

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.

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