

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**

SOUTH PASADENA MOBILE HOME PARK, INC.,
Appellant,

vs.

Ref. No.: 16-0008AP-88B
UCN: 522016AP000008XXXXCI

LOUIS H. MAHAR, Deceased; MARIE MAHAR;
JOHN DOE AS UNKNOWN HEIR OF LOUIS
H. MAHAR; JANE DOE AS UNKNOWN HEIR
OF LOUIS H. MAHAR; ALL OTHER
PARTIES CLAIMING BY, THROUGH, AND
UNDER SAID DEFENDANTS, and SCOTT HUNDLEY,
Appellees.

ORDER AND OPINION

Appellant challenges the trial court's Order Vacating Default Final Judgment of Foreclosure and Order Vacating Sale of Property. For the reasons set forth below, the Order is reversed and the case is remanded.

Facts and Procedural History

In May 2015, Appellant, a mobile home cooperative, filed a complaint for eviction, lien foreclosure, and the termination of occupancy rights and possession against Louis Mahar, a deceased "unit owner,"¹ and potential heirs and interested parties. The Complaint requested the sale of his mobile home and the reversion of his Stock Certificate² (the "Share") to Appellant. When no responsive pleading was filed, the trial court entered a Default Final Judgment in favor of Appellant. The Final Judgment ordered the sale of the mobile home and the reversion of the Share.

Appellee Scott Hundley ("Purchaser") bought the mobile home at the foreclosure sale. Eight days after the sale, Purchaser filed an "Objection to Sale and Motion for Clarification" ("Motion"). As the result of an incorrect e-filing date stamp, the trial court deemed the Motion untimely and treated it "as a timely filed Motion to Correct Title or Vacate Sale, pursuant to Fla. R. Civ. P. 1.540(b)." After a hearing, the trial court entered the Order Vacating Default Final Judgment of Foreclosure and Order Vacating Sale of Property ("Order"). In the Order, the court held:

¹ A unit owner is "the person holding a share in the cooperative association and a lease or other muniment of title or possession of a unit." § 719.103(26), Fla. Stat.

² The Stock Certificate indicates "ownership in [the] cooperative representing an undivided share in the assets of the association." See § 719.1039(14), Fla. Stat.

Based on this Court's finding that Plaintiff foreclosed on the "cooperative parcel," thus, the entire "cooperative parcel" was required to be sold at foreclosure sale, this Court finds it entered a voidable Default Final Judgment.

Appellant then filed a petition for writ of certiorari, which this Court treats as a direct appeal pursuant to Florida Rule of Appellate Procedure 9.130(5).

Standard of Review

"Ordinarily, we review an order on a motion for relief from judgment for an abuse of discretion." *Casteel v. Maddalena*, 109 So. 3d 1252, 1255 (Fla. 2d DCA 2013) (citations omitted). If the trial court's decision to apply rule 1.540(b) is purely a question of law, a de novo standard applies. *Id.*; *Segalis v. Roof Depot USA, LLC*, 178 So. 3d 83, 85 (Fla. 4th DCA 2015) ("[W]here there is no factual dispute and the trial court's decision is based on a pure question of law, the review is de novo.").

Discussion

Appellant asserts that the trial court erred by: 1) finding that both the mobile home and the Share had to be included in the foreclosure sale; 2) misapplying the doctrine of election of remedies; 3) failing to apply the doctrine of caveat emptor; and 4) using Florida Rule of Civil Procedure 1.540(b) to vacate the Final Judgment. Because we find that the fourth issue is dispositive, the Court will not address the first three.

Using Rule 1.540 to Vacate the Final Judgment

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, 444-45 (Fla. 1990) (citation omitted). Under rule 1.540(b), 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.

Appellant correctly contends that Purchaser's Motion does not seek relief under any of these grounds. Instead, Purchaser disputes the substance of the Final Judgment. In the Motion, Purchaser asserts that because Appellant foreclosed on the claim of lien, which included both the mobile home and the Share, the Share should have also been sold at the foreclosure sale. Purchaser's Motion requests that the court order the Clerk of Court to issue a new certificate of title that would include

the Share, or, in the alternative, to treat the motion as an objection to the sale and return the money Purchaser paid for the property.

Although Purchaser's Motion did not request relief under rule 1.540, "a trial court [can] grant such relief on its own motion." *Commonwealth Land Title Ins. Co. v. Freeman*, 884 So. 2d 164, 167 (Fla. 2d DCA 2004). However, a court "can only grant such relief for one of the enumerated reasons in the rule." *Id.* At the hearing on the Motion, Purchaser cited *Bank of New York Mellon v. Reyes* for the proposition that "[t]o the extent that the final judgment gave relief that was not properly pled in the complaint . . . those provisions are void and should be clarified." 126 So. 3d 304, 309 (Fla. 3d DCA 2013) (holding that "[b]ecause the judgment below grants relief wholly outside the pleadings on which the default was entered, it is void and should have been vacated by the court below"). In *Reyes*, although "the counterclaim ma[de] no mention of the promissory note secured by the mortgage at issue . . . and allege[d] no grounds on which relief from that note might be granted," the trial court declared the note null and void. *Id.* at 308. Relying on the *Reyes* case, the trial court held that "Plaintiff cannot be granted relief in a Default Final Judgment that is not supported by the pleadings or by substantive law applicable to the pleadings." Although this is a valid basis to vacate a void judgment under 1.540(b)(4), the Final Judgment in this case is not void. Here, the Complaint contains allegations of past due assessments in violation of both the cooperative's governing documents and section 719.108, Florida Statutes, and requests that the Share revert under the former, and the mobile home be sold under the latter.

While this Court recognizes the perceived inequity of the Share reversion that the trial court was attempting to remedy, a determination that the Final Judgment must be vacated because it required only the mobile home to be sold at the foreclosure sale is not a valid basis for relief under rule 1.540(b). The Final Judgment does not award any relief that was not requested in the pleadings. If the Final Judgment improperly granted the requested relief, then that is an issue for a motion for rehearing or appeal, not a basis for relief under rule 1.540. *Curbelo*, 571 So. 2d at 444-45 (holding that rule 1.540 is not "a substitute for appellate review of judicial error"); *Leach v. Salehpour*, 19 So. 3d 342, 345 (Fla. 2d DCA 2009) (declaring that "judicial errors, which include errors that affect the substance of a judgment," cannot be corrected under rule 1.540); *Paladin Properties v. Family Inv. Enterprises*, 952 So. 2d 560, 562 (Fla. 2d DCA 2007) (asserting that errors of law "must be corrected by way of an appeal"); *Harrison v. La Placida Cmty. Ass'n, Inc.*, 665 So. 2d 1138, 1141 (Fla. 4th DCA 1996) (opining that a "trial court is not empowered by rule 1.540(b) to revisit a final judgment . . . to correct errors of law").

Conclusion

No valid basis for vacating the Final Judgment exists under rule 1.540(b). Furthermore, the trial court Order contained no independent analysis concerning the propriety of vacating the sale but simply held that "the sale in this matter will be vacated as the Default Final Judgment must be vacated." Accordingly, the Order must be reversed and the case remanded for further determination.

ORDERED AND ADJUDGED that the Order Vacating Default Final Judgment of Foreclosure and Order Vacating Sale of Property is REVERSED and REMANDED.

DONE AND ORDERED in Chambers, at St. Petersburg, Pinellas County, Florida this 25th day of October 2016.

Original Order entered on October 25, 2016, by Circuit Judges Pamela A.M. Campbell, Amy M. Williams, and Thomas M. Ramsberger.

Copies furnished to:

DANIELLE VANDERGEETEN, ESQUIRE
DAVIS BASTA LAW FIRM, P.A.
31111 U.S. HIGHWAY 19 NORTH
PALM HARBOR, FL 34684

DONALD A. MIHOKOVICH, ESQUIRE
ADAMS and REESE LLP
101 E. KENNEDY BLVD., SUITE 4000
TAMPA, FL 33602

UTA S. GROVE, ESQUIRE
GROVE & CINTRON, P.A.
2600 EAST BAY DRIVE, SUITE 220
LARGO, FL 33771

MARIE MAHAR
214 BRANSFIELD ROAD
GREENVILLE, SC 29615

MARIE MAHAR
331 MERRIVALE LANE
SPARTANBURG, SC 29301

JOHN DOE AND/OR JANE DOE
AS UNKNOWN HEIR OF LOUIS H. MAHAR
801 64th STREET SOUTH, #31-A
ST. PETERSBURG, FL 33707

LOUIS H. MAHAR
801 64th STREET SOUTH, 31-A
ST. PETERSBURG, FL 33707