

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA12-942  
NORTH CAROLINA COURT OF APPEALS

Filed: 19 March 2013

In the matter of the Proposed  
Foreclosure of Claim of Lien  
Filed Against  
QIN QIANG ZHENG  
BI RONG DONG

by

Weddington Ridge Homeowners  
Association, Inc.  
Dated June 17, 2010  
Recorded in Docket # 10-M-7789  
In the Office of the Clerk of  
Superior Court for Mecklenburg  
County

v.

Mecklenburg County  
No. 10 SP 7029

CHARLOTTE PROPERTY INVESTMENTS,  
LLC,  
Appellant.

Appeal by Charlotte Property Investments, LLC from order entered 29 March 2012 by Judge Eric L. Levinson in Mecklenburg County Superior Court. Heard in the Court of Appeals 4 March 2013.

*No brief filed for petitioner.*

*Hedrick Gardner Kincheloe & Garofalo, LLP, by Harmony Whalen Taylor and M. Duane Jones, for respondent-appellees.*

*Richard H. Tomberlin for appellant.*

HUNTER, JR., Robert N., Judge.

Charlotte Property Investments, LLC ("Appellant") appeals from an order allowing Qin Qiang Zheng and Bi Rong Dong's ("Respondents") motion to set aside the foreclosure of the real property located at 3134 Huntington Ridge Court in Matthews (the "Property"). We affirm.

On 17 June 2010, the Weddington Ridge Homeowners Association, Inc. (the "Association") filed a claim of lien against the Property, which was owned by Respondents. The Association filed a notice of hearing prior to foreclosure of claim of lien on 22 July 2010. Following a hearing, an assistant clerk entered an order on 30 September 2010 allowing foreclosure to proceed. The Property came on for public sale on 2 November 2010 and was purchased by Appellant. The foreclosure deed was recorded on 17 February 2011.

On 31 October 2011, Respondents filed a motion for relief from the Clerk's order pursuant to Rule 60(b) of the North Carolina Rules of Civil Procedure, requesting that the trial court set aside the foreclosure of the Property. Upon

Respondents' motion, the trial court entered an order on 24 January 2012 adding Appellant as a party to the action.

On 29 March 2012, the trial court entered an order allowing Respondents' motion to set aside the foreclosure. The trial court concluded that the Association failed to provide Respondents with proper notice of the foreclosure action, in violation of several statutes, and that N.C. R. Civ. P. 60(b)(4) and (6) authorize the trial court to set aside a void judgment. The trial court therefore ordered the following: "The Order Allowing Foreclosure to Proceed, dated September 30, 2010, the Foreclosure sale held on November 2, 2010, and the Foreclosure Deed recorded on February 17, 2011, are hereby deemed void and are set aside." Appellant entered timely notice of appeal.

Appellant argues that the trial court erred in deeming the foreclosure deed void and in ordering it to be set aside pursuant to N.C. R. Civ. P. 60(b). "[A] motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court and appellate review is limited to determining whether the court abused its discretion." *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975).

Appellant cites to N.C. Gen. Stat. § 1-108, which provides, in pertinent part, the following:

If a judgment is set aside pursuant to Rule 60(b) or (c) of the Rules of Civil Procedure and the judgment or any part thereof has been collected or otherwise enforced, such restitution may be compelled as the court directs. Title to property sold under such judgment to a purchaser in good faith is not thereby affected.

N.C. Gen. Stat. § 1-108 (2011). Appellant argues that pursuant to this section, the trial court's order should not affect Appellant's deed to the property absent a showing that Appellant was not a purchaser in good faith. Appellant thus argues that any restitution is a matter between Respondents and the Association.

We disagree, as we have previously rejected such an interpretation of N.C. Gen. Stat. § 1-108 in *Town of Cary v. Stallings*, 97 N.C. App. 484, 389 S.E.2d 143 (1990). In *Stallings*, we stated:

[The purchaser] has interpreted this statute as being one which unquestionably prevents the disturbance of a transfer of title to property sold pursuant to a judgment when such judgment was subsequently set aside. This, however, is not an accurate interpretation. Our reading of this statute provides that the conveyance of title to such property, as acquired in good faith, is not *automatically* affected, but, title to such property *may* in fact be affected if the court deems it necessary in the interest of justice.

*Id.* at 487, 389 S.E.2d at 145 (emphasis in original). In

*Stallings*, we went on to hold that the trial court did not err in concluding that the judgment was void and in setting it aside. *Id.* at 488, 389 S.E.2d at 145. The trial court's order in the instant case is consistent with *Stallings*, and Appellant has made no showing that the trial court abused its discretion in deeming the foreclosure deed void and in setting it aside. Accordingly, we affirm the order of the trial court.

Affirmed.

Chief Judge MARTIN and Judge STROUD concur.

Report per Rule 30(e).