

In the Matter of the ESTATE of
Betty Jo HODGES, Deceased, Joyce LONG, Executrix
v. Thomas W. WILKIE III et al

CA 84-359

688 S.W.2d 307

Court of Appeals of Arkansas
Division I
Opinion delivered April 24, 1985

1. JUDICIAL SALES — COURT IS VENDER — VESTED WITH GREAT DISCRETION. — In judicial sales, the court is the vendor and is vested with great discretion.
2. APPEAL & ERROR — DISCRETION OF TRIAL — COURT — STANDARD OF REVIEW. — In reviewing the action of a trial court to determine whether an abuse of discretion has occurred, the appellate court does not substitute its own decision for that of the judge; instead, it merely reviews the case to see whether the decision below was within the latitude of decisions a judge could make.
3. EXECUTORS & ADMINISTRATORS — DECEDENT'S ESTATE — MEANING OF "INTERESTED PERSON." — An "interested person," under Ark. Stat. Ann. § 62-2003(k) (Repl. 1971), includes an heir, devisee, spouse, creditor or any other having a property right or interest in or claim against the estate being administered, and a fiduciary.
4. JUDICIAL SALES — CONFIRMATION HEARING — HIGHEST BIDDER FOR ONE OF TRACTS ENTITLED TO PARTICIPATE. — The trial judge did not abuse his discretion by permitting the participation in a confirmation hearing, following a public auction of estate property, of a party who had lodged the highest bid for a separate tract being auctioned off by the estate and who believed itself to have a claim against the estate.
5. JUDICIAL SALES — COURT MAY REJECT SALE IF NOT ADVANTAGEOUS TO THE ESTATE, OR MAY REQUIRE RE-EXECUTION OF ORDER. — If the judge is satisfied that the sale of estate property at a public auction is not advantageous to the estate or has not been made in conformity with law, the court may reject the sale or require a re-execution of the order upon such terms and conditions as it may direct. [Ark. Stat. Ann. § 62-2719 (Repl. 1971).]
6. JUDICIAL SALES — REJECTION OF PUBLIC SALE BY COURT — BIDDERS NO LONGER "INTERESTED PARTIES" — NO STANDING TO CONTEST PETITION OF HEIRS. — Once the trial judge rejected the report on the public sale, the appellees and cross-appellants,

who had bid at the auction, could no longer be described as interested parties but only as potential bidders at any future sale; hence, their status was in no way superior to that of any other prospective purchaser, and they had no standing to contest a petition on behalf of the heirs of the estate, who then, through their representative, appellant and cross-appellee, remained the only interested parties.

7. **JUDICIAL SALES — AUCTION OF ESTATE PROPERTY — RESPONSIBILITY OF COURT TO DO WHAT IS BEST FOR ESTATE.** — Where estate property is being auctioned off, it is the responsibility of the court to do that which is best for the estate; and when the executrix, with the approval of all the heirs, withdraws her petition for a public sale, it is difficult to find a justification for a court's action in overriding the clearly expressed wishes of the interested parties.
8. **JUDICIAL SALES — CONFIRMATION, WHAT CONSTITUTES — AUCTION, WHEN CONCLUDED.** — While it is a legal truism that a judicial sale is not complete until confirmation, this refers to the court's ratification or rejection of transactions occurring within the formal framework of a judicial sale, and the auction itself is concluded with the submission of the highest bid and the sounding of the gavel.
9. **JUDICIAL SALES — BIDDERS CANNOT INCREASE BIDS AFTER AUCTION CLOSES.** — Parties at an auction are not allowed to increase their offers after the auctioneer closes the bidding.
10. **JUDICIAL SALES — REFUSAL OF COURT TO CONFIRM SALE OF SEPARATE TRACT OF ESTATE PROPERTY PROPER UNDER CIRCUMSTANCES.** — Where the order for the sale of nine tracts of estate property provided that the tracts were to be offered separately until the aggregate price of \$350,000 was reached, and where the sales price of the separate tracts totaled only \$296,000, the trial court's refusal to confirm the sale of one of the nine tracts to one of the appellees was merely a recognition that the terms of the sale order had not been fulfilled.
11. **JUDICIAL SALES — WITHDRAWAL BY EXECUTRIX OF PETITION FOR A PUBLIC SALE OF ESTATE PROPERTY — COURT ABUSED DISCRETION IN ORDERING SALE.** — The trial court exceeded the bounds of its discretion in ordering a second public sale of estate property after the executrix of the estate had withdrawn her petition for a public sale.

Appeal from St. Francis Probate Court; *John M. Pittman*, Judge; reversed and remanded.

Dan Dane, for appellant.

Sharpe & Beavers, for appellee Thomas W. Wilkie III.

Butler, Hicky, Hicky & Routon, Ltd., for appellee L'Anguille River Enterprises.

LAWSON CLONINGER, Judge. On this appeal, appellant and cross-appellee Joyce Long raises three points for reversal, appellee and cross-appellant Thomas W. Wilkie III raises one point for reversal, and appellee and cross-appellant L'Anguille River Enterprises raises one point for reversal while responding to appellant's arguments.

Appellant, acting as executrix of the estate of the late Betty Jo Hodges, obtained an order from St. Francis County Probate Court to sell the nine tracts of estate lands at a public sale in order to pay the estate's debt to the First National Bank of Eastern Arkansas. The order provided that the executrix was to offer separate tracts for sale until the aggregate price would equal \$350,000; if, however, the aggregate of the sales of the separate tracts did not equal that figure, appellant was to sell all nine tracts together as one unit.

When the nine tracts were offered separately, the total of the bids reached only \$296,000; all were then offered as one parcel. Appellee and cross-appellant Wilkie placed the highest bid, but the figure, \$416,000, was less than the statutory requirement of three-fourths of the appraised value of the lands, \$422,000. After making his final bid, Mr. Wilkie learned that the amount failed to exceed the minimum set by law. He then approached the auctioneer and informed him that he wished to raise his bid to \$424,000. In his Report of Sale, the auctioneer made no mention of the post-auction offer.

At a hearing on the Report of Sale, the executrix, on behalf of the heirs, filed a petition for a private sale, appellee and cross-appellant L'Anguille River Enterprises filed a petition requesting that the executrix be required to sell one tract to it as the highest bidder. A party who had not been present at the sale, Sid Fogg, testified that he was willing to purchase some of the property at a price higher than that bid.

Appellee and cross-appellant Wilkie argues that his increased offer of \$424,000 for the total estate lands was a valid bid made prior to the completion of the sale and should have been confirmed by the court. He asserts that no substantial amount of time had elapsed between the delivery of his final bid and his notification of the auctioneer of his enhanced offer.

Mr. Wilkie quotes *Fleming v. Southland Life Ins. Co.*, 262 Ark. 272, 564 S.W.2d 218 (1978) for the long-established rule that "a judicial sale is not complete until confirmation." While we cannot disagree with this legal truism, we also cannot see how this precept leads Mr. Wilkie to the proposition that the auction had not concluded with the submission of the highest bid, Mr. Wilkie's own \$416,000, and the sounding of the gavel. The language in *Fleming, supra*, refers, of course, to the court's ratification or rejection of transactions occurring within the formal framework of a judicial sale. The procedure would have no meaning if parties at an auction were allowed to increase their offers after the auctioneer closed the bidding.

Finally, appellee and cross-appellant L'Anguille River Enterprises argues that the trial court erred in refusing to confirm the sale of one of the tracts to the partnership. L'Anguille River Enterprises had entered a bid of \$36,000 for Tract VI during the initial phase of the public sale. The figure was 140 per cent of the appraised value of the parcel, which was appraised at \$25,600. Because it exceeded the statutory minimum bid with respect to that particular tract, cross-appellant insists that it is entitled to the land.

We cannot agree. The Order of Sale stated explicitly:

3. That the sale of the Estate real estate should be made by offering separate tracts or parcels for sale at a public sale until the aggregate price of the separate tracts is equal to at least Three Hundred Fifty Thousand (\$350,000.00) Dollars. After the parcels have been offered for sale separately or so many thereof as the aggregate purchase price shall equal at least Three Hundred Fifty Thousand (\$350,000.00) Dollars all

parcels offered for sale up to that point should be offered for sale together as one unit and the lands should be sold to the highest bidder.

The trial court's refusal to confirm the sale of Tract VI to L'Anguille River Enterprises was merely a recognition that the terms of the sale order had not been fulfilled. Although L'Anguille's individual bid was higher than the minimum prescribed by statute for the tract in question, the aggregate figure reached for the separate parcels of land was \$296,000. The language of the order clearly requires that the tracts be offered intact together as a single unit if previous efforts to secure the necessary price for the separate parcels failed.

We find that the trial court exceeded the bounds of its discretion in ordering a second public sale. We reverse the trial court's decision and remand this case with instructions to the court to entertain any motions or petitions presented by interested parties and to complete the administration of the estate in a manner not inconsistent with the holdings in this opinion.

Reversed and remanded.

COOPER and MAYFIELD, JJ., agree.