SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1346-16T1

WELLS FARGO BANK, N.A., as Trustee for WaMu Mortgage Pass-Through Certificates Series 2006-PR1 Trust,

Plaintiff-Respondent,

v.

CHRISTINE BUCKLEY and WILLIAM A. BUCKLEY, III, her husband and each of their heirs, devisees, and personal representatives, and his, her, their or any of their successors in right, title and interest,

Defendants-Appellants,

and

JP MORGAN CHASE BANK, NATIONAL ASSOCIATION and GDS FOODS,

Defendants.

Argued February 28, 2018 – Decided April 18, 2018

Before Judges Fuentes, Manahan, and Suter.

On appeal from Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. F-001913-14.

Christine Buckley and William A. Buckley, III, appellants, argued the cause pro se.

Sonya Gidumal Chazin argued the cause for respondent (Phelan, Hallinan, Diamond & Jones, PC, attorneys; Sonya Gidumal Chazin, on the brief).

PER CURIAM

Defendants Christine Buckley and William A. Buckley, III appeal from the September 9, 2016 order that denied their motion to dismiss the foreclosure complaint under Rule 4:6-2 for lack of service, and from the November 4, 2016 order that denied their motion for reconsideration. We affirm both orders.

On December 30, 2015, Christine Buckley (Christine)[1] signed a note in the principal amount of $376,000 to Washington Mutual Bank, F.A. (WaMu) for the purchase of a residential property in Waldwick, New Jersey. Her husband, William A. Buckley, III (William) was not a signatory on the note. On the same day, Christine and William also executed a purchase money mortgage in favor of WaMu. The mortgage was assigned to plaintiff Wells Fargo

[1] We refer to the parties by their first names only to avoid confusion because they share the same surname. When we refer to them jointly, it is as "defendants".

Bank, N.A., as Trustee for WaMu Mortgage Pass-Through Certificates Series 2006-PR1 Trust (Wells Fargo) and recorded in February 2010.[2]

Christine resides at the property. William and Christine separated in 2011. William moved to his mother's home in Ramsey and in 2013, rented an apartment in the same town. William did not notify Wells Fargo that he was living at a different address.

Defendants defaulted on the mortgage in October 2010. No mortgage payments have been made since then. On March 14, 2013, a notice of intention to foreclose was sent to Christine by regular and certified mail to the address of the mortgaged property.

Wells Fargo filed a foreclosure complaint against Christine and William on January 16, 2014. A process server attempted three times in January 2014, to serve the complaint at the address in Waldwick but was not successful. The certification of attempted service and diligent inquiry provided that a note was left for defendants at the property and a notice to tenants was posted. Contact with the Waldwick postmaster and the tax office confirmed defendants' address as that of the mortgaged property. An internet search yielded the same result.

[2] JP Morgan Chase Bank, N.A. was the purchaser of the loans and other assets of WaMu from the Federal Deposit Insurance Corporation, acting as receiver. On January 25, 2010, it assigned this mortgage to Wells Fargo, together with the note.

Wells Fargo then served the complaint by mail pursuant to Rule 4:4-3(a), sending it regular and certified to the Waldwick property. The certified mail was returned unclaimed. The regular mail was not returned. A default was entered on June 4, 2014, and mailed to defendants. An unopposed final judgment of foreclosure was entered on December 16, 2014, in the amount of $458,852.85. Copies of the motion and final judgment were mailed to defendants by regular and certified mail. The regular mail was not returned and the certified mail was unclaimed.

Counsel for Wells Fargo sent a letter dated June 21, 2016, to defendants at the property, advising them that it would be sold at a sheriff's sale on August 5, 2016. The certified mail was unclaimed and the regular mail was not returned. Christine acknowledged that she received the letter on June 23, 2016. She advised William.

On July 27, 2016, Christine and William asked to file a motion to dismiss the complaint under Rule 4:6-2, claiming that they were not properly served with it and requesting an order to stay the sheriff's sale scheduled for August 5, 2016. They exercised their two statutory adjournments under N.J.S.A. 2A:17-36, and the sale was rescheduled to September 2, 2016.

On August 15, 2016, defendants filed an "emergency" motion to dismiss the complaint under Rule 4:6-2. In the supporting certifications, Christine alleged she did not receive a copy of the foreclosure complaint nor any of the other foreclosure related documents except for the letter in June 2016, advising that the property would be sold at a sheriff's sale. William certified that he had been residing in Ramsey since 2011. He also claimed not to have received a copy of any of the foreclosure documents. Wells Fargo filed opposition, contending that it properly served the complaint by mail under Rule 4:4-3(a) after conducting a diligent inquiry.

Defendants' motion to dismiss was denied on September 9, 2016. The court found that "a reasonable and good faith attempt was made to effectuate personal service" based on the three attempts by the process server. The court also found plaintiff made diligent inquiry to determine defendants' "place of abode" by contacting the postmaster and conducting tax and internet searches, all of which confirmed defendants' last known address was the mortgaged property. Because the pleadings and notices sent by regular mail were not returned, the court held that service was effective under Rule 4:4-3(a) and that defendants' allegations did not "nullify the effective service made by simultaneous

mailing." The court also noted that defendants did not inform plaintiff that William had moved, as required by the mortgage.

Defendants' motion for reconsideration was denied on November 4, 2016. At oral argument, Christine advised the court that she received a letter telling her ownership of the mortgage was assigned to MTGLQ Investors LP as of August 29, 2016. Defendants argued they had no obligation to notify Wells Fargo about a change in address because their "lender" under the mortgage was WaMu, which had gone out of business years earlier.

The court found that defendants' claims were self-serving and were made "without any corroborating evidence." It observed that defendants could have informed their lender's successors or assigns of any change of address because the mortgage was a transferable document, citing to [Uniform Commercial Code Comment, cmt. 9 on N.J.S.A. 12A:9-203]. It rejected defendants' argument based on an unpublished opinion from this court. Defendants raised the same arguments about service that were made in the underlying motion. The property was sold at a sheriff's sale on December 2, 2016.

On appeal, defendants contend that the court erred in denying their motion to dismiss the complaint and for reconsideration because service of the complaint was "insufficient," the final

judgment should have been vacated, and they were denied equal access to the courts. They contend there were disputed issues of fact and credibility issues, the court violated the rule against hearsay, the court lacked subject matter jurisdiction, and the court abused its discretion based on certain unreported cases. Defendants also contend that Wells Fargo had no authority to foreclose the loan that was transferred to a different servicer. We find no merit in these issues.

We defer to the trial court's factual findings, which are binding on appeal when supported by adequate, substantial, credible evidence. Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974). However, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

"The requirements of the Rules with respect to service of process go to the jurisdiction of the court and must be strictly complied with." Berger v. Paterson Veterans Taxi Serv., 244 N.J. Super. 200, 204 (App. Div. 1990) (quoting Driscoll v. Burlington-Bristol Bridge Co., 8 N.J. 433, 493 (1952)). "'[S]ubstantial deviation from service of process rules' typically makes a judgment

void." M & D Assocs. v. Mandara, 366 N.J. Super. 341, 353 (App. Div. 2004) (quoting Jameson v. Great Atl. and Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003)).

In a foreclosure case, service can be obtained by satisfying the requirements of Rule 4:4-3 or Rule 4:4-5. Rule 4:4-3 applies where "personal service cannot be effected after a reasonable and good faith attempt, which shall be described with specificity in the proof of service required by R. 4:4-7". R. 4:4-3(a). In that case, "service may be made by mailing a copy of the summons and complaint by registered or certified mail, return receipt requested, to the usual place of abode of the defendant or a person authorized by rule of law to accept service for the defendant." Ibid. However, service by mail is effective only "[i]f it appears by affidavit satisfying the requirements of Rule 4:4-5(b) that despite diligent effort and inquiry personal service cannot be made." R. 4:4-4(b)(1). Service made by mail without satisfying the affidavit requirement under Rule 4:4-4(b)(1) is ineffective and will not support the entry of default, unless the defendant "answers the complaint or otherwise appears in response thereto." R. 4:4-4(c). Thus, there must be "a reasonable and good faith attempt" to serve defendant personally and a diligent inquiry to determine their "place of abode" before serving defendant by mail

under Rule 4:4-3. See U.S. Bank Nat'l Ass'n v. Curcio, 444 N.J. Super. 94, 106 (App. Div. 2016).

Here, we agree with the trial court that service was proper under Rule 4:4-3(a) because the record supported the good faith and reasonable efforts made by Wells Fargo in attempting personal service upon defendants and then by mailing a copy of the complaint to the property. Christine did not dispute that she lived at the property. William never advised the lender that he had a different address. Plaintiff made a diligent inquiry to find Christine and William through the postmaster, tax office and internet after the process server was not successful in personally serving the complaint. Then, the complaint was served in accord with Rule 4:4-3(a) at the property where Christine actually resided and where William last resided by mailing a copy of the complaint to that address. The certified mail was unclaimed but the regular mail was not returned. That was effective service under Rule 4:4-3(a).

Christine's explanation that she was having an issue with one of the mail carriers did not plausibly explain why she received the June 2016 notice of sheriff's sale and not any of the other prior notices. Stated succinctly, Christine did not substantiate

her claim of lack of notice by any evidence other than her own bald assertion.

Defendants' citation to the unreported opinion from this court is unavailing. See R. 1:36-3 (providing that "[n]o unpublished opinion shall constitute precedent or be binding upon any court"). Defendants did not challenge that the mortgage was assigned to Wells Fargo and recorded. They offered no support for their contention that they were only obligated to advise the original lender if they moved. Additionally, in the context of the financial transaction involved here, we find it implausible that the lender would self-impose such a restriction.

The law firm of Phelan Hallinan Diamond & Jones was substituted as counsel for plaintiff in August 2015. Wells Fargo's attorney represented that the records of the prior firm were transferred to it. As with their other claims, defendants cite no support for their contention that those records no longer constitute business records under N.J.R.E. 803(c)(6).

We agree that defendants' motion for reconsideration did not satisfy the applicable standard for relief. "[A] trial court's reconsideration decision will be left undisturbed unless it represents a clear abuse of discretion." Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div.

2015). Reconsideration is appropriate only where "1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or 2) it is obvious that the [c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

Here, the court did not fail to consider the evidence nor was the court's decision based on something incorrect or irrational. Defendants' original motion did not raise the issue that Wells Fargo may have assigned the final judgment to another entity in August 2016. See Naik v. Naik, 399 N.J. Super. 390, 395 (App. Div. 2008) (stating R. 4:49-2 "is not the vehicle for raising a new issue"). Defendants do not explain how this relates to the issue about service of process nor is there a prohibition on the assignment of a judgment. See N.J.S.A. 2A: 25-1.

After carefully reviewing the record and the applicable legal principles, we conclude that defendants' further arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.