STATE OF MICHIGAN

COURT OF APPEALS

AMERICAN HOME MORTGAGE SERVICING,

Plaintiff/Counter-Defendant-Appellee,

v

STEPHEN PANKO,

Defendant/Counter-Defendant,

and

LUMBERMANS FINANCIAL, LLC,

Defendant/Counter-Plaintiff/Cross-Plaintiff-Appellee,

and

RALPH HOLLEY and MELONEE MONSON-HOLLEY, a/k/a MELONEE MONSON, a/k/a MELONEE HOLLEY,

Defendants/Counter-Plaintiffs/Cross-Defendants-Appellants.

UNPUBLISHED
March 9, 2010

No. 289585
Oakland Circuit Court
LC No. 2008-088841-CH

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Defendants Ralph and Melonee Holley ("the Holleys") appeal as of right the trial court's order granting plaintiff American Home Mortgage Servicing's motion for summary disposition. We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

American Home Mortgage Servicing (American Home) took a mortgage in the amount of $650,000 on the subject property from Stephen Panko. The mortgage went into default and was foreclosed. American Home was the winning bidder at the sheriff's sale with a credit bid of

$69,113.13. American Home recorded the deed along with its Affidavit Declaring Redemption Designee, which stated: "Redemption must include $69,113.13, plus interest at the rate of 6.63% from October 2, 2007; at a per diem amount of $12.55." Panko and/or the Holleys twice requested redemption information from American Home; both times it responded with letters identifying the total redemption amount at just over $70,000. The Holleys obtained a quitclaim deed from Panko, granting them the right to redeem the property. Having obtained a $100,000 mortgage from defendant Lumbermans Financial, LLC, they then tendered a check for the redemption amount to American Home. Thereafter, American Home discovered that it had made a mistake in the amount of its bid on the sheriff's sale, and consequently, this mistaken amount was repeated in American Home's Affidavit Declaring Redemption Designee and in the redemption letters of November 16, 2007 and December 18, 2007. Accordingly, American Home attempted to convince the Holleys to voluntarily set aside the sale; when they declined, American Home filed this suit in equity to set aside the October 2, 2007, sheriff's deed.

The trial court found that the Holleys acted wrongfully by knowing of the bid mistake and taking advantage of it, and that such inequitable conduct justified setting aside the sale. Although recognizing that a grossly inadequate price by itself would be insufficient to set aside the sale, the court cited *Carlisle v Dunlap*, 203 Mich 602; 169 NW 936 (1918), and found "the sale should be set aside based on a grossly inadequate sale price and a mistake." The court noted: that the Holleys originally owned the home, but defaulted on their nearly $500,000 mortgage with Bank of America, which was foreclosed in September 2005; that the Holleys entered into an agreement with Panko whereby Panko redeemed the house and the Holleys obtained a land contract from him while they attempted to get new bank financing; that the Holleys' failure to make payments in accordance with this land contract was the cause of Panko's default; and that the house appraised at over $700,000. The court explained:

> Were this Court to look at the sale price in a vacuum, it is possible to state that plaintiff made a unilateral clerical error which, on it's [sic] own, may not invalidate an otherwise fair and regular statutory foreclosure. However, that is not the case in this instance.
>
> Looking at the facts as a whole, the Holleys knew the value of their home was in excess of, at a minimum, $550,000 dollars [sic], which was their final offering price to plaintiff on the short sale.
>
> * * *
>
> Although the Holleys claim that [American Home] had plenty of opportunities to find the price error, as evidence by the two redemption letters, it is clear that they seized upon the error and used it to their advantage.

The Holleys appeal the trial court's order, asserting that their redemption of the property was in accordance with the statutory requirements, and therefore, that there was no basis for the trial court to set aside the sheriff's sale. We agree.

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Statutory interpretation is a question of law that is also considered de novo on appeal.

Detroit v Ambassador Bridge Co, 481 Mich 29, 35; 748 NW2d 221 (2008). Generally, "[w]hen reviewing a grant of equitable relief, an appellate court will set aside a trial court's factual findings only if they are clearly erroneous, but whether equitable relief is proper under those facts is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008). The particular question whether to set aside a foreclosure sale is one resting "largely in the discretion of the trial court" and this Court should "not interfere unless it satisfactorily appears such discretion has been misused." *Nugent v Nugent*, 54 Mich 557, 559-560; 20 NW 584 (1884). A trial court abuses its discretion when its decision results in an outcome falling outside the range of principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006); *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006); *People v Carnicom*, 272 Mich App 614, 616-617; 727 NW2d 399 (2006). A trial court also abuses its discretion when it makes an error of law, such as by exceeding its authority under an applicable statute. *Kidder v Ptacin*, 284 Mich App 166, 170; 771 NW2d 806 (2009); *People v Giovanni*, 271 Mich App 409, 417; 722 NW2d 237 (2006); see also *In re Macomber*, 176 Mich App 131, 135-136; 439 NW2d 307 (1989), rev'd in part 436 Mich 38; 461 NW2d 671 (1990) (discussing whether probate court judge and referee had statutory authority to remove father from home).

MCL 600.3240, the redemption statute involved here, states in part:

> (1) A purchaser's deed is void if the mortgagor, the mortgagor's heirs, executors, or administrators, or any person lawfully claiming under the mortgagor or the mortgagor's heirs, executors, or administrators redeems the entire premises sold by paying the amount required under subsection (2), within the applicable time limit prescribed in subsections (7) to (12), to the purchaser or the purchaser's executors, administrators, or assigns, or to the register of deeds in whose office the deed is deposited for the benefit of the purchaser.
>
> (2) The amount required to be paid under subsection (1) is the sum that was bid for the entire premises sold, with interest from the date of the sale at the interest rate provided for by the mortgage, together with the amount of the sheriff's fee paid by the purchaser under section 2558(2)(q), and an additional $5.00 as a fee for the care and custody of the redemption money if the payment is made to the register of deeds. The register of deeds shall not determine the amount necessary for redemption. The purchaser shall attach an affidavit with the deed to be recorded under this section that states the exact amount required to redeem the property under this subsection, including any daily per diem amounts, and the date by which the property must be redeemed shall be stated on the certificate of sale. The purchaser may include in the affidavit the name of a designee responsible on behalf of the purchaser to assist the person redeeming the property in computing the exact amount required to redeem the property. The designee may charge a fee as stated in the affidavit and may be authorized by the purchaser to receive redemption funds. The purchaser shall accept the amount computed by the designee.

* * *

> (13) The amount stated in any affidavits recorded under this section shall be the amount necessary to satisfy the requirements for redemption under this section.

In *Townsend v Chase Manhattan Mortgage Corp*, 254 Mich App 133, 139-140; 657 NW2d 741 (2002), where the lender took a mortgage from only the mother even though the mother and her son owned the property jointly with full survivorship rights, this Court stated:

> The only equity that defendant [mortgagee] seeks to have done here is to save defendant from the mistake of the original mortgagee in not insisting that plaintiff pledge his interest in the property to secure the loan, a mistake that defendant could easily have discovered by comparing the names on the deed with the names on the mortgage before it purchased the mortgage. *We think it insufficient to invoke equity to save the mortgagee from its own mistake, particularly where the mortgagee is a sophisticated commercial lender*. [Emphasis added.]

Similarly, in *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45; 503 NW2d 639 (1993), our Supreme Court declined to grant the lender equitable relief where the lender redeemed the property from foreclosure on construction liens before the redemption period for foreclosure on the mortgage had run. The homeowner timely redeemed for the amount bid at the foreclosure sale, leaving the lender unpaid for the construction lien payoff. The Court explained:

> We agree with the decision of the Court of Appeals that plaintiff has complied with the statutory requirements and therefore has properly redeemed the property from defendant's foreclosure sale. Foreclosure sales by advertisement are defined and regulated by statute. Once the mortgagee elects to foreclose a mortgage by this method, the statute governs the prerequisites of the sale, notice of foreclosure and publication, mechanisms of the sale, and redemption. Upon a foreclosure sale, the mortgage debt is considered paid and the mortgage lien discharged. If the mortgagee purchases the property at the sale, it stands in the position of an ordinary purchaser and obtains an ownership interest in the land, subject to the mortgagor's opportunity of redemption. In order to redeem the property from the mortgage foreclosure sale by advertisement under the plain meaning of [MCL 600.3240], plaintiff must pay the bid price plus interest, and any amount for taxes and insurance that the purchaser has properly filed with the register of deeds. [*Senters*, 443 Mich at 50 (case citations omitted).]

Thus, the Court concluded that

> Upon foreclosure by advertisement in the present case, the rights of the parties were controlled by statute. Before the redemption period expired, plaintiff tendered to defendant the amount required under MCL 600.3240 . . . to redeem

> from a foreclosure sale by advertisement. The plaintiff therefore has legal title to the property free of defendant's mortgage lien. [*Id* at 52-53.]

The Court declined to impose an equitable lien on the property in favor of the lender in the amount paid to redeem the property from the construction lien foreclosure sale, explaining that it was powerless to do so:

> When confronted with equities conflicting with clear statutory language, the [*G S Sanborn Co v Alston*, 153 Mich 456, 461; 116 NW 1099 (1908)] Court stated, [] "Courts of equity, however, as well as law, must apply legislative enactments in accordance with the plain intent and language used by the legislature." Where, as in the present case, a statute is applicable to the circumstances and dictates the requirements for relief by one party, equity will not interfere.
>
> Finally, in the present case defendant chose to foreclose by advertisement, which is strictly regulated by the statute. Had defendant chosen to proceed pursuant to a foreclosure suit in equity, it might have raised its equitable defenses. In *Masella v Bisson*, 359 Mich 512, 525; 102 NW2d 468 (1960), this Court acknowledged that one who seeks the statutory remedy in preference to resort to the equitable proceeding is bound to comply with the statute. [*Id*. at 55-56.]

The instant case is directly on point with those cited above. The trial court overstepped its bounds when it invoked equity, in contravention of the plain language of the statute, to impose its own sense of what was fair despite that the Holleys had clearly met the statutory requirements for timely redemption. MCL 600.3240(13) unambiguously mandates that "[t]he amount stated in any affidavits recorded under this section shall be the amount necessary to satisfy the requirements for redemption under this section." Here, American Home's own, recorded affidavit stated that the redemption amount was $69,113.13. There is no argument that this is not the amount it actually bid; instead, it claims it bid the wrong amount.

The cases cited by the Holleys correctly state the law. Unilateral mistakes by one party are insufficient to avoid a sheriff's sale. Moreover, the cases cited by American Home and the trial court do not provide support for using equity to sideline the provisions of the statute. In *Carlisle*, the Court declined to set aside a bargain-basement redemption, noting that there was "no evidence of fraud, mistake, unfairness or irregularity." The Court quoted Justice Campbell's words in *Cameron v Adams*, 31 Mich 426, 428 (1875):

> "Where a valid legislative act has determined the conditions on which rights shall vest or be forfeited, and there has been no fraud in conducting the legal measures, no court can interpose conditions or qualifications in violation of the statute. The parties have a right to stand upon the terms of the law." [*Carlisle*, 203 Mich at 608.]

The trial court erred by finding that this case involved more than an inadequate price, sufficient to permit it to set aside the sheriff's sale. Rather, the low price *was* the mistake; this

was not a combination of two factors as the court implied. To the extent there was a mistake, it was clearly unilateral on the part of American Home. This is an insufficient ground for a court to invoke its equitable powers. "Equity does not relieve from a unilateral mistake of fact. The mistake must be mutual and common to both parties, and the proof thereof must be clear and satisfactory." *McCreary v Shields*, 333 Mich 290, 300; 52 NW2d 853 (1952) (Boyles, J., dissenting, citing *Emery v Clark*, 303 Mich 461, 471-472; 6 NW2d 746 (1942); *Holda v Glick*, 312 Mich 394, 404; 20 NW2d 248 (1945).

Plainly, the Holleys complied with the statutory requirements to redeem the property. American Home offers no authority suggesting that equity may disturb an otherwise valid sheriff's sale based solely on the lender's unilateral mistake, and controlling precedent establishes otherwise. Likewise, American Home offers no authority suggesting that the Holleys had any duty to advise American Home of its mistake, or to refrain from acting to redeem the property in conformity with the statute in the face of that mistake. Therefore, despite the harsh results, we have no choice but to conclude that the trial court abused its discretion by setting aside the sheriff's sale and negating the Holleys redemption of the property.

In accordance with its decision to set aside the sheriff's sale and its attempt to return all parties to their pre-sale positions, the trial court ordered American Home to pay Lumbermans $100,000, to reimburse Lumbermans for its loan to the Holleys, used to redeem the property. Because we reverse the trial court's judgment setting aside the sheriff's sale, Lumbermans retains its interest in the mortgage between it and the Holleys and, correspondingly, its valid, first lien on the property. Consequently, that portion of the trial court's order directing American Home to pay Lumbermans $100,000 is vacated.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. The Holleys, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood