

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

WILMINGTON SAVINGS FUND SOCIETY,
FSB, D/B/A CHRISTIANA TRUST AS
OWNER TRUSTEE OF THE RESIDENTIAL
CREDIT OPPORTUNITIES TRUST V, AS A
SUBSTITUTED PLAINTIFF FOR BAYVIEW
LOAN SERVICING, LLC,

Appellant,

v.

Case No. 5D19-1271

ANDREW JOSEPH GREENWELL, A/K/A
ANDREW J. GREENWELL,

Appellee.

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Opinion filed September 18, 2020

Appeal from the Circuit Court
for Brevard County,
W. David Dugan, Judge.

Melisa Manganelli, of Law Offices of
Mandel, Manganelli & Leider, P.A., Boca
Raton, for Appellant.

Jay R. Thakkar, of Cantwell & Goldman,
P.A., Cocoa, and Beau Bowin, of Bowin
Law Group, Indialantic, for Appellee.

WALLIS, J.

Appellant, Wilmington Savings Fund Society FSB, d/b/a/ Christiana Trust as owner
Trustee of the Residential Credit Opportunities Trust V, appeals the final summary

judgment entered in favor of Appellee, Andrew Greenwell. Appellant contends that the trial court erred in entering summary judgment because genuine issues of material fact remain regarding Appellant's standing to sue, Appellant's compliance with conditions precedent to foreclosure, and the amount of damages that Appellee owes. We agree that there are questions of fact regarding standing and, therefore, we reverse and remand for further proceedings.

This case began when Appellee executed a promissory note in favor of American Brokers Conduit, which was secured by a mortgage that was delivered to MERS as nominee for American Brokers Conduit. In September 2015, Bayview Loan Servicing, LLC (Bayview) filed a complaint against Appellee to foreclose the mortgage, alleging that it was the holder of the note by virtue of a mesne assignment and that Appellee defaulted on the note and mortgage by failing to make the required payments. Bayview attached to the complaint a copy of the note endorsed in blank and a series of assignments showing that MERS assigned to Bank of America, N.A. the note and the mortgage in 2011 and that Bank of America assigned the note and the mortgage to Bayview in June 2015.

In August 2018, Bayview filed a motion to substitute Appellant as the party plaintiff because Appellant was the current owner and holder of the loan documents. As support, Bayview attached to the motion the previously identified assignments as well as two other assignments showing that the mortgage was transferred to Appellant in November 2017. The trial court granted that motion and substituted Appellant as the plaintiff in this action.

Appellant thereafter filed a Motion for Summary Judgment and, as support, attached an affidavit from Ron McMahan, the Trust Administrator and Appellant's authorized signer. In the affidavit, Mr. McMahan discussed his knowledge of Appellant's

records and he described the process that Appellant uses when it boards loans that it receives from other entities. Mr. McMahan swore that Appellant currently owns the original note for Appellee's loan and that Bayview owned the original note on the date the complaint was filed. He further swore that the Mortgage Asset Purchase Agreement that was attached to his affidavit was kept as a part of Appellant's business records and it establishes that Appellant purchased Appellee's loan from Bayview on October 25, 2017.

Appellee filed his Response in Opposition to Appellant's Motion for Summary Judgment and his Second Motion for Summary Judgment. He specifically argued that Appellant failed to resolve all issues of material fact, and that Appellant failed to establish its standing at the time the judgment is entered as well as Bayview's standing at the time the complaint was filed.

The trial court subsequently entered the order on appeal. Without explanation or factual findings, the order denied Appellant's Motion for Summary Judgment, granted Appellee's Motion for Summary Judgment, dismissed the case, and entered judgment in favor of Appellee and against Appellant.

On appeal, Appellant argues that the trial court erred in entering summary judgment in favor of Appellee because genuine issues of fact remain regarding standing.¹

"It is axiomatic that '[s]ummary judgment is proper [only] if there is no genuine issue of

¹ We disagree with Appellee that the lack of hearing transcripts makes it impossible to fully review this case. Contrary to his claims, it is clear from the record that the trial court granted Appellee's motion for summary judgment based on standing. Moreover, because the issues related to standing and the entry of summary judgment are questions of law, the lack of a transcript does not impede our review of this case. See Johnson v. Deutsche Bank Nat'l Tr. Co. Am., 248 So. 3d 1205, 1210–11 (Fla. 2d DCA 2018) (reversing summary judgment entered in favor of the bank despite the lack of a hearing transcript where the evidence in the record showed that there were remaining questions of fact on standing).

material fact and if the moving party is entitled to a judgment as a matter of law.'" Baxter v. Northrup, 128 So. 3d 908, 909 (Fla. 5th DCA 2013) (quoting Volusia Cty. v. Aberdeen at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000)). Moreover, the movant bears the burden of establishing "*irrefutably* that the nonmoving party *cannot* prevail were a trial to be held." Land Dev. Servs., Inc. v. Gulf View Townhomes, LLC, 75 So. 3d 865, 868 (Fla. 2d DCA 2011) (emphasis in original).

In mortgage foreclosure proceedings, it is well settled that the plaintiff must have standing to sue at the inception of the case and at the time of the final judgment. Wilmington Tr., Nat'l Ass'n for MFRA Tr. 2015-2 v. Moon, 238 So. 3d 425, 427 (Fla. 5th DCA 2018). "In the case of a substituted plaintiff, the substituted plaintiff may rely on the standing (if any) of the original plaintiff at the time the case was filed. The substituted plaintiff then must prove its own standing when judgment is entered." Id. at 428. A plaintiff may prove standing through evidence of a valid assignment, proof that he purchased the debt, or evidence of an effective transfer. Stone v. BankUnited, 115 So. 3d 411, 413 (Fla. 2d DCA 2013).

As the substituted plaintiff, Appellant was required to establish that Bayview had standing at the time the complaint was filed and that it has standing at the time the final judgment is entered. See Moon, 238 So. 3d at 428. Bayview filed its complaint and attached a copy of the endorsed in blank note and a series of assignments showing that the note and mortgage were transferred to Bayview before the complaint was filed. This evidence was sufficient to establish that Bayview was the holder of the note and that it had standing to sue at the time the complaint was filed. See Nationstar Mortg., LLC v. Kelly, 199 So. 3d 1051, 1052 (Fla. 5th DCA 2016) (holding that appellant had standing

where evidence showed that there was an unbroken chain of valid and timely assignments of the note and the mortgage); Wells Fargo Bank, N.A. v. Morcom, 125 So. 3d 320, 322 (Fla. 5th DCA 2013) (concluding that the bank established standing as the holder of the note where it attached to the complaint a copy of the note endorsed in blank). In addition, the documents that were filed as support for Appellant's Motion for Summary Judgment suggest that Appellant may have owned Appellee's loan in October 2017. While not conclusive of Appellant's standing, this evidence created a question of fact regarding Appellant's ownership of Appellee's loan at the time the judgment was entered. See Bolous v. U.S. Bank Nat'l Ass'n, 210 So. 3d 691, 695 (Fla. 4th DCA 2016) (holding that evidence from trial combined with the pre-complaint pooling and servicing agreement and corresponding mortgage loan schedule showing that the agreement included the borrower's loan was sufficient to establish the bank's standing as the owner or holder of the borrower's note).

Therefore, because questions of fact remain on the issue of standing and because Appellee did not present evidence showing that Appellant could not prove standing at trial, it was error for the trial court to enter summary judgment in favor of Appellee. See Moon, 238 So. 3d at 428 (reversing final summary judgment where appellees "presented no summary judgment evidence that Wilmington Trust would be unable to prove it was the holder of the note at trial"); Lyttle v. BankUnited, 115 So. 3d 425, 426 (Fla. 5th DCA 2013) (reversing summary judgment of foreclosure where issues of fact remain regarding appellee's standing to foreclose). Accordingly, we reverse the final summary judgment and remand for further proceedings.

REVERSED and REMANDED.

COHEN and TRAVER, JJ., concur.