SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0627-21

GREGORY JUDGE,

Plaintiff-Respondent,

v.

96 GRANT AVENUE, LLC,

Defendant-Appellant,

and

STATE OF NEW JERSEY,

Defendant.

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Submitted October 3, 2022 – Decided November 30, 2022

Before Judges Enright and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Chancery Division, Hudson County, Docket No. F-027505-17.

The Law Office of Savio D. Figaro, LLC, attorney for appellant (Savio D. Figaro, on the brief).

Robert A. Del Vecchio, LLC, attorney for respondent (Robert A. Del Vecchio, on the brief).

PER CURIAM

Defendant 96 Grant Avenue, LLC, appeals from orders entered on July 19, 2019 and October 22, 2021 denying its motion to vacate the entry of a final judgment of an in rem tax foreclosure. We affirm.

I.

We provide a detailed recitation of the legal proceedings giving rise to this appeal.

Defendant, comprised of the sole member and registered agent Edward Fowlkes, owned property with a registered service-of-process address listed on M.L.K. Drive in Jersey City. Fowlkes had a different mailing address from defendant. After defendant failed to pay property taxes for two years, plaintiff purchased a tax sale certificate on June 29, 2010, in the amount of $723.63.

Plaintiff initiated a foreclosure action on December 8, 2017, after serving defendant with a notice of intent to foreclose by certified and regular mail. Between December 9, 2017, and February 13, 2018, plaintiff unsuccessfully

attempted to serve defendant "care of [] Fowlikes [sic]" on three separate occasions at three different addresses in Jersey City.[1]

Defendant was eventually served by publication on January 8, 2019, in The Jersey Journal. Thereafter, all notices were served on the Superior Court Clerk's Office in Trenton.

Plaintiff filed an amended complaint on January 7, 2019, adding the State of New Jersey as a defendant. Plaintiff's counsel certified he conducted a title and tax search, which listed defendant's M.L.K. Drive address.

Defendant failed to file an answer, and default was entered. An order was subsequently entered on April 8, 2019, setting $17,096.16 as the redemption amount. The notice to redeem was published in The Jersey Journal. Defendant's non-redemption was certified on June 13, 2019. Plaintiff filed and served defendant, via the Clerk's Office, a motion to enter final judgment. Thereafter, final judgment of tax sale foreclosure was entered on July 19, 2019. Plaintiff recorded the final judgment on August 1, 2019.

[1] Plaintiff's counsel certified a process server attempted to serve defendant at two different addresses on Claremont Avenue and Virginia Avenue. The record shows service was not effectuated because defendant was unknown at each of the Claremont and Virginia Avenues addresses. Defendant also was unknown at the other Claremont Avenue address where Fowlkes claimed to reside.

Six months later, on January 31, 2020, defendant moved to vacate the final judgment pursuant to Rule 4:50-1. Plaintiff opposed the motion

On March 13, 2020, the trial judge rendered an oral decision memorialized by a written order denying defendant's motion. The judge found "more than three months since the entry of judgment ha[d] elapsed, and the defendant ha[d] not established credibly that there are any other jurisdictional issues, nor fraud, that would trigger a vacation of the judgment under N.J.S.A. 54:5-87." The judge further found "service by publication here did not create a due process issue in which the court lacked jurisdiction over defendant to grant plaintiff's requested relief." The judge explained under Rule 4:4-5,[2] "[an] order to obtain in rem jurisdiction in actions concerning real property can be obtained by publication[,] provided diligent efforts are first expended to permit that method of service." The judge also noted service was made by publication, and "it is [was] not disputed that the defendant received pre-action notice and therefore was put on constructive notice."

Lastly, the judge concluded defendant did not establish sufficient grounds to vacate the judgment under Rule 4:50-1. The court determined: defendant did not have a "meritorious defense;" "defenses [were] barred under the two-

[2] The record shows the court mistakenly referred to this rule as Rule 4:5-5.

year statute of limitations;" and "there [was] no excusable neglect for what might be considered reasonable diligence after being provided with the pre-action notice and, according to the defendant, personal knowledge of the plaintiff."

Defendant moved for reconsideration pursuant to Rule 4:49-2 in April 2020. In an order accompanied by a statement of reasons, the judge denied defendant's motion for reconsideration. The judge found: defendant "essentially rehashe[d]" the arguments made and considered in the initial motion; Fowlkes failed to update the registered service of process address, and "then [sought the trial] court to fashion an equitable remedy to favor his non-feasance"; and defendant did not point to any facts or law that demonstrated that the trial court's decision was "palpably incorrect or irrational" to permit reconsideration.

In September 2021, plaintiff moved to discharge a lis pendens. The following month, defendant opposed the motion, and supported by Fowlkes's certification, cross-moved to set aside final judgment based on defective service of process. Fowlkes claimed he resided in Jersey City his "entire life." He further claimed he was never served with the summons and complaint. Lastly, he noted plaintiff's counsel failed to certify any inquiry was made with the Department of Motor Vehicles, Superior Court or the Board of Elections, and

counsel did not annex an affidavit from the process server to confirm personal service was attempted on Fowlkes at his residence or the M.L.K. Drive address, or any other agent or employee at the business address.

Judge Mary K. Costello granted plaintiff's motion to discharge the lis pendens and denied defendant's motion to set aside the final judgment on October 22, 2021. In an oral decision, the judge stated she "ha[d] neither the authority nor the inclination to overrule or change [the prior judge's] decision" since "[i]t ha[d] been two years since the entry of final judgment, and more than a year and a half since the last motion was denied." The judge further noted because "a final judgment was entered on this matter on July 19, 2019," and both the first motion to vacate that judgment and a motion for reconsideration were denied, "a year and a half later [defendant] cannot simply assert the same arguments to vacate the judgment."

On appeal, defendant argues Judge Costello erred in denying defendant's motion to vacate the final judgment entered on July 19, 2019, because plaintiff "substantially deviated" from the court rules.

II.

A motion to vacate based on Rule 4:50-1 "is within the sound discretion of the trial court and 'should be guided by equitable principles in determining

whether relief should be granted or denied.'" M & D Assocs. v. Mandara, 366 N.J. Super. 341, 350 (App. Div. 2004) (quoting Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994)). The trial court's decision is entitled to "substantial deference, and should not be reversed unless it results in a clear abuse of discretion" under Rule 4:50-1. U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012). This Rule "is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." BV001 REO Blocker, LLC v. 53 W. Somerset St. Props., LLC, 467 N.J. Super. 117, 123 (App. Div. 2021) (quoting Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n, 74 N.J. 113, 120 (1977)).

Vacating a tax foreclosure judgment is within the exercise of a trial judge's equitable powers. "Courts of equity have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case . . . ." Guillaume, 209 N.J. at 476, because "our law abhors a forfeiture." Town of Kearny v. Discount City of Old Bridge, Inc., 205 N.J. 386 (2011) (citing Kutzin v. Pirnie, 124 N.J. 500, 516 (1991)). Thus, there are clear parameters governing a judge's powers to vacate a final judgment of tax foreclosure.

Rule 4:50-1 states: "the court may relieve a party . . . from a final judgment . . . for the following reasons: (a) mistake, inadvertence, surprise, or excusable neglect; . . . (d) the judgment or order is void; . . . or (f) any other reason justifying relief from the operation of the judgment or order." "The rule is designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." Guillaume, 209 N.J. at 467 (citation and internal quotation marks omitted).

Here, it is unclear from the record which of the subsections of the rule were being argued; however, a close reading suggests that subsections (a), (d), and (f) were placed at issue by defendant. Subsection (a) requires the movant to show excusable neglect and a meritorious defense to obtain relief. See R. 4:50-1(a). Here, the trial court correctly found defendant failed to demonstrate excusable neglect based on Fowlkes's "personal knowledge" of plaintiff and "reasonable diligence" after pre-action notice was provided.

We next address subsection (d). The record discloses no other fact alleged by defendant which would render the final judgment void. However, even if service was improper, a void judgment does not necessarily require vacating the judgment. See Citibank, N.A. v. Russo, 334 N.J. Super. 346, 353 (App. Div.

2000) (stating that even if a final judgment is void, a party still must make a motion to vacate within a reasonable time per Rule 4:50-2). The court in Citibank noted that "'[w]here due process has been afforded a litigant, technical violations of the rule concerning service of process do not defeat the court's jurisdiction'" and that not all defects in service of process must render a judgment void. Id. at 352 (quoting Rosa v. Araujo, 260 N.J. Super. 458, 462-63 (App. Div. 1992)). More specifically, we have stated that "default judgments will not be vacated for minor flaws in the service of process." Sobel v. Long Island Ent. Prods., 329 N.J. Super. 285, 292 (App. Div. 2000).

Defendant's claim that he was unaware of the foreclosure proceeding is belied by the record. Defendant received a pre-action notice by certified mail and regular mail to the M.L.K. Drive address, which was not returned as undeliverable. Plaintiff's counsel later served defendant by publication after a diligent inquiry was made on at least four occasions to locate a "good" address for defendant. Thus, we are satisfied defendant was afforded due process.

Moreover, defendant's defenses were barred by the two-year statute of limitations as explained by the judge first hearing defendant's motions in 2020. Thus, Judge Costello correctly noted defendant was barred from raising the same

arguments a year and a half after both the initial motion and motion for reconsideration were denied.

Lastly, we turn to subsection (f) of the rule. Given the trial court's finding that service by publication was proper, we find nothing in the record which could be characterized as "exceptional circumstances" warranting relief under this section of the rule. Defendant was on constructive notice of the actions taken by plaintiff and elected to not redeem the tax sale certificate or make any inquiries regarding the foreclosure proceeding. Service was attempted on numerous occasions at multiple addresses, to no avail, after plaintiff conducted various searches to confirm defendant's and Fowlkes's address. Nor did Fowlkes update the registered service-of-process address.

Under these circumstances and mindful of our deferential standard of review, we find no reason to conclude the motion judges abused their discretion. See Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 174 (App. Div. 2005).

Affirmed.