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Jun 13 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
COURT OF COMMON PLEAS
The Honorable Dale E. Van Slambrook
Master-In-Equity

Appellate Case No. 2023-001863
Civil Action No. 2022-CP-08-02386

VAK M250 FUND, LLC.....RESPONDENT,

RONALD D. PRINGLE AND CLEO R. PRINGLE.....APPELLANTS.

APPELLANTS PETITION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the Appellants, Ronald D. Pringle and Cleo R. Pringle respectfully petition this Court for a rehearing of the decision rendered on May 28, 2024. In support of this petition, the Appellants state the following points of law and fact which they believe the Court has overlooked or misapprehended, and provide a brief argument on these points:

II. ARGUMENT

A. Existence of a Justiciable Controversy

Pursuant to the order dated May 28, 2024, this Court denied the Appellant's appeal as moot. A case is considered moot when the issues presented are no longer live or when the parties involved no longer have a legally recognizable interest in the outcome. This occurs when the matter has been resolved, the relief sought is no longer available, or the circumstances have changed in a way that renders the case irrelevant or academic. In such instances, courts may dismiss the case as moot because there is no longer a justiciable controversy for them to resolve. A justiciable controversy is a real and substantial dispute that is ripe and appropriate for judicial determination, as opposed to a contingent, hypothetical, or abstract dispute. This concept is essential for a court to have the authority to hear and decide a case. The Appellants, Ronald D. Pringle and Cleo R. Pringle, are involved in an actual, ongoing dispute with the Respondent, VAK M250 Fund, regarding the foreclosure of their property. The core of this dispute is whether the

Respondent had the legal standing and right to foreclose on the mortgage and if the lower court applied an incorrect law when deciding the case. To establish standing, the Respondent provided an alleged chain of assignments, promissory note, and allonges in the lower court. During the trial, the Respondent, through its counsel, asserted that they were in possession of the original note and were the holder of the instrument entitled to enforce the mortgage pursuant to South Carolina Commercial Code § 36-3-301(i). The South Carolina Commercial Code, Title 36 of the South Carolina Code of Laws, governs commercial transactions in the state and is designed to simplify, clarify, and modernize the law governing commercial transactions and to make uniform the law among various jurisdictions. The Appellants argue that their foreclosure was residential and does not constitute a commercial transaction; therefore, the lower court erred in applying the commercial code. Furthermore, it is crucial to note that after the Appellants were compelled to pay the foreclosure amount to prevent the loss of their home, the Respondent notified the Appellants by mail that they could not locate the original promissory note. This statement contradicted their earlier claim during the trial that they were in possession of the original note and were the holder in due course. These issues directly affect the validity of the foreclosure proceedings. If it is found that the lower court applied the wrong law, the court can reverse or remand the case for the correct application of the law. This correction can change the outcome and legal rights of the Appellants. Furthermore, if the Respondent lacked standing, the foreclosure proceedings could be nullified, significantly impacting the legal rights and obligations of both parties. This is not a hypothetical situation, the foreclosure proceedings and the subsequent appeal are based on real actions taken by both parties. The Appellants are challenging these concrete events, specifically questioning the legality of the proceedings and the legitimacy of the Respondent's standing and entitlement to foreclose. Given these points, the case is not moot. The controversy remains unresolved and requires judicial intervention to address the significant legal questions raised by the Appellants. This warrants judicial review and reconsideration of the court's prior dismissal of the Appellants' appeal.

B: Inapplicability of Sloan v. Department of Transportation

Pursuant to this Court's order dated May 28, 2024, it appears that the Court relied on *Sloan v. Department of Transportation*, 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008), to determine that the Appellant's appeal was moot. In *Sloan*, the court held that it will not adjudicate moot and academic questions or cases where there is no actual

controversy. The principle is to avoid hypothetical or abstract disputes that do not affect the actual rights of the parties involved. However, the Appellant's case does not fall into this category because it involves an ongoing dispute with real legal implications. The issues raised by the Appellant's regarding Respondent's standing and entitlement to foreclose are not hypothetical but critical to determining the outcome of the foreclosure proceedings. Therefore, the principle from *Sloan* does not apply as the Appellant's case presents a live controversy requiring judicial determination and reconsideration.

C: Inapplicability of Wachesaw Plantation East Community Service Association, Inc.

Pursuant to this Court's order dated May 28, 2024, it appears that the Court relied on the case *Wachesaw Plantation East Community Service Association, Inc.* In that case, a matter is deemed moot if an intervening event renders any grant of effectual relief impossible, meaning a judgment would have no practical or legal effect on the existing controversy. However, in the Appellant's case, no such intervening event has occurred that would render the court unable to provide effectual relief. The issues of the Respondent's standing and entitlement to foreclose remain unresolved and require judicial determination. Specifically, if the Respondent was not entitled to foreclose due to a lack of standing or failure to possess the original promissory note, the foreclosure itself would be invalid, and the foreclosure proceeding would be void. Therefore, relief is not impossible in this instance. Additionally, if it is determined that the lower court applied the wrong law, the appropriate course of action would be to remand or reverse the decision, thus making relief possible. This significant legal question remains unanswered and impacts the legal rights and obligations of both parties. Consequently, the principle from *Wachesaw Plantation* does not apply because the Appellant's case involves a live and substantial controversy with the potential for the court to provide meaningful relief.

III. POINTS SUPPOSED TO HAVE BEEN OVERLOOKED OR MISAPPREHENDED

1. Error of Law:

This Court has overlooked that the lower court granted relief to the Respondents and allowed them to foreclose on the Appellants' mortgage based on South Carolina Code § 36-3-301, which governs commercial transactions. However, the mortgage in question arose from a consumer transaction, as it was used to finance a residential property for personal use.

The application of this commercial code is therefore incorrect because consumer transactions are governed by different legal standards that protect residential borrowers. This misapplication of the law constitutes an error of law and directly impacts the legal rights and obligations of the parties by potentially invalidating the foreclosure and affecting the Appellants' property rights and financial liabilities.

2. Material Controversy:

This Court overlooked the continuing material controversy regarding Respondent's standing and entitlement to foreclose. Specifically, the Respondent's standing is in question because there is no clear evidence that they possess the original promissory note or have the legal authority to enforce the mortgage. Additionally, the lower court applied the wrong law by relying on South Carolina Code § 36-3-301, which governs commercial transactions, instead of the appropriate statutes for consumer transactions. This issue directly impacts the legal rights and obligations of the parties because if the Respondent lacks standing and the wrong law was applied, the foreclosure proceeding would be invalid, thereby affecting the Appellants' property rights and financial responsibilities.

3. Substantive Errors:

This Court misapprehended the significance of the alleged errors in the lower court proceedings. Specifically, the lower court's reliance on South Carolina Code § 36-3-301, which governs commercial transactions, was incorrect given that the mortgage arose from a consumer transaction. Furthermore, there is a continuing material controversy regarding the Respondent's standing, as there is no clear evidence that they possess the original promissory note or have the legal authority to enforce the mortgage. These errors directly impact the legal rights and obligations of the parties and necessitate appellate review to ensure fairness and legal integrity.

4. Effect of Payment:

This Court incorrectly concluded that the Appellant's payment to redeem their property rendered the appeal moot. This payment was made to prevent the immediate loss of their home and did not address or resolve the substantive legal issues in contention, such as the Respondent's standing to foreclose and the application of the incorrect law. These unresolved issues continue to impact the legal rights and obligations of both parties, and therefore, the appeal remains relevant and necessary for judicial review.

IV: LEGAL STANDARD

When a respondent files a motion to dismiss an appeal, the court first checks if the claims are still relevant (live) or if they've become irrelevant (moot). A claim is considered live if it involves an ongoing dispute affecting the parties' rights or obligations. If the court's decision can no longer have a practical impact because the issue has been resolved, settled, or circumstances have changed, the claim may be moot. The court examines the respondent's motion, considers the appellant's arguments against mootness, and then decides whether to dismiss the case as moot or allow the appeal to proceed if the issues are still active and impactful. In this instance, the Appellants responded, arguing that the case is not moot by asserting and alleging that the Respondent did not have legal standing to enforce the Appellants' mortgage, that the lower court erred in applying the wrong law and that the payment of \$55,847.12 to prevent the sale of their home does not render the appeal moot. These issues constitute an ongoing dispute with substantial legal and practical implications, indicating a live controversy that warrants judicial review, making the case not moot.

The order dated May 28, 2024, states that after careful consideration of the filings, this Court granted the Respondent's motion to dismiss the appeal as moot. The Appellants contend that for the court to demonstrate it has considered all relevant filings and arguments, it must provide a thorough analysis and comparison in its written opinions and judgments. This requires the court to clearly summarize the arguments presented by both parties, identify and explain the applicable legal standards and precedents relevant to the case, conduct a detailed analysis of the legal arguments, addressing each argument raised by the appellants and respondents, compare the strengths and weaknesses of each party's arguments, and highlight and resolve the central issues based on the law and evidence, clearly stating how conflicts between the parties are resolved. This thorough approach ensures that all arguments are considered and that the court's decision is based on a comprehensive evaluation of the case.

In this instance, the order does not demonstrate that all arguments have been considered. The Court summarized the Respondent's claim that the Appellants' payment of \$55,847.12 constituted an intervening event, rendering their appeal moot. The order also briefly summarized and minimized the Appellants' response to the Respondent's motion to dismiss. The order is devoid of any legal analysis, comparison, summary, or opinions suggesting that the Court engaged in a detailed analysis of the arguments presented by the Appellants. It appears that the Court only considered the

argument raised by the Respondent, as it did not provide an analysis, comparison, summary, or opinion of any kind; instead, the Court merely recited and restated the Respondent's statement and cited case law. For example, the Respondent alleged that the appeal was moot because the Appellants' payment to redeem their property constituted an intervening event. The Appellants responded by arguing that in legal proceedings, an intervening event refers to an occurrence that transpires after the initiation of the action but before its resolution, potentially affecting the rights or circumstances of the involved parties. They argued that their payment to prevent the sale of their home did not resolve the issues they allege against the Respondent, such as the Respondent's lack of standing or entitlement to foreclose on the mortgage, and the lower court's error of law. While the payment did occur, it did not resolve the underlying procedural and legal issues regarding the foreclosure proceedings held in the lower court, which is the basis for the Appellants' appeal. Instead, it was undertaken to salvage their home. Courts recognize that payments do not necessarily resolve all aspects of a dispute, particularly when significant legal questions remain. The mootness doctrine typically applies when the resolution of an issue no longer affects the rights or interests of the parties. However, if there are ongoing legal questions stemming from the original judgment, as in this case, the case is not moot. The Appellants contend that the payment was necessitated by the imminent foreclosure and cannot be deemed an intervening event that would nullify the Appellants' appeal, thereby preserving their right to appeal.

The Court's failure to give careful consideration and respect to the Appellants' arguments, coupled with its deviation from established legal principles and standards, constitutes a violation of the Appellants' right to due process. The appellate court has a duty to review and correct such errors to ensure a just outcome. Dismissing a case as moot when there is a real and substantial controversy constitutes a breach of duty on the court's behalf. By failing to address these substantial errors, the appellate court risks perpetuating a miscarriage of justice. The Appellant's are entitled to a fair judicial process, where all material facts and legal standards are properly considered. Ignoring these critical issues deprives the Appellant's of their constitutional protection and right to due process and denies them a fair judicial process to resolve significant legal rights. Therefore, dismissing the case as moot when a justiciable controversy exists not only undermines the integrity of the judicial system but also violates the Appellant's rights. These unresolved issues warrant judicial reconsideration and determination. Thus, the case is not moot, and the Appellant's right to appeal should be preserved.

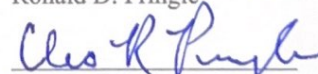
The Court's failure to give careful consideration and respect to the Appellant's arguments, along with its deviation from established legal principles and standards, has resulted in a process that undermines the Appellant's right to due process. For example, the Court did not address the Appellant's argument that their payment to prevent the sale of their home was not an intervening event that mooted their appeal. The Appellants argued that the payment was made to prevent imminent foreclosure and did not resolve the underlying legal issues regarding the Respondent's standing to foreclose. Additionally, the Court granted the Respondent's motion to dismiss without clarifying the basis for this decision, thereby failing to provide transparency in its legal reasoning. The lack of explanation regarding why the payment was considered an intervening event and how it affected the Respondent's standing to foreclose leaves the Appellants without a clear understanding of the Court's rationale. This absence of detailed reasoning prevents the Appellants from effectively addressing the Court's concerns and undermines their ability to seek appropriate redress.

V: CONCLUSION

The Appellants have demonstrated that a justiciable controversy exists. Additionally, the court must reconsider its order if there is a clear error in the application of law or interpretation of facts, or if the court determines that its decision was based on a misinterpretation or misapplication of legal precedent. In this case, the Court used the legal precedents *Sloan v. Dept of Transp.*, 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008), and *Wachesaw Plantation E. City Serv. Ass'n v. Alexander*, 414 S.C. 355, 359, 778 S.E.2d 898, 900 (2015), which the Appellants have already demonstrated are inapplicable. This misapplication of precedent requires the Court to reconsider its order and decision to dismiss the Appellants' appeal as moot.

Respectfully submitted,


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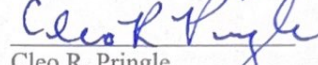
PROOF OF SERVICE

The undersigned hereby certifies that on June 13, 2024, the Appellants Ronald D. Pringle and Cleo R. Pringle served a true and accurate copy of the Appellants Petition for Reconsideration via certified and electronic mail to the following:

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