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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-1308-MR

WILLIAM "BILL" PERRY — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BRIAN C. EDWARDS, JUDGE
ACTION NO. 22-CI-400559

WILMINGTON SAVINGS FUND SOCIETY, FSB NOT IN ITS CAPACITY BUT SOLELY IN ITS CAPACITY AS OWNER TRUSTEE FOR OCWEN LOAN ACQUISITION TRUST 2023-HB F/K/A REVERSE MORTGAGE FUNDING, LLC; CAROLE SCHNEIDER; COLDSTREAM HOMEOWNERS ASSOCIATION, INC.; DENISE DRIGGS; LINDA DODGE (DECEASED 6/30/2022); LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT; MICHAEL DAVID DRIGGS; UNITED STATES OF AMERICA; UNKNOWN EXECUTOR/ADMINISTRATOR OF THE ESTATE OF LINDA A. DODGE; UNKNOWN HEIRS OF THE ESTATE OF LINDA A. DODGE; AND UNKNOWN SPOUSE OF LINDA A. DODGE

APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CETRULO, AND KAREM, JUDGES.

CETRULO, JUDGE: William Perry ("Perry") appeals a Jefferson Circuit Court order denying a motion to set aside a Master Commissioner's sale. Perry argues the purchase price exceeded the property's value, and the condition of the property is indicative of unfairness in the sale process. However, as the inappropriateness of the purchase price was not established and we detect no unfairness in the sale process, we find no abuse of discretion in the trial court's refusal to set aside the sale and affirm the Jefferson Circuit Court.

BACKGROUND

In May 2022, Wilmington Savings Fund Society ("Wilmington")[1] initiated a foreclosure action on a property located on Olde Spring Road in Louisville, Kentucky ("Property"). In October 2024, Wilmington obtained a foreclosure judgment on the property, and shortly thereafter, the county's Master Commissioner listed the property for sale. The listing included an appraisal signed

[1] Named Appellees are Wilmington Savings Fund Society, FSB, not in its capacity but solely in its capacity as Owner Trustee For Ocwen Loan Acquisition Trust 2023-Hb f/k/a Reverse Mortgage Funding, LLC; Carole Schneider; Coldstream Homeowners Association, Inc.; Denise Driggs; Linda Dodge; Louisville/Jefferson County Metro Government; Michael David Driggs; United States of America; Unknown Executor/Administrator of the Estate of Linda A. Dodge; Unknown Heirs of the Estate of Linda A. Dodge; and Unknown Spouse of Linda A. Dodge.

by court-appointed appraisers Raymond Suell ("Appraiser Suell") and Charlotte Walford. The appraisal specified the Property was "NO ENTRY[,]" rated its condition as "average," and valued it at $200,000. "Guidelines for Sales" ("Guidelines") were also posted with the appraisal. The first page of the Guidelines stated, "Sales are 'BUYER BEWARE.' Sold 'AS IS WHEN SOLD.' With NO WARRANTY of Title."

At the Master Commissioner sale on February 7, 2025, Perry was the successful bidder at $201,000. The Master Commissioner filed a report of sale on February 12. Upon receiving written confirmation of the sale, Perry entered the home on the Property to find its condition vastly worse than expected. According to Perry, the Property had deteriorated structural beams, damaged framing, mold, smoke/fire damage, missing fixtures, chimney instability, and standing water in the basement. As a result, on February 20, Perry filed objections to the report of sale in accordance with CR[2] 53.05(2) and moved to set aside the sale. Perry argued the appraisal significantly overvalued the Property to such a degree that it "shocks the conscience." Perry asserted the mistake of fact was "in no way attributable to fraud," but claimed that he relied on the misleading appraisal to his detriment. He requested vacating the sale, return of his purchase money, and leave to seek reimbursement for remediation work.

[2] Kentucky Rule of Civil Procedure.

In March 2025, 32 days after the sale, Perry received a Louisville Code Enforcement demolition notice for the Property.

The circuit court held an evidentiary hearing in July 2025. At the hearing, Perry testified on his own behalf and called Appraiser Suell as his other witness. Appellees did not call any witnesses.

Appraiser Suell testified that he had been appraising properties for the Master Commissioner for about 35 years. He stated that he had no right of entry to the Property, but he based its fair market value on public property evaluation records, his research on comparable nearby homes, and an in-person street view. Appraiser Suell stated he listed "NO ENTRY" on the appraisal to indicate he had no access to the interior of the home or right to be on the Property. Appraiser Suell explained that he is not permitted to indicate on the appraisal that a home is vacant due to the concern for potential break-ins. Based on the information available to him, he listed the Property's condition as "average" and placed a "conservative" value on the Property at $200,000.

Next, Perry testified that he had purchased approximately ten homes at previous Master Commissioner sales. For the Property in question, Perry stated he relied upon the appraisal but also drove by the home numerous times. He acknowledged reading the Guidelines prior to the sale and admitted he read the "Buyer Beware" and "sold as is" language; he admitted that language indicated to

him that purchasing the home meant "taking a chance when you buy one." He stated his belief that an "average" rated home should be in "half-decent shape," but the Property's condition was more severe than anticipated. He asserted that the home was not "average" and was not habitable without extensive work.

The Jefferson Circuit Court denied Perry's motion to set aside the Master Commissioner's sale. In its order, the circuit court stated Perry's claim that the sale of the Property "shocks the conscience" lacked merit because it was "clearly rebutted" by the Guidelines language. Also, the court found that Perry made no claim of fraudulent or nefarious behavior on behalf of Wilmington or the Master Commissioner. After obtaining finality language, Perry appealed the circuit court's order denying his motion to set aside the Master Commissioner sale.

STANDARD OF REVIEW

Notably, the circuit court did not confirm the sale,[3] which leaves only the circuit court's decision not to vacate the sale for review on appeal. "The circuit court's decision to confirm or vacate a judicial sale is reviewed for an abuse of discretion." *U.S. Bank Nat'l Ass'n v. Courtyards Univ. of Kentucky, LLC*, 594 S.W.3d 205, 209 (Ky. App. 2019) (citation omitted). The test for abuse of discretion is whether the trial court's decision was "arbitrary, unreasonable, unfair,

[3] Perry's appellate argument proceeds under the misconception that the circuit court's order denying his objections also confirmed the sale. However, while such a dual-prong order is often the standard course of practice, the order on appeal does not contain confirmation language.

or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted). Review of the trial court's findings of fact shall not be set aside unless they are clearly erroneous. CR 52.01. A trial court's findings of fact are not clearly erroneous if supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (citations omitted). "The abuse of discretion and clear error standards allow an appellate court to walk this fine line – to engage in a meaningful review without resorting to retrying the issue – by requiring a thorough *but deferential* examination of the record and the trial court's findings of fact and rulings." *Miller v. Eldridge*, 146 S.W.3d 909, 917 (Ky. 2004).

ANALYSIS

On appeal, Perry argues the trial court erred in applying the common law doctrine of *caveat emptor*.

> The maxim "caveat emptor" ("let the buyer beware") expresses a rule of the common law applicable to sales of property which implies that the buyer must not trust blindly that he will get value for his money, but must take care to examine and ascertain the kind and quality of the article he is purchasing, or, if he is unable to examine it fully or intelligently, or lacks the knowledge to judge accurately of its quality or value, to protect himself against possible loss by requiring an express warranty from the seller.

Manning v. Lewis, 400 S.W.3d 737, 741-42 (Ky. 2013) (quoting *McClurkin v. DeGaigney*, 251 S.W. 617, 619 (Ky. 1923)). While the trial court's decision not to set aside the sale is reviewed for an abuse of discretion, whether and how *caveat*

emptor applies to the facts here is a legal determination subject to *de novo* review. *Id.* at 741.

Courts in the Commonwealth have long applied *caveat emptor* to judicial sales/master commissioner sales. *See, e.g.*, *Trigg v. Jones' Adm'r*, 19 Ky. L. Rptr. 1009, 102 Ky. 44, 42 S.W. 848, 849-50 (1897) ("There can be no question that the rule of caveat emptor applies to judicial sales of real property, and, in the absence of misconception and fraud, the buyer must look out for himself. He buys at his own risk, both as to title and quantity."). As a result, Kentucky courts are reluctant to overturn judicial sales. *See, e.g.*, *Gross v. Gross*, 350 S.W.2d 470, 471 (Ky. 1961) (a judicial sale "ought not to be lightly disapproved where it was conducted in a fair and regular manner, and confirmation ought not to be refused except for substantial reasons"); *Jones v. Deposit & People's Bank*, 202 S.W. 907, 910 (Ky. 1918) (citation omitted) (noting that "the policy of the law [is] to sustain judicial sales and to encourage bidding by all persons, in order that the property may not be sacrificed" so setting aside a sale for insignificant reasons is discouraged). While there are exceptions to *caveat emptor* for judicial sales, Perry did not sufficiently establish his circumstances met any of the exceptions.

Judicial sales may be set aside for extraordinary circumstances including fraud, unfair or irregular proceedings, mistake, or the price itself simply shocking the conscience of the court. *Courtyards*, 594 S.W.3d at 209-10.

Relevant here, inadequacy of price alone is not a sufficient ground for setting aside a judicial sale, unless the inadequacy is so great as to shock the conscience of the court, creates a presumption of fraud, or is accompanied by circumstances of unfairness or impropriety. *Gross*, 350 S.W.2d at 471 (citations omitted); *Sterling Grace Mun. Secs. Corp. v. Cent. Bank & Trust Co.*, 926 S.W.2d 670, 673 (Ky. App. 1995) (citation omitted). On appeal, Perry argues: (1) the sale price was grossly inadequate (as $201,000 far exceeds the Property's value); *and* (2) there were circumstances that cast doubt on the fairness of the process.[4]

First, Perry did not establish that the sale price was inadequate, *i.e.*, that $201,000 was an inappropriate value. Appraiser Suell testified that the $201,000 value was a "conservative" estimate, and, in reaching that number, he considered that the Property was in foreclosure and would likely need renovation. Perry testified that remediation work could cost almost $100,000, but he did not present evidence that that remediation cost would be unreasonable in light of the $201,000 purchase price. For instance, the record does not reflect the sale prices

[4] Wilmington asserts that various legal arguments by Perry were not properly preserved for appeal, but we disagree. Perry filed timely objections to the Master Commissioner's report of sale pursuant to CR 53.05(2). These objections preserved his issue, *i.e.*, his claim of error with the report of sale. *See Eiland v. Ferrell*, 937 S.W.2d 713, 716 (Ky. 1997) (citation omitted). Issues, not arguments, are preserved, and, as long as the issue, claim, or question is properly preserved, parties are not limited to the precise arguments they made below. *See Gasaway v. Commonwealth*, 671 S.W.3d 298, 313-14 (Ky. 2023) (citations omitted).

for comparable homes in the area nor whether $300,000 (purchase price plus remediation cost) would be inappropriate for the house and area.

It is the role of the trial court to make factual findings and to judge the credibility of the witnesses; *our* role is only to review those findings for clear error. CR 52.01. While Perry testified that $201,000 was an unreasonable price considering the poor condition of the home, that finding was not made by the circuit court. "In particular, CR 52.04 requires a motion for additional findings of fact when the trial court has failed to make findings on essential issues. Failure to bring such an omission to the attention of the trial court by means of a written request will be fatal to an appeal." *Vinson v. Sorrell*, 136 S.W.3d 465, 471 (Ky. 2004) (quoting *Eiland*, 937 S.W.2d at 716). Assuming *arguendo*, the circuit court had made such a finding, Perry does not establish the requisite unfairness needed to vacate the sale.

It has long been held that

> [t]o warrant the setting aside of a sale there must be either fraud or misconduct in some one connected with the sale, unfairness of the officer who conducts the sale, some surprise or misapprehension on the part of those interested, or some irregularity in the proceedings, or other circumstances attending, conducing to show unfairness.

Smith v. Holowell, 256 S.W. 408, 409 (Ky. 1923).

Here, there is no evidence in the record that Appraiser Suell, the Master Commissioner, or any other party connected to the sale engaged in any type

of fraud, misconduct, or irregularity as it related to the sale. Instead, Perry argues *the appraisal* resulted in unfairness. Yet, *his detrimental reliance* on the appraisal created the unfairness he refers to; the appraisal itself was not unfair.

According to Perry, unfairness resulted from the appraisal because: (a) the "average" appraisal rating materially misrepresented the fundamental condition of the Property; (b) this appraisal "error" caused his inappropriate price formation; and (c) Wilmington's "ineffective property preservation" was not reflected in the appraisal. Perry challenges the appraisal but does not establish it was materially false. The appraisal – and its "NO ENTRY" label – put the parties on notice that the fair market value of the Property was established without interior access to the home. Perry does not argue that the home was anything other than "average" by outside appearances, something he would have known considering he admitted to driving past the Property on numerous occasions. He does not assert there were broken windows, that the fire damage was visible from the outside, or that the exterior of the home showed signs of deterioration. The record indicates that from outside appearances, the home on the Property looked average. The fact that Perry later perceived it to be less than average does not make the appraisal false, misleading, or unfair.

Further, the appraisal establishes the redemption amount and, thereby, allows the debtor to redeem the foreclosed property if it is sold for less than two-

thirds of its value. KRS[5] 426.530; *see also Vallandigham v. Worthington*, 2 S.W. 772, 773 (Ky. 1887) (The statutory "valuation is for the benefit of the debtor, and to secure him in his legal right to redeem if the land does not bring two-thirds of its appraised value."). Perry directs us to no caselaw that suggests the appraisal is for the benefit of the buyer, as opposed to the debtor.

Additionally, the Guidelines – which Perry admitted he read prior to the sale – clearly stated "BUYER BEWARE" and "SOLD AS IS." Perry acknowledged purchasers were "taking a chance" when buying a property through a Master Commissioner sale.

Unfairness, in this context, more commonly applies to the Master Commissioner's behavior and the judicial sale procedure. *See Gross*, 350 S.W.2d at 472 (addressing unfairness and irregularities "in the manner in which the sale was conducted"); *see also Sterling Grace*, 926 S.W.2d at 673 (citing *Gross*, 350 S.W.2d at 471) ("A sale may be set aside if the price is inadequate and is accompanied by irregularities in the proceeding."). Here, Perry does not allege the Master Commissioner failed to adequately perform her statutory duties. *See* KRS 31A.010 (appointment and general requirements); KRS 426.520 (appraisal); KRS 426.560 (advertisement). The record contains no evidence that the Master Commissioner failed to conduct the sale in any way which deviated from the

[5] Kentucky Revised Statute.

correct procedure. Perry admitted during testimony that other bidders were present the day of the sale, and he does not suggest there was any irregularity in the bidding process.

It is not a court's role to "protect unwise decisions." *Manning*, 400 S.W.3d at 741. *Courtyards*, 594 S.W.3d at 209 (indicating judicial sales should generally be upheld if proceedings were conducted in a fair and regular manner in the absence of "substantial reasons" not to confirm a sale). Perry was on notice that foreclosure proceedings began in May 2022 (over two years prior to his February 2025 purchase); that the appraisal was created without entry into the Property; and that the Property was sold "as is." There is no evidence to suggest the sale was conducted unfairly or in conflict with statute. Under these circumstances, the law does not protect buyers who regret their purchase. Accordingly, it was within the circuit court's discretion to decline Perry's request to set aside the sale.

CONCLUSION

Therefore, we AFFIRM the Jefferson Circuit Court order denying Perry's motion to set aside the Master Commissioner's sale.

ALL CONCUR.

BRIEF FOR APPELLANT:

Valerie Shannon
La Grange, Kentucky

BRIEF FOR APPELLEE:

Ashley E. Mueller
Akron, Ohio