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NO. COA14-153  
NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

IN THE MATTER OF THE  
FORECLOSURE OF A DEED OF TRUST  
EXECUTED BY STEPHEN F. CLOUSE  
AND GLORIA J. CLOUSE DATED  
OCTOBER 20, 1998 AND RECORDED IN  
BOOK 1021 AT PAGE 741 IN THE  
JACKSON COUNTY PUBLIC REGISTRY,  
NORTH CAROLINA

Jackson County  
No. 12-SP-247

Appeal by respondent from order entered 24 September 2013  
by Judge Edwin Wilson in Jackson County Superior Court. Heard  
in the Court of Appeals 13 August 2014.

*Bradley Arant Boult Cummings LLP, by Brian M. Rowlson, for  
petitioner-appellee.*

*Soboleski Law, PC, by Sean D. Soboleski, for respondent-  
appellant.*

DAVIS, Judge.

Respondent Turnip Investments, LLC ("Turnip Investments")  
appeals from the trial court's 24 September 2013 order  
authorizing Deutsche Bank Trust Company Americas as Trustee for

RAMP 2004-SL4 ("Deutsche Bank") to proceed with foreclosure on a deed of trust recorded in Book 1021 at Page 741 in the Jackson County Register of Deeds. After careful review, we affirm.

**Factual Background**

On 20 October 1998, Stephen Clouse ("Mr. Clouse") executed a promissory note ("the Note") in the amount of \$59,600.00 plus interest to Homecomings Financial Network, Inc. ("Homecomings Financial"). On 21 October 1998, the Note was secured with a deed of trust executed by Mr. Clouse and his wife, Gloria Clouse, on real property located at 3851 Spruce Flats Road, Maggie Valley, North Carolina ("the Subject Property"). This deed of trust was recorded in Book 1021 at Page 741 in the Jackson County Register of Deeds.

On 22 June 2012, Turnip Investments purchased the Subject Property at an execution sale "subject to all liens which were effective prior to the lien of the judgment under which the sale was held." On 11 October 2012, Homecomings Financial assigned its rights under the Note to Deutsche Bank. This assignment was recorded on 23 October 2011 in Book 1958 at Page 840 in the Jackson County Register of Deeds.

On 15 November 2012, Grady J. Ingle or Elizabeth B. Ells ("the Substitute Trustees"), acting on behalf of Deutsche Bank,

initiated foreclosure proceedings on the Subject Property and sent a notice of foreclosure hearing to the Clouses. On 28 November 2012, the Substitute Trustees amended the foreclosure hearing notice to include Turnip Investments, the current owner of the Subject Property. On 31 December 2012, GMAC Mortgage, LLC, as servicer of the loan on behalf of Deutsche Bank, submitted an affidavit of default, attesting that Mr. Clouse had defaulted according to the terms of the Note and deed of trust and that the Substitute Trustees had been instructed to proceed with foreclosure.

On 29 January 2013, the Jackson County Clerk of Court authorized foreclosure on the Subject Property pursuant to N.C. Gen. Stat. § 45-21.16 after concluding that there was a valid debt, Deutsche Bank was the holder of the note evidencing the debt, the parties were given proper notice of the foreclosure hearing, there was a default, the Note provided the right to foreclosure under power of sale, pre-foreclosure notice was provided in all material respects and all relevant time periods had elapsed, and the foreclosure sale was not barred by N.C. Gen. Stat. § 45-21.12A. Turnip Investments appealed to the Jackson County Superior Court, and on 16 September 2013, the

matter came on for a *de novo* hearing before the Honorable Edwin Wilson.

At the hearing, Deutsche Bank tendered the "court file and all the documents in that court file from the clerk's prior hearing for the appeal," as well as the "original blue ink note with the allonge and all of the [i]ndorsements." Additionally, Deutsche Bank presented "696 pages . . . from SEC's website, [of] the purchasing and servicing agreement." Turnip Investments did not object to any of the evidence offered by Deutsche Bank at the hearing.

On 24 September 2013, the trial court entered an order finding that each of the requirements of N.C. Gen. Stat. § 45-21.16(d) had been satisfied and authorizing Deutsche Bank to proceed with foreclosure. Turnip Investments filed a timely notice of appeal to this Court.

### **Analysis**

On appeal, Turnip Investments argues that the trial court erred by failing to conduct a proper *de novo* hearing. As a result, Turnip Investments contends, there was insufficient evidence before the trial court to support its conclusion that Deutsche Bank was the holder of the Note. We disagree.

#### **I. Preservation of the Appeal**

Rule 10(a)(1) of the North Carolina Rules of Appellate Procedure generally requires a party to object at trial and obtain a ruling in order to preserve an issue for appeal. N.C.R. App. P. 10(a)(1). After carefully reviewing the transcript of the proceeding, it is evident that Turnip Investments failed to object to the evidence offered or the manner in which it was offered at the 16 September 2013 superior court hearing. As such, Deutsche Bank argues that dismissal of the appeal is warranted because Turnip Investments failed to preserve any issues for appeal. We agree that Turnip Investments failed to preserve their right to challenge the introduction of specific evidence. However, Rule 10(a)(1) allows this Court to consider an issue "by which rule or law was deemed preserved or taken without any such action, including . . . whether the judgment is supported . . . by the findings of fact and conclusions of law[.]" *Id.* Therefore, our review is limited to determining whether error appears on the face of the record, and we will not re-weigh evidence or address unpreserved issues.

## **II. De Novo Hearing**

Turnip Investments first argues that the trial court failed to hold a proper *de novo* hearing and, instead, merely engaged in

a "de novo review" of the clerk's findings.

N.C. Gen. Stat. § 45-21.16(d1), in pertinent part, provides that

[t]he act of the clerk in so finding or refusing to so find [the existence of subsection (d)'s elements] is a judicial act and may be appealed to the judge of the district or superior court having jurisdiction . . . . Appeals from said act of the clerk shall be heard de novo.

N.C. Gen. Stat. § 45-21.16(d1) (2013).

"A court empowered to hear a case *de novo* is vested with full power to determine the issues and rights of all parties involved, and to try the case as if the suit had been filed originally in that court." *Caswell Cty. v. Hanks*, 120 N.C. App. 489, 491, 462 S.E.2d 841, 843 (1995) (citation and internal quotation marks omitted). "[A] *de novo* hearing or trial conducted pursuant to a specific statutory mandate requires judge or jury to disregard the facts found in an earlier hearing or trial and engage in independent fact-finding." *Ocean Hill Joint Venture v. Currituck Cty. Bd. of Comm'rs*, 178 N.C. App. 182, 186, 630 S.E.2d 714, 717 (2006) (citation, quotation marks, and emphasis omitted), *per curiam disc. review improvidently allowed*, 361 N.C. 228, 641 S.E.2d 302 (2007). Thus, N.C. Gen. Stat. § 45-21.16(d1) requires that the trial court "hear or try

the case on its merits from beginning to end as if no trial or hearing had been held by the [clerk] and without any presumption in favor of the [clerk's] decision." *In re Hayes*, 261 N.C. 616, 622, 135 S.E.2d 645, 649 (1964) (citation and quotation marks omitted).

We disagree with Turnip Investments' contention that the trial court "simply considered and reviewed documents submitted at the Clerk's hearing[.]" In addition to reviewing the file considered by the clerk, the trial court considered new evidence and heard arguments by both parties. In its order, the trial court specifically noted that it considered "the respective briefs and exhibits thereto submitted by the parties, the original Promissory Note, the Deed of Trust recorded in Book 1021 at Page 741, appropriate assignments, and . . . heard the arguments of counsel" before reaching its decision. The transcript indicates that Deutsche Bank tendered to the trial court the file previously considered by the clerk. Additionally, it provided the "original blue ink note with the allonge and all of the [i]ndorsements," as well as a 696-page copy of the purchase and servicing agreement from the Securities and Exchange Commission's website. As such, we conclude that Turnip Investments' contention that the trial court failed to

hold a *de novo* hearing pursuant to N.C. Gen. Stat. § 45-21.16(d1) is without merit.

### **III. Holder of the Note**

Turnip Investments next argues that the trial court's order allowing foreclosure must be vacated because its conclusion that Deutsche Bank was the holder of the Note is unsupported by the evidence. The Uniform Commercial Code ("UCC"), as adopted by North Carolina, defines the term "holder" to include "[t]he person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." N.C. Gen. Stat. § 25-1-201(b)(21) (2013). A "person" includes "an individual, corporation, business trust, estate, trust . . . or any other legal or commercial entity." N.C. Gen. Stat. § 25-1-201(b)(27). If the person in possession was not the original holder but is identified in the note, "transfer requires indorsement by each previous holder." *In re Bass*, 366 N.C. 464, 468, 738 S.E.2d 173, 176 (2013).

"An indorsement is a signature that alone or accompanied by other words is made on an instrument for the purpose of negotiating the instrument." *Id.* (citation, quotation marks, and ellipses omitted). Our Supreme Court has noted that the UCC defines "signature" broadly, explaining that "[e]ven if there



might be some irregularities in the signature, the necessary intent can still be found based on the signature itself and other attendant circumstances." *Id.* at 469, 738 S.E.2d at 176. "[A] signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement." N.C. Gen. Stat. § 25-3-204(a) (2013). Within the context of transferring promissory notes, there exists a "strong presumption in favor of the legitimacy of indorsements[, which] protects the transfer of negotiable instruments by giving force to the information presented on the face of the instrument." *Bass*, 366 N.C. at 468, 738 S.E.2d at 176.

Here, Deutsche Bank is in possession of the Note and is identified therein. Though Deutsche Bank was not the original holder of the Note, the record contains sufficient evidence to support the trial court's conclusion that Deutsche Bank "is the holder of said promissory note, and the balance due on said promissory note constitutes a valid debt to Deutsche Bank."

At the superior court hearing, Deutsche Bank presented the Note and the allonges to the Note evidencing various transfers. The Note showed that Homecomings Financial was the original

holder. The Note itself also contained an indorsement showing a transfer from Homecomings Financial to Residential Funding Corporation. There is a second stamp on the Note where Residential Funding Corporation indicates that the Note should be paid "to the order of Bankers Trust Company as Trustee." In a subsequent allonge to the Note, Residential Funding Corporation indicates that the Note should be paid "to the order of Deutsche Bank Trust Company Americas as Trustee Formerly Known as Bankers Trust Company." The next allonge contains an indorsement transferring the Note back to Residential Funding Corporation, and the final allonge transfers the note from "Deutsche Bank Trust Company Americas as Trustee, Residential Funding Corporation, LLC fka Residential Funding Corporation as Attorney in Fact" to "Deutsche Bank Trust Company Americas as Trustee for RAMP 2004SL4."

Bearing in mind the strong presumption in favor of the legitimacy of indorsements, we conclude that sufficient evidence existed in the record to support the conclusion that Deutsche Bank is the holder of the Note. Therefore, we affirm.

**Conclusion**

For the reasons stated above, we affirm the trial court's order authorizing foreclosure.

AFFIRMED.

Judges HUNTER, Robert C., and DILLON concur.

Report per Rule 30(e).