

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000601-MR

RUDY THOMAS and wife,  
KATHY THOMAS

APPELLANTS

v. APPEAL FROM CLINTON CIRCUIT COURT  
HONORABLE EDDIE C. LOVELACE, JUDGE  
ACTION NO. 01-CI-00123

BANK OF CLINTON COUNTY

APPELLEE

OPINION

AFFIRMING

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BEFORE: HUDDLESTON, PAISLEY AND TACKETT, JUDGES.

PAISLEY, JUDGE. This is an appeal from an order entered by the Clinton Circuit Court which overruled appellants' exceptions to a Master Commissioner's sale of their property. Appellants contend that the circuit court abused its discretion by failing to find that the commissioner's appraised value and ultimate selling price were so low as to be unconscionable. Finding no abuse of discretion, we affirm.

Appellants, Rudy and Kathy Thomas, defaulted on their loan obligation to appellee, Bank of Clinton County. The bank commenced a foreclosure action against appellants' real property which had been used as collateral to secure the loan, and the court granted a summary judgment ordering the property sold. The Master Commissioner appointed two housekeepers to appraise the property as required by KRS 426.520(1), and they fixed its value at \$103,000. The sale was subsequently held on December 8, 2001, and the property sold for \$103,100. As appellants believed that the appraised value assigned to the property by the housekeepers was well below its actual value, they filed exceptions to the sale, which were overruled by the circuit court. This appeal followed.

Appellants claim that two appraisals which they acquired prior to the foreclosure action valued the property at significantly more than \$103,000, with the result that "the housekeepers' appraised value of the property was so completely erroneous as to be unconscionable." Appellants further note that during a hearing regarding their exceptions to the sale, Certified General Appraiser John Lyons, who had conducted a third appraisal for appellants after the sale, testified that the property was worth a minimum of \$223,000. Appellants argue that the discrepancy between their appraisals and the sale price is so great that the circuit court abused its discretion by

failing to set aside the sale. Although appellants rely heavily on Burchett v. Bank Josephine, Ky., 474 S.W.2d 66 (1971), to support their position, it has long been this jurisdiction's rule that regardless of the property's value,

mere inadequacy of price is an insufficient ground for setting aside a judicial sale. For an inadequate price to require reversal for a new sale, the amount brought in the original sale must be so grossly inadequate as to "shock the conscience" of the circuit court or raise the presumption of fraud.

Sterling Grace Municipal Securities Corporation v. Central Bank & Trust Co., Ky. App., 926 S.W.2d 670, 673 (1996) (citations omitted). Clearly, the trial court is afforded great discretion when reviewing matters such as the one now before us.

Here, the circuit court reviewed the evidence presented at the hearing regarding appellants' exceptions, and in its order it noted various circumstances to support its findings. First, the court stressed that appellants purchased the property for only \$150,000 and that a portion of the property was sold prior to the auction. In addition, the highest bid offered at a sale previously attempted by appellants was only \$143,000. Further, Lyons, who conducted appellants' final appraisal, admitted at the hearing that an appraisal should be reduced between 25-75% when property is sold at a judicial sale. The court also noted that appellants did not claim that the sale was improperly conducted or that it involved

any other irregularities. As these circumstances clearly support the trial court's decision, we cannot say that the court abused its discretion. Gross v. Gross, Ky., 350 S.W.2d 470, 471 (1961).

We are also not persuaded by appellants' argument that fraud should be implied by the fact that the purchaser of the property at the auction is the uncle of one of the housekeepers. As the record reflects that appellants failed to produce any evidence tending to show that the sale was conducted in an irregular manner or was otherwise unfair, the sale need not be set aside simply because the appraiser was not completely disinterested. Briggs v. Muir, Wilson & Muir, 204 Ky. 135, 263 S.W. 740 (1924). Absent further evidence, the existence of a familial relationship between one of the housekeepers and the purchaser was inadequate to support any allegation of fraud.

The order of the Clinton Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Gordon T. Germain  
Monticello, Kentucky

BRIEF FOR APPELLEE:

Van F. Phillips  
Monticello, Kentucky