RECEIVED
Nov 08 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

James A. Grimsley, Special Referee

Appellate Case No. 2024-00039
Trial Court Case No. 2022-CP-2700306

Nationstar Mortgage, LLC d/b/a Mr. Cooper.....Respondent,

v.

Carolyn Brantley; The United States of America acting by and through its agency, the Secretary of Housing and Urban Development; The United States of America acting by and through its agency, the Internal Revenue Service; South Carolina Department of Revenue; and T.N.S. LTD., LLC, Defendants,

Of which Carolyn Brantley is the Appellant.

Respondent's Initial Brief

Rachel L. Ferguson
Finkel Law Firm LLC
4000 Faber Place Drive | Suite 450
North Charleston, South Carolina 29405
Telephone: 843.577.5460

Mr. Thomas A. Shook
Finkel Law Firm LLC
P.O. Box 71727
N. Charleston, SC 29415
Telephone: 843.576.1072

ATTORNEYS FOR RESPONDENT

Table of Contents

Table of Authorities

Cases

South Carolina State Court Cases

Other Jurisdictions

Statutes

Rules

Other Materials

Counterstatement of Issues on Appeal

I. A matter may not be presented for the first time on appeal and this court need not address a point which is manifestly without merit.

II. In any event, Appellant did not answer or otherwise respond; therefore, the special referee did not err in finding Appellant in default (and deemed to have admitted to defaulting on the debt).

III. A preponderance of the evidence supports the special referee's order (and amended order) and judgment of foreclosure and sale.

Statement of the Case

This appeal arises out of a mortgage foreclosure action brought by Respondent Nationstar Mortgage, LLC d/b/a Mr. Cooper against Appellant Carolyn Brantley, who is proceeding pro se. Respondent is the current holder of the mortgage, and the mortgage is the first lien purchase money mortgage for the subject property. Appellant stopped making payments in 2015, and as a result, on July 12, 2022, following notice of foreclosure intervention, Respondent filed a lis pendens and summons and complaint for a non-jury mortgage foreclosure and sale against Appellant. In doing so, Respondent sought to enforce its lien against the subject property and waived its right to any personal or deficiency judgment against any obligor.

The matter was referred to James A. Grimsley, III, Special Referee, pursuant to Rule 53, SCRCP, and following a hearing on December 11, 2023, the special referee entered an order (and amended order) and judgment of foreclosure and sale (deficiency waived).[1] Appellant later

[1] The order and amended order were substantively the same. At the request of the County Attorney for Jasper County, the special referee made non-substantive amendments to language in the order as to the steps to be taken by the Jasper County Register of Deeds. (Order at 6 and Amended Order at 6).

unsuccessfully filed several miscellaneous pleadings in an effort to set aside the judgment. This appeal followed.

Statement of Facts

On September 4, 2009, Appellant executed a promissory note payable to Real Estate Mortgage Network, Inc., for $242,526.00, with interest. (Compl. 1). To secure the note, the same day, Appellant executed and delivered to Mortgage Electronic Registration Systems, as nominee for Real Estate Mortgage Network, Inc., its successors and assigns, a mortgage for real property located at 200 Oak Plantation Drive, Ridgeland, South Carolina 29936 ("the Property"). (Compl. 2). The mortgage was filed in the Office of Register of Deeds for Jasper County on September 10, 2009, in Book 760 at Page 243. (*Id.*). Subsequently, the mortgage was assigned to Respondent and recorded in the public records of Jasper County on March 7, 2012, in Book 823 at Page 723 and January 9, 2013, in Book 842 at Page 369, and by agreement recorded May 5, 2015, in Book 895 at Page 6, the parties modified the terms of the original mortgage. (*Id*.). The note came into default when Appellant failed to make the August 1, 2015, payment and all subsequent payments. (*Id*.). Respondent, after providing all required notices, declared the entire balance due and payable; the principal due totals $215,454.07, together with interest at 4.125% from July 1, 2015, other corporate advances in the amount of $12,624.65, escrow advances in the amount of $29,465.45, the costs and disbursements of this action, and attorney's fees. (*Id*. at 2-3).

On July 12, 2022, Respondent filed its lis pendens and summons and complaint for a non-jury mortgage foreclosure against Appellant, seeking to enforce its liens against the property and waiving its right to any personal or deficiency judgment against any obligor. (*Id.* at 3). In doing so, Respondent asked the circuit court to declare it the first mortgage lien holder and direct the

Property to be sold. (*Id*. At 5-6). In response, Appellant filed a notice of foreclosure intervention. (8/12/22 Notice). After Appellant failed to provide a complete loss mitigation application, Respondent denied the request for foreclosure intervention (2/14/23 Denial, Docketed 3/16/23).[2] Appellant was served via publication. (Aff. of Publication). Appellant did not answer or otherwise respond. (Aff. of Default).

Subsequently, the case was referred to James A. Grimsley, III, Special Referee, pursuant to Rule 53, SCRCP. (Order of Reference). Throughout the proceedings, Appellant filed numerous documents, but none challenged that (1) she executed the note and mortgage, (2) Respondent was the first lien holder of the mortgage, or (3) she stopped making monthly mortgage payments. Rather, Appellant asserted "sovereign citizen" theories to excuse her failure to make monthly payments and filed various documents that did not challenge the merits of the underlying proceedings. (12/5/23 Notice; 12/11/23 Aff.).

The special referee conducted a hearing on December 11, 2023, wherein the promissory note, mortgage, assignments, loan modification, and debt and judgment figures were admitted into evidence. (Record of Hearing). Following the hearing, the special referee entered an order and judgment of foreclosure and sale (deficiency waived), (12/13/23 Order), and an amended order and judgment of foreclosure and sale (deficiency waived). (1/4/24 Order). Specifically, the special referee found (1) Appellant in default; (2) Appellant purchased the Property on September 4, 2009, by executing and delivering a note, in the sum of $242.526.00, with interest; (3) Appellant executed and delivered a mortgage the same day; (4) Respondent is the current holder of the mortgage; (5) the mortgage is the first lien purchase money mortgage for the

[2] *See* May 2, 2011, Administrative Order 2011-05-02-01 of the South Carolina Supreme Court.

Property; (6) Appellant stopped making payments in 2015; and (7) the total debt secured by the note and mortgage, including interest, as of the date of the order was $339,140.83. (1/4/24 Order 2-4). In reaching these conclusions, the special referee rejected Appellant's "sovereign citizen" theories and found the documents that she submitted to the Jasper County Register of Deeds were "materially false or fraudulent or a sham legal process" and instructed the Register of Deeds to provide record notice that those documents "have been invalidated."[3] (Order at 5). As a result, the special referee granted Respondent's request to sale the Property, recognizing the foreclosure sale would be cancelled if Appellant paid the debt in full. (Order at 6-10). Appellant has not paid the debt.

Appellant filed a notice of appeal with this court on January 10, 2024, appealing the special referee's order (and amended order) and judgment of foreclosure and sale. Shortly thereafter, Appellant filed a motion for stay pending appeal, which this court denied after Respondent filed its expedited return to Appellant's motion for stay. As a result of this pending appeal, Respondent canceled the foreclosure sale that had been previously scheduled.

Standard of Review

"A mortgage foreclosure is an action in equity." *U.S. Bank Tr. Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (quoting *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997)). "The appellate court's standard of review in equitable matters is [it's] own view of the preponderance of the evidence." *Horry County v. Ray*, 382 S.C. 76, 80, 674 S.E.2d 519, 522 (Ct. App. 2009). "A legal question in an

[3] *See, e.g.*, S.C. Code Ann. § 30-9-30(B)(1) ("If a person presents a conveyance, mortgage, judgment, lien, contract, or other document to the clerk of court or the register of deeds for filing or recording, the clerk of court or the register of deeds may refuse to accept the document for filing if he reasonably believes that the document is materially false or fraudulent or is a sham legal process.").

equity case receives review as in law." *Sloan v. Greenville County*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003). "Because questions of law may be decided with no particular deference to the [special referee], this court may correct errors of law in both legal and equitable actions." *Bell*, 385 S.C. at 373, 684 S.E.2d at 204.

Arguments

This is a case about a straightforward residential foreclosure where Respondent was entitled to enforce a claim against the Property and seek a foreclosure sale based on Appellant's nonpayment of the note. The only inquiry for this court is whether a preponderance of the evidence supports the special referee's finding of the existence of note and mortgage, the existence of a debt, and that Appellant failed to pay; the answer to which is: yes.

I. A matter may not be presented for the first time on appeal and this court need not address an issue manifestly without merit.

Appellant invites this court to engage in an unnecessary and contorted legal analysis by raising arguments that are manifestly without merit and most, if not all, are being improperly raised for the first time on appeal.

For the first time on appeal, Appellant argues, vaguely and confusingly, that the underlying foreclosure action was based on "securities fraud" and is in violation of due process. (App. Br. 7-8, 10-16). In addition, and also for the first time on appeal and despite proceeding pro se in the circuit court, she makes a conclusory and unfounded allegation of "ineffective assistance of counsel." (*Id*. at 8, 11). Further, for the first time on appeal, she appears to suggest that the doctrine of res judicata applies to this case, but she fails to direct this court to any prior

litigation that applies to the underlying case.[4] (*Id*. at 6, 8, 11).

"A matter may not be presented for the first time on appeal; rather, it must have been both raised to and ruled upon by the court below." *Pikaart v. A & A Taxi, Inc.*, 393 S.C. 312, 324, 713 S.E.2d 267, 273 (2011); *see also Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 311, 698 S.E.2d 773, 779 (2010) (holding that in order to preserve an issue for appeal it must have been both raised to and ruled on by the trial court).

Here, Appellant did not raise any of these arguments to the special referee; therefore, these issues are not properly before this court. Regardless, this court "need not address a point which is manifestly without merit." Rule 220(b)(2), SCACR. Therefore, this court should affirm.

II. Appellant did not file an answer or other response; therefore, the special referee did not err in finding her in default and she is deemed to have admitted the existence of the debt and the default on that debt.

The special referee did not err in finding Appellant in default.

"[W]here the appellant was duly served with the summons and complaint, [i]t was h[er] duty to answer the complaint . . . . [Therefore,] [sh]e must suffer the consequence of h[er] failure to answer." *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) (second and fourth alteration in original)). "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." *Roche v. Young Bros., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998).

[4] To the contrary, Respondent, as the first mortgage lien holder, was entitled to enforce a claim against the Property because it was not avoided or eliminated in Appellant's bankruptcy proceedings. *See* United States Bankruptcy Court District of South Carolina Case No. 19-05734.

Appellant did not file an answer or other responsive pleading to the complaint, and after the time to do so elapsed, Respondent filed an affidavit of default. *See* Rule 12(a), SCRCP (requiring a defendant to serve his answer withing thirty days after service of the complaint). Thus, the special referee did not err in finding Appellant in default. Accordingly, Appellant is deemed to have admitted the existence of the debt and the default on that debt, and this court should affirm. Regardless, the only "defenses" raised by Appellant before the special referee were based on "sovereign citizen" theories, which as Respondent noted in its complaint and the special referee agreed has been rejected as frivolous by numerous courts.[5] Accordingly, this court should affirm the finding of default and subsequent grant of a judgment of foreclosure and sale.

III. A preponderance of the evidence supports the special referee's amended order and judgment of foreclosure sale.

The special referee did not err in (1) declaring the mortgage a first mortgage lien, (2) entering a judgment of foreclosure for the amount found to be due, and (3) ordering the

[5] *See generally Gravatt v. United States*, 100 Fed. Cl. 279, 282 (2011) ("So-called sovereign citizens believe that they are not subject to government authority and employ various tactics in an attempt to, among other things, avoid paying taxes, extinguish debts, and derail criminal proceedings."); *El Ameen Bey v. Stumpf*, 825 F.Supp.2d 537, 540-548 (D. N.J. 2011) (describing interplay of Moorish-American and Sovereign Citizen movements and holding plaintiff's reliance on Treaty with Morocco, or "Treaty of Peace and Friendship 1787" in civil suit raising claims against bank in order to assert interest in real property facially frivolous); *United States v. Mitchell*, 405 F. Supp. 2d 602, 604 (D. Md. 2005) (describing "flesh and blood defense" and its anti-government roots); *see also United States v. Singleton*, 2004 U.S. Dist. LEXIS 8234, 2004 WL 1102322, *3 (N.D.Ill. May 7, 2004) (denying motion to dismiss for lack of jurisdiction based on argument that defendant was "a flesh and blood man."); *United States v. Secretary of Kansas*, 2003 U.S. Dist. LEXIS 19539, 2003 WL 22472226 (D.Kan. Oct. 30, 2003) (criminal defendant who filed a lien against property owned by federal judge sought dismissal of injunctive action filed by United States because he was "a flesh and blood man."); *Reeves v. United States*, 105 F.3d 621 (Fed.Cir.1997) (describing an attempt to avoid payment of federal income taxes); *United States v. Schneider*, 910 F.2d 1569 (7th Cir.1990) (describing an attempt to present a defense in a criminal trial); *Bryant v. Wash. Mut. Bank*, 524 F.Supp.2d 753 (W.D.Va.2007) (describing an attempt to satisfy a mortgage).

Property to be sold.

"Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *U.S. Bank Tr. Nat. Ass'n v. Bell*, 385 S.C. 364, 374–75, 684 S.E.2d 199, 205 (Ct. App. 2009). "Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure . . . ." *Id.*; *Bandy v. Bandy*, 187 S.C. 410, 413, 197 S.E. 396, 397 (1938) (holding the burden was on defendant in mortgage foreclosure suit to establish her defense).

Here, the record of hearing establishes the special referee accepted and admitted into evidence the following exhibits: (1) promissory note, (2) mortgage, (3) assignments, (4) loan modification, (5) debt and judgment figures, and (6) an affidavit of attorney's fees and costs. (Record of Hearing).

This documented evidence shows that for value received, Appellant made, executed, and delivered a note dated September 4, 2009, promising to pay Real Estate Mortgage Network, Inc., for $242,526.00, with interest pursuant to the terms of the note and any extensions, amendments, or modifications thereto. It also established that to secure the payment of the note, Appellant executed and delivered to Mortgage Electronic Registration Systems a mortgage for the Property, and the mortgage was filed in the Office of Register of Deeds for Jasper County on September 10, 2009, in Book 760 at Page 243. The evidence showed the Mortgage was assigned to Respondent by instruments recorded on March 7, 2012, in Book 823 at Page 723 and January 9, 2013, in Book 842 at Page 369, and by agreement recorded May 5, 2015, in Book 895 at Page 6, the parties modified the terms of the original mortgage. Finally, the debt and judgment figures showed payment was due on the note and Appellant did not make any payment as of August 1, 2015, and all subsequent payments.

Appellant did not offer any evidence to establish payment of the mortgage. This evidence demonstrates Respondent carried its burden of establishing the existence of a debt and Appellant's default on that debt. Therefore, a preponderance of the evidence supports the special referee's findings and order (and amended order) and judgment of foreclosure and sale.

Conclusion

For these reasons, the special referee did not err in entering a judgment of foreclosure sale, and this court should affirm.

Respectfully submitted,

November 8, 2024

s/Rachel L. Ferguson
Rachel L. Ferguson (SC Bar #75224)
Finkel Law Firm LLC
4000 Faber Place Drive | Suite 450
North Charleston, South Carolina 29405
Telephone: 843.577.5460

s/Thomas A. Shook
Thomas A. Shook (SC Bar # 68340)
Finkel Law Firm LLC
P.O. Box 71727
N. Charleston, SC 29415
Telephone: 843.576.1072

ATTORNEYS FOR RESPONDENT

Carolyn Brantley
Cbran211@gmail.com
Appellant Pro Se