



OKLAHOMA STATE COURTS NETWORK

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U.S. BANK v. WEBB et al.

2025 OK CIV APP 28

Case Number: 121830

Decided: 01/31/2025

Mandate Issued: 07/17/2025

THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA, DIVISION III



Cite as: 2025 OK CIV APP 28, __ P.3d __

U.S. BANK, NATIONAL ASSOCIATION AS TRUSTEE FOR CRMSI REMJ C SERIES 2006-03 REMIC PASS-
THROUGH CERTIFICATES, SERIES 2006-03, Plaintiff/Appellee

vs.

GAREY WEBB, Defendant/Appellant,

and

MIKLA L. ENNIS A/K/A MIKLA LYNN ENNIS; NOLA M. DUNCAN A/K/A NOLA MAE DUNCAN; OCCUPANTS OF
PREMISES; NOLA MAE DUNCAN REVOCABLE LIVING TRUST DATED THE 5TH DAY OF SEPT., 2006; OAKLANE
HOMEOWNERS' ASSOCIATION, INC., Defendants.

APPEAL FROM THE DISTRICT COURT OF
WAGONER COUNTY, OKLAHOMA

HONORABLE TIMOTHY KING, JUDGE

AFFIRMED

Melanie Wilson Rughani, CROWE & DUNLEVY, Oklahoma City, Oklahoma, -and- Lysbeth L. George, LIZ GEORGE
AND ASSOCIATES, Oklahoma City, Oklahoma, For Plaintiff/Appellee,

Janet D. Roloff, LEGAL AID SERVICES OF OKLAHOMA, INC., McAlester, Oklahoma, For Defendant/Appellant.

E. Bay Mitchell, III, Judge:

¶1 Defendant/Appellant Garey Webb (Webb) appeals from the trial court's September 20, 2023 order confirming the sale of real property by the Wagoner County Sheriff on May 1, 2018. He also appeals from the trial court's order denying his motion to reconsider and vacate the order confirming the sale. Webb argued the confirmation was erroneous because the foreclosure judgment underlying the sheriff's sale had gone dormant pursuant to 12 O.S. §735. We agree with the trial court: there was no irregularity in the proceedings, and the court's decision to confirm the sale was consistent with the law and supported by sufficient evidence. The court did not abuse its discretion by confirming the sheriff's sale or by denying Webb's motion to reconsider or vacate. We affirm.

¶2 In September 2006, Defendants Mikla Ennis and Nola Duncan (Borrowers) purchased residential property in Broken Arrow, Oklahoma. Borrowers executed a promissory note in favor of Citicorp Trust to finance the property. In 2008, Borrowers called the number on a roadside advertisement offering assistance with mortgage payments. They reached Webb, who advised that he would be able to "help with the house." On May 21, 2008, Borrowers

signed a quitclaim deed conveying the property to Webb. Borrowers moved out of the home in 2009, and Webb moved in sometime thereafter. Webb, however, never officially assumed the promissory note and associated monthly mortgage, and Borrowers defaulted on the note.

¶3 CitiMortgage, successor by merger with CitiFinancial Mortgage Company, brought an action against Borrowers and any occupants of the property on September 18, 2008 seeking to foreclose the mortgage (Wagoner County Case No. CJ-2008-1165). Judgment was granted by default. On appeal, another division of this Court reversed, finding that CitiMortgage failed to present proof that it was the holder of the note when it filed the foreclosure petition. See *CitiMortgage, Inc. v. Ennis*, case no. 109,821 (decided December 14, 2012). This first foreclosure action was ultimately dismissed without prejudice in 2014.

¶4 Plaintiff/Appellee U.S. Bank National Association, as Trustee for CRMSI REMIC Series 2006-03 Passthrough Certificates Series 2006-03 (U.S. Bank), filed a second foreclosure action on July 24, 2015 (Wagoner County Case No. CJ-2015-250) ("the Foreclosure Suit"). Webb answered and, challenging the documents transferring the note from the prior holder, alleged U.S. Bank did not have standing. The trial court disagreed and granted U.S. Bank's motion for summary judgment on January 29, 2018. Webb's motion to vacate the judgment was denied. He did not initiate an appeal. A special execution and order of sale was filed on March 6, 2018. A sale was conducted and the property was sold to the highest bidder on May 1, 2018. U.S. Bank filed a motion to confirm the sale on the same day.

¶5 However, because of Webb's subsequent actions, the confirmation hearing did not immediately take place. First, Webb filed a new lawsuit (Wagoner County Case No. 2018-156) ("Webb's Suit") in which he sought to vacate and set aside the January 29, 2018 foreclosure judgment, as well as sanctions for fraud on the court, malicious use of process, fraud, deceit, and intentional infliction of emotional distress. In the Foreclosure Suit, Webb filed an emergency motion to strike the notice of hearing on U.S. Bank's motion to confirm the sheriff's sale, a motion to stay the confirmation of the sale, and an objection to the sale. Finally, Webb filed a suggestion of bankruptcy in both lawsuits. The hearing on the motion to confirm the sheriff's sale in the Foreclosure Suit was, accordingly, stricken, and U.S. Bank placed all actions in the case on hold.

¶6 Webb's Suit continued for several years until March 15, 2021, when the trial court entered a journal entry of judgment denying all of Webb's claims and requests for relief. Webb filed an appeal on April 15, 2021. Division III of this Court affirmed. See *Webb v. U.S. Bank National Association*, case no. 119,508 (decided August 12, 2022). This Court and the Oklahoma Supreme Court refused to consider Webb's untimely petitions for rehearing and for certiorari, and the United States Supreme Court denied Webb's petition for a writ of certiorari on January 9, 2023.

¶7 U.S. Bank filed an alias motion to confirm the sheriff's sale in the Foreclosure Action on August 10, 2023. Webb objected, arguing that the foreclosure judgment was dormant under 12 O.S. §735. He claimed that U.S. Bank failed to take any action within five years after the foreclosure judgment and that nothing prevented U.S. Bank from renewing the judgment during Webb's bankruptcy proceeding. After a hearing, the court denied Webb's objection and entered an order confirming the sheriff's sale. Webb filed a motion to vacate and reconsider. After another hearing, the court found there had been no irregularity in the proceedings, the underlying foreclosure judgment was not dormant, and the equities favored confirming the sale.

¶8 We review the court's ruling on a motion to confirm a sheriff's sale for abuse of discretion. *Bank One, Oklahoma, N.A. v. Tanner*, 2001 OK CIV APP 57, ¶16, 23 P.3d 977, 979. The term "discretion," when invoked as a guide to judicial action, means "sound discretion." *Stewart v. Oklahoma Tax Comm'n*, 1946 OK 132, ¶14, 168 P.2d 125, 128. "[T]his is held to mean a discretion not exercised willfully or arbitrarily, but with a regard to what is right and equitable under the circumstances." *Id.* What constitutes "abuse of discretion" in a particular matter depends upon the circumstances and the law surrounding each case. *Id.* at ¶15, 168 P.2d at 129. Absent some pure error of law, we will not disturb a trial court's ruling on a motion to reconsider or vacate unless it is arbitrary, clearly against the evidence, or manifestly unreasonable, and thus an abuse of discretion. *Robinson v. Oklahoma Nephrology Assocs., Inc.*, 2007 OK 2, ¶16, 154 P.3d 1250, 1253.

¶9 For several reasons, we affirm the trial court. First, as noted by U.S. Bank, this matter is moot because the property has been sold and the sale confirmed; the new deed has been transferred and filed; and Webb has been evicted and no longer occupies the property. The trial court denied Webb's requests to stay enforcement of the confirmation order and to waive the requirement that he post a supersedeas bond pending appeal. Webb did not, however, seek a writ of prohibition from the Supreme Court. This Court has consistently held that if a person does not take advantage of the procedures available for preserving the status quo and the conduct which is sought to be prevented is thus permitted to take place, we cannot provide any relief. See *Westinghouse Elec. Corp. v. Grand River Dam Authority*, 1986 OK 20, ¶24, 720 P.2d 713, 721. Where the subject of the sale proceedings under review "has been permanently removed from the force and effect of further orders in this case[.]" the Court is left "without the authority to grant appellants any relief." *Edwards v. Hanna Lumber Co.*, 1966 OK 20, ¶4, 415 P.2d 980, 981. And, "[i]f . . . no particular relief can be afforded, the issues in this Court are abstract and hypothetical and the case becomes moot. Under such circumstances, the appeal should be dismissed." *Westinghouse Elec. Corp.*, ¶17, 720 P.2d at 718.

¶10 If the appeal is *not* moot, our review is confined to determining the regularity of the sheriff's sale. "Only questions relating or pertaining to the sheriff's sale may be considered on hearing on confirmation of sale." *Fernow v. Gubser*, 1945 OK 265, ¶6, 162 P.2d 535, 537 (citations omitted). "[T]he court should confine itself to the proceedings of sale and is not to go behind the execution and look into the regularity of the judgment." *Id.*, ¶5, 162 P.2d at 537. Because Webb raised no objections to the May 1, 2018 sheriff's sale below and does not challenge the sheriff's sale on appeal, we cannot say the court abused its discretion by confirming the sale.

¶11 Webb has also not convinced us that the court abused its discretion by failing to find the judgment was dormant. Section 735 requires enforcement (or active attempts at enforcement) of a judgment within five years. See 12 O.S. 2021 §735; see also *Wishon v. Sanders*, 2020 OK CIV APP 29, ¶7, 467 P.3d 721, 724. A mortgage foreclosure is properly enforced via special execution. *Paschal Inv. Co. v. Atwater*, 1935 OK 869, ¶11, 50 P.2d 357, 359; see also *Okla. Salvage & Supply Co.*, 1926 OK 595, ¶5, 251 P. 1006, 1007 (defining a special execution as "one that directs a levy upon some special property[.]"). Accordingly, if more than five years have passed since the filing of the last special execution and the creditor has failed within that time to take other action under §735 to renew the judgment, the judgment becomes unenforceable. See *Hub Partners XXVI, Ltd. v. Barnett*, 2019 OK 69, ¶11, 453 P.3d 489, 492-93; see also §735(B).

¶12 The Supreme Court has recognized that a district court may deny confirmation where real property was sold at a sheriff's sale pursuant to execution issued on a dormant judgment. See, e.g., *Hub Partners*, 2019 OK 69, ¶1, 453 P.3d at 491; *Skinner v. First National Bank of Davis*, 1928 OK 671, ¶5, 273 P. 893, 894. In those cases, however, execution was not issued until after the judgment had become dormant, which meant the sale stemming from that execution was itself improper. See *Hub Partners*, ¶16, 453 P.3d at 494; *Skinner*, ¶¶ 2 & 5, 273 P. at 894. This case is distinguishable because the sale was conducted pursuant to a timely writ of special execution U.S. Bank caused to be issued *before* there was any question about the judgment's dormancy. The judgment here was not dormant and the sheriff's sale was timely.

¶13 Finally, even if the judgment was dormant when U.S. Bank filed its alias motion to confirm in 2023, we find there was no abuse of discretion in the court's decision to confirm the sale. Oklahoma law does not provide a time within which a sheriff's sale must be confirmed, and one legal treatise notes that, "Ordinarily, mere lapse of time will not prevent confirmation of a judicial sale." See 50A C.J.S. Judicial Sales §50 (December 2024). "Unlike a judgment on which execution is not issued, a decree of sale does not become dormant, and confirmation may be had after a long lapse of time[.]" *Id.*

¶14 The sheriff's sale in this case was conducted as a result of the special execution U.S. Bank caused to be issued within the statutorily-prescribed time. The delay in confirming the sale resulted from Webb's own choice to pursue other legal relief. Webb has not shown the court abused its discretion by confirming the sale, and he has not shown the court abused its discretion by denying his motion to reconsider. Accordingly, we affirm.

¶15 AFFIRMED.

Cite Name Level

None Found.

Citationizer: Table of Authority**Cite Name Level****Oklahoma Court of Civil Appeals Cases**

Cite	Name	Level
<u>2001 OK CIV APP 57</u> , <u>23 P.3d 977</u> , <u>72 OBJ 1569</u> ,	<u>BANK ONE, OKLAHOMA, N.A. v. TANNER</u>	Discussed
<u>2020 OK CIV APP 29</u> , <u>467 P.3d 721</u> ,	<u>WISHON v. SANDERS</u>	Discussed

Oklahoma Supreme Court Cases

Cite	Name	Level
<u>1946 OK 132</u> , <u>168 P.2d 125</u> , <u>196 Okla. 675</u> ,	<u>STEWART v. OKLAHOMA TAX COMM'N</u>	Discussed
<u>1945 OK 265</u> , <u>162 P.2d 535</u> , <u>196 Okla. 63</u> ,	<u>FERNOW v. GUBSER</u>	Discussed
<u>1935 OK 869</u> , <u>50 P.2d 357</u> , <u>174 Okla. 356</u> ,	<u>PASCHAL INV. CO. v. ATWATER</u>	Discussed
<u>1966 OK 20</u> , <u>415 P.2d 980</u> ,	<u>EDWARDS v. HANNA LUMBER COMPANY</u>	Discussed
<u>2007 OK 2</u> , <u>154 P.3d 1250</u> ,	<u>ROBINSON v. OKLAHOMA NEPHROLOGY ASSOCIATES, INC.</u>	Discussed
<u>2019 OK 69</u> , <u>453 P.3d 489</u> ,	<u>HUB PARTNERS XXVI, LTD. v. BARNETT</u>	Discussed at Length
<u>1928 OK 671</u> , <u>273 P. 893</u> , <u>135 Okla. 61</u> ,	<u>SKINNER v. FIRST NAT. BANK</u>	Discussed
<u>1926 OK 595</u> , <u>251 P. 1006</u> , <u>122 Okla. 128</u> ,	<u>OKLAHOMA SALVAGE & SUPPLY CO. v. FIRST NAT. BANK OF OKMULGEE</u>	Discussed
<u>1986 OK 20</u> , <u>720 P.2d 713</u> , <u>57 OBJ 1155</u> ,	<u>Westinghouse Elec. Corp. v. Grand River Dam Authority</u>	Discussed

Title 12. Civil Procedure

Cite	Name	Level
<u>12 O.S. 735</u> ,	<u>Must Be Issued within Five Years or Judgment Becomes Dormant - Inapplicable to Municipalities</u>	Discussed at Length