

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2010-CP-08-3514

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SC Court of Appeals

Branch Banking and Trust Company.....Respondent,

v.

Wilton H. Cain and Cassandra M. Cain.....Appellants.

FINAL BRIEF OF RESPONDENT

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August 26, 2013

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STATEMENT OF THE ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR WHEN IT DENIED APPELLANTS' REQUEST FOR AN APPRAISAL FOLLOWING A DEFICIENCY JUDGMENT?**

STATEMENT OF THE CASE

On June 16, 2011, a foreclosure hearing was held before the Honorable Robert E. Watson as Master-in-Equity for Berkeley County. (S.R. pp. 2-10). The court granted a judgment of foreclosure and ordered the property sold. (R. p. 2). Respondent demanded a deficiency judgment. (SR. p. 10).

The Berkeley County Master-in-Equity held a foreclosure sale of Appellants' property on August 3, 2011. (S.R. p. 10). The sale became final on September 2, 2011. (S.R. p. 11).

Appellants filed a Petition and Proposed Order for Appraisal after Deficiency Judgment on September 6, 2011. (R. p. 10).

The Order for Deficiency Judgment was filed on September 16, 2011. (S.R. pp. 11-12).

On September 28, 2011, the Honorable Kristi L. Harrington signed a copy of the proposed order granting Appellants' requested appraisal. (R. p. 4). However, neither the Respondent nor Appellants were forwarded a copy of the signed order.

On October 27, 2011, the trial court then issued an order via a Form 4 rescinding the previously signed order and denied Appellants' request for an appraisal. (R. p. 4).

On November 1, 2011, Appellants filed a Motion to Reconsider / Appeal Order to Rescind Order of Appraisal / and Issue Order for Appraisal. (R. pp. 12-13).

The court denied the Appellants' Rule 59(e), SCRCF motion via a Form 4 filed on November 9, 2011. (R. p. 5).

This appeal followed.

STATEMENT OF THE FACTS

This appeal concerns the denial of a petition for an appraisal filed in connection with a mortgage foreclosure action. Respondent filed a foreclosure complaint against Appellants on October 4, 2010. (S.R. p. 2 ¶1-2). Respondent demanded a deficiency judgment against the Appellants. (S.R. p. 5 ¶18). On June 16, 2011, a foreclosure hearing was held before the Honorable Robert E. Watson as Master-in-Equity for Berkeley County. (S.R. pp. 2-10). The court granted a judgment of foreclosure and ordered the property sold. (R. p. 2). At the time the foreclosure was granted, the Appellants no longer occupied the property. (S.R. p. 6 ¶21).

On August 2, 2011, the property was sold at a judicial sale. (S.R. p. 11). Respondent was the high bidder. (S.R. p. 11). Because a deficiency judgment was sought, the sale was held open for thirty days as required by statute. (S.R. p. 11). On September 2, 2011, the sale became final and an order for deficiency judgment against the Appellants was filed on September 19, 2011. (S.R. p. 11).

On September 6, 2011, Appellants filed a verified petition seeking an order of appraisal. (R. p. 3). The verified petition requested the court appoint Dot Adams of Tri County Appraisals, Inc. as appraiser for the Appellants. (R. p. 3).

Upon information and belief, attached to the verified petition was a proposed order. The Honorable Kristi Harrington signed the proposed order on September 28, 2011 and it was filed the following day. (R. p. 3). However, for reasons unknown, the Respondent did not receive a copy of the signed order after it was filed.

On October 27, 2011, the court then *sua sponte* issued an order via a Form 4 that rescinded the order granting an appraisal after deficiency judgment. (R. p. 4).

Appellants then filed a motion to reconsider on November 1, 2011, and sought clarification as to why the court initially signed the order granting the appraisal but then rescinded the order

without a hearing. (R. pp. 12-13). Finally, the court denied Appellants motion to reconsider on November 9, 2011 without a hearing. (R. p. 5).

STANDARD OF REVIEW

The denial of a petition for order of an appraisal is reviewed *de novo*. See *S.C. Nat'l Bank v. Devine Blossom*, 321 S.C. 110, 467 S.E.2d 767 (Ct. App. 1996).

ARGUMENT

I. THIS COURT SHOULD REMAND THIS CASE FOR A *DE NOVO* HEARING DUE TO THE INSUFFICIENT RECORD ON APPEAL.

“Proper appellate review is extremely difficult, if not impossible, where a lower court order omits specific findings of fact to support its legal conclusions.” *Atkinson v. Atkinson*, 279 S.C. 454, 456, 309 S.E.2d 14, 15 (Ct. App. 1983). In *Atkinson*, this Court was faced with a record that was “insufficient to permit adequate review” of whether the family court properly granted a divorce. *Id.* The family court’s order was filled with legal conclusions that were not supported by findings of fact. *Id.* Due to the insufficient record, this Court remanded the case for a *de novo* hearing and ordered the family court to set forth “each salient fact” to support its future order. *Id.*, 309 S.E.2d at 14.

Just as in *Atkinson*, it would be extremely difficult for this Court to engage in a proper appellate review of the issues presented in this appeal due to the insufficient record. This Court is being asked to review whether the trial court erred when it denied Appellants’ petition for an order of an appraisal following a deficiency judgment. However, this Court has no findings of fact or other evidence on which to review the trial court’s decision. Moreover, the trial court did not hold hearing on Appellants’ motion to reconsider after the lower court rescinded its previously signed order. Thus, this Court does not have the benefit of a transcript to understand

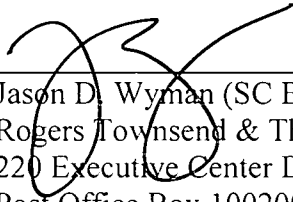
why the trial court rescinded the order granting the appraisal and denied the motion to reconsider. All of these reasons make a remand appropriate in this situation.

In addition, it is unclear whether Appellants are correct in their assertion that the trial court based its denial on an alleged waiver of their statutory appraisal rights. *See* S.C. Code Ann. § 29-3-680(B). Neither the Respondent nor the Appellants were given the opportunity to present arguments on this issue. In essence, this Court would be forced to act as a trial court to properly determine whether Appellants did in fact waive their right to an appraisal following the deficiency judgment. Thus, this Court should remand this case for a *de novo* hearing to determine if Appellants are entitled to an order of appraisal.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests this Court remand this case for a *de novo* hearing on the issues presented in this appeal.

Respectfully submitted,



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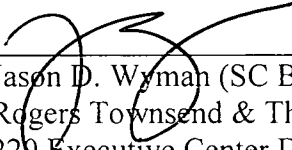
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PROOF OF SERVICE

I certify that I have served the **Final Brief of Respondent** on Appellants by depositing a copy in the United States Mail, postage prepaid, on August 26, 2013, addressed to Appellants Wilton H. Cain and Cassandra M. Cain at 2886 Palmer Drive, Charleston, South Carolina 29414.



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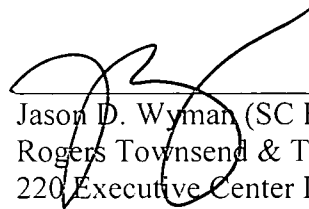
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCRCR.



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