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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Patricia Devine

v.

The Bank of New York Mellon Corporation

Appeal from Baldwin Circuit Court
(CV-17-901237)

MITCHELL, Justice.

Patricia Devine filed an action seeking to invalidate a foreclosure sale that divested her interest in a property located in Elberta. The trial court entered a summary

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judgment against Patricia, from which she now appeals. We affirm.

Facts and Procedural History

In January 2007, Patricia's husband Jerry Devine executed a promissory note ("the note") in favor of Taylor, Bean & Whitaker Mortgage Corp. ("TBW"), evidencing a debt for \$744,000. That note was secured by a mortgage on the Devines' residence in Elberta ("the Elberta property"), and both Jerry and Patricia signed the mortgage documents.

In August 2009, TBW declared bankruptcy and commenced liquidation proceedings. In July 2010, TBW sold assets, including the note executed by Jerry, to The Bank of New York Mellon Corporation, as trustee for TBW Mortgage Pass-Through Certificates, Series 2007-1 ("BNYM"). It is undisputed, however, that Mortgage Electronic Registration Systems, Inc., the nominal mortgagee, did not reassign the Devines' mortgage to BNYM until February 2011.

At some point Jerry defaulted on the note, and in January 2011 BNYM foreclosed on the Elberta property. BNYM was the highest bidder at the foreclosure sale, and in March 2011 it brought an ejectment action against the Devines seeking to

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take possession of the Elberta property. While that action was pending, Jerry died. Patricia filed a notice with the court informing it of Jerry's death and that she no longer resided at the Elberta property, but she never formally answered the complaint. In May 2011, a default judgment was entered in favor of BNYM, and in December 2011 BNYM sold the Elberta property to Tracy Kruse, who has continuously resided on the Elberta property since that time.

In October 2017, Patricia filed a nine-count complaint against BNYM and Kruse seeking ownership and possession of the Elberta property and compensation for various torts she alleged BNYM had committed. Before filing an answer, BNYM moved the trial court to dismiss Patricia's complaint, arguing, among other things, that Patricia's claims were all barred by the applicable statutes of limitations. Patricia thereafter agreed to the dismissal of all of her claims except the illegal-foreclosure and quiet-title claims. The thrust of those remaining claims was that Patricia was entitled to ownership and possession of the Elberta property because, she alleged, BNYM had not been assigned the mortgage at the time of the January 2011 foreclosure sale.

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After BNYM and Kruse submitted answers denying Patricia's claims, all parties filed motions for a summary judgment. The trial court denied those motions. BNYM moved the trial court to reconsider, arguing:

"[Patricia] has two counts remaining against [BNYM] -- illegal/void foreclosure and quiet title. [BNYM's] [summary-judgment] motion demonstrated both res judicata and statute-of-limitations grounds that bar [Patricia's] illegal/void foreclosure claim. These are purely legal arguments that do not depend on any issues of fact. As for [Patricia's] quiet title action, she does not contest that she no longer possesses the subject property. [BNYM's] motion showed that [Patricia's] failure to be in actual, peaceable possession of the [Elberta] property dooms her quiet-title claim. Taken together, [BNYM] presented both legal and undisputed factual arguments that were ripe for summary judgment. Additional discovery will not undercut or otherwise affect these arguments."

Kruse filed a similar motion, and the trial court thereafter held a hearing to consider the parties' arguments. On June 13, 2018, the trial court entered an order vacating its previous orders denying BNYM's and Kruse's motions for a summary judgment and granting those motions. The trial court explained in its June 13 order that Patricia's illegal-foreclosure claim failed because BNYM was the holder of the note at the time of the foreclosure sale and that possession entitled it to foreclose on the Elberta property. The trial

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court further noted that, in any event, the illegal-foreclosure claim was barred by the statute of limitations and the doctrine of res judicata. Finally, the trial court held that Patricia could not prevail on her quiet-title claim because she undisputedly was not in possession of the property. After her postjudgment motion was denied, Patricia filed her notice of appeal to this Court.

Standard of Review

On appeal, Patricia challenges the summary judgment entered against her on the illegal-foreclosure claim. She does not address the summary judgment entered against her on her quiet-title claim and has not made Kruse a party to this appeal. Thus, the only issue before this Court is whether the summary judgment in favor of BNYM and against Patricia on the illegal-foreclosure claim was proper.

In Nationwide Property & Casualty Insurance Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000), this Court stated that, when a party "appeals from a summary judgment, our review is de novo." The Nationwide Court further explained how that standard of review is applied:

"We apply the same standard of review the trial court used in determining whether the evidence

presented to the trial court created a genuine issue of material fact. Jefferson County Comm'n v. ECO Preservation Services, L.L.C., 788 So. 2d 121 (Ala. 2000) (quoting Bussey v. John Deere Co., 531 So. 2d 860, 862 (Ala. 1988)). Once a party moving for a summary judgment establishes that no genuine issue of material fact exists, the burden shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989). 'Substantial evidence' is 'evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). In reviewing a summary judgment, we view the evidence in the light most favorable to the nonmovant and entertain such reasonable inferences as the jury would have been free to draw. Jefferson County Comm'n v. ECO Preservation Servs., L.L.C., supra (citing Renfro v. Georgia Power Co., 604 So. 2d 408 (Ala. 1992))."

Analysis

The summary judgment in favor of BNYM on Patricia's illegal-foreclosure claim was premised on three grounds: (1) BNYM had the right to foreclose on the Elberta property because BNYM held the note at the time of foreclosure; (2) Patricia's claim was barred by the statute of limitations; and (3) Patricia's claim was precluded by the doctrine of res judicata. On appeal, Patricia challenges only the first ground of the judgment, leaving the other two grounds

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uncontested. For that reason, as explained below, we must affirm the judgment in favor of BNYM.

Patricia argues that the trial court erred by entering a summary judgment in favor of BNYM because, she alleges, BNYM never submitted evidence establishing that it was legally entitled to foreclose on the Elberta property. Patricia argues that the evidence submitted by BNYM in fact demonstrated that BNYM was not authorized to foreclose on the Elberta property because, she says, that evidence undisputedly showed that BNYM was not assigned the mortgage until February 2011 -- after BNYM foreclosed on the property in January 2011. Patricia argues that this documentary evidence also establishes that the affidavits submitted by BNYM to support its right to foreclose on the property are inaccurate, if not fraudulent.

BNYM states in response that Patricia has misinterpreted the law and that her arguments have already been rejected by Alabama courts. See, e.g., Coleman v. BAC Servicing, 104 So. 3d 195, 200-01 (Ala. Civ. App. 2012) (explaining that the holder of a note secured by a mortgage may initiate foreclosure proceedings before the mortgage is assigned to

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it). Ultimately, however, BNYM states that it is unnecessary for this Court to analyze Patricia's arguments about the validity of the January 2011 foreclosure sale because the trial court also determined that summary judgment was appropriate on statute-of-limitations and res judicata grounds and Patricia has wholly failed to address those issues on appeal.

When a trial court has stated that a judgment is warranted on multiple grounds, it is incumbent upon a party that subsequently appeals that judgment to address all of those grounds in the opening appellate brief because any issue not argued at that time is waived. See Crews v. National Boat Owners Ass'n Marine Ins. Agency, Inc., 46 So. 3d 933, 942 (Ala. 2010) ("When an appellant fails to argue an issue in its [initial] brief, that issue is waived." (quoting Boshell v. Keith, 418 So. 2d 89, 92 (Ala. 1982))). When the issue that is waived is one of the grounds supporting the judgment, that waiver is fatal to the entire appeal. See Austin v. Providence Hosp., 155 So. 3d 1028, 1031 (Ala. Civ. App. 2014) ("When a trial court enters conclusions of law stating alternative legal grounds for its judgment, the failure of an

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appellant to show error as to each ground in his or her opening brief constitutes a waiver of any argument as to the omitted ground and results in an automatic affirmance of the judgment."). This Court explained in Soutullo v. Mobile County, 58 So. 3d 733, 739 (Ala. 2010), that affirmance is required because an appellate court will not presume error on the part of the trial court.

Applying this principle to Patricia's case, she has contested one of the grounds supporting the trial court's summary judgment (i.e., that BNYM had the right to foreclose), but she has not contested the two additional grounds (statute of limitations and res judicata) supporting that judgment. In the absence of any argument indicating that the trial court erred in its statute-of-limitations or res judicata analysis, we will not presume that such error exists. Therefore, it is unnecessary for us to review Patricia's substantive argument about BNYM's right to foreclose because the summary judgment entered on her illegal-foreclosure claim is due to be affirmed on statute-of-limitations and res judicata grounds, regardless of any conclusion we might make about BNYM's right to foreclose. See Soutullo, 58 So. 3d at 739 ("Because the

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[appellants] have pretermitted discussion of one of the two grounds forming the basis for the [judgment as a matter of law], we pretermitt discussion of the other ground, and we affirm the judgment.").

Conclusion

Patricia sued BNYM arguing that it illegally foreclosed on the Elberta property in January 2011. The trial court entered a summary judgment in favor of BNYM, explaining that the foreclosure was lawful and that Patricia's lawsuit was, in any event, barred by the statute of limitations and precluded by the doctrine of res judicata. Patricia insists on appeal that the foreclosure was illegal and therefore void, but she has failed to address the trial court's application of the statute of limitations and the doctrine of res judicata. The judgment of the trial court is therefore due to be affirmed.

AFFIRMED.

Parker, C.J., and Shaw, J., concur.

Bryan and Mendheim, JJ., concur in the result.