Affirmed and Opinion filed August 16, 2001.

In The

Fourteenth Court of Appeals

NO. 14-99-01343-CV

GLADYS R. GOFFNEY, Appellant

V.

THOMAS A. RABSON, SYLVIA RABSON, AND RABSON AND BROOCKS, L.L.C., Appellees

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On Appeal from the 55th District Court
Harris County, Texas
Trial Court Cause No. 95-040177

O P I N I O N

Appellant Gladys R. Goffney appeals from the trial court's order granting a Motion to Document Completion of Constable's Sale filed by appellee Rabson and Broocks, L.L.C. ("R&B"). Goffney asserts that the execution sale in question was void because it occurred after she filed her *pro se* bankruptcy petition. Because there was no evidence before the trial court that Goffney filed her bankruptcy petition before the execution sale occurred, we affirm the trial court's order.

Background

Sylvia Rabson obtained a judgment against Goffney in the trial court ("Judgment"). Goffney appealed the Judgment to this Court in *Goffney v. Rabson*, Cause No. 14-99-00327-CV ("First Appeal"). On July 12, 2001, this court reversed the Judgment and rendered judgment that Rabson take nothing against Goffney.[1] Goffney did not supersede the Judgment. At Rabson's request, the constable levied a writ of execution on certain real property owned by Goffney ("Real Property"). This writ set an execution sale as to the Real Property. On June 29, 1999, Rabson assigned all of her interest in the Judgment to R&B. The execution sale did occur on July 6, 1999. The only irregularity that Goffney asserts regarding the execution sale relates to the *pro se* bankruptcy petition that Goffney filed on July 6, 1999. In her brief, Goffney alleges that she filed her bankruptcy petition before 9:48 a.m. on July 6, 1999—prior to the execution sale. Deputy Curtis Thompson completed the execution sale some time after 10:35 a.m. on the same date.[2]

The day after the execution sale, Goffney sought to dismiss her bankruptcy petition. On July 26, 1999, the bankruptcy court signed an order granting Goffney's motion to voluntarily dismiss her bankruptcy case. The record does not indicate that the bankruptcy court annulled or modified the bankruptcy stay under 11 U.S.C. § 362.

On August 4, 1999, R&B filed a Motion to Document Completion of Constable's Sale ("Motion"), attaching Thompson's affidavit and alleging that the execution sale was completed before Goffney filed bankruptcy. The Motion also requested that the trial court

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[1] Even before this court's judgment in the First Appeal, R&B argued that this appeal is moot because the execution sale has been completed and therefore, R&B claims, a reversal of the trial court's Confirmation Order in this case will have no effect. We disagree. The completion of the execution sale and the reversal of the Judgment do not moot this appeal. The First Appeal still pends in this court, and, in any event, our judgment in this appeal still affects the case or controversy relating to the validity of the execution sale and the title to the real property in question.

[2] Goffney claims that she examined the constable office's file in this matter and that this file indicated that the execution sale was canceled due to bankruptcy; however, no evidence in the record supports this assertion.

confirm that the execution sale was complete upon Thompson's acceptance of R&B's winning bid and that the court order Thompson to perform all administrative acts necessary to allow R&B to record its purchase of the Real Property at the execution sale.

At the oral hearing on the Motion, Goffney's attorney stated that Goffney had filed bankruptcy before the execution sale occurred and that therefore the Motion should not be granted. R&B argued that Goffney had not proven that she had filed bankruptcy before the execution sale occurred. Goffney's attorney stated that he was not present at the federal courthouse when Goffney filed her bankruptcy petition. Goffney's attorney stated that Goffney does not take issue with Thompson's affidavit, which is attached to the Motion. Goffney did not offer any evidence in opposition to the Motion. Goffney did not file any written response in opposition to the Motion.

On August 11, 1999, the trial court signed an Order granting the Motion ("Confirmation Order"). Goffney filed a Request for Findings of Fact and Conclusions of Law. The trial court never issued findings of fact and conclusions of law. Goffney did not file any notice of past due findings of fact and conclusions of law. Goffney filed a Motion for New Trial and then a First Amended Motion for New Trial. The First Amended Motion for New Trial repeated Goffney's allegation that the execution sale took place after Goffney had filed bankruptcy. This Motion had an "affidavit" of Goffney attached to it, which reads in its entirety as follows:

> "My name is Gladys R. Goffney. I am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct",[sic] as stated in the foregoing First Amended Motion for New Trial/and or Motion for Reconsideration".

Goffney did not attach any exhibits or attachments to her affidavit.

Also attached to the First Amended Motion for New Trial were three sheets of paper that were not marked as exhibits to the motion and that appear to include a bankruptcy petition filed by Goffney on July 6, 1999. However, Goffney did not prove up these

documents, and the documents do not indicate when on July 6, 1999 the petition was filed. Goffney also attached to this motion a fax confirmation sheet showing that two pages were faxed to 713.755.8951 between 9:48 a.m. and 9:50 a.m. on July 6, 1999. Goffney did not prove up this document. Goffney also did not submit any evidence as to which two sheets were faxed. The trial court denied Goffney's First Amended Motion for New Trial.

Issues Presented

On appeal, we read Goffney's brief as asserting that the trial court erred in signing the Confirmation Order for the following reasons: (1) the execution sale was void because it occurred after Goffney filed her bankruptcy petition; (2) the trial court lacked subject-matter jurisdiction to sign the Confirmation Order due to Goffney's bankruptcy petition; and (3) the Confirmation Order violates this Court's mediation stay that was then in effect in the First Appeal. Goffney also asserts that the trial court committed reversible error by failing to issue findings of fact and conclusions of law as requested by Goffney.

Was There Evidence That the Execution Sale Was Void Because It Was Held After Goffney Filed for Bankruptcy?

Goffney asserts that the trial court erred in confirming the execution sale because it was void *ab initio* since it took place after Goffney filed for bankruptcy and in violation of 11 U.S.C. § 362. The filing of a bankruptcy petition triggers the automatic stay under § 362 of the Bankruptcy Code. *See* 11 U.S.C. § 362(a)(1); *Paine v. Sealey*, 956 S.W.2d 803, 805 (Tex. App.--Houston [14th Dist.] 1997, no writ). Any action taken against the debtor while the stay is in place is void and without legal effect. *Continental Casing Corp. v. Samedan Oil Corp.*, 751 S.W.2d 499, 501 (Tex. 1988); *Paine*, 956 S.W.2d at 805. This is true regardless of whether R&B, Thompson, the Constable's office, or the trial court had notice of Goffney's bankruptcy filing at the time that the execution sale took place. *Paine*, 956 S.W.2d at 805.

The bankruptcy court has the power to annul or modify the stay so as to validate an execution sale that violated the automatic stay, but this only applies if the bankruptcy court issues such an order. *See, e.g., Claude Regis Vargo Enters., Inc. v. Bacarisse*, 578 S.W.2d 524, 527-29 (Tex. Civ. App.—Houston [14th Dist.] 1979, writ ref'd n.r.e.). In this case, the bankruptcy court did not annul or modify the stay. Therefore, the dismissal of the bankruptcy case would not validate a sale that violated the automatic stay. *Huddleston v. Texas Commerce Bank-Dallas*, 756 S.W.2d 343, 345-46 (Tex. App.—Dallas 1988, writ denied). Goffney requested findings of fact and conclusions of law under TEX. R. CIV. P. 296, but failed to file a notice of past due findings of fact under TEX. R. CIV. P. 297.[3] Because the trial court did not file findings of fact or conclusions of law, it is implied that the trial court made all the necessary findings to support its judgment. *Carter v. William Sommerville and Son, Inc.*, 584 S.W.2d 274, 276 (Tex.1979). On appeal, Goffney has not challenged the sufficiency of the evidence supporting the trial court's express finding that the execution sale was completed on July 6, 1999 or supporting the trial court's implied finding of fact that the execution sale was completed before Goffney filed her bankruptcy petition. For this reason alone, we can affirm the Confirmation Order.

Even if we construed Goffney's brief to challenge the sufficiency of the evidence supporting these findings, Thompson's affidavit is evidence that Goffney filed the bankruptcy after the execution sale. Thompson states in the affidavit that Goffney's son did not give him the bankruptcy case number until after the execution sale was over. Further, the trial court's material findings are not against the great weight and preponderance of the evidence. Indeed, at the hearing on the Motion, Goffney stated that she did not take issue with Thompson's affidavit. Goffney did not offer any evidence at all in response to the Motion, and Goffney did not file a written response to the Motion. Goffney has not assigned or briefed any error as to the denial of her First Amended Motion

[3] Because Goffney did not file this notice, she has waived her argument on appeal that the trial court erred by not issuing findings of fact and conclusions of law. *Zeolla v. Zeolla*, 15 S.W.3d 239, 243 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).

for New Trial.[4] We reject Goffney's arguments that the trial court erred in signing the Confirmation Order because the execution sale occurred after Goffney had filed bankruptcy.[5] When the trial court signed the Confirmation Order, Goffney had presented no evidence that the bankruptcy petition was filed before the completion of the execution sale. Therefore, we overrule all the issues asserted by Goffney and affirm the Confirmation Order.[6]

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed August 16, 2001.

Panel consists of Justices Yates, Fowler, and Wittig.

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[4] Even if Goffney had asserted error as to the denial of her First Amended Motion for New Trial, we would still have found that the trial court did not abuse its discretion in denying this motion. Goffney did attach some evidence to her First Amended Motion for New Trial. This evidence, however, did not prove that Goffney filed her bankruptcy petition before Thompson completed the execution sale. There was nothing attached to the fax confirmation sheet, and there was no proof as to what was faxed and when Goffney filed her bankruptcy petition. Goffney did not attach any fax coversheet to this motion. Goffney's affidavit only says that all of the statements of fact in her affidavit are within her personal knowledge and are true and correct, as stated in her First Amended Motion for New Trial. The affidavit contained no statements relevant to the issues on appeal. The only statement in the affidavit is incorrect—the First Amended Motion for New Trial did not state that all of the statements of fact in Goffney's affidavit are within her personal knowledge and are true and correct.

[5] Goffney's argument that the trial court had no subject-matter jurisdiction to sign the Confirmation Order on August 11, 1999 fails because Goffney's bankruptcy case was dismissed on July 27, 1999. Therefore, the trial court had jurisdiction to sign the Confirmation Order.

[6] Goffney also argues that the Confirmation Order violated the mediation stay in the First Appeal that was in effect when the trial court signed the Confirmation Order. This argument has no merit. This mediation stay only applied to the First Appeal and did not operate as a writ of supersedeas as to the underlying Judgment. The mediation stay did not stop R&B from asserting its Motion.