IN THE COURT OF APPEALS OF IOWA

No. 2-784 / 12-0439
Filed November 15, 2012

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR THE BENEFIT OF CITIGROUP MORTGAGE LOAN TRUST INC. ASSET-BACKED PASS-THROUGH CERTICIATES SERIES 2005-H3,
Plaintiff-Appellee,

vs.

BRUCE A. VAHLE, MELISSA M. VAHLE *a/k/a* MELISSA RICHARDS, ZEPHYR CREDIT UNION, JANET L. VAHLE, and PARTIES IN POSESSION,
Defendants,

THREE R BUILDERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Michael J. Schilling, Judge.

Three R Builders, L.L.C. appeals a district court's denial of its motion to intervene and motion to quash and discharge judgment. **AFFIRMED.**

William R. Jahn Jr. of Aspelmeier, Fisch, Power, Engberg & Helling, P.L.C., Burlington, for appellant Three R Builders, L.L.C.

C. Morgan Lasley of Dunakey & Klatt, P.C., Waterloo, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

TABOR, J.

A construction company that acquired real estate from homeowners in default on their mortgage moved to intervene in a foreclosure action after the judgment creditor filed a recision of the foreclosure. The district court denied intervention because the action had been dismissed. The company appeals, arguing the creditor's attempt to dismiss the foreclosure without prejudice under Iowa Code section 654.17 (2011) was ineffectual because the recision was barred by section 615.1—a special two-year statute of limitations governing the execution of foreclosure judgments.

As a general rule, where a case is concluded, intervention is not permissible. *See Mata v. Clarion Farmers Elevator Co-op*, 380 N.W.2d 425, 427 (Iowa 1986). The district court correctly found no exception applied to allow intervention in this previously dismissed foreclosure action. Accordingly, we affirm.

I. Background Facts and Proceedings

On May 5, 2005, Bruce Vahle executed and delivered an adjustable rate promissory note for $114,000 to WMC Mortgage Corporation to purchase a single-family residence located at 927 North Street, Mediapolis, Iowa. To secure the note's payment, Bruce and his wife, Melissa Vahle, executed and delivered a purchase money mortgage to Mortgage Electronic Registration Systems, Inc., as nominee for WMC Mortgage Corporation. The couple signed the instrument on May 5, and it was recorded the following day. U.S. Bank became the successor in interest of the two instruments.

On or before December 3, 2007, the Vahles defaulted on their mortgage obligations. U.S. Bank filed a foreclosure petition against the couple and any junior interests in the real estate. The court granted the decree on September 5, 2008. U.S. Bank asserted in its supplemental brief to the district court that it "filed a Praecipe September 12, 2008, directing the clerk to issue special execution on the property, which Praecipe was returned unexecuted." That praecipe does not appear in the trial court papers available for this appeal. The only document in the court file dated September 12, 2008, was an itemized breakdown of attorney fees that indicated that preparation of the praecipe and directions to the sheriff were "pending" tasks. U.S. Bank also asserted in its district court briefing that "as part of a settlement agreement with a national group of attorneys general, the servicer agreed to place all foreclosure files on hold and to review them for eligibility in a nationwide home retention program, and thus execution was not reinitiated."

On September 14, 2009, the Vahles filed for Chapter 7 bankruptcy, which the bankruptcy court discharged on December 30, 2009.

On June 30, 2011, U.S. Bank filed a notice of recision and dismissal without prejudice pursuant to Iowa Code section 654.17. U.S. Bank asked the district court to issue an order affirming the voluntary dismissal as being without prejudice and asked for relief from Iowa Rule of Civil Procedure 1.943. The district court granted U.S. Bank's motion the same day. U.S. Bank also filed a motion to return the original documents, which the court granted.

On July 13, 2011, the Vahles executed a quit claim deed for the subject real estate in favor of Three R Builders, LLC.[1] Consideration for the deed was $400. The deed transferred the Vahles' right, title, and interest in the real estate, assigning Three R "any affirmative defense they may have against their prior mortgagee or that mortgagee's assigns pertaining to Des Moines County Case No. EQEQ008068." After acquiring the deed, Three R maintained the property, mowing the lawn and locking the doors. The company also negotiated with the city to settle its outstanding liens against the property. Those liens for mowing and a large water bill due to a broken pipe amounted to more than $9000. Three R reached an agreement with the city to release the liens for $4500, which was to be done after the intervention proceeding.

On July 25, 2011, Three R filed a motion to intervene and motion to quash and discharge judgment. U.S. Bank resisted and moved to strike the motion to intervene. On November 22, 2011, U.S. Bank filed a new foreclosure action in Des Moines County, naming Three R as a party defendant. On November 29, the district court denied Three R's motion to intervene in the dismissed foreclosure action and granted U.S. Bank's motion to strike. Three R also filed a motion to enlarge or amend, which the district court denied. Three R now appeals.

II. Scope and Standard of Review

Our review in equity proceedings is generally de novo. Iowa R. App. P. 6.907. But when a district court denies a motion to intervene, our review is for

[1] Douglas Roelfs testified that Three R Builders was a construction company that he operated with his two sons.

correction of legal error, though we accord some discretion to the court. *In re H.N.B.*, 619 N.W.2d 340, 342–43 (Iowa 2000) (noting this discretion relates to determining whether an intervenor is “interested” in the litigation before the district court). Because Three R’s interest in the foreclosure proceeding is not the focus of this appeal, our review is for correction of legal error.

III. Analysis

Three R argues the district court improperly denied its petition to intervene without first considering whether the foreclosure action had been properly dismissed. The company contends the district court should have granted intervention because U.S. Bank did not timely file its notice of recision, so its voluntary dismissal did not end the foreclosure action.

The right of non-parties to intervene in a lawsuit is set out in Iowa Rule of Civil Procedure 1.407(1):

> Upon timely application, anyone shall be permitted to intervene in an action under any of the following circumstances:
> . . .
> (b) When the applicant claims an interest relating to the property or transaction which is the subject of the action . . . .

The district court recognized our state’s long-standing rule that a non-party is unable to intervene in a case between other parties after the case has been dismissed. *See Keehn v. Keehn*, 88 N.W.2 957, 958 (Iowa 1902). Based on that precept, the district court found Three R could not meet the requisites of rule 1.407(1) because there was “no ‘action’ in which to intervene.”

Three R attacks the district court’s ruling at its foundation: the dismissal of the foreclosure action. The company contends the June 30, 2011, dismissal

should be "deemed ineffectual and meaningless" because U.S. Bank's purported recision was time-barred. Three R's argument is based on language in section 654.17(1). That statute, enacted as part of judicial foreclosure reforms in 2006, provides as follows:

> At any time prior to the recording of the sheriff's deed, *and before the mortgagee's rights become unenforceable by operation of the statute of limitations*, the judgment creditor . . . may rescind the foreclosure action by filing a notice of recision with the clerk of court in the county in which the property is located . . . .

Iowa Code § 654.17(1) (emphasis added).

Three R contends that section 615.1 sets out the statute of limitations referenced in section 654.17(1). Section 615.1 provides as follows:

> 1. After the expiration of a period of two years from the date of entry of judgment, exclusive of any time during which execution on the judgment was stayed pending a bankruptcy action or order of court, a judgment entered in any of the following actions shall be null and void, all liens shall be extinguished, and no execution shall be issued except as a setoff or counterclaim:
>
> > a. (1) For a real estate mortgage, deed of trust, or real estate contract executed prior to July 1, 2009, an action for the foreclosure of the real estate mortgage, deed of trust, or real estate contract upon property which at the time the foreclosure is commenced is either used for an agricultural purpose as defined in section 535.13 or as a one-family or two-family dwelling which is the residence of the mortgagor.

The district court filed the foreclosure decree on September 5, 2008. U.S. Bank had two years—until September 5, 2010—to execute that judgment. The limitations period was tolled during the pendency of the Vahles' bankruptcy case—from September 14, 2009, until December 30, 2009—which was 107 days. *See id.* at § 615.1(1). Accordingly, the deadline for executing on the

foreclosure decree was December 21, 2010.[2] U.S. Bank filed its June 30, 2011 notice of recision after the two-year period had expired. On this basis, Three R argues the district court's June 30, 2011 order confirming the foreclosure dismissal without prejudice was ineffectual and that the court's November 29, 2011 order denying intervention failed to first analyze whether a proper dismissal or recision had occurred.

In its appellate response, U.S. Bank embraces the district court's reasoning and conclusion that Three R could not intervene in the suit that was no longer being litigated. The bank does not address Three R's statute of limitations argument on appeal,[3] and instead argues Three R's petition to intervene was untimely because it was filed three years after the foreclosure decree and nearly a month after the district court dismissed the action.

The district court did not squarely decide Three R's claim that the dismissal on June 30, 2011 was ineffectual and should not be viewed as ending the foreclosure action. Three R urges that "on appeal [our court should] analyze whether a proper dismissal occurred before deciding the intervention issue." In support of its appellate exhortation to look beneath the surface of the dismissal, Three R relies on *Mata*. In that case, our supreme court held a worker's compensation insurer could intervene to assert its right of indemnity in a worker's tort claim action against a third party even though the worker had dismissed his suit before the petition for intervention was filed. *See Mata*, 380 N.W.2d at 429. The *Mata* court reasoned that the worker's attempted dismissal was of no effect

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[2] Three R calculates the deadline as December 20, 2010.
[3] At trial, U.S. Bank denied the recision and dismissal orders were improperly entered.

because specific provisions of the workers' compensation statute enshrined the insurer's right to intervene. *Id.* Three R contends *Mata* stands for the proposition that a court must determine whether a proper dismissal occurred before ruling on a motion to intervene.

The district court distinguished *Mata* based on the insurer's statutory right to intervene, as well as its financial interest in the litigation. *See id.* (citing section 85.22(3) as the statute rendering the dismissal with prejudice as ineffective). By contrast, the court noted Three R "had no financial interest before the foreclosure action was dismissed" and "no statutory right to notice or to intervene before dismissal occurred." The district court declined to extend *Mata* beyond its facts, concluding, "[t]o rule otherwise would breathe life into a non-existent case."

In deciding how to frame our analysis, we first consider Three R's suggestion that *Mata* requires any court faced with a motion to intervene in a dismissed lawsuit to collaterally test the validity of the dismissal before denying the intervention. We do not read *Mata* so broadly. In *Mata*, the supreme court faced two competing rules: (1) an insurer that has paid workers' compensation has a statutory right to intervene in an employee's action for damages against a third party and (2) a party may not intervene in an action between other parties that had been dismissed before intervention was interposed. *Mata*, 380 N.W.2d at 427. The court held the second rule did not apply because Mata's actions contravened the first rule, rendering the dismissal of no effect. *Id.* The insurer's right to intervene existed at the time of the wrongful dismissal.

In the instant case, Three R claims the dismissal was ineffectual for reasons that are independent of and predate its interest in intervening. If the statute of limitations in section 615.1 barred U.S. Bank from filing the notice of recision under section 654.17(1), any right to contest dismissal of the foreclosure action belonged to the Vahles because on June 30, 2011, they still held the deed to the property subject to foreclosure. Three R did not have an interest in the foreclosure action before it was dismissed.

Moreover, we are not persuaded by Three R's interpretation of section 654.17(1). That provision permits a judgment creditor to rescind a foreclosure action by filing a notice of recision at any time prior to the recording of the sheriff's deed *and before the mortgagee's rights become unenforceable by operation of the statute of limitations*. Iowa Code § 654.17(1) (emphasis added). Three R construes the italicized clause as prohibiting U.S. Bank from filing a recision after expiration of the two-year period for executing a foreclosure judgment set out in section 615.1. But section 615.1 addresses the time for execution of a foreclosure judgment, not the time for a mortgagee to enforce its rights under the mortgage. Two other statutes restrict the timing in which a foreclosure action may be brought: (1) section 614.1(5) requires actions on written contracts to be brought within ten years after the cause of action accrues and (2) section 614.21 bars foreclosure on mortgages over twenty years old, with certain exceptions. *See* 17 David M. Erickson & Christopher Talcott, Iowa Practice Series, Real Estate Law § 3:9 (discussing judicial foreclosures). Section 654.17(1) could more easily be interpreted as referring to those two statutes of

limitations rather than section 615.1. If the drafters had intended to cross reference section 615.1 in section 654.17(1) they would have done so expressly, as they did in section 654.17(2).

Subsection two states, in pertinent part:

> Upon the filing of the notice of recision, the mortgage loan shall be enforceable according to the original terms of the mortgage loan and the rights of all persons with an interest in the property may be enforced as if the foreclosure had not been filed. Except as otherwise provided in this section, the filing of a recision shall operate as a setting aside of the decree of foreclosure and a dismissal of the foreclosure without prejudice, with costs assessed against the plaintiff. *However*, *any findings of fact or law shall be preclusive for purposes of any future action unless the court*, *upon hearing*, *rules otherwise and the mortgagee shall be permanently barred from a deficiency judgment if the judgment rescinded was subject to the provisions of section 615*.*1*.

Iowa Code § 654.17(2) (emphasis added.). This provision clarifies that "the slate is not wiped entirely clean" if the lender's recision is subject to the provisions of section 615.1. *See* 17 David M. Erickson & Christopher Talcott, Iowa Practice Series, Real Estate Law § 3:16. While the lender faces certain consequences for rescinding after the two-year period has expired, section 654.17(2) does not contemplate a complete bar to the recision. Accordingly, we reject the contention that U.S. Bank's voluntary dismissal was of no effect.

In a related claim, Three R argues the judgment and mortgage were void on December 20, 2010, and that the district court lacked jurisdiction to enter the June 30, 2011 order. We find this argument unpersuasive. First, as counsel for U.S. Bank pointed out in the district court, section 615.1 limits the lender's execution on the property after a two-year period from the foreclosure judgment, it does not limit enforcement of the mortgagee's rights, except as noted in section

654.17(2). U.S. Bank acknowledged that after two years it could no longer go to a sheriff's sale for the Vahles' property, but rebutted Three R's suggestion that section 615.1 "kills the underlying mortgage." Counsel for U.S. Bank continued:

> [W]hat [Three R] would have you believe is that [they] get a free house, and that's simply not the case. The mortgage, because of the recision, is still active. They may have a valid lien and some interest in the property, but that needs to be dealt with in some sort of other proceeding besides this one, because this one is concluded.

We agree with U.S. Bank's position. The language in the quit claim deed conveying the Vahles' rights in the property and assigning "any affirmative defense they may have against their prior mortgagee . . . pertaining to Des Moines County Cause No. EQEQ008068" did not retroactively provide Three R an interest in the foreclosure at the time of the recision and dismissal. Even if U.S. Bank's recision and dismissal were subject to challenge under section 615.1, the ability to raise that challenge rested with the Vahles as mortgagors.

Three R contends that it has a right to intervene in post-judgment proceedings, citing to *Dyer v. Harris*, 22 Iowa 268, 269–70 (1867) (holding purchaser of real estate at sheriff's sale had right to intervene in foreclosure suit), and *Iowa-Des Moines National Bank & Trust Co. v. Alta Casa Investment Co.*, 269 N.W. 798, 799 (Iowa 1936) (allowing assignee of purchaser at sheriff's sale to intervene in proceeding addressing period of redemption). As the district court determined, these cases are distinguishable because the foreclosure actions were still pending when the purchasers moved to intervene.

Iowa cases consistently declare: "It is the general rule intervention will not be allowed after final judgment or decree has been entered." *Morse v. Morse*, 77

N.W.2d 622, 628 (Iowa 1956); *see also First Trust Joint Stock Land Bank of Chicago v. Cuthbert*, 246 N.W. 810, 815 (Iowa 1933) ("[I]t is plain that, while a person may become a party to an action by intervening, he can intervene only during the pendency of the action. He cannot come into the case by intervention after judgment or final order."); *Jenkins Lumber Co. v. Cramer Bros.*, 160 N.W. 42, 48 (Iowa 1916) (holding because "the controversy between the plaintiff and defendant was over, intervention was not permissible"); *Keehn*, 88 N.W. at 958; *First Nat'l Bank of Leon v. Grill & Co.*, 50 Iowa 425, 428 (1879) (holding petition to intervene was improper after parties to action already reached settlement).

Mata reaffirmed this long-standing principle, while carving out a narrow exception where the dismissal violated an insurer's statutory right to intervene. 380 N.W.2d at 427. We agree with the district court that Three R does not fall within the *Mata* exception to the general rule of intervention. Three R cannot satisfy rule 1.407's requirements that an application for intervention be "timely" filed in an existing "action."

Finally, Three R asks us to find the district court erred in denying its motion to quash and discharge the judgment. Because we conclude the district court properly denied Three R's motion to intervene, the company is not a party to the foreclosure action and is not entitled to the relief it seeks.

AFFIRMED.