

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Oct 05 2020
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2020-001304

Churchill Park,

Respondent,

v.

Alan G. Nix, Norma J. Nix and the Estate of Norma J. Nix,

Defendants,

Of which Alan G. Nix and the Estate of Norma J. Nix are the,

Appellants.

**RESPONDENT'S RESPONSE IN OPPOSITION TO
APPELLANT'S MOTION FOR EMERGENCY INJUNCTION
STAYING SALE OF PROPERTY**

The Respondent, Churchill Park, respectfully requests this Court deny Appellant's motion to stay and/or enjoin the sale of the subject property, to deny the tolling of any statute of limitations, and to deny the imposition of sanctions against Respondent.

PROCEDURAL HISTORY

Trial in this matter was held in September 2017 and the final order granting judgment and foreclosure was issued November 9, 2017. Appellant Alan Nix filed his initial Notice of Appeal January 11, 2018. On July 27, 2018 the trial court scheduled the first foreclosure sale for September 4, 2018. The court also established \$20,000 as the appropriate bond amount required to stay the first foreclosure sale pursuant to S.C. Code § 18-9-170. On September 4, 2018 Appellant Alan Nix filed the required appeal bond and the sale was stayed pending the first appeal. This court dismissed Appellant Alan Nix's first appeal on June 27, 2019 and issued the Remittitur on January 21, 2020 after the South Carolina Supreme Court denied Mr. Nix's Petition for Certiorari.

On August 20, 2020 the trial court held a hearing to receive evidence of supplemental damages and set a second foreclosure sale date. Mr. Nix acknowledged receiving notice of that hearing and informed the trial court and the undersigned that he did not intend to appear at the hearing. On August 21, 2020 the trial court issued a Supplemental Order granting judgment of \$123,296.89 to Respondent and scheduled the second foreclosure sale for October 6, 2020. Respondent served Appellants with a copy of the Supplemental Order via U.S. Mail on September 1, 2020, however Appellants' acknowledge they received notice of the order by August 31, 2020. Appellants' Notice of Appeal from the Supplemental Order was filed with this court September 24, 2020.

LEGAL ARGUMENT

“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment decree or decision on appeal, and to automatically stay

matters decided in the order, judgment, or decree or decision.” SCACR 241(a). However, if the judgment being appealed is one directing the sale of real property, the execution of the judgment shall not be stayed unless the appellant posts a bond in an amount “fixed by a judge **of the court by which judgment was rendered.**” S.C. Code § 18-9-170 (emphasis added). To obtain such relief, the Appellants must first move the trial court for the issuance of supersedeas and to fix the bond amount. See SCACR 241(d)(1). Appellants have not submitted any evidence, nor is the undersigned aware of any evidence, that Appellants attempted to file or filed a Motion for Writ of Supersedeas before filing their motion with this Court. While petition to the appellate court may be proper in certain circumstances, Appellants’ motion fails to state “extraordinary grounds” as required by SCACR 241(d)(1) and (d)(4). Specifically, Appellants’ motion is not supported by any affidavits or sworn testimony; does not contain any legal arguments or legal authority; and does not show that they made an application for relief to the lower court.

Because the Appellants’ have failed to avail themselves of the procedure outlined in SCACR 241 and § 18-9-170, the trial court has a duty to proceed with the second foreclosure sale as scheduled on October 6, 2020. Ex parte Andrews, 152 S.C. 325, 150 S.E. 313, 314 (1929). As the Supreme Court explained in Andrews, while the appellate court and its judges and justices have the power to stay the proceedings in a case in a court from which an appeal comes, that rule does interfere with the procedure outlined in S.C. Code § 18-9-170.

Additionally, the existence of the 2018 appeal bond is of no consequence on the second foreclosure sale. As explained in Ex parte Andrews, the 2018 appeal bond only applied the first appeal. “That undertaking . . . did not, and could not, operate to stay the sale ordered under the second decree.” Id., 152 S.C. at 325, 150 S.E. at 314.

CONCLUSION

S.C. Code § 18-9-170 requires an appellant move the trial court for an order establishing the undertaking required to stay the sale of property from a judgment of foreclosure. Appellants have failed to follow this procedure. While Rule 241, SCACR outlines certain circumstances whereby an appellant make seek a stay of proceedings from this court, Appellants have failed to demonstrate such relief is appropriate under the current circumstances. Appellants have also failed to make their petition in the manner required by the appellate court rules. Because Appellants have failed to follow the procedure mandated by S.C. Code § 18-9-170, this court should deny Appellants' motion.

/s Stephanie Trotter Kellahan
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ATTORNEYS FOR RESPONDENT

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PROOF OF SERVICE

I certify that I served Respondent's Response in Opposition on Appellants by depositing a copy of it in the United States Mail, postage prepaid, on October 5, 2020 as follows:

Alan G. Nix
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Mount Pleasant, South Carolina 29466

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