IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

WILLIAM D. JENKINS,

Appellant,

v.

Case No. 5D21-1740
LT Case No. 2020-CA-3250

SILVER PINES ASSOCIATION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION,

Appellee.

_____/

Opinion filed November 5, 2021

Appeal from the Circuit Court
for Orange County,
Jeffrey L. Ashton, Judge.

Williams Jenkins, Orlando, pro se.

Sarah Webner, of Wonsetler & Webner, P.A., Orlando, for Appellee.

PER CURIAM.

AFFIRMED.

TRAVER and NARDELLA, JJ., concur.
LAMBERT, C.J., concurs and concurs specially, with opinion.

LAMBERT, C.J., concurring specially. Case No. 5D21-1740
LT Case No. 2020-CA-3250

Appellant, William D. Jenkins, appealed the trial court's order denying his timely motion to set aside or "reverse" the judicial foreclosure sale of his home. I agree with our court's affirmance of this order; and, for the benefit of Mr. Jenkins, an unrepresented litigant, I explain why.

Silver Pines Association, Inc. ("Appellee"), sued to foreclose a lien that it had recorded on Jenkins's property. The lien originated from Jenkins's failure to pay his monthly homeowner's association fees. Jenkins answered the complaint, albeit without directly addressing the allegations made in the complaint. Appellee then filed a motion for summary judgment under Florida Rule of Civil Procedure 1.510. Jenkins responded to the motion; but, contrary to his assertions of impropriety therein, nothing precluded Appellee from bringing its motion in an effort to obtain a final judgment in lieu of trial. Our record does not show that Jenkins filed any sworn evidence or affidavit in opposition to Appellee's motion.

The trial court held a properly-scheduled hearing on the summary judgment motion, which Jenkins attended. The motion was granted, and the court entered the final summary judgment of foreclosure that same day.

Jenkins did not move for a rehearing, nor did he appeal the final judgment. As such, whether the final summary judgment should or should

not have been entered is not presently before this court because Jenkins did not appeal it. Moreover, whether Jenkins, as a nonlawyer, was aware of the time frame in which to appeal the final judgment of foreclosure is irrelevant because, "[i]n Florida, *pro se* litigants are bound by the same rules that apply to counsel." *See Stueber v. Gallagher*, 812 So. 2d 454, 457 (Fla. 5th DCA 2002) (citing *Kohn v. City of Miami Beach*, 611 So. 2d 538, 539 (Fla. 3d DCA 1992)). Thus, to the extent that Jenkins argued in his initial brief filed here that the final judgment of foreclosure should be reversed, his arguments are misplaced. *See Mack v. Repole*, 239 So. 3d 91, 92 (Fla. 4th DCA 2018) ("[W]hen a party has failed to take a timely appeal from an order that is final for purposes of appeal, the appellate court is without jurisdiction to consider the propriety of that earlier final order in an appeal from a subsequent order, even in the same case." (citation omitted)).

The final judgment set the date and time of the judicial foreclosure sale. The sale took place as scheduled; and, in fact, our record shows that Jenkins actively participated in the sale, submitting two unsuccessful bids. Ultimately, Appellee was the high bidder at the sale, and the clerk of court issued a Certificate of Sale.

Jenkins timely objected to the sale under section 45.031(5), Florida Statutes (2020), by filing a motion to "reverse" the sale. The motion,

however, provided no detail or substantive analysis as to why the sale should be set aside. Jenkins thereafter filed several additional, albeit similarly sparsely-argued, motions to set aside, "reverse," or "stop" the sale. The clerk of court dutifully withheld issuing a certificate of title to Appellee until the trial court held a hearing to resolve Jenkins's objections to the sale, which it did.

To set aside a judicial foreclosure sale, Jenkins had the evidentiary burden of establishing at this hearing the existence of at least one equitable ground for relief. *See Moran-Alleen Co. v. Brown*, 123 So. 561, 561 (Fla. 1929) (stating that the court is "committed to the doctrine that a judicial sale may on a proper showing made, be vacated . . . on any or all [equitable] grounds" (citations omitted)). These equitable grounds include such matters as the gross inadequacy of the successful bid at the sale, surprise, accident, or mistake imposed on the complainant, and irregularities in the conduct of the sale. *Id.*

Jenkins attended the hearing held on his motion to set aside the sale, as did Appellee's counsel. Following the hearing, the trial court issued the unelaborated order denying Jenkins's motion to set aside the sale that is now before this court for review.

An appellate court applies the abuse of discretion standard[1] of review to orders or judgments entered by a trial court regarding the setting aside of judicial foreclosure sales. *Arsali v. Chase Home Fin. LLC,* 121 So. 3d 511, 519 (Fla. 2013); *Josecite v. Wachovia Mortg. Corp.*, 97 So. 3d 265, 267 (Fla. 5th DCA 2012). As the appellant, the burden was solely upon Jenkins to establish or show to us, through his briefs, how the trial court abused its discretion in denying his motion to set aside or "reverse" the judicial foreclosure sale held below. *See Filomia v. Celebrity Cruises Inc.*, 271 So. 3d 1199, 1199–1200 (Fla. 3d DCA 2019) (recognizing that "it is well-settled that 'in appellate proceedings . . . the burden is on the appellant to demonstrate error'" (quoting *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979))). That Jenkins is not represented by counsel is of no consequence because this burden remains "squarely upon the litigant, whether represented by counsel or not." *Steele v. Fla. Unemplmt. App. Comm'n*, 596 So. 2d 1190, 1192 (Fla. 1st DCA 1992).

Simply put, Jenkins failed to meet his burden. His initial brief does not

[1] Discretion is considered abused "when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trial court;" but "[i]f reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion." *Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980) (citation omitted).

mention what, if any, competent substantial evidence that he actually presented to the trial court at the hearing would support the setting aside of the foreclosure sale on equitable grounds. The court minutes of this hearing, which are included in our record, suggest that Jenkins may not have called any witnesses or caused any evidence to be admitted at this hearing. Nor does Jenkins's brief raise any real argument or issue about the trial court's conduct of the hearing that it held on Jenkins's motion to vacate or "reverse" the sale or about the existence of any fraud, misconduct, or irregularity in the conduct of the foreclosure sale itself. Because Jenkins failed to adequately raise these issues in his initial brief, they are deemed abandoned. *See J.A.B. Enters. v. Gibbons*, 596 So. 2d 1247, 1250 (Fla. 4th DCA 1992) ("[A]n issue not raised in an initial brief is deemed abandoned . . . .").

Instead, Jenkins's arguments for reversal here focused on two premises. In 2017, which was three years before Appellee filed the instant foreclosure suit—and at a time when Jenkins was in the midst of his own chapter 13 bankruptcy proceeding—Appellee, through its representative, sent Jenkins a text message indicating that his delinquent account with Appellee was on "hold" and that, at the time, it was not planning to pursue foreclosure. The message also indicated that Appellee hoped that when

Jenkins's bankruptcy proceedings concluded, a plan could be reached for him to pay off the balance that he owed.

Jenkins emerged from his bankruptcy case in 2019. When Appellee filed its foreclosure suit against him the following year, Jenkins argued both here and below that this filing constituted "fraud" because Appellee, in its 2017 text message, indicated at that time its intent not to foreclose. Jenkins also argued that Appellee "blocked" him from entering a payment plan—or, at the very least, that Appellee failed to put forth a good faith effort to resolve, through a payment plan, the admittedly significant debt that Jenkins owed to Appellee.

Assuming, for the sake of argument, that these matters asserted by Jenkins constituted adequate grounds to set aside the foreclosure sale, it was Jenkins's obligation to sufficiently bring these purported fraudulent acts of Appellee before the trial court through testimony or documents, such as the aforementioned text message, being admitted into evidence before that court. Jenkins has made no showing in the record or argument here that he did this.

To be fair, Jenkins is not a lawyer. Whether he had a colorable ground or grounds for relief from the foreclosure sale, he did not do a sufficient job in presenting his case to the trial court. Moreover, like many litigants who

appear before our court without an attorney, Jenkins seeks relief here without appearing to fully understand our function as an appellate court. As comprehensively stated by our sister court in *Steele*:

> We suspect that one of the many reasons why pro se litigants find it difficult to comprehend the appellate process is that the nature of the appellate court's function is not well understood. The appellate court is a court of review, not simply another forum to which the dissatisfied litigant may submit his or her list of grievances in hopes of a more favorable outcome. For the most part, the appellate court is concerned with questions pertaining to whether or not the proceedings below were carried out in accordance with the law. It is generally not a question of whether the appellate court agrees or disagrees with the result reached in a particular case, but whether that result was reached in a fair manner and was within the jurisdiction and authority of the court or agency whose decision is being appealed. Further, no matter how tempting it may be for the court itself to extend a helping hand to litigants not represented by counsel, there are limits beyond which the court cannot properly go and still remain an impartial arbiter of disputes submitted to it for decision. Under our adversary system of justice, which has served so well for many generations, the court and its personnel may not be cast in the role of advocate or advisor for either side in any controversy. The burden of properly presenting a case to this court for review must therefore remain squarely upon the litigant, whether represented by counsel or not.

596 So. 2d at 1191–92 (footnote omitted).

Jenkins's initial brief is essentially a rehashing of the arguments that he apparently made to the trial court, in the hope that we view his "evidence" differently than the trial court did and, thus, reach a different outcome. Even assuming that the 2017 text message was admitted into evidence at the hearing held to set aside the sale, Jenkins's brief fails to articulate how the trial court abused its discretion in thereafter denying his motion. Therefore, since it is not the task of an appellate court to rebrief an appeal, *see Polyglycoat Corp. v. Hirsch Distribs., Inc.*, 442 So. 2d 958, 960 (Fla. 4th DCA 1983) ("[I]t is not the function of [an appellate court] to rebrief an appeal."), or, as indicated in *Steele*, *supra*, to extend a helpful hand to or, more particularly, make arguments for an unrepresented appellant, such as Jenkins, affirmance is required.