

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

CITIMORTGAGE, INC.,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-11-089
- vs -	:	<u>OPINION</u>
	:	5/2/2011
DIANE E. HAVERKAMP, et al.,	:	
Defendants-Appellants.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2009 CVE 00415

Lerner, Sampson & Bjerkaas, Erin E. Bjerkaas, 120 East Fourth Street, 8th Floor, Cincinnati, Ohio 45202, for plaintiff-appellee

Jacobs, Kleinman, Seibel & McNally, Mark J. Byrne, 2300 Kroger Bldg., 1014 Vine Street, Cincinnati, Ohio 45202, for defendant-appellant

PIPER, J.

{¶1} Defendant-appellant, Diane E. Haverkamp, appeals from a judgment of the Clermont County Court of Common Pleas confirming the sale of 1110 North Muscony Drive, Cincinnati, Ohio, and ordering distribution of the proceeds. For the reasons that follow, we affirm the decision of the trial court.¹

{¶2} The record reflects that on February 24, 2009, plaintiff-appellee,

1. Pursuant to Loc.R. 6(A), we sua sponte remove this case from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

Citimortgage, Inc., filed an action seeking foreclosure of its mortgage on the Muscony Drive address. The complaint alleged appellant owed \$121,767.11 plus interest at the rate of 5.625 percent per year from October 1, 2008. After appellant failed to respond to the complaint, the trial court granted default judgment in appellee's favor and issued a decree in foreclosure on August 10, 2009. No appeal was taken from this judgment.

{¶3} Thereafter, the property was sold to Peralta Group, LLC (Peralta) at a sheriff's sale on June 15, 2010. On June 21, 2010, appellant filed a motion to stay confirmation of the sheriff's sale, requesting additional time to redeem the property. See R.C. 2329.31(A). However, on October 14, 2010, the trial court confirmed the sheriff's sale and awarded appellee \$142,983.94 on the note.

{¶4} Appellant now appeals from the journal entry confirming the sale, raising two assignments of error for review.

{¶5} Assignment of Error No. 1:

{¶6} "THE TRIAL COURT ERRED TO THE PREJUDICE OF HAVERKAMP BY DISTRIBUTING THE SUM OF \$142,983.94 TO CITIMORTGAGE WHEN THE AMOUNT TO WHICH IT WAS DUE AS OF OCTOBER 14, 2010 WAS \$134,250.01."

{¶7} In her first assignment of error, appellant argues the contractual interest rate of 5.625 percent, as listed in the note, became inapplicable after the court entered the decree in foreclosure on August 10, 2009. Instead, appellant argues that after August 10, 2009, the trial court should have applied the statutory post-judgment interest rate, as calculated by the Ohio Department of Taxation. Thus, according to appellant, the post-judgment interest rate should have been five percent from August 10, 2009 until December 31, 2009, and four percent from January 1, 2010 until October 14, 2010.

Further, appellant argues she is entitled to the \$8,733.93 in excess funds stemming from her calculation using the post-judgment interest rates. See R.C. 2329.44(A)(1).

However, we need not reach the merits of appellant's argument, as we find appellant waived any error when she failed to raise this issue before the trial court.

{¶8} "Ordinarily, errors which arise during the course of a trial, which are not brought to the attention of the court by objection or otherwise, are waived and may not be raised upon appeal." *Setzekorn v. Kost USA, Inc.*, Warren App. No. CA2008-02-017, 2009-Ohio-1011, ¶18. As such, "[a]n appellate court need not consider an error which a party complaining of the trial court's judgment could have called, but did not call, to the trial court's attention at a time when such error could have been avoided or corrected by the trial court." *Id.*

{¶9} In the case at bar, at no point during the course of the proceedings below did appellant advance her current argument that the 5.625 percent interest rate was not applicable through the distribution of the sale proceeds. See R.C. 1343.01(A); R.C. 1343.02; *First Bank of Ohio v. Wigfield*, Franklin App. Nos. 07AP-561, 07AP-562, 2008-Ohio-1278, ¶22, quoting *Capital Fund Leasing, LLC v. Garfield* (1999), 135 Ohio App.3d 579, 582 (discussing the "preference to enforcing the stipulated rate of interest contained in a contract assented to by the parties, rather than applying the statutory default rate"). The record also lacks any indication that appellant presented evidence of different interest rates potentially applicable to the judgment. Thus, since appellant raised this argument for the first time on appeal, it is waived. Compare *Mid-State Trust IX v. Davis*, Champaign App. No. 07-CA-31, 2008-Ohio-1985 (proper means to challenge the "existence and extent of mortgage liens" is either an appeal or a motion for relief from the foreclosure judgment, rather than the confirmation of sale, which "involves only decisions on whether a sale has been conducted in accordance with R.C. 2329.01 through R.C. 2329.261").

{¶10} For the foregoing reason, appellant's first assignment of error is overruled.

{¶11} Assignment of Error No. 2:

{¶12} "THE TRIAL COURT ERRED TO THE PREJUDICE OF HAVERKAMP IN PLACING OF RECORD THE JOURNAL ENTRY CONFIRMING SALE, ORDERING DEED AND DISTRIBUTING SALE PROCEEDS WITHOUT INSURING COMPLIANCE WITH OHIO REVISED CODE 2329.271."

{¶13} In her second assignment of error, appellant argues the trial court's October 14, 2010 entry confirming the sheriff's sale is "voidable" for lack of pertinent purchaser information as required by R.C. 2329.271. We disagree.

{¶14} We first note the "decision whether to confirm or set aside a judicial sale is left to the sound discretion of the trial court." *Natl. Union Fire Ins. Co. v. Hall*, Montgomery App. No. 19331, 2003-Ohio-462, ¶12. This court will reverse a trial court's confirmation of a sale only if the trial court has abused its discretion. See *Ohio Sav. Bank v. Ambrose* (1990), 56 Ohio St. 3d 53, 55; *Ohio Farm Bur. Fedn., Inc. v. Amos*, Ashland App. No. 07-COA-006, 2008-Ohio-459, ¶21. An abuse of discretion connotes more than an error of law or judgment; it implies an attitude that is "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. In making its decision to confirm a sheriff's sale, a trial court must determine whether the sale was conducted in accordance with R.C. 2329.01 through R.C. 2329.61 inclusive. See R.C. 2329.31. See, also, *Sky Bank v. Mamone*, Cuyahoga App. No. 91812, 2009-Ohio-2265, ¶25.

{¶15} In the case at bar, appellant correctly states that pursuant to R.C. 2329.271, the sheriff's record of proceedings and the record of the court of common pleas must contain certain information regarding the purchaser of the property. Appellant argues the records lack pertinent purchaser information in violation of R.C.

2329.271, including the "identification of the LLC, the person who was responsible for the LLC, and whether the LLC is located within the county or outside the county." However, contrary to appellant's assertion, it is clear to this court that the records contain all pertinent information appellant seeks regarding the purchaser, Peralta. Specifically the record contains a "Purchaser Information Form," stating, in relevant part: (1) the name, address and telephone number of the purchaser; (2) the type of purchaser, namely, an "LLC," (3) a "contact person," namely, a "member, manager, or officer" of Peralta; (4) the name, address, and telephone number of the party to whom the property was "to be deeded"; (5) the purchaser's principal place of business; and (6) a "statement indicating whether the purchaser will occupy the lands and tenements."² See R.C. 2329.271(A)(1)(a)-(c).

{¶16} Where the required purchaser information is clearly within the record, we cannot say the trial court abused its discretion in finding that the sale was made "in conformity to the law and orders of [the] Court," or that it abused its discretion in confirming the sale. It follows that appellant cannot be prejudiced when the purchaser information she seeks is clearly part of the record. See R.C. 2329.31. Cf. *Marion Prod. Credit Assn. v. Cochran* (Nov. 20, 1985), Morrow App. No. CA-644, 1985 WL 3698.

{¶17} Moreover, appellee correctly notes "[a]n order of confirmation becomes dispositive as to the propriety of the sale and the sale confirmation procedures," unless properly vacated by the trial court. *Mamone*, 2009-Ohio-2265 at ¶26. In such a case, we note that "all irregularities are cured after the sale is made and confirmed. It is said that the final order of confirmation, having the effect of a final conclusive judgment, cures all such irregularities, misconduct, and unfairness in the making of the sale,

2. The Purchaser Information Form was attached to the court's "Alias Order of Sale Without Reappraisal," placed behind the "Sheriff's Return" that was signed by the sheriff and indicated the date and terms of the sheriff's sale.

departures from the provisions of the decree of sale, and errors in the decree and the proceedings under it." *Peoples Liberty Bank & Trust Co. v. Cornett* (1949), 86 Ohio App. 222, 223-224.

{¶18} For the foregoing reasons, appellant's second assignment is overruled.

{¶19} Judgment affirmed.

HENDRICKSON, P.J., and RINGLAND, J., concur.