

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

THOMAS E. RICHESON,

Appellant,

v.

Case Nos. 5D20-1496
5D20-2399

SOUTH'S CUSTOM CONSTRUCTION,
INC.,

Appellee.

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Opinion filed April 23, 2021

Appeal from the Circuit
Court for Orange County,
Lisa T. Munyon, Judge.

Samuel Alexander, of Alexander
Appellate Law P.A., DeLand, for
Appellant.

David G. Hamilton, of Peterson Law
Group PLLC, New Smyrna Beach, for
Appellee.

EVANDER, C.J.,

In a quiet title action brought against the Appellant, Thomas E. Richeson (“Richeson”), the trial court entered summary judgment in favor of South’s Custom Construction, Inc. (“Custom”) after finding that Richeson failed to timely provide Custom a satisfaction of mortgage. The trial court subsequently entered a final judgment awarding Custom attorney’s fees and costs. We conclude that summary judgment was improperly granted and, accordingly, we reverse.

Custom initiated its quiet title action against Richeson in November 2019. In its complaint, Custom alleged that on May 26, 2004, a mortgage was executed in favor of Richeson and his then-wife, Sophie Richeson (“Sophie”), upon Richeson and Sophie conveying certain real property to Custom and Uplift Crane Services, Inc. (“Uplift”). Although Richeson and Sophie owned the property jointly, Custom and Uplift executed a \$75,000 promissory note in favor of Richeson and a separate \$75,000 promissory note in favor of Sophie. The two notes (establishing a total debt of \$150,000) were secured by the same mortgage.¹

The complaint further alleged that the note held by Richeson was fully satisfied in 2009. However, notwithstanding Custom’s multiple requests,

¹ The structure of the parties’ transaction is admittedly unique. By our decision, this Court reaches only the issue raised by the parties.

Richeson had failed to provide a “recorded satisfaction of said Mortgage Note” or a “partial satisfaction of mortgage.” Custom requested that title to the real property “be quieted, as to the subject \$75,000.00 Mortgage Note” in favor of Custom and that the trial court award Custom its reasonable attorney’s fees and costs pursuant to section 701.04(2), Florida Statutes (2019).

The record reflects that Richeson executed a partial satisfaction of mortgage on December 23, 2019—approximately forty-five days after the filing of the complaint. The record further suggests that Sophie executed a satisfaction of mortgage on November 20, 2019, but does not establish when the note held by Sophie was fully satisfied.

In May 2020, Richeson filed a motion to dismiss the complaint as moot, alleging that he had executed the partial satisfaction of mortgage provided by Custom and delivered the same to Custom.

Thereafter, Custom filed a response to Richeson’s motion to dismiss and a motion for summary judgment. In its response to the motion to dismiss, Custom acknowledged that it had received the partial satisfaction of mortgage and that title to the property had been cleared. However, Custom argued that the complaint was not moot because Custom’s claim for attorney’s fees and costs remained pending.

In its motion for summary judgment, Custom argued that under section 701.04(2), Florida Statutes (2019), Richeson was required to provide Custom with a partial satisfaction of mortgage within sixty days after receipt of final payment on the \$75,000 promissory note held by Richeson. Because Richeson's note was fully satisfied in 2009 and his partial satisfaction of mortgage was executed over ten years later, it was Custom's contention that it was entitled to recover its attorney's fees and costs.

Richeson opposed the summary judgment motion arguing, inter alia, that section 701.04(2) does not provide for partial satisfactions of mortgage and that he was not required to execute a satisfaction of mortgage until both promissory notes had been satisfied. It is Richeson's contention that Sophie's promissory note was not satisfied until November 2019 and, therefore, his satisfaction of mortgage had been timely provided.

The trial court granted Custom's summary judgment motion, finding that Richeson had a statutory obligation to provide a satisfaction of mortgage within sixty days after receiving final payment on his note in 2009, and had failed to meet that obligation. The trial court concluded that, as a matter of law, Custom was entitled to recover its attorney's fees and costs for having to institute the action based on Richeson's "failure to provide a Satisfaction of Mortgage as per Fl Stat section 701.04(2)."

On appeal, Richeson argues that the trial court's interpretation of section 701.04(2) was erroneous, resulting in Custom's motion for summary judgment being improperly granted. We agree.

"A trial court's ruling on a motion for summary judgment posing a pure question of law is subject to de novo review." *Clay Elec. Coop., Inc. v. Johnson*, 873 So. 2d 1182, 1185 (Fla. 2004). Likewise, the appellate standard of review on issues involving the interpretation of a statute is de novo. *B.Y. v. Dep't of Child. & Fams.*, 887 So. 2d 1253, 1255 (Fla. 2004).

"As with any matter involving an issue of statutory interpretation, courts must first look to the actual language of the statute and 'examine the statute's plain meaning.'" *Bank of NY Mellon v. Glenville*, 252 So. 3d 1120, 1127 (Fla. 2018). "When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning." *Id.* (quoting *A.R. Douglass, Inc. v. McRaine*, 137 So. 157, 159 (Fla. 1931)).

Section 701.04(2), Florida Statutes (2019) provides:

Whenever the amount of money *due on any mortgage*, lien, or judgment has been fully paid to the person or party entitled to the payment thereof, the mortgagee, creditor, or assignee, or the attorney of record in the case of a judgment, to whom the payment was made, shall execute in writing an instrument acknowledging satisfaction of the mortgage, lien, or judgment

and have the instrument acknowledged, or proven, and duly entered in the official records of the proper county. Within 60 days *after the date of receipt of the full payment of the mortgage, lien, or judgment*, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall send or cause to be sent the recorded satisfaction to the person who has made the full payment. In the case of a civil action arising out of this section, the prevailing party is entitled to attorney fees and costs.

(emphasis added). Based on the plain language of the statute, Richeson's obligation to execute a satisfaction of mortgage did not occur until the mortgage was fully paid. The statute does not reference partial satisfactions of mortgage, nor does it refer to payments on promissory notes. Rather, the statute imposes an obligation to send or cause to be sent a recorded satisfaction after receipt of "the full payment of the mortgage." *Id.*; see also *Rudolph v. Unger*, 417 So. 2d 1095, 1096 (Fla. 3d DCA 1982) ("Attorney's fees are only recoverable under this statute when the lien created by the mortgage is 'fully paid.'").

Because the record does not establish the date of receipt of the full payment on the mortgage (that is, the date on which both Richeson's and Sophie's notes were fully satisfied), the trial court erred in finding, as a matter of law, that Richeson had failed to comply with section 701.04(2). Accordingly, we reverse the summary judgment order and the judgment for

attorney's fees and costs entered below and remand for further proceedings consistent with this opinion.

REVERSED and REMANDED.

WALLIS and NARDELLA, JJ., concur.