

STATE OF MICHIGAN
COURT OF APPEALS

HSBC BANK USA, NA,

Plaintiff-Appellant,

v

MARY F. YOUNG,

Defendant-Appellee.

UNPUBLISHED

July 15, 2014

No. 313212

Washtenaw Circuit Court

LC No. 11-000693-AV

Before: MURRAY, P.J., and O'CONNELL and BORRELLO, JJ.

PER CURIAM.

In this summary action for eviction and possession of residential property following a foreclosure by advertisement, plaintiff HSBC Bank USA, NA appeals by leave granted the circuit court's order reversing the district court's grant of summary disposition in plaintiff's favor. The circuit court also denied plaintiff's motion for reconsideration. For the reasons set forth below, we reverse and remand.

In 2004, defendant Mary Young granted a mortgage on her property to Wells Fargo Home Mortgage, Inc., as security for a loan. The mortgage contained a power of sale clause and was properly recorded. Wells Fargo Bank, NA, as successor to Wells Fargo Home Mortgage Inc., thereafter assigned the mortgage to plaintiff, as trustee for Wells Fargo Home Equity Trust 2004-2. The assignment was recorded in October 2008. The trust is governed by a Pooling and Servicing Agreement (PSA). Defendant defaulted on her loan and, in January 2009, entered into a loan modification agreement. When defendant remained unable to pay her monthly payments, plaintiff began the foreclosure by advertisement process pursuant to MCL 600.3201 *et seq.* Plaintiff thereafter purchased the property at the sheriff's sale on April 8, 2010. The six-month statutory redemption period expired on October 8, 2010. Defendant admits that she failed to redeem the property.

On November 8, 2010, plaintiff commenced summary proceedings in the district court to obtain possession of the property. Defendant answered and asserted various affirmative defenses, including that plaintiff was not the true owner of the mortgage or note because the note was not properly negotiated from the successor mortgagee to plaintiff and because the assignment of the mortgage and note violated several provisions of the PSA. Defendant asserted that if the assignment was invalid, the original mortgagee retained the ability to pursue a remedy for her default of the loan, thereby subjecting her to potential double liability. Plaintiff thereafter

moved for summary disposition pursuant to MCR 2.116(C)(10). The district court granted the motion, finding that there was no genuine issue of material fact as to plaintiff's right to the property and that defendant lacked standing to challenge the mortgage assignment because she was not a party to that assignment. The circuit court, however, reversed the district court's order, finding that the alleged violations of the PSA created a genuine issue of material fact as to which entity had the authority to foreclose the property. The circuit court further opined that, under certain circumstances, a non-party mortgagor has standing to challenge the validity of the mortgage assignment. The circuit court thereafter denied plaintiff's motion for reconsideration, and we granted its application for leave to appeal.

We review de novo all decisions made on motions for summary disposition, including a circuit court's affirmance or reversal of a district court's decision. *Residential Funding Co, LLC v Saurman*, 292 Mich App 321, 327; 807 NW2d 412 (2011), rev'd on other grounds, 490 Mich 909 (2011).

On appeal, plaintiff first argues that defendant lacked standing to challenge the foreclosure in the summary eviction proceeding because the statutory six-month redemption period expired with no attempt by defendant to redeem the property or otherwise challenge the foreclosure. Plaintiff did not raise this issue in the proceedings below, and therefore neither the district court nor the circuit court addressed it. "Michigan generally follows the 'raise or waive' rule of appellate review," which indicates that the "failure to timely raise an issue waives review of that issue on appeal." *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). However, "this Court may overlook preservation requirements where . . . the issue involves a question of law and the facts necessary for its resolution have been presented." *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002) (citations omitted). Whether a party has standing is a question of law, *National Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004), overruled on other grounds, *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010), and the facts necessary to resolve that question are before this Court.

With regard to standing, our Supreme Court has held that "Michigan's standing doctrine should be restored to an approach that is consistent with the limited, prudential approach used historically." *Lansing Sch Ed Ass'n*, 487 Mich at 355. According to these principles,

a litigant has standing whenever there is a legal cause of action. . . . Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or *right*, or substantial *interest*, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Id.* at 372 (emphasis added).]

Standing requires "a legal or equitable right, title, or interest in the subject matter of the controversy." *MOSES Inc v SEMCOG*, 270 Mich App 401, 414; 716 NW2d 278 (2006).

Pursuant to the foreclosure by advertisement statute, after the sheriff's sale is completed, the mortgagor may redeem the property by paying the requisite amount within the six-month

redemption period. MCL 600.3240(1), (8). If the mortgagor does not redeem the property within the six-month redemption period, MCL 600.3236 provides, in pertinent part, that:

Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time hereafter

In other words, once the six-month redemption period expires without the mortgagor having exercised her right to redeem, all of the mortgagor's "right[s], title, and interest" in and to the property are extinguished. MCL 600.3236. See *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942) (Where plaintiffs "did not avail themselves of their right of redemption in the foreclosure proceedings . . . all plaintiff's rights in and to the property were extinguished.").

In this case, the undisputed facts show that the foreclosure sale was held on April 8, 2010. Accordingly, the redemption period expired on October 8, 2010. See MCL 600.3240(1), (8). Defendant admits that she did not redeem the property within the redemption period. Accordingly, all of defendant's "right[s], title, and interest" in and to the property were extinguished, and she lacked standing to challenge the foreclosure in the summary eviction proceedings. MCL 600.3236; *Piotrowski*, 302 Mich at 187; *Lansing Sch Ed Ass'n*, 487 Mich at 372.

In support of her argument that she had standing to challenge the foreclosure in the summary proceeding, defendant relies on *Manufacturers Hanover Mortgage Corp v Snell*, 142 Mich App 548, 553; 370 NW2d 401 (1985), in which this Court cited *Reid v Rylander*, 270 Mich 263, 267; 258 NW 630 (1935), for the proposition that "[t]he Supreme Court has long held that the mortgagor may hold over after foreclosure by advertisement and test the validity of the sale in the summary proceeding." This Court reasoned that "[o]therwise, the typical mortgagor who faces an invalid foreclosure would be without remedy, being without the financial means to pursue the alternate course of filing an independent action to restrain or set aside the sale." *Manufacturers Hanover*, 142 Mich App at 553. *Id.*

Neither *Reid* nor *Manufacturers Hanover* support a finding that defendant had standing in this case. Indeed, the Court in *Reid*, 270 Mich at 267, held that a mortgagor can test the validity of the foreclosure sale in a summary proceeding. However, the Court specifically noted that the mortgagor's challenge to the validity of the foreclosure must relate to the procedure of the sale itself, not to "underlying equities, if any, bearing on the instrument [or] legal capacity of the mortgagee or trustee" *Id.* This Court recognized that limitation in *Manufacturers Hanover*, 142 Mich App at 553, noting that when a mortgagor brings a challenge to the foreclosure after the redemption period has expired, the mortgagor is limited to challenges that relate to the sale itself. In this case, defendant's challenge to the foreclosure does not fit within the exception articulated by the Court in *Reid* because that challenge does not relate to any irregularity in the foreclosure sale itself, but rather relates to plaintiff's legal capacity to foreclose upon the property based on alleged irregularities in the assignment of the underlying mortgage and note granting plaintiff an interest in the property. Challenges on such grounds were expressly rejected

by the Court in *Reid*, 270 Mich at 267. Accordingly, defendant lacked standing to challenge the foreclosure in the summary proceedings, and we need not address the merits of her arguments.

We recognize that the district court granted plaintiff's request for summary disposition under MCR 2.116(C)(10) because there were no genuine issues of material fact, whereas summary disposition for lack of standing is more properly granted under MCR 2.116(C)(5). *Aichele v Hodge*, 259 Mich App 146, 165; 673 NW2d 452 (2003). Nonetheless, we may uphold the district court's ruling where the right result issued, even if the district court used the incorrect court rule. *Gleason v Michigan Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003). See also MCR 7.216(A)(7). Accordingly, we hold that the district court properly granted summary disposition in favor of plaintiff, and conversely, that the circuit court erred in reversing that decision. We thus reverse the circuit court's order and remand this case for entry of an order granting plaintiff possession of the property.

Reversed and remanded. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Stephen L. Borrello