

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

PARTNERS FOR PAYMENT RELIEF DE
III, LLC

C.A. No. 28590

Appellant

v.

HAZEL MOSS, et al.

Appellees

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2013-12-5995

DECISION AND JOURNAL ENTRY

Dated: December 29, 2017

CALLAHAN, Judge.

{¶1} Partners for Payment Relief DE III, LLC (“Partners”) appeals a judgment of the Summit County Court of Common Pleas that denied its motion to set aside foreclosure sale or, in the alternative, confirm the sale without requiring it to pay extinguished tax certificate liens. This Court affirms.

I.

{¶2} Partners filed a complaint for money judgment and foreclosure against Hazel Moss. It named Woods Cove III, LLC (“Woods Cove”) as a defendant because Woods Cove had tax certificates against the property. After Ms. Moss and Woods Cove did not file answers, Partners moved for default judgment and/or summary judgment against them and other defendants. The trial court granted its motion and entered a decree of foreclosure. Woods Cove moved for relief from judgment, but the trial court denied its motion. Partners subsequently purchased the property at sheriff’s sale.

{¶3} Ten months after the sheriff’s sale, Partners filed a “Motion of Plaintiff to Set Aside Foreclosure Sale, or in the Alternative, Confirm the Sale without Requiring Plaintiff to Pay Extinguished Tax Certificate Liens.” In its motion, Partners alleged that it had been attempting to complete the steps necessary for the trial court to confirm the sheriff’s sale, including paying off the taxes owed on the property. Partners alleged that it had been unable to pay the taxes, however, because the County Treasurer was requiring it to pay not only the amount owed to the county, but also the amount owed on the tax certificates held by Woods Cove, despite the default judgment entered against Woods Cove. Alleging that it would not have purchased the property at the sheriff’s sale if it had known it would have to pay off Woods Cove’s tax certificates, Partners requested that the court set aside the sale. In the alternative, it requested that the court issue an order that would allow confirmation of the sale without payment of the Woods Cove tax certificates. The trial court denied Partners’ motion. Partners has appealed and assigned one error.

II.

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED APPELLANT PARTNERS FOR PAYMENT RELIEF DE III, LLC’S MOTION TO SET ASIDE FORECLOSURE SALE, OR IN THE ALTERNATIVE, TO CONFIRM SALE WITHOUT REQUIRING PLAINTIFF TO PAY EXTINGUISHED TAX CERTIFICATE LIENS.

{¶4} Partners argues that the trial court incorrectly denied its motion to confirm the sheriff’s sale. Specifically, it argues that it should not have to pay off the tax certificates owned by Woods Cove because the default judgment against Woods Cove precludes Woods Cove from receiving any proceeds of the sheriff’s sale.

{¶5} The Ohio Supreme Court has held that “[w]hether a judicial sale should be confirmed * * * is within the sound discretion of the trial court.” *Ohio Sav. Bank v. Ambrose*, 56

Ohio St.3d 53, 55 (1990), quoting *Michigan Mtge. Corp. v. Oakley*, 68 Ohio App.2d 83 (12th Dist.1980), paragraph two of the syllabus. We review the court’s decision for an abuse of discretion. *Brandywine Pres. Cluster Assn. v. Carter*, 9th Dist. Summit No. 27584, 2015-Ohio-4163, ¶ 6. An abuse of discretion “implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶6} In its motion, Partners noted that R.C. 2329.31 outlines when a court should confirm a sale. *See Ambrose* at 55 (“Confirmation of foreclosure sales regarding real property is governed by R.C. 2329.31[.]”). R.C. 2329.31(A) provides:

Upon the return of any writ of execution for the satisfaction of which lands and tenements have been sold, on careful examination of the proceedings of the officer making the sale, if the court of common pleas finds that the sale was made, in all respects, in conformity with sections 2329.01 to 2329.61 of the Revised Code, it shall, within thirty days of the return of the writ, direct the clerk of the court of common pleas to make an entry on the journal that the court is satisfied of the legality of such sale.

R.C. 2329.31(A). Partners did not argue in its motion to the trial court, and has not argued in its appellate brief, that it satisfied all of the requirements for confirmation of sale under R.C. 2329.31, particularly that the sale was made in conformity with R.C. 2329.01 to 2329.61. While Partners argues that it should not have to pay the amount that was owed to Woods Cove on its tax certificates, there is nothing in the trial court’s order that indicates that that was the basis of the court’s decision. Accordingly, upon review of the record, we cannot say that the trial court improperly exercised its discretion when it denied Partners’ motion for confirmation of sale.

{¶7} Partners also argues that the trial court incorrectly denied its motion to set aside the sheriff’s sale. As with the confirmation of a sale, we review a court’s determination whether to set aside a foreclosure sale for an abuse of discretion. *Ambrose* at 55.

{¶8} According to Partners, when it bid on the property at the sheriff's sale, it understood that it would have to pay the tax liens of the county treasurer. It did not anticipate that it would also have to pay the liens created by Woods Cove's tax certificates because it had been granted a default judgment against Woods Cove. Partners notes that it moved to have Woods Cove's tax liens released, but the trial court denied its motion. Partners argues that, because the treasurer will not calculate the amount that is owed in current real estate taxes without regard to Woods Cove's voided liens, it cannot pay the property's taxes off, which it asserts is a "necessary step" under Loc.R. 11.08 of the Court of Common Pleas of Summit County, General Division¹. It also argues that it has been threatened with sanctions if it does not pay off the eliminated liens. Partners contends that, in light of the situation with the Woods Cove tax certificates, the trial court abused its discretion when the court denied its motion to set aside the sheriff's sale.

{¶9} The foreclosure decree directs the Sheriff to use the proceeds of the sheriff's sale to pay the county treasurer the "taxes, accrued taxes, assessments, and penalties on the premises described herein[.]" Elsewhere in the decree, the court found that there were taxes due to the county treasurer and indicated that the exact amount of those taxes would be determined at the time of the sheriff's sale. The decree also provides that those taxes included only the taxes on the property "for which amount the Summit County Treasurer has a statutory priority lien."

¹ At the time of Partners' motion, Loc.R. 11.08 of the Court of Common Pleas of Summit County, General Division provided:

In all foreclosure actions and Sheriff Sales, the parties shall pay all required real estate taxes directly to the Summit County Treasurer. Real estate taxes shall include delinquent, tax certificate liens, and current taxes. The parties shall obtain a verification form from the Treasurer's Office to be delivered to the Sheriff's Civil Division and/or attached to the Confirmation of Sale entry.

{¶10} Partners did not submit any evidence with its motion to set aside the foreclosure sale to support its assertion that the county treasurer has refused to calculate the amount of taxes owed only to the treasurer, despite the plain language of the decree. Partners also did not explain in its motion, and has not in its appellate brief, why compliance with the local rule is required before confirmation of the sheriff's sale is possible under R.C. 2329.31. Upon review of the record, we conclude that Partners has not established that the trial court improperly exercised its discretion when it denied Partners' motion to set aside the foreclosure sale. Partners' assignment of error is overruled.

III.

{¶11} Partners' assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

LYNNE S. CALLAHAN
FOR THE COURT

HENSAL, P. J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

DANIEL O. BARHAM, Attorney at Law, for Appellant.

ERIC T. DEIGHTON, Attorney at Law, for Appellee.

HAZEL MOSS, pro se, Appellee.