



The South Carolina Court of Appeals

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POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 16, 2014

The Honorable Jerri Ann Roseneau
PO Box 1128
Beaufort SC 29901-1128

REMITTITUR

Re: Bloody Point Property v. William A. Ashton, Jr.
Lower Court Case No. 2011CP0702176
Appellate Case No. 2013-000222

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: James Frederick Berl, Esquire
Terry A. Finger, Esquire

Matthew Tillman, Esquire
Dustin Lee, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Bloody Point Property Owners Association, Inc., David
L. Fingerhut, and Patricia M. Santry, Respondents,

v.

William A. Ashton, Jr. and Michele C. Ashton,
Appellants.

Appellate Case No. 2013-000222

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Opinion No. 5262
Heard May 7, 2014 – Filed August 20, 2014

AFFIRMED

James Frederick Berl, of Law Offices of James F. Berl,
PC, of Hilton Head Island, and Dustin Lee, of Lee Law
Firm, LLC, of Hilton Head Island, for Appellants.

Terry A. Finger, of Finger & Fraser, PA, of Hilton Head
Island, for Respondent Bloody Point Property Owners
Association, Inc.; and Matthew Tillman, of Womble
Carlyle Sandridge & Rice, LLP, of Charleston, for
Respondents David L. Fingerhut and Patricia M. Santry.

LOCKEMY, J.: William A. Ashton, Jr. and Michele C. Ashton appeal the
master-in-equity's denial of their motion to vacate/set aside a foreclosure sale,
arguing the master erred in finding (1) they were properly served; (2) their due

publication. Appellants did not dispute the validity of the debt or their failure to pay dues and fees to the Association.

On May 9, 2012, the Fingerhuts filed a memorandum in opposition to the motion to vacate, wherein they argued they were good faith purchasers for value under section 15-39-870 of the South Carolina Code. The Fingerhuts further asserted (1) \$2,793.20 in taxes and fees unpaid by Appellants should be added to the sale price; (2) the foreclosure sales price did not shock the conscience of the court; and (3) the Association properly served Appellants pursuant to section 15-9-710 of the South Carolina Code.

On July 24, 2012, the master issued an order denying the motion to vacate, holding (1) the Fingerhuts were good faith purchasers for value; (2) the Fingerhuts paid \$11,593.20 for the Property; (3) the foreclosure sales price did not shock the conscience of the court; (4) the Association complied with the order for publication; and (5) Appellants were properly served with the summons and complaint. On July 25, 2012, Appellants filed a motion to reconsider the master's order denying the motion to vacate. The master denied the motion in a form order. This appeal followed.

STANDARD OF REVIEW

The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court. *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008). "An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." *Carson v. CSX Transp., Inc.*, 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012).

LAW/ANALYSIS

I. Bona Fide Purchasers

Appellants argue the master erred in finding the Fingerhuts were bona fide purchasers for value pursuant to section 15-39-870 of the South Carolina Code. We disagree.

Pursuant to section 15-39-870,

done. In the furtherance of this principle, our decisions have applied the general rule, applicable here, that a purchaser in good faith at a judicial sale is not affected by irregularities in the proceedings or even error in the judgment, under which the sale is made; but is required at his peril only to make inquiry as to the jurisdiction of the court which ordered the sale, and whether all proper parties were before the court when the order was made.

251 S.C. at 37, 159 S.E.2d at 917. Appellants contend the Fingerhuts failed to (1) properly inquire as to the jurisdiction of the court that ordered the foreclosure sale and (2) properly and sufficiently inquire as to whether all parties were properly before the court when the order was made. Additionally, Appellants argue the order of publication did not comply with the publication requirements of section 15-9-740 of the South Carolina Code. Pursuant to section 15-9-740,

[t]he order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks. The court, judge, clerk, master or judge of probate shall also direct that a copy of the summons be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him.

S.C. Code Ann. § 15-9-740 (Supp. 2013). Appellants assert it is unreasonable to expect a newspaper in Beaufort County to be the newspaper most likely to give notice to the Appellants, who reside in Pennsylvania. Appellants further assert the Association's failure to properly serve the summons and complaint violated Appellants' due process rights.

The Fingerhuts contend the purchaser (1) is deemed to be on notice of defects contained in the court's file and (2) takes title to the property without notice of lien or defect. Citing *Gladden v. Chapman*, 106 S.C. 486, 91 S.E. 796, 797 (1917), they argue the foreclosure purchaser is entitled to a presumption that the court

Id. at 146-47, 662 S.E.2d at 423. Thus, the *Robinson* court found foreclosure proceedings were res judicata as to bona fide purchasers without notice of defective service claims.

Here, as in *Robinson*, there is no evidence the Fingerhuts had any notice of Appellants' claims they were not properly served. Thus, the Fingerhuts were bona fide purchasers and their title to the Property was not affected by Appellants' claims of defective service of process in the foreclosure action. In light of our finding the Fingerhuts were bona fide purchasers without notice, we need not address Appellants' argument regarding improper service. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding appellate court need not address remaining issues when disposition of prior issue is dispositive).

II. Foreclosure Sales Price

Appellants argue the master erred in failing to set aside the foreclosure sale because the foreclosure sales price shocks the conscience. We disagree.

"A judicial sale will be set aside when either: (1) the sale price 'is so gross as to shock the conscience[;]' or (2) the sale 'is accompanied by other circumstances warranting the interference of the court.'" *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 150, 662 S.E.2d 424, 425 (Ct. App. 2008) (alteration by court) (quoting *Poole v. Jefferson Standard Life Ins. Co.*, 174 S.C. 150, 157, 177 S.E. 24, 27 (1934)). "South Carolina has not established a bright line rule for what percentage the sale value must be with respect to the actual value in order to shock the conscience of the court." *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 359, 644 S.E.2d 802, 807 (Ct. App. 2007). "However, a search of South Carolina jurisprudence reveals only when judicial sales are for less than ten percent of a property's actual value, have our courts consistently held the discrepancy to shock conscience of the court." *Id.*

Appellants purchased the Property in 2001 for \$201,500. The Fingerhuts subsequently purchased the Property for \$11,593.20 at the foreclosure sale in 2012. Appellants submitted an appraisal (Appellants' Appraisal) to the master which set the Property's value at \$140,000. This appraisal stated its intended use was to rebut the foreclosure sales price. The master found the Appellants' Appraisal used non-comparable sales data from oceanfront lots and only cited Multiple Listing Service listing data for interior lots as support for the valuation conclusion.