

SUPREME COURT OF ARKANSAS

Wetzel v. Mortgage Electronic Registration Systems, Inc.

358 S.W.3d 473 (Ark. 2010) · No. No. 09-1410 · Decided January 21, 2010

SUMMARY

The Supreme Court of Arkansas accepted certification from the United States Bankruptcy Court for the Eastern District of Arkansas concerning whether a recorded affidavit of lost mortgage with an appended copy, or a recorded copy of a lost mortgage, provides constructive notice sufficient to defeat a bona fide purchaser claim. The court established briefing and procedural requirements for the certified-question proceeding and stated that the certified question was answered.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	January 21, 2010
DOCKET	No. 09-1410
DISPOSITION	cert_granted
PROCEDURAL POSTURE	The United States Bankruptcy Court for the Eastern District of Arkansas certified a question of Arkansas law to the Supreme Court of Arkansas. The Arkansas Supreme Court accepted certification and prescribed the procedures for briefing and processing the matter.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court per curiam opinion concerning acceptance and processing of a certified question.
PARTIES	Frederick S. Wetzel v. Mortgage Electronic Registration Systems, Inc.

TOPICS

- appellate jurisdiction
- appellate procedure
- mortgages
- recording acts
- real estate

PRACTICE AREAS

- Appellate procedure
- Real estate law
- Mortgage law
- Bankruptcy

QUESTIONS PRESENTED

1. Whether the Arkansas Supreme Court should accept certification of a question of Arkansas law from the United States Bankruptcy Court for the Eastern District of Arkansas.
2. Whether an affidavit of lost mortgage with a copy of the mortgage appended, or merely a copy of an admittedly lost original mortgage, separately or collectively recorded, constitutes constructive notice sufficient to defeat the claim of a bona fide purchaser under Arkansas law.

HOLDINGS

1. The Arkansas Supreme Court accepted certification of the Arkansas-law question because the question could be determinative of the pending bankruptcy proceeding and appeared to lack controlling precedent from the Arkansas Supreme Court.
2. The certified question presented for resolution was whether specified recorded documents relating to a lost mortgage constitute constructive notice sufficient to defeat a bona fide purchaser's claim under Arkansas law.

KEY QUOTATIONS

“Whether an affidavit of lost mortgage with a copy of the mortgage appended, or merely a copy of an admittedly lost original mortgage, separately or collectively recorded, constitutes constructive notice sufficient to defeat the claim of a bona fide purchaser under the laws of the State of Arkansas.” (358 S.W.3d at 473)

FACTUAL BACKGROUND

The underlying matter was pending in a bankruptcy court and involved whether recorded documents concerning a lost mortgage could provide constructive notice sufficient to defeat a bona fide purchaser's claim under Arkansas law. The bankruptcy court determined that the question could be determinative and that no controlling Arkansas Supreme Court precedent answered it.

PROCEDURAL HISTORY

Judge Richard D. Taylor of the United States Bankruptcy Court for the Eastern District of Arkansas filed a motion and certification order requesting an answer to an Arkansas-law question that could be determinative of a pending bankruptcy proceeding. The Arkansas Supreme Court concluded that the certification requirements were satisfied, accepted the certified question, designated the parties as petitioner and respondent, and established briefing and oral-argument procedures.

DISPOSITION

cert_granted

REMAND INSTRUCTIONS

No remand instructions were issued. The court directed the parties to proceed with briefing on the certified question under the specified Arkansas appellate rules.

OPINION

PER CURIAM.

358 S.W.3d 473 (2010) 2010 Ark. 31 Frederick S. WETZEL, Appellant, v. MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., Appellee. No. 09-1410. Supreme Court of Arkansas. January 21, 2010. PER CURIAM. In accordance with section 2(D)(3) of amendment 80 to the Arkansas Constitution and Rule 6-8 of the Rules of the Supreme Court and Court of Appeals of the state of Arkansas, Judge Richard D. Taylor of the United States Bankruptcy Court for the Eastern District of Arkansas, filed a motion and certification order with our clerk on December 30, 2009.

The bankruptcy court requests that we answer one question of Arkansas law that may be determinative of a cause now pending in that court, because it appears that there is no controlling precedent in the decisions of the Arkansas Supreme Court.

After a review of the certifying court's analysis and explanation of the need for this court to answer the question of law presently pending in that court, we accept certification of the following question: Whether an affidavit of lost mortgage with a copy of the mortgage appended, or merely a copy of an admittedly lost original mortgage, separately or collectively recorded, constitutes constructive notice sufficient to defeat the claim of a bona fide purchaser under the laws of the State of Arkansas.

This per curiam order constitutes notice of our acceptance of the certification of question of law. For purposes of the pending proceeding in this court, the following requirements are imposed: A. Time limits under Arkansas Supreme Court Rule 4-4 will be calculated from the date of this per curiam order accepting certification.

The plaintiff in the underlying action, Frederick S. Wetzel, is designated the moving party and will be denoted as the "Petitioner," and his brief is due thirty days from the date of this per curiam; the defendant, Mortgage Electronic Registration Systems, Inc., shall be denoted as the "Respondent" and its brief shall be due thirty days after the filing of Petitioner's brief.

Petitioner may file a reply brief within fifteen days after Respondent's brief is filed. See Ark. Sup.Ct. R. 4-4. B. The briefs shall comply with this court's rules as in other cases except for the briefs' content. Only the following items required in Arkansas Supreme Court Rule 4-2(a) shall be included: (3) Point on appeal which shall correspond to the certified question of law to be answered in the federal bankruptcy court's certification order.

(4) Table of authorities. (5) Statement of the case which shall correspond to the facts relevant to the certified question of law as stated in the federal bankruptcy court's certification order. (7) Argument. (8) Addendum, if necessary and appropriate. *474 (9) Cover for briefs. See Ark.

Sup.Ct. R. 4-2(a). C. Oral argument will only be permitted if this court concludes that it will be helpful for presentation of the issue.

See Ark. Sup.Ct. R. 5-1. D. Arkansas Supreme Court Rule 4-6 applies to amicus curiae briefs. See Ark. Sup.Ct. R. 4-6. E. This matter will be processed as any case on appeal. See Rules of the Supreme Court and Court of Appeals and Rules of Appellate Procedure-Civil. F. Rule XIV of the Rules Governing Admission to the Bar shall apply to the attorneys for the Petitioner and Respondent.

See Ark. Bar Adm. R. XIV. Certified question answered.