Third District Court of Appeal

State of Florida

Opinion filed August 19, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-1869
Lower Tribunal No. 09-127-P

Christopher G. Venezia,
Appellant,

vs.

Wells Fargo Bank, N.A., etc.,
Appellee.

An Appeal from the Circuit Court for Monroe County, Luis M. Garcia, Judge.

T.P. Murphy's Law P.A., and Thomas P. Murphy, for appellant.

Weitz & Schwartz, P.A., and Sarah T. Weitz (Fort Lauderdale), for appellee.

Before EMAS, C.J., and FERNANDEZ and HENDON, JJ.

EMAS, C.J.

Christopher Venezia ("Venezia") appeals an order denying a motion to vacate a foreclosure sale and overruling an objection to that sale. We affirm because the trial court properly found Venezia failed to meet his burden of establishing "mistake, fraud or other irregularity" in connection with the sale.

In 2005, Venezia executed and delivered a mortgage for Lot 1 in favor of Bankers Mortgage Trust, Inc., which was later assigned to Wells Fargo Bank. The next year Venezia unilaterally signed and recorded a unity of title intended to unify Lot 1 and Lot 2 into a single parcel of property. He also built a home on the unified lot which was bisected by the lot line.

Venezia defaulted on the loan and, in 2009, Wells Fargo sought to foreclose solely on Lot 1. Venezia answered the foreclosure complaint and alleged that the legal description incorrectly omitted Lot 2. In 2012, Wells Fargo obtained a final judgment of foreclosure as to Lot 1.[1] The foreclosure sale was held in April 2019,

[1] Venezia appealed the final judgment of foreclosure and this court affirmed. See Venezia v. Wells Fargo Bank, 133 So. 3d 941 (Fla. 3d DCA 2014). Venezia later sought to appeal the trial court's nonfinal, nonappealable order scheduling the foreclosure sale, which this court dismissed for lack of jurisdiction. See Venezia v. Wells Fargo Bank, 258 So. 3d 539 (Fla. 3d DCA 2014). In addition, Wells Fargo moved pursuant to Florida Rule of Civil Procedure 1.540(b)(5) to vacate its own foreclosure judgment to include Lot 2, alleging that based upon "new evidence" (the unity of title), Wells Fargo was entitled to a vacatur of its judgment so it could file an amended foreclosure action on the entire parcel. The trial court "rejected this argument, specifically finding that Wells Fargo was well aware of Venezia's unity of title filing several years before bringing its rule 1.540(b)(5) motion." Id. at 540 n. 1.

at which the winning bidder, Wells Fargo, paid $100. Venezia objected and moved to vacate the foreclosure sale, challenging the amount of the bid as "grossly inadequate." The objection was overruled, and the motion to vacate denied.[2]

Florida law provides that "[t]he amount of the bid for the property at the [foreclosure] sale shall be conclusively presumed to be sufficient consideration for the sale." § 45.031(8), Fla. Stat. (2019). Gross inadequacy of price alone is not enough to set aside a foreclosure sale. Arsali v. Chase Home Fin., LLC., 121 So. 3d 511, 516 (Fla. 2013). Instead, the gross inadequacy must result from a "mistake, accident, surprise, fraud, misconduct, or irregularity upon the part of either the purchaser or the person connected with the sale." Id. (quoting Arlt v. Buchanan, 190 So. 2d 575, 577 (Fla. 1966)). In the instant case, Venezia alleged that the bid price of $100 was grossly inadequate; however, he presented no evidence of inadequacy, nor any evidence that the "inadequacy of the bid resulted from some mistake, fraud or other irregularity *in the sale*." Mody v. Cal. Fed. Bank, 747 So. 2d 1016, 1017-18 (Fla. 3d DCA 1999) (emphasis added).

Furthermore, the law is well-established that an objection to a foreclosure sale must be directed toward conduct that occurred at, or was directly related to, the

[2] We review for an abuse of discretion a trial court's order on a motion to set aside a judicial foreclosure sale. Arsali v. Chase Home Fin., LLC., 121 So. 3d 511, 511 (Fla. 2013).

foreclosure sale. IndyMac Fed. Bank FSB v. Hagan, 104 So. 3d 1232, 1236 (Fla. 3d DCA 2012). See Lawrence v. Nationstar Mortg., LLC., 197 So. 3d 150, 151 (Fla. 4th DCA 2016) (Noting: "Those factors include 'gross inadequacy of consideration, surprise, accident, or mistake . . . , and irregularity in the conduct of the sale.'") (quoting Moran-Allen Co. v. Brown, 98 Fla. 203, 204 (1929)). Venezia seeks to challenge the foreclosure sale by contending that Wells Fargo knew about the unity of title long before the final judgment was entered, but failed to resolve the title issues prior to its entry. This argument misses the mark, as it impermissibly attacks the underlying 2012 final judgment rather than the 2019 foreclosure sale itself. See Aparicio v. Deutsche Bank Nat'l Trust Co., 278 So. 3d 814, 814 (Fla. 3d DCA 2019) (finding the appellant "embarked on an impermissible mission designed to once again elucidate the infirmities in the underlying judgment"). Accordingly, the trial court did not abuse its discretion in overruling Venezia's objections to the foreclosure sale and in denying Venezia's motion to vacate the sale.

Affirmed. [3]

[3] Venezia has raised other claims in his brief. However, he failed to properly raise and preserve these claims in the trial court, thus waiving them on appeal. See Sunset Harbour Condo. Ass'n v. Robbins, 914 So. 2d 925, 928 (Fla. 2005) (holding that, as a general rule, it is not appropriate for a party to raise an issue for the first time on appeal) (citing Dade Cty. Sch. Bd., v. Radio Station WQBA, 731 So. 2d 638 (Fla. 1999)).