NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

ROBERT JAMES COREY and AUDREY B. COREY, Appellants, v. Unknown heirs, creditors, devisees, beneficiaries, grantees, assignees, lienors, trustees, and all other parties claiming an interest by, through, under, or against CLIFFORD RAY NEUFFER, deceased, who are not known to be dead or alive, to include defendant STACI VERONICA WILLIAMS, as the known surviving heir of the decedent, Appellees.	)	Case No. 2D19-1083

Opinion filed March 20, 2020.

Appeal from the Circuit Court for Hillsborough County, Rex M. Barbas, Judge.

Brian A. Leung of Holcomb & Leung, P.A., Tampa, for Appellants.

Stephen K. Hachey of the Law Offices of Stephen K. Hachey, P.A., Riverview, for Appellees Shannon Drew, Elena Clark, and Staci Veronica Williams.

LaROSE, Judge.

Robert and Audrey Corey challenge the trial court's order distributing surplus funds from a foreclosure sale. We have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A). The trial court erred in not awarding the surplus funds to the Coreys, the record owners of the property. Instead, it distributed the funds to the holders of an equitable right of redemption to the property. We reverse.

Background

In August 2014, the Coreys entered into an agreement for deed, also known as an "installment land contract," to sell real property to Mr. Neuffer. See Sawyer v. Marco Island Dev. Corp., 301 So. 2d 820, 821 (Fla. 2d DCA 1974) (Mann, J., concurring in part and dissenting in part). An agreement for deed is

> an agreement that requires the seller to convey legal title to the buyer after the buyer pays all of the installments of the purchase price. An agreement for deed is primarily utilized as a security device and an alternative to immediate conveyance of title to the buyer with a purchase money mortgage back to the seller.

Free v. Free, 936 So. 2d 699, 703 (Fla. 5th DCA 2006) (citation omitted) (citing White v. Brousseau, 566 So. 2d 832 (Fla. 5th DCA 1990)). Under the agreement, the Coreys retained fee simple title to the property and held the note and contract for deed; Mr. Neuffer agreed to make monthly installment payments toward the principal sum of $30,000. Cf. Prime Homes, Inc. v. Pine Lake, LLC, 84 So. 3d 1147, 1152 (Fla. 4th DCA 2012) ("Vendor's liens arise through agreements for deed, as the vendor essentially holds title to the property to secure payment of the agreed upon purchase price." (citing Jasper v. Orange Lake Homes, Inc., 151 So. 2d 331, 333 (Fla. 2d DCA 1963))).

In September 2017, Mr. Neuffer defaulted on his payments. He died in May 2018. The Coreys, in August 2018, filed a foreclosure action and a lis pendens.

See Luneke v. Becker, 621 So. 2d 744, 746 (Fla. 2d DCA 1993) ("[T]he vendor under an agreement for deed has no right to repossess the property; the vendor must proceed with a foreclosure action."). The complaint alleged that the Coreys were the record owners of the property. Following a default, the trial court entered a final judgment of foreclosure in December 2018. After a January 2019 foreclosure sale, a surplus remained.

The Coreys claimed the surplus. They asserted that pursuant to section 45.032, Florida Statutes (2018), they were the owners of record on the date they filed the lis pendens. Mr. Neuffer's daughters—Elena Clark, Shannon Drew, and Staci Veronica Williams (the heirs)—filed a competing claim, asserting that an agreement for deed is akin to a mortgage, thus, the record owner "would be the buyer on agreement for deed." The heirs insisted that the Coreys "should only receive payment as to the unpaid purchase price plus interest . . . as if it were the usual deed-mortgage sale arrangement," in accordance with section 697.01, Florida Statutes (2018).

After conducting a hearing, the trial court ruled for the heirs, reasoning that they held equitable title upon their father's death and, consequently, possessed the right of redemption to the property and to any surplus funds from the sale. The trial court awarded the heirs $76,127.95 in surplus funds.

Analysis

Because we must interpret the statutory scheme for the disbursement of surplus funds, we review the trial court's order de novo. See Matlacha Civic Ass'n v. City of Cape Coral, 273 So. 3d 243, 245 (Fla. 2d DCA 2019).

After a foreclosure sale, the clerk must hold any surplus funds for sixty days pending receipt of a trial court order dictating the manner in which the surplus is to

be disbursed. § 45.032(3). Section 45.032, entitled "Disbursement of surplus funds after judicial sale," provides, in part, that when "the owner of record claims the surplus before the date that the clerk reports it as unclaimed and there is no subordinate lienholder, the court shall order the clerk to deduct any applicable service charges from the surplus and pay the remainder to the owner of record." § 45.032(3)(a). The "owner of record" is "the person or persons who appear to be owners of the property that is the subject of the foreclosure proceeding on the date of the filing of the lis pendens." § 45.032(1)(a). The "appearance" of ownership is satisfied simply by including an allegation of ownership in the foreclosure complaint. Id. ("In determining an owner of record, a person need not perform a title search and examination but may rely on the plaintiff's allegation of ownership in the complaint when determining the owner of record.").

"Further, section 45.032(2) establishes a rebuttable presumption that the owner of record is entitled to the surplus after any subordinate lienholders who *timely* filed claims have been paid." Dever v. Wells Fargo Bank Nat'l Ass'n, 147 So. 3d 1045, 1047 (Fla. 2d DCA 2014); § 45.032(2) ("There is established a rebuttable legal presumption that the owner of record on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim."). Section 45.032(2) also "expressly delineates the circumstances under which the presumption may be rebutted, i.e., where the owner has assigned such surplus funds rights to an assignee pursuant to section 45.033(2)(a), Florida Statutes (2013), a situation which does not appear to exist in this case." Pineda v. Wells Fargo Bank, N.A., 143 So. 3d 1008, 1010 (Fla. 3d DCA 2014). The heirs did not claim

assignee status. In fact, they claim that they are the record owners as a matter of equity.

The "distribution of surplus foreclosure proceeds is governed by a plain and unambiguous statutory procedure which clearly provides that the owner of record is entitled to the surplus proceeds." Id. at 1011. "[C]ourts are not free to deviate from that process absent express authority." Id. The legislature has provided none. See, e.g., id. ("The statute is clear: the owner of record at the time of the recording of the lis pendens is entitled to any surplus proceeds. The Notice of Lis Pendens . . . reflects the Pinedas owned the subject property. Nocari was neither an 'owner of record,' an assignee of an owner, nor 'subordinate lienholder,' and thus was not entitled to any surplus funds." (footnote omitted) (citations omitted)). As in Pineda, the complaint and notice of lis pendens show that the Coreys owned the property. The heirs are neither owners of record, assignees of an owner, nor subordinate lienholders. Under the statutory scheme, they are entitled to no surplus funds.

Seemingly, the trial court accepted the heirs' argument that an "agreement for deed is treated under Florida law as a mortgage and is subject to the same rules of foreclosure." See Kubany v. Woods, 622 So. 2d 22, 24 (Fla. 2d DCA 1993); accord Luneke, 621 So. 2d at 746 ("An agreement for deed is deemed to be a mortgage and subject to the same rules of foreclosure as a mortgage."); see also Webb v. Kirkland, 899 So. 2d 344, 347 (Fla. 2d DCA 2005) ("[A]n agreement for deed, 'under section 697.01, Florida Statutes, is a mortgage and carries all the burdens thereof including the rules relating to foreclosure and the right of redemption.' " (quoting Bowman v. Saltsman, 736 So. 2d 144, 146 (Fla. 5th DCA 1999))). Recall, however, that with a

traditional mortgage, the mortgagor holds title to the property. The trial court conflated the purchaser in an agreement for deed with an owner of record.

As the Fifth District explained, and this case highlights, there is an integral distinction between a mortgage and an agreement for deed:

> [A] contract for deed wherein the seller agrees to convey title to land after the buyer pays all installments of the purchase price is merely a security device and is an alternative or substitute to an immediate conveyance of the title to the buyer with a purchase money mortgage back to the seller. Under equitable concepts, the buyer under the agreement for deed is in the same position as the purchaser-mortgagor and the seller is merely a lienor. Under the usual deed-mortgage sale arrangement, the buyer immediately receives and holds the legal title and the seller has a legal lien (mortgage) on the land; whereas under the land contract sale arrangement, the buyer immediately receives and holds the equitable title and the seller holds the bare legal title only as security for the unpaid purchase price. The form is different but the substance is the same for equitable purposes including the foreclosure procedure in the event the buyer defaults in payment of some portion of the purchase price.

White, 566 So. 2d at 835 (emphases added). Under an agreement for deed, the seller, like the Coreys, retains legal title to the property until the purchase price is paid. Only then does the seller transfer legal title. See Free, 936 So. 2d at 703 (observing that an agreement for deed is "defined as an agreement that requires the seller to convey legal title to the buyer after the buyer pays all of the installments of the purchase price" (emphasis added)).

Section 45.032 makes no distinction between the foreclosure of an equitable interest obtained through an agreement for deed and the foreclosure of other security instruments. Had it chosen, the legislature could have made that distinction.

The trial court improperly based its ruling on an equitable right of redemption, instead of the owner of record's right to surplus funds under section 45.032.

The trial court apparently assumed that the legislature did not consider the effect of section 45.032 on a vendee under an agreement for deed, or consider that the entitlement to surplus proceeds is a distinctly separate analysis from a right of redemption. Presumably, the legislature does not act in ignorance. Cf. Adler-Built Indus., Inc. v. Metropolitan Dade County, 231 So. 2d 197, 199 (Fla. 1970) ("The Legislature is presumed to be acquainted with judicial decisions on the subject concerning which it subsequently enacts a statute."); Wood v. Fraser, 677 So. 2d 15, 18 (Fla. 2d DCA 1996) ("Florida's well-settled rule of statutory construction [is] that the legislature is presumed to know the existing law when a statute is enacted, including 'judicial decisions on the subject concerning which it subsequently enacts a statute.' " (quoting Collins Inv. Co. v. Metropolitan Dade County, 164 So. 2d 806, 809 (Fla. 1964))). Elsewhere in the Florida Statutes, specifically, section 197.502(4)(d), Florida Statutes (2018), covering the provision of notice prior to a tax sale, the legislature contemplated a vendee on an agreement for deed. Further, the legislature specifically addressed the right of redemption in section 45.0315, appropriately titled "Right of redemption." The trial court should not have presumed that the legislature was unaware of the concept of agreement for deed when enacting section 45.032. We cannot conclude, therefore, that the legislature did not intend section 45.032 to be applied as written, or that some other meaning should be accorded other than the plain meaning of the statute's wording, when awarding the surplus. See W. Fla. Reg'l Med. Ctr., Inc. v. See, 79 So. 3d 1, 9 (Fla. 2012) ("To discern legislative intent, this Court looks first to the plain and obvious meaning of the statute's text, which a court may discern from a

dictionary. If that language is clear and unambiguous and conveys a clear and definite meaning, this Court will apply that unequivocal meaning and not resort to the rules of statutory interpretation and construction." (citation omitted) (citing Holly v. Auld, 450 So. 2d 217, 219 (Fla. 1984))).

The trial court failed to hew to section 45.032, opting instead to adhere to section 697.01(1), which generally provides that "instruments of writing conveying or selling property . . . for the purpose or with the intention of securing the payment of money . . . shall be deemed and held mortgages, and shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms . . . in relation to mortgages." In effect, the trial court believed that the statute directly on point, section 45.032, had to give way to the more general one, section 697.01(1). It did not. See, e.g., Cricket Props., LLC v. Nassau Pointe at Heritage Isles Homeowners Ass'n, 124 So. 3d 302, 307 (Fla. 2d DCA 2013) ("It is well settled that a more specific statute covering a particular subject is controlling over one covering the same subject in general terms." (citing Mendenhall v. State, 48 So. 3d 740, 748 (Fla. 2010))).

In support of their argument that the agreement for deed must be treated as if it were a mortgage under section 697.01(1), the heirs rely on a pair of cases, both of which are distinguishable. In Torcise v. Perez, 319 So. 2d 41, 42 (Fla. 3d DCA 1975), the Third District stated that "contracts for deed were clearly intended to secure the payment of money and under [section] 697.01(1) . . . must be deemed and held to be mortgages and subject to the same rules, regulations, etc., as mortgages." However, in Torcise the court determined that mortgagees under contract for deed had no right to use or possess the real property. Id. Moreover, the heirs' argument is contradictory. On the one hand, they claim the agreement for deed is akin to a

mortgage under section 697.01(1), however, they ask us to conjure up a different rule for the distribution of surplus proceeds for agreements for deed than the one prescribed for mortgages in section 45.032.

The heirs also cite the Fifth District's decision in White, 566 So. 2d at 832, for the proposition that equitable principles concerning the right of redemption in a contract for deed should be applied in the instant case to the procedure for distribution of surplus funds. However, our case is not an equitable dispute; it is a dispute regarding a clearly defined statutory procedure for distributing surplus foreclosure proceeds. See Pineda, 143 So. 3d at 1011.

Conclusion

Because section 45.032 controls the disposition of surplus funds following a judicial sale of property, and because the trial court failed to follow the clear and unambiguous statutory language in awarding such funds to the record owners of the property, we reverse the order on appeal and remand for the trial court to order the surplus funds disbursed to the Coreys.

Reversed and remanded with directions.

NORTHCUTT and SALARIO, JJ., Concur.