Third District Court of Appeal

State of Florida

Opinion filed August 21, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-0399
Lower Tribunal No. 17-10986

Maria C. Aparicio, et al.,
Appellants,

vs.

Deutsche Bank National Trust Company, etc.,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Beatrice Butchko, Judge.

Anthony Rumore, P.A., and C. Anthony Rumore (Fort Lauderdale), for appellants.

Weitz & Schwartz, P.A., and Sarah T. Weitz (Fort Lauderdale), for appellee.

Before EMAS, C.J., and MILLER, and LOBREE, JJ.

MILLER, J.

Appellants, Maria C. Aparicio and Guillermo Aparicio ("the borrowers"), challenge an order denying their motion to set aside a judicial foreclosure sale. In furtherance of relief, the borrowers contended the final summary judgment precipitating the sale was improvidently entered. For the reasons articulated below, we affirm the discretion exercised by the trial court.

After convening a duly noticed summary judgment hearing, the lower tribunal entered a final judgment of foreclosure in favor of Deutsche Bank National Trust ("the bank"), in its formal capacity as the steward of certain mortgage-backed securities trusts. The borrowers timely sought rehearing, alleging evidentiary infirmities in the court's grant of summary judgment. The court denied relief and the borrowers failed to appeal.

The bank was the successful bidder at an ensuing properly noticed and scheduled foreclosure sale. Thereafter, the borrowers filed a timely objection to the sale, again asserting purported flaws inherent in the court's decision granting final summary judgment. See § 45.031, Fla. Stat. (2019). The lower tribunal denied relief and the instant appeal ensued.

"It may be stated generally that there is a measure of discretion in a court of equity, both as to the manner and the conditions of such a sale, as well as to ordering or refusing a resale." C. G. Ballentyne & Honolulu Rapid Transit & Land Co. v. Smith, 205 U.S. 285, 290, 27 S. Ct. 527, 529, 51 L. Ed. 803 (1907). Accordingly,

"judgments pertaining to set asides of judicial foreclosure sales are now, as they always have been, subject to review by way of an abuse of discretion standard." Arsali v. Chase Home Fin. LLC, 121 So. 3d 511, 519 (Fla. 2013) (citations omitted); see also Smith, 205 U.S. 285, 27 S. Ct. 527. But cf. Wells Fargo Bank, N.A. v. Lupica, 36 So. 3d 875, 876 (Fla. 5th DCA 2010) (applying a "gross" abuse of discretion standard in reviewing an order denying a motion to vacate a foreclosure sale).

"[T]he trial courts' use of their equity powers in resolving disputes pertaining to judicial foreclosure sale set aside actions is essential." Arsali, 121 So. 3d at 518. In the exercise of these powers, "[t]he chancellor . . . after a sale has once been made . . . will, certainly before confirmation, see that no wrong has been accomplished in and by the manner in which it was conducted.'" Smith, 205 U.S. at 290-91, 27 S. Ct. at 529. Nonetheless, any decision must be closely informed by a demonstration of entitlement to equitable relief premised upon "one or more adequate equitable factors." Arsali, 121 So. 3d at 518 (citation omitted). "Those factors include 'gross inadequacy of consideration, surprise, accident, or mistake . . . , and irregularity in the conduct of the sale.'" Lawrence v. Nationstar Mortg., LLC, 197 So. 3d 150, 151 (Fla. 4th DCA 2016) (alteration in original) (quoting Moran-Alleen Co. v. Brown, 98 Fla. 203, 203, 123 So. 561, 561 (1929)).

Here, in pursuing relief from the sale, the borrowers failed to allege "one or more adequate equitable factors and make a proper showing to the trial court that they exist[ed]," in the proceedings below. Arsali, 121 So. 3d at 518. Instead, they embarked on an impermissible mission designed to once again elucidate the infirmities in the underlying judgment.[1] See Flagstar Bank, F.S.B. v. Cleveland, 87 So. 3d 63, 65 (Fla. 4th DCA 2012) ("This court has long held, however, that '[a] trial court is without jurisdiction to entertain a second motion for relief from judgment which attempts to relitigate matters settled by a prior order denying relief.'") (alteration in original) (quoting Steeprow Enters., Inc. v. Lennar Homes, Inc., 590 So. 2d 21, 23 (Fla. 4th DCA 1991)); De Ardila v. Chase Manhattan Mortg. Corp., 826 So. 2d 419, 421 (Fla. 3d DCA 2002) ("[W]e cannot escape the conclusion that what occurred was a rehearing of a rehearing, and ultimately an untimely appeal."); see also St. Cloud Utils. v. Moore, 410 So. 2d 973, 974 n.3 (Fla. 5th DCA 1982) ("The trial court loses jurisdiction, except to enforce the judgment and except as provided by Florida Rule of Civil Procedure 1.540, when the time for filing a

[1] As the borrowers failed to appeal the final summary judgment and the "entry of a subsequent final order does not confer jurisdiction on this court to review an earlier final order," this court is divested of jurisdiction to consider the propriety of the underlying judgment. Mack v. Repole, 239 So. 3d 91, 92 (Fla. 4th DCA 2018) ("When a party has failed to take a timely appeal from an order that is final for purposes of appeal, the appellate court is without jurisdiction to consider the propriety of that earlier final order in an appeal from a subsequent order, even in the same case.") (citation omitted).

motion for rehearing or new trial has expired, or if such motion has been timely filed, when it is ruled upon.") (citation omitted).

Accordingly, although we adhere to the adage that "the trial courts in this state possess sufficient powers to ensure that 'equity will act to prevent the wrong result' in judicial foreclosure sale disputes," on this record, we ascertain no abuse of discretion by the lower tribunal in denying relief. Arsali, 121 So. 3d at 519 (quoting Arlt v. Buchanan, 190 So. 2d 575, 577 (Fla. 1966)). Accordingly, we affirm.

Affirmed.