

IN THE SUPREME COURT OF THE STATE OF MISSOURI

IN THE MATTER OF FORECLOSURE OF LIENS FOR DELINQUENT TAXES
BY ACTION IN REM

COLLECTOR OF REVENUE, CITY OF ST. LOUIS & SHERIFF OF THE CITY
OF ST. LOUIS & LEWIS MITCHELL COMPANY
RESPONDENTS

V.

PARCELS OF LAND ENCUMBERED WITH DELINQUENT TAX LIENS, LTS
144-026 & MOHAMMAD BHATTI,
APPELLANT

Cause # SC90732

Appeal from the Circuit Court of the City of St. Louis, Twenty-Second Judicial
Circuit
The Honorable Michael F. Stelzer, Judge

RESPONDENT GREGORY F. X. DALY'S BRIEF

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JURISDICTIONAL STATEMENT

Contrary to the assertions of the Appellant, this Court does not have jurisdiction to hear this appeal because the time within which to appeal the underlying judgment, upon which this appeal is purportedly based, had long expired before the Notice of Appeal to this Court had been filed.

There are time constraints within which parties need to operate in order to have their claims adjudicated. For this reason, the Courts and the Legislature has set out temporal limitations within which pleadings need to be filed. Various Statute of Limitations and Supreme Court Rules of Procedure set out times during which suits and post judgment motions are to be filed. In this appeal, Appellant seeks to have this Court review the denial of its post-trial motions to have a judgment confirming a Sheriff's sale set aside. Appellant failed to timely file her post-judgment pleadings and as a result, her notice of appeal. Since all of Appellant's post-judgment filings occurred beyond the permissible dates, neither the Circuit Court, nor this Court has jurisdiction to hear this appeal.

Therefor, there is nothing for this Court to consider, and the appeal should be dismissed as untimely filed.

STATEMENT OF FACTS

A Judgment of foreclosure against the property at issue was entered by the St Louis City Circuit Court on June 6, 2008. (LF pg 8) On May 19, 2009, the property was sold at the Sheriff sale to Lewis Mitchell Company for \$7,600.00. (LF pg 27) That sale was confirmed by the Circuit Court on July 23, 2009. (LF pg 36) On October 19, 2009, one hundred fifty-three days (153) after the Sheriff's sale and eighty-eight days (88) after the Judgment confirming the Sheriff's sale, the Appellant filed his Motion to Set aside the Sheriff's sale. (LF pg 38) Appellant's Amended Motion to Set Aside the Sheriff's sale was filed on November 12, 2009, (LF pg 48) some 112 days after the entry of the Judgment confirming the Sheriff's sale from which the appeal is taken. The principal basis of both Motions was that sufficient efforts were not made to serve a notice of the Sheriff's sale on the Appellant.

On November 16, 2009, Appellant's Motions to Set Aside the Sheriff's sale were denied. (LF pg 63)

On December 9, 2009, Appellant filed his Motion for New Trial. (LF pg 66) On February 4, 2010, he filed an Amended Motion for New Trial. (LF pg 75) Both Motions for New Trial were denied on February 5, 2010. (LF pg 85.)

On February 16, 2010, Appellant filed his Notice of Appeal with the St.

Louis City Circuit Court (Twenty-Second Judicial Circuit) (LF pg 88).

POINTS RELIED ON

The Trial Court did not error in denying Appellant's post-judgments Motions because it did not have jurisdiction.

Taylor v. United Parcel Service, Inc., 854 S.W.2d 390, 392 (Mo., 1993)

In re Franz' Estate, 359 Mo. 362, 221 S.W.2d 739, 740 (1949);

Walker v. Smallwood, 247 S.W.3d 24, 26-27 (Mo. App., 2008).

MRCP 75.01

§511.170 - 210 RSMo

ARGUMENT

THE TRIAL COURT DID NOT ERROR IN DENYING APPELLANT'S POST-JUDGMENTS MOTIONS BECAUSE IT DID NOT HAVE JURISDICTION.

Appellant was and is clearly attempting to have the Judgment confirming the Sheriff's sale to Lewis-Mitchell reexamined and set aside. However, the Appellant used improper procedure. The Circuit Court retained jurisdiction to reexamine its June 23, 2009 Judgment for thirty (30) days after the Judgment was entered.

Contrary to the assertions of the Appellant, this Court does not have jurisdiction to hear this appeal because the time within which to appeal the underlying Judgment, upon which this appeal is purportedly based, had long expired before the Notice of Appeal to this Court had been filed.

There are time constraints within which parties need to operate in order to have their claims adjudicated. For this reason, the Courts and the Legislature has set out temporal limitations within which pleadings need to be filed. Various Statute of Limitations and Supreme Court Rules of Procedure set out times during which suits and post Judgment motions are to be filed. In this appeal, Appellant seeks to have this Court review the denial of its post-trial motions to have a Judgment confirming a Sheriff's sale set aside. Appellant failed to timely file her post Judgment pleadings and as a result her Notice of Appeal. It would be helpful

for this Court to set out the timeline of the proceedings in this case.

TIMELINE IN LTS 144-024 APPEAL

June 6, 2008	Judgment of Foreclosure in LTS 144
April 21, 2009	Gordon Schweitzer mails notice to property owners of Sheriff's sale in LTS 144
April 29, 2009	Letter to owner in LTS 144-024 returned to Sheriff's office marked "RTS. ANK, UTF".
May 19, 2009	Sheriff's sale in LTS 144. LTS 144-024 was sold to Lewis Mitchell Company for \$7,600.00
July 23, 2009	Sale of LTS 144-024 confirmed.
October 19, 2009	Appellant files a Motion to Set Aside Sheriff's sale.
November 12, 2009	Appellant files an Amended Motion to Set Aside Sheriff's sale and oral arguments presented.
November 16, 2009	Appellant's Motion to Set Aside Sheriff's sale denied.
December 9, 2009	Appellant files a Motion for new trial
February 4, 2010	Appellant files an Amended Motion for New Trial
February 5, 2010	Appellant's Motion and Amended Motion for New Trial denied.
February 16, 2010	Notice of Appeal to the Supreme Court filed with Circuit Clerk, appealing judgments dated 11/16/2009 and 2/5/2010

A review of these proceedings discloses that the Appellant's Motions and Appeals were directed at the Circuit Court's Judgment confirming the Sheriff's sale, which was entered on July 23, 2009. Since all of Appellant's post-judgment

filings occurred beyond the permissible dates, neither the Circuit Court, nor this Court has jurisdiction to hear this appeal.

MRCP 75.01 provides, in pertinent part

“The trial court retains control over judgments during the thirty-day period after entry of judgment and may, after giving the parties an opportunity to be heard and for good cause, vacate, reopen, correct, amend, or modify its judgment within that time.”

The Judgment, on which this appeal is based, was the Judgment confirming the Sheriff’s sale. The Confirmation Judgment was entered on July 23, 2009. (LF pg. 36) Appellant filed a Motion to Set Aside the sale on October 16, 2009 (LF pg. 38), some 85 days after the Judgment confirming the sale. Appellant’s Amended Motion to Set Aside the Sheriff’s sale was filed on November 12, 2009, (LF pg 48) some 112 days after the entry of the Judgment from which the appeal is taken. The Circuit Court denied Appellant’s Motion to Set Aside the sale on November 17, 2009. (LF pg. 63) on the basis that it no longer had jurisdiction. Appellant’s Motion for New Trial left nothing for the Circuit Court to rule on, since the Court had no jurisdiction to rule on the Motion to Set Aside the Sheriff’s sale. Appellant’s filing of Motions for New Trial and Notices of Appeal failed to confer

jurisdiction in any Court, Circuit or Supreme, since the last possible date for Appellant to take advantage of challenging the Judgment Confirming the Sheriff's sale would have been August 24, 2009.

Since the Appellant's Motions and Appeals took place long after the date when they would have been timely, this Court is faced with an appeal of an action which is not justified under the law.¹ Taylor v. United Parcel Service, Inc., 854 S.W.2d 390, 392 (Mo., 1993); In re Franz' Estate, 359 Mo. 362, 221 S.W.2d 739, 740 (1949); Walker v. Smallwood, 247 S.W.3d 24, 26-27 (Mo. App., 2008).

Therefor, there is nothing for this Court to consider, and the appeal should be dismissed as untimely filed.

¹ We would point out that Appellant had an alternative method to attack the Judgment confirming the Sheriff's sale under the provisions of §511.170 - 210 RSMo. but chose not to take advantage of this alternative

RELIEF SOUGHT

For the reasons set out in this brief, and keeping in mind this Respondent's earlier Motion to Dismiss, the Circuit Court Judgement should be affirmed.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 84.06 of the Missouri Rules of Civil Procedure and the Local Rules of this Court, counsel for Respondent hereby certifies the following:

1. Respondent's Brief contains the information required by Rule 55.03;
2. Respondent's Brief complies with the limitations contained in Rule 84.06(b);
3. The number of words in Respondent's Brief is 2490, in compliance with the Missouri Supreme Court Rules and the Local Rules of this Court;
4. The word processing software used to prepare Respondent's Brief was

WordPerfect X5; with New York Times 14 point font and

5. Ten copies of Respondent's Brief in WordPerfect X5 format will be filed manually with the Court along with the disk with a copy of the disk to Appellants' counsel. The disk has been scanned by the virus program Office Scan and was found to be free of any virus

Anthony J. Sestric

CERTIFICATE OF SERVICE

I hereby certify that two copies of the above and forgoing pleading and an electronic copy on disk has been served upon the parties hereto by depositing the same, postage prepaid, this 10th day of September,, 2010 addressed to:

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Anthony J. Sestric

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Petition for review, grounds.

§511.170RSMo. When such interlocutory judgment shall be made and final judgment entered thereon against any defendant who shall not have been summoned as required by this chapter, or who shall not have appeared to the suit, or has been made a party as the representative of one who shall have been summoned or appeared, such final judgment may be set aside, if the defendant shall, within the time herein limited, appear, and by petition for review, show good cause for setting aside such judgment.

Bar to petition for review.

§511.180RSMo. If the plaintiff shall, at any time after such final judgment, serve the defendant, within any of the United States or the territories thereof, with notice of the suit and a copy of the judgment thereon, and such defendant shall not, within one year after such service, bring his petition for review, the court, on proof of the service of such notice, shall make an order that the judgment stand absolute.

Judgment absolute after three years.

§511.190 RSMo. If such petition for review be not filed within three years after such final judgment is rendered, the same shall stand absolute, whether notice thereof be given or not.

Judgment set aside--contents of petition.

§511.200RSMo. No such judgment shall be set aside unless the petition for review shall state the existence of the facts set forth in section 511.170, and that the petition of plaintiff, upon which the judgment complained of was obtained, is untrue in some material matter, setting it forth, or that he has and then had a good defense thereto, setting such defense forth, or both, and then only on condition that the defendant answer or direct a motion to the petition of plaintiff on which the judgment was rendered within a reasonable time, to be ordered by the court. Such petition for review shall be verified by affidavit of the defendant or his attorney of record.

Petition, how served.

§511.210 RSMo. The petition of defendant shall be served on the plaintiff in the judgment or notice given by publication to him, or, if the plaintiff be dead, then on or to his legal representatives, in like time and manner as provided for the service or giving of notice in case of an original petition upon a defendant.

COURT RULES

MRCP 75.01. Judgments, Control by Trial Court

The trial court retains control over judgments during the thirty-day period after entry of judgment and may, after giving the parties an opportunity to be heard and for good cause, vacate, reopen, correct, amend, or modify its judgment within that time. Not later than thirty days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and every order granting a new trial shall specify the grounds therefor. After the filing of notice of appeal and before the filing of the record on appeal in the appellate court, the trial court, after the expiration of such thirty-day period, may still vacate, amend or modify its judgment upon stipulation of the parties accompanied by a withdrawal of the appeal.

The thirty-day period after entry of judgment for granting a new trial of the court's own initiative is not shortened by the filing of a notice of appeal but is terminated when the record on appeal is filed in the appellate court.