

2024 WL 4297750

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio, Eighth District, Cuyahoga County.

LAKEVIEW LOAN SERVICING,
LLC, Plaintiff-appellant,

v.

Patricia Ann SOLDAT, et
al., Defendants-Appellees.

No. 113516

|

Released and Journalized: September 26, 2024

Civil Appeal from the Cuyahoga County Court of Common Pleas, Case No. CV-19-925215.

Attorneys and Law Firms

Albertelli Law Partners Ohio, LLC, [Antonio J. Scarlato](#), and [Mark R. Lembright](#), for appellant.

JOURNAL ENTRY AND OPINION

[ANITA LASTER MAYS, J.](#):

*1 {¶ 1} Plaintiff-appellant Lakeview Loan Servicing, LLC (“Lakeview”) appeals the trial court’s denial of reimbursement for condominium dues advanced during a foreclosure action against defendants-appellees Patricia Ann Soldat (“Soldat”), Mickey Bzdak (“Bzdak”), and Sandpiper Condominium Unit Owners Association, Inc. (“Sandpiper”). Based on a thorough review of the record, we affirm the trial court’s judgment.

I. Preliminary Matters

{¶ 2} As a preliminary matter, we observe that appellees failed to file appellate briefs before this court. Consequently, “this ‘court may accept the appellant’s statement of the facts and issues as correct and reverse judgment if appellant’s brief reasonably appears to sustain such an action.’” *Smallwood v.*

Shiflet, 2016-Ohio-7887, ¶ 8, fn. 1 (8th Dist.), quoting App.R. 18(C).

{¶ 3} “App.R. 18(C) does not impose a form of appellate default judgment where the court of appeals can reverse solely because the appellee[s] failed to file a brief.” *In re S.M.T.*, 2012-Ohio-1745, ¶ 3 (8th Dist.). Reversal is warranted only if the arguments in the appellant’s brief reasonably appear to support a reversal.”¹

II. Introduction

{¶ 4} This case arises from a foreclosure action by mortgagee Lakeview against mortgagor Soldat and homeowner’s association Sandpiper. Bzdak purchased the property at foreclosure and intervened in the action prior to confirmation of the sale. The sale of the property was confirmed in November 2023. On appeal, Lakeview requests that this court vacate the judgments for the confirmation of sale and the trial court’s denial of Lakeview’s request for reimbursement for advances for condominium dues under [R.C. 5301.233](#).

III. Background and Relevant Facts

{¶ 5} Lakeview’s November 14, 2019 foreclosure complaint requested:

\$56,054.96 plus interest at the rate of 4.37500% per annum from May 1, 2019, together with its advances made pursuant to the terms of the mortgage for sums, including but not necessarily limited to, real estate taxes and assessments, insurance premiums, property protection, inspections, appraisals, and maintenance.

{¶ 6} The condominium rider was attached to and incorporated as part of the mortgage and stated it was an amendment and supplement to the mortgage.

(“Condominium Project”). If the owners association or other entity which acts for the Condominium Project (“Owners Association”) holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower’s Interest in the Owners Association and the uses, proceeds and benefits of Borrower’s Interest.

...

B. Borrower promises to pay all dues and assessments imposed pursuant to the legal instruments creating and governing the Condominium Project.

*2 C. If borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate, with interest, upon notice from Lender to Borrower requesting payment.

{¶ 7} Lakeview did not reference the condominium rider and its contents in the complaint.

{¶ 8} The January 6, 2022 magistrate's foreclosure decision provided:

Plaintiff may have advanced or may advance during the pendency of this action sums for the payment of taxes, hazard insurance premiums and protection of the property described herein, the total amount of which is undetermined at the present time, but which amount will be ascertainable at the time of the judicial sale, which amount may be added to the first mortgage lien of plaintiff. Determination of the exact, if any, amount due Plaintiff for said advances is reserved for further order.

...

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there may be due Plaintiff, additional sums advanced by it under the terms of the note and mortgage to pay real estate taxes, hazard insurance premiums, and property protection, inspections, appraisals, which sums are to be determined by further Order.

Mag. Dec., Journal Entry No. 120431863 (January 6, 2022).

{¶ 9} The decision also advised:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, if a successful sale occurs, the parties are ordered to file any motions for reimbursement of advances pursuant to R.C. 5301.233 within 21 days from the sale. A party may move the court to extend this deadline for good cause shown. No party will be granted reimbursement for advances if such a motion is not filed before this deadline. Within seven days from the filing of a motion for reimbursement, a party may file a brief in opposition. The court will then make a careful examination of the sale pursuant to the applicable statutes.

Id.

{¶ 10} Lakeview did not file objections to the magistrate's decision regarding the absence of advances for condominium dues under Civ.R. 53(D)(3)(b)(i). The court's January 31, 2022 decree affirming the decision provided in pertinent part:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there may be due Plaintiff additional sums advanced by it under the terms of the note and mortgage to pay real estate taxes, hazard insurance premiums, and property protection, which sums are to be determined by further Order.

The court's January 31, 2022 judgment affirming the decision was a final appealable order. There was no appeal.

{¶ 11} The property was sold on August 21, 2023. Lakeview was granted leave to file its motion for reimbursement and did so on September 25, 2023. Lakeview requested reimbursement pursuant to the "mortgage terms" and R.C. 5301.233 for:

Escrow advances for real estate taxes, assessments, and hazard insurance premiums — \$12,149.95.

Property protection — \$1,522.61.

Condominium association dues advanced — \$12,965.97.

The total amount claimed was \$26,638.53.

{¶ 12} A five-page single-spaced "escrow advance breakdown" containing a list of advances was attached as a supporting exhibit. Two entries dated June 6, 2022, designated "CFMAA-Condo/HOA dues" are for \$9,926.74 and \$3,039.23, totaling the requested sum of \$12,965.97.

{¶ 13} In September 2023, appellee intervened to correct his name on the submitted bid. In early October 2023, appellee Soldat moved to redeem the property. The trial court set a hearing for October 30, 2023, to address the redemption and motion for reimbursement. On October 29, 2023, Soldat moved to continue the hearing. On October 30, 2023, Lakeview and Sandpiper appeared at the hearing, Soldat failed to appear, and the hearing was continued to November 30, 2023. On November 20, 2023, appellee Soldat withdrew the redemption motion and the magistrate cancelled the November 30, 2023 hearing.

*3 {¶ 14} In an order and journal entry dated November 20, 2023, the court approved advances of \$1,522.61 for property protection and \$12,149.95 for escrow (real estate taxes, assessments, and hazard insurance premiums) for a total of

\$13,672.56.² The court denied the request for condominium dues on the ground that neither the foreclosure decision and order nor Ohio law provided for advances for condominium dues. The order of confirmation was signed on November 21, 2023, and journalized on November 22, 2023, and Lakeview timely appealed.

IV. Assignments of Error

{¶ 15} Lakeview assigns the following errors:

- I. The trial court erred by failing to rule on plaintiff-appellant's motion for reimbursement of advances prior to issuing the decree of confirmation.
- II. The trial court erred in holding that there is no provision in the aforementioned court documents or in Ohio law permitting reimbursement for "condominium association dues advanced."

V. Discussion

A. Standard of Review

{¶ 16} There are two judgments that are appealable in foreclosure actions: the order of foreclosure and sale and the order of confirmation of sale. *Fid. Bank, N.A. v. Unknown Heirs of Bowyer*, 2023-Ohio-611, ¶ 9 (8th Dist.), citing *CitiMortgage, Inc. v. Roznowski*, 2014-Ohio-1984, ¶ 39. The foreclosure order "determines the extent of each lienholder's interest, sets out the priority of the liens, determines the other rights and responsibilities of each party, and orders the property to be sold by sheriff's sale." *Id.*, citing *id.* at ¶ 39. Once the foreclosure order is final and the appellate process concluded, a party may no longer challenge the rights and responsibilities of the parties set forth in the foreclosure order. *Id.*, citing *id.*

{¶ 17} After the property is sold, all that remains is to conduct the ancillary proceeding confirming the sale pursuant to R.C. 2329.31(A). The trial court is to determine the legality of the sale in all respects by carefully examining the proceedings. " 'As part of this examination, the court must determine whether the amounts advanced for inspections, appraisals, property protection, and maintenance are accurate.' " (Emphasis omitted.) *Unknown Heirs of Bowyer*, at 11, quoting *Roznowski* at ¶ 36.

{¶ 18} Absent an abuse of discretion, an appellate court will not reverse a trial court's foreclosure decree or confirmation of

sale. *Treasurer of Cuyahoga Cty. v. Berger Properties of Ohio*, 2021-Ohio-3204, ¶ 9 (8th Dist.); *MidFirst Bank v. Samad*, 2015-Ohio-2270, ¶ 8 (8th Dist), citing *Ohio Sav. Bank v. Ambrose*, 56 Ohio St.3d 53, 55 (1990).

{¶ 19} " '[T]he term "abuse of discretion" ... implies that the court's attitude [was] unreasonable, arbitrary or unconscionable.' " *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983), quoting *Steiner v. Custer*, 137 Ohio St. 448 (1940), paragraph two of the syllabus. "A decision is unreasonable if there is no sound reasoning process that would support that decision." *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990).

B. Analysis

{¶ 20} We address the assignments out of order for ease of analysis.

1. Reimbursement of Condominium Fees Advanced

{¶ 21} Lakeview contends that the trial court's denial of reimbursement for condominium dues was in error. The trial court held:

The Magistrate's Decision and Order Adopting the Magistrate's Decision provides for reimbursement for advances. There is no provision in the aforementioned Court documents or in Ohio law permitting reimbursement for "Condominium Association dues advanced, as requested by Plaintiff."

*4 {¶ 22} Lakeview argues the trial court abused its discretion as the condominium rider to the mortgage and R.C. 5311.18(B)(5) specifically allow recovery for the condominium dues. R.C. Ch. 5311 governs condominium property. R.C. 5311.18 authorizes, unless otherwise provided by the bylaws or declaration, a continuing lien by a unit owners associations against the unit owners for payment of liens for unpaid common expenses of condominium property and listed expenses to enforce and collect a lien.

{¶ 23} R.C. 5311.18(B)(5) provides that "[a] mortgage on a unit may contain a provision that secures the mortgagee's advances for the payment of the common expenses chargeable against the unit upon which the mortgagee holds the mortgage." *Id.* The statute does not address condominium dues.

{¶ 24} The mortgage condominium rider attached to the mortgage specified in part, “[i]f borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph C shall become additional debt of Borrower secured by the Security Instrument....”

{¶ 25} The court's foreclosure decree directed that after the property sale, during the confirmation of sale stage under R.C. 2329.31, the parties were to move for reimbursement of advances made pursuant to R.C. 5301.233. Entitled “[m]ortgages to secure certain advances,” the statute provides:

In addition to any other debt or obligation, a mortgage may secure unpaid balances of advances made, with respect to the mortgaged premises, for the payment of *taxes, assessments, insurance premiums, or costs incurred for the protection of the mortgaged premises*, if such mortgage states that it shall secure such unpaid balances. A mortgage complying with this section is a lien on the premises described therein from the time such mortgage is delivered to the recorder for record for the full amount of the unpaid balances of such advances that are made under such mortgage, plus interest thereon, regardless of the time when such advances are made.

(Emphasis added.) *Id.*

{¶ 26} This court agrees that R.C. 5311.18 allows a mortgage to contain a provision that secures mortgagee advances for unpaid common expenses of a condominium unit. This court does not agree that Lakeview's claim for condominium dues falls within the purview of costs contemplated by R.C. 5301.233 for “taxes, assessments, insurance premium or costs incurred for the protection of the mortgage premises.” *Id.*

{¶ 27} The condominium dues were secured by the mortgage. Lakeview did not list condominium dues in the complaint nor did it object to the magistrate's foreclosure decision, subsequently affirmed by the trial court, which was a final appealable order. Lakeview did not appeal the order.³ The foreclosure decree determines the interest and priorities of the lienholders. *Roznowski*, 2014-Ohio-1984, at ¶ 36. “If an individual or entity believes that the order of foreclosure fails to accurately reflect an interest in the property, the proper means to challenge the court's determination is by appealing the order of foreclosure.” *Id.* at ¶ 38.

*5 {¶ 28} Because Lakeview failed to appeal the foreclosure order, any argument pertaining to it is now barred. *U.S. Bank, Natl. Assn. v. Sanders*, 2017-Ohio-1160, ¶ 16 (8th Dist.), citing *Beneficial Ohio, Inc. v. LaQuatra*, 2014-Ohio-605, ¶ 5, (8th Dist.), citing *Third Fed. S. & L. Assn. of Cleveland v. Rains*, 2012-Ohio-5708, ¶ 10-12 (8th Dist.).

{¶ 29} The second assignment of error is overruled.

2. Failure to Rule on Advances Prior to Confirmation

{¶ 30} Lakeview asserts via its first assignment of error that the trial court failed to rule on Lakeview's motion for reimbursement prior to confirmation of the property sale. R.C. 2329.31(A), which governs the confirmation proceeding includes a determination of “whether the amounts advanced for inspections, appraisals, property protection, and maintenance are accurate.” *Roznowski*, 2014-Ohio-1984, at ¶ 36.

{¶ 31} Due to this court's finding that Lakeview failed to request the condominium dues in the complaint for foreclosure, did not object to the failure to list condominium dues in the magistrate's decision, or did not appeal the foreclosure decree, the first assignment of error is moot. App.R. 16(A)(7).

{¶ 32} The first assignment of error is overruled.

VI. Conclusion

{¶ 33} The trial court's judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHELLE J. SHEEHAN, P.J., and FRANK DANIEL CELEBREZZE, III, J., CONCUR

All Citations

Slip Copy, 2024 WL 4297750, 2024-Ohio-4676

Footnotes

- 1 An “appellee will not be heard at oral argument except by permission of the court upon a showing of good cause submitted in writing prior to argument; and in determining the appeal, the court may accept the appellant’s statement of the facts and issues as correct and reverse the judgment if appellant’s brief reasonably appears to sustain such action.” [App.R. 18\(C\)](#).
- 2 The entry was manually file-stamped by the clerk’s office on November 29, 2023.
- 3 To the extent Lakeview posits it properly requested condominium dues in its request for advances, it was also Lakeview’s burden to submit sufficient evidence that it was entitled to proceeds from the advancement of condominium dues though it was not listed in the complaint nor included in the court’s foreclosure order and “that the advances fell within the categories of supplemental distributions under the foreclosure decree.” [Unknown Heirs of Bowyer, 2023-Ohio-611, at ¶ 13 \(8th Dist.\)](#). Instead, two abbreviated lines containing two amounts were provided with its submission without mention of the condominium rider as a proposed basis for recovery.

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