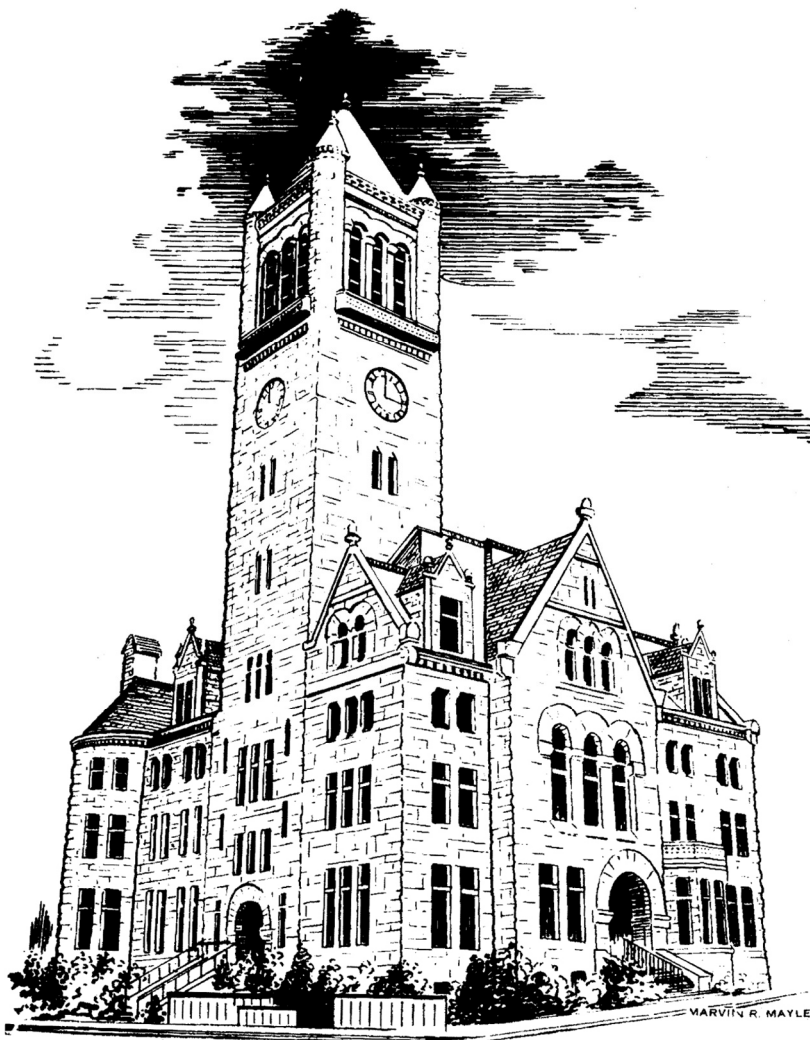


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Attorney: Jennifer M. Casini

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WATSON MUNDORFF, LLP
Attorneys at Law

NOTICE is hereby given that Articles of Incorporation were filed on December 13, 2022 with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, for the purpose of obtaining a Certificate of Incorporation of a domestic nonprofit corporation which was organized under the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania (15 Pa. C. S. A. Section 5306, et sec.). The name of the corporation is "Hybrid Arts Dance Competition Association".

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NOTICE OF INCORPORATION

NOTICE IS HEREBY GIVEN that Articles of Incorporation were filed with and approved by the Department of State on the 3rd day of November 2022, for the purpose of obtaining a Certificate of Incorporation for a business corporation organized under the Business Corporation Law of 1988 as amended.

The name of the corporation is SPECIALTY MANAGEMENT & ENVIRONMENTAL INC. The Purpose for which it is organized is to engage in and to do any lawful business for which corporations may be incorporated under the Pennsylvania Corporation Law.

Paul E. Toohey
Attorney at Law
749 North Church Street
Mt. Pleasant, PA 15666
724-547-7557


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Notice is hereby given to heirs, legatees, creditors, and all parties in interest that accounts in the following estates have been filed in the Office of the Clerk of the Orphans' Court Division of the Court of Common Pleas as the case may be, on the dates stated and that the same will be presented for confirmation to the Orphans' Court Division of Fayette County on

Tuesday, January 3, 2023, at 9:30 A.M.

<u>Estate Number</u>	<u>Estate Name</u>	<u>Accountant</u>
2621-0984	RICHARD L. TRESSLER	Janis Daly, Executrix

Notice is also hereby given that all of the foregoing Accounts will be called for Audit on

Tuesday, January 17, 2023, at 9:30 A.M.

in Courtroom No. 1 of the **Honorable Steve P. Leskinen** or his chambers, Second Floor, Courthouse, Uniontown, Fayette County, Pennsylvania, at which time the Court will examine and audit said accounts, hear exceptions to same or fix a time therefore, and make distribution of the balance ascertained to be in the hands of the Accountants.

JEFFREY L. REDMAN
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division (2 of 2)

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JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY,
PENNSYLVANIA
CIVIL DIVISION

QUEST IRA, INC., FBO: RAY	:	
TROUNDAY, IRA ACCOUNT# 2675011	:	
Appellee,	:	
	:	
v.	:	
	:	
ANDREA J. COPTIS and	:	
MICHAEL C. STOYKO,	:	No. 34 of 2021, G.D.
Appellants.	:	Honorable Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

November 28, 2022

SUMMARY

This appeal arises from this Court's September 6, 2022 order cancelling the proceedings on Appellant Stoyko's petition to strike/ open a default judgment and dismissing/denying Appellant's petitions in the matter. The default judgment on Appellee's initial complaint in mortgage foreclosure involved real property at 668 Walnut Hill Road in Fayette County, Pennsylvania. This property was sold in a sheriffs sale on July 21, 2022, before the hearing on Appellant's petition to strike/open the judgment was scheduled to occur. Appellee Quest purchased the property at the sale, and the deed was recorded on August 16, 2022. On that same date, counsel for Appellant filed a petition to set aside the sale. Appellee subsequently filed a motion to cancel the upcoming proceedings on the grounds that because the property sale was final, Appellant could not succeed on his petition to set it aside, and therefore the pending petition to strike/open the judgment was rendered moot.

After this Court granted Appellee's motion to cancel on September 6, 2022, counsel for Appellant filed a notice of appeal with the Fayette County Prothonotary on October 6, 2022. This Court issued an order for a Concise Statement on October 28, 2022, and Appellant filed the Statement on November 17, 2022.

BACKGROUND

On January 6, 2021, Appellee Quest IRA, Inc. filed an initial complaint in mortgage foreclosure against Andrea Coptis and Michael Stoyko. On February 9, 2021, the Sheriffs Office of Fayette County filed a return of service stating that neither defendant could be located or contacted despite numerous attempts.

On March 8, 2021, Appellee filed a motion for substituted service under Pa.R.Civ.P. 430(a), which was granted on May 28, 2021. In accordance with the meth-

ods for service set forth in that order, a sheriff's return verifying that notice was posted at the property was filed on June 24, 2021, and proof of publication and of service by certified and regular mail were filed on August 5, 2021.

On February 4, 2022, Appellee filed a praecipe for entry of default judgment and for writ of execution. On May 13, 2022, newly-retained counsel for Appellant {1} filed a motion to postpone the upcoming sheriff's sale of the property. On May 18, 2022, this Court granted a postponement to July 21, 2022.

On June 13, 2022, Appellant filed a petition to strike and/or open the default judgment on the grounds that (1) the proof of substituted service was defective; and (2) there was a meritorious defense in that there existed a factual dispute as to whether Appellant had signed the Note or Mortgage as alleged in the initial complaint.

On June 17, 2022, this Court issued a rule to show cause and scheduled a hearing for September 9, 2022. Appellee responded the same day (June 17, 2022).

Counsel for Appellant did not file any other motion to postpone the sheriff's sale, which proceeded as scheduled on July 21, 2022. Appellee was the highest bidder for the property at the sale, and on August 16, 2022 at 9:08 a.m., the deed was recorded in Fayette County, Pennsylvania at Book 3523, Pages 1888-1890.

On August 16, 2022 at 3:21 p.m., Appellant filed a petition to set aside the sale. This Court issued a rule to show cause and scheduled a hearing on that matter for the same date as the hearing for Appellant's petition to strike/open - September 9, 2022.

On August 30, 2022, Appellee filed a priority motion to cancel the September 9, 2022 proceedings on the grounds that since Appellant had filed an untimely petition to set aside the sale, the sale was final and, therefore, Appellant's petition to strike/ open the default judgment was moot. On September 2, 2022, this Court heard argument on that motion. On September 6, 2022, after consideration of the record and the legal arguments of both parties, it granted Appellee's motion. Appellant now appeals that decision.

ISSUES ON APPEAL

Appellants raise two (2) issues in the Concise Statement:

1. The trial court erred by finding that the recording of the sheriff's deed rendered Appellants' petition to strike/open judgment and petition to set aside sale moot.
2. The trial court erred by not issuing a stay of proceedings pursuant to Pa.R.Civ.P. 206.5(c).

{1} The Concise Statement in this appeal was filed on behalf of both Ms. Coptis and Mr. Stoyko, however, Appellant's counsel has entered an appearance only for Mr. Stoyko and both the petition to strike/open and the petition to set aside sale mention only Mr. Stoyko.

STANDARD OF REVIEW

The trial court has discretion on whether to set aside a sheriff's sale, and its decision will not be reversed unless there is a clear abuse of discretion. *GMAC Mortgage Corp. of PA v. Buchanan*, 929 A.2d 1164, 1167 (Pa. Super. Ct. 2007).

DISCUSSION

Appellant's first issue challenges this Court's decision to deny/find moot his petitions, which include both a petition to strike/open the default judgment and a petition to strike off the sheriff's sale of the subject property.

The following Pennsylvania Rules of Civil Procedure apply to property transferred via sheriff's sale:

When real property is sold in execution and no petition to set aside the sale has been filed, the sheriff, at the expiration of twenty days ... after ... the execution sale ... shall execute and acknowledge before the prothonotary a deed to the property sold. The sheriff shall forthwith deliver the deed to the appropriate officers for recording and for registry if required.

Pa.R.Civ.P. 3135(a).

Upon petition of any party in interest before delivery of the personal property or of the sheriff's deed to real property, the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order which may be just and proper under the circumstances.

Pa.R.Civ.P. 3132.

Both Appellant and Appellee relied upon Pa.R.Civ.P. 3132 during argument at the September 2, 2022 hearing on Appellee's motion to cancel, and each interpreted the term "delivery" differently. Appellant posited that the petition to set aside the sale was timely because "delivery" does not occur until the purchaser has actual, physical possession of the deed, and, because the deed to the property here was recorded on August 16, 2022, it could not have reached Appellee's counsel in Philadelphia before Appellant's petition to set aside was filed later that day. Appellee, on the other hand, argued that delivery was accomplished when the deed was recorded, and therefore Appellee's petition to set aside the sale was untimely.

"The recording of a deed constitutes prima facie evidence of delivery and raises a rebuttable presumption thereof." *Bank of New York v. Harvey*, 928 A.2d 325, 327 n. 2 (Pa. Super. Ct. 2007), app. denied, 939 A.2d 889 (Pa. 2007). The burden to overcome the presumption of delivery of a deed that results from its recording "is upon the person attacking its validity and requires clear, positive proof that no delivery was intended and that the recording was unauthorized." *Claar v. Burket*, 136 A.2d 111, 113 (Pa. 1957).

In *Harvey*, the Supreme Court of Pennsylvania chose to equate delivery with recordation, stating that "since [Appellant] has only pleaded the date of recordation, we will consider this as the date of delivery of the deed." 928 A.2d at 327 n.2. The Superior Court of Pennsylvania also has equated delivery of a deed with recordation, as in *Mortgage Electronic Registration Systems, Inc., v. Ralich*, in which it stated that a challenge to a sheriff's sale must be made before the deed is delivered and found that a petition was untimely when it was filed three weeks after the deed was recorded. 982 A.2d 77, So (Pa. Super. Ct. 2009).

Here, counsel for both parties agreed that the deed was recorded on August 16, 2022. Appellee's motion to cancel included an exhibit showing the deed was filed on August 16, 2022 at 9:08 a.m. The record also shows that Appellant's petition to set aside the sale was filed on August 16, 2022 at 3:21 p.m. Although the deed was recorded and the petition filed on the same date, the petition was filed after recording. The petition therefore was untimely, albeit by a few hours. {2}

In addition, the fact that disposition of Appellant's petition to strike/open was still pending was not "proper cause" to set aside the sale because: (1) Appellant had notice of the upcoming sheriff's sale; (2) Appellant had notice that sale date was before the scheduled date for the hearing to strike/open the default judgment; (3) Appellant chose not to file a motion to postpone the sheriff's sale or to a just the hearing date; and (4)

Appellant then also waited twenty-six (26) days to file a petition to set aside the sale despite knowing the sale had proceeded. Appellant had a full and fair opportunity to timely advocate for his interests but chose not to do so.

As Appellant's petition to set aside the sale was untimely, and there was no proper cause shown to set it aside, this Court denied the petition. Accordingly, this Court also dismissed Appellant's petition to strike/open as moot.

Appellant's second issue cites to Pa.R.Civ.P. 206.5(c) and challenges that this Court should have issued a stay of the proceedings and the pending sheriff's sale. However, the rule states that the court "may grant" a stay. This language suggests that (1) issuing a stay is not mandatory; and (2) the action is in response to some petition, motion, or request.

{2} A sheriff's sale may still be set aside after delivery of the deed based on fraud or lack of authority to make the sale. *Ralich*, 982 A.2d at 80. However, Appellant does not allege either of these.

As discussed, Appellant did not file a motion to postpone the sheriffs sale or to adjust the date of the September 9, 2022 hearing. Appellant's Concise Statement argues that this Court "was aware that [the] matter was already scheduled for sheriffs sale when the Petition to Strike/Open the Judgment was filed," and it erred by "not reviewing the merits of the Petition ... and subsequently issuing an order staying the proceedings, and the pending sheriffs sale, until after the hearing on September 9, 2022." However, this ignores that Appellant had the same knowledge of upcoming dates and had every opportunity to file a motion, yet chose not to do so. {3}

CONCLUSION

Appellant did not file a timely petition to set aside the sheriffs sale nor demonstrate proper cause to set it aside. Furthermore, Appellant did not file any motions or petitions to postpone the sheriffs sale or to adjust the hearing on his petition to strike/open despite having full knowledge of the upcoming sale, the upcoming hearing, and having every opportunity to file. For these reasons, Appellant's petition to set aside was denied. Because the petition to strike/ open the judgment was implicated in that decision and could not succeed, that petition was dismissed as moot.

It is respectfully submitted that the findings and conclusions of this Court should be AFFIRMED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Prothonotary

Dated: November 28, 2022

{3} Appellant also emphasizes that counsel for Appellee did not respond to multiple attempts to reach an agreement to continue the sheriffs sale until the day the sale was to occur. However, again, Appellant had every opportunity to file a motion to postpone the sale prior to that last-minute discussion.

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