



## Case Summary

Deborah Walton appeals the trial court's summary judgment order granting foreclosure of a judgment lien on Walton's residence in favor of Claybridge Homeowners Association ("Claybridge"). We affirm.

## Issues

We restate the issues before us as:

- I. whether there exists a final judgment upon which a judgment lien could have been established;
- II. whether the trial court properly ordered foreclosure of a judgment lien, where the judgment upon which it was based never was entered in the trial court's judgment docket book; and
- III. whether the trial court properly ordered foreclosure, rather than a writ of execution, as the means for Claybridge to collect a judgment against Walton.

## Facts

Walton and Claybridge have been embroiled in litigation since 2001, when Claybridge first filed a complaint against Walton, who resides in the Claybridge subdivision in Hamilton County.<sup>1</sup> Walton subsequently filed a counterclaim against Claybridge. In 2002, Claybridge obtained an injunction against Walton to prevent her

---

<sup>1</sup> This is the fourth appeal involving these parties. A fifth appeal, between Walton and her title insurer, also related to this litigation, has reached this court as well. See Walton v. First Am. Title Ins. Co., 844 N.E.2d 143 (Ind. Ct. App. 2006), trans. denied.

from interfering with Claybridge's performance of duties under the subdivision's covenants.<sup>2</sup>

On July 15, 2004, the trial court entered an order awarding Claybridge \$64,600 in attorney fees associated with obtaining the injunction and defending it on appeal, and \$248 in damages associated with Walton's removal of a survey monument.<sup>3</sup> The trial court's order specifically stated that it was not a final judgment, because Walton's counterclaim still was pending. On July 26, 2004, the trial court clerk entered the July 15, 2004 order in the court's judgment docket book. However, on September 29, 2004, the trial court directed the clerk to remove the July 15 order from the judgment docket book.

On December 4, 2006, the trial court entered judgment in favor of Claybridge on Walton's counterclaims.<sup>4</sup> The trial court scheduled a hearing for January 17, 2007, to address a claim by Claybridge to recover additional attorney fees. Claybridge later rescinded its request for additional attorney fees. On January 16, 2007, the trial court entered an order vacating the January 17, 2007 hearing, and which further stated:

This Order shall not affect the prior award of damages, trial court and appellate attorney fees, nor shall this Order prevent Claybridge Homeowners Association, Inc., from seeking

---

<sup>2</sup> This court affirmed the issuance of the injunction. See Walton v. Claybridge Homeowners Ass'n, No. 29A04-0207-CV-348 (Ind. Ct. App. July 15, 2003), trans. denied.

<sup>3</sup> This court affirmed the attorney fees award. See Walton v. Claybridge Homeowners Ass'n, 825 N.E.2d 818, 826 (Ind. Ct. App. 2005).

<sup>4</sup> This court affirmed that judgment. See Walton v. Claybridge Homeowners Ass'n, No. 29A04-0701-CV-44 (Oct. 19, 2007), trans. denied.

additional collection costs in enforcing the prior award of attorney fees or pre and post judgment interest. This Court further certifies this matter as a final judgment pursuant to Ind. T.R. 58.

App. p. 62. This order was never entered in the trial court's judgment docket book.

On October 30, 2007, Claybridge filed a "Complaint to Foreclose Judicial Lien." Id. at 15. The complaint alleged that the trial court's July 15, 2004 order was a judgment that established a lien against Walton's property in Claybridge. Also named in the complaint was, among other defendants, First Indiana Bank ("First Indiana"), which had recorded a mortgage against Walton's property in 2006.<sup>5</sup> Walton moved to dismiss the foreclosure complaint on the basis that there was no valid, final judgment against her by which a judgment lien could have been established. The trial court, while agreeing that the July 15, 2004 order did not constitute a final judgment, nonetheless denied the motion to dismiss, noting the January 16, 2007 final judgment order.

On May 27, 2010, the trial court entered summary judgment in favor of Claybridge and against Walton and First Indiana, ordering a foreclosure sale of Walton's property and giving priority to Claybridge's judgment lien over First Indiana's mortgage. Walton now appeals; First Indiana has not appealed.

## **Analysis**

### ***I. Final Judgment***

---

<sup>5</sup> Several other named defendants never appeared in the foreclosure action, and the trial court entered default judgment against them. First Indiana did appear in the action and defended itself.

Walton first contends that the trial court's January 16, 2007 order did not constitute a final judgment upon which a judgment lien could have been based. Indiana Trial Rule 58(B) delineates several elements that should be present in every final judgment:

(1) A statement of the submission indicating whether the submission was to a jury or to the Court; whether the submission was upon default, motion, cross-claim, counterclaim or third-party complaint; and if the submission was to less than all issues or parties, such other matters as may be necessary to clearly state what issue is resolved or what party is bound by the judgment.

(2) A statement of the appearances at the submission indicating whether the parties appeared in person, by counsel, or both; whether there was a failure to appear after notice; and whether the submission was conducted by telephone conference.

(3) At the court's discretion and in such detail as it may deem appropriate, a statement of the court's jurisdiction over the parties and action and of the issues considered in sufficient particularity to enable any party affected by the judgment to raise in another action the defenses of merger, bar or claim or issue preclusion.

(4) A statement in imperative form which clearly and concisely sets forth the relief granted, any alteration of status, any right declared, or any act to be done or not done.

(5) The date of the judgment and the signature of the judge.

Ind. Trial R. 58.

“Critical to a money judgment is that it be a certain and definite statement of the amount due.” Henderson v. Sneath Oil Co., Inc., 638 N.E.2d 798, 803 (Ind. Ct. App.

1994). The trial court's order of January 16, 2007, does not contain a "certain and definite statement" of the amount Walton owed Claybridge. Nonetheless, we have noted that "[t]he sufficiency of a judgment 'is to be tested by its substance rather than its form.'" Id. (quoting 46 Am.Jur.2d Judgments § 64 (1969)). Furthermore, a trial court's failure to strictly comply with the mandates of Trial Rule 58 is not grounds for voiding a judgment unless a party can demonstrate prejudice to a substantial right caused by that failure. Id. at 803-04. "The form and content requirements of Trial Rule 58(B) are primarily related to the management of court records as opposed to the validity of the judgment itself." Paulson v. Centier Bank, 704 N.E.2d 482, 488 (Ind. Ct. App. 1998), trans. denied.

Here, the trial court's January 16, 2007 order clearly states that it represented the final judgment in the long-pending litigation between the parties. It also expressly referenced the fact that there was a previous outstanding damages and attorney fees award to Claybridge and against Walton, which Claybridge was entitled to collect. Thus, although it may have been better for the January 16, 2007 order to have explicitly listed the amount of money that Walton owed Claybridge, that order does unmistakably incorporate the prior monetary award into the judgment. We can perceive no prejudice to Walton's substantial rights caused by any insufficiency in the language of the final judgment. She was aware of the existence of the prior monetary award, which was affirmed by this court on appeal, and she was on notice that the litigation between her and Claybridge had been reduced to final judgment. As between Walton and Claybridge,

there was no doubt that a final judgment existed and no doubt as to the amount of money Walton owed Claybridge.

## *II. Existence of Judgment Lien*

Having concluded that the trial court entered a valid final judgment on January 16, 2007, we now address whether that judgment gave rise to a lien that Claybridge was entitled to act upon. The creation of a judgment lien is governed by statute:

All final judgments for the recovery of money or costs in the circuit court and other courts of record of general original jurisdiction in Indiana, whether state or federal, constitute a lien upon real estate and chattels real liable to execution in the county where the judgment has been duly entered and indexed in the judgment docket as provided by law:

- (1) after the time the judgment was entered and indexed; and
- (2) until the expiration of ten (10) years after the rendition of the judgment;

exclusive of any time during which the party was restrained from proceeding on the lien by an appeal, an injunction, the death of the defendant, or the agreement of the parties entered of record.

Ind. Code § 34-55-9-2. Pursuant to this statute, “a money judgment becomes a lien on the debtor’s real property when the judgment is recorded in the judgment docket in the county where the realty held by the debtor is located.” Arend v. Etsler, 737 N.E.2d 1173, 1175 (Ind. Ct. App. 2000).

It is undisputed that here, the trial court’s final judgment of January 16, 2007, was never entered in the Hamilton County judgment docket. The original award of attorney

fees in July 2004 was so docketed for a period of time, but was removed in September 2004. Thus, after September 2004, there was nothing recorded in the Hamilton County judgment docket reflecting an outstanding money judgment against Walton.

This is not fatal to the existence of a judgment lien, however, with respect to Walton herself. Our supreme court has held the following, in addressing a similarly-worded predecessor to Indiana Code Section 34-55-9-2:

[U]nder these provisions, it is necessary that the copy or transcript of a judgment be not only filed, but also recorded and entered in the judgment docket, in order to constitute notice of the lien thereby acquired as against subsequent purchasers without notice thereof. As between the immediate parties to the judgment, and as to all who have notice, it is doubtless proper to hold that the judgment constitutes a lien from the time of filing the copy of the judgment, and that the failure of the clerk to enter and record the judgment in the judgment docket can not defeat the lien; but to apply this rule to purchasers without notice, would open the way to great injustice and fraud, and would bring the titles to real estate into such uncertainty as would greatly impede the transfer thereof.

Berry v. Reed, 73 Ind. 235, 239-40 (1881) (emphasis added).

Much more recently, we addressed Section 34-55-9-2, in conjunction with Indiana Trial Rule 58, in Lobb v. Hudson-Lobb, 913 N.E.2d 288 (Ind. Ct. App. 2009). In that case, which originally concerned a divorce, the trial court had entered a money judgment in favor of the wife and against the husband in the amount of \$167,745.50. The husband failed to pay the full amount of that judgment to the wife, and husband's parents subsequently took title to the prior marital residence from husband. The trial court later

ordered foreclosure sale of the residence in order to satisfy the outstanding judgment to the wife.

The husband's parents appealed, contending there was no judgment lien that could be foreclosed because the \$167,745.50 judgment had never been properly recorded in the trial court clerk's record of judgment and orders. We rejected this argument. We first observed that the proper recording of a judgment is a ministerial act performed by the trial court clerk pursuant to Trial Rule 58(A),<sup>6</sup> and not something controlled by a judgment creditor. Lobb, 913 N.E.2d at 295. We also noted that there was evidence that the parents had actual notice of the judgment in favor of wife and that husband had not paid the entirety of that judgment and stated, "the controlling and dispositive fact is that the [parents] had actual notice of Wife's judgment lien." Id. at 296. We ultimately concluded "that on these facts, as a matter of law, it was unnecessary for the Decree to have been entered in the Record of Judgments and Orders for the award in favor of Wife to have been a judgment lien on the property enforceable against the [parents]." Id. Although we did not cite Berry, our ultimate holding was consistent with that case, i.e., the failure to properly record a judgment does not defeat the existence of a judgment lien upon a judgment debtor's property, at least as to the judgment debtor and any parties who have actual notice of an outstanding judgment. We also do not believe that Lobb has any

---

<sup>6</sup> Trial Rule 58(A) states in part, "upon . . . a decision of the court, the court shall promptly prepare and sign the judgment, and the clerk shall thereupon enter the judgment in the Record of Judgments and Orders and note the entry of the judgment in the Chronological Case Summary and Judgment Docket."

less relevance to this case, simply because it concerned a judgment entered in a dissolution action.

Here, the trial court's final judgment of January 16, 2007, which as we noted unmistakably incorporated the previous monetary award against Walton, clearly was sufficient to permit the establishment of a judgment lien against Walton's interest in any real property in Hamilton County that could be foreclosed as to Walton, or any other party who had actual notice of the judgment against her. Walton argues that the lien should not be effective as to First Indiana, who recorded a mortgage against the property before the final judgment was entered, or that the judgment lien could not take priority over First Indiana's mortgage. First Indiana, however, has chosen not to appeal the trial court's foreclosure order. It does not appear to us that Walton is entitled to make arguments regarding priority on First Indiana's behalf. See Campbell v. El Dee Apartments, 701 N.E.2d 616, 621 (Ind. Ct. App. 1998) (holding that a party on appeal may not assert legal interests of another party to litigation). Whatever arguments a third-party creditor might have regarding the judgment lien, the fact remains that Walton was aware of the judgment against her and it was a valid lien as to her interest in the property. As such, the trial court did not err in ordering foreclosure sale of the property to satisfy the judgment lien in favor of Claybridge.<sup>7</sup>

### ***III. Judicial Foreclosure Remedy***

---

<sup>7</sup> Walton also contends that another creditor, Washington Mutual Bank, issued and recorded a mortgage against the property on November 27, 2007, or after Claybridge initiated these foreclosure proceedings. Again, we do not believe Walton may invoke any rights of third-party creditors in attacking the foreclosure.

Finally, we address Walton's contention that the trial court erred in ordering foreclosure of the judgment lien, instead of proceeding by writ of execution as the means for Claybridge to collect its judgment against her. Indiana Trial Rule 69, governing collection of judgments, provides in part:

(A) Execution sales. Process to enforce a judgment or a decree for the payment of money shall be by writ of execution, unless the court directs otherwise and except as provided herein. Notwithstanding any statute to the contrary, real estate shall not be sold until the elapse of six [6] months from the time the judgment or execution thereon becomes a lien upon the property.

Except for any requirement of appraisal and that the property sell for two-thirds (2/3) or more of its appraised value, the sale of real estate shall be conducted under the same rules and the same procedures applicable to foreclosure of mortgages, including subdivision (C) of this rule, without right of redemption after the sale but subject to the judgment debtor's right to care for and remove crops growing at the time the lien attached as in the case of mortgage foreclosure. Unless otherwise ordered by the court, the sheriff or person conducting the sale of any property upon execution shall not be required to offer it for sale in any particular order, in parcels, or first offer rents and profits and shall be required to sell real and personal property separately pursuant to the law applicable. Execution upon any property shall not suspend the right and duty to levy upon other property.

\* \* \* \* \*

(C) Foreclosure of liens upon real estate. Unless otherwise ordered by the court, judicial foreclosure of all liens upon real estate shall be conducted under the same rules and the same procedures applicable to foreclosure of mortgages upon real estate, including without limitation redemption rights, manner and notice of sale, appointment of a receiver, execution of deed to purchaser and without valuation and appraisal. Judicial lien foreclosures

including mortgage foreclosures may be held at any reasonable place stated in the notice of sale. In all cases where a foreclosure or execution sale of realty is not confirmed by the court, the sheriff or other officer conducting the sale shall make a record of his actions therein in his return to be filed promptly with the record of the case and also in the execution docket maintained in the office of the clerk.

Walton seeks to require the trial court's foreclosure order to comply with subsection (A) of Trial Rule 69, in particular its implicit requirement that there be an appraisal of her property and a sale for no less than 2/3 of the appraised value.<sup>8</sup>

We conclude the trial court did not err in ordering foreclosure of the judgment lien under subsection (C) of Trial Rule 69, rather than proceeding with a writ of execution under subsection (A). Clearly, there is substantial overlap between the two subsections, and they have been described as “complimentary.” William F. Harvey, Ind. Rules of Proc. Ann., Volume 4A, p. 33 (2003). However, it appears that subsection (A) is the more general rule regarding collection of judgments, while subsection (C) applies more specifically in situations where, as here, there already exists a valid lien of some kind upon which a judgment creditor wishes to foreclose.

Subsection (A), being the more general provision, would apply to efforts to levy upon personal property and real property not already subject to a judgment lien. We additionally note that Trial Rule 69(A) states that collection of judgments should proceed by writ of execution, “unless the court directs otherwise and except as provided herein.”

---

<sup>8</sup> Trial Rule 69(A) apparently is referring to Indiana Code Section 34-55-4-1, which states, “Property shall not be sold on any execution or order of sale issued out of any court for less than two-thirds (2/3) of the appraised cash value of the property, exclusive of liens and encumbrances, except where otherwise provided by law.”

(Emphasis added). By this language, we conclude a trial court has discretion to permit a judgment creditor possessing a valid judgment lien to collect a judgment through foreclosure of that lien under subsection (C), rather than by writ of execution under subsection (A).

Walton further contends that Claybridge should have been required to comply with the procedures for proceedings supplemental outlined in subsection (E) of Trial Rule 69. We have previously observed, however, that “enforcement of a judgment lien is a separate and distinct action from the execution of a money judgment via proceeding supplemental.” Arend v. Etsler, 737 N.E.2d 1173, 1174 (Ind. Ct. App. 2000). “Proceedings supplemental are brought solely for the purpose of subjecting property allegedly belonging to a judgment debtor to the satisfaction of the judgment debt, not to a lien.” Id. (quoting Hinds v. McNair, 235 Ind. 34, 40, 129 N.E.2d 553, 558 (1955)). Thus, in this case, the action to foreclose the judgment lien was not, technically speaking, a proceedings supplemental action. The provisions of subsection (E) of Trial Rule 69 did not apply here. The trial court did not err in directing foreclosure of the judgment lien, consistent with subsection (C) of Trial Rule 69.

### **Conclusion**

There existed in this case a valid final judgment upon which a judgment lien clearly was established as to Walton’s interest in her real estate in Hamilton County. The trial court did not err in ordering foreclosure of that lien, consistent with Indiana Trial Rule 69(C). We affirm.

Affirmed.

BAKER, J., and VAIDIK, J., concur.