



ORIGINAL

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See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA
DIVISION IV
FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

PEAK EQUITY GROUP, LLC and)
HIGH PEAKS FINANCIAL, LLC,)
)
Plaintiffs/Appellees,)
)
vs.)
)
WYNN WYNN SOLUTIONS, LLC and)
DAVID NGUYEN,)
)
Defendants/Appellants.)

MAR - 4 2026
SELDEN JONES
CLERK
Case No. 122,407

APPEAL FROM THE DISTRICT COURT OF
CLEVELAND COUNTY, OKLAHOMA

HONORABLE JEFF VIRGIN, DISTRICT JUDGE

AFFIRMED

Jon E. Brightmire
Sara E. Potts
DOERNER SAUNDERS, DANIEL
& ANDERSON, LLP
Tulsa, Oklahoma

Rec'd (date)	3-4-26
Posted	<i>[Signature]</i>
Mailed	<i>[Signature]</i>
Distrib	<i>[Signature]</i>
Publish	yes <input type="checkbox"/> no <input checked="" type="checkbox"/>

For Plaintiffs/Appellees

Brittini L. Jagers-Johnson
JAGERS & JOHNSON
ATTORNEYS AT LAW, PLLC
Oklahoma City, Oklahoma

For Defendants/Appellants

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

The defendants—Wynn Wynn Solutions LLC and David Nguyen—appeal the trial court’s order confirming the sale of real property. Upon review, we find

that the plaintiffs were entitled to foreclose on the property at issue and thereby affirm the order confirming the sheriff's sale of that property.¹

I.

On March 18, 2023, the plaintiffs—Peak Equity LLC and High Peaks Financial LLC—filed a petition for foreclosure against the defendants. The plaintiffs alleged that the defendants executed two promissory notes, one for \$747,500 in favor of Peak Equity and the other for \$402,500 in favor of High Peaks. The plaintiffs alleged that the defendants defaulted on both notes by failing to make the required payments. The defendants filed an answer denying the allegations and brought counterclaims for slander of title and to quiet title.

The plaintiffs moved for summary judgment. The defendants filed a response in which they did not dispute defaulting on payments. However, they alleged that summary judgment should not be granted because they were prevented from exercising the right of redemption due to the plaintiffs “wrongfully cloud[ing] the title to the subject real property” because of a notice filed in relation to plaintiffs’ prior efforts seeking a non-judicial foreclosure via each mortgage’s power-of-sale provision. ROA, Tab 6, *Defendants’ Response to Plaintiffs’ Motion for Summary Judgment*, pg. 3. See also 46 O.S. §§ 40-49 (known as “Oklahoma Power of Sale Mortgage Foreclosure Act”). Additionally, the defendants filed a motion for partial summary judgment on their quiet title claim and on the plaintiffs’ foreclosure claim. The trial court held a hearing on the

¹ This appeal was assigned to the author’s chambers on January 9, 2026.

summary judgment motions on August 14, 2023. The court granted the plaintiffs' motion for summary judgment and denied the defendants' motion.

On October 6, 2023, the plaintiffs filed a motion for attorney fees and costs, which was subsequently granted by the trial court on November 27, 2023. The defendants did not respond to the motion or appear at the hearing.

The plaintiffs filed a special execution and order of sale on October 10, 2023. A sheriff's return was filed on March 6, 2024, stating that the real property was sold at public auction to the plaintiffs for the sum of \$1,340,000. On the same day, the plaintiffs filed a motion to confirm the sheriff's sale. The defendants filed an objection to the motion to confirm the sheriff's sale on April 1, 2024. On June 3, 2024, the plaintiffs moved for summary judgment on the defendants' counterclaims for slander of title and quiet title.

On July 23, 2024, the court granted the plaintiffs' motion for summary judgment on the defendants' counterclaims. On the same day, the trial court also issued an order titled "Order Confirming Sherriff's Sale and Final Order on Foreclosure Claim," ordering that the sale be approved and confirmed and that, in accordance with 12 O.S. § 994, the order should be considered a final judgment on the foreclosure claim. ROA, Tab 21, *Order Confirming Sheriff's Sale and Final Order on Foreclosure Claim*, pg. 1 (capitalization modified). It is from this order that the defendants appeal.²

² The record reflects that the defendants filed a motion for new trial on August 19, 2024. However, a summary order filed on October 15, 2024, reflects that the motion was withdrawn by request of defendants' counsel.

II.

The standard of review for a motion to confirm sheriff's sale is whether the trial court abused its discretion. *Fleet Real Estate Funding Corp. v. Frampton*, 1991 OK CIV APP 32, ¶ 8, 812 P.2d 416, 418.

The appellate standard of review of summary judgment is *de novo*. *Boyle v. ASAP Energy, Inc.*, 2017 OK 82, ¶ 7, 408 P.3d 183, 187. On appeal, this court assumes plenary and non-deferential authority to reexamine a district court's legal rulings. *John v. St. Francis Hospital, Inc.*, 2017 OK 81, ¶ 8, 405 P.3d 681, 685. Summary judgment will be affirmed only if the court determines that there is no dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *Lowery v. Echostar Satellite Corp.*, 2007 OK 38, ¶ 11, 160 P.3d 959, 963-64. All inferences and conclusions to be drawn from the materials must be viewed in a light most favorable to the nonmoving party. *Tiger v. Verdigris Valley Electric Coop.*, 2016 OK 74, ¶ 13, 410 P.3d 1007, 1011.

III.

A.

In order to determine what claims remain for review in this appeal, a more in-depth discussion regarding the timeline of events in this case is warranted. Normally, "the scope of inquiry on a motion to confirm sale of real estate made under execution is confined to the regularity of the proceedings on the sale, and not as to the regularity of the judgment." *Burton v. Mee*, 1931 OK 615, ¶¶ 34-35, 4 P.2d 33, 36. Here, the defendants only appealed the order confirming the sale. Thus, the defendants, in theory, are limited to raising arguments on appeal

exclusively related to the sheriff's sale, not arguments related to the correctness of underlying judgment, which in this case, would be the order allowing foreclosure of the property. However, as the defendants point out in their objection to the sheriff's sale, due process has not been afforded when the court orders the sale of the mortgaged property without adjudicating affirmative defenses related to the foreclosure action. *Fed. Deposit Ins. Corp. v. Tidwell*, 1991 OK 119, ¶ 8, 820 P.2d 1338, 1342.

In this case, the trial court granted the plaintiffs' motion for summary judgment, finding that the defendants had defaulted on payments and that plaintiffs were entitled to recover all amounts due and owing. The court also ordered that if redemption could not be made from the judgment by the defendants a special execution of sale and order of sale may be issued. The court also denied the defendants' motion for partial summary judgment, leaving the defendants' counterclaims for quiet title and slander of title unadjudicated. The plaintiffs filed a special execution, and the property was eventually sold at the sheriff's sale. The defendants objected to the sale, after it had already occurred, based on the grounds that the court and the plaintiffs proceeded with the sale while the defendants still had unresolved claims. Presumably in response to the objection, the plaintiffs filed a motion for summary judgment on defendants' counterclaims for slander of title and quiet title. The court granted that motion on the same day it confirmed the sheriff's sale.

Normally, the judgment in a foreclosure proceeding is the order determining the amount due and ordering the sale to satisfy the mortgage lien.

Fed. Deposit Ins. Corp. v. Tidwell, 1991 OK 119, ¶ 5, 820 P.2d 1338, 1342). It is a final, appealable judgment. *Id.* However, Oklahoma courts have consistently held “[i]f an order determines the amount due, orders foreclosure of the mortgage, and sale of the property, but leaves claims unresolved, the order is ‘an interlocutory adjudication anterior to the judgment.’” *Liberty Bank & Tr. Co. of Oklahoma City, N.A. v. Rogalin*, 1996 OK 10, ¶ 9, 912 P.2d 836, 838 (quoting *Founders Bank & Tr. Co. v. Upsher*, 1992 OK 35, ¶ 2, n.2, 830 P.2d 1355, 1359). Accordingly, the court’s order granting summary judgment on the plaintiffs’ foreclosure claim was an interlocutory order.³ Therefore, it can be argued that, under 12 O.S. § 952(b)(3), the defendants are not precluded from asserting error in the court’s grant of summary judgment after the final order, in this case the order confirming sale/final order on foreclosure, was entered.

The defendants raised eighteen allegations of error in their petition in error, the majority of which relate to the propriety of the court’s grant of summary judgment of the plaintiffs’ foreclosure claim and the court’s grant of summary judgment in plaintiffs’ favor on the defendants’ counterclaims for quiet title and slander of title. Thus, while our review of an order confirming a sheriff’s sale is usually confined to the regularity of the proceedings of the sale, here, given the unusual procedural posture of this case, we will presume that the

³ We find it clear the trial court believed this as well, as the court ordered the parties to mediation.

defendants have preserved claims of error related to the propriety of the trial court's grants of summary judgment as to the foreclosure and counterclaims.⁴

B.

Many of the defendants' propositions of error are resolved in answering whether the plaintiffs were entitled to summary judgment on their foreclosure claim. We address that claim here.

The plaintiffs alleged that the defendants executed two separate promissory notes, and the notes and mortgages were subsequently recorded. The plaintiffs stated that the defendants defaulted on the terms of the note by failing to make the required payments. As a result of the default, the plaintiffs contended that they were entitled to recover all amounts due and owing under the notes. The plaintiffs attached the legal description of the property and both notes which name the plaintiffs as the lender and the defendants as borrowers. Because the defendants defaulted on payments, the plaintiffs ultimately requested that the subject property be foreclosed and ordered sold.

In their response to the plaintiffs' motion for summary judgment, the defendants do not dispute any of the above-stated facts. They do not deny that

⁴ The defendants also raise propositions of error directly related to the procedural irregularities outlined above, contending that the trial court erred by both entering an order for special execution and confirming the sheriff's sale prior to entry of a final judgment of foreclosure. While we agree that the trial court should have addressed the counterclaims before ordering the sale, we note that the defendants did not object to the foreclosure before the sale took place. Instead, the defendants only argued that the sale was improper because their counterclaims to the foreclosure had not been adjudicated *after* the sale had been conducted and the plaintiffs had purchased the property. Accordingly, any error in the court's decision to proceed with the foreclosure and issue a special execution prior to resolution of the defendants' counterclaims was harmless because the defendants did not raise their objection before the sale occurred and their counterclaims were heard on the merits before the final order confirming the sale was issued.

they executed the notes or deny that they have not been making payments to the plaintiffs. Instead, they claim that the plaintiffs filed a “false and slanderous claim to own the title to the subject property, thereby clouding the title to the property.” ROA, Tab 6, *Defendants’ Response to Plaintiffs’ Motion for Summary Judgment*, pg. 1. Due to this alleged cloud on title, the defendants claimed they were prevented from being able to exercise their right of redemption and were unable to refinance the subject property to pay off the loan.

The record reflects that both mortgages contain the following language:

26. Notice of power of sale. A power of sale has been granted in this Security Instrument. A power of sale may allow the Lender to take the Property and sell it without going to court in a foreclosure action upon default by Borrower under this Security Instrument.

ROA, Tab 1, *Petition*, Exhibits B and C, pg. 12. The record also reflects that the plaintiffs in this case filed a notice invoking power of sale on July 29, 2022, roughly eight months before they filed the foreclosure petition. Title 46 O.S. § 43 details the procedure for non-judicial foreclosure:

1. a power to sell the mortgaged real estate may be conferred by the mortgagor upon the mortgagee in the mortgage under which the mortgaged property and the interests of persons therein may be sold in the manner provided for in Sections 43 through 47 of this title, after a breach or default in performance of the contract or contracts for which the property is granted as security, or a breach or default in the performance of the mortgage; and
2. with respect to any mortgage in which a power of sale is granted:
 - a. the mortgage shall state in bold and underlined language, substantially the following:

“A power of sale has been granted in this mortgage. A power of sale may allow the mortgagee to take the

mortgaged property and sell it without going to court in a foreclosure action upon default by the mortgagor under this mortgage,”

Id. Upon review, we find that the plaintiffs complied with § 43 as the mortgage contained the requisite language. The plaintiffs apparently first decided to pursue a non-judicial foreclosure pursuant to 46 O.S. § 43 before ultimately abandoning that course and pursuing this judicial foreclosure.

Defendants allege that the notice invoking power of sale, filed with the Cleveland County Clerk in 2022, constituted a cloud on the title of the property which somehow prevented them from exercising their right of redemption. However, we note that 46 O.S. § 43(B) explicitly provides that “[n]othing in this act shall be construed to impair the right of the mortgagor or another party to redeem as provided in Sections 18 through 20 of Title 42 of the Oklahoma Statutes, up to the completion of the sale upon payment of the amount owed including all expenses.” Therefore, it is unclear how the notice invoking sale could have prevented the defendants from exercising their right of redemption. The defendants do not point us to any law or cases which prevent a party from first pursuing a non-judicial foreclosure and then deciding to change course. In fact, pursuant to 46 O.S. § 49, the mortgagee “may at any time prior to the conduct of any sale under this act, terminate any power of sale proceeding and pursue judicial foreclosure in accordance with the procedures provided for the foreclosure of mortgages.” Additionally, the defendants do not point us to any authority stating that initiation of a non-judicial foreclosure pursuant to a valid power of sale creates a cloud on the property’s title or prevents them from

exercising the right of redemption, especially when § 43 explicitly states that the right of redemption is unaffected by a mortgagee invoking a power of sale provision. In light of the same, we find that the court properly granted summary judgment in favor of the plaintiffs and that plaintiffs were entitled to foreclose and to have the property sold.⁵

C.

Next, we must address whether the court erred in granting summary judgment in favor of plaintiffs on the defendants' counterclaims for quiet title and slander of title. We note that the defendants did not file a response to the plaintiffs' motion for summary judgment on the defendants' counterclaims. However, this Court has previously held:

The granting of summary judgment ultimately depends upon a determination by the trial court of whether there is a substantial controversy as to any material fact. Even when no counterstatement has been filed, it is still incumbent upon the trial court to insure that the motion is meritorious. The trial court must examine the evidentiary materials supporting the motion and if all the material facts are addressed and are supported by admissible evidence, those facts are admitted and judgment for the movant is proper.

Spirgis v. Circle K Stores, Inc., 1987 OK CIV APP 45, ¶ 10, 743 P.2d 682, 685. *Spirgis* makes clear that even when a party does not file a response to sum-

⁵ The defendants also allege that the trial court erred by entering a foreclosure judgment that included expenses that were not identified by the plaintiffs. However, a review of the defendants' objection to the plaintiffs' motion to confirm the sheriff's sale shows that this argument was not raised below. We also note that despite there being many docketed hearings in this case, no transcripts are a part of this record. Thus, it appears that this allegation of error is being raised for the first time on appeal, and therefore, is not reviewable. Issues not raised below will not be considered for the first time on appeal. *Jones v. Alpine Inv., Inc.*, 1987 OK 113, ¶ 11, 764 P.2d 513, 515.

mary judgment, the court is not relieved of its obligation to ensure the summary judgment motion is meritorious.

Although they did not respond to the motion for summary judgment, the defendants previously alleged that they were entitled to judgment as a matter of law on their quiet title claim because the property was not sold “as required under the Power of Sale Act” and, because no mortgagee’s deed had been executed, the plaintiffs did not own the subject real property. First, we reiterate that pursuant to Oklahoma’s Power of Sale and Mortgage Foreclosure Act, the plaintiffs in this case were not required to conduct the sale of the property under the act and “at any time” prior to the sale being conducted they could “terminate any power of sale proceeding and pursue judicial foreclosure in accordance with the procedures provided for the foreclosure of mortgages.” 46 O.S. § 49.

Additionally, despite the defendants’ contentions, the “Notice of Invoking Power of Sale and Claim of Ownership of Real Property” filed by the plaintiffs did not automatically confer ownership of the property onto the plaintiffs. Rather, it provided notice of record to the defendants that the plaintiffs were invoking the power of sale granted by each of the two mortgages. The Power of Sale and Mortgage Foreclosure Act provides that after notice of invocation is filed, a mortgagee shall execute a notice of sale. *Id.* § 46. Then, on the date and at the time and place designated in the notice of sale, the mortgagee shall cause the property to be sold at public auction. *Id.* § 47. For reasons unknown to this court, the plaintiffs did not execute and file a notice of sale or proceed with the sale

under the power of sale provision. Instead, the plaintiffs elected to proceed with a judicial foreclosure, as is permissible under the act.

This court has previously held that “[a] quiet title action is to determine the actual owner of a property and put any adverse claims to rest.” *Schultz v. Evans*, 1951 OK 61, ¶ 13, 228 P.2d 626, 628. “In such an action all matters affecting the title of the parties thereto may be litigated and determined” *Id.* ¶ 0 (syllabus of the Court). In this case, the defendants filed their counterclaim for quiet title asking the court to cancel the plaintiffs’ notice of invoking power of sale and clear title to the property so it could be restored to the defendants. For the reasons articulated above, the court did not err in ordering the foreclosure of the property. In its order granting summary judgment, the court found that any right that the defendants had to the property was subsequent or inferior to the mortgages held by the plaintiffs. Additionally, the court found that each of the mortgages held by the plaintiffs were cancelled following the grant of summary judgment and subsequent foreclosure sale of the property. ROA, Tab 11, *Journal Entry of Judgment*, pgs. 3-8. Accordingly, all matters affecting the title of the property were litigated, the court found in favor of the plaintiffs, and, as a result, we find that the plaintiffs were entitled to summary judgment on the defendants’ counterclaim for quiet title.

Regarding the counterclaim for slander of title, defendants contended that the plaintiffs published false claims that they own the subject property. The elements of slander of title include: 1) publication; 2) a false statement in the publication; 3) malice in the publication; 4) special damage resulting from the

publication; and 5) ownership or possession of the property that is the subject of the publication. *Borison v. Bank Leumi Trust Co. of New York*, 1998 OK CIV APP 196, ¶ 5, 972 P.2d 1188, 1189–90. As explained above, the *Notice of Invoking Power of Sale and Claim of Ownership of Real Property* filed by the plaintiffs did not confer ownership of the property onto the plaintiffs. Rather, it provided notice of record that the plaintiffs were invoking the power of sale. Thus, we find that the notice does not contain a false statement that they own the property and, therefore, the plaintiffs were also entitled to summary judgment on the defendants' counterclaim for slander of title.

D.

The defendants also allege that the trial court erred by entering the foreclosure judgment while an ejectment action is pending wherein the plaintiffs claim to own the subject property independently of the foreclosure. It appears that after the power of sale notice was filed of record with the Cleveland County Clerk, the plaintiffs then sought forcible entry and detainer at the property against all occupants of the property in CJ-2022-931. The named defendants, Luther Mason, Chris Mitchell, and Wynn Wynn Solutions, objected to the forcible entry and detainer action. The court entered judgment in favor of the plaintiffs, and defendants appealed. On appeal, this court reversed, finding that a question of title was raised by Mr. Mitchell and, therefore, the action should have proceeded as one in ejectment. *Peak Equity Group, LLC, et al v. Luther Mason, et al.*, No. 121,048, pg. 8 (COCA Div. IV July, 15, 2024) (unpublished); see 12 O.S. § 1148.6. A review of the docket sheet reflects that mandate issued on August

13, 2024, and since then, the only proceedings which have occurred on remand are related to a motion to intervene filed by David Nguyen.⁶

Upon review, we find no error in the court's decision to enter a foreclosure judgment while the ejectment action was pending. In the prior appeal, this court merely observed that disputes regarding the ownership of the property had been raised and, as such, the action was required to proceed as an action for ejectment. This court did not opine as to who was the owner of the property and since the case was remanded, neither has the trial court. Accordingly, the foreclosure judgment did not conflict or contradict this court's prior opinion or any subsequent judgment of the trial court.

E.

Next, the defendants allege that the court erred by denying their partial motion for summary judgment without including in the order what the questions of material fact were. Oklahoma District Court Rule 13 provides as follows:

If it appears to the court that there is no substantial controversy as to the material facts and that one of the parties is entitled to judgment as a matter of law, the court shall render judgment for said party.

If the court finds that there is no substantial controversy as to certain facts or issues, the court may enter an order specifying the facts or issues which are not in controversy and direct that the action proceed for a determination of the remaining fact or issues.

⁶ The motion to intervene was denied and that order was appealed. See Case No. 123,050. The order appealed, which we have reviewed "to inquire into and protect its jurisdiction," also notes the trial court has stayed proceedings in that case awaiting the outcome of this appeal. See Okla.Sup.Ct.R. 1.1(d). Thus, there is no risk of inconsistent judgments.

Okla. Dist. Ct. R. 13(e). Neither Rule 13 nor 12 O.S. § 2056, Oklahoma's rule governing summary judgment motions, requires the trial court to make findings of fact or to enumerate undisputed material facts in the summary judgment order. As stated above, a partial summary judgment order *may* identify which facts and issues are not in controversy and state that the action is to proceed for determination of any remaining facts and issues. However, it is clear by the use of the word *may* that such inclusion in a summary judgment order is up to the sound discretion of the trial court. We find no error in the court's order denying the defendants' motion for summary judgment.

F.

The defendants next aver that the court erred by "entering an unlawful order restricting Defendants from spending their own assets and ordering a hearing on assets before a deficiency judgment was entered." The only item contained in this record which pertains to the hearing on assets is a summary order issued on January 10, 2024. The summary order reads as follows:

Matter comes on for HOA. Parties appear by counsel. Defendant object [sic] to HOA. Parties present argument. Based upon the same, the court finds HOA may be conducted after any confirmation of sheriff sale.

ROA, Tab 15, *Summary Order*. There is no transcript of this hearing in the record. It is unclear from this summary order how the order is unlawful and how the defendants were restricted from spending assets when the court expressly stated that the hearing on assets should be conducted *after* any confirmation of the sheriff's sale. "It is the duty of the appealing party to procure a record that is sufficient to obtain the corrective relief sought." *Chamberlin v. Chamberlin*, 1986

OK 30, ¶ 7, 720 P.2d 721, 724. Without a transcript detailing what transpired at the hearing and in light of the court delaying the hearing on assets to after the confirmation of the sheriff's sale, we find no error in this summary order.

G.

The defendants raised two propositions of error related to the attorney fee judgment entered in favor of the plaintiffs. However, the trial court's post-judgment determination of a motion for attorney's fees, costs or post-judgment interest is a final order under Oklahoma Supreme Court Rule 1.20(b)(6). An aggrieved party must therefore challenge the award by filing a timely new or amended petition in error. See Okla.Sup.Ct.R. 1.26 ("An amended petition in error to challenge a post-trial order granting or denying costs, interest, or attorney's fees must be filed with this Court within thirty (30) days of the date of the post-trial order challenged."). Here, the only order contained in the amended petition in error is the order confirming the sheriff's sale. The appellants did not amend their petition in error to include the journal entry awarding fees in favor of the appellees, nor is the journal entry even contained in the record. Accordingly, we find that the appellants cannot challenge the attorney fee judgment in this appeal.

H.

The defendants also raised allegations of error related to the court's failure to recuse based on alleged bias in favor of the plaintiffs and alleged inappropriate ex parte communications with plaintiffs' counsel. However, there is nothing contained in this record related to a request for recusal or the court's denial of

the same. Oklahoma courts have consistently held that, “[i]t is the duty of the appealing party to procure a record that is sufficient to obtain the corrective relief sought. That record, which should incorporate all pertinent and necessary pleadings or other papers, *must always include* a written memorial of the judicial action that triggered the appealable event.” *Chamberlin v. Chamberlin*, 1986 OK 30, ¶ 7, 720 P.2d 721, 724 (emphasis supplied). Here, no such pertinent pleadings or written memorial of the judicial action are contained in this record. Therefore, the issues related to an alleged failure to recuse are not now reviewable by this Court.

* * *

Upon thorough review of the record and the issues raised by the defendants, we agree with the trial court that the plaintiffs were entitled to foreclose on the property at issue and thereby affirm the order confirming the sheriff's sale of that property.

AFFIRMED.

BARNES, J., and HUBER, J. concur.

March 4, 2026