

REL: 1/20/12

**Notice:** This opinion is subject to formal revision before publication in the advance sheets of Southern Reporter. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0649), of any typographical or other errors, in order that corrections may be made before the opinion is printed in Southern Reporter.

# ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2011-2012

---

2100490

---

Reginald A. Patterson and Diana V. Patterson

v.

GMAC Mortgage, LLC

Appeal from Jefferson Circuit Court,  
Bessemer Division  
(CV-07-1138)

PER CURIAM.<sup>1</sup>

Reginald A. Patterson and Diana V. Patterson appeal from

---

<sup>1</sup>Because of the issues involved, this appeal was held in abeyance pending the adjudication of the appeal in Sturdivant v. BAC Home Loans Servicing, LP, [Ms. 2100245, Dec. 16, 2011] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2011).

2100490

a judgment in favor of GMAC Mortgage, LLC ("GMAC Mortgage"). We vacate the judgment of the trial court and dismiss the appeal.

On September 4, 2007, GMAC Mortgage brought an ejectment action against the Pattersons. GMAC Mortgage alleged that the Pattersons had mortgaged their house located on Southcrest Trail in Bessemer ("the house") to Option One Mortgage Corporation ("Option One"), that Option One had transferred the mortgage to GMAC Mortgage, that GMAC Mortgage had foreclosed the mortgage on August 7, 2007, and that GMAC Mortgage was the owner of the house by virtue of the foreclosure sale. GMAC Mortgage further alleged that it had made a written demand for possession of the house in accordance with § 6-5-251(a), Ala. Code 1975,<sup>2</sup> and that the Pattersons had not vacated the house. As relief, GMAC Mortgage sought possession of the house, damages for wrongful detention

---

<sup>2</sup>Section 6-5-251(a) provides:

"The possession of the land must be delivered to the purchaser or purchaser's transferees by the debtor or mortgagor if in their possession or in the possession of anyone holding under them by privity of title, within 10 days after written demand for the possession has been made by, or on behalf of, the purchaser or purchaser's transferees."

2100490

of the house, and a determination that the Pattersons had forfeited their right to redeem the house by failing to vacate it within 10 days after GMAC Mortgage demanded possession.<sup>3</sup> Answering, the Pattersons asserted, among other things, that the foreclosure was unlawful. They also asserted a counterclaim seeking a determination that the foreclosure was unlawful.

GMAC Mortgage moved for a summary judgment and later supplemented its summary-judgment motion with additional evidence. The Pattersons submitted evidence in opposition to the summary-judgment motion.

The evidence submitted by GMAC Mortgage in support of its summary-judgment motion included the foreclosure deed purporting to convey title to the house to GMAC Mortgage. The foreclosure deed recites that GMAC Mortgage accelerated the

---

<sup>3</sup>Section 6-5-251(c), Ala. Code 1975, provides:

"Failure of the debtor or mortgagor or anyone holding possession under him or her to comply with the provisions of this section forfeits the right of redemption of the debtor or one holding possession under the debtor."

2100490

debt secured by the mortgage.<sup>4</sup> The foreclosure deed also recites that GMAC Mortgage gave notice of the foreclosure of the mortgage in a newspaper of general circulation in Jefferson County on May 19, May 26, and June 2, 2007, and that GMAC Mortgage foreclosed the mortgage on August 7, 2007. The evidence submitted by GMAC Mortgage also included a written assignment executed by Option One on August 6, 2007, in which Option One assigned the mortgage to GMAC Mortgage.

Following a hearing, the trial court entered an order granting GMAC Mortgage's summary-judgment motion insofar as it sought a determination that the foreclosure was valid but denied the motion in all other respects on the ground that a genuine issue of material fact existed regarding whether the Pattersons had received notice of GMAC Mortgage's demand for possession of the house after the foreclosure.

Following a bench trial regarding the issue whether the Pattersons had received notice of GMAC Mortgage's demand for possession, the trial court entered a judgment (1) finding that GMAC Mortgage had given the Pattersons notice of its

---

<sup>4</sup>The Pattersons deny that they received notice of the acceleration of the debt.

2100490

demand for possession, (2) ordering the Pattersons to deliver possession of the property to GMAC Mortgage, and (3) ruling that the Pattersons had forfeited their right to redeem the property; however, the trial court did not award any damages for wrongful detention of the property. The Pattersons timely appealed to the supreme court, which transferred the appeal to this court pursuant to § 12-2-7(6), Ala. Code 1975.

On appeal, the Pattersons assert, among other things, that the trial court erred in determining that the foreclosure was valid. While the Pattersons' appeal was pending, this court delivered its decision in Sturdivant v. BAC Home Loans, LP, [Ms. 2100245, Dec. 16, 2011] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2011). In Sturdivant, BAC Home Loans, LP ("BAC"), initiated foreclosure proceedings on the mortgage encumbering Bessie T. Sturdivant's house before the mortgage had been assigned to BAC. BAC then held a foreclosure sale at which it purchased Sturdivant's house, and the auctioneer executed a foreclosure deed purporting to convey title to Sturdivant's house to BAC. BAC was assigned the mortgage the same day as the foreclosure sale. Thereafter, BAC brought an ejectment action against Sturdivant, claiming that it owned title to her

2100490

house by virtue of the foreclosure deed. After the trial court entered a summary judgment in favor of BAC, Sturdivant appealed to the supreme court, which transferred her appeal to this court. We held that BAC lacked authority to foreclose the mortgage because it had not been assigned the mortgage before it initiated foreclosure proceedings and that, therefore, the foreclosure and the foreclosure deed were invalid. We further held that, because the foreclosure and the foreclosure deed were invalid, BAC did not acquire legal title to Sturdivant's house through the foreclosure deed and thus BAC did not own an interest in the house when it commenced its ejectment action. We further held that, because BAC did not own any interest in Sturdivant's house when it commenced its ejectment action, BAC did not have standing to bring that action and, consequently, the trial court never acquired subject-matter jurisdiction over the ejectment action. Because BAC did not have standing to bring its ejectment action and the trial court never acquired jurisdiction over the ejectment action, we held that the judgment of the trial court was void, and we vacated that judgment. Moreover, because a void judgment will not support an appeal, we dismissed the appeal.

2100490

In the case now before us, GMAC Mortgage, like BAC in Sturdivant, had not been assigned the mortgage before it initiated foreclosure proceedings. Consequently, under our holding in Sturdivant, GMAC Mortgage lacked authority to foreclose the mortgage when it initiated the foreclosure proceedings, and, therefore, the foreclosure and the foreclosure deed upon which GMAC based its ejectment claim are invalid. Moreover, under our holding in Sturdivant, because GMAC Mortgage did not own any interest in the house, it lacked standing to bring its ejectment action against the Pattersons. Because GMAC Mortgage lacked standing to bring the ejectment action, the trial court never acquired subject-matter jurisdiction over the ejectment action. Accordingly, the judgment of the trial court is void and is hereby vacated. Moreover, because a void judgment will not support an appeal, we dismiss this appeal. Id.

JUDGMENT VACATED; APPEAL DISMISSED.

Pittman, Thomas, and Moore, JJ., concur.

Thompson, P.J., concurs in the result, with writing.

Bryan, J., dissents, with writing.

2100490

THOMPSON, Presiding Judge, concurring in the result.

Reginald A. Patterson and Diane V. Patterson executed a mortgage, secured by their house, to Option One Mortgage Corporation on January 25, 2006, and they later defaulted on the mortgage. GMAC Mortgage, LLC, initiated foreclosure proceedings, and, in May 2007, GMAC began publishing notice of its intent to conduct a foreclosure sale. On August 6, 2007, Option One assigned the mortgage to GMAC, and the next day, August 7, 2007, GMAC conducted the foreclosure sale and purchased the property at that sale. Also on August 7, 2007, GMAC sent the Pattersons a letter demanding possession of the property.

In their brief on appeal, the Pattersons argue, among other things, that GMAC failed to demonstrate proof of a valid foreclosure. Specifically, the Pattersons argue, as they did before the trial court, that GMAC, which first obtained an interest in the property the day before it conducted its foreclosure sale, did not have an interest in the property at the time it initiated the foreclosure process and that one without an interest in a mortgage may not institute foreclosure proceedings. In support of those arguments, the



2100490

Pattersons cite § 6-6-280, Ala. Code 1975; Steele v. Federal Nat'l Mortgage Ass'n, 69 So. 3d 89, 93 (Ala. 2010) ("[Section 6-6-280(b)] unambiguously states that a complaint seeking ejectment 'is sufficient if it alleges that the plaintiff was possessed of the premises or has the legal title thereto, properly designating or describing them, and that the defendant entered thereupon and unlawfully withholds and detains the same.'"); MacMillan Bloedell, Inc. v. Ezell, 475 So. 2d 493 (Ala. 1985); Kelly v. Carmichael, 217 Ala. 534, 117 So. 2d 67 (1928); and Berry v. Deutsche Bank Nat'l Trust Co., 57 So. 3d 142 (Ala. Civ. App. 2010).

While the Pattersons' appeal was pending in this court, this court decided Sturdivant v. BAC Home Loans Servicing, LP, [Ms. 2100245, Dec. 16, 2011] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2011). In Sturdivant, supra, this court considered an appeal from a summary judgment proceeding in which the record demonstrated that in September 2009 BAC Home Loans Servicing, LP, had initiated foreclosure proceedings with regard to a mortgage Bessie T. Sturdivant had executed and that was secured by Sturdivant's house. BAC Home Loans conducted a foreclosure sale on December 1, 2009, and, also on December 1,

2100490

2009, it received an assignment from the holder of the mortgage on Sturdivant's property. BAC Home Loans, relying on the deed it received as a result of the December 1, 2009, foreclosure sale, sought to eject Sturdivant from the property. This court noted that in order to demonstrate a prima facie case in support of its claim in ejectment, BAC Home Loans was required to show, among other things, that it had legal title to the property. Sturdivant v. BAC Home Loans Servicing, LP, \_\_\_ So. 3d at \_\_\_ (citing § 6-6-280(b), Ala. Code 1975). In that case, BAC Home Loans claimed that it had legal title by virtue of the deed it had received after it had conducted the foreclosure sale. Article 1 of Title 35, Chapter 10, Ala. Code 1975, governs sales conducted to foreclose on a mortgage and, in pertinent part, requires that a power of sale may be executed by "any person ... who, by assignment or otherwise, becomes entitled to the money" secured by the mortgage. § 35-10-1, Ala. Code 1975. In Sturdivant, this court, relying on several of the authorities cited in the Pattersons' brief on appeal in this case, concluded that because BAC Home Loans had no interest in the property at the time it initiated its foreclosure proceedings,

2100490

the foreclosure sale was invalid. \_\_\_ So. 3d at \_\_\_ (citing § 35-10-9, Ala. Code 1975). This court held that, because the foreclosure sale was invalid, BAC Home Loans had no legal title on which to base its claim in ejectment and, as a result, that BAC Home Loans lacked standing to assert its ejectment action. Sturdivant, \_\_\_ So. 3d at \_\_\_.

In this case, GMAC initiated foreclosure proceedings at least four months before it obtained an interest in the mortgage.<sup>5</sup> GMAC was first assigned an interest in the mortgage on August 6, 2007, the day before it conducted its already scheduled August 7, 2007, foreclosure sale. Given the Pattersons' arguments on appeal, the authorities they cited in support of those arguments, and the holding of Sturdivant, supra, I agree with the Pattersons that GMAC failed to demonstrate that it had standing to prosecute its ejectment action and that the trial court erred in allowing GMAC to prosecute its action. I therefore concur in the result

---

<sup>5</sup>The record indicates that notice of the foreclosure by publication was first made in May 2007 and completed in June 2007. The Pattersons contend that they were not provided notice of the acceleration of the mortgage indebtedness or of foreclosure, and the record does not contain evidence that they received those notices.

2100490

reached by the main opinion.

2100490

BRYAN, Judge, dissenting.

In Sturdivant v. BAC Home Loans Servicing, LP, [Ms. 2100245, Dec. 16, 2011] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2011), BAC Home Loans Servicing, LP ("BAC"), brought an ejectment action against Bessie T. Sturdivant, seeking, among other things, possession of her house. BAC based its claim to title to Sturdivant's house on a foreclosure deed that had resulted from the foreclosure of a mortgage encumbering Sturdivant's house. BAC had foreclosed the mortgage as the assignee of the mortgagee. The trial court entered a summary judgment in favor of BAC, and Sturdivant appealed. The main opinion in Sturdivant held that the foreclosure conducted by BAC and the foreclosure deed purporting to convey title to Sturdivant's house to BAC were invalid because BAC had not been assigned or succeeded to the interest of the mortgagee in the mortgage when BAC commenced the foreclosure proceedings. Moreover, relying on the supreme court's decision in Cadle v. Shabani, 950 So. 2d 277 (Ala. 2006), the main opinion held that, because the foreclosure and the foreclosure deed were invalid, BAC lacked standing to prosecute its ejectment action, the trial court never acquired subject-matter jurisdiction over

2100490

that action, and, therefore, the judgment of the trial court was void.

I dissented from the main opinion in Sturdivant because, in my opinion, Cadle was distinguishable on its facts from Sturdivant; in Cadle, the ejectment plaintiff did not have paper title to the property that was the subject of the ejectment action when it commenced its ejectment action, whereas BAC, the ejectment plaintiff in Sturdivant, did have paper title to the property that was the subject of the ejectment action when it commenced its ejectment action. It was my opinion that Sturdivant was entitled to assert and prove that the paper title upon which BAC relied, i.e., the foreclosure deed, was invalid as an affirmative defense to BAC's ejectment action but that Sturdivant's successfully proving that BAC's paper title was invalid did not deprive BAC of standing to bring the ejectment action and did not justify the conclusion that the trial court had never acquired subject-matter jurisdiction over the ejectment action. Moreover, because, in my opinion, proof that BAC's paper title was invalid did not deprive BAC of standing or deprive the trial court of subject-matter jurisdiction over the ejectment

2100490

action, I disagreed with the main opinion's basing its decision on a ground that had not been argued to the trial court because of the well-established principle that an appellate court may not base a reversal of the trial court's judgment on a ground that was not argued to the trial court. See Smith v. Equifax Servs., Inc., 537 So. 2d 463, 465 (Ala. 1988). As the supreme court explained in Smith:

"An appellee can defend the trial court's ruling with an argument not raised below, for this Court 'will affirm the judgment appealed from if supported on any valid legal ground.' Tucker v. Nichols, 431 So. 2d 1263, 1265 (Ala. 1983). There is a rather obvious fundamental difference in upholding the trial court's judgment and reversing it; this Court will not reverse the trial court's judgment on a ground raised for the first time on appeal, Costarides v. Miller, 374 So. 2d 1335 (Ala. 1979), even though it affirms judgments on bases not asserted in the trial court, Bank of the Southeast v. Koslin, 380 So. 2d 826 (Ala. 1980). This difference is predicated on the 'long-standing, well-established rule that [in order to secure a reversal] the appellant has an affirmative duty of showing error upon the record.' Tucker v. Nichols, supra, at 1264."

537 So. 2d at 465 (emphasis on "affirms" in original; other emphasis added).

In my opinion, Cadle is distinguishable from the case now before us for the same reason it was distinguishable from Sturdivant -- the ejectment plaintiff in Cadle did not have

2100490

paper title to the property when it commenced its ejectment action, whereas GMAC Mortgage, LLC ("GMAC Mortgage"), the ejectment plaintiff in the case now before us, did have paper title to Reginald A. Patterson and Diane V. Patterson's house when it commenced its ejectment action. Therefore, consistent with my dissent in Sturdivant, I believe that, although the Pattersons were entitled to prove that GMAC's foreclosure and foreclosure deed were invalid as an affirmative defense to GMAC Mortgage's ejectment claim, proof that the foreclosure and the foreclosure deed were invalid did not establish that GMAC Mortgage lacked standing to prosecute the ejectment action or that the trial court lacked subject-matter jurisdiction over the ejectment action. Consequently, in my opinion, the Pattersons are subject to the long-standing principle that an appellate court may not base a reversal of the trial court's judgment on a ground that was not argued to the trial court. See Smith. Although the Pattersons argued to the trial court that the foreclosure and the foreclosure deed were not valid, they did not argue to the trial court that they were invalid on the ground that the mortgage had not been assigned to GMAC Mortgage when it commenced the foreclosure



2100490

proceedings. Consequently, I dissent from the main opinion because it bases its decision on a ground that was not argued to the trial court. See Smith.