SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0080-21

DEACH, LLC,

Plaintiff-Respondent,

v.

LILLIAN HOLLAND, HOUSEHOLD FINANCE CORPORATION III n/k/a HSBC FINANCE CORPORATION, CITY OF NEWARK, COUNTY OF MONMOUTH, NEWARK DIAGNOSTIC RADIOLOGY, WOODBRIDGE VILLAGE ASSOC., SOUTH MOUNTAIN REHABILITATION, and STATE OF NEW JERSEY,

Defendants.

LYNN KENNEDY,

Intervenor-Appellant.

Argued October 11, 2022 – Decided December 22, 2022

Before Judges Mawla and Smith.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. F-006041-19.

Lynne Kennedy argued the cause pro se.

Adam D. Greenberg argued the cause for respondent (Honig & Greenberg, LLC, attorneys; Adam D. Greenberg, on the brief).

PER CURIAM

Intervenor-Appellant Lynn Kennedy appeals from an August 20, 2021 order of the trial court denying her motion for reconsideration. She sought vacation of the judgment of foreclosure for 140-144 Fabyan Place (the Property). On appeal, defendant contends that: she was entitled to actual notice of the foreclosure; plaintiff's service of the foreclosure complaint by publication was insufficient; and her due process rights were violated. We affirm.

I.

Lillian Holland died on May 15, 2015, at eighty-one years of age. She had been the owner of the Property in Newark. The 2016 taxes on the property went unpaid. Consequently, the Newark Tax Collector conducted a tax sale, and sold Certificate 2016-1715 to Tower DBW VI Trust 2016-1 for $7,556.20. On February 26, 2019, plaintiff served a Notice of Intent to Foreclose by certified

and regular mail on Lillian Howard's address at the Property address. The tax sale certificate was recorded on March 17, 2017. On March 29, 2019, plaintiff filed a complaint to foreclose its certificate, and filed an amended complaint on October 3, 2019. The complaints named Household Finance Corporation, the City of Newark, and various judgment creditors as defendants. Service was properly effectuated for each of these defendants.

For defendant Lillian Holland, plaintiff conducted an inquiry to determine the proper address for service. Plaintiff employed a skip trace and also conducted a death index search and a surrogate's search. In addition to those searches, plaintiff mailed inquiry letters to every "L. Holland" in the New Jersey telephone directory and requested a service of process firm to serve defendant with the summons and amended complaint. None of the efforts were successful. Plaintiff unsuccessfully attempted service at the property but it was vacant.

Upon completion of the of inquiry into Lillian Holland or her representative's whereabouts, plaintiff posted a notice at the property on January 6, 2020, and made service by publication on January 9, 2020. Default was entered March 9, 2020, supported by an Affidavit of Inquiry.

Plaintiff assigned the tax sale certificate to Deach, L.L.C., and motions to substitute plaintiff and for final default judgment were filed July 30, 2020. Both

motions were mailed by certified and regular mail to the Fabyan Place address and all defendants. The Chancery Division entered final judgment against defendants on August 28, 2020, and plaintiff mailed it to all defendants on September 2, 2020.

On May 17, 2021, Lynn Kennedy[1](Kennedy), a non-party, filed a motion to vacate and set aside default judgment under Rule 4:50-1. Plaintiff filed opposition and the motion was denied by the court on June 11, 2021. In its written statement of reasons, the court found that plaintiff conducted a diligent inquiry under Rule 4:50-1(d), and consequently the default judgment obtained by plaintiff was not void. The trial court found that Kennedy's allegations of inappropriate conduct by plaintiff were baseless, and they did not provide grounds for a finding of exceptional circumstances under Rule 4:50-1(f).

Kennedy moved for reconsideration, which the trial court denied. In addition to denying reconsideration of its decision concerning Kennedy's Rule 4:50-1(d) and (f) applications, the trial court took the time to consider and reject Kennedy's new Rule 4:50-1(a) application. The court found defendant failed to

[1] Kennedy was appointed representative of the Estate of Lillian Holland in February 2021. The court declined to consider Kennedy's multiple motions to vacate until she presented proof of her standing to represent the estate. It first held argument on Kennedy's motions on April 1, 2021.

show excusable neglect, finding that "mere neglect of the estate and the estate assets" is "not excusable." Additionally, the court found that there was no meritorious defense, as the taxes simply went unpaid. Kennedy appealed the order denying reconsideration.

II.

We review a trial court's decision on whether to grant or deny a motion for reconsideration under Rule 4:49-2 using the abuse of discretion standard. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021); Hoover v. Wetzler, 472 N.J. Super. 230, 235 (App. Div. 2022). "The rule applies when the court's decision represents a clear abuse of discretion based on plainly incorrect reasoning or failure to consider evidence or a good reason for the court to reconsider new information." Pressler & Verniero, Current N.J. Court Rules, cmt. 2 on R. 4:49-2 (2022).

Reconsideration should only be used in two cases: "1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (citing D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch.Div.1990)). "Reconsideration cannot be used to expand the record

and reargue a motion. Reconsideration is only to point out 'the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred.'" Capital Fin. Co. of Del. Valley v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div. 2008) (quoting R. 4:49–2).

III.

We affirm denial of the motion for reconsideration for the reasons set forth in the oral statement of reasons given by Judge James R. Paganelli, who took care to acknowledge Kennedy's pro se status and explained the decision in a thorough and appropriate fashion. We add the following brief comments.

Defendant argues that she was entitled to actual notice because the Property belonged to the estate at the time of foreclosure, and she had been named administrator of the estate, albeit after the complaint was filed and served. Defendant asserts, without evidence, that the affidavit upon which the default judgement was entered was not only deficient, but that the search described in it was "highly unlikely" to have occurred. Plaintiff contends that service was proper, and that it executed due diligence in conducting its inquiry.

"Service by publication is hardly favored and is the method of service that is least likely to give notice." M & D Assocs. v. Mandara, 366 N.J. Super. 341, 353 (App. Div. 2004) (citing Modan v. Modan, 327 N.J. Super. 44, 48 (App.

Div. 2000). However, service by publication is permitted in some circumstances. Rule 4:4-5(a)(3) permits service by publication after reasonable inquiry when the action affects a specific property:

> (a) Methods of Obtaining In Rem Jurisdiction . . . in actions affecting specific property, or any interest therein . . . wherein it shall appear by affidavit of the plaintiff's attorney or other person having knowledge of the facts, that a defendant cannot, after diligent inquiry as required by this rule, be served within the State, service may, consistent with due process of law, be made by any of the following . . . methods:
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> . . . .
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> (3) by publication of a notice to absent defendants once in a newspaper published or of general circulation in the county in which the venue is laid; and also by mailing, within [seven] days after publication, a copy of the notice as herein provided and the complaint to the defendant, prepaid, to the defendant's residence or the place where the defendant usually receives mail . . . or unless the defendants are proceeded against as unknown owners or claimants pursuant to R[ule] 4:26-5(c). If defendants are proceeded against pursuant to R[ule] 4:26-5(c), a copy of the notice shall be posted upon the lands affected by the action within [seven] days after publication. The notice of publication to absent defendants required by this rule shall be in the form of a summons, without a caption. The top of the notice shall include the docket number of the action, the court, and county of venue.
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> [Rule 4:4-5(a)(3) (emphasis added).]

"[A] plaintiff need not exhaust all conceivable means of personal service before service by publication is authorized. A plaintiff need only follow up on that information possessed by plaintiff which might reasonably assist in determining defendant's whereabouts." Modan, 327 N.J. Super. at 48 (quoting Carson v. Northstar Dev. Co., 62 Wash. App. 310, 216 (1991)).

Here, plaintiff followed the appropriate steps set forth by Rule 4:4-5. The detailed Affidavit of Inquiry showed plaintiff performed a skip trace, a surrogate search, and a death index search on defendant and the three searches returned no information on Lillian Holland or any spouse she may or may not have had. In addition to those searches, plaintiff took additional steps, including mass mailing inquiry letters to every "L. Holland" in New Jersey and employing a process server.

Defendant argues, without evidence, that plaintiff's searches as detailed in its certifications attached to the Affidavit of Inquiry were "highly unlikely" to have occurred. Defendant bases this assertion solely on the fact that a Google search conducted today might reveal that Lillian Holland was dead. Defendant offers no proof tending to demonstrate that plaintiff had access to this information at the time the searches were conducted. Based on the available

evidence in the record, the trial court's conclusion that constructive service through publication was effective was proper, and it should not be disturbed.

Defendant argues that notice by publication is not consistent with due process. We are not persuaded. "[A]lthough due process of law does not require personal service of process or even actual notice of suit, '[s]ervice . . . must be reasonably calculated to inform the defendant of the pendency of the proceedings . . . .'" W.S. Frey Co. v. Heath, 158 N.J. 321, 325 (1999) (second alteration in original) (quoting Mariash v. Morrill, 496 F.2d 1138, 1143 (2d Cir. 1974)). "Due process does not require that a property owner receive actual notice before the government may take his property." Jones v. Flowers, 547 U.S. 220, 226 (2006) (citing Dusenbery v. United States, 534 U.S. 161, 170 (2002)). Here, plaintiff took appropriate steps to effectuate service, following New Jersey Court Rules. Its efforts were "reasonably calculated to inform defendant of the pendency of the proceeding . . . ." W.S. Frey & Co., 158 N.J. at 352. It follows that there is no violation of due process here.

Kennedy contends that Lillian Holland and her estate and heirs were subject to ouster as a result of the foreclosure.

"An ouster is a wrongful dispossession or exclusion of a party from real estate." Cap. Fin. Co. of Del. Valley v. Asterbadi, 389 N.J. Super. 219, 231 (Ch.

Div. 2006) (emphasis added). Non-payment of property taxes set in motion the events which led to foreclosure. As Administrator of the Estate of Lillian Holland, Kennedy was charged with the responsibility of ensuring payment of those taxes and not permitting wasting of the estate. "A property owner knows that he must pay taxes on his property, and that if he fails to do so the municipality will sell the property (or the tax sale certificate) for the price of the taxes due and owing." Long Beach Twp. v. Lot 3, Block No. 9, 189 N.J. Super. 116, 125 (Ch. Div. 1983). Foreclosure is not analogous to ouster, because ouster requires a wrongful disposition. The record shows this foreclosure judgment was caused by the property owner's failure to pay taxes, and it was not procedurally deficient. There is no wrongful disposition, and therefore no ouster.

Kennedy's remaining arguments lack sufficient merit to warrant discussion in a written opinion. Rule 2:11-3(e)(1)(E).

Affirmed.