

# **Third District Court of Appeal**

## **State of Florida**

Opinion filed September 18, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D18-1669  
Lower Tribunal No. 15-30066

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**Eluime H. Baker, a/k/a Eluine H. Baker,**  
Appellant,

vs.

**The Courts at Bayshore I Condominium Association, Inc.,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Spencer Eig,  
Judge.

Robert Flavell (Orlando), for appellant.

Association Law Group, P.L., and Douglas H. Stein, for appellee.

Before EMAS, C.J., and LOGUE and HENDON, JJ.

EMAS, C.J.

## **INTRODUCTION**

Eluime H. Baker (“Baker”), appeals from an order correcting a scrivener’s error in the final judgment of foreclosure entered against Baker and in favor of The Courts at Bayshore I Condominium Association, Inc. (“the Association”). Because the scrivener’s error did not exist prior to entry of the final judgment, but instead first occurred upon entry of the final judgment itself, we affirm the trial court’s order correcting the final judgment pursuant to Florida Rule of Civil Procedure 1.540(a).

## **FACTS AND PROCEDURAL BACKGROUND**

Baker was the owner of a condominium unit and a member of the Association. In December 2015, the Association filed a complaint seeking to foreclose on a statutory claim of lien arising from Baker’s failure to pay her share of condominium assessments. The Association attached, as exhibits to the complaint, the declaration of condominium, a duly recorded claim of lien, and a notice of lis pendens. The complaint, the declaration of condominium, the claim of lien, and the notice of lis pendens each contained the correct legal description of the property at issue. When Baker failed to respond to the complaint, the Association moved for default, and later for summary judgment, both of which the trial court granted.

The final summary judgment, however, while containing the correct street address for the property, recited an incorrect legal description.<sup>1</sup> This erroneous legal

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<sup>1</sup> The correct legal description of the property:

description was carried forward to the certificates of sale and title, as well as to the subsequent order granting the third-party purchaser's motion for writ of possession.

Following the sale and issuance of the certificate of title, the Association moved for attorney's fees. Baker moved for disbursement of the remaining proceeds of the sale (including disbursement of the surplus to Baker). The trial court granted both motions and disbursed the remaining surplus of the sales proceeds (\$92,084.98) to Baker.

Thereafter, the third-party purchaser moved to amend the certificate of title to correct what it described as a scrivener's error in the legal description. The trial court granted the motion and amended the certificate of title accordingly. Baker timely moved for rehearing, contending that the error in the legal description was not

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CONDOMINIUM UNIT NO. 2, BUILDING NO. 23, OF THE COURTS AT BAYSHORE **I**, ACCORDING TO THE DECLARATIONS OF CONDOMINIUM THEREOF, AS RECORDED IN OFFICAL RECORDS BOOK 25621, AT PAGE **2372**, AND ALL AMENDMENTS THERETO, RECORDED IN THE PUBLIC RECORDS OF MIAMI- DADE COUNTY, FLORIDA. (Emphasis added.)

The incorrect legal description of the property:

CONDOMINIUM UNIT NO. 2, BUILDING NO. 23, OF THE COURTS AT BAYSHORE **II**, ACCORDING TO THE DECLARATIONS OF CONDOMINIUM THEREOF, AS RECORDED IN OFFICAL RECORDS BOOK 25621, AT PAGE **2486**, AND ALL AMENDMENTS THERETO, RECORDED IN THE PUBLIC RECORDS OF MIAMI- DADE COUNTY, FLORIDA. (Emphasis added.)

merely a scrivener's error, but a material error. The trial court did not rule on Baker's motion for rehearing.

After the amended certificate of title was issued, the Association moved to correct the same scrivener's error contained in the final judgment. The trial court granted the motion and issued an order correcting the legal description recited in the final judgment. Baker filed a motion for rehearing, which the trial court denied, and this appeal followed.

### **DISCUSSION**

Baker contends that the error in the legal description was not a mere scrivener's error, but a material error that required the trial court to vacate the final judgment, as well as the certificate of title and certificate of sale. We hold that the trial court did not abuse its discretion in amending the final judgment (as well as the certificate of title) to correct a scrivener's error. See Bazzichelli v. Deutsche Bank Trust Co. Ams., 274 So. 3d 414 (Fla. 3d DCA 2019) (holding trial court properly amended final judgment and certificate of title to correct scrivener's error); Keller v. Belcher, 256 So. 2d 561, 563 (Fla. 3d DCA 1971) (observing that "clerical mistakes include only errors or mistakes arising from accidental slip or omission and not errors or mistakes in the substance of what is decided by the judgment or order").

We recognize those decisions holding that errors in the legal description of property, contained in a deed or mortgage existing prior to entry of the final

judgment, cannot be remedied by simply amending or correcting the final judgment.<sup>2</sup> However, those decisions are distinguishable because in the present case, the error in the legal description occurred upon entry of the final judgment itself, and did not exist in a deed or mortgage (or other document conveying or encumbering the property) prior to entry of the final judgment.

In reaching our conclusion that the trial court properly amended the final judgment, we adopt the reasoning of our sister court in Rodgers v. Deutsch Bank Nat'l Trust Co., 256 So. 3d 885 (Fla. 4th DCA 2018). Rodgers involved a mortgage foreclosure on real property. The mortgage and the complaint contained an accurate legal description of the property. However, the final judgment contained errors in the legal description of the property, and this error was carried forward into the notice of foreclosure sale as well as the certificate of title issued following the sale.

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<sup>2</sup> See Fed. Nat. Mortg. Ass'n v. Sanchez, 187 So. 3d 341, 343 (Fla. 4th DCA 2016) (holding in such case that the trial court must first vacate the judgment, the sale and any certificates of title or sale); Caddy v. Wells Fargo Bank, N.A., 198 So. 3d 1149, 1150 (Fla. 4th DCA 2016); Wells Fargo Bank, N.A. v. Giesel, 155 So. 3d 411, 414 (Fla. 1st DCA 2014); Lucas v. Barnett Bank of Lee Cty., 705 So. 2d 115, 116 (Fla. 2d DCA 1998). “[W]hen a mortgage misdescribes the property intended to be mortgaged the mistake may be corrected by a proper proceeding before judicial foreclosure; but, if the mistake has been carried into a bill, filed for the purpose of foreclosing such mortgage, into the decree ordering foreclosure, into the advertisement, and into the deed, the purchaser at such foreclosure sale cannot maintain a bill in equity to correct the description of the land as contained in the mortgage, in the decree, and in the deed.” Fisher v. Villamil, 56 So. 559, 561-62 (Fla. 1911).

The bank moved to amend the final judgment, but that motion was never heard. Rodgers moved to vacate the final judgment, contending that the erroneous legal description in the final judgment required the final judgment be vacated and the foreclosure process begun anew. The trial court denied Rodgers' motion to vacate, and the Fourth District affirmed, distinguishing its earlier decision in Caddy v. Wells Fargo Bank, N.A., 198 So. 3d 1149, (Fla. 4th DCA 2016):

In Caddy[], we determined that the trial court erred in denying the mortgagor's motion to vacate the final judgment which contained a single numerical error *in the deed description* that was carried into the amended complaint and consent judgment, even though the correct legal description was used in the advertisement for the sale. Id. at 1150. We concluded that, “[b]ecause the erroneous legal description was discovered after the final judgment and foreclosure sale, the court could not simply correct the legal description in the judgment and certificate of title. ‘Rather, reformation required vacating the final judgment, judicial sale, and issuance of title.’” Id. (quoting Fed. Nat'l Mortg. Ass'n v. Sanchez, 187 So. 3d 341, 343 (Fla. 4th DCA 2016)).

Unlike the situation in Caddy, here, the error *did not occur prior to the entry of the final judgment; instead the error first occurred upon the entry of the judgment itself*. This factual distinction makes principles of law discussed in Caddy and the cases cited therein inapplicable. The situation in this case is arguably more in line with the case law discussing errors covered by Florida Rule of Civil Procedure 1.540(a), rather than rule 1.540(b).

Rodgers, 256 So. 3d at 888 (emphasis added).

## **CONCLUSION**

Here—as in Rodgers—because the error in the legal description did not exist in a deed or mortgage (or other document conveying or encumbering the property)

prior to entry of the final judgment, but instead first occurred upon entry of the final judgment itself, the trial court properly corrected the scrivener's error in the final judgment pursuant to Florida Rule of Civil Procedure 1.540(a).

Affirmed.