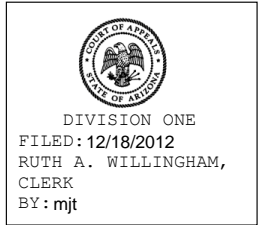


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DUANE VARBEL,) No. 1 CA-CV 12-0385
)
Plaintiff/Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
CARRINGTON MORTGAGE SERVICES,) Rule 28, Arizona Rules of
LLC,) Civil Appellate Procedure)
)
Defendant/Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-014166

The Honorable Robert H. Oberbillig, Judge

AFFIRMED

Duane Varbel Phoenix
Plaintiff/Appellant Pro Per

Wright Finlay & Zak, LLP Newport Beach, CA
By Bradford E. Klein

Stoops Denious Wilson & Murray, PLC Phoenix
By Stephanie M. Wilson
Attorneys for Defendant/Appellee

G O U L D, Judge

¶1 Appellant Duane N. Varbel ("Varbel") appeals the trial court's granting of summary judgment in favor of Appellee

Carrington Mortgage Services ("Carrington"). For the following reasons, we affirm.

Facts and Procedural History¹

¶2 The following facts appear undisputed. On April 7, 2005, Michael Yniguez ("Yniguez") purchased property by executing a note in the amount of \$173,850.00, secured by a deed of trust to the subject property located in Phoenix. The deed of trust securing the loan identified New Century Mortgage Corporation as the Lender and designated Chicago Title Insurance as the trustee. The deed of trust was properly recorded in Maricopa County on April 13, 2005. New Century Mortgage Corporation subsequently sold the loan to Deutsche Bank National Trust Company, for whom Carrington was the servicer. Yniguez quit-claimed his interest in the property to Varbel on July 29, 2011.

¶3 Varbel then filed a complaint seeking to quiet title on the property and obtain a declaratory judgment that Carrington did not have any legal or equitable claim on the property. Both parties moved for summary judgment. At a hearing on these motions, Varbel admitted that he was aware of the existence of the mortgage when he purchased the quit-claim deed from Yniguez.

¹ We draw all facts and reasonable inferences in favor of Varbel, given that he was the party against whom summary judgment was granted. *Prince v. City of Apache Junction*, 185 Ariz. 43, 45, 912 P.2d 47, 49 (App. 1996).

¶4 The trial court granted Carrington's motion for summary judgment on April 4, 2012 and entered judgment accordingly. Varbel timely appeals.

Discussion

¶5 We review a trial court's ruling on cross-motions for summary judgment de novo. *Nelson v. Phx. Resort Corp.*, 181 Ariz. 188, 191, 888 P.2d 1375, 1378 (App. 1994). We view the facts in the light most favorable to the party against whom summary judgment was granted. *Id.* On appeal, we will affirm the grant of summary judgment if there are no genuine issues of material fact and the prevailing party is entitled to judgment as a matter of law. Ariz. R. Civ. P. 56(c); *Orme School v. Reeves*, 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990).

¶6 Varbel argues that the trial court erred because he was a "purchaser of the property for valuable consideration without notice of any party having a recorded equitable interest recorded with the Maricopa County Recorder as is required by law." In essence, Varbel appears to argue that because New Century's assignment to Deutsche Bank was not recorded, Varbel should take title to the property free and clear.²

² Varbel's other arguments regarding the bundling and securitization of the mortgage were not raised below and we decline to address them here. *Town of South Tucson v. Bd. of Supervisors*, 52 Ariz. 575, 582, 84 P.2d 581, 584 (1938) (explaining that we generally decline to address arguments that were not raised below).

¶7 However, there is no requirement that an assignment be recorded in order for it to be valid. *In re Vasquez*, 228 Ariz. 357, 359, ¶ 3, 266 P.3d 1053, 1055 (2011) (rejecting the argument that an assignment of deed of trust must be recorded prior to filing a notice of trustee's sale). As the recipient of Yniguez's quit claim deed, Varbel could not acquire an interest greater than that which Yniguez possessed. Varbel's claim to the property is thus junior to that of any assignee of New Century.

¶8 In addition, Varbel admits he had actual notice of the prior mortgage, and does not argue that the prior mortgage was not properly recorded. As we recognized long ago, "[t]he purpose of the recording statute is to create notice in the form of constructive notice so that a party or his transferee may not claim to be a subsequent purchaser for value without notice." *Chantler v. Wood*, 6 Ariz. App. 134, 137, 430 P.2d 713, 716 (App. 1967). Even without actual notice, the constructive notice created by the proper recording of the mortgage would foreclose Varbel's claims as a matter of law.

¶9 Nor does Varbel argue that the agreement between New Century and Yniguez barred assignments; our review of the document reveals that the deed of trust provided that "[t]he Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to the Borrower."

¶10 Because Varbel offered no plausible legal argument to support his claims, the trial court properly granted summary judgment to Carrington. We award Carrington its costs on appeal.

Conclusion

¶11 For the foregoing reasons, we affirm.

/s/

ANDREW W. GOULD, Judge

CONCURRING:

/s/

MICHAEL J. BROWN, Presiding Judge

/s/

DONN KESSLER, Judge