

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY CIRCUIT COURT
James E. Chellis, Master-In-Equity

SC Court of Appeals

Appellate Case No.: 2016-000704

Wells Fargo Bank N.A.,

Respondent,

v.

Richard B. Cunningham, Latisa L. Cunningham, Sumter Housing, Inc., And Drakesborough
Homeowner Association, Inc.,

Defendants,

Of whom, Latisa L. Cunningham is the Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER IN EQUITY ERR IN ISSUING AN ORDER STRIKING APPELLANT'S MOTIONS TO STAY THE FORECLOSURE SALE AND FOR A STATUS HEARING?
2. DID THE MASTER IN EQUITY ERR IN MOVING FORWARD WITH THE FORECLOSURE SALE PURSUANT TO A VALID FORECLOSURE ORDER?

STATEMENT OF THE CASE AND FACTS

Respondent, Wells Fargo Bank, N.A. filed the instant action seeking foreclosure of property located in Dorchester County and owned by Appellant, Latisa L. Cunningham and co-defendant, Richard B. Cunningham. The foreclosure is based upon Appellant's failure to make payments required by the terms of her mortgage. (Complaint pp. 1-5.)

Appellant and Richard B. Cunningham made, executed and delivered a note, dated November 25, 2008, promising to pay to the order of WR Starkey Mortgage, L.L.P. the sum of \$183,919.00 with interest at the rate of 6% per annum (hereinafter "Note"). (Note pp. 1-2.) To better secure payment of the note, Appellant and Richard B. Cunningham made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for WR Starkey Mortgage L.L.P., in writing, dated November 25, 2008, covering real property in Dorchester County, which is the same as that described in the Complaint. (Mortgage pp. 1-14) The Mortgage was recorded November 26, 2008 in the Dorchester County Registry in Book 6871, Page 69. (Id.) Said Mortgage constituting a valid purchase money mortgage on the subject property. Thereafter, the Mortgage was assigned to Wells Fargo Bank, N.A. by assignment recorded on December 22, 2011 in Book 8121 at Page 321. (Assignment, p. 1-2). Respondent is

the current holder of the note and mortgage. (Master in Equity's Order and Judgment of Foreclosure and Sale p. 2).

On March 26, 2013, Respondent filed the instant Complaint for mortgage foreclosure against Appellant and co-defendants based upon Appellant's failure to make the payments due under the terms of the Note and Mortgage with said installments falling due on or after November 1, 2012 having not been paid (Complaint p. 1-5). Appellant was served via substitute service at her place of residence on April 24, 2013. (Affidavit of Service, p. 1.)

Appellant filed a Motion to Dismiss on June 19, 2014 (Appellant's Motion to Dismiss and attachments p. 1-10) alleging improper service of process and that she was not a proper party to the foreclosure action due to divorce from her husband. The case was referred to The Honorable James E. Chellis as Dorchester County Master in Equity on August 12, 2014. (Order of Reference, p. 1). Respondent submitted a Memorandum in Opposition to Appellant's Motion to Dismiss asserting that Appellant was properly served pursuant to SCRCF and that Appellant's Motion should be denied as a matter of law. (Memorandum in Opposition and Attachments, p. 1-5).

On August 14, 2014, Appellant submitted to the court a document titled "AFFIDAVIT AGAINST INTRODUCTION OF FACTS". (Affidavit Against Introduction of Facts, p. 1-2). Appellant also submitted a Request for Continuance that same day. (Request for Continuance, p. 1-2).

A hearing on Appellant's Motion to Dismiss was held on September 30, 2014 and Appellant's Motion to Dismiss was denied by the Master via a Form 4 Order filed that same day. (Transcript of September 30, 2014 hearing, Order Denying Appellant's Motion to Dismiss, p. 1). Appellant submitted an answer to Respondent's complaint on October 13, 2014. (Answer, p. 1-3).

Appellant's filings in this action appear to be in the nature of a "sovereign citizen" type filings and appear to be sham pleadings on their face. For the purposes of this brief, the term sovereign citizen is used to refer to individuals who are members of or involved with one of a number of loosely associated and diverse groups with varying belief systems that are generally anti-government and anti-authority. Sovereign citizen type filings are commonly interposed for the illegitimate purposes of delaying or denying the institution of justice in criminal and civil matters. Such filings are often voluminous and contain no cognizable legal theory in presenting their argument.

Appellant's filings bear certain tell-tale markings of sovereign citizen type filings. For example, there are stamps affixed to Appellant's Motion to Dismiss and it appears Appellant has signed her name over the stamps. (Appellant's Motion to Dismiss, p. 1). The signature block to Appellant's Motion to Dismiss includes the phrase "Every Right Reserved" as well as an imprint of Appellant's thumbprint. (Id.) These markings are common among sovereign citizen type filings. As a further example, Appellant's Answer opens with the statement "[f]or the claim is of the Defendant, known as Latisa L. Cunningham, with special limited visitation, in the natural personal capacity, to defend the Foreclosure Action that has been filed against the corporate person LATISA L. CUNNINGHAM". (Answer at p. 1). These examples illustrate the sham nature of Appellant's filings.

Respondent filed a Motion to Strike Appellant's Answer on January 2, 2015. (Motion to Strike, p. 1-2). On February 13, 2015, Respondent filed a Motion for Summary Judgment as to its foreclosure cause of action. (Motion for Summary Judgment, p. 1). Respondent submitted a Memorandum in Support of its Motion for Summary Judgment on April 30, 2015. (Memorandum in Support of Summary Judgment and Attachments p. 1-26). A hearing regarding all pending motions, including Respondent's motions to Strike and for Summary Judgment was

held on May 4, 2015. (Notice of May 4, 2015 Hearing p. 1). Appellant attended the hearing on the motion for summary judgment. (Transcript of May 4, 2015 hearing pp. 1-77).

On May 12, 2015 Appellant filed a document entitled "Judicial Notice" similar to her prior sovereign citizen filings. (Judicial Notice and Attachments p. 1-9). The Master in Equity issued an Order granting Respondent's Motion for Summary Judgment on May 13, 2015. (Master in Equity's Order and Judgment of Foreclosure and Sale p. 1-6). On June 9, 2015 the Master in Equity filed an Order granting Respondent's Motion to Strike. (Order Granting Plaintiff's Motion to Strike p. 1-2). In issuing the Order, the Master concluded that Appellant's filings were "wholly frivolous and made up of redundant, immaterial, impertinent, and/or scandalous matters" and that the substance of her filings should be stricken from the record pursuant to SCRCF Rule 12(f). (Id. at p. 2).

Appellant filed a Notice of Appeal on June 20, 2015. (Prior Notice of Appeal p. 1-3). Appellant's first appeal was assigned appellate case number 2015-001211. Said appeal was dismissed based upon Appellants failure to correct deficiencies with her initial brief. (Dispositional Order p. 1). The case was remitted to the Circuit Court on December 18, 2015. (Remittitur p. 1).

A Supplemental Hearing was held on January 27, 2016. (Notice of January 27, 2016 Hearing p. 1). Appellant filed four additional sovereign citizen documents respectively titled Judicial Notice, Notice of Citizenship, Objection to Plaintiff Supplementary Judgment, and Affidavit of Facts Concerning American Citizen. (Second Judicial Notice p. 1-2, Notice of Citizenship p. 1-2, Objection to Plaintiff Supplementary Judgment p. 1-2, Affidavit of Facts Concerning American Citizen p. 1). Appellant attended the January 27, 2016 hearing along with an individual named Ronald Allen Wright (hereinafter "Wright")(Transcript of January 27, 2016 hearing p 1-21).

Counsel for Respondent believes that Appellant received coaching or advice regarding her filings from Wright. Appellant confirmed at the January 27, 2016 hearing that Wright had drafted documents for her. (Transcript of January 27, 2016 hearing at pp. 10-11). Wright is an individual that has become known to counsel for Respondent for his involvement in several foreclosure actions in counties throughout South Carolina. A non-inclusive list of other cases that counsel for Respondent has discovered that Wright has been involved in is as follows:

1. Deutsche Bank National Trust Company, as Trustee v. Helen V. Thomas, et al., Richland County, SC Civil Action No. 2012-CP-40-0009, Appellate Case No. 2016-CP-000678.
2. Bank of America, N.A. v. James W. Wright, et al., Orangeburg County, SC Civil Action No. 2012-CP-38-00962, Appellate Case No. 2015-001596.
3. Deutsche Bank National Association, as Trustee v. Louise Legare-Gardner, et al., Jasper County, SC Civil Action No. 2015-CP-27-00524.
4. Deutsche Bank National Association, as Trustee v. Eugene Elmore, et al., Berkeley County, SC Civil Action No. 2011-CP-08-02434.
5. Bank of America, N.A. v. Elois C. Baxter, et al., Richland County, SC Civil Action No. 2016-CP-40-01620.
6. Ocwen Loan Servicing, LLC v. Zena McPherson, et al., Berkeley County, SC Civil Action No.: 2015-CP-08-02158.

Similar or identical sovereign citizen filings have been made in each of the above-listed actions. Wright is not an attorney licensed to practice law in the State of South Carolina.

The Master in Equity continued the January 27, 2016 hearing based upon procedural issues involving Appellant's prior appeal. (Transcript of January 27, 2016 hearing p. 13-20). Specifically, the Master in Equity was unsure if jurisdiction had transferred back to him following the dismissal of Appellant's prior appeal and, as such, the Master directed counsel for Respondent to prepare a Supplemental Memorandum regarding the procedural issues regarding the appeal. (Id. at p. 13-20). Counsel for Respondent filed a Supplemental Memorandum

regarding issues discussed at the January 27, 2016 hearing on February 12, 2016 (Supplemental Memorandum p. 1-3). The Master in Equity rescheduled the foreclosure sale for March 1, 2016. (Amended Notice of Sale p. 1).

Appellant filed a Motion to Stay the Foreclosure Sale and Motion for a Status Hearing on February 25, 2016. (Motion to Stay Sale p. 1-3 and Motion for Status Hearing p. 1-3). On March 21, 2016, the Master in Equity issued a Form 4 Order striking Appellant's motions to Stay the Foreclosure Sale and for a Status Hearing pursuant to SCRPC Rule 11. (Order Striking Motions to Stay Sale and Status Hearing p. 1). On April 1, 2016, Respondent filed a document entitled Objection to Sale. (Objection to Sale p. 1-2). This appeal followed.

STANDARD OF REVIEW

"A mortgage foreclosure is an action in equity." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). "In an appeal from an action in equity, the appellate court may find facts in accordance with its own view of the preponderance of the evidence." Lowcountry Open Land Trust v. Charleston S. Univ., 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). Nevertheless, "the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings." U.S. Bank Trust Nat. Ass'n v. Bell, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009) (quoting Pinkney v. Warren, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001)). The Court may affirm the trial court's ruling for any ground appearing in the record. SCRAP 220(c); see also I'On v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

ARGUMENT

1. THE MASTER IN EQUITY PROPERLY STRUCK APPELLANT'S MOTIONS TO STAY THE FORECLOSURE SALE AND FOR A STATUS HEARING.

Appellant's Amended Initial Brief sets forth six items as issues on appeal. Five out of the six issues on appeal are based on sovereign citizen type arguments and those issues do not merit discussion in this brief. Appellant's only issue based on matters that factually occurred in this action is her issue numbered 4 regarding the denial of her Motion to Stay the Foreclosure Sale.

SCRCP Rule 11(a) states that, "[a] party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address". Appellant's Motions to Stay the Foreclosure Sale and for a Status Hearing failed to state her address. The Master in Equity's Form 4 Order denying Appellant's motions indicated that those motions were stricken pursuant to SCRCP Rule 11 as they "were signed but failed to state the address of the Movant". (Order Striking Motions to Stay Sale and Status Hearing p. 1). The Master in Equity's stated reason for striking the motions is valid pursuant to the SCRCP.

The Master in Equity could have also stricken Appellant's motions pursuant to SCRCP Rule 12(f) as he had done with Appellant's previous filings. Appellant's motions are sovereign citizen filings similar to her previous filings and they do not set forth any cognizable legal theory that would entitle her to any relief as a matter of law. As has been discussed at length in this brief, Appellant has exhibited the behavior of filing a series of sham filings throughout this action beginning with her motion to dismiss. These filings are non-sensical and allege inaccurate law on their face. The Court may affirm the trial court's ruling for any ground appearing in the record. SCRAP 220(c); see also On v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000). Thus, this Court would be justified in upholding the Master in Equity's striking of Appellant's motions for the reason stated in the Order or pursuant to SCRCP Rule 12(f).

**2. THE MASTER IN EQUITY PROPERLY CONDUCTED THE FORECLOSURE
SALE PURSUANT TO A VALID FORECLOSURE ORDER**

The Master in Equity's Order and Judgment of Foreclosure and Sale filed May 13, 2015 and the Order granting the Respondent's Motion to Strike, filed June 9, 2015, prompted Appellant's prior appeal in this action. With the dismissal of that appeal said orders became the law of the case. An unappealed ruling is the law of the case and requires affirmance. Shirley's Iron Works v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013); See also In re Thames, 344 S.C. 564, 573, 544 S.E.2d 854 (Ct. App. 2001) ("The unappealed decision of the trial court, right or wrong, is the law of the case."). After the time has expired for an appeal of a judgment, a party may be able to seek relief from the judgment to the extent permitted by SCRCP Rule 60, which permits a party to obtain relief from judgments and orders due to clerical mistakes, inadvertence, excusable neglect, fraud, and similar grounds. However, a party cannot invoke relief under Rule 60 where it could have pursued the issue on appeal. Tench v. South Carolina Dept. of Educ., 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001).

Pursuant to SCRCP Rule 60(b)(5), a court may modify its prior decree to address subsequent changes in conditions. Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 48, 590 S.E.2d 502, 505 (Ct. App 2003) (stating that S.Car.R.Civ.P. 60(b)(5) is based on the historical power of a court of equity to modify its decree "in light of subsequent conditions"). Thus, a trial court "has authority to modify all orders affecting [a foreclosure] sale by subsequent orders." Ex parte Moore, 346 S.C. 274, 287, 550 S.E.2d 877, 883 n.8 (Ct. App. 2001) (internal quotations omitted, rev'd on other grounds, 352 S.C. 508, 575, S.E.2d 561 (2003)).

In this case, Appellant filed an appeal which was subsequently dismissed thereby rendering the Master in Equity's Judgment of Foreclosure and Sale and Order Granting Respondent's Motion to Strike as the definitive law of the case which may not be subsequently attacked on grounds which were available to Appellant at the time of previous appeal. See In re Thames, 344 S.C. 564, 573, 544 S.E.2d 854, 858 (Ct. App. 2001) ("The unappealed decision of

the trial court, right or wrong, is the law of the case). Nor did Appellant properly bring a motion under Rule 60, SCRCP for relief from judgment. Thus, the validity of the original judgment and order striking Appellant's pleadings have not been preserved for appeal.

Accordingly, the Master in Equity properly conducted the foreclosure sale based upon a valid Order and Judgement of Foreclosure and Sale.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the Circuit Court.

September 23, 2016




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CERTIFICATE OF SERVICE

The undersigned certifies that, on September 23, 2016, Respondent's Initial Brief was served on Appellant by depositing a copy thereof in the United States Mail, first Class, postage prepaid, addressed to:

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September 23, 2016

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Wells Fargo Bank, N.A. v. Richard B. Cunningham, *et al.*
Appellate Case#: 2016-000704
B&S file #: 13-03642

Dear Ms. Kitchings

Enclosed please find an original and one copy of the Initial Brief of Respondent with regard to the above referenced matter. Kindly file the same and return a clocked copy to me in the enclosed self-addressed stamped envelope.

Thank you in advance for your assistance in this matter.

Sincerely,

Kathryn Howell
Paralegal
Brock & Scott, PLLC

Enclosures



13-03642 FC01

