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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL R. ARBUCKLE,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A02-1009-DR-1083
	)	
ANN C. ARBUCKLE,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Michael D. Keele, Judge
Cause No. 49D07-0701-DR-4009

August 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Michael Arbuckle appeals the denial of his Emergency Motion to Review Commissioner's Sale. We affirm.

FACTS AND PROCEDURAL HISTORY

Michael Arbuckle and his wife Ann divorced in 2009, and as part of the property settlement they agreed Ann would keep the marital residence and Michael would maintain his interest in real estate referred to as "the Farm." (App. at 13.) The parties agreed Michael would pay Ann $140,000 within six months of the divorce decree and if he did not, a commissioner would be appointed to sell the Farm. Michael did not pay the $140,000 in time, and on June 15, 2010, the court appointed a commissioner and granted him permission to sell the Farm.

Prior to June 15, Michael had been negotiating a sale of the Farm with two different parties. He proposed to sell all but five acres to Sonny Beck. Michael would keep five acres including the homestead, where he would live. Beck and Michael could not agree on how to divide the land.

Michael then began negotiating with William Clark, who was to buy the Farm and then convey the homestead and some land surrounding it back to Michael. Before Michael could complete the sale to Clark, the commissioner arranged to sell the entirety of the Farm to Beck.

Michael filed an Emergency Motion to Review Commissioner's Sale. After a hearing

the trial court denied Michael's motion, noting:

> I ordered [the commissioner] to take charge of this, I ordered him to make the arrangements for it[,] the authority was granted on June 15, the decree and settlement was back in April of '09. And therefore the sale is set forth by the commissioner we'll go forward with the closing tomorrow at 2:00.

(*Id*. at 63.)

DISCUSSION AND DECISION

Ann did not submit an appellee's brief. In such a situation, we do not undertake the burden of developing arguments for the appellee. Applying a less stringent standard of review with respect to showings of reversible error, we may reverse the lower court if the appellant can establish *prima facie* error. *AmRhein v. Eden*, 779 N.E.2d 1197, 1205 (Ind. Ct. App. 2002). *Prima facie,* in this context, is "at first sight, on first appearance, or on the face of it." *Id.* at 1205-06. This rule is not to benefit the appellant; it is to relieve us of the burden of controverting the arguments advanced for reversal where this burden rests with the appellee. *Id.* at 1206. Where an appellant is unable to meet that burden, we will affirm. *Id*.

Michael has not established *prima facie* error. Confirmation of judicial sales rests largely within the discretion of the trial court, and will not be reviewed except for manifest abuse of such discretion. *McFall v. Fouts*, 139 Ind. App. 597, 601, 218 N.E.2d 138, 140 (1966).

Michael first asserts "inequitable conduct" on Beck's part in "soliciting" the sale by the commissioner. (Appellant's Br. at 5.) We find nothing "inequitable" in Beck's purchase of the Farm through the commissioner's sale, presumably at a price the commissioner

determined was fair and on terms the commissioner presumably found otherwise acceptable. We decline Michael's invitation to find "double-dealing," (*id*. at 7), in an offer to purchase property at a commissioner's sale after the same purchaser was unable reach an agreement to buy part of the same property directly from the owner.

Michael next asserts the trial court's decision results in "great unfairness" to him, (*id*. at 6), apparently because the sale Michael was trying to arrange might have permitted him to re-acquire a part of the Farm that included a house where he could live. As Michael's property settlement agreement with Ann explicitly provided for a commissioner's sale of the entire Farm, we decline to find "great unfairness" in the trial court's decision to permit a sale under the exact terms Michael had agreed to. Michael could have avoided the commissioner's sale by paying Ann $140,000 pursuant to the agreement. As he did not, we cannot find error in the trial court's decision to permit the commissioner's sale.

The trial court did not abuse its discretion in permitting the commissioner to carry out the terms of Michael's property settlement agreement, and we accordingly affirm.

Affirmed.

BAKER, J., and BRADFORD, J., concur.