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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NATIONSTAR MORTGAGE, LLC,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	
)	No. 15 CH 11820
JADWIGA RUSZCZAK and LESZEK RUSZCZAK,)	
)	
Defendants-Appellants.)	Honorable
)	Daniel Patrick Brennan,
)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* Trial court did not err in approving a judicial sale where defendants failed to show the sale was unconscionable or that justice was not otherwise done. Defendants' remaining arguments were either waived or not supported by evidence.
- ¶ 2 Jadwiga and Leszek Ruszczak seek reversal of a trial court order approving a judicial sale after a summary judgment of foreclosure on their home. The lender Nationstar Mortgage, LLC was the successful bidder at the sale and moved for the sale's approval under section 15-1508(b) of the Illinois Mortgage Foreclosure Law. The Ruszczaks contend the trial court should

not have approved the sale because (i) Nationstar's bid was unconscionably low, (ii) justice was not otherwise done because Nationstar did not permit them to explore loss mitigation options, (iii) the sale violated section 15-1508 (d-5), which permits a sale to be set aside if the mortgagor proves by a preponderance of the evidence that he or she applied for assistance under the federal Home Affordable Modification Program (HAMP), and the property was sold in material violation of HAMP's requirements, and (iv) Nationstar's loss mitigation affidavit violated Illinois Supreme Court Rule 114.

¶ 3 We affirm. The Ruszczaks failed to establish the sale was unconscionable or that justice was not otherwise done under section 15-1508(b). Further, they did not present evidence they applied for a modification under HAMP and waived their argument as to the loss mitigation affidavit by failing to raise it before the trial court.

¶ 4 Background

¶ 5 Jadwiga and Leszek Ruszczak took out a \$262,000 loan in February 2007. Both parties signed the mortgage; only Jadwiga Ruszczak signed the promissory note. On August 6, 2015, the lender, Nationstar Mortgage, LLC, filed a complaint to foreclose the mortgage and properly served notice on the Ruszczaks. When the Ruszczaks did not appear, Nationstar moved for a default judgment. The Ruszczaks then filed a *pro se* answer to the complaint and Nationstar withdrew its motion.

¶ 6 Nationstar then moved for summary judgment, attaching a loss mitigation affidavit detailing the loss mitigation steps it had taken, including a 2011 HAMP modification and a 2015 HAMP modification application that was denied due to missing documentation. The trial court entered summary judgment against the Ruszczaks and a judgment of foreclosure and sale. The court initially scheduled the judicial sale for October 14, 2016, but the Ruszczaks filed for

Chapter 13 bankruptcy. According to defendants, Leszek Ruszczak was ill and hospitalized on and off and, due to his illness, they were unable to establish a Chapter 13 repayment plan. The bankruptcy case was dismissed.

¶ 7 A sale date then was set for February 16, 2017. In December 2016, Nationstar sent a letter to the Ruszczaks's attorney offering them a "trial period plan for streamline modification," which provided that the loan could be modified if they made three monthly payments of \$1,942.73 on January 1, February 1, and March 1, 2017. The Ruszczaks assert their attorney could not reach them because Leszek was in the hospital after several surgeries. When their attorney finally informed them, they asked the offer trial period be extended from February through April, but Nationstar declined.

¶ 8 On February 15, 2017, the day before the sale, the Ruszczak filed for Chapter 7 bankruptcy and the sale again was cancelled. On March 21, 2017, Nationstar's motion to lift the stay in the bankruptcy court was granted and a sale set for June 9, 2017. The Ruszczaks, through counsel, filed an emergency motion to stay the sale and request mediation. The trial court denied the request for mediation without prejudice but stayed the sale until August 1, 2017. The sale was then rescheduled for August 2. On August 1, the Ruszczaks filed a second emergency motion to stay and renewed their request for mediation. Attached to the motion was a letter from Northwest Side Housing Center, a HUD-certified, non-profit housing agency, stating that the Ruszczaks were applying for a loan modification through the Illinois Hardest Hit program. After a hearing, the trial court denied the motion and ordered the sale to proceed. (A transcript from that hearing is not in the record.)

¶ 9 The sale occurred on August 2, 2017. Nationstar was the successful purchaser with a bid of \$103,654. Nationstar filed a motion for an order approving the sale and distribution. The

Ruszczaks filed a motion opposing approval arguing that the amount Nationstar bid was unconscionable under section 15-1508(b) because the amount owed was \$272,102.19, leaving an arrearage of \$168,448.19. They also argued justice was not done because they were not allowed to seek a reasonable accommodation regarding a loan modification. Alternatively, the Ruszczaks sought a stay pending resolution of a complaint they filed in federal court alleging discrimination under the Federal Fair Housing Act, 42 U.S.C. 3601, *et seq.* and the Equal Credit Opportunity Act, 15 U.S.C. 1691, *et seq.*

¶ 10 In reply, Nationstar argued the Ruszczaks offered no evidence that the sale terms were unconscionable and an assertion of a low bid, without more, is insufficient to overturn a judicial sale. Nationstar asserted the Ruszczaks otherwise failed to establish justice was not done, absent allegations Nationstar engaged in fraud or misrepresentation or any facts showing the couple was prevented from securing another loan modification. Nationstar noted the Ruszczaks did not accept its previous loan modification offers, including most recently in December 2016.

¶ 11 The trial court entered an order approving the sale. The Ruszczaks filed a motion to reconsider, restating the arguments they had raised in opposing the sale. They also argued for the first time that the foreclosure sale should be set aside under section 15-1508(d-5) of the IMFL (735 ILCS 5/15-1508(d-5) (2016)), which provides that a foreclosure sale must be set aside when, before confirmation, a mortgagor proves by a preponderance of the evidence that he or she applied for assistance under HAMP and the property was sold in material violation of HAMP's requirements. The Ruszczaks' motion states they applied for HAMP relief, but their motion lacks a copy of the application. Attached to the motion was a letter from Northwest Center Housing stating they were applying for a loan modification through Illinois Hardest Hit Program. After a hearing, the trial court denied the motion to reconsider.

¶ 12

Analysis

¶ 13 Section 15-1508 of the IMFL governs confirmation of judicial sales. *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 178 (2008). Under subsection (b), the trial court must conduct a hearing on confirmation of a judicial sale after a motion to confirm has been made and will confirm the sale unless the court finds (i) improper notice; (ii) unconscionable terms of sale, (iii) a fraudulent sale, or (iv) justice was otherwise not done. 735 ILCS 5/15-1508(b)(i-iv) (West 2016); *Household Bank, FSB*, 229 Ill. 2d at 178. Once the plaintiff files a properly supported motion to confirm the sale and notice for hearing, “the interested party opposing the sale bears the burden of proving that grounds exist sufficient for the trial court to not enter an order approving the sale.” *Sewickley, LLC v. Chicago Title Land Trust Co.*, 2012 IL App (1st) 112977, ¶ 35. The trial court has broad discretion to confirm or deny a judicial sale. *Bayview Loan Servicing, LLC v. 2010 Real Estate Foreclosure, LLC*, 2013 IL App (1st) 120711, ¶ 32. We will not reverse its decision absent an abuse of discretion. *Id.* The trial court abuses its discretion only when “its ruling rests on an error of law or where no reasonable person would take the view adopted by the circuit court.” *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 57.

¶ 14

Whether Justice Otherwise Was Not Done

¶ 15 The Ruszczaks base their objections to the sale on an unconscionable sale price and that justice otherwise was not done. The statute does not expressly define “justice,” and the justice clause “appears to give courts some discretion in rejecting judicial sales. But case law demonstrates that discretion to be extraordinarily narrow. *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 16. Cases where courts have vacated sales based on the justice clause share the common theme of low sale prices along with errors relating to the actual sale process. *Id.* ¶ 18. And in *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 26, our supreme court

evidence, like an appraisal showing the property's value, to support their assertion of an unconscionably low price.

¶ 20 Even assuming the property would be appraised at a value near the amount owed on the mortgage, merely comparing the bid to the appraisal does not establish an unconscionably low price. A foreclosure sale is a forced sale (*Deutsche Bank National v. Burtley*, 371 Ill.App.3d 1, 8 (2006)), and “it is unusual for land to bring its full, fair market value at a forced sale.” *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 20. Inadequacy of sale price is not a sufficient reason, standing alone, to deny confirmation of a judicial sale. *Lyons Savings & Loan Ass'n. v. Gash Associates*, 189 Ill. App. 3d 684, 689 (1989) (noting less than full value at forced judicial sales and mere inadequacy of price “no reason for upsetting a judicial sale” (internal quotation marks omitted)). “When there is no fraud or other irregularity in the foreclosure proceeding, the price at which the property is sold is the conclusive measure of its value.” *Nationwide Advantage Mortgage Co. v. Ortiz*, 2012 IL App (1st) 112755, ¶ 35 (quoting *Loeb v. Stern*, 198 Ill. 371, 383, 64 N.E. 1043 (1902)).

¶ 21 Taking these principles into account, in the absence of an appraisal showing the value of the property or any evidence of fraud or other irregularity in the foreclosure proceeding, the sales price was not unconscionable. Accordingly, the trial court correctly confirmed the sale.

¶ 22 HAMP

¶ 23 The Ruszczaks also argue the order affirming the judicial sale must be set aside because Nationstar violated HAMP, a component of the federal Making Home Affordable Program. See 12 U.S.C. § 5219a (2012). They cite section 15-1508(d-5) of the IMFL, which states: “The court that entered the judgment shall set aside a sale held pursuant to Section 15-1507, upon motion of the mortgagor at any time prior to the confirmation of the sale, if the mortgagor proves by a

preponderance of the evidence that (i) the mortgagor has applied for assistance under the Making Home Affordable Program established by the United States Department of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008 * * * and (ii) the mortgaged real estate was sold in material violation of the program's requirements for proceeding to a judicial sale.” 735 ILCS 5/15-1508(d-5) (West 2014).

¶ 24 The threshold issue, however, asks whether defendants “applied for assistance” under HAMP, because if they did not, their property could not be sold in material violation of HAMP and they cannot obtain the relief sought under section 15-1508(d-5), that is, vacating of the judicial sale. *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 60. In *Bermudez*, this court provided an exhaustive analysis of HAMP rules and section 15-1508(d-5) of the IMFL. In addressing the threshold HAMP application issue, the *Bermudez* court held that to “apply for assistance” under section 15-1508(d-5), a borrower must submit certain documentation required by the loan servicer to determine the borrower's eligibility and verify his or her income. *Id.* ¶ 67.

¶ 25 Notably, neither the Ruszczaks’ motion opposing the sale nor their motion to reconsider attaches any documents showing they applied for assistance under HAMP. Instead, they submitted a letter from Northwest Side Housing Center, a HUD-certified, non-profit housing agency, stating they were applying for a loan modification through the Illinois Hardest Hit program, without submitting a copy of that application. Although the loss mitigation affidavit Nationstar submitted with its motion for summary judgment states the Ruszczaks applied for a HAMP modification in 2015, it also states the application was denied due to missing documents. The Ruszczaks did not submit any evidence to the trial court refuting that documents were missing. Under section 15-1508(d-5), the Ruszczaks had the burden of proving by a

preponderance of the evidence they applied for assistance under HAMP. Nothing in the record supports a finding that they did so.

¶ 26 Furthermore, the Ruszczaks did not provide a record of proceedings or bystander's report from the hearing on Nationstar's motion for approval of the sale. It is the appellants' duty to present this court with a sufficiently complete record of the trial proceedings to support their claims of error. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). "An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Corral v. Mervis Industries, Inc.*, 217 Ill.2d 144, 156 (2005). Where the issue relates to the conduct of a hearing or proceeding, review requires a report or record of the proceeding. *Webster*, 195 Ill. 2d at 432. Without that record, we presume that the ruling entered conforms to the law and has a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. Absent the transcript, there is nothing to determine whether the trial court abused its discretion in granting Nationstar's motion and confirming the sale of the property.

¶ 27 Illinois Supreme Court Rule 114

¶ 28 The Ruszczaks argue for the first time on appeal that the order approving sale should be reversed because Nationstar's loss mitigation affidavit violated Illinois Supreme Court Rule 114 (eff. May 1, 2013). This issue is forfeited. The Ruszczaks did not raise it before the trial court. See *Wells Fargo Bank, N.A. v. Maka*, 2017 IL App (1st) 153010, ¶ 24 (party that does not raise issue in circuit court forfeits that issue and may not raise it for first time on appeal).

¶ 29 Affirmed.