

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED
IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION

GREEN KEY FINANCIAL, LLC,
Appellant,

Case No.: 15-000046AP-88A
UCN: 522015AP000046XXXXCI

v.

RANCH MOBILE, INC.,
Appellee.

_____ /

Opinion Filed _____

Appeal from Order Denying Motion
to Vacate Final Judgment and Granting
Motion for Removal of Mobile Home
Pinellas County Court
Judge Edwin Jagger

Russell L. Cheatham, III, Esq.
Attorney for Appellant

Karen E. Maller, Esq.
Attorney for Appellee

PER CURIAM.

Green Key Financial, LLC, as third-party purchaser in the trial court action, appeals the "Order Denying Green Key's Motion to Vacate Final Judgment and Granting Plaintiff's Motion for Removal of Mobile Home" entered on May 15, 2015. Upon review of the briefs, the record on appeal, and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We affirm.

Statement of Case

In August 2012, Ranch Mobile, Inc., a cooperative mobile home park, filed a two-count complaint for foreclosure of a mobile home and damages for unpaid assessments against a deceased leaseholder in the park. The trial court entered a Final Judgment of Foreclosure ("Final Judgment") in favor of Ranch Mobile. The Final Judgment set the

sale date for the mobile home, awarded Ranch Mobile possession of the premises on which the mobile home is located, and required any third-party purchaser of the mobile home to either be approved as a member of the park or to remove the home from the park.

Green Key purchased the mobile home at the foreclosure sale. When Green Key did not apply for membership in the mobile home park, Ranch Mobile filed a motion for removal of the mobile home. After several hearings, continuances, and a separate, but related, declaratory action by Green Key (which was dismissed with prejudice), Green Key filed "Third party Bidder, Green key Financial, LLC's Motion to Vacate Foreclosure Sale Final Judgment." The trial court held that Green Key "failed to establish a basis to vacate the judgment under the standards set forth in Rule 1.540, Florida Rule of Civil Procedure." Therefore, the court denied the motion to vacate and granted the motion to remove the mobile home.

Argument on Appeal

In the Initial Brief, Green Key asserts that the trial court erred by failing to vacate the foreclosure sale, erred by finding that Green Key did not establish a basis to vacate the Final Judgment, and erred by requiring the removal of the mobile home. Green Key contends that the foreclosure sale was the result of a flawed Final Judgment, which granted relief not requested in the complaint and, as such, the sale and Final Judgment should have been vacated.

In the Motion to Vacate Foreclosure Sale Final Judgment, Green Key states that although the trial court action involved a complaint to foreclose a claim of lien on real property, the Final Judgment wrongly awarded the real property to Ranch Mobile and provided for a judicial sale of only the mobile home. Green Key alleges that it bought the property at the judicial sale under the assumption that both the real property and physical home were included. Green Key requests that the sale and Final Judgment be vacated to allow the pleadings to be amended to reflect the proper interest being foreclosed upon, and the purchase price be refunded.

Standard of Review

An order denying a motion to vacate a judgment pursuant to Florida Rule of Civil Procedure 1.540(b) is reviewed under an abuse of discretion standard. Carmona v.

Wal-Mart Stores, E., LP, 81 So. 3d 461, 464 (Fla. 2d DCA 2011). “Judicial discretion exercised by the trial court is abused when no reasonable judge would take the view adopted by the trial judge.” HSBC Bank USA, Nat. Ass'n v. Nixon, 117 So. 3d 430, 433 (Fla. 4th DCA 2012) (citation omitted). “The review of such an order does not include the merits of the final decree sought to be vacated or any other order or judgment. Thus, our only concern is whether the trial court abused its discretion in denying relief from the final judgment.” Shields v. Flinn, 528 So. 2d 967, 968 (Fla. 3d DCA 1988) (citations omitted).

Analysis

In the instant appeal, Green Key alleges that the foreclosure sale and Final Judgment should have been vacated because the trial court granted relief to Ranch Mobile that was not requested in the Complaint. Green Key is correct that “a judgment which grants relief wholly outside the pleadings is void.” See Bank of New York Mellon v. Reyes, 126 So. 3d 304, 309 (Fla. 3d DCA 2013). However, we find that the Final Judgment does not award any relief that was not requested. Upon review of the briefs, it appears that Green Key is actually asserting that the trial court erred in providing the requested relief, which is not a proper basis for a rule 1.540 motion.

Florida Rule of Civil Procedure 1.540 is “intended to provide relief from judgments, decrees or orders under a limited set of circumstances.” Curbelo v. Ullman, 571 So. 2d 443, 444-445 (Fla. 1990) (internal citations omitted). Under rule 1.540, a party may seek relief from a final judgment for:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Fla. R. Civ. P. 1.540(b). Green Key's motion does not seek relief under any of these grounds. Instead, it disputes the substance of the Final Judgment. Although Green Key's motion alleges that Ranch Mobile engaged in misconduct by inducing the trial

court to improperly award it possession of real property, Green Key ultimately seeks relief on the basis that the trial court wrongly allowed the sale of only the mobile home when a leasehold interest in real property was also at issue.¹ Rule 1.540 is not “a substitute for appellate review of judicial error.” Curbelo, 571 So. 2d at 444-445. A “trial court is not empowered by rule 1.540(b)4 to revisit a final judgment or final order . . . to correct errors of law.” Harrison v. La Placida Cmty. Ass'n, Inc., 665 So. 2d 1138, 1141 (Fla. 4th DCA 1996). Accordingly, because Green Key’s motion presents no basis for relief from judgment under rule 1.540, we affirm the order denying the motion.

Finally, Green Key asserts that because the trial court erred by not vacating the foreclosure sale and Final Judgment, it follows that it was an error to require the removal of the mobile home. As discussed above, the trial court properly denied the motion to vacate. Accordingly, we affirm the order granting removal of the mobile home.

ORDERED AND ADJUDGED that:

1. The Order Denying Green Key’s Motion to Vacate Final Judgment and Granting Plaintiff’s Motion for Removal of Mobile Home is **AFFIRMED**.
2. Pursuant to Florida Rule of Appellate Procedure 9.400, the assessment of appellate attorney’s fees and costs is remanded to the lower tribunal.

DONE AND ORDERED in Chambers in Clearwater, Pinellas County, Florida, this

10 day of June 2016.

Original Order entered on June 10, 2016, by Circuit Judges Linda R. Allan, Jack R. St. Arnold, and Patricia A. Muscarella.

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¹ The Court notes that a motion for relief from judgment on the basis of an adverse party’s misconduct is required to be filed within one year after the judgment is rendered, which would be time barred in this case.