

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TCF NATIONAL BANK FBO AEON FINANCIAL, LLC	:	JUDGES:
	:	W. Scott Gwin, P.J.
	:	John W. Wise, J.
	:	Julie A. Edwards, J.
Plaintiff-Appellant	:	
	:	Case No. 2009 CA 00124
-vs-	:	
	:	
	:	<u>OPINION</u>
ESTATE OF CHARLES F. OLIVER, SR., et al.,	:	
Defendants-Appellees	:	

CHARACTER OF PROCEEDING:	Civil Appeal from Stark County Court of Common Pleas Case No. 2008 CV 04870
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JUDGMENT:	Dismissed
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DATE OF JUDGMENT ENTRY:	March 22, 2010
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APPEARANCES:

For Plaintiff-Appellant

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UNKNOWN SPOUSE, IF ANY, OF THE
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Edwards, P.J.

{¶1} Plaintiff-Appellant, TCF National Bank FBO Aeon Financial, LLC, appeals the April 30, 2009, Judgment Entry entered by the Stark County Court of Common Pleas.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant purchased a tax lien certificate from the Stark County Treasurer on a property located in Stark County, Ohio. Subsequently, Appellant filed a Complaint for Foreclosure, pursuant to R.C. 5721.30 to 5721.46. Appellant's counsel filed a motion for private attorney's fees with a supporting Affidavit attached. The motion for fees requested \$2,500.00 in attorney's fees, to be taxed as a cost of the private foreclosure action, and requested a hearing.

{¶3} The motion for attorney's fees was unopposed. Thereafter, the trial court issued an Order and Decree of Foreclosure on April 30, 2009. The court made Findings of Fact and Conclusions of Law in the same judgment.

{¶4} It is from the April 30, 2009, Judgment Entry Appellant appeals, raising as its sole assignment of error:

{¶5} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN REDUCING AEON'S STATUTORILY RECOVERABLE ATTORNEY FEES, BELOW THE \$2,500 IT INCURRED AND REQUESTED, BECAUSE THE COURT FAILED TO ACCORD AEON THE BENEFIT OF THE STATUTORY PRESUMPTION OF REASONABLENESS CREATED BY THE OHIO LEGISLATURE, IN R.C. SECTION 5721.371, IN FAVOR OF A TAX CERTIFICATE HOLDER FOR ATTORNEY FEES INCURRED IN TAX

CERTIFICATE FORECLOSURE CASES WHERE SUCH FEES DO NOT EXCEED \$2,500.”

{¶6} In finding of fact no. 11 at page six of the trial court’s entry, the court states, “Plaintiff is entitled to reimbursement for reasonable attorney’s fees incurred in the amount of \$_____, and to have said sum taxed as a cost to be paid from the proceeds of Sheriff’s Sale.” At page seven of the judgment entry, when stating the amount which must be paid to the county treasurer to redeem the property prior to sale, the court includes “reasonable attorney fees of _____,” again without including a dollar amount in the blank. However, in the order of the court directing how the proceeds are to be applied by the Sheriff upon confirmation of sale, the court states, “1) *To Plaintiff’s attorney*, the fees and costs incurred in this proceeding, which are hereby taxed as costs[.]”

{¶7} Ohio law provides that appellate courts have jurisdiction to review only final orders or judgments. See, generally, Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and it must be dismissed.

{¶8} A judgment which expressly orders attorney fees but does not specify an amount is not a final, appealable order. *Ft. Frye Teachers Association v. Ft. Frye Local School Dist. Bd. of Education* (1993), 87 Ohio App.3d 840, 843, 623 N.E.2d 232, 234. *Accord, Cwynar v. Jackson Twp. Bd. of Trustees*, 178 Ohio App.3d 345, 897 N.E.2d 1181, 2008-Ohio-5011, ¶54; *Jones v. McAlarney Pools, Spas & Billiards, Inc.*, 4th Dist. No. 07CA34, 2008-Ohio-1365; *Vannoy v. Capital Lincoln-Mercury Sales, Inc.* (Jun. 1, 1993), Ross App. Nos. 1868 & 1871; *Cole v. Cole* (Nov. 8, 1993), Scioto App. No.

93CA2146; *Pickens v. Pickens* (Aug. 27, 1992), Meigs App. No. 459; *State ex rel. VanMeter v. Lawrence Co. Bd. of Commrs.* (Aug. 25, 1992), Lawrence App. No. 91 CA25.

{¶9} Because the entry appealed from awarded attorney's fees taxed as costs in the action but did not include a dollar amount, the judgment appealed from is not a final appealable order. The appeal is dismissed.

By: Edwards, J.

Gwin, P. J. and

Wise, J. concur

s/Julie A. Edwards

s/W. Scott Gwin

s/John W. Wise

JUDGES

JAE/r0310

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

TCF NATIONAL BANK FBO AEON
FINANCIAL, LLC

Plaintiff-Appellant

-vs-

ESTATE OF CHARLES F. OLIVER, SR.,
et al.,

Defendants-Appellees

JUDGMENT ENTRY

CASE NO. 2009 CA 00124

For the reasons stated in our accompanying Memorandum-Opinion on file, the appeal of the April 30, 2009, Judgment Entry of the Stark County Court of Common Pleas is dismissed. Costs waived.

s/Julie A. Edwards

s/W. Scott Gwin

s/John W. Wise

JUDGES