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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2315-21**

NR DEED, LLC,

Plaintiff-Appellant,

v.

HENRY RABAGO and
JENNIFER RABAGO, his wife,

Defendants-Respondents,

and

MAO PROPERTIES, LLC,

Intervenor-Respondent.

Argued March 1, 2023 – Decided April 21, 2023

Before Judges Mayer and Enright.

On appeal from the Superior Court of New Jersey,
Chancery Division, Middlesex County, Docket No.
F-004020-21.

Jason A. Levine argued the cause for appellant
(Hangley Aronchick Segal Pudlin & Schiller, attorneys;
Jason A. Levine, on the briefs).

Brian L. Whiteman argued the cause for respondent MAO Properties, LLC (Whiteman Law Group, LLC, attorneys; Brian L. Whiteman, on the brief).

Evan N. Pickus argued the cause for respondents Henry and Jennifer Rabago (Pickus & Landsberg, attorneys, join in the brief of respondent MAO Properties, LLC).

PER CURIAM

Plaintiff NR Deed, LLC (NR) appeals from two orders dated March 16, 2022, each of which vacated an order of final judgment of foreclosure¹ and granted an application by MAO Properties, LLC (MAO) to intervene and redeem a tax sale certificate held by NR. We affirm both orders.

I.

We briefly recount the salient facts. MAO is the contract purchaser of property located in Sayreville (the Property) and defendants Henry and Jennifer Rabago are the contract sellers, having owned the Property since 2011. Defendants live at the Property with their son and grandchild.

Several years after defendants bought the Property, they became delinquent in paying their property taxes and utilities. In 2018, the Tax Collector from the Borough of Sayreville sold tax sale certificate #18-10 to

¹ NR does not challenge the vacatur of the order of final judgment under either of the March 16 orders.

Christiana Trust as Custodian GSRAN-Z, LLC (Christiana), in exchange for Christiana's payment of defendants' unpaid taxes and utilities, which then totaled approximately \$8,100. Thereafter, Christiana continued paying the taxes and utilities on the Property while the tax sale certificate earned eighteen percent interest.

By August 2021, the tax lien on the property totaled over \$60,000 and defendants were financially unable to redeem the tax sale certificate. Accordingly, Christiana filed a foreclosure action against defendants. In December 2021, Christiana moved for final judgment and assigned its interest in the tax sale certificate to NR.

On December 19, 2021, defendants executed a contract to sell the Property to MAO for \$150,000. Under the contract, defendants were permitted to reside at the Property for six months after the closing, at no cost. MAO also agreed to pay defendants' litigation and closing expenses.

On December 22, 2021, the trial court granted NR's motion to substitute as plaintiff in the foreclosure action. That same day, defendants uploaded their opposition to Christiana's motion for final judgment.

On December 23, MAO moved to intervene in the foreclosure action and redeem the tax sale certificate. In support of its motion, MAO submitted a certification from Henry Rabago, which provided, in part:

[1.] The \$150,000 offer [from MAO] will permit me to pay off debt plus [will allow] me to satisfy the tax liens in the approximate[] amount of \$60,000 plus receive significant sale proceeds to use for a fresh start and find a new place to live. It would be very helpful to me to receive a financial benefit from my home.

[2.] MAO is also helping me relocate and letting me live in the property for about [six] months after closing[,] which is very helpful to us[,] especially since we also have our son and grandson living with us as well.

[3.] My home is not worth what Zillow states it is worth because my home is not in good condition and requires substantial repairs and MAO agreed to purchase same in as-is condition[,] which is very helpful to me especially since I do not have the time, ability or money to make repairs and find another buyer for a higher price.

[4.] I do understand that the property could be sold for more money but under the circumstances and because of the condition of the property, I am happy with the purchase price and I need and want to sell my home and avoid foreclosure and obtain some value for my home.

. . . .

[5.] It would be unfair for the [c]ourt to allow . . . [p]laintiff to take my property and for me not to receive any compensation for same.

Mostafa Salem, MAO's Managing Member, also filed a certification with the court. He stated the \$150,000 purchase price offered to defendants was "clearly fair market value under [New Jersey] law," "[t]he [P]roperty [was] in very poor condition and . . . in need of substantial repair," and the purchase price MAO offered defendants was "based upon not just current market value but also the very substantial renovations needed" at the Property. Salem further certified the transaction was "an as-is and cash purchase," and defendants would be permitted to live in the property with their son and grandchild after the closing so they would have "time to find a good place to live for the family but still redeem quickly as needed."

On December 27, 2021, a deficiency notice was posted to the case file on the foreclosure matter, based on defendants' failure to pay the appropriate fee with their December 22 filing. Defendants were not alerted to the deficiency because they received no notice from the court about the missing fee. Accordingly, on January 6, 2022, while MAO's motion was pending, the Office of Foreclosure entered an uncontested order of final judgment against defendants.

MAO subsequently moved to vacate the final judgment; defendants joined in the application after retaining counsel. Additionally, defendants' counsel

filed a certification with the court confirming defendants supported MAO intervening in the foreclosure action and redeeming the tax sale certificate. In his certification, defendants' attorney stated defendants understood "all of the options, risks and details of this matter," the Property was "in disrepair and . . . in tax foreclosure," and defendants had "debt to be satisfied and need[ed] their sale proceeds to move and start fresh." He added,

the offer from MAO to accept the [P]roperty in as-is condition and pay all liens and judgments and additional costs and provide sale proceeds for the Property as well as assist [defendants] with giving them six months before having to move clearly constitutes fair market value under the law.

NR opposed MAO's motion. It contended MAO should not be permitted to intervene and redeem the tax sale certificate based on a \$150,000 purchase price for the Property because the figure was not indicative of the Property's fair market value. In support of its argument, NR relied, in part, on a Zillow Zestimate² for the Property, which reflected the Property's value at \$394,400. NR also represented "the Tax Assessor has tagged the fair market value of the Property at approximately \$350,000." NR alternatively argued the trial court

² A Zestimate "is Zillow's estimate of a home's market value. . . . It is not an appraisal and can't be used in place of an appraisal." Zillow, What is a Zestimate?, (Apr. 17, 2023 9:30:16 AM), <https://www.zillow.com/z/zestimate>.

should preclude MAO from redeeming the tax sale certificate and instead, impose the equitable remedy of a constructive trust in NR's favor to allow NR, as the tax lien certificate holder, to assume MAO's contractual rights with defendants.

In reply, defendants submitted a certification from Jennifer Rabago. She stated, in part:

[1.] I know my home is not worth what Zillow states it is worth because my home is not in good condition and requires substantial repairs[,] which Zillow does not contemplate and the pictures are not even accurate.

[2.] I have spoken to many people and contractors, and I would need to spend approximately \$125,000[] to \$150,000[] in construction repairs . . . for the property to be valued consistent with the Zillow estimates.

[3.] I do not have \$125,000[] - \$150,000[] for repairs and even if hypothetically I did, I do not have the time or desire to perform major construction to my house.

[4.] I do understand that the property could be sold for more money if I had more time or performed the major repairs to the property but under the circumstances, I am happy with the purchase price and agree that the purchase price from MAO is fair market value.

. . . .

[5.] I know . . . [NR] asked the [c]ourt to permit . . . [NR] to step into the shoes of MAO and take over MAO's contract rights, but it is important for the [c]ourt

to know[] that I do not trust . . . [NR] and I do not want to work with or sell my property to . . . [NR].

. . . .

[6.] I have discussed the pros and cons and options of this matter at length with my attorney. I understand the details of this matter. I understand the value of my property. I sincerely believe that under these circumstances[,] the value being paid by MAO in the contract is fair market value and I respectfully request the [c]ourt permit MAO to intervene and buy my home.

The judge heard argument on MAO's motion on March 15, 2022. During argument, NR acknowledged the informal valuations it presented to the court were "based on the outside of the property because [they] weren't allowed in" defendants' home.

On March 16, the judge issued an order, accompanied by a twelve-page opinion: granting MAO's motion to vacate the final judgment; permitting MAO to intervene; and granting MAO's request to redeem the tax sale certificate. Later that day, the judge entered another order (supplemental order), granting identical relief to MAO. The supplemental order was accompanied by a modified, six-page opinion.

In the judge's written opinions, he determined the order of final judgment was "improperly entered against [d]efendants in the face of their filed objections," making it "clear MAO's interest in the Property [was] not

adequately represented." He also concluded NR "would not be prejudiced by [MAO's] intervention as the redemption amount demanded [would] be paid."

Next, the judge addressed "whether or not the purchase price" offered by MAO "qualifie[d] as adequate consideration for the Property." Citing N.J.S.A. 54:5-89.1, the judge observed the statute was recently amended to provide, in part:

No person . . . shall be admitted as a party to such [foreclosure] action, nor shall the person have the right to redeem the lands from the tax sale whenever it shall appear that the person has acquired such interest in the lands for less than fair market value after the filing of the complaint.

The judge then rejected NR's claim that "the contemplated purchase price of \$150,000 [was] not fair market value," despite that "the current Zillow estimate [was] \$394,000." In reaching this conclusion, he credited defendants' certifications, finding "[p]laintiff neglect[ed] the fact that [d]efendants – the owners and current occupants of the Property – themselves acknowledge[d] and certify[ied] that the Property [was] in substantial need of repair."

Additionally, the judge stated:

[m]arket estimates such as those provided by Zillow generally assume a property does not require substantial repairs. Here, however, the Property is in need of substantial repairs and so the Zillow estimate cannot be said to be an accurate reflection of what a

buyer with reasonable knowledge of the relevant facts would be willing to pay "under normal market conditions based on all surrounding circumstances." State v. Silver, 92 N.J. 507, 514 (1983); see also [Est.] of Cohen v. Booth [Computs.], 421 N.J. Super. 134, 150 (App. Div. 2011).

Therefore, the judge concluded "\$150,000 constitute[d] fair market value for the Property given its stated, current conditions." Moreover, the judge determined the \$150,000 purchase price well exceeded the amount due for defendants' tax lien, and "[p]ermitting redemption w[ould] allow . . . [p]laintiff to be . . . made whole, and further allow . . . [d]efendants to remain in possession of what is and has been . . . their home – thus, in this [c]ourt of [e]quity, . . . breathing life into and supporting that old equitable maxim, 'equity abhors forfeiture.'"

II.

On appeal, NR argues the judge: (1) "applied the wrong legal standard for intervention and redemption under the Tax Sale Law," N.J.S.A. 54:5-1 to - 137; (2) "incorrectly assessed whether MAO complied with the Tax Sale Law using the 'flexible, all circumstances test' that the Legislature repealed and replaced in September 2021"; (3) mistakenly accepted MAO's representation that it acquired an interest in the Property for fair market value "without any evidence, placing the burden on plaintiff to disprove MAO's allegation"; and (4)

"misunderstood and misapplied the remedy of a constructive trust" as endorsed by our Supreme Court in Simon v. Cronecker, 189 N.J. 304 (2007). None of these arguments are persuasive.

Preliminarily, we observe "appeals are taken from orders and judgments and not from opinions, oral decisions, informal written decisions, or reasons given for the ultimate conclusion." Do-Wop Corp. v. City of Rahway, 168 N.J. 191, 199 (2001) (citations omitted); see also MacFadden v. MacFadden, 49 N.J. Super. 356, 359 (App. Div. 1958) ("The written conclusions or opinion of a court do not have the effect of a judgment. From them no appeal will lie. 'It is only what a court adjudicates, not what it says in an opinion, that has any direct legal effect.'" (quoting Suburban Dep't Stores v. City of E. Orange, 47 N.J. Super. 472, 479, (App. Div. 1957))).

It also is well settled that appellate courts apply a deferential standard in reviewing factual findings by a judge. Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. McNeil-Thomas, 238 N.J. 256, 271 (2019). "A reviewing court must accept the factual findings of a trial court that are 'supported by sufficient credible evidence in the record.'" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). "Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial

judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Gripenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (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." Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

We review a trial court's order regarding intervention in a tax sale foreclosure under an abuse of discretion standard. Town of Phillipsburg v. Block 1508, Lot 12, 380 N.J. Super. 159, 174 (App. Div. 2005). A court abuses its discretion "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Flagg v. Essex Cnty. Prosecutor, 171 N.J. 561, 571 (2002) (quoting Achacoso-Sanchez v. Immigr. & Naturalization Serv., 779 F.2d 1260, 1265 (7th Cir. 1985)).

Turning to the issues of intervention and redemption raised in this appeal, we note that:

[i]n a series of cases decided fifteen years ago – [i]Cronecker, . . . Simon v. Rando, 189 N.J. 339 (2007), and Malinowski v. Jacobs, 189 N.J. 345 (2007) – [our Supreme Court] resolved many aspects of the ongoing battles between purchasers of tax sale certificates and those who acquire an interest in encumbered properties after foreclosure is sought. [The Court] held in Cronecker that the Tax Sale[] Law . . . does not discourage competition between these combatants when "likely to benefit a financially-strapped property owner." 189 N.J. at 311. But [the Court] also emphasized that the late-arriving investor must intervene in the foreclosure action before being allowed to redeem and that an investor's "failure to follow the clear dictates of the Tax Sale Law and our court rules renders" a pre-intervention redemption or attempted redemption "invalid." Id. at 337.

[Green Knight Cap., LLC v. Calderon, 252 N.J. 265, 267-68 (2022).]

Governed by these principles, we need not discuss at length NR's contention that the judge applied the wrong legal standard in permitting MAO to intervene in this matter. It is enough to say MAO was a contract purchaser with an equitable interest in the property; it had an interest in the property as required under Rules 4:33-1 and -2³; and it satisfied the intervention provision

³ As the judge noted, Rule 4:33-1 sets forth the requirements for intervention as of right, whereas Rule 4:33-2 sets forth the necessary criteria for permissive intervention.

of the Tax Sale Law. Thus, we are satisfied the judge did not abuse his discretion in granting MAO's request for intervention.

NR next argues that "without any evidence," the judge mistakenly accepted MAO's representation that it "acquired its interest in the Property for fair market value." Again, we disagree.

Until recently, a party obtaining an interest in real property could not intervene in a pending tax sale foreclosure action unless the party bought the interest for more than "nominal consideration." N.J.S.A. 54:5-89.1 hist. n. However, the Legislature modified the Tax Sale Law in September 2021 to preclude the right to redeem or intervene in that circumstance if the interest was acquired for "less than fair market value." L. 2021, c. 231, § 1.

As our Supreme Court observed in the past year, amendments to the Tax Sale Law were not "intended 'to bar third-party investors from helping property owners in desperate need of financial assistance, but rather to ensure that the third-party investors do not exploit vulnerable owners by offering only nominal consideration for their property interests.'" Green Knight, 252 N.J. at 271. The Court also noted the amended Tax Sale Law evinces an "evolving attitude toward late investors and its greater interest in providing property owners with the opportunity to salvage or maximize their interests before foreclosure." Id.

at 274. Thus, the Court instructed that in circumstances such as those presented in Green Knight, nothing "preclude[d] a tax sale certificate holder from negotiating with the owner and competing with the investor in attempting to acquire the property" at issue. Id. at 275, n. 4. Additionally, the Court stated it "and the Legislature ha[d] adopted a more tolerant view of investors . . . and a less exalted view of tax sale certificate purchasers . . . than expressed in the decisions that preceded Cronecker." Id. at 272.

Here, we are persuaded the judge adhered to the mandates of updated Tax Sale Law, as well as the shift in our jurisprudence in granting MAO's motion to redeem the tax sale certificate. Indeed, he understood that for MAO to be eligible to redeem the tax sale certificate, it needed to show the \$150,000 purchase price set forth in its contract with defendants reflected the Property's fair market value, i.e., "the value that would be assigned to the acquired property by knowledgeable parties freely negotiating for its sale under normal market conditions based on all surrounding circumstances." Silver, 92 N.J. at 514. In concluding MAO met this burden, the judge credited defendants' certified statements that the Property had diminished in value due to its significant state of disrepair so that the Property's fair market value was \$150,000.

Because the record reflects: plaintiff admitted it was denied access to the interior of defendants' home; its Zillow Zestimate and tax assessment figures did not account for the poor condition of the Property nor the significant cost to renovate it; and no other competent evidence was presented to the judge to refute the fair market value figure presented by MAO, we discern no basis to second-guess the judge's finding that \$150,000 was the fair market value of the Property. While we understand that generally, trial judges are "caution[ed] . . . against fixing market value of real property without the benefit of expert appraisal evidence," see e.g., Jacobitti v. Jacobitti, 263 N.J. Super. 608, 613 (App. Div. 1993) (citation omitted), we also are persuaded a judge is not precluded from considering reliable evidence of the value of real property absent such expert proofs, id. at 613-614.

Given our determination, we need not address plaintiff's remaining arguments. We also are satisfied they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION