

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 24, 2019

Before:

William J. Bauer, *Circuit Judge*
Michael S. Kanne, *Circuit Judge*
Michael B. Brennan, *Circuit Judge*

WELLS FARGO BANK, N.A.,
Plaintiff-Appellee,

No. 18-3662 v.

RONALD MUHAMMAD,
Defendant-Appellant.

] Appeal from the United
] States District Court for
] the Northern District of
] Illinois, Eastern Division.
]
] No. 1:18-cv-06548
]
] Robert W. Gettleman,
] Judge.

ORDER

On January 17, 2019, the court issued an order requiring that both appellant and appellee file, on or before January 31, 2019, a brief memorandum explaining why this court should not dismiss this appeal for lack of jurisdiction. To date, appellant has not responded. Appellee responded, filing a memorandum on March 1, 2019. On consideration of that memorandum and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

This court has consistently reminded litigants that an order remanding a case to state court based on lack of subject matter jurisdiction or a defect in the removal procedure is not reviewable on appeal, whether or not the decision is correct. *See, e.g., The Northern League, Inc. v. Gidney*, 558 F.3d 614 (7th Cir. 2009) (*per curiam*); *Rubel v.*

Pfizer, Inc., 361 F.3d 1016 (7th Cir. 2004); *Phoenix Container, L.P. v. Sokoloff*, 235 F.3d 352, 354-55 (7th Cir. 2000); *In re Continental Casualty Co.*, 29 F.3d 292, 293 (7th Cir. 1994).

In the present case, the district court remanded this case to state court in a minute entry of November 15, 2018, and in a separate minute entry of December 13, 2018, denied appellant's motion to strike and/or disregard and overrule appellee's motion to dismiss. The district court, at the December 13, 2018, hearing, informed defendant that "This is not a federal matter," explaining that "we don't have jurisdiction over a state mortgage foreclosure action." In light of the district court's ruling, this court cannot review the remand order.

NOTICE

The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (1st) 18-0640-U

No. 1-18-0640

Order filed May 9, 2019

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WELLS FARGO BANK, N.A.,

Plaintiff-Appellee,

v.

WILHELMENIA T. MUHAMMAD; RONALD
MUHAMMAD; CITY OF CHICAGO, UNITED
STATES OF AMERICA; GMAC, LLC; LVNV
FUNDING, LLC; UNKNOWN OWNERS; and NON-
RECORD CLAIMANTS,

Defendants,

(Wilhelmenia T. Muhammad, Defendant-Appellant).

) Appeal from the
) Circuit Court of
) Cook County
)
)
)
)

) No. 12 CH 21767
)
)
)
)
)

) Honorable
) Patricia S. Spratt,
) Judge presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Gordon and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm the circuit court's denial of defendants' section 2-1401 petition where their filing was barred by section 15-1509(c) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1509(c) (West 2018)).

¶ 2 More than three years after the circuit court approved the judicial sale of a property previously owned by defendants Ronald Muhammad and Wilhelmenia T. Muhammad, the Muhammads filed a section 2-1401 petition alleging that they had newly discovered evidence that showed plaintiff Wells Fargo Bank, N.A., had perpetuated a fraud during the foreclosure proceedings. The court denied their petition, and Wilhelmenia appealed. On appeal, Wilhelmenia contends that the circuit court abused its discretion by denying the petition where it contained newly discovered evidence of the alleged fraud.¹ For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3

I. BACKGROUND

¶ 4

A. Underlying Proceedings

¶ 5 In May 2006, the Muhammads obtained a loan, which was secured by a mortgage on a property located on the 4300 block of South Vincennes Avenue in Chicago. The mortgage was originally issued by Mortgage Electronic Registration Systems, as nominee for Provident Funding Group. The note showed that it was initially given to Provident Funding Group, but was later specially endorsed to Provident Funding Associates, L.P., which then endorsed the note to Wells Fargo. Subsequently, Wells Fargo endorsed the note in blank, making the note payable to the bearer.

¶ 6 In June 2012, after the Muhammads defaulted on their note, Wells Fargo filed a foreclosure complaint. The Muhammads filed an "Answer to Complaint and Motion to Dismiss," where they asserted that the alleged debt had been "charged off" and referred to an exhibit, but no exhibit was attached to their motion. The Muhammads also alleged that Wells Fargo was

¹ Only Wilhelmenia filed a notice of appeal.

conducting a fraud upon the court. The pleading was signed by both Wilhelmenia and Ronald. In August 2012, Ronald filed a *pro se* appearance.

¶ 7 In September 2012, Wells Fargo filed a motion for a default order and a judgment of foreclosure and sale. Wells Fargo asserted that Wilhelmenia should be found in default because she failed to appear in the matter. Also in September 2012, Wells Fargo filed a motion for summary judgment against Ronald, contending that there was no genuine issue of material fact because Ronald failed to respond to the arguments made in the complaint and failed to support his allegations with supporting documentation. Wells Fargo attached to its motion an affidavit from Tanya Nolley, its vice president of loan documentation, in which she averred that Wells Fargo was the holder of the note and stated the amount owed on the note.

¶ 8 In January 2013, the circuit court entered an order granting Wells Fargo's motion for default against Wilhelmenia, its motion for summary judgment against Ronald, and entered a judgment of foreclosure and sale. The notice of sale, which was served on the Muhammads, indicated that the property would be sold at a May 2, 2013, auction.

¶ 9 In late April 2013, the Muhammads filed an "Emergency Motion to Cancel Sale, Vacate Final Judgment, Dismiss Complaint and Request for Leave to File Counter Complaint." In their motion, the Muhammads argued that Wells Fargo did not have standing to file the complaint because they did not "execute a mortgage to Wells Fargo." The Muhammads contended that Freddie Mac was the current holder of the mortgage and that Wells Fargo had not presented any evidence to show that the mortgage had been transferred to it. The pleading was signed only by Ronald. The Muhammads attached an affidavit to their emergency motion, which they both signed, in which they alleged that their property had been wrongfully foreclosed. The

Muhammads also attached several exhibits to their motion, including a printout from Freddie Mac's website which showed that Freddie Mac was the "owner" of the mortgage on the property.

¶ 10 On May 1, 2013, the circuit court denied the Muhammads' motion. The judicial sale of the property was delayed, and in November 2013, Wells Fargo served the Muhammads with a notice of sale which indicated that the property would be sold on December 5, 2013.

¶ 11 Two weeks after the scheduled sale date, Wells Fargo filed a motion to approve the judicial sale. In the attached report of sale, the Judicial Sales Corporation indicated that Wells Fargo had been the highest bidder, and that upon confirmation of the sale, it would execute and deliver a deed to Wells Fargo. Similarly, in the attached certificate of sale, the Judicial Sales Corporation asserted that Wells Fargo had been the highest bidder.

¶ 12 Shortly thereafter, an attorney filed an appearance on behalf of the Muhammads and filed an "Objection to Motion for Order Approving Sale and Distribution." In their objection, they argued that Wells Fargo did not properly give notice of the judicial sale.

¶ 13 On May 28, 2014, the circuit court granted Wells Fargo's motion for an order approving the judicial sale, finding among other things that Wells Fargo properly gave notice of the sale. The court further ordered the Judicial Sales Corporation to "execute and deliver a deed sufficient to convey title to the holder of the certificate of sale," *i.e.*, Wells Fargo.

¶ 14 Less than a month later, the Muhammads filed a motion to reconsider, arguing, in part and for the first time, that there was an issue of material fact as to whether Wells Fargo had the capacity to bring the foreclosure complaint. In its response, Wells Fargo argued that the Muhammads waived any arguments regarding its standing or capacity to bring the suit because they did not raise either of them as an affirmative defense. Regardless, Wells Fargo asserted that

it made a *prima facie* showing of its standing and capacity by attaching a copy of the note to its complaint, a showing that the Muhammads had failed to rebut.

¶ 15 In October 2014, the circuit court denied the Muhammads' motion to reconsider. They filed their notice of appeal the following month.

¶ 16 In June 2016, in *Wells Fargo Bank, N.A. v. Muhammad*, 2016 IL App (1st) 143771-U, this court rejected the Muhammads' contentions on appeal, including that Wells Fargo did not have the capacity or standing to foreclose. This court accordingly affirmed the circuit court's judgment and order approving the judicial sale of the property. In January 2017, our mandate was issued.

¶ 17 B. Section 2-1401 Petition Proceedings

¶ 18 On February 14, 2018, Ronald filed a "Motion to Vacate Judgment" that cited section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2018)). In the motion, Ronald argued that newly discovered evidence showed a "Fraud Upon the Court" and that it was "patently obvious that there is a meritorious defense involving Standing to Foreclose and Real Party in Interest: The most accurate tool of analysis known to man has shown that the purported Trust SIMPLY DOES NOT EXIST." Additionally, Ronald alleged that "there was simply no way that [he] could have known of such facts until recently, lacking the knowledge and resources to deep dive into America's failed mortgage and banking institutions." To support this claim, Ronald attached a "Property Securitization Analysis Report" prepared by Certified Forensic Loan Auditors, LLC, which in various places indicated that Freddie Mac was the owner of the Muhammads' mortgage. The report stated that, while the "mortgage was never transferred," the note itself "may have been pooled, sold" or "transferred." Additionally, the report stated that Wells Fargo was the "[s]ervicer." Ronald also attached an affidavit from Michael Carrigan, a

certified mortgage securitization auditor, who researched an online database of Bloomberg and determined that Freddie Mac currently owned the mortgage. The petition was signed only by Ronald, and Wells Fargo did not respond to it.

¶ 19 The following month, the circuit court denied the petition. Although the court stated that it lacked jurisdiction because the order approving the judicial sale was entered in May 2014, the court also found that, on the merits, the petition failed to allege any newly discovered evidence. In the court's order, it noted that Wilhelmenia was present in addition to Ronald and counsel for Wells Fargo.

¶ 20 As noted, Wilhelmenia subsequently filed a notice of appeal in her name. Ronald did not.

¶ 21

II. ANALYSIS

¶ 22 On appeal, Wilhelmenia contends that the circuit court erred when it denied her and Ronald's petition because the report attached to it constituted newly discovered evidence.

¶ 23 Section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2018)) allows for petitions for relief from final orders and judgments filed more than 30 days after the entry of the order or judgment. Although a section 2-1401 petition is not a continuation of the underlying proceedings, the petition must be filed in the same proceeding. 735 ILCS 5/2-1401(b) (West 2018). Because the petition starts a new proceeding, the initial petition procedurally is the same as a complaint. *Blazyk v. Daman Express, Inc.*, 406 Ill. App. 3d 203, 207 (2010). And thus, the petition is "subject to all the rules of civil practice that that character implies." *Id.*

¶ 24 In this case, Ronald was the only one of the Muhammads to file the section 2-1401 petition, as he brought the petition under his name and was the only one to sign it. While Wilhelmenia was a party to the underlying proceedings, including the direct appeal, she was not named in the section 2-1401 petition and did not sign her name to it. Yet, Wilhelmenia, who

appeared in court the day the circuit court denied the petition, was the one who filed the notice of appeal to challenge the court's denial. And she is the one who filed the appellant's brief. Meanwhile, Ronald was not named in the notice of appeal, did not sign the notice of appeal and did not sign the appellant's brief. It is therefore questionable whether Wilhelmenia is even a proper party to this appeal given that she was not named in the petition that commenced the section 2-1401 proceedings. But in light of Ronald's *pro se* status in filing the section 2-1401 petition, Wilhelmenia's *pro se* status in filing the appeal and how the Muhammads proceeded throughout the foreclosure proceedings—sometimes having Ronald sign a document, sometimes having Wilhelmenia sign a document and sometimes having both sign a document—we will liberally construe the section 2-1401 petition to include Wilhelmenia and review the merits of her appeal of the circuit court's denial of their section 2-1401 petition.

¶ 25 The main purpose of a section 2-1401 petition is to allege facts which, if known at the time of the circuit court's judgment, would have precluded its entry, though the section allows for some legal challenges. *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 94 (2006). To be entitled to relief under a fact-dependent challenge, the section 2-1401 petition must set forth specific factual allegations supporting: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting the defense or claim to the circuit court in the underlying action; and (3) due diligence in filing the section 2-1401 petition for relief. *Warren County Soil & Water Conservation District v. Walters*, 2015 IL 117783, ¶ 51. The petitioner has the burden of establishing these elements by a preponderance of the evidence. *Id.*

¶ 26 In responding to Wilhelmenia's contention on appeal, Wells Fargo argues that the circuit court properly denied the section 2-1401 petition for several reasons, including that the Muhammads could not bring such a petition in the first place because the court had already

approved the judicial sale of the property. Although a fact-dependent challenge to a final judgment or order is reviewed for an abuse of discretion (*id.*), we review whether Wilhelmenia was barred from bringing the petition *de novo*. *BMO Harris Bank National Ass'n v. LaRosa*, 2017 IL App (1st) 161159, ¶ 15.

¶ 27 Under section 15-1509(b) of the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1509(b) (West 2018)), delivery of the deed is sufficient to pass title in a foreclosure action. And under section 15-1509(c) of the Foreclosure Law (735 ILCS 5/15-1509(c) (West 2018)), the vesting of title by deed of a foreclosed property “shall be an entire bar of *** all claims of parties to the foreclosure.” In *U.S. Bank National Ass'n v. Prabhakaran*, 2013 IL App (1st) 111224, ¶ 30, this court held that, after the circuit court approves a judicial sale and a deed has been delivered to the purchaser of the property, a party cannot use a section 2-1401 petition to seek relief. See also *LaRosa*, 2017 IL App (1st) 161159, ¶ 19 (citing to *Prabhakaran* and section 1509(c) of the Foreclosure Law, and agreeing that generally the vesting of title by deed to the purchaser bars all claims of the parties to the foreclosure).

¶ 28 In this case, we note there is no evidence of record that the Judicial Sales Corporation actually delivered the deed to Wells Fargo following the circuit court approving the judicial sale, but the record strongly suggests that this occurred. First, the report of sale stated “[t]hat upon confirmation of this sale, The Judicial Sales Corporation will execute and deliver to said successful bidder,” which was Wells Fargo, “a Deed to said bidder in accordance with said judgment and law.” Second, in the circuit court’s order approving the judicial sale, the court ordered “the Selling Officer,” which was the Judicial Sales Corporation, to “execute and deliver a deed sufficient to convey title to the holder of the certificate of sale pursuant to the findings of this Court as set forth above” to Wells Fargo. Regardless, the Muhammads, as the petitioners and

the ones with the burden to allege and prove facts that entitle them to relief (see *Cavitt v. Repel*, 2015 IL App (1st) 133382, ¶ 45), have not made any allegation or presented any evidence that the Judicial Sales Corporation failed to deliver a deed to Wells Fargo. These facts therefore render the instant case squarely within the ambit of *Prabhakaran*.

¶ 29 However, the rule of *Prabhakaran* will be inapplicable where the petitioner alleges that the underlying judgment was void for a lack of personal jurisdiction (*LaRosa*, 2017 IL App (1st) 161159, ¶ 19) or subject-matter jurisdiction. *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶ 15. These exceptions are based on the principle that a void judgment may be attacked at any time. See *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 17. But here, the Muhammads did not raise an argument about the lack of personal jurisdiction or subject-matter jurisdiction. Rather, they vaguely asserted that Wells Fargo perpetuated a “Fraud Upon the Court” based on the newly discovered Property Securitization Analysis Report, which allegedly showed Freddie Mac owned their mortgage.

¶ 30 However, there are instances where fraud can render a judgment void. Our supreme court has stated that “fraud which gives the court only colorable jurisdiction” can “render[] a decree void.” *Schwarz v. Schwarz*, 27 Ill. 2d 140, 144-45 (1963); see also *City of Naperville v. Mann*, 378 Ill. App. 3d 657, 661 (2008) (noting that fraud can “render[] a judgment void”). Such fraud, also known as “‘extrinsic fraud,’ ” occurs where a party “ ‘has been prevented from fully exhibiting his case by being kept away from the court or is kept from gaining knowledge of the suit.’ ” *Mann*, 378 Ill. App. 3d at 661 (quoting *In re Adoption of E.L.*, 315 Ill. App. 3d 137, 154 (2000)). Clearly, extrinsic fraud did not occur in this case, as the Muhammads actively participated in the foreclosure proceedings, including at times with the representation of counsel. They absolutely had knowledge of the foreclosure proceedings. Thus, whatever alleged fraud

that Wells Fargo committed according to the Muhammads did not give the circuit court colorable jurisdiction. And because of this, the Muhammads' claim of "Fraud Upon the Court" was not an allegation of a void judgment. Consequently, under *Prabhakaran*, the Muhammads were precluded from bringing a section 2-1401 petition.

¶ 31 Nevertheless, we note that the Muhammads' claim of Freddie Mac being the owner of the mortgage and the implication of such was fully resolved by this court in their direct appeal. See *Muhammad*, 2016 IL App (1st) 143771-U, ¶¶ 28-34. Notably, in the Muhammads' "Emergency Motion to Cancel Sale, Vacate Final Judgment, Dismiss Complaint and Request for Leave to File Counter Complaint," they relied on a printout from an online loan search on Freddie Mac's website, which indicated that Freddie Mac owned their mortgage. In the Muhammads' section 2-1401 petition, specifically the attached "Property Securitization Analysis Report," they relied on a similar printout from an online loan search on Freddie Mac's website, which indicated that Freddie Mac owned their mortgage. The Muhammads' attempt to use a section 2-1401 petition to relitigate what has already been decided in the circuit court and reviewed on direct appeal is improper. See *People v. Burrows*, 172 Ill. 2d 169, 187 (1996) (asserting that the purpose of a section 2-1401 petition "is not to relitigate matters that were or could have been raised on direct appeal"); *In re Marriage of Halas*, 173 Ill. App. 3d 218, 223 (1988) ("Consistent with the strong judicial policy favoring finality of judgments, our courts have held that a section 2-1401 petition is not to be used as a device to relitigate issues already decided or to put in issue matters which have previously been or could have been adjudicated.").

¶ 32

III. CONCLUSION

¶ 33 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.