

STATE OF MICHIGAN  
COURT OF APPEALS

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TERESA EVELYN MCCAIN,

Plaintiff-Appellee,

v

TRACY LEE MCCAIN,

Defendant-Appellee,

and

OCWEN FEDERAL BANK FSB,

Appellant.

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UNPUBLISHED  
February 19, 2004

No. 244426  
Genesee Circuit Court  
LC No. 01-234805-DO

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Ocwen appeals<sup>1</sup> the trial court's ex parte order that granted plaintiff a perpetual injunction from Ocwen's foreclosure sale of the home where she resided and an order that declared a deed, and consequentially Ocwen's mortgage, void on the basis of forgery. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant allegedly received a quit claim deed from plaintiff's mother. On the strength of the deed, defendant mortgaged the property and paid off plaintiff's mother's mortgage with the proceeds. Defendant then re-mortgaged the property with Ocwen and paid off his first mortgagor. Defendant defaulted on the mortgage payments, and Ocwen posted a notice on the property that it would hold a foreclosure sale on January 16, 2002. Plaintiff filed this divorce action on September 17, 2001, and petitioned for an ex parte injunction on January 9, 2002. The

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<sup>1</sup> Ocwen claims an appeal of right, but the court rules state that an appeal of right only extends to an "aggrieved party." MCR 7.203(A). Because Ocwen claims non-party status and to avoid jurisdictional issues, we consider Ocwen's appeal an application for leave and grant it. MCR 7.205(D)(2); *Oakland Co Prosecutor v Forty-Sixth District Judge*, 72 Mich App 564, 567; 250 NW2d 127 (1976).

petition asserted that defendant forged the deed or obtained it by some other fraud. Thus, the petition alleges that the defendant never owned the property. It asked the court to enjoin Ocwen from conducting the scheduled sale until plaintiff and her mother could determine the amount owed Ocwen and pay it off.

Plaintiff did not send Ocwen notice of her petition, and did not move to amend her complaint to add Ocwen as a party under MCR 2.205. Nevertheless, the circuit court granted the petition and enjoined Ocwen from proceeding with the sale. Ocwen provided plaintiff payment information, and then moved the court to set aside its order on the basis that Ocwen was not a party, had no notice of the petition, and had every right to foreclose. Rather than granting the motion, the circuit court set a hearing where it determined, as stated in a written order, that defendant's deed was a forgery. The court denied Ocwen's ensuing motion to set aside the order declaring the deed a forgery. After preparing rebuttal witnesses for trial, Ocwen learned that the true parties to the case had conveniently settled, leaving intact the court's perpetual order declaring the deed a forgery and enjoining Ocwen from selling the foreclosed property.

Ocwen argues that the circuit court's injunction and declaration that the deed was forged improperly affected its rights under the mortgage even though it was not a party to the divorce proceedings. We agree. Whether a trial court may issue an injunction against a non-party without notice or, following a motion hearing, find a deed forged and a non-party mortgagee's interest implicitly void are questions of law we review de novo. *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 10; 672 NW2d 351 (2003). An injunction may not affect the actions of non-parties who fail to receive notice of the injunction petition. MCR 3.310(C)(4). Further, special rules governing the adjudication of real property interests prevent a party from obtaining binding judgments against non-parties. MCR 3.411(H). Because the circumstances of plaintiff's claims required Ocwen to forebear taking lawful action, the trial court erroneously failed to require plaintiff to add Ocwen as a party and set forth her claim for relief in a complaint. MCR 2.205(A). This action would have ensured that Ocwen retained its right to assert any defenses, including those that might dismiss the claims altogether. Instead, plaintiff moved ahead without providing Ocwen with information and documents it would normally receive as a party, including preliminary access to witnesses who testified about the alleged forgery at the only evidentiary hearing the court held. Therefore, the circuit court erred when it failed to set aside its injunctive order in the face of clear procedural impropriety and further erred when it issued an ostensibly binding declaration that the deed was forged without first adding Ocwen as a necessary party and allowing it access to the usual adversarial procedures.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper  
/s/ Peter D. O'Connell  
/s/ Karen M. Fort Hood