Third District Court of Appeal

State of Florida

Opinion filed July 17, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-2004
Lower Tribunal No. 10-58746

Carmen Taufer, et al.,
Appellants,

vs.

Wells Fargo Bank, N.A., etc.,
Appellee.

An Appeal from non-final orders from the Circuit Court for Miami-Dade County, Thomas J. Rebull, Judge.

Alfonso E. Oviedo-Reyes, for appellants.

Bradley Arant Boult Cummings, LLP, and Tabitha S. Etlinger (Tampa), for appellee.

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

HENDON, J.

Carmen Taufer ("Taufer"), Hilda E. Lacayo and Mauricio Lacayo, ("Tenants"), appeal from the trial court's denial of their motions to vacate, reconsider, or stay the order granting writ of possession to Wells Fargo Bank, N.A.[1] ("Bank"). For the following reasons, we dismiss the appeal.

In 2014, the final judgment of foreclosure was rendered in favor of the Bank. The Bank and Taufer subsequently entered into a 2015 stipulation, ratified by the trial court, in which Taufer withdrew all of her post-judgment motions and stipulated to the immediate issuance of a certificate of title. Title was issued to the Bank.

In between the final judgment of foreclosure and the stipulation and title transfer, Taufer leased the premises to the Tenants. When the Bank filed its 2015 motion for writ of possession, and timely filed notice to vacate, Taufer and the Tenants objected, and filed the following four motions: 1) motion to reconsider or vacate the order granting writ of possession to the Bank, pursuant to Florida Rule of Civil Procedure 1.530; 2) motion to reconsider or vacate the order pursuant to Florida Rule of Civil Procedure 1.540; 3) motion to stay the order granting writ of possession pending appeal; 4) motion to stay the order granting writ of possession for 45 days to allow the tenants to find new living arrangements. All were properly denied by the trial court.

[1] Not In Its Individual Capacity But Solely As Trustee For The Rmac Remic Trust Series 2010-3.

As an initial matter, the appellants herein lack standing to attack the validity of the final judgment of foreclosure. The Tenants took their interest in the property subject to a recorded lis pendens and final judgment of foreclosure. The Tenants are bound by that judgment. Furthermore, Taufer waived her right to challenge the final judgment when she stipulated to the title transfer. See e.g., Carlisle v. U.S. Bank, Nat'l Ass'n for Harborview 2005-10 Tr. Fund, 225 So. 3d 893, 895 (Fla. 3d DCA 2017) (holding that as a purchaser post-lis pendens, Carlisle had no rights in the property at the time the litigation commenced, and he purchased the property subject to and bound by any judgment rendered in the foreclosure action).

As with review of a final order, in order to invoke this Court's jurisdiction to review a non-final order, an appellant must file a notice within thirty days of rendition of the order to be reviewed. Fla. R. App. P. 9.130(b). Here, the writ of possession was rendered on August 16, 2018, and the notice of appeal was filed on October 4, 2018. Appellants' failure to file a notice of appeal within thirty days of rendition precludes this Court from exercising jurisdiction over the appeal. See Bryant v. Wells Fargo Bank, N.A., 182 So. 3d 927 (Fla. 3d DCA 2016). As well, Florida Rule of Civil Procedure 1.540 cannot be directed toward non-final orders such as the order granting the writ of possession. See Hollifield v. Renew & Co., 18 So. 3d 616, 617 (Fla. 1st DCA 2009) ("Rule 1.540 authorizes a trial court to grant relief 'from a final judgment, decree, order, or proceeding'—not from a non-

final order . . . ."). Motions for reconsideration apply to "nonfinal, interlocutory orders, and are based on a trial court's 'inherent authority to reconsider and, if deemed appropriate, alter or retract any of its nonfinal rulings prior to entry of the final judgment or order terminating an action . . . .'" Seigler v. Bell, 148 So. 3d 473, 478-79 (Fla. 5th DCA 2014) (quoting Silvestrone v. Edell, 721 So. 2d 1173, 1175 (Fla. 1998) (citations omitted, emphasis added)); see also Bettez v. City of Miami, 510 So. 2d 1242, 1243 (Fla. 3d DCA 1987) ("It is well settled in this state that a trial court has inherent authority to reconsider . . . any of its interlocutory rulings prior to entry of a final judgment or final order in the cause.") (emphasis added); see also Bryant, 182 So. 3d at 930 ("Moreover, even if the motion to vacate had been the proper procedural vehicle below, we are without jurisdiction to review the trial court's denial of that motion because it does not fall within the range of appealable, non-final orders provided by Rule 9.130(a)(3).").

An issue raised by the appellants for the first time on appeal is the federal Protecting Tenants at Foreclosure Act of 2009.[2] The appellants did not raise this issue below and cannot raise it for the first time on appeal. Gables Ins. Recovery, Inc. v. Citizens Prop. Ins. Corp., 261 So. 3d 613, 620 (Fla. 3d DCA 2018) (holding, in order to raise an issue on appeal, it must be presented to the trial court, and the specific legal argument or ground to be argued on appeal must be part of that

[2] Pub. L. No. 111-22, § 702, 123 Stat. 1632, 1660–61 (2009).

presentation). Finally, the arguments in support of the motions to stay are, essentially, unauthorized and untimely challenges to the final judgment of foreclosure, rendered in 2014. The remaining arguments on appeal are without merit. We therefore dismiss the appeal.

Dismissed.