

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-927

Filed: 17 May 2016

Union County, No. 14 SP 158

IN THE MATTER OF THE FORECLOSURE by Rogers Townsend & Thomas, PC, Substitute Trustee, of a Deed of Trust Executed by Helen J. Reeb, dated June 18, 2008 and recorded on June 24, 2008 in Book No. 04922 at Page 0108 of the Union County Public Registry.

Appeal by Helen J. Reeb from order entered 9 March 2015 by Judge C.W. Bragg in Union County Superior Court. Heard in the Court of Appeals 27 January 2016.

Clark, Griffin & McCollum, by Joe P. McCollum, Jr., for appellant.

Matthew T. McKee, for appellee.

DIETZ, Judge.

Helen Reeb appeals from a foreclosure proceeding involving her home. Reeb challenges a number of findings and decisions by the clerk of superior court during the foreclosure process. But while her appeal of those decisions was pending in the trial court, the foreclosure sale took place. Reeb did not post a bond or seek an injunction to stop the sale. As a result, the trial court dismissed her appeal as moot. Reeb then appealed to this Court.

As explained below, we likewise dismiss the appeal. A long line of precedent in this Court holds that “when the trustee’s deed has been recorded after a foreclosure sale, and the sale was not stayed, the parties’ rights to the real property become fixed,

IN RE REEB FORECLOSURE

Opinion of the Court

and any attempt to disturb the foreclosure sale is moot.” *In re Cornblum*, 220 N.C. App. 100, 106, 727 S.E.2d 338, 342 (2012). Thus, unless a bond is posted or a stay obtained (or the homeowner properly makes an upset bid for the property), the foreclosure sale becomes final and any challenge to the process becomes moot. In light of this authority, we are constrained to dismiss this appeal for lack of jurisdiction.

Facts and Procedural History

On 18 June 2008, Helen J. Reeb granted Bank of America a deed of trust on her home in order to secure her obligation to repay a reverse mortgage.

On 10 February 2014, Nationstar Mortgage LLC d/b/a Champion Mortgage Company, the then-current holder of that note and deed of trust, notified Reeb that it was initiating a foreclosure proceeding on her property because she had defaulted on her mortgage payments. On 17 February 2014, Nationstar notified Reeb of an upcoming foreclosure hearing before the clerk of superior court.

On 27 August 2014, after this hearing, the superior court clerk entered an order finding that Nationstar properly notified Reeb of the foreclosure hearing and that Reeb was in default on a valid debt secured by Nationstar’s deed of trust, which gave Nationstar the right to foreclose under a power of sale provision. The order ultimately authorized a trustee to conduct a foreclosure sale of the property.

IN RE REEB FORECLOSURE

Opinion of the Court

Reeb timely appealed the clerk's order to the superior court on 8 September 2014. However, she did not post an appeal bond or seek a temporary restraining order or permanent injunction to stay the authorized foreclosure sale. During the pendency of Reeb's appeal, the trustee notified Reeb that it would sell the property at public auction on 26 November 2014. On 26 November 2014, the trustee notified Reeb that it had postponed the sale to 28 January 2015.

On 28 January 2015, the trustee sold the property and filed a report of sale. Reeb did not file an upset bid within the ten-day upset bid period and, as noted above, did not post a bond or otherwise seek to stay the sale. The trustee recorded the deed of sale on 11 February 2015.

On 9 March 2015, the superior court dismissed Reeb's appeal as moot. Reeb timely appealed from the superior court's order.

Analysis

On appeal, Reeb raises a number of arguments concerning the foreclosure sale. As explained below, this Court—like the trial court—lacks jurisdiction to review those arguments because they are now moot as a matter of law.

“[W]hen the trustee's deed has been recorded after a foreclosure sale, and the sale was not stayed, the parties' rights to the real property become fixed, and any attempt to disturb the foreclosure sale is moot.” *In re Cornblum*, 220 N.C. App. at 106, 727 S.E.2d at 342. When an issue becomes moot “during the course of the

IN RE REEB FORECLOSURE

Opinion of the Court

proceedings, the usual response is to dismiss the action for lack of subject matter jurisdiction.” *Cumberland Cnty. Hosp. Sys. v. N.C. HHS*, __ N.C. App. __, __, 776 S.E.2d 329, 333 (2015). Thus, if a homeowner wishes to challenge a foreclosure, she must either post a bond to stay the foreclosure sale or obtain an injunction before the foreclosure sale becomes final. *In re Hackley*, 212 N.C. App. 596, 605, 713 S.E.2d 119, 125 (2011).

Here, Reeb concedes that she “did not post a bond after giving notice of appeal from the Clerk’s ruling” and did not seek an injunction to stop the sale. She also concedes that the foreclosure sale took place. As a result, under *In re Cornblum*, the trial court properly concluded that it lacked subject matter jurisdiction to hear Reeb’s arguments because the foreclosure sale rendered those arguments moot. 220 N.C. App. at 106, 727 S.E.2d at 342.

Mootness applies in the appellate courts to the same extent it applies in the trial courts. *See Simeon v. Hardin*, 339 N.C. 358, 370, 451 S.E.2d 858, 866 (1994). As a result, this Court, like the trial court, lacks jurisdiction to review Reeb’s arguments. *Id.*

We recognize Reeb’s frustration with this outcome, which leaves her unable to have her legal arguments heard on the merits. But this outcome is compelled by well-settled, controlling authority from this Court. *See, e.g., In re Hackley*, 212 N.C. App. at 605, 713 S.E.2d at 125; *In re Cornblum*, 220 N.C. App. at 106, 727 S.E.2d at 342.

IN RE REEB FORECLOSURE

Opinion of the Court

Accordingly, the issues raised in this appeal are moot and we lack jurisdiction to consider them.

Conclusion

We dismiss the appeal for lack of jurisdiction.

DISMISSED.

Judges ELMORE and STROUD concur.

Report per Rule 30(e).