STATE OF MICHIGAN

COURT OF APPEALS

PAULA MARIE HOPKINS,

Plaintiff-Appellant,

v

FEDERAL HOME LOAN MORTGAGE CORPORATION,

Defendant-Appellee.

UNPUBLISHED
March 14, 2013

No. 309047
Oakland Circuit Court
LC No. 2011-117395-CZ

Before: MURRAY, P.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

In this action to invalidate a statutory foreclosure sale, plaintiff Paula Hopkins appeals as of right the trial court's order granting summary disposition to defendant Federal Home Loan Mortgage Corporation (Freddie Mac) under MCR 2.116(C)(8) and (10). We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2006, Hopkins executed a promissory note to Pathway Financial, LLC (Pathway) and a mortgage to Mortgage Electronic Registration Systems (Mortgage Systems), as nominee of Pathway, on her property in Bingham Farms. On September 22, 2009, Washington Mutual Mortgage (Washington Mutual), as "the creditor or to which your mortgage debt is owed or the servicing agent for the creditor[,]" advised Hopkins that she had defaulted on the loan.

In October 2009, Mortgage Systems assigned its interests in the mortgage to JP Morgan Chase Bank, NA (Chase). Chase recorded its interest in the mortgage on October 19, 2009. Chase published notices of the foreclosure and Hopkins received foreclosure notices from Freddie Mac. On September 7, 2010, Freddie Mac purchased the property at a sheriff's sale.

Hopkins filed a complaint on March 4, 2011, alleging in pertinent part that Chase did not have authority to commence foreclosure proceedings under Michigan law. Freddie Mac moved the trial court for summary disposition under MCR 2.116(C)(8) and (10). The trial court granted Freddie Mac's motion, basing its decision on the documentary evidence that established that Mortgage Systems assigned the mortgage to Chase, Chase recorded the mortgage, and then Chase commenced foreclosure proceedings. Hopkins moved the trial court to reconsider its

ruling, arguing that Chase did not record its mortgage before the sheriff's sale, but the trial court denied Hopkins's motion on the same grounds.

II. FORECLOSURE UNDER MCL 600.3204

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

This Court reviews de novo the trial court's determination on a motion for summary disposition.[1] When a party moved the trial court for summary disposition under MCR 2.116(C)(8) and (10) and the trial court considered documents outside of the pleadings when deciding the motion, we review the trial court's decision under MCR 2.116(C)(10).[2]

A party is entitled to summary disposition under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law."[3] The trial court must consider all the documentary evidence in the light most favorable to the nonmoving party.[4] A genuine issue of material fact exists if, when viewing the record in the light most favorable to the nonmoving party, reasonable minds could differ on the issue.[5]

As an initial matter, we note that Hopkins argues that the signature on the mortgage assignment was a "robo-signature" for the first time in her reply brief on appeal. A party must raise an issue before the trial court to preserve it for our review.[6] Further, a reply brief must be limited to "rebuttal of the arguments in the appellee's or cross-appellee's brief," and an appellant that raises an issue for the first time in her reply brief has not properly presented it.[7] Also, Hopkins attempts to support her argument with documents that are not a part of the lower court record. This Court's review is generally limited to the record of the trial court, which includes the documents and exhibits filed in the trial court.[8] The parties may not expand the record on appeal.[9] For these reasons, we decline to consider this additional issue.

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[1] *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

[2] *Hughes v Region VII Area Agency on Aging*, 277 Mich App 268, 273; 744 NW2d 10 (2007).

[3] MCR 2.116(C)(10); see *Maiden*, 461 Mich at 120.

[4] *Id*.

[5] *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

[6] *Polkton Charter Twp v Pelegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

[7] MCR 7.212(G); see *Blazer Foods, Inc v Restaurant Props, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003).

[8] MCR 7.210(A)(1); *In re Rudell Estate*, 286 Mich App 391, 405; 780 NW2d 884 (2009).

[9] *Id*.

B. CHASE WAS AN OWNER OF THE INDEBTEDNESS

Hopkins contends that Chase was not "the owner of the indebtedness" under MCL 600.3204(1)(d), and therefore could not foreclose her mortgage. We disagree.

Subject to exceptions which do not apply in this case, a party may foreclose on a mortgage by advertisement if the party is the owner of the indebtedness secured by the mortgage, and can establish a record chain of title:

> (1) . . . [A] party may foreclose a mortgage by advertisement if . . .
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> * * *
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> (d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.
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> * * *
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> (3) If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale under [MCL 600.3216] evidencing the assignment of the mortgage to the party foreclosing the mortgage.

The Michigan Supreme Court has clarified that a mortgagee can be an owner in the indebtedness—even though it does not have an ownership interest in the promissory note—because the mortgagee owns the "legal title to a security lien whose existence is wholly contingent on the satisfaction of the indebtedness[.]"[10] A mortgagee has an interest in the indebtedness because the mortgagee has a lien on the land which secures the mortgagor's debt.[11]

Here, the uncontroverted documentary evidence established that Mortgage Systems was the mortgagee; as the mortgagee, Mortgage Systems had a lien on Hopkins's land to secure its debt; therefore, it was an owner of an interest in Hopkins's indebtedness. The uncontroverted evidence also established that Mortgage Systems assigned its interest in the mortgage to Chase. Thus, Chase became the owner of an interest in Hopkins's indebtedness. We conclude that the trial court did not err when it determined that there was no question of fact whether Chase was the owner of an interest in the indebtedness under MCL 600.3204.

Hopkins contends that the trial court erred when it determined that Chase recorded its interest in the mortgage before the sheriff's sale on the basis that Mortgage Systems did not own any interests that it could assign to Chase. Because we have determined that Mortgage Systems did own an interest in Hopkins's indebtedness, we conclude that her argument fails.

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[10] *Residential Funding Co, LLC v Saurman*, 490 Mich 909, 909; 805 NW2d 183 (2011).

[11] *Id*. at 909-910.

Further, the uncontroverted documentary evidence shows Mortgage Systems assigned the mortgage to Chase on October 5, 2009; Chase recorded its interest in the mortgage on October 19, 2009; and the sheriff's sale took place on September 7, 2010. Thus, Chase was part of the record chain of title before the date of sheriff's sale.

We affirm.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ William C. Whitbeck