IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

SWEARINGEN & ASSOCIATES, INC.
as Assignee of Sharon D. Carter,
Appellant/Cross-appellee,

CASE NO.: 2017-CV-000017-A-O
Lower Case No.: 2014-CC-016136-O

vs.

VALENTINE EVELYNN GE,
Appellee/Cross-appellant,

vs.

THE OAKS OF SUMMIT LAKE HOMEOWNERS ASSOCIATION, INC.
Cross-appellee.
_____/

Appeal from the County Court,
for Orange County, Florida,
Tina Caraballo, County Judge.

Bruce H. Hornstein, Esquire,
for Appellant/Cross-appellee.

David N. Glassman, Esquire,
for Appellee/Cross-appellant.

John Di Masi, Esquire,
Cross-appellee.

Before BLACKWELL, A.; WHITEHEAD, R; and RODRIGUEZ, H.

PER CURIAM.

FINAL ORDER DISMISSING APPEAL

Appellant, SWEARINGEN & ASSOCIATES, INC., as Assignee of Sharon D. Carter (hereinafter "S&A"), timely appeals the county court's "Order on Distribution of Funds Held by Orange County Clerk of Court" entered on January 11, 2017. VALENTINE EVELYNN GE

(hereinafter "Ge") timely responded and cross-appealed February 17, 2017. Cross-appellee, THE OAKS OF SUMMIT LAKE HOMEOWNERS ASSOCIATION, INC., (hereinafter "HOA") has not filed a cross-reply brief.

This Court has jurisdiction of appeals from county court orders. Fla. Stat. § 26.012(1) (2017); Fla. R. App. P. 9.030(c)(1)(A).[1]

Facts and Procedural History

On March 15, 2016, pursuant to a final judgment of foreclosure (hereinafter "Lien Judgment") Ge was high bidder at an online public sale conducted in accordance with Florida Statutes § 45.031 (hereinafter "HOA Sale"). [2] The record shows Ge intentionally bid $60,000.00 on real property located at 312 Breezeway Dr., Apopka, Florida, (hereinafter "Breezeway"). For the purchase she tendered certified funds into the Orange County Court Registry, the Clerk disbursed funds sufficient to satisfy the Lien Judgment which was less than $5000.00, certificates of sale, title, and disbursement all issued, and $55,175.35 in surplus funds remained in the Registry.

Breezeway had been purchased by Mr. Rodolphus Jackson and his spouse Sharon Carter in 1995. In 2009 Ms. Carter quitclaimed her interest in Breezeway to Mr. Jackson "to remove wife's name and clear title to obtain financing." R. 135. There is no dispute that Mr. Jackson was sole record owner of Breezeway from 2009 until he died intestate. Ms. Carter became record owner as a function of law upon his death. *See* § 732.101(2), Fla. Stat. Prior to his death, however, Mr. Jackson stopped paying both his Lender and his HOA assessments which caused each to separately file suit to foreclose his interest in Breezeway. On November 20, 2014, the Lender was first to file

[1] *Popescu v. Laguna master Ass'n, Inc.* 126 So.3d 449, 450 (Fla. 4th DCA 2013) *citing Clearwater Federal Savings & Loan Ass'n. v Sampson*, 336 So,2d 78, 79 (Fla. 1976) ("[A] postforeclosure judgment order which was dispositive of a separate issue, entitlement to money paid to a receiver, constituted a 'final decretal order,'. . .").

[2] Lien Judgment was entered October 29, 2015 in Case No.: 2014-CC-16136-O.

an action in circuit court based on the Note and Mortgage.[3] (hereinafter "Lender Action"). About a month later, December 23, 2014, HOA filed suit in county court to foreclose Mr. Jackson's interest based upon its Claim of Lien duly recorded with Orange County on October 24, 2014 (hereinafter "Lien Action"). When HOA was informed that Mr. Jackson had died, it amended its complaint to include Ms. Carter as a defendant. Despite the amendment, the Lien Action proceeded more quickly in county court than the Lender Action in circuit court and Lien Judgment was entered on October 29, 2015.

For Ge's part, she was trying to get into the business of real estate investing during the early part of 2016 which led her to bid on Breezeway when it came up for public sale. Ge was under the belief that her $60,000.00 bid would purchase the property free of all encumbrances. A search of public records would have revealed that Mr. Jackson's interest in Breezeway was in the process of being foreclosed by both the HOA and the Lender. Shortly after Ge bought Breezeway two events occurred independently which ultimately bring us to this appeal: On March 16, 2015, the day after the HOA sale, S&A entered into an agreement with Ms. Carter to recover any surplus from the sale; and on April 8, 2015 the circuit court entered final judgment in the Lender Action in favor of the Lender (hereinafter "Lender Judgment"). Breezeway was again sold at auction (hereinafter "Lender Sale") but this time Ge did not place a bid. Ge learned of the Lender Sale on June 4, 2016 along with the unhappy fact, from her perspective, that her interest in Breezeway would be extinguished upon the issuance of certificate of title to the buyer at said sale. She was also surprised to learn that the bulk of her $60,000.00 bid was still on deposit in the Court Registry. At that time she obtained counsel, Appellee/Cross-appellate Counsel in the present case, to try to recoup the money she believed she had paid to buy the property free of encumbrances at the HOA

[3] 2014-CA-012117-O

sale. Accordingly, on June 20, 2016, Ge moved to 1) intervene, 2) to rescind the sale, and 3) to recover the entire $60,000.00 she had paid. In the meantime, on May 4, 2016, in accordance with Florida Statutes § 45.032, S&A moved, in county court, to intervene and disburse the $55,175.35 surplus to itself as assignee of Ms. Carter pursuant to the written agreement they entered into on March 16, 2016. On July 21, 2016, the HOA, noting "there remains sums available in the Court Registry," moved for disbursement of an additional $3,168.70 for interest, fees, and costs.

The trial court held an evidentiary hearing November 2, 2016, and announced a ruling which was thereafter reduced to writing and entered January 11, 2017. The "Order on Distribution of Funds Held by Orange County Clerk of Court" awarded $2,091.43 "for costs and reasonable attorney's fees" to the HOA, $5,517.35[4] to S&A without comment, and the "remaining Retained Funds"[5] to Ge without comment. Both S&A and Ge appealed the Order on Distribution, S&A in its entirety and Ge the portions that ordered funds disbursed to S&A and the HOA.

Analysis

There were three different movants in the matter below. S&A was moving to intervene and to have surplus monies disbursed to itself as assignee of Defendant Susan Carter. Ge was moving to intervene and have the trial court order the equitable remedy of rescission to undo the foreclosure sale and to return to her the entire $60,000.00 purchase money. HOA was already a party and was moving to have money from the surplus disbursed to itself, the legal basis of which is not clear from its Motion for Disbursement of Funds from Court Registry.

[4] This amount represents 10% of the $55,175.35 surplus as reflected by the Certificate of Disbursement issued March 29, 2016 and is stated as the "entitled to" amount in paragraph 4 of the Order on Distribution. R. 228. The Court notes that paragraph 5 of the Order on Distribution incorrectly orders $5524.84 remitted to S&A. *Id.*

[5] Paragraph 6 of the Order on Distribution uses this language. R. 229. Paragraph 7 of same names the amount as $47,632.08. *Id.* This amount is incorrect as $55,175.35-$2,091.43-$5,517.35=$47,566.57.

At no time, either orally or by written order, did the trial court make a determination, analyze, or rule that Ge or S&A were allowed to intervene. Consequently, neither Ge nor S&A are parties to the action below and have no standing either here or in the court below. Therefore, the Court dismisses this appeal *sua sponte*. *See Hidden Wealth, Inc. v. Royal Petroleum, Inc.*, 453 So. 2d 106 (Fla. 4th DCA 1984) (citing *Vogel v. Smith*, 371 So. 2d 719 (3rd DCA 1979)).[6]

Based on the foregoing, it is **ORDERED AND ADJUDGED** that the present appeal is hereby **DISMISSED** because Appellant and Cross-appellant do not have standing before the Court.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this ___ day of November, 2019.

ALICE L. BLACKWELL
Presiding Circuit Judge

WHITEHEAD, R. and RODRIGUEZ, H., JJ., concur.

[6] A trial court commits reversible error by authorizing the release of monies deposited in the court registry to one who was not a party to the action. *Vogel v. Smith*, 371 So. 2d 719 (3rd DCA 1979). The record shows that the trial court fashioned an equitable remedy distributing monies to non-parties Ge and S&A. R. 297-298. As neither yet have standing to appeal, this Court does not reach whether the trial court properly fashioned its equitable remedy, and in any event, entry of an order distributing monies to non-parties would be reversible error.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to **Judge Tina Caraballo**, at 425 N. Orange Avenue, Orlando, Florida 32801; **Bruce H. Hornstein, Esq.**, *counsel for Appellant*, at 6961 Indian Creek Dr., Miami Beach, FL 33141; and **David N. Glassman, Esq.**, *counsel for Appellee/Cross-appellant*, at 218 Palmetto Ave., Orlando, FL 32801, on this day of November, 2019.

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Judicial Assistant