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NO. COA14-526  
NORTH CAROLINA COURT OF APPEALS

Filed: 18 November 2014

SCBT d/b/a FIRST FEDERAL, a  
DIVISION OF SCBT,

Plaintiff,

v.

Pender County  
No. 12 CVD 1033

RONELL R. RIMES,

Defendant.

Appeal by defendant from judgment entered 4 November 2013  
by Judge James H. Faison, III, in Pender County District Court.  
Heard in the Court of Appeals 8 October 2014.

*Smith Debnam Narron Drake Saintsing & Myers, L.L.P., by  
Jonathan D. Rhyne, for plaintiff-appellee.*

*Ray C. Blackburn, Jr., for defendant-appellant.*

STEELMAN, Judge.

Summary judgment was properly granted to plaintiff where  
defendant failed to produce competent evidence of the value of  
the property at the time of foreclosure pursuant to N.C. Gen.  
Stat. § 45-21.36.

I. Factual and Procedural Background

On 9 May 2005 Ronell Rimes (defendant) executed a promissory note evidencing a loan of \$108,000 from First Federal Bank (defendant), and secured by a deed of trust on three lots owned by defendant. Defendant defaulted on the loan and plaintiff instituted foreclosure proceedings. Plaintiff obtained an appraisal of the property's value by a licensed appraiser, who valued the property at \$76,000. On 21 June 2012 the property was sold at a foreclosure sale. Plaintiff was the only bidder, and purchased the property for \$68,400, about nine percent less than the appraised value.

On 31 October 2012 plaintiff filed suit against defendant to recover the amount still owing on the loan after crediting the proceeds of the foreclosure sale. Plaintiff alleged that "the Defendant owes a deficiency balance of \$38,820.75," and also sought "reasonable attorney's fees in the amount of \$5,823.11, and costs[.]" On 2 April 2013 defendant filed an amended answer alleging that the property "was sold at a price that was woefully inadequate and well below the market value and that any deficiency resulting from the sale came as a result of Plaintiff's sale of the property in an unreasonable manner." On 30 September 2013 plaintiff filed a motion for summary judgment. On 4 November 2013 the trial court entered an order granting summary judgment in favor of plaintiff.

Defendant appeals.

II. Standard of Review

"Under N.C. Gen. Stat. § 1A-1, Rule 56(a), summary judgment is properly entered 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.' 'In a motion for summary judgment, the evidence presented to the trial court must be admissible at trial, N.C.G.S. § 1A-1, Rule 56(e) [(2013)], and must be viewed in a light most favorable to the non-moving party.' *Patmore v. Town of Chapel Hill N.C.*, \_\_ N.C. App. \_\_, \_\_, 757 S.E.2d 302, 304 (quoting *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 467, 597 S.E.2d 674, 692 (2004) (internal citation omitted)), *disc. review denied*, \_\_ N.C. \_\_, 758 S.E.2d 874 (2014). In addition, "[i]f the granting of summary judgment can be sustained on any grounds, it should be affirmed on appeal. If the correct result has been reached, the judgment will not be disturbed even though the trial court may not have assigned the correct reason for the judgment entered.'" *Rankin v. Food Lion*, 210 N.C. App. 213, 215, 706 S.E.2d 310, 313 (2011) (quoting *Haugh v. Cnty. of Durham*, 208 N.C. App. 304, 311, 702 S.E.2d 814, 819 (2010) (internal citation omitted)).

III. Findings of Fact

In her first two arguments, defendant contends that the trial court erred by making oral findings of fact during the hearing "but not reducing those findings to writing in the written order." Defendant notes that the trial court made several statements concerning the weight and competence of the parties' evidence on the value of the property at the time of the foreclosure sale, and asserts that by making these observations the trial court "effectively tried this case in a summary judgment proceeding." Defendant further contends that N.C. Gen. Stat. § 1A-1, Rule 52 required the trial court to make findings of fact in its order. We disagree.

Defendant cites no authority for her contention that the trial court's remarks during the hearing converted the summary judgment proceeding into a bench trial. Nor does she identify any evidence in the record suggesting that the parties agreed to try the case before the court and, as defendant concedes, the court entered an order granting summary judgment. Notwithstanding the trial court's comments to the parties, the proceeding at issue was a hearing on plaintiff's summary judgment motion rather than a bench trial.

It is long established that "[i]f findings of fact are necessary to resolve an issue as to a material fact, summary

judgment is improper. There is no necessity for findings of fact where facts are not at issue, and summary judgment presupposes that there are no triable issues of material fact. *Insurance Agency v. Leasing Corp.*, 26 N.C. App. 138, 142, 215 S.E.2d 162, 165 (1975). Therefore, "the enumeration of findings of fact and conclusions of law is technically unnecessary and generally inadvisable in summary judgment cases[.]" *Ellis v. Williams*, 319 N.C. 413, 415, 355 S.E.2d 479, 481 (1987) (citing *Wall v. Wall*, 24 N.C. App. 725, 212 S.E. 2d 238 (1975)). The trial court did not err by failing to make findings of fact in its summary judgment order.

#### IV. Existence of a Material Issue of Fact

In her third argument, defendant contends that the trial court erred by entering summary judgment in favor of plaintiff because the evidence before the trial court raised a genuine issue of material fact regarding the value of the subject property at the time of the foreclosure sale. We are not persuaded.

N.C. Gen. Stat. § 45-21.36 provides in relevant part that:

When any sale of real estate has been made by a mortgagee . . . at which the mortgagee . . . becomes the purchaser and takes title . . . and thereafter such mortgagee . . . shall sue for and undertake to recover a deficiency judgment against the mortgagor . . . it shall be competent and lawful for the defendant against whom such deficiency

judgment is sought to allege and show as matter of defense and offset . . . that the property sold was fairly worth the amount of the debt secured by it at the time and place of sale or that the amount bid was substantially less than its true value[.]

In her answer, defendant asserted the "affirmative defense . . . [of] a claim to a right of offset pursuant to N.C. Gen. Stat. § 45-21.36." *Wells Fargo Bank v. Arlington Hills*, \_\_ N.C. App. \_\_, \_\_, 742 S.E.2d 201, 202-03 (2013). An offset under N.C. Gen. Stat. § 45-21.36 "is an affirmative defense and, therefore, the defendant bears the burden of proof." *Lyon v. Shelter Resources Corp.*, 40 N.C. App. 557, 560, 253 S.E.2d 277, 280 (1979) (citing N.C. Gen. Stat. § 1A-1, Rule 8(c), and *Price v. Conley*, 21 N.C. App. 326, 328, 204 S.E.2d 178, 180 (1974)). On appeal, defendant argues that the trial court erred in entering summary judgment because both parties presented competent evidence of the value of the property. We disagree.

In the instant case, plaintiff submitted the appraisal reports of certified appraisers who valued the property at \$76,000. Plaintiff was the only bidder at the sale and purchased the property for \$68,400. The only evidence proffered by defendant in regards to the value of the property was the affidavit of Randy Cox, a real estate broker, in which he averred in relevant part that:

. . .

11. That I have been asked to review whether the price that First Federal received for the sale of Ronell Rimes property was reasonable in comparison to the actual value of the property.

12. That I have analyzed sales of comparable property in the area of the Rimes lots and I note as follows:

a. Comparably zone[d] properties across the street have tax values of \$100,000.00 per acre.

b. Two sales of comparable properties just off Highway 17 have sol[d] for an average of \$60,000.00 per acre.

c. A 9 acre parcel within two miles of the Rimes parcels sold for \$89,500.00 per acre.

d. The Rimes tract has the advantage of being a corner parcel which increases its value.

e. Based upon comparable area sales, the value of the Rimes parcels may be determined in two ways: (1) the first two parcels are commercial and make up in excess of one acre - the value of the first two lots would be between \$70,000.00 and \$80,000.00 an acre. The remaining residential lot would be value[d] at \$35,000.00 to \$40,000.00 per lot or (2) rezone the residential lot as commercial with the valuation of the combined lots being \$84,000.00 to \$96,000.00.

13. In either event, the Rimes property is worth considerably more than the price First Federal sold it for.

Mr. Cox's affidavit is deficient in several aspects:

1. The affidavit asserts that unspecified other properties sold for a certain amount or had a particular tax value, but fails to identify these properties, or state why they are comparable to the subject property.

2. The affidavit avers that the value might be determined in two ways, and that if one of the proposed calculation methods were used the value "would be between \$70,000 and \$80,000 an acre." However, the affidavit fails to state a specific value for the property.

3. The affidavit fails to state that Mr. Cox was assessing the value of the property at the time of the foreclosure sale.

4. Mr. Cox avers that he is comparing the property's value to the amount defendant received for the property, and concludes that the property "is worth considerably more than the price First Federal sold it for." However, the legal issue is whether it was worth substantially more than the amount plaintiff purchased it for, not the amount for which they subsequently sold it.

In sum, the affidavit offered by defendant (1) fails to state that the affiant was valuing the property at the time of the foreclosure sale, (2) fails to affirmatively state the value of the property, and (3) fails to aver that the property was sold to plaintiff for substantially less than its true value. We hold that defendant did not offer competent evidence of the value of the property at the time of the foreclosure sale, and reject defendant's arguments to the contrary.

#### V. Conclusion

For the reasons discussed above, we conclude that the trial court did not err by entering summary judgment for plaintiff and that its order should be

AFFIRMED.

Judges CALABRIA and McCULLOUGH concur.

Report per Rule 30(e).