ We decline to address this argument. Appellees' arguments concerning the appropriateness of utilizing a real estate statute to perform a judicial sale for oil and gas rights and royalty interest with the lease were not cross-appealed; thus, we decline to address it further.

not be disturbed unless it appears to this court to have been abused in the judicial sense.” *Lerner v. Mortgage Electronic Registration Systems, Inc.*, 423 S.W.3d 772, 773 (Ky. App. 2014), citing *Gross v. Gross*, 350 S.W.2d 470, 471 (Ky. 1961).

A determination or decision by the trial court is an abuse of discretion if it is arbitrary, unreasonable, unfair, or unsupported by sound legal principles.

Commonwealth v. English, 993 S.W.2d 941, 945 (Ky. 1999). However,

It is a salutary policy to engender and maintain confidence in the stability of sales made by a court. *Louisville Title Co. v. Ramsey*, 258 Ky. 183, 79 S.W.2d 693; *Melton v. Tipton*, 264 Ky. 196, 94 S.W.2d 350; *Allen v. Francis*, 292 Ky. 412, 166 S.W.2d 877. Such a sale ought not to be lightly disapproved where it was conducted in a fair and regular manner, and confirmation ought not to be refused except for substantial reasons.

Gross v. Gross, 350 S.W.2d 470, 471 (Ky. 1961). With this in mind we turn to the dispositive issue on appeal, whether the court erred in setting aside the sale citing that the assessed value was insufficient to reflect the true value of the property.

It has long been held:

[M]ere inadequacy in price, standing alone, is not a sufficient ground for the setting aside of a sale, unless the inadequacy is so great as to create a presumption of fraud or shock the conscience of the court, but when the inadequacy is accompanied by circumstances which would tend to cause the inadequacy, or where the inadequacy is attended by any apparent unfairness or impropriety or oppression on the part of those connected with the sale, the sale will be set aside, though such circumstances are slight, and, by themselves, do not furnish a sufficient reason for vacating the sale.

Morton v. Wade, 175 Ky. 564, 194 S.W. 802, 804 (1917).

We believe that this matter should be remanded to the trial court for an evidentiary hearing as there have been issues raised challenging the sufficiency of notice and service upon which the court, in its sound discretion, may take into consideration along with the alleged inadequate valuation in determining whether to set aside the sale.⁹, ¹⁰

Moreover, “When a party whose redemption rights are at stake believes the appraisal of his property is inadequate in any way, he is entitled to an evidentiary hearing to determine whether the appraisal was “irregular, fraudulent, or so erroneous as to be unconscionable[.]” *Eagle Cliff Resort, LLC v. KHBBJB, LLC*, 295 S.W.3d 850, 852-53 (Ky. App. 2009), citing *Burchett v. Bank Josephine*, 474 S.W.2d 66, 68 (Ky.1971).¹¹ Upon remand, after the evidentiary hearing, the

⁹ We are not determining that the price offered by Halifax was inadequate, only that it is for the trial court to so determine at a proper hearing.

¹⁰ Certainly it would be most prudent to challenge the appraisal of the property prior to the sale; however, the allegations of insufficiency of service, if proven, may have prevented such due to lack of notice.

¹¹ The *Burchett* court explained:

We have examined the exceptions and amended exceptions and are of the opinion that the only one of merit is the allegation that the appraisal before the sale was so low as to be a constructive fraud upon the appellants. Included in the exception is an affirmative allegation that the property sold had a reasonable value of \$160,000. This presented a factual issue.

We are of the opinion that the trial court erred in confirming the report of sale after the exceptions had been filed without first having an evidentiary hearing on the factual issue of the value of the property. KRS 426.530 provides an owner the right of redemption in the event the property sold by judicial decree does not bring two-thirds of its appraised value. An insufficient appraisal could defeat the right of redemption by the owner. We are not saying that the appraisal of \$40,000 is legally insufficient; we are saying that the trial court should have held an evidentiary hearing concerning the sufficiency of the appraisal.

The exceptions filed by the appellants are pleadings. Such pleadings do not require a response. They stand traversed as a matter of law. *Kelley's Heirs v. Burnam*, 305 Ky. 544, 204 S.W.2d 965. The burden is upon the one excepting to prove his allegations, or the exceptions will

court may well determine that the appraisal had been irregular, fraudulent, or so erroneous as to be unconscionable; thus, the trial court should then determine the true value of the property as of the date of the appraisal.¹² See *Burchett* at 68.

In light of the aforementioned, we reverse and remand this matter for an evidentiary hearing.

DIXON, JUDGE CONCURS.

COMBS, JUDGE, CONCURS IN RESULT ONLY.

be overruled. *Will v. City of Louisville*, 176 Ky. 450, 195 S.W. 822; *E'town Shopping Center, Inc. v. Lexington Finance Company*, Ky., 436 S.W.2d 267.

In the instant case appellants were not afforded opportunity to develop facts to substantiate the allegations in their exceptions relative to the gross disparity between the two values: one of \$40,000 by the court-appointed appraisers, and the \$160,000 valuation alleged by the appellants. The trial court should not have overruled this exception in the absence of an evidentiary hearing.

We are of the opinion that the purpose of an appraisal relates primarily to the right of redemption and not to the validity of the sale. In the event, after a hearing on the exceptions, the appraisal is found to have been irregular, fraudulent, or so erroneous as to be unconscionable, the trial court shall determine the true value of the property as of the date of the appraisal.

After holding an evidentiary hearing on the sufficiency of the appraised value, should the trial court sustain the exceptions and fix the

true value of the property, it should by proper order and judgment protect the appellants' right of redemption.

Burchett v. Bank Josephine, 474 S.W.2d 66, 68 (Ky. 1971).

¹² The court will need to consider:

Much evidence was taken to show that the 67.4 acre tract of land was worth more than the sum fixed by the appraisers, but no allegation of fraud is made; the only claim being that the appraisers made an honest mistake in their valuation, though it is admitted they were not mistaken as to the lands appraised. It is well settled that an appraisement cannot be attacked on this ground. *Vallandingham v. Worthington*, 85 Ky. 83, 2 S. W. 772; *Lawrence v. Edelen*, 6 Bush, 55; *Knight v. Whitman*, 6 Bush, 51, 99 Am. Dec. 652.

Marcum v. Thompson, 222 Ky. 702, 2 S.W.2d 392, 393 (1928).

BRIEFS FOR APPELLANT:

John C. Roach
S. Chad Meredith
Lexington, Kentucky

BRIEF FOR APPELLEES:

Barbara Anderson
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