

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

MAR 14 2018

SC Court of Appeals

Honorable Joseph M. Strickland, Master in Equity

Case No. 2015-CP-40-07210

Appellate Case No. 2017-002149

Nationstar Mortgage, LLC.....Respondent

v.

Marcus L. Hall and Rosa C.Hall.....Appellants

RESPONDENT NATIONSTAR MORTGAGE LLC'S INITIAL BRIEF

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Date: March 13, 2018

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STATEMENT OF ISSUES ON APPEAL

I. Whether the Master in Equity was correct in granting the Writ of Assistance to Nationstar Mortgage, LLC (“Nationstar”).

STATEMENT OF THE CASE

Appellants Marcus and Rosa Hall (“Borrowers”) offer an incomplete statement of the case which also contains some argumentative language. Thus, Nationstar offers the following statement of the case to give this Court more context for this appeal:

On December 2, 2015, Nationstar filed its Summons and Complaint, bearing case number 2015-CP-40-07210 in the Court of Common Pleas, Richland County, South Carolina, seeking foreclosure. (*See generally* Compl.). After a hearing, on June 17, 2016, Judge Joseph Strickland, Master in Equity for Richland County, issued a Master’s Order and Judgment of Foreclosure. (*See* Order of Judgment of Foreclosure and Sale, June 16, 2016). However, that Order from June 17, 2016 was later vacated upon Nationstar’s Motion. (*See* Order Vacating Judgment). A second Master’s Order and Judgment of Foreclosure was entered on October 4, 2016. (*See* Order of Judgment of Foreclosure and Sale, October 4, 2016).

The property was sold at foreclosure to Nationstar, but Borrowers did not vacate the home after it was conveyed to Nationstar. (*See* Master’s Report on Sale and Disbursements). Therefore, Nationstar filed a Petition to Show Cause and requested a Writ of Assistance on July 21, 2017. (*See* Petition for Rule to Show Cause). Borrowers claim to have filed a vague “Constitutional Challenge”, although they do not explain the precise nature of this challenge, and they acknowledge that it was never actually “filed in this case,” presumably meaning the clerk did not place it on the docket. (In. Br. at 1). The lower court issued the Writ of Assistance on September 15, 2017, ordering that the Appellants be removed from the property on November 6, 2017. (*See*

Writ of Assistance). Borrowers' filed a Notice of Appeal to appeal this Writ of Assistance on October 16, 2017. (*See* Notice of Appeal).

STATEMENT OF THE FACTS

Borrowers do not include a Statement of the Facts section in their Initial Brief. Thus, Nationstar provides the following brief statement of the facts, although this appeal mostly concerns the procedural matters stated above.

Borrowers executed a promissory note ("Note") and mortgage ("Mortgage") in favor of Bank of America, N.A. ("BANA") in the amount of \$107,712.00 related to the property located at 160 Deer Lake Drive, Columbia, South Carolina 29229 (the "Property"). (Compl. ¶¶ 6-7). BANA later assigned the Mortgage and transferred the Note to Nationstar. (Compl. ¶ 10). Borrowers failed to make their August 1, 2015 payment and all subsequent payments and were thereby placed in default. (Compl. ¶ 13).

Borrowers do not appear to dispute any of the above facts in their Initial Brief, which makes no contentions related to the Note, Mortgage, or their default. (*See generally* In. Br.). Due to the default, Nationstar filed the above-referenced foreclosure case, received a final judgment, and also purchased the Property at the foreclosure sale. (*See, supra* Statement of the Case). After the Writ of Assistance, Borrowers were apparently removed from the Property. (In. Br. at 3).

STANDARD OF REVIEW

Borrowers completely fail to include a standard of review for the Writ of Assistance in their Initial Brief. The correct standard of review for the issuance of a Writ of Assistance is abuse of discretion because issuing a Writ of Assistance is committed to the sound discretion of the court in equity. *Griggs v. Griggs*, 31 S.E.2d 505 (S.C. 1944). This is a high standard because a court of appeal will only disturb the judgment of the lower court where the lower court made conclusions of fact that completely lacked evidentiary support or such conclusions were controlled by an

incorrect legal standard. *State v. Barrett*, 785 S.E.2d 387, 389 (S.C. Ct. App. 2016). In this case, Borrowers do not even attempt to argue that the Master in Equity made any factual conclusions that lack evidentiary support or applied an incorrect legal standard and, therefore, this Court should affirm the Writ of Assistance issued by the Master in Equity.

ARGUMENT

This Court should affirm the Master in Equity's Writ of Assistance for two (2) reasons. First, Borrowers do not argue that the Master in Equity made any factual conclusions that lack evidentiary support or that he applied an incorrect legal standard and Borrowers may not argue the issue of title on a Writ of Assistance. Second, the Federal Rules of Civil Procedure do not apply to the courts of the State of South Carolina and, therefore, Borrowers' entire brief is completely baseless. For these reasons, this Court should affirm the Master in Equity's Writ of Assistance.

I. BORROWERS FAIL TO ARGUE ABUSE OF DISCRETION IN THE ISSUANCE OF THE WRIT OF ASSISTANCE AND MAY NOT CHALLENGE TITLE IN THIS ACTION.

A Writ of Assistance should be issued where "the right [to possession of the property] is clear and free from doubt--when there is no equity or appearance of equity in defendant, and when the decree, and the sale and proceedings thereunder, are beyond suspicion." *Griggs*, 31 S.E.2d at 506. Moreover, concerning foreclosure sales, "[a] writ of assistance is undoubtedly an appropriate process to issue from a court of equity to place a purchaser of mortgaged premises under its decree in possession after he has received the commissioner's or master's deed, *as against parties who are bound by the decree* (italics ours), and who refuse to surrender possession pursuant to its direction or other order of the Court." *Ex Parte Jenkins*, 26 S.E. 686, 689 (S.C. 1897) (emphasis in the original). Finally, a court has no jurisdiction to determine title to real property when considering whether to issue a Writ of Assistance. *Pipkin v. Fletcher*, 162 S.E. 774, 776 (S.C. 1932).

In this case, Borrowers do not even attempt to argue that the Master in Equity abused his discretion in issuing the Writ of Assistance. Instead, Borrowers argue that some unspecified “Constitutional Challenge” somehow should have prevented the issuance of the Writ. (In. Br. at 1-3). Borrowers do not explain how Nationstar’s right to possession is not “clear and free from doubt” or how equity should determine that the Writ was issued in error. *See Griggs*, 31 S.E.2d at 506. Additionally, it is clear that Nationstar’s right to possession stems from its purchase of the Property at the foreclosure sale pursuant to an action which bound Borrowers, who were parties to the foreclosure action. (See Compl.; Master’s Report on Sale and Disbursements); *see also Ex Parte Jenkins*, 26 S.E. at 689. Therefore, Borrowers have failed to show how the Master in Equity found any facts without evidentiary support or applied an incorrect legal standard. *See Barrett*, 785 S.E.2d at 389.

Finally, Borrowers appear to challenge title to the Property by requesting this Court to “place the property back in [Borrowers’] name.” (In. Br. at 3). However, as explained above, the Master in Equity had no jurisdiction to consider title to the Property in determining whether to issue the Writ of Assistance and this Court should hold that such a request by Borrowers is improper. *See Fletcher*, 162 S.E. at 776. For these reasons, this Court should affirm the Master in Equity’s Writ of Assistance.

II. THE FEDERAL RULES OF CIVIL PROCEDURE DO NOT APPLY TO THE COURTS OF THE STATE OF SOUTH CAROLINA.

Borrowers’ entire Initial Brief concerns their claim that they filed a “Constitutional Challenge” under Federal Rule of Civil Procedure 5.1 which was not properly addressed, although they acknowledge that the clerk did not actually place this document on the docket. (In. Br. at 1-3). Borrowers do not specify how this “Constitutional Challenge” would affect the Writ of Assistance. Regardless, the Federal Rules of Civil Procedure only apply to “civil actions and

proceedings in the United States district courts, except as stated in Rule 81.” Fed. R. Civ. P. 1. Rule 81 further specifies to which proceedings the Federal Rules do or do not apply, and none of the actions listed in Rule 81 involve actions proceeding in a state court. Fed. R. Civ. P. 81. Accordingly, the “Constitutional Challenge” under Federal Rule of Civil Procedure 5.1 is inapplicable to these state court proceedings and this Court should affirm the Writ of Assistance of the Master in Equity.

CONCLUSION

Based upon the foregoing, the Writ of Assistance issued by the Master in Equity should be affirmed.

March 13, 2018.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with Rule 208(b), SCACR.

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CERTIFICATE OF SERVICE

The undersigned certifies that *Respondent Nationstar Mortgage, LLC's Initial Brief* was served on Pro Se Appellant and other counsel by depositing a copy thereof in the United States Mail, first class, postage prepaid, addressed to:

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This the 13th day of March, 2018.

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SC Court of Appeals

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Court of Appeals No. 2017-002149
Court of Common Pleas No. 2015-CP-40-07210


Dear Ms. Kitchings:

Enclosed for filing is Respondent Nationstar Mortgage LLC's Initial Brief in the above-referenced matter. Also enclosed is an additional copy of the Initial Brief which I would ask that you file-stamp and return to us in the enclosed self-addressed stamped envelope.

Thank you for your kind assistance in this matter. If you have any questions, please do not hesitate to contact us.

Sincerely,

McGUIREWOODS, LLP


Elizabeth P. Hedges
Practice Assistant

:eph
Enclosures

cc: Marcus L. Hall
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