

RENDERED: DECEMBER 14, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000947-MR

M D WOOD

APPELLANT

v. APPEAL FROM PENDLETON CIRCUIT COURT
HONORABLE JAY DELANEY, JUDGE
ACTION NO. 16-CI-00037

FLOYD SHEARER

APPELLEE

OPINION
AND ORDER
DISMISSING

** ** * * * * *

BEFORE: ACREE, KRAMER, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: M D Wood brings this appeal from a May 3, 2017, Order of Distribution of the Pendleton Circuit Court. We dismiss this appeal as it was taken from an interlocutory order.

On March 4, 2016, Kentucky Tax Bill Servicing, Inc. (Tax Bill) filed a Complaint for Foreclosure in the Pendleton Circuit Court. Tax Bill alleged that it purchased four Certificates of Delinquency for ad valorem property taxes due and owing on real property owned by Floyd and Dorothy Shearer. The real property was located at Liberty Ridge Road in Falmouth, Kentucky. Tax Bill named the following parties as defendants: Floyd Shearer, Dorothy Shearer,¹ General Electric Capital Corporation, Palisades Collections, LLC, American General, Tax Ease Lien Servicing, LLC, M D Wood, CitiFinancial Services, Inc., and the County of Pendleton, Kentucky. CitiFinancial possessed a recorded mortgage and lien upon the subject real property. All the other defendants, except the Shearers, had either filed a judgment lien against the real property or purchased Certificates of Delinquency for past due ad valorem taxes for the real property.

Wood filed an answer, cross-claim, and counterclaim. Therein, Wood asserted that he possessed a superior lien against the real property. Wood claimed that in 2011, he purchased a Certificate of Delinquency for ad valorem taxes due and owing on the subject real property for 2010, in the amount of \$132.28. Wood claimed entitlement to other legal expenses, interest, penalties, and fees, related to the Certificate of Delinquency. Eventually, on October 20, 2016, Wood filed an

¹ It is inferred from the record that Dorothy Shearer is deceased.

accounting and sought a total of \$2,983.03, representing the original amount of the tax certificate (\$132.28) and costs incurred in relation thereto.

The Shearers did not enter an appearance, and the court, on October 27, 2016, rendered a Judgment and Order of Sale. The court ordered the master commissioner to sell the real property. Thereafter, on December 5, 2016, Wood filed another accounting and sought a total of \$3,072.52, representing the original amount of the tax certificate (\$132.28) and costs incurred in relation thereto.

On January 19, 2017, the master commissioner filed a Report of Sale. The commissioner reported that the real property sold for \$27,000. Subsequently, on February 2017, the court rendered an Order Confirming Sale, For Delivery of Deed, and Distribution of Costs. Therein, the court ordered the master commissioner to deliver the deed to purchaser. The master commissioner then filed an objection to the claim asserted by Wood and argued that Wood's expenses and costs were unreasonable.

By order entered May 3, 2017, the court rendered an Order of Distribution. The court ordered proceeds from the sale of the real property to be distributed to all the lienholders, except for Wood. As to Wood, the circuit court noted:

The Master Commissioner filed an objection to the claim of M D Wood and M D Wood has filed a response to the same. While this matter is set for a hearing on April 5, 2017, the instant Order of Distribution should be entered

to disburse sale proceeds to the various lienholders so entitled. Since excess proceeds exist to satisfy the claim of M D Wood, regardless of the adjudicated amount, any further distribution may be made by subsequent Court order.

May 3, 2017, Order of Distribution at 1. The circuit court observed that \$7,717.87 remained of the sale proceeds after payment to all claimants, except Wood.

On May 31, 2017, Wood filed a Notice of Appeal (2017-CA-000947-MR) from the May 3, 2017, Order of Distribution. Wood named only Floyd Shearer as appellee.

A final and appealable judgment is one that adjudicates all the rights of all the parties or is made final under Kentucky Rules of Civil Procedure (CR) 54.02. In an action involving multiple claims and/or multiple parties, CR 54.02 permits the circuit court to make an otherwise interlocutory order final and appealable in certain circumstances. Under CR 54.02, an interlocutory order may be made final and appealable if the order includes both recitations: (1) there is no just cause for delay and (2) the decision is final. The failure to include both certifications renders the order nonfinal. *Watson v. Best Fin. Servs., Inc.*, 245 S.W.3d 722, 726-27 (Ky. 2008).

In this case, it is clear that the May 3, 2017, order is interlocutory. In the May 3, 2017, order, the circuit court noted that it would conduct a subsequent hearing to adjudicate the proper sum to distribute to Wood as holder of a

Certificate of Delinquency. The court recognized that the master commissioner objected to the amount sought by Wood and scheduled a hearing to determine the proper amount of distribution. Therefore, the amount owed to Wood has yet to be adjudicated by the circuit court. And, as noted, the order on appeal contains no CR 54.02 recitations that might render the order final and appealable. Accordingly, the May 3, 2017, order did not make a final determination as to Wood's distribution amount and is inherently interlocutory. *See Tax Ease Lien Investments 1, LLC v. Brown*, 340 S.W.3d 99, 102 (Ky. App. 2011).

Now, therefore, be it ORDERED that Appeal No. 2017-CA-000947-MR is DISMISSED as being taken from an interlocutory order.

ALL CONCUR.

ENTERED: December 14, 2018

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Jack D. Wood
Louisville, Kentucky