DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2014

WINSTON MUHAMMAD and **JANET MUHAMMAD,**
Appellants,

v.

BAC HOME LOANS SERVICING, LP,
Appellee.

No. 4D13-1580

[June 25, 2014]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Miette K. Burnstein, Judge; L.T. Case No. 10036145CACE.

Winston and Janet Muhammad, Lauderhill, pro se.

Lance T. Davies of Butler & Hosch, P.A., Orlando, for appellee.

WARNER, J.

We affirm the final judgment of foreclosure entered after a non-jury trial. While appellants claim that appellee did not prove its standing to foreclose at the inception of the proceedings and that the non-jury trial was not set in accordance with the rules of procedure, a transcript of the proceedings is not available for review. Without a transcript, we afford the trial court the presumption of correctness in its rulings, and the record is inadequate to demonstrate error. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979).

Appellants point to an undated endorsement on the note and claim that, because it was undated, appellee failed to prove standing existed prior to the filing of the complaint. However, a non-jury trial was held at which witnesses testified, and they may well have testified that the note was acquired by the appellee prior to the institution of the suit. Such evidence would be sufficient to prove standing. *See McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So. 3d 170, 173 (Fla. 4th DCA 2012) (affidavit of ownership is sufficient to prove standing). Therefore, without a

transcript of the proceedings to show that no evidence of standing was presented, the trial court is entitled to the presumption of correctness.

As to appellants' claim that the case was not properly set for trial, their argument lacks any merit. There is nothing in the record to show that appellants objected to the court's setting the case for trial before the final judgment was entered. *See Labor Ready Se., Inc. v. Australian Warehouses Condo. Ass'n*, 962 So. 2d 1053, 1055 (Fla. 4th DCA 2007) (error in setting case for trial may be waived if the aggrieved party appears at trial and raises no objection). Thus, even if it were meritorious, the issue was not preserved. But it has no merit at all.

This case had been pending for over two years when the trial court *sua sponte* set it for trial. The case was at issue, as the pleadings had closed months before the order setting trial was entered. *See* Fla. R. Civ. P. 1.440(a) ("An action is at issue after any motions directed to the last pleading served have been disposed of or . . . 20 days after service of the last pleading."). Appellants contend that the trial court cannot set a case for trial unless one of the parties has noticed it for trial pursuant to Florida Rule of Civil Procedure 1.440(b). Appellants overlook Rule 1.440(c), which provides:

> **(c) Setting for Trial.** If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. Trial shall be set not less than 30 days from the service of the notice for trial. *By giving the same notice the court may set an action for trial. . . .*

(Emphasis added). A case is ready to be set when it is at issue. Fla. R. Civ. P. 1.440(a). The parties may notify the court that it is ready to be set, or the court may *sua sponte* set the case for trial, so long as it gives the same notice as when a party notices a case for trial, i.e., not less than thirty days. The trial court provided such notice in this case.

The cases cited by appellants are all inapposite, as they deal with either cases that were not at issue or notices for trial served less than thirty days before the trial date. *See Genuine Parts Co. v. Parsons*, 917 So. 2d 419 (Fla. 4th DCA 2006); *Globe Life & Accident Ins. Co. v. Preferred Risk Mut. Ins. Co.*, 539 So. 2d 1192 (Fla. 1st DCA 1989). Appellants also cite cases holding that, once the case is at issue and a party has filed a notice for trial, the trial court is obligated to set a trial date. *See Garcia v. Lincare, Inc.*, 906 So. 2d 1268 (Fla. 5th DCA 2005); *Balboa Ins. Co. v. Shores of Madeira, Inc.*, 457 So. 2d 596 (Fla. 2d DCA 1984). Nothing in these cases indicates that the court may not *sua sponte* set a case for trial. As

appellants note, the Rules of Civil Procedure should be followed. Here, the trial court properly followed the rules.

For these reasons, we affirm the final judgment.

DAMOORGIAN, C.J., and MAY, J., concur.

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Not final until disposition of timely filed motion for rehearing.