

STATE OF MICHIGAN
COURT OF APPEALS

VICKASH MANGRAY,

Plaintiff-Appellee,

v

GMAC MORTGAGE, L.L.C., US BANK
NATIONAL ASSOCIATION, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.,

Defendants-Appellees,

and

RONALD KELLY and ORE CREEK
DEVELOPMENT CORP.,

Defendants-Appellants,

and

ORLANS ASSOCIATES, P.C.,

Defendant.

VICKASH MANGRAY,

Plaintiff-Appellee,

v

GMAC MORTGAGE, L.L.C., ORLANS
ASSOCIATES, P.C., RONALD M. KELLY, ORE
CREEK DEVELOPMENT CORP.,

Defendants,

and

UNPUBLISHED
December 17, 2013

No. 311321
Washtenaw Circuit Court
LC No. 11-000798-CH

No. 311332
Washtenaw Circuit Court
LC No. 11-000798-CH

US BANK NATIONAL ASSOCIATION,
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., MERSCORP, INC.,

Defendants-Appellants.

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

In docket no. 311321, Ronald Kelly, and Ore Creek Development Corp. (“Ore Creek”) appeal as of right the trial court order granting plaintiff Vickash Mangray summary disposition pursuant to MCR 2.116(C)(10) and entering a declaratory judgment voiding ab initio the foreclosure of plaintiff’s property. In docket no. 311331, US Bank National Association (“US Bank”), Mortgage Electronic Registration Systems, Inc. (“MERS”), and Merscorp, Inc. appeal the same order. For the reasons set forth in this opinion, we reverse the trial court and remand for entry of judgment in favor of defendant.

On July 29, 2005, plaintiff signed a mortgage as security for plaintiff’s property in Ypsilanti, Michigan. The mortgage identified FMF Capital, LLC as the lender and MERS as the mortgagee. Also on July 29, 2005, plaintiff signed a note for the property that indicated that FMF Capital, LLC was the original lender. On March 20, 2006, Mortgage Electronic Registration Systems, Inc., (MERS) executed an assignment of the mortgage to US Bank as “Trustee.” The assignment was recorded on October 12, 2006.

Plaintiff defaulted on the mortgage leading to a non-judicial foreclosure by advertisement and Sheriff’s sale on February 10, 2011. Defendant Orleans Associates, P.C. initiated the foreclosure proceedings on behalf of US Bank. Plaintiff’s property was sold at sheriff’s sale to Ore Creek.

Following the sale, plaintiff filed a complaint to quiet title. Plaintiff’s main argument was that MERS had no right to foreclosure by advertisement under this Court’s decision in *Residential Funding Co, LLC v Saurman*, 292 Mich App 321, 330-333; 807 NW2d 412 (2011). The trial court granted summary disposition in favor of plaintiff of November 4, 2011. Twelve days later, on November 16, 2011, the Michigan Supreme Court reversed *Saurman*, 292 Mich App 321. The Supreme Court held that when the Michigan Legislature amended MCL 600.3204(1) in 1994, they intended to “include mortgagees of record among the parties entitled to foreclose by advertisement, along with parties who ‘own[] the indebtedness’ and parties who act as ‘the servicing agent of the mortgage.’” *Residential Funding Co, LLC v Saurman*, 490 Mich 909, 910; 805 NW2d 183 (2011). Accordingly, the proposition from *Saurman*, 292 Mich App 321, that the trial court relied upon in its opinion [that only parties with a legal share, title, or right in the note have the right to foreclose by advertisement under MCL 600.3204(1)(d)] was reversed by the Supreme Court.

On November 21, 2011, defendants GMAC, US Bank, and MERS moved the trial court for reconsideration. Defendants attached two new pieces of evidence to their brief in support of their motion for reconsideration. First, defendants attached a new copy of the Adjustable Rate Note at issue in this case. The new copy of the note had a different allonge page. The new allonge page was the same as the old page, except that it included two specific endorsements. The first endorsement transferred the note from FMF Capital, LLC to Residential Funding Corporation. The second endorsement transferred the note from Residential Funding Corporation to US Bank.

The second new piece of evidence was the sworn “Declaration of Kyle Lucas.” In the declaration, Kyle Lucas, a Senior Litigation Analyst for GMAC, attested that the note at issue in this case was transferred from FMF Capital, LLC to Residential Funding Corporation, and subsequently from Residential Funding Corporation to US Bank. Within defendants GMAC, US Bank, and MERS’ brief in support of their motion for reconsideration, they raised two primary arguments. First, they argued that because the authority the trial court relied on reaching its opinion was reversed by the Supreme Court, they were entitled to reconsideration. Second, they argued that the new evidence showed that US Bank was an “owner of an interest in the indebtedness” [the note] and that US Bank was entitled to foreclose by advertisement under MCL 600.3204(1)(d). The trial court denied defendants’ relief stating: “No palpable error has been demonstrated. For these reasons, Defendants’ Motion for Reconsideration is DENIED.” This appeal then ensued.

On appeal, defendants argue that the trial court abused its discretion in denying their motion for reconsideration because *Saurman*, 292 Mich App 321, the authority relied upon by the trial court in its opinion, was reversed. We review a trial court’s decision regarding a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). We review the trial court’s grant of summary disposition to plaintiff de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008); *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006).

Generally, a motion for reconsideration should be granted only if the moving party demonstrates a palpable error by which the court and the parties have been misled and shows that a different disposition must result from correction of the error. MCR 2.119(F)(3). MCR 2.119(F)(3) also grants “considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties.” *Kokx v Bylenga*, 241 Mich App 655, 659; 617 NW2d 368 (2000).

Foreclosure by advertisement is governed by MCL 600.3204(1)(d), which provides, in relevant part:

[A] party may foreclose a mortgage by advertisement if all of the following circumstances exist:

* * *

(d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

In this case, it is undisputed that on March 20, 2006, MERS (as the original mortgagee) executed an assignment of plaintiff's mortgage to US Bank. "It is well established that an assignee stands in the shoes of an assignor, acquiring the same rights and being subject to the same defenses as the assignor." *Coventry Parkhomes Condo Ass'n v Fed Nat'l Mtg Ass'n*, 298 Mich App 252, 256-257; 827 NW2d 379 (2012). Accordingly, US Bank had the same rights as MERS, the original mortgagee, had. US Bank was the party that initiated foreclosure proceedings against plaintiff. Thus, under *Saurman*, 490 Mich at 910, US Bank was entitled to foreclose on the property in this case because it had the rights of a mortgagee. The Supreme Court's decision in *Saurman*, 490 Mich at 910, should be given full retroactive effect, *Pohutski v Allen Park*, 465 Mich 675, 695; 641 NW2d 219 (2002), because it did not overrule settled precedent; the reversal of this Court's decision removed any precedential value of the Court of Appeals decision, *Dunn v Detroit Auto Inter-Ins Exch*, 254 Mich App 256, 262; 657 NW2d 153 (2002), and the Supreme Court's opinion did not clearly establish a new principle of law, *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197, 220; 731 NW2d 41 (2007). We find that the trial court abused its discretion in denying defendants' motion for reconsideration because US Bank was entitled to foreclose on the property under *Saurman*, 490 Mich at 910, and the trial court should have corrected its opinion. *Kokx*, 241 Mich at 655; *Churchman*, 240 Mich App at 233; MCR 2.119(F)(3). Further, defendants were entitled to summary disposition as a matter of law under MCR 2.116(C)(8) and MCR 2.116(C)(10) because US Bank properly foreclosed on the property in this case. *Latham*, 480 Mich at 111; *Feyz*, 475 Mich at 672. We reverse the trial court's grant of summary disposition to plaintiff, and remand this case the trial court for the entry of summary disposition in favor of defendants.

Defendants also raise several alternative grounds for reversal. However, issues are "deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief." *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). This Court has awarded relief to defendants and therefore the other grounds presented are deemed moot. This Court generally will not decide moot issues. *Id.*¹

¹ Plaintiff briefly argues that we lack jurisdiction to hear this appeal. We have reviewed the argument and find it to be without merit. Plaintiff also argues that this appeal should be stayed or deemed void because an automatic bankruptcy stay in regard to defendant GMAC Mortgage L.L.C. was enforced by the trial court. Plaintiff apparently argues that the bankruptcy stay in regard to GMAC should apply to all the defendant-appellants. However, plaintiff fails to provide any authority in support of that position, and this issue is abandoned. *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs are awarded. MCR 7.219(A).

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello