



# CIRCUIT COURT OF SOUTH DAKOTA SIXTH JUDICIAL CIRCUIT

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March 15, 2024

RE: Bryan Reo v. Martin Lindstedt; 58CIV21-16, 58CIV21-24, 58CIV21-40, 58CIV22-16

## MEMORANDUM DECISION

Stanley County, South Dakota Sheriff Brad Rathbun (Sheriff or Sheriff Rathbun) through Stanley County State's Attorney Tom Maher (Mr. Maher) submitted a motion to intervene in the above actions on May 15, 2023. Sheriff also filed motion for the court to vacate or void the Sheriffs' sales as moot or void due to the underlying vacated foreign judgments. Briefing on the issues ensued, with the final document submitted to the court for consideration on December 5, 2023.

The Court grants the motion to intervene as a matter of right. Alternatively, permissive intervention is granted. The Court grants a delay of the execution of any deed until the Ohio court matters are determined. The objections and arguments proposed by Plaintiff Bryan Reo's (Reo or Plaintiff) are denied.

### **FACTUAL BACKGROUND**

On December 8, 2022, the 6<sup>th</sup> Circuit Court of Appeals for the United States issued its per curiam opinion vacating the four civil judgments which are the basis of Reo's debt collection herein (that is, the foreign judgment debt collection cases found in 58CIV21-40, 58CIV21-16, 58CIV21-24, and 58CIV22-16).

As explained by the 6<sup>th</sup> Circuit Court of Appeals in its opinion, Defendant Martin Lindstedt (Defendant or Lindstedt) published provocative and highly offensive material online, impugning three members of the Reo family: Bryan Anthony Reo; Bryan's father, Anthony Domenic Reo; and Bryan's wife, Stefani Rossi Reo. Each family member separately sued Lindstedt in Lake County, Ohio, alleging defamation and privacy claims. Lindstedt removed four cases to federal court. The district courts granted summary judgments, in the total amount of \$2,750,000 for compensatory and punitive damages. *Reo v. Lindstedt*, (6<sup>th</sup> Cir) per curiam Opinion and Judgment, dated December 8, 2022.

Lindstedt filed a notice of appeal from the judgments in these various federal district matters to the 6<sup>th</sup> Circuit Court of Appeals. Thereafter, Plaintiff sought to execute on these same four civil judgments from Ohio, in Stanley County, South Dakota (Stanley County). Lindstedt owns land in Stanley County. Pursuant to a sheriff's sale on May 26, 2022, Plaintiff bid in the full value of the subject civil judgments (\$2,750,000) against Defendant's real property located in

Stanley County. At this stage, the one year redemption period has not lapsed, and Plaintiff, as high bidder at the auction has not yet received a Sheriff's Deed for the subject property.

Reo is not a stranger to these proceedings as he is the complaining party. Reo did not pay or deposit money at the sheriff's sale, but rather bid the full amount of the civil judgments from federal district court in Ohio, plus interest. On December 8, 2022, those same four money judgments were subsequently vacated by the 6<sup>th</sup> Circuit Court of Appeals. The 6<sup>th</sup> Circuit remanded all of those cases back to the federal district court in Ohio. That court further directed the federal district court to permit withdrawal of Defendant's admissions, and consider the punitive damages issues. It also gave guidance to the lower court to consolidate and conduct further proceedings consistent with the appellate court's opinion. In the last paragraph of its Opinion, the 6<sup>th</sup> Circuit wrote:

We vacate the district courts' judgments in each of these cases and remand them for further proceedings consistent with this opinion. We also deny as moot all other pending appellate motions and requests for relief. For the district courts' sake and for ours, we strongly suggest that the lower courts consolidate these cases before a single judge on remand.

As a recap of the cases concerning the South Dakota is set forth again. The sheriff's sale was held on May 26, 2022 outside the Stanley County Courthouse. At that sale, Plaintiff bid the full-face value of his civil judgments at the auction, not cash money. By statute, the auction is a conditional sale of the judgment debtor's property and has not closed. In the meantime, and prior to the conclusion of the redemption period, Defendant's civil judgments were all vacated by the United States 6th Circuit Court of Appeals on December 8, 2022. These vacated judgments are the basis of Plaintiff's collections proceedings. The redemption period concerning a sheriff's sale is one year. It may have likely concluded, without the Ohio federal appellate court ruling. Nonetheless, the Sheriff has not executed a Sheriff's Deed. Defendant has requested that Sheriff

not execute a Deed in Plaintiff's favor due to the action of 6th Circuit Court of Appeals. Stanley County state's attorney, Thomas P. Maher, has moved to intervene on behalf of the Stanley County Sheriff.

### **LEGAL STANDARD**

The South Dakota Supreme Court has held that intervention standards are flexible, allowing for some tailoring of decision to the facts of each case. *Matter of Shirley A. Hickey Living Trust*, 2022 S.D. 53, ¶ 29, 979 N.W.2d 558, 567. Additionally, the rule allowing intervention as a matter of right is construed liberally, and the court is to resolve all doubts in favor of the proposed intervenors. *Berbos v. Berbos*, 2018 S.D. 82, ¶ 7, 921 N.W.2d 475, 477. The South Dakota Supreme Court held *In Re Estate of Olson* that in applying rule regarding intervention in a matter of right to protect an interest in property, courts are to utilize a tripartite test: (1) the party must have a recognized interest in the subject matter of the litigation, (2) that interest must be one that might be impaired by the disposition of the litigation, and (3) the interest must not be adequately by existing parties. *In re Estate of Olson*, 2008 S.D. 126, ¶ 5, 759 N.W.2d 315, 318. See SDCL 15-6-24(a).

South Dakota Codified Law 15-6-24(b) addresses the requirements for permissive intervention. The statute states:

Upon timely application anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

SDCL 15-6-24(b).

The law is well settled that if a judgment is reversed, the parties are to be restored to their original rights, so far as it can be done without prejudice to third persons. If the plaintiff has derived any benefit from the judgment, he must make as full restitution to the defendant as the circumstances of the case will permit...If he has purchased the property under the judgment, and still retains the ownership, the defendant may recover the specific property in the appropriate action. *McJilton v. Love*, 13 Ill. 486 (1851), 54 Am. Dec. 449.

## ANALYSIS

### *A. Motion to Intervene*

Sheriff Rathbun asserts the facts of this case allow for his intervention. Sheriff Rathbun explains that after investigation and careful consideration of the invalidity of the subject foreign civil judgments, he believes that the 6<sup>th</sup> Circuit Court of Appeals for the United States has ruled that the subject civil judgments from Ohio are a void, and therefore must *not* in exercise of his duty as the Sheriff for Stanley County, execute a Sheriff's Deed in favor of the Plaintiff. Sheriff Rathbun argues that that would be beyond his authority, as Sheriff, to execute a deed transferring Defendant's land for debts that are no longer owed the Plaintiff as a result of vacated Ohio judgments.

### *B. Motion to Declare Sheriff's Sale Void due Vacated Judgments*

The controlling fact is that the debts that Plaintiff seeks to collect, evidenced by foreign civil judgments from the U.S. District Court for the Northern District of Ohio, have been vacated. The judgments were not vacated in part, but in total. Those foreign judgments can be of no more force and effect here in South Dakota than in Ohio. These four foreign judgments, now vacated,

are the foundation upon which Plaintiff's collections effort against Defendant in South Dakota rests. Each one was vacated by the federal court on December 8, 2022.

As noted earlier, Plaintiff is not a stranger to these proceedings. Reo was the principal initiating or complaining party in Ohio and subsequently in South Dakota. He is also an attorney. The subject judgments appealed from have been returned to the Ohio federal district court. The district court has consolidated the proceedings in one case, before Judge Thomas M. Parker. Before that event, at the South Dakota sheriff's sale, Plaintiff bid in the value of the money judgments that Reo obtained from the federal district court of Ohio, together with interest, against Defendant's property in South Dakota. Now, those judgments have been declared void.

The Plaintiff's brief critiques the Sheriff's Reply Brief and Mr. Maher's failure to address key factors for intervention and standing, particularly in relation to the *Olson* factors. Plaintiff asserts that Sheriff and Mr. Maher provide rhetoric without legal authority to support their motion for intervention, ignoring established South Dakota case law.

Moreover, Plaintiff argues that the proposed intervenors fail to cite relevant statutes and case law, instead relying on outdated cases from foreign jurisdictions. Specifically, Plaintiff claims they fail to address the controlling South Dakota law regarding redemption, suggesting that Lindstedt did not fulfill the statutory requirements for redemption, even if the judgments were vacated.

Plaintiff contends that the inaction of Lindstedt cannot be considered redemption, and therefore, the arguments presented by Sheriff and Mr. Maher should be discounted. Plaintiff suggests that the court may either disregard the arguments from Mr. Maher's Supplemental Brief

or grant the motion to strike Maher Law Office filings. Additionally, Plaintiff asserts that Sheriff lacks standing and proper grounds to intervene, rendering all relief requested by Sheriff moot.

The cases of *Matter of Shirley A. Hickey Living Trust* and *Berbos v. Berbos*, underscore a Court's obligation to consider the specific facts of each case and resolve doubts in favor of intervention. Additionally, the legal doctrine holds that if a judgment is reversed, parties should be restored to their original rights as much as possible without prejudicing third parties, as demonstrated by the precedent set forth in *McJilton v. Love*.

In applying the tripartite test found in *In Re Estate of Olson* this Court finds that Sheriff Rathbun has a matter of right to intervene. First, Sheriff Rathbun asserts he has an interest in the real property at issue in that he faces the risk or threat of liability in transferring title of valuable property in exchange for worthless vacated judgments. Second, the Sheriff's interest might be impaired by the disposition of the litigation. Third, the Sheriff's interest is not adequately protected by either of the existing parties. Reo is obviously not raising the sheriff's concerns and obligations; Lindstedt is pro se and unable to advocate for the sheriff's position.

This Court also finds that Sheriff Rathbun has met the statutory requirements under SDCL 15-6-24(b) for permissive intervention. Sheriff Rathbun's request for intervention was timely and he shares a question of law in common with the parties (should he or not issue the sheriff's deeds in light of the Ohio ruling). That being whether the sheriff sale is void due to the vacated foreign judgments.

This Court is granted discretion in considering whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. There is nothing to suggest that either party will be unduly delayed or prejudiced in granting Sheriff Rathbun's motion to intervene.

Analyzing the motions at hand, Sheriff Rathbun's assertion for intervention hinges on his duty as Sheriff of Stanley County and his belief in the invalidity of the subject foreign civil judgments. His argument suggests that executing a Sheriff's Deed in favor of Plaintiff would exceed his authority given the vacated Ohio judgments.

Regarding the motion to declare the sheriff's sale void due to vacated judgments, it is evident that the foundation upon which Plaintiff's collection efforts rested has crumbled with the vacating of the foreign judgments. Plaintiff, intimately involved in both Ohio and South Dakota proceedings, now faces the challenge of reconciling the voided judgments with the executed sheriff's sale in South Dakota.

Ultimately, the legal landscape surrounding intervention and the consequences of reversed judgments underscore the complexities of the current situation. As this matter progresses, careful consideration of legal principles and equitable remedies is essential to ensure justice is served without prejudice to any party involved.

There is limited case law addressing the stalemate of a sheriff sale due to an appellate court overturning the underlying decision upon which the sheriff's sale was based. Other jurisdictions however have addressed the issue of setting aside a sheriff's sale. One such case comes from the Court of Appeals of Utah where the court found:

[t]here is a general policy to sustain a sheriff's sale. The policy of the courts is to uphold judicial sales except when they are manifestly unfair.... [E]specially this is true in a state such as Utah which has a substantial period of redemption." *Beesley v. Hatch*, 863 P.2d 1319, 1322 (Utah 1993) (citation and internal quotation marks omitted). District courts are afforded a "high degree of discretion" in determining whether to set aside a sheriff's sale. *Pyper v. Bond (Pyper II)*, 2011 UT 45, ¶ 24, 258 P.3d 575, aff'g 2009 UT App 331, 224 P.3d 713. This discretion, however, is not limitless. On the contrary, our jurisprudence has developed a rather specific and



systematic methodology for considering challenges to sheriff's sales like the instant one.

One of the main justifications for setting aside a sheriff's sale or extending the redemption period involves the interplay of two factors: (1) gross inadequacy of the purchase price and (2) irregularity in the sale so as to indicate at least slight circumstances of unfairness. 'These factors operate on a sliding scale. Thus, the greater the disproportionality in price, the less unfairness or fewer irregularities a party must demonstrate before a court may justifiably extend a redemption period or set aside a sheriff's sale.' *Meguerditchian v. Smith*, 2012 UT App 176, ¶ 10, 284 P.3d 658 (emphasis added) (internal citations, additional internal quotation marks, and footnote omitted) (quoting *Pyper II*, 2011 UT 45, ¶ 15, 258 P.3d 575).

*Sunrise Oaks Capital Fund, LLC v. Maughan Family P'ship*, 2012 UT App 271, ¶ 6, 288 P.3d 295, 296–97.

Under the facts before the court, it is undisputed that the Ohio judgments no longer exist. To allow the sheriff's sale to be completed in South Dakota, as proposed by the Plaintiff, would distort the reality of the circumstances. Allowing the sheriff sale to fully come to fruition, in light of what has happened to the underlying foreign judgments, would constitute more than a slight unfairness to the Ohio court rulings. It is also more than a slight unfairness to the Stanley County Sheriff, who has an inherent obligation to conduct and complete sales that are based upon valid foreign judgments. There is no room for this court to throw out the sheriff's concerns and obligations merely because of Lindstedt's inappropriate language in the lawsuit. Nonetheless, the court will enforce its earlier order to forbid the filing of documents with inappropriate language.

## CONCLUSION

For the reasons described above, Sheriff Rathbun's motion to intervene is granted and the collections process herein is now moot and declared void as a result of the foreign judgments being vacated. Therefore, the Sheriff should not execute a sheriff's deed in Plaintiff's favor. Any

other grounds for upholding and enforcing the sale are denied. Stanley County States attorney shall prepare any appropriate order consistent with the ruling herein.

Dated this 15<sup>th</sup> day of March, 2024.

*M. Bridget Mayer*  
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Hon. M. Bridget Mayer  
Circuit Court Judge

CC: Stanley County Clerk of Courts for filing