

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Alexander Volynsky v. Park Tree Investments 21, LLC

No. 3D19-2197 · No. No. 3D19-2197 · Decided June 9, 2021

SUMMARY

The Florida Third District Court of Appeal affirmed an order overruling Alexander Volynsky’s objections to a judicial foreclosure sale and directing issuance of a certificate of title to the winning bidder. The court held that Volynsky’s objections were facially deficient because they identified no sufficient equitable grounds for relief and therefore did not require an evidentiary hearing beyond the opportunity to be heard that he received.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Miller, J.; Emas, C.J.; Lobree, J.
JURISDICTION	Florida
DECIDED	June 9, 2021
DOCKET	No. 3D19-2197
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a non-final order overruling objections to a judicial foreclosure sale and directing issuance of a certificate of title to the third-party purchaser.
STANDARD OF REVIEW	The court reviewed the order overruling post-sale objections for error.
PRECEDENTIAL VALUE	Published Florida Third District Court of Appeal opinion; precedential subject to timely rehearing disposition.
PARTIES	Alexander Volynsky v. Park Tree Investments 21, LLC

TOPICS

- foreclosure
- appellate procedure
- civil procedure
- equitable relief
- remedies

PRACTICE AREAS

- foreclosure
- civil procedure
- appellate procedure
- remedies
- real estate litigation

QUESTIONS PRESENTED

1. Whether due process required an evidentiary hearing on Volynsky's post-sale objections to the foreclosure sale.
2. Whether Volynsky's objections were legally sufficient to support equitable relief from the judicial foreclosure sale.

HOLDINGS

1. An evidentiary hearing is not required merely because timely post-sale objections are filed; where the objections are facially deficient and are not supported by facts or proffered evidence sufficient to justify equitable relief, notice and a meaningful opportunity to be heard satisfy due process.
2. A generalized allegation that unspecified court notices were not served is legally insufficient to support equitable relief from a foreclosure sale when the borrower was personally served with the foreclosure action and received notice of the final judgment.
3. A bare assertion that the foreclosure-sale price was less than the property's value, without proof of fair market value or another adequate equitable factor, is legally insufficient to set aside the sale.

KEY QUOTATIONS

“The specific parameters of the notice and opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding.” (at 2)

“Under these circumstances, the trial court afforded Volynsky both notice and a meaningful opportunity to be heard, satisfying the essential elements of due process.” (at 5)

FACTUAL BACKGROUND

Volynsky was the borrower in a judicial foreclosure action and was individually served with the foreclosure complaint. He defaulted, and the mortgagee obtained a summary final judgment of foreclosure followed by an advertised public sale at which Jado Group, LLC was the winning bidder. Volynsky's objections asserted generally that unspecified court notices had not been served and that the property was worth considerably more than the sale price, but he supplied no valuation, supporting facts, or anticipated evidence.

PROCEDURAL HISTORY

After being personally served with the foreclosure complaint, Volynsky defaulted, and Park Tree Investments obtained a summary final judgment of foreclosure setting a public sale. Following the advertised sale, at which Jado Group, LLC was the winning bidder, Volynsky filed objections alleging that court notices had not been served and that the property was worth more than the bid. The trial court held a hearing, overruled the objections, ordered issuance of the certificate of title, denied rehearing, and Volynsky appealed.

DISPOSITION

affirmed

CASES CITED

- In Interest of D. B., 385 So. 2d 83, 89 (Fla. 1980)
- Massey v. Charlotte County, 842 So. 2d 142, 146 (Fla. 2d DCA 2003)
- Regner v. Amtrust Bank, 71 So. 3d 907, 908 (Fla. 4th DCA 2011)
- U.S. Bank National Ass'n v. Bjeljac, 43 So. 3d 851, 853 (Fla. 5th DCA 2010)
- Valls v. HSBC Bank USA, N.A., No. 4D20-1984, 2021 WL 1898121 (Fla. 4th DCA May 12, 2021)
- Arsali v. Chase Home Finance LLC, 121 So. 3d 511, 518 (Fla. 2013)
- Moran-Alleen Co. v. Brown, 123 So. 561, 561 (Fla. 1929)
- Venezia v. Wells Fargo Bank, N.A., 306 So. 3d 1096, 1097 (Fla. 3d DCA 2020)

OPINION

PER CURIAM.

Third District Court of Appeal State of Florida Opinion filed June 9, 2021. Not final until disposition of timely filed motion for rehearing. _____ No. 3D19-2197 Lower Tribunal No. 19-7687 _____ Alexander Volynsky, Appellant, vs. Park Tree Investments 21, LLC, Appellee. An appeal from a non-final order from the Circuit Court for Miami-Dade County, Jacqueline Hogan Scola, Judge.

Xander Law Group, P.A. and Nicholas M. Nash, II and Matthew J. Troccoli, for appellant. McMichael, Taylor & Gray, LLC, and Ezra Scrivanich (Sunrise), for appellee. Before EMAS, C.J., and MILLER, and LOBREE, JJ. MILLER, J. Appellant, Alexander Volynsky, the borrower, challenges an order overruling his objections to a judicial foreclosure sale and directing issuance of a certificate of title to a third-party purchaser.

1 On appeal, Volynsky contends the trial court divested him of due process by failing to afford him an evidentiary hearing. Because his objections were facially deficient, we discern no error and affirm. PROCEDURAL HISTORY After Volynsky was individually served with the foreclosure complaint in the action below, he defaulted, and appellee, Park Tree Investments 21, LLC, the mortgagee, obtained a summary final judgment of foreclosure.

The judgment set a date for public sale. The sale was duly advertised by publication, and Jado Group, LLC was deemed the winning bidder. Volynsky then timely filed two written objections. In the first, he alleged “[c]ourt notices were not served,” while in the second, he contended the property was “worth considerably more” than the sale price.

The trial court convened a hearing, at the conclusion of which it overruled both objections and ordered the clerk to issue the certificate of title to Jado Group. Volynsky unsuccessfully sought rehearing and the instant appeal ensued. ANALYSIS 1 We have jurisdiction. See Fla. R. App. P. 9.130(a)(3)(C)(ii). 2 It is axiomatic “[t]he extent of procedural due process protections varies with the character of the interest and nature of the proceeding involved.” In Int. of D. B., 385 So.

2d 83, 89 (Fla. 1980) (citation omitted). Accordingly, “[t]he specific parameters of the notice and opportunity to be heard required by procedural due process are not evaluated by fixed rules of law, but rather by the requirements of the particular proceeding.” *Massey v. Charlotte Cnty.*, 842 So. 2d 142, 146 (Fla. 2d DCA 2003) (citations omitted).

As relevant here, section 45.031(8), Florida Statutes, governing post-sale objections to the amount of the bid, provides, “[i]f timely objections to the bid are served, the objections shall be heard by the court.” Although the statute itself does not expressly require an evidentiary hearing to resolve timely-filed objections, several of our sister courts have concluded that under certain narrow circumstances, such a hearing is necessary.

See *Regner v. Amtrust Bank*, 71 So. 3d 907, 908 (Fla. 4th DCA 2011); *U.S. Bank Nat’l Ass’n v. Bjeljac*, 43 So. 3d 851, 853 (Fla. 5th DCA 2010); *Valls v. HSBC Bank USA, N.A.*, No. 4D20-1984, 2021 WL 1898121 (Fla. 4th DCA May 12, 2021). These cases collectively involve post-bid objections alleging grounds sufficient to support equitable relief from the sale. ³ Having carefully examined the record in this case, we are persuaded these cases are inapplicable, as Volynsky failed to plead or proffer any supportive facts or anticipated evidence which would support the conclusion he was entitled to relief.

Here, the first objection was grounded upon a failure to serve unspecified court notices. Volynsky was individually served with the lawsuit and, as aptly noted by the trial judge, furnished notice of the final judgment. He never sought to quash service, vacate the final judgment, or set aside the publication.

As our Legislature has expressly determined, “[a]ny irregularity in... mailing” does “not affect the validity or finality of... any sale” stemming from the final judgment, we conclude the allegation, as penned, was patently inadequate to support relief in equity. § 45.031(1)(c), Fla. Stat. Similarly, the second objection, unaccompanied by any valuation, merely recited the opinion the property was worth more than the sale price.

Because it is well-settled that proof the price produced is not commensurate with the fair market value of the property, without more, does not justify setting aside a forced sale, the objection was legally insufficient. See *Arsali v. Chase Home Fin. LLC*, 121 So. 3d 511, 518 (Fla. 2013) (“[O]ur previous decisions have consistently required that litigants allege one or more adequate equitable factors and make a proper showing to the trial court that ⁴ they exist in order to successfully obtain an order that sets aside a judicial foreclosure sale.”) (citation omitted); *Moran-Alleen Co. v. Brown*, 123 So.

561, 561 (Fla. 1929) (“On the question of gross inadequacy of consideration, surprise, accident, or mistake imposed on complainant, and irregularity in the conduct of the sale, this court is committed to the doctrine that a judicial sale may on a proper showing made, be vacated and set

aside on any or all of these grounds.”) (citations omitted); see also *Venezia v. Wells Fargo Bank, N.A.*, 306 So.

3d 1096, 1097 (Fla. 3d DCA 2020) (“Gross inadequacy of price alone is not enough to set aside a foreclosure sale.”) (citation omitted). The lower tribunal observed these deficiencies at the hearing on the objections. Nonetheless, Volynsky failed to proffer any supportive facts or anticipated evidence which would support the conclusion he was entitled to relief from the sale.

Under these circumstances, the trial court afforded Volynsky both notice and a meaningful opportunity to be heard, satisfying the essential elements of due process. Accordingly, we affirm the order under review. Affirmed. 5