

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Brent St. John,
Appellant

v.

Carnoustie Circle Owners Association, Inc., Prestwick
Community Services Association, Inc., Secretary of Housing
and Urban Development, West Central Conservancy District,
Appellees

and

Christian Z. Smith,
Appellee / Intervenor



April 29, 2024

Court of Appeals Case No.
23A-CC-2335

Appeal from the Hendricks Circuit Court
The Honorable Daniel F. Zielinski, Judge

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] Brent St. John, as successor trustee of the Wade Family Trust (hereinafter, “the Trust”), appeals the denial of a motion to correct error, which challenged the distribution of a portion of proceeds from a sheriff’s sale of a condominium (“the Property”) to the purchaser, Christian Z. Smith, who received a deed to the Property subject to a mortgage held by the Secretary of Housing and Urban Development (“HUD”). St. John presents the issue of whether the trial court erroneously disbursed proceeds in contravention of Indiana Code Section 32-30-10-14, which pertains to mortgage foreclosures. But here the foreclosure was of a judgment lien granted to a condominium association for unpaid assessments, which is to be treated as a mechanics’ lien pursuant to Indiana Code Section 32-25-6-3. Because the Trust has not identified reversible error, we affirm.

Facts and Procedural History

[2] On June 13, 2022, Carnoustie Circle Owners' Association, Inc. ("the Association") filed its "Complaint to Foreclose Lien and for Reformation of Legal Description." (App. Vol. II, pg. 26.) The Complaint named as defendants: the Trust, as the record owner of a condominium located in Hendricks County; HUD, the record holder of first and second mortgages;¹ Prestwick Community Services Association, Inc. ("Prestwick"), as a lien holder; West Central Conservancy District ("West Central"), a provider of sewer services; and Unknown Occupants. The Complaint alleged that the Trust had failed to pay condominium association assessments.

[3] Only defendant Prestwick answered the Complaint, and the Association sought an in rem judgment² by default as to the remaining parties, with Prestwick agreeing to the proposed terms.³ Although HUD did not file an Answer, the Association admitted that HUD held a valid lien by virtue of its first mortgage.⁴ However, the Association's Complaint requested that the trial court "declare" that the Association's lien "is a valid and subsisting lien on the premises

¹ The Complaint referenced HUD mortgages recorded on April 2, 2001, in the Hendricks County Recorder's Office as Instruments 200100008307 and 200100008308. The loans were obtained by Malcolm E. Wade and Beatrice Wade, both now deceased, from Wells Fargo Bank. Those loans were later assigned to HUD. The Trust acquired title to the Property by a quit claim deed.

² An in rem proceeding is an "against the property" proceeding. *U.S. Bank Tr. Nat'l Ass'n as Tr. of Am. Homeowner Pres. Tr. Series 2015 A+ v. Dugger*, 193 N.E.3d 1015, 1020 (Ind. Ct. App. 2022). It is not equivalent to an in personam (i.e., personal) judgment against a debtor having the "liability for any deficiency on the debt." *Id.* An in personam judgment may be enforced against the debtor's personal assets. *Id.*

³ On July 25, 2022, Unknown Occupants were dismissed as a defendant.

⁴ The parties appear to agree that Malcolm and Beatrice Wade had obtained a reverse mortgage, the exact amount of which was unknown or undisclosed by the Association at the time that it filed its Complaint.

superior to the rights, title and interest of said Defendants who have not appeared.” (*Id.* at 30.)

[4] On January 20, 2023, the trial court issued an in rem judgment in favor of the Association in the amount of \$11,858.34 and granted the Association all other relief sought. The Association’s lien was foreclosed subject to the lien and indebtedness of HUD, as recorded in Instrument 200100008307. The judgment did not state that the mortgage was in default or mention a balance due. Although the order declared that the Association’s lien was “subject to” the mortgage, (*Id.* at 33), the order did not specifically provide for priority payment to HUD in the event of a sale. The anticipated payout of proceeds was summarized as follows:

That the proceeds of such sale shall be distributed first to the costs of the Sheriff’s Sale and any real estate taxes due and owing relating to the property, second to Plaintiff to satisfy the sums due and owing pursuant to this judgment, third to Prestwick Community Services Association, Inc., to satisfy its assessment lien against The Successor Trustees of the Wade Family Revocable Trust dated May 14, 1993, in an amount to be determined by the Court, and if any proceeds remain, to the Clerk of this Court for the benefit of the parties and subject to further order of this Court.

(*Id.* at 36.)

[5] On January 25, the Association filed a praecipe for an order for a sheriff’s sale of the Property. On April 20, the Sheriff of Hendricks County sold the Property to Smith for \$115,000.00. The Sheriff’s Deed of the same date conveyed the

Property to Smith “subject to the Mortgage of [HUD] ... filed ... as Instrument No. 200100008307.” (*Id.* at 39.)

[6] On April 26, the trial court granted the Association’s motion for the release of a portion of the sale proceeds, i.e., \$14,213.74. From the gross sale proceeds, \$100,786.26 was tendered to the Hendricks County Clerk. On May 8, funds were released to Prestwick. On May 23, St. John, on behalf of the Trust, filed a petition for release of the remaining funds pursuant to Indiana Code Section 32-30-10-14,⁵ in an estimated amount of \$98,836.26. On June 7, HUD filed a notice to advise the trial court that it held a mortgage on the Property with a balance of \$238,417.76. HUD also represented that it “t[ook] no position regarding Brent St. John’s Verified Petition for Release of Excess Proceeds.” (*Id.* at 44.) West Central filed an objection, and its \$199.00 claim was later resolved by stipulation. On June 16, Smith filed an emergency motion to intervene and motion to vacate any pending order on distribution of funds to St. John personally or to the Trust. On the same day, Smith was granted leave to intervene.

[7] On August 8, the trial court heard oral arguments from the attorneys for HUD, the Trust, and Smith. All parties agreed that HUD held a valid mortgage on the Property. The Trust asserted the “position that this is a sheriff’s sale, and pursuant to the Indiana law, any excess proceeds would go back to the property

⁵ This statute governs the distribution of excess funds after a sheriff’s sale as a result of a mortgage foreclosure.

or in this case to the Wade Family Trust.” (Tr. Vol. II, pg. 6.) Counsel acknowledged that the mortgage “is still there and still valid on the property itself” but that “[Smith] has no rights to collect on it.” (*Id.*) Smith argued that the Trust, having not paid its obligations, was positioned to receive a windfall, and requested that any available funds be distributed to him for the purpose of paying down the HUD mortgage. HUD “t[ook] no position on the competing motions,” but asserted that a “mortgagee can’t come back later and try to get the proceeds of the sheriff’s sale.” (*Id.* at 4.) Moreover, counsel clarified that HUD was not intending to waive its rights as a creditor.

[8] On September 6, the trial court issued an order, reciting in part that “HUD’s First Mortgage remains on the property, undisturbed” and that “HUD’s interests remain unaffected by this Order.” (Appealed Order at 1.) The Clerk of Hendricks County was ordered to disburse \$199.00 to West Central and to disburse the remaining funds to Smith. The Trust filed a motion to correct error, which was summarily denied. This appeal ensued.

Discussion and Decision

[9] “We generally review a trial court’s ruling on a motion to correct error for an abuse of discretion.” *Santelli v. Rahmatullah*, 993 N.E.2d 167, 173 (Ind. 2013). An abuse of discretion occurs if a ruling is clearly against the logic and effect of the facts and circumstances or if the trial court misinterpreted or misapplied the law. *Wright v. Mount Auburn Daycare/Preschool*, 831 N.E.2d 158, 162 (Ind. Ct. App. 2005), *trans. denied*.

[10] The Trust contends that the trial court failed to distribute proceeds from the sheriff's sale in accordance with Indiana Code Section 32-30-10-14. Smith argues in response that the trial court "logically, reasonably, and correctly interpreted and applied Indiana Code Section 32-30-10-14 to the facts and circumstances in this matter." Appellee's Brief at 10. Notwithstanding the singular focus by the parties on this mortgage foreclosure statute, we observe that this statute governs the disposition of proceeds from a sheriff's sale in a mortgage foreclosure matter. Here, the Complaint before the trial court was brought by the Association to assert its statutory remedy of foreclosure upon a lien for unpaid condominium assessments. The Complaint stated that the right to recovery was grounded in Indiana Code Section 32-25-6-3, pertaining to condominium assessments. Moreover, during discovery, the parties established by judicial admission that the case involved not a mortgage foreclosure but rather the foreclosure of a judgment lien.

[11] By the time the matter progressed to final distribution of proceeds, the trial court was faced with unique circumstances. The Trust had not paid its obligations. The indebtedness incurred by the Wades exceeded the value of the condominium mortgaged to secure the debt. Because the obligation exceeded the value of the asset, there was little incentive for the heirs to pay off the mortgage. HUD, possibly because the only service originally provided to it was

by publication,⁶ had been defaulted along with other defendants. No party moved to set aside the default judgment, which was internally inconsistent in its stated allocation of priority of liens. The Property was sold at a sheriff's sale and, again, no party collaterally attacked the sheriff's sale. When HUD later appeared in the proceedings, it simply advised the trial court that, having failed to vigorously assert its priority position, it had no entitlement to claim a share of the funds under consideration.⁷ Other creditors had been paid from the

⁶ The Chronological Case Summary does not reflect a return of sheriff's service upon the summons issued to HUD. With sheriff's service obtained upon only some of the defendants, the Association published notice of the action.

Indiana Trial Rule 4.10(a) provides for service upon a governmental organization or officer, as agent for the person being served. The person seeking service is to, among other things, "state the address of the person being served as filed and recorded pursuant to a statute or valid agreement, or if no such address is known, then his last known mailing address." *Id.* Service by publication is governed by Indiana Trial Rule 4.13 and requires, among other things, "supporting affidavits that diligent search has been made that the defendant cannot be found, has concealed his whereabouts, or has left the state[.]" We question the notion that a valid address could not have been obtained for HUD.

[1] ⁷ HUD based its argument upon its reading of *Edler v. Regions Bank, et al.*, 60 N.E.3d 288 (Ind. Ct. App. 2016). There, Regions Bank was the holder of both first and second mortgages attached to real estate but it chose to foreclose only on the second mortgage. *Id.* at 289. After the sheriff's sale, at which the real estate was sold subject to the first mortgage, Regions attempted to collect surplus funds to satisfy both mortgages. *Id.* at 290. This Court observed:

Regions obviously had notice of the foreclosure action on the second mortgage but chose to make no effort to foreclose on the first mortgage or otherwise have its rights adjudicated with respect to the first mortgage. Having chosen this course of action, Regions could not essentially reverse course by seeking the surplus sales proceeds, in clear contravention of the foreclosure statutes and relevant case law. In essence, Regions attempted to foreclose on the first mortgage without following the procedures for such a foreclosure.

Id. at 292-93. "It is long-settled Indiana law that, '[l]ienholders whose rights have not been adjudged or foreclosed in the foreclosure action have no right to share in the proceeds of the sale.'" *Id.* at 292 (citing 20 IND. LAW ENCYC. Mortgages § 175) (citing *McKernan v. Neff*, 43 Ind. 503 (1873)). *Edler* is not controlling here, given that the instant case involves not a mortgage foreclosure but a lien foreclosure with specific statutory rights accorded the holder of a first mortgage pursuant to Indiana Code Section 32-25-6-3(a)(2).

sheriff's sale proceeds, notwithstanding HUD's superior position assigned by statute.⁸

[12] Smith asked the trial court that he receive funds to tender to HUD, although he was not an assignee of HUD. Moreover, Smith was not a signatory on any promissory note that was secured by the property he had purchased. Rather, he had simply purchased at auction an extremely leveraged asset secured by the HUD mortgage. Yet absent any reference to a specific statute, the trial court allocated the majority of the remaining proceeds to Smith.

[13] Had the distribution been made on a strictly statutory basis, the allocation would have been proportional among the claimants, as more fully explained below. A foreclosure upon a lien for an unpaid condominium assessment is governed by the law of mechanics' liens. In its Complaint, the Association averred that it held a lien against the Property for unpaid assessments, pursuant to Indiana Code Section 32-25-6-3, which provides in pertinent part:

(a) All sums assessed by the association of co-owners but unpaid for the share of the common expenses chargeable to any condominium unit constitute a lien on the unit effective at the

⁸ Also, had HUD answered the Complaint and requested foreclosure of its mortgage lien, its position would have been considered superior under the common law. When a mechanic's lien is junior to a mortgage lien that is also being foreclosed upon, the junior lienholder is entitled to proceeds from the sale of the property only after the superior lien has been satisfied. *Wells Fargo Bank v. Rieth-Riley Const.*, 38 N.E.3d 666, 675 (Ind. Ct. App. 2015).

time of assessment. The lien has priority over all other liens except:

(1) tax liens on the condominium unit in favor of any:

(A) assessing unit; or

(B) special district; and

(2) all sums unpaid on a first mortgage of record.

[14] Pursuant to subsection (d), a suit to recover a money judgment is “maintainable without foreclosing.” Thus, “[t]he statute contemplates both a legal and an equitable remedy for a co-owners association to recover delinquent amounts due from a unit owner.” *Harbours Condominium Ass’n, Inc. v. Hudson*, 852 N.E.2d 985, 989 (Ind. Ct. App. 2006). Here, the Association elected to pursue the statutory remedy of foreclosure and named HUD as a party. A lien for unpaid assessments may be foreclosed by a lawsuit “under laws of Indiana governing mechanics’ and materialmen’s liens.” Ind. Code § 32-25-6-3.

[15] Indiana Code Section 32-28-3-7 provides for a sale to satisfy a recorded mechanics’ lien. Pursuant to subsection (b):

The sale shall not prejudice the rights of:

(1) a prior encumbrance; or

(2) an owner or other person who is not a party to the action.

See also Ward v. Yarnelle, 173 Ind. 535, 91 N.E. 7, 14 (1910), overruled in part on other grounds by *Moore-Mansfield Constr. Co. v. Indianapolis, N.C. & T. Ry. Co.*, 179 Ind. 356, 101 N.E. 296 (1913) (recognizing that the mechanics' lien statute is meant to "intervene in favor of the mechanic or laborer, and secure to him a return for what he has done in enhancement of the value of the land, and still not injure prior lienholders.") Where a sale produces insufficient proceeds to pay all the claimants, "the court shall order the claimants to be paid in proportion to the amount due each claimant." I. C. § 32-28-3-8.

[16] But HUD elected not to pursue its rights as a claimant under the mechanics' lien statutory scheme, notwithstanding the superiority of its mortgage by virtue of Indiana Code Section 32-25-6-3(a)(2) (providing that a condominium assessment lien is junior to "all sums unpaid on a first mortgage of record.") *See also* Indiana Code section 32-21-4-1(c), (governing the priority of encumbrances on land, and providing that "[a] conveyance or mortgage takes priority according to the time of its recording.") As to the priority between a mortgage and a mechanics' lien, Indiana Courts have long held that "a mortgage lien was superior to a mechanic's lien if the mortgage was recorded before the mechanic's work was begun or materials furnished." *Provident Bank v. Tri-County Southside Asphalt, Inc.*, 804 N.E.2d 161, 163 (Ind. Ct. App. 2004), *clarified on reh'g*, 806 N.E.2d 802 (Ind. Ct. App. 2004) (citing *Zehner v. Johnston*, 22 Ind. App. 452, 53 N.E. 1080, 1082 (1899)). Here, the HUD mortgage was recorded on April 2, 2001, well in advance of the unpaid assessments giving rise to the judgment lien. Thus, by virtue of its earlier recording date, together with

the statutory authority specific to condominium assessment liens, HUD's mortgage had priority over the Association's lien, which was to be treated in foreclosure proceedings as if it were a mechanics' lien. But HUD "took no position" as a potential claimant regarding the distribution of the funds available generally or pursuant to the mechanics' lien statute. (Tr. Vol. II, pg. 4.)

[17] A trial court enjoys "full discretion to fashion equitable remedies which are complete and fair to all parties involved." *Lake Cnty. Auditor v. Bank Calumet*, 785 N.E.2d 279, 281 (Ind. Ct. App. 2003). That said, "where substantial justice can be accomplished by following the law, and the parties' actions are clearly governed by rules of law, equity follows the law." *Id.* Here, although the trial court did not specify that its decision was grounded in a particular statute, the trial court allocated funds to the sole party having the incentive to clear title to the Property. Smith, now owner of the Property, had obtained an extremely leveraged asset encumbered by the mortgage with HUD. With liens secured, the mechanic's lien foreclosure sale proceeded while HUD sat on its rights. All claimants under the lien statute that made a claim for the payment of a debt owed to them were paid from the proceeds tendered by Smith at the mechanic's lien Sheriff's sale. Certainly, HUD is not foreclosed from pursuing its rights against the real estate as the holder of a first mortgage but, to date, it has not done so. Still, because Smith was not in privity with HUD, HUD has no recourse against Smith to collect the balance of the funds from the mechanic's lien Sheriff's sale. Smith is equitably entitled to the funds distributed to him.

Conclusion

[18] The Trust argued that the trial court erred by distributing proceeds in contravention of Indiana Code Section 32-30-10-14, but the Trust has not shown that statute to be applicable here. The trial court distributed funds in an equitable manner not inconsistent with the facts and circumstances before it. Accordingly, we find no abuse of discretion in the trial court's denial of the motion to correct error.

[19] Affirmed.

Crone, J., and Pyle, J., concur.

ATTORNEY FOR APPELLANT

Brian M. Fitzwater
Fitzwater Law Office
Rochester, Indiana

ATTORNEYS FOR APPELLEE CHRISTIAN Z. SMITH

Kyla L. Thomas
Jeffrey J. Jinks
Jeff Jinks Law
Indianapolis, Indiana