

No. 25429 - Gerald Locke Smith v. Betty M. Rusmisell, Mike Ross, Inc.,
a West Virginia Corporation

Davis, Justice, dissenting:

Judge Keadle did not abuse his discretion in ordering the property resold based upon a bid which was “grossly inadequate”. That has been our law for more than one hundred years. In *Kable v. Mitchell*, 9 W. Va. 492 (1876), *overruled in part by Childs v. Hurd*, 25 W. Va. 530 (1885) this Court stated:

The court may, in the exercise of a sound discretion, either affirm, or set aside, the sale, where from the facts, evidence, and circumstances before it, it appears clearly that the sale was made at a greatly inadequate price, and the court may solve the question upon affidavits, or depositions in connection with the fact that a greatly larger price is offered to the court for the land, and, secured or offered to be secured, or, it may set the sale aside upon any evidence, or fact, or facts before it, which clearly shows that the land sold at a greatly inadequate price.

Kable at Syl. pt. 3.

Furthermore, in *Kable*, this Court stated, “Where the circuit court has disapproved, and set aside, sale made by its own commissioners, the Appellate Court should not disturb the action of the circuit court, unless, it plainly appears that there is error to the prejudice of the appellant.” *Kable* at Syllabus point 8.

In this case, Ross was not prejudiced by the judge’s decision. Ross merely

made an offer to purchase the property subject to court approval. *See Hatfield*, 136 W. Va. at 346, 67 S.E.2d at 532. Ross' bid represented less than fifty-six percent of the Holmes' appraised value. The trial court, in exercising its discretion, considered the difference between Holmes' appraisal and the high bid at the auction, which was \$300,000.00. By any standard, a bid falling more than a quarter of a million dollars short of market value is grossly inadequate. Accepting such a bid is an inequity to both Smith and Rusmisell.

It is within the sound discretion of the trial court to approve or reject a bid made at a judicial sale. There is sufficient independent evidence that the Ross bid was grossly inadequate. Judge Keadle did not abuse his discretion when he refused the Ross bid and ordered the property be re-offered for sale. Therefore, I respectfully, dissent.