[Cite as *Wiley Organics, Inc. v. Ankrom*, 2004-Ohio-6362.]

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

WILEY ORGANICS, INC.

Plaintiff-Appellee

-vs-

JOHN C. ANKROM, et al.

Defendants-Appellants

JUDGES:
Hon. William B. Hoffman, P. J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 03 CA 12

O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Case No. 01 CI 414
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	November 23, 2004

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellants

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Wise, J.

{¶1} Appellants John and Susan Ankrom and AA Management Trust (hereinafter "appellants") appeal the decision of the Coshocton County Court of Common Pleas that determined Appellee Wiley Organics, Inc. ("Wiley") has a valid lien against 80 acres allegedly held in an irrevocable trust by appellants. The trial court further determined that Wiley may proceed to enforce the judgment and foreclose against said property. The following facts give rise to this appeal.

{¶2} On August 12, 1996, Appellants John and Susan Ankrom created AA Management Trust and conveyed approximately 80 acres of land to "Robert G. Shoup, CPA, Trustee" by quit-claim deed. As a result of a cash management program implemented by Wiley in September 1996, Wiley discovered that Appellant John Ankrom, along with Robert Shoup and Harry Jones, had been misappropriating corporate funds. The real estate conveyance occurred on the eve of implementing the cash management program.

{¶3} Following the discovery of the misappropriation of corporate funds, Wiley filed suit against Appellant John Ankrom, in the Franklin County Court of Common Pleas. The court rendered a verdict against Appellant John Ankrom in the amount of $512,988 and against Robert Shoup in the amount of $1,538,964.

{¶4} Thereafter, Wiley commenced this action on October 25, 2001, to collect the judgment by filing a foreclosure complaint against the 80 acres. Wiley argued Appellant John Ankrom retained a beneficial interest, in the real estate, and that the property was subject to the lien of Wiley's judgment. Appellants Susan Ankrom and AA Management Trust filed an answer. Appellant John Ankrom filed a separate answer

with a jury demand. Wiley filed a motion to strike the jury demand, which the trial court granted on February 19, 2003.

{¶5} This matter proceeded to a bench trial on March 4, 2003. The issue presented at trial was whether Appellant John Ankrom retained an interest in the 80 acres notwithstanding the quit-claim deed dated August 19, 1996. In a judgment entry dated July 31, 2003, the trial court found that Appellant John Ankrom had retained an interest in the 80 acres and therefore, Wiley had a valid claim for foreclosure against the property. Appellants did not request findings of fact or conclusions of law pursuant to Civ.R. 52. The trial court entered final judgment, on August 27, 2003, in the form of the judgment decree in foreclosure.

{¶6} Appellants timely filed a notice of appeal and set forth the following assignments of error for our consideration:

{¶7} "I. PLAINTIFF-APPELLEE DOES NOT HAVE STANDING TO MAINTAIN THE ACTION TO QUIET TITLE TO REAL PROPERTY.

{¶8} "II. PLAINTIFF-APPELLEE HAS NO LIEN OR OTHER INTEREST IN THE REAL PROPERTY DESCRIBED IN PLAINTIFF'S COMPLAINT AS A MATTER OF LAW.

{¶9} "III. THE QUIT CLAIM DEED RECORDED AUGUST 19, 1996 AND THE WRITTEN TRUST DIVESTED DEFENDANT-APPELLANT JOHN ANKROM OF ALL TITLE TO THE REAL PROPERTY AND CREATED A VALID TRUST FOR THE BENEFIT OF SUSAN ANKROM AND THE ANKROM CHILDREN.

{¶10} "IV. THE TRIAL COURT ERRED IN FAILING TO CONSIDER AND RULE UPON THE CLAIM OF APPELLANTS THAT THE REAL PROPERTY DESCRIBED IN PLAINTIFF'S COMPLAINT WAS HELD IN A RESULTING TRUST.

{¶11} "V. THE TRIAL COURT ERRED IN FAILING TO HONOR THE JURY DEMAND OF DEFENDANT-APPELLANT JOHN ANKROM."

I

{¶12} In their First Assignment of Error, appellants contend Wiley did not have standing to maintain the action to quiet title to the real property in question. We disagree.

{¶13} In support of this assignment of error, appellants maintain Wiley has no standing, under R.C. 5303.01, to quiet title, because Appellant John Ankrom disclaims an interest in the property.

{¶14} Recently, in *Brown v. Lincoln Natl. Life Ins*., Franklin App. No. 02AP-225, 2003-Ohio-2577, the Tenth District Court of Appeals discussed the concept of "standing" and explained:

{¶15} "* * * It is well-established that before an Ohio court can consider the merits of a legal claim, the person seeking relief must establish standing to sue. *Ohio Contractors Assn. v. Bicking* (1994), 71 Ohio St.3d 318, 320, 643 N.E.2d 1088. The issue of standing is a threshold test that, once met, permits a court to determine the merits of the questions presented. *Tiemann v. Univ. of Cincinnati* (1998), 127 Ohio App.3d 312, 712 N.E.2d 1258. The standing requirement answers the question of whether a plaintiff can demonstrate an injury sufficiently traceable to the conduct of the defendant. In order to have standing to raise a claim, one must demonstrate an injury in

fact. *Fraternal Order of Police v. Cleveland* (2001), 141 Ohio App.3d 63, 75, 749 N.E.2d 840. Id. at ¶ 32.

{¶16} Further, "[a]bstract injury is not enough. The plaintiff must show that he 'has sustained or is immediately in danger of sustaining some direct injury' * * * and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.' " [Citations omitted.] *City of Los Angeles v. Lyons* (1983), 461 U.S. 95, 101-102.

{¶17} "A party's unsupported assertion that he or she has suffered, or will suffer an injury, is not sufficient to confer standing. Rather, a litigant must demonstrate that he or she has a 'personal stake in the outcome of the controversy.' " *Brown* at ¶ 35, citing *Middletown v. Ferguson* (1986), 25 Ohio St.3d 71, 75.

{¶18} A review of Wiley's complaint indicates that it does not seek to quiet title. Instead, Wiley sought relief pursuant to R.C. 1335.01, the Statute of Frauds. We conclude Wiley has standing to bring this action because it has a personal stake in the outcome. If a valid trust does not exist, Wiley may file a lien against the property in order to satisfy the judgment rendered by the Franklin County Court of Common Pleas.

{¶19} The Twelfth District Court of Appeals recognized this right in *Bank One of Milford v. Bardes* (Dec. 31, 1987), Brown App. No. CA87-04-008. The court noted the burden of proving the existence of a trust rests on the party asserting it. Id. at 2, citing *Hill v. Irons* (1953), 160 Ohio St. 21, 29.

{¶20} In concluding that defendant had not established a valid trust, the court stated:

{¶21} "It is obvious that although appellant transferred the property to himself as 'trustee,' appellant retained all beneficial interest in the property. In essence, appellant [defendant] retained both the legal and equitable titles to the property. Appellant attempted to make a 'gift' of the farm to his children while at the same time retaining all control over and benefit from the farm property. * * * The record supports the trial court's conclusion that no valid trust was created and the court did not err in finding that appellant's letter and/or deed did not qualify as trust instruments." Id. at 2.

{¶22} Clearly, as in the *Bardes* case, Wiley does have standing to challenge the existence of the trust because it has a personal stake in the outcome of the controversy.

{¶23} Appellants' First Assignment of Error is overruled.

II, III, IV

{¶24} We will address appellants' Second, Third and Fourth Assignments of Error simultaneously. In their Second Assignment of Error, appellants contend Wiley has no lien or other interest in the 80 acres. Appellants maintain, in their Third Assignment of Error, the quit-claim deed recorded August 19, 1996, divested them of all legal title to the 80 acres and created a valid trust. In their Third Assignment of Error, appellants contend the trial court erred when it failed to decide whether the 80 acres was held in a resulting trust. We will not address the merits of these assignments of error as appellants failed to file a transcript of the trial proceedings and did not request findings of fact and conclusions of law pursuant to Civ.R. 52.

{¶25} When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the

lower court's proceedings and affirm. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. Because appellants failed to provide this Court with those portions of the transcript necessary for resolution of the assigned errors, i.e., the transcript of the trial, we must presume the regularity of the proceedings and affirm.

{¶26} Further, in addition to not filing a transcript of the trial, appellants also did not request findings of fact and conclusions of law pursuant to Civ.R. 52. This rule provides, in pertinent part:

{¶27} "When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise before the entry of judgment pursuant to Civ.R. 58, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law." * * *

{¶28} Having failed to request findings of fact and conclusions of law, we will presume the validity of the trial court's judgment as long as there is evidence, in the record, to support it. See *Fletcher v. Fletcher* (1994), 68 Ohio St.3d 464, 468.

{¶29} Accordingly, we presume the trial court's judgment valid and overrule appellant's Second, Third and Fourth Assignments of Error.

V

{¶30} In their Fifth Assignment of Error, appellants contend the trial court erred in failing to honor Appellant John Ankrom's request for a jury trial. We disagree.

{¶31} Appellants were not entitled to a jury trial as this matter was an equitable action for foreclosure seeking to enforce a previously rendered money judgment. The

issues raised required a declaratory judgment regarding the existence and validity of an alleged trust. In *Alsdorf v. Reed* (1888), 45 Ohio St. 653, the Ohio Supreme Court stated, in an action to enforce a judgment by means of sale proceedings against real estate, a jury trial was not required. The Court explained:

{¶32} "* * * Where, in such action, the prayer is for an ordinary decree of foreclosure and order of sale, the action is one for relief other than money only and, although an issue of fact may be joined on a plea by the garnishee that he had paid the mortgage indebtedness before notice of garnishment was served on him, neither party is entitled to demand a jury for the trial of the issue, and either may appeal from a final judgment rendered against him in the action." Id. at syllabus.

{¶33} As such, appellants were not entitled to a jury trial in this matter.

{¶34} Appellants' Fifth Assignment of Error is overruled.

{¶35} For the foregoing reasons, the judgment of the Court of Common Pleas, Coshocton County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Farmer, J., concur.

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JUDGES

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IN THE COURT OF APPEALS FOR COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

WILEY ORGANICS, INC.	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JOHN C. ANKROM, et al.	:	
	:	
Defendants-Appellants	:	Case No. 03 CA 12

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Coshocton County, Ohio, is affirmed.

Costs assessed to Appellants.

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JUDGES