

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001193-MR

JASON EYE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 08-CI-009131

WOODFORD FINANCE, LLC

APPELLEE

OPINION
VACATING, REVERSING,
AND REMANDING

** ** * * * * *

BEFORE: CLAYTON, COMBS AND STUMBO, JUDGES.

STUMBO, JUDGE: This is an appeal from a foreclosure action initiated by Woodford Finance, LLC to recover on delinquent tax certificates it had purchased on properties owned by Jason Eye. The Jefferson Circuit Court, after receiving a report from a Master Commissioner, granted summary judgment in favor of Woodford and ordered the sale of three pieces of real property. Mr. Eye sets forth

multiple arguments on appeal, but his main argument is that the Master Commissioner did not make the requested findings of fact and the trial court erred by not requiring the Master Commissioner to make further findings of fact. We agree with this argument; therefore, we vacate the orders of sale and remand in order for the Master Commissioner to make the requisite findings of fact.

This case has a long history. Complicating matters is the fact that the Jefferson Circuit Court referred¹ this matter to a Master Commissioner three times and it appears as though a number of motions were never directly ruled upon. We will describe the pertinent facts briefly. Woodford initiated this foreclosure action on September 2, 2008. Woodford had purchased delinquent tax certificates on four pieces of property allegedly owned by Mr. Eye.² The foreclosure action was eventually dropped as to one of the properties. As to the three remaining pieces of property, the Jefferson Circuit Court referred the case to a Master Commissioner. Due to certain procedural defects on the part of Woodford, the Master Commissioner would not hold a hearing on the issues until January 17, 2013.

In a report filed January 31, 2013, the Master Commissioner found that Mr. Eye owned the three pieces of property at issue, that the taxes had not been paid, and that Woodford should be allowed to sell the property to satisfy the delinquent tax certificates. Mr. Eye made multiple objections to the Master

¹ The referrals were made on a generic form entitled “ORDER REFERRING CASE TO MASTER COMMISSIONER FOR JUDICIAL SALE”.

² We use the term allegedly because there is an issue of fact as to whether Mr. Eye owns one of the parcels.

Commissioner's report and requested the Master Commissioner make further findings of fact. Instead of making the requested findings, the Master Commissioner filed two pages of largely illegible handwritten notes he took during the hearing. Mr. Eye again moved for further findings. The trial court denied the motion and ordered the sale of the property at issue. This appeal follows.

Mr. Eye first argues that the Master Commissioner erred in making evidentiary rulings during the hearing. This issue is without merit because a commissioner is allowed to make evidentiary rulings pursuant to CR 53.03.

The rest of Mr. Eye's arguments on appeal concern the lack of findings of fact made by the Master Commissioner. He argues that the Master Commissioner erred by not making the findings he requested, that the handwritten notes were insufficient, and that the trial court erred in adopting the Master Commissioner's report that had no findings of fact. We agree with these arguments.

On February 8, 2013, Mr. Eye filed his objections to the Master Commissioner's report and requested that the Master Commissioner make further findings of fact. The trial court referred the matter back to the Master Commissioner on February 13, 2013, using one of the generic forms mentioned previously. This referral does not state why the case was being sent back to the Master Commissioner other than to effect a judicial sale, but it is logical to assume it was in response to Mr. Eye's motion. Thereafter, the Master Commissioner filed the two pages of handwritten notes. The Master Commissioner's report was one

and a half pages long. It did not set forth what evidence was considered during the hearing nor what evidence the Master Commissioner relied upon in making his recommendation. This is especially relevant in this case because Mr. Eye apparently provided evidence that he did not own one of the remaining three pieces of property at issue.

The trial court referred the matter back to the Master Commissioner for further findings, but the Master Commissioner only filed two pages of illegible handwritten notes. This was insufficient. Once the trial court directed more findings from the Master Commissioner, it was incumbent upon the Commissioner to make said findings. While trial courts are not required to make findings of fact when summary judgment is granted, CR 52.01, summary judgment is inappropriate when there are issues of fact that must be resolved. CR 56.03. By remanding for further findings, the trial court indirectly stated that such findings were necessary.

For the foregoing reasons, we vacate the judgments and orders of sale as to the three properties at issue and reverse and remand for the Master Commissioner to make more specific findings of fact as requested by Mr. Eye.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jason Eye, *pro se*
Louisville, Kentucky

BRIEF FOR APPELLEE:

James R. McKenzie
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