2001

Bennion v. Dudley M. Amoss : Brief of Respondent

Utah Supreme Court

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of the Estate of Heber Bennion, ...
VERA W. BENNION and
BENNION RANCHING COMPANY,
a Utah corporation,
Plaintiffs-Respondents,

v.

DUDLEY M. AMOSS and DIANA M. AMOSS, his wife,
Defendants-Appellants.

DAGGETT COUNTY DEVELOPMENT CORPORATION,
a corporation,
Applicant for Intervention and Appellant.

Case No.
13551

BRIEF OF PLAINTIFFS-RESPONDENTS

Appeal from Judgment of the Fourth Judicial District
Court of Daggett County,
Honorable J. Robert Bullock, Presiding

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IN THE SUPREME COURT OF THE STATE OF UTAH

DON WEILER BENNION, Executor of the Estate of Heber Bennion, Jr., VERA W. BENNION and BENNION RANCHING COMPANY, a Utah corporation,
Plaintiffs-Respondents,

v.

DUDLEY M. AMOSS and DIANA M. AMOSS, his wife,
Defendants-Appellants.

DAGGETT COUNTY DEVELOPMENT CORPORATION, a corporation,
Applicant for Intervention and Appellant.

Case No. 13551

BRIEF OF PLAINTIFFS-RESPONDENTS

STATEMENT OF THE CASE

Defendants-Appellants filed a motion in the District Court of Daggett County to vacate a foreclosure sale held on December 15, 1972. The redemptioner, Daggett County Development Corporation, filed a motion to intervene and join in the motion to vacate the sale.

DISPOSITION IN THE LOWER COURT

The lower court denied both the motion of Amoss to vacate the foreclosure sale and the motion of Daggett County Development Corporation to intervene.

RELIEF SOUGHT ON APPEAL

Appellants seek a reversal and remand to the lower court, with directions to permit Daggett County Development Corporation to intervene as a defendant, to vacate the foreclosure sale and to enter judgment for Appellants for certain amounts claimed to have been paid to redeem the property from such foreclosure sale in excess of that required to satisfy the mortgage indebtedness.

STATEMENT OF FACTS

This is the fifth time this Court has been called upon to settle differences in regard to the problems arising out of the transactions involving the contract entered into between Appellant Dudley M. Amoss and Respondents' predecessor, Heber Bennion, on August 12, 1964. The most recent decision of this Court was rendered December 27, 1973. Prior decisions are Amoss v. Bennion, 18 Utah 2d 251, 420 P.2d 47 (1966); Amoss v. Bennion, 23 Utah 2d 40, 456 P.2d 172 (1969); and Bennion v. Amoss, 28 Utah 2d 216, 500 P.2d 512 (1972).

Additional facts which have significance to the instant matter are detailed below.

This instant case commenced as an action to foreclose a mortgage. After a considerable amount of legal

stalling and delay on the part of Appellants Amoss, as the record discloses, before their present counsel became involved in the case, Respondents were successful in obtaining a summary judgment on their complaint and a decree of foreclosure on the property. Appellants thereupon appealed to this Court which affirmed the decision of the lower court and sent the matter back for further proceedings. (28 Utah 2d 216, 500 P.2d 512)

On November 20, 1972, the trial court duly entered an amended decree of foreclosure (R. 14) and an order of sale (R. 7). The sheriff's sale was set for December 15, 1972. (Tr. 3)

Appellants then filed a motion to postpone the foreclosure sale, alleging as grounds therefor that Appellants had not been given sufficient notice of the entry of the amended decree; that the amended decree of foreclosure failed to provide that the mortgaged premises be divided and sold in parcels; that it failed to apportion equitably among the parcels of property the 800 shares of stock in the Sheep Creek Irrigation Company; that Appellants were prepared to pay the amount owing if given additional time to do it; and that the holding of the foreclosure sale on December 15, 1972, instead of December 27, 1972, "would not afford the Respondents any greater protection with respect to the mortgaged indebtedness, but would require Defendants to pay a penalty of approximately $7,600.00 in order to redeem the property after the mortgage sale." (R. 32)

Respondents' counsel filed an affidavit in opposition to the motion in which the facts with respect to the num-

erous delays, particularly following the decision of this Court, were outlined. (R. 23) Among other facts, the affidavit disclosed that Appellants had been given the opportunity to satisfy the judgment from the date of this Court's decision in September until December when the sale was scheduled. (R. 20-23)

After hearing Appellants' motion, the trial court denied the same (R. 33); and the sale proceeded as advertised on December 15, 1972, at which time Respondents purchased the property for $128,550.00, being the amount of the mortgage indebtedness, including interest, attorneys fees and costs to the date of purchase. (R. 99)

At some time during this period Appellants Amoss (mortgagors) transferred their interest in the property to Daggett County Development Corporation. (R. 99) Later, at the hearing on the motion to vacate the foreclosure sale, Respondents contended that such transfer was made before the sheriff's sale of the property; whereas, Appellants claimed that such transfer was made subsequent to the sheriff's sale. (Tr. 26-34) In any event, it is undisputed that Appellants Amoss did, in fact, transfer all of their right, title and interest in the property to Daggett County Development Corporation prior to the redemption by Daggett County Development Corporation from the sheriff's sale and that Appellants Amoss therefore have had no interest in the matter since prior to December 29, 1972. (Tr. 5)

On December 29, 1972, Daggett County Development Corporation presented satisfactory evidence of its

ownership of all the rights of the Appellants Amoss to redeem the property as permitted by Rule 69(f)(1), U.R.C.P., and paid to the Plaintiffs the sum of $138,691.56 as and for the redemption of said property, which amount included the 6% penalty on the purchase price, together with taxes and other costs which had been paid by the Plaintiffs subsequent to the purchase by them at the sheriff's sale. (R. 99)

Thereafter, on January 19, 1973, Appellants Amoss filed in the lower court a motion to vacate the foreclosure sale. (R. 98) This motion was heard by the court in Utah County by agreement of counsel (Tr. 1) on April 26, 1973.

In the interim, Daggett County Development Corporation filed a motion to intervene in the case in place of the Defendants Amoss and in support thereof submitted a memorandum of authorities to the court. (R. 98)

At the conclusion of the hearing on the motion to vacate the foreclosure sale, the court extended to counsel the opportunity to file briefs on their respective positions. (Tr. 34)

After considering the respective briefs, the lower court denied Appellants' Motion to Vacate Foreclosure Sale on the following grounds:

> "(a) The record, including motion to vacate foreclosure sale, does not contain sufficient ultimate facts to require the court to vacate the sale in the exercise of its sound discretion. Two of the grounds set forth in the motion have been ruled upon previously, and there does not appear to be any compelling reason to modify that ruling. The remain-

der are irregularities which may or may not have prejudiced the defendant, depending upon the evidence, but in any event, the court holds that they were waived by the redemption.

"(b) There is some merit in bringing litigation to an end, and the court believes that more mischief and inequity would result from setting aside the sale than is alleged to have resulted from irregularities in the sale." (R. 101)

The lower court also denied the motion of Daggett County Development Corporation to intervene as a defendant on the ground that there was no pending action in which to intervene. (R. 101)

ISSUES

Appellants have raised three issues in their brief which Respondents will answer under the following headings:

1. Appellants' Motion and the evidence in support thereof were insufficient to justify granting relief.

2. The property having been redeemed from the sheriff's sale, any irregularities in the sale have been waived and the matter is now moot.

3. The motion of Daggett County Development Corporation to intervene was properly denied.

In addition, Respondents submit an additional point numbered 4 to the effect that Appellants Amoss, having assigned any interest they may have in the property to

Daggett County Development Corporation, have no further interest in the matter and therefore no cause to complain.

ARGUMENT

POINT I

APPELLANTS' MOTION AND THE EVIDENCE IN SUPPORT THEREOF WERE INSUFFICIENT TO JUSTIFY GRANTING RELIEF.

Appellants' motion to vacate foreclosure sale was founded on the following arguments: (1) lack of notice sufficient to interest other bidders; (2) not made in accordance with law in that it was not sold in parcels; (3) the sheriff refused to accept a bid with 10% down and the balance in the future; (4) requiring the sale to be held at that time was oppressive and unconscionable; (5) the property was sold for less than its value; and (6) the property having been redeemed, it would be equitable to require Respondents to refund the penalty required to be paid.

Points (1), (4) and (6) are not raised or argued in Appellants' brief before this Court and therefore must be assumed to be waived. Points (2), (3), and (5) are without merit under the facts and circumstances of this case.

Sale in parcels. This point was argued to the lower court on the initial motion to continue the sale and/or require the property to be sold in parcels. That motion was denied by the court and no appeal was taken from such order. Therefore, the matter is now res judicata.

In any event, in the case of *Commercial Bank of Utah v. Madsen,* 120 Utah 519, 236 P.2d 343, (1951) this Court had before it the question of whether property had to be sold separately and held that "the fact that the land is described as 'Lots 1 and 2 of Block 28, Plat A Manti City Survey' does not serve to make separate tracts of an otherwise unified parcel."

With respect to a sale as a whole as opposed to parcels, 55 AM. JUR. 2d, *Mortgages,* Section 649, pages 605-606, states the law as follows:

> "In particular cases the sale of the property as a whole or in parcels has been regarded as proper or improper depending largely upon the state of the property and the circumstances. * * * Many cases hold that two or more tracts or lots of land which constitute one farm or other enterprise, or home, may be sold as a unit upon foreclosure of a mortgage covering the property."

The Idaho Supreme Court held in *Gaskill v. Neal,* also cited by Appellant, 77 Idaho 428, 293 P.2d 957, 960 (1956), that:

> "The general rule is that where there is no division of the mortgaged property into parcels adapted for separate and distinct enjoyment, the property should be sold as a whole, unless the party interested should show in some intelligible manner the distinct manner in which the property might be profitably divided for sale. 37 Am. Jur., Mortgages, Sec. 694, p. 138. No such showing was made or even attempted in the case now before us."

The court in *Gaskill v. Neal* also observed that:

> "In the case of Federal Land Bank of Spokane v. Curts, 45 Idaho 414, 262 P. 877, parcels of a farm

had been sold separately, and the sheriff had ignored a much higher written bid for the entire tract. The court set aside the sale, and said, 45 Idaho at page 424, 262 P. at page 880:

> " '* * * Since this land is contiguous, and is owned and farmed as one tract, and there are no peculiar marks or circumstances to distinguish one 40-acre piece from another, from the standpoint of use or enjoyment, it cannot be said, as a matter of law, that it is divided into separate known lots or parcels, requiring the officer to sell in separate parcels. Elston v. Hix, supra [67 Mont. 294, 215 P. 657].' "

Section 651, 55 AM. JUR. 2d, *Mortgages,* states as follows with regard to discretion of officer selling the property:

> "Where no direction in relation to the order or mode of sale is contained in the decree, the officer charged with its execution is vested with discretionary power. Such discretionary power is subject to the control of the court, however. Where a discretion is vested in the trustee or other officer empowered to sell as a whole or in parcels, it must be exercised in good faith for the best interests of both the creditor and debtor; in other words, it is his duty to sell in the mode which, in the exercise of a sound judgment and discretion, probably will be the most advantageous.
>
> "There are some general rules, deducible from the cases, for the guidance of an officer having discretionary power as to the amount of property to be sold under mortgage foreclosure and the mode of selling the property. Thus, the general rule is that mortgaged property which consists of several distinct known lots, parcels, or tracts shall be first

offered for sale in parcels, especially where the debtor requests that such a mode of sale be adopted, or where the decree directs the sale of so much of the land as is necessary to pay the debt. *But this rule, while a wholesome one, is not an arbitrary one, and should not be enforced where there is a valid reason for a sale of property en masse; as, for example, where the latter mode will insure the best prices and be most advantageous to all parties concerned, or where the separate parcels are used as one property and all are essential to such use, or where the property is first offered in parcels and no bids are received or those received are insufficient to pay the mortgage debt."* (Emphasis added)

As in *Gaskill v. Neal, supra,* no showing was made or even attempted in the present case that the property might be more profitably divided for sale or that it is adapted for separate and distinct enjoyment. (R. 20)

All of the property involved comprises one contiguous tract. (R. 20, 15) Prior to the time the property was sold to Appellants Amoss, it was operated as one ranching unit and was mortgaged as a unit to the Federal Land Bank of Berkeley, on which mortgage there is still a balance owing of $30,000.00. (R. 20) The property was sold to Appellants Amoss as one parcel or tract and Amoss mortgaged the same to Respondents as one entire parcel to secure the payment of the purchase price. (R. 20) It would not be practicable to attempt to segregate said property or to divide the same into parcels for purposes of sale because said property has been and is now being operated as one integral unit. (R. 20)

Price. In the case of *Cole v. Canton Mining Company,* 59 Utah 140, 202 P. 830, the Supreme Court discussed the effect of a sale on foreclosure as follows:

> "We are not unmindful that in some jurisdictions, under similar circumstances, no sale could have been consummated until after a confirmation by the court ordering the sale. Such is not the practice in our jurisdiction, but sale proceedings, and the rights of parties under them, are fixed, and in the absence of gross irregularities, mistake, fraud, or collusion practiced on the part of the participants, a sale, when made as directed by the court, in compliance with the statutes, must of necessity be held valid and binding and the rights of all interested parties fixed and determined thereby."

The court also held:

> "When a lawful sale has been once consummated at a price not grossly inadequate, as we think it was in this instance, after full compliance with the statutes and the orders of the court, the rights of redemptioners when established should be equally safeguarded, even though some other course might increase the sum for which the property is sold. Ontario Land Co. v. Bedford, 90 Cal. 181, 27 Pac. 39; Marstson v. White, 91 Cal. 37, 27 Pac. 588; Power v. Larabee, 3 N.D. 502, 57 N.W. 789, 44 Am. St. Rep. 577."

Likewise, in *First National Bank v. Haymond,* 89 Utah 151, 57 P.2d 1401, (1936) the court discussed the right of a mortgagee to have the property sold to satisfy the mortgage, as follows:

> "Under our laws affecting the foreclosure of mortgages, we can see no escape from the conclusion that a mortgagee is entitled to have the mortgaged property sold under foreclosure sale,

and, in the event the property does not sell for sufficient to satisfy the mortgage debt, to have a deficiency judgment entered in the usual way, notwithstanding the value of the mortgaged property is in excess of the debt owing to the mortgagee. Thus the equitable powers which the courts may exercise at the time of confirmation in the jurisdiction from which cases are cited by appellants may in this jurisdiction be exercised only after sale upon proper application by the party who claims to be injured. Moreover, to require the mortgagee to accept the mortgaged property in lieu of the money which the mortgagors have agreed to pay would be to make a contract for the parties contrary to their agreement. This the courts may not do. Under our statutory law the mortgagor and other parties interested in the mortgaged property are given six months after sale in which to redeem the property sold. The redemption may be had by paying the sale price, together with 6 per cent interest thereon. R.S. Utah 1933, 104-37-31. These provisions are calculated to protect from injury the mortgagor and others who may have an interest in the property. If the mortgagee or other purchaser bids in the property for less than its value, such mortgagee or purchaser may be deprived of all anticipated profit by redemption. Nor is redemption of the mortgaged property the sole remedy available to the mortgagor. It is quite generally held that substantial inadequacy of price, coupled with fraud, mistake, or other unfair dealing is sufficient to justify a court of equity from timely motion to set aside the sale and order a resale."

With regard to inadequacy of price, the language of this Court in *Commercial Bank of Utah v. Madsen, et al,* 120 Utah 519, 522-523, 236 P.2d 343, (1951), is relevant:

"This was not a sale between a willing buyer and a willing seller, where a fair price might have been arrived at by bargaining. There were other factors present: It was subject to redemption by the judgment-debtor, and to possible infirmities of title. It is well known that purchasers at such sales are seeking bargains, when possible, and that *such a sale will rarely bring the full market price of the property.* * * * The value of the property was the subject of conflicting evidence, and the trial court made the determination that the sale price was 'consistent with the value of the property under an execution sale.' This precludes any possibility whatever of this Court ruling that the price paid was so disproportionate to the value as to shock the conscience. The trial court's judgment that the price was not inadequate is based on competent credible evidence, therefore we will not disturb it." (Emphasis added)

Also, in *Mower v. Bohmke,* 9 Utah 2d 52, 55, 337 P.2d 429 (1959), this Court held:

"The policy of the courts is to uphold judicial sales except where they are manifestly unfair. Page v. Commonwealth, 176 Va. 351, 11 S.E.2d 621. *Especially is this true in a state such as Utah which has a substantial period of redemption.* Parker v. Clayton, 248 Ala. 632, 29 So.2d 139. Compare Crane v. Bielski, 15 N.J. 342, 104 A.2d 651. This is because courts hope that such a policy will encourage bidding at judicial sales and because it appears to be a waste of time to require a new sale where little evidence is presented to show that the bid price at the new sale will be any different from the bid at the old. In the instant case defendant has presented no evidence to show that the price was unfair or that defendant was injured by the conduct of the sale. It follows that the trial court ruled correctly in refusing to overturn the sale." (Emphasis added)

Cases cited in Appellants' brief are examples of inadequate prices which were so gross as to shock the conscience. Such is not the case in the instant action. In any event, the amount of the purchase price at the sheriff's sale is immaterial because the property was redeemed. If a higher price had been paid, it would have required the payment of a larger sum, including a greater penalty, to have redeemed.

Payment in cash. Appellants cite 59 C.J.S., *Mortgages,* §7321, in support of their position. However, they stop short in their quotation of the relevant passage:

> "In the absence of a statute or a provision in the mortgage to the contrary, whether or not the sale shall be for cash has been held to be within the discretion of the court, and such discretionary power to sell partly on credit should be exercised where the facts warrant such action in view of the interests of all parties. [End of Appellants' quotation] Where the decree orders that the sale may be made on credit, the sheriff is not authorized to offer by advertisement to sell the property for cash only. *On the other hand, unless authorized by statute or decree, the sale may not be made on credit or for anything else than lawful money."* (Emphasis added)

The simple fact of the matter is that the sheriff in the instant action was authorized neither by statute nor decree to sell the property in question for anything other than lawful money, payable immediately in cash.

In view of the history of delays perpetrated by Appellants as represented in Plaintiffs' counsels' affidavit

filed in the lower court (R. 23), where counsel gave Appellants every chance to produce the amount owing, from June, 1972, until the date of the sale, it can hardly be said that it would have been in the best interests of all parties for the sheriff to have accepted an amount in cash representing only 10% of the bid.

Appellants cite authorities where sales for part credit have been upheld; however, these cases can be distinguished from the instant action on the facts.

In *Prudential Insurance Company of America v. Lemmons,* 155 S.E. 591 (S.C. 1930), for example, the court merely recognized that a court of equity has discretionary power to *order* sale of mortgaged premises for part cash and part credit.

"Distressful times" was cited as the reason for overturning a lower court decision requiring cash at the foreclosure sale in the 1934 case of *Federal Bank of Columbia v. Wells,* 172 S.C. 1, 172 S.E. 707.

The facts in the instant action are such that the sheriff was justified in rejecting a bid of part credit and part cash where neither decree nor statute authorized him to do otherwise.

POINT II

THE PROPERTY HAVING BEEN REDEEMED FROM THE SHERIFF'S SALE, ANY IRREGULARITIES IN THE SALE HAVE BEEN WAIVED AND THE MATTER IS NOW MOOT.

In the case of *Tanner v. Lawler,* 6 Utah 2d 268, 311 P.2d 791, (1957) this Court discussed the effect of a redemption from a sheriff's sale as follows:

> "We adhere to our holding that the provisions of Rule 69(f)(5) dealing with the right of a judgment debtor who redeems his property from the sheriff's sale in a foreclosure action gives him different rights than if he takes an assignment of the sheriff's sale certificates. Under the above provisions of Rule 69(f)(5), had Reichert redeemed from the sheriff's sale as a judgment debtor and as successor of the interest of the Lawlers, the effect of the foreclosure sale would have terminated."

The general effect of a redemption as stated in 47 AM. JUR. 2d, *Judicial Sales,* §348, p. 572, by the judgment debtor or his successor "restores the property to the same condition as if no sale had been attempted."

See, also, Rule 69(f)(5), U.R.C.P., which states in part:

> "If the debtor redeems the effect of the sale is terminated and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a certificate of redemption, duly acknowledged."

With respect to waiver or estoppel, Section 400 of 47 AM. JUR. 2d, *Judicial Sales,* states the law as follows:

> "Persons interested in a judicial sale or the property sold may by disclaimer waive defects in such sale, even as to its fraudulent character, and thereby estop themselves from later challenging its validity. As a general rule, any act of participation by one for whose benefit the sale is made which shows approval of or acquiescence in the proceedings for the sale of land, including such an act by the beneficiaries of the decedent in cases involving an executor's or administrator's sale, may, under the conditions necessary to invoke waiver or estoppel, preclude him from challenging the validity of the sale for defects short of those which would render it a complete legal nullity. * * * Thus, an heir who assents to a sale under a void decree, and acts as one of the commissioners thereat, passes in equity a good title to his share. ***Included in such conduct is bidding, or redemption of or an attempt to redeem the property.***" (Emphasis added) (47 AM. JUR. 2d, *Judicial Sales,* p. 611)

Cases cited in support of this statement include *Holcomb v. Boynton,* 151 Ill. 294, 37 N.E. 1031; *Miller v. Ayers,* 59 Iowa 424, 13 N.W. 436, holding that one who deposited the amount of the debt in the clerk's office prior to the expiration of the period of redemption affirmed the validity of the sale insofar as his redemption rights depended on a determination of that question.

Also, in the case of *French v. Kemp,* 253 Mass. 75, 148 N.E. 422, the court held that where a redemption of the property has taken place, the person redeeming is estopped from asserting any invalidity to the sale.

Respondents further contend that the action of Appellants Amoss' successor in interest in redeeming the property from the sale which had brought a sufficient sum to satisfy the amount owing so that no deficiency judgment was entered constituted a complete satisfaction of the judgment and the matter was and now remains moot.

A case illustrating this point is *Dawson v. Board of Education of Weber County,* 118 Utah 452, 222 P.2d 590, where the plaintiff brought an action against the Board of Education of Weber County and certain individuals to recover for damages suffered by him by reason of the unlawful death of his nine-year-old son. Judgment was entered in favor of the plaintiff against the defendant Carr after a jury verdict, but in favor of the defendant Bingham and against plaintiff. The plaintiff thereupon appealed from the judgment insofar as the defendant Bingham was concerned but subsequent to the judgment accepted payment from the defendant Carr for the amount of the judgment rendered against him. On motion to dismiss the appeal, the Supreme Court stated (quoting from AM. JUR., Vol. 31, paragraph 873):

> "The general rule is that actual payment of a judgment in full to a person authorized to receive it operates as a discharge thereof whether the payment is made by the judgment debtor himself or by one of several judgment debtors, or by another in his behalf. This rule prevails at law."

Seer also, Restatement of the Law of Torts, Vol. 4, Sec. 886.

Respondents further contend that by redeeming the property from the sheriff's sale, the Appellants' successor in interest accepted the benefits of the judgment and therefore cannot complain of it. It is well recognized that a party cannot accept the benefits of a judgment or decision and then appeal from it. See 4 AM. JUR. 2d, *Appeal & Error,* Section 250, where the following appears:

> "A party who accepts an award or legal advantage under an order, judgment, or decree ordinarily waives his right to any such review of the jurisdiction as may again put in issue his right to the benefit which he has accepted. This is so even though the judgment, decree, or order may have been generally unfavorable to the appellant."

We see no way that Appellant Amoss can now complain of the sale, in view of the foregoing.

POINT III

THE MOTION OF DAGGETT COUNTY DEVELOPMENT CORPORATION TO INTERVENE WAS PROPERLY DENIED.

What has been heretofore stated with respect to the merits of the motion to set aside the sheriff's sale apply with equal force to Daggett County Development Corporation as to Appellants Amoss. In addition, Daggett County Development Corporation has failed to establish any basis for intervention.

As stated by counsel for Daggett County Development Corporation in his brief, intervention in an action is governed by Rule 24, U.R.C.P. However, there was and

is no action pending before the court in which intervention is possible. The matter has been completely adjudicated, the property sold and redeemed and as stated heretofore, the judgment satisfied. If the Development Corporation, after taking an assignment from Appellants Amoss of their interest in the property, had any objection to the amount which it was required to pay to redeem, it could have followed the procedure outlined in Rule 69(f)(3) which authorizes the person seeking redemption to "pay the amount necessary for redemption, less the amount in dispute, to the court out of which execution or order authorizing the sale was issued, and at the same time file with the court a petition setting forth the item or items demanded to which he objects, together with his grounds of objection; and thereupon the court shall enter an order fixing a time for hearing of such objections. A copy of the petition and order fixing time for hearing shall be served on the purchaser not less than two days before the day of hearing. Upon the hearing of the objections the court shall enter an order determining the amount required for redemption."

Daggett County Development Corporation not only failed to take advantage of the foregoing provision, it paid the full amount requested without protest and did nothing further until after the lower court had held the hearing on the motion of Appellants Amoss to set aside the sheriff's sale — approximately four months after the redemption had been made.

In no way can it be said that Daggett County Development Corporation has brought itself within the provisions of either Rule 24(a) (relating to intervention as a

matter of right) or Rule 24(b) (relating to permissive intervention).

POINT IV

APPELLANTS AMOSS, HAVING ASSIGNED ANY INTEREST THEY MAY HAVE IN THE PROPERTY TO DAGGETT COUNTY DEVELOPMENT CORPORATION, HAVE NO FURTHER INTEREST IN THE MATTER AND THEREFORE NO CAUSE TO COMPLAIN.

Inasmuch as this is an action to foreclose a mortgage and there has been no attempt to take a deficiency judgment against Appellants Amoss, Appellants have no further interest in the litigation since they have long since assigned their interest in the property to Daggett County Development Corporation.

Whether such assignment was made before or after the sale appears of little significance. Appellant Dudley Amoss was present at the sale and failed to bid in his own right. Instead, he attempted to bid on behalf of Daggett County Development Corporation. (R. 97) His bid, however, was not for cash but on an installment or future payment basis which the sheriff refused. (R. 97) Respondents, on the other hand, bid the full amount of the indebtedness; and there being no other or better bids, it was accepted. (R. 97)

It seems odd that Appellant Dudley Amoss would bid for Daggett County Development Corporation unless he had already assigned his interest to such corporation; but

certainly after doing so, he cannot now come in this Court in the same action and claim any irregularity in the sale.

Cases cited in Appellants' brief in support of right to appeal have reference to the payor's or judgment debtor's right to appeal and are not persuasive in the present case where the judgment debtor assigned his right to redeem, and redemption by the assignee has already taken place.

SUMMARY

We respectfully submit that the motion of Appellants Amoss to set aside the sheriff's sale was properly denied, and the motion of Daggett County Development Corporation to intervene was likewise properly denied.

Respectfully submitted,

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