2017 IL App (1st) 161802-U

THIRD DIVISION
June 28, 2017

No. 1-16-1802

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

CHP LANDWEHR, LLC,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 13CH20593
	)	
PWS NORTHBROOK, LLC, and PAUL SWANSON,	)	The Honorable
	)	Daryl B. Simko,
Defendants-Appellants.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Lavin and Pucinski concur in the judgment.

ORDER

¶ 1 Held: No error is found in the trial court's confirmation of the judicial sale of commercial property, and no error is found in trial court's award of attorneys' fees. Affirmed.

¶ 2 Defendants-Appellants Paul Swanson and PWS Northbrook, LLC, appeal from the trial court's order confirming the judicial sale of real property to plaintiff-appellee CHP Landwehr, LLC, and awarding a deficiency judgment against defendants-appellants. On appeal, Swanson

and PWS contend the trial court erred in: (1) confirming the judicial sale of the property without first holding a hearing on the fairness of the sale price; and (2) awarding attorneys' fees for time expended on matters arising prior to the entry of the judgment for foreclosure and sale. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The property at issue here is commercial property in Northbrook, Illinois. RiverSource Life Insurance Company (RiverSource) commenced this lawsuit by filing a two-count complaint against Swanson and PWS Northbrook in September 2013 to foreclose on a mortgage against the Northbrook property, and to enforce and collect upon a personal guaranty signed by Swanson. At some point, CHP Landwehr purchased the note and mortgage, and in February 2015, CHP Landwehr was granted leave to substitute as plaintiff in this matter.[1]

¶ 5 In July 2015, the Circuit Court of Cook County entered a judgment of foreclosure and sale (the judgment) in this matter. It set the judgment amount at $2,426,253. In this judgment, the court authorized the sale of the property by public auction to be conducted by Judicial Sales Corporation. The judgment authorized CHP Landwehr to bid at this auction and to credit its bid against the amount held due to plaintiff, stating:

> "(D) That the Plaintiff or any of the parties hereto may become the purchaser at such sale. If the Plaintiff is the successful bidder at the sale, the amount due the Plaintiff, plus costs, advances, and fees hereunder with interest incurred between the entry of Judgment shall be taken as a credit on its bid at the sale."

[1] There is no issue raised as to the transfer or assignment of this mortgage.

Additionally, the Judgment provided that the property "shall be sold at public venue to the highest and best bidder for cash;" and that payment of 10% would be required from the highest bidder at the time of the sale, with the balance to be paid within 24 hours thereafter.

¶ 6 The Judgment also provided for what should occur following the sale:

> "(J) That the Court shall, upon notice in accord with the Rules of court applicable to motions generally, conduct a hearing to confirm the sale, and enter an order providing said sale as confirmed and include an award of possession which shall be effective thirty (30) days after entry. The confirmation order may also:
>
> (1) Approve the Plaintiff's attorneys' fees, costs and any additional advances arising between the dates set forth in Paragraph 6 herein and the confirmation(s) of sale;
>
> (2) Provide for the finding of a personal judgment against those deemed personally liable therein."

¶ 7 Previously, in October 2014, another entity, SFP Group, L.P., entered into a purchase and sale agreement to buy the Northbrook property for $2,175,000 (the 2014 offer). According to the affidavit of Paul Swanson, both CHP Landwehr and SFP Group are controlled by the same individual, Dominic Sergi. Sergi signed the October 2014 purchase agreement as "president" of SFP group. CHP Landwehr is managed by SFP Management, LLC, which itself is managed by DAS Company, LLC. DAS Company is managed by Dominic Sergi. This 2014 sale was never closed upon due, apparently, to an ongoing bankruptcy case.

¶ 8 Over a year later, the property was sold to plaintiff CHP Landwehr on November 10, 2015, at a foreclosure sale. The Report of Sale and Distribution prepared by The Judicial Sales Corporation and filed in the circuit court reflects that the property was "offered for sale at public auction to the highest bidder" and that CHP Landwehr was that highest bidder "by credit bid as

full payment." The report of sale reflects that CHP Landwehr was due $2,426,253 under the judgment, along with accrued interest in the amount of $71,790 and publication and publication costs due to a bankruptcy filing by PWS, in the amount of $1,300. In addition, PWS had incurred an additional $6,985 in advances for the cost of an appraisal for the property, as well as court fees in the bankruptcy proceeding, and an additional $52,228 in attorney fees between February 1, 2015, and November 10, 2015. The selling officer received a commission of $350. The report of sale reflects a total amount of indebtedness due under the judgment of $2,558,907.

¶ 9 Plaintiff CHP Landwehr then filed a "motion for order approving report of sale confirming judicial sale and order of possession and awarding deficiency" (motion to confirm). By that motion, it asked for possession of the property and that a deficiency judgment be entered against defendants Swanson and PWS in the amount of $658,907.23, "reflecting the arithmetic difference between the total indebtedness under the Judgment ($2,558,907.23) and the winning 'credit bid' of $1,900,000.00[.]" They also included an executive summary of an appraisal of the property, prepared by a real estate appraisal company, determining that the property value using the sales comparison approach was $2,040,000; and the property value using the sales comparison approach was $1,830,000; and concluding that the property value using the market value conclusion was $1,900,000. The court set a briefing schedule on the motion to confirm, with a hearing date of January 29, 2016.

¶ 10 Thereafter, defendants Swanson and PWS filed objections to the motion to confirm. Specifically, defendants asked the court not to confirm the sale because CHP Landwehr's credit bid was "far less than fair value." They argued that, because SFP Group, which had attempted to purchase the property in 2014, is controlled by Dominic Sergi, and Sergi also controls CHP Landwehr, the previous contract offer price of $2,175,000 in October 2014 represented Sergi's

opinion of the fair market value of the property. Accordingly, CHP Landwehr's bid of $1.9 million was $275,000 less than fair market value for the property as determined by Sergi in October 2014. Swanson and PWS argued that this $1.9 million sales price "constitutes unfairness that is prejudicial to [their] interests" and asked the court to schedule an evidentiary hearing on the fairness of the price.

¶ 11 Swanson and PWS also argued that $21,000 in attorney fees requested by CHP Landwehr were untimely because they were incurred prior to the date of the judgment of foreclosure.

¶ 12 The court confirmed the sale on January 29, 2016, entering an order (the confirmation order) granting the motion to confirm, confirming the judicial sale, awarding an order of possession to CHP Landwehr, and awarding a deficiency judgment of $658,907.23 (the deficiency award) against Swanson and CHP Landwehr. In its confirmation order, the court specifically found that "all notices required by 735 ILCS 5/15-1507(c) were given;" that the "sale was fairly and properly made;" and that "the Judicial Sales Corporation *** has in every respect proceeded in accordance with the terms of the court's Judgment of Foreclosure dated July 13, 2015 *** and [that] justice was done."[2]

¶ 13 Defendants filed a motion to vacate or modify the confirmation order in February 2016. By this motion, counsel for defendants asserted he had miscalendared the time for the January 29, 2016 hearing, and he mistakenly appeared shortly after the conclusion of the hearing to learn that the confirmation order had been entered. Defendants argued that, in late 2014, one of the

[2] Although there is no transcript of this proceeding in the record on appeal, the parties have provided this court an agreed statement of facts by which they stipulate that, when the case was called that morning, counsel for defendants was not in court. The court set the matter over to the end of the call. At the end of the call, counsel for defendants still had not appeared. The court then entered plaintiff's draft order granting the confirmation of sale. Counsel for defendants later filed a motion to vacate or modify the confirmation order, arguing in part that the failure of defendants' counsel to timely appear at the January 29, 2016 hearing was the result of a docketing error. The court held a hearing on May 24, 2016, and "indicated that it would grant the defendants' request for a hearing and asked if either side had anything to add to the briefs. Neither counsel for the Plaintiff nor counsel for the Defendants offered additional arguments, and the court ruled by denying the motion to vacate and ordering the transfer of funds from the receiver's bank account to the Plaintiff per the written order, upon which the hearing was adjourned."

principals for CHP, Dominic Sergi, had made a private offer to purchase the subject property for $275,000 more than the $1.9 million judicial sales price, and that the trial court should therefore vacate the confirmation order as unfair or, alternatively, schedule an evidentiary hearing concerning the adequacy of the sale price. Defendants also requested a modification of the discharge order, seeking an order requiring the former receiver to file a final accounting and for disposition and credit for money in the receiver's operating account.

¶ 14 In CHP Landwehr's response to the motion to vacate, it stated that, if the $266,173 set forth in the former receiver's April 15, 2016 final financial report were transferred to CHP Landwehr, then it would not object to the entry of an order modifying and reducing the deficiency award to $392,733.

¶ 15 On May 24, 2016, the trial court entered an order denying defendants' motion to vacate, and ratifying the deficiency order with some minor modifications, such that, upon transfer by the receiver of $266,173 into the account of CHP Landwehr, the deficiency amount would be reduced to $392,733.

¶ 16 Defendants PWS Northbrook and Swanson appeal.

¶ 17 II. ANALYSIS

¶ 18 i. Confirmation of the Judicial Sale

¶ 19 On appeal, defendants first contend the trial court erred in confirming the judicial sale of the property without first holding a hearing on the adequacy of the sales price of $1.9 million, arguing that—over a year prior—the winning bidder had offered to purchase the property for $275,000 more. Specifically, they argue that the court should have held an evidentiary hearing as to the adequacy of the sale price because the "special and unusual circumstances" of the instant case "argue for additional scrutiny of the amount of the successful credit bid." In support of this

argument, defendants allege that CHP Landwehr's final bid of $1.9 million reflects that its principal, Sergi, who one year prior had offered $275,000 more, "took advantage" of the foreclosure process and underbid for the property. They claim the final sale price should not have been less than the 2014 offer because the "financial conditions" of the property improved, and argue, "[t]he temptation exists that a note purchaser will award itself a substantial discount on the date of sale, and where there is evidence of a fair market price negotiated at arm's length between the property owner and the purchaser at the foreclosure sale, the court should take such facts into account and hold an evidentiary hearing on the sufficiency of the credit bid at the judicial sale."

¶ 20 Initially, we observe that there is no report of proceedings from the trial court included in the record filed on appeal. Instead, we have before us the common law record plus the 2-page "agreed statement of facts" mentioned above. "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." *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009). It is the appellants' burden to provide a complete record on appeal, including a report of proceedings or an appropriate substitute, as required by Illinois Supreme Court Rule 323 (Ill. S.Ct. R. 323 (eff. Dec. 13, 2005)). *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993). In the absence of such a record, we presume that any order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. We address appellants' contentions on appeal under this limitation.

¶ 21 In the context of a mortgage foreclosure, it is the order confirming the sale that operates as the final and appealable order in a foreclosure case. *Wells Fargo Bank, N.A. v. McCluskey*,

2013 IL 115469, ¶ 12; *CitiMortgage, Inc. v. Bermudez*, 2014 IL App (1st) 122824, ¶ 59 ("A judicial foreclosure sale is not complete until it has been approved by the circuit court"). It is the burden of the objecting party to show why a judicial sale of property should not be confirmed. *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, ¶ 9. Our supreme court has stated that defenses are limited after a plaintiff files a motion to confirm a judicial sale:

> "* * * after a motion to confirm the judicial sale has been filed, a borrower seeking to set aside a default judgment of foreclosure may only do so by filing objections to the confirmation of the sale under the provisions of section 15-1508(b) [of the Mortgage Foreclosure Law]." *McCluskey*, 2013 IL 115469, ¶ 27.

¶ 22 Section 15-1508(b) of the Mortgage Foreclosure Law (735 ILCS 5/15-1508(b) (West 2016)) deals with the sale and confirmation of sale of a property. This section confers broad discretion on circuit courts to approve or disapprove judicial sales. We review the exercise of that discretion under an abuse of discretion standard. *Bank of America N.A. v. Adeyiga*, 2014 IL App (1st) 131252, ¶ 116; *Bermudez*, 2014 IL App (1st) 122824, ¶ 57; *CitiMortgage Inc. v. Lewis*, 2014 IL App (1st) 131272, ¶ 31 (rulings on a motion to confirm the sale and rulings on a motion to vacate the sale without an evidentiary hearing are both reviewed for an abuse of discretion). An abuse of discretion occurs where a court rests its ruling on an error in law or where no reasonable person would take the view adopted by the circuit court. *CitiMortgage, Inc. v. Johnson*, 2013 IL App (2d) 120719, ¶ 18.[3]

[3] We recognize that defendants urge this court to employ a *de novo* standard of review, relying on *NAB Bank v. LaSalle Bank, N.A.*, 2013 IL App (1st) 121147, and arguing that where, as here, the circuit court based its decision "entirely on documentary evidence," the rationale underlying deferential standard of review is inapplicable. It is unclear to this court, however, whether the circuit court actually based its decision entirely on documentary evidence. As noted above, the record on appeal does not contain transcripts from the many occasions the parties appeared in court. The record does include a 7-paragraph "Agreed Statement of Facts" that includes the following information regarding the motion to vacate the confirmation of sale at issue here:

¶ 23 Section 15-1508(b) of the Foreclosure Law provides:

> "Hearing. Upon motion and notice in accordance with court rules applicable to motions generally, which motion shall not be made prior to sale, the court shall conduct a hearing to confirm the sale. Unless the court finds that (i) a notice required in accordance with subsection (c) of Section 15-1507 was not given, (ii) the terms of sale were unconscionable, (iii) the sale was conducted fraudulently, or (iv) justice was otherwise not done, the court shall then enter an order confirming the sale." 735 ILCS 5/15-1508(b) (2014).

"Thus, a party seeking to set aside the sale at that point is limited to the three specified grounds related to defects in the sale proceedings, or to the fourth ground, that 'justice was otherwise not done.' " *McCluskey*, 2013 IL 115469, ¶ 18.

¶ 24 Parties are not unconditionally entitled to an evidentiary hearing under section 15-1508(b). The First Division of this Court has addressed the section 15-1508(b) hearing requirement, finding:

> "The Illinois General Assembly intended this new [section 15-1508(b)] language [regarding hearings] 'to create a new, but limited, level of inquiry' into foreclosure sales.

> "5. The motion to vacate was presented on April 25, 2016 and the court entered a briefing schedule on the motion and set a hearing date of May 25, 2016. Plaintiff had filed its response to the motion to vacate on April 20, 2016 and Defendants replied on May 6, 2016.
>
> 6. At the hearing on May 24, 2016, the court opened the hearing by commenting that the hearing time of 10:00 a m. on January 29, 2016 was unusual, and not a time that the court would ordinarily set absent a special request from counsel. Accordingly, the court indicated that it would grant the defendants' request for a hearing and asked if either side had anything to add to the briefs. Neither counsel for the Plaintiff nor counsel for the Defendants offered additional arguments, and the court ruled by denying the motion to vacate and ordering the transfer of funds from the receiver's bank account to the Plaintiff per the written order, upon which the hearing was adjourned."

Aside from the fact that, from this agreed-to statement of facts, it appears the circuit court may have, in fact, granted a hearing on this motion, it is not clear that the court based its decision on only the documents presented. As noted above, when the record appears as it does here, any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. The appropriate standard of review here is abuse of discretion.

> [Citations.] The Illinois General Assembly did not, however, intend to require an extended evidentiary hearing after each sheriff's sale. [Citations.] While the provision provides for a hearing, the extent of the hearing afforded a mortgagor is left to the sound discretion of the court. [Citation.]" *Deutsche Bank Nat. v. Burtley*, 371 Ill. App. 3d 1, 6 (2006).

¶ 25 Furthermore, the Third Division of this Court has addressed when a hearing is necessary, stating:

> "We do not believe that the General Assembly intended to require an extended evidentiary hearing after each sheriff's sale. To determine the extent of the hearing to be afforded the mortgagor, the court should look to the defendant's petition or motion and if there is an allegation of a current appraisal or other current indicia of value which is so measurably different than the sales price as to be unconscionable, then a hearing should be afforded the defendant. On the other hand, if the allegation of unconscionability rests on an appraisal rendered remote in time, the requisite of a formal hearing is not required under [section 15-1508(b)]." *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 115 (1993).

¶ 26 Defendants Swanson and PWS Northbrook have not alleged that any of the first three section 15-1508(b) factors are present in this case. To be specific, defendants have not raised any concerns regarding the required notice, unconscionability of the sale[4], or that the sale was fraudulently or irregularly conducted. Instead, defendants rely on the fourth section 15-1508(b) prong, that is, that "justice was otherwise not done." 735 ILCS 5/15-1508(b) (2014). In their motion to vacate, defendants objected to the inadequacy of the sales price of $1.9 million,

[4] To be clear, defendants do not rely on Section 15-1508(b)(ii) in their argument regarding the sale price. Although defendants use the term "unconscionable," they have failed to argue or show that, under section 15-1508(b)(ii), "the terms of sale were unconscionable."

arguing that—over a year prior—the winning bidder had offered to purchase the property for $275,000 more.

¶ 27 As to section 15-1508(b)(iv), and whether "justice was otherwise not done," our supreme court has explained that "[w]hat constitutes an injustice under section 15-1508(b)(iv) is not expressly defined in the statute." *McCluskey*, 2013 IL 115469, ¶ 19. But, as the court further explained, "it appears to merely codify the long-standing discretion of the courts of equity to refuse to confirm a judicial sale." *McCluskey*, 2013 IL 115469, ¶ 19. "[T]he justice provision under section 15-1508(b)(iv) acts as a safety valve to allow the court to vacate the judicial sale and, in rare cases, the underlying judgment, based on traditional equitable principles." *McCluskey*, 2013 IL 115469, ¶ 25.

¶ 28 In the case at bar, the trial court did not abuse its discretion in confirming the sale without an evidentiary hearing where defendants failed to allege any appraisal or other "current indicia of value" to show that the sale price was unconscionable. See, *e.g.*, *Holtzman*, 248 Ill. App. 3d at 115 ("To determine the extent of the hearing to be afforded the mortgagor, the court should look to the defendant's petition or motion and if there is an allegation of a current appraisal or other current indicia of value which is so measurably different than the sales price as to be unconscionable, then a hearing should be afforded the defendant"). Instead, defendants merely alleged that the confirmation should have been denied because the sale price was inadequate in light of the 2014 offer, an offer that was slightly more than the final sales price. However, mere inadequacy of price is no reason for upsetting a judicial sale unless there are other irregularities. *NAB Bank*, 2013 IL App (1st) 121147, ¶ 18. The First Division of this court has discussed the "justice clause," noting:

> "There is only a handful of reported cases where a court vacated a sale under the justice clause, and almost all of them did so because of an unconscionable sale price, which is a separately listed basis on which a court can decline to confirm a sale. * * * Cases where courts vacated sales based on the justice clause, but not simply because of a low sale price, share the common theme of errors relating to the actual sale process[.] * * * The 'justice clause' provides a narrow window through which courts can undo sales because of serious defects in the actual sale process[.]" *NAB Bank*, 2013 IL App (1st) 121147, ¶ 18 (omitting citations).

¶ 29 Moreover, "[i]t is well recognized that it is unusual for land to bring its full, fair market value at a forced sale." *NAB Bank*, 2013 IL App (1st) 121147, ¶ 20; see also *Burtley*, 371 Ill. App. 3d at 8 ("At a forced sale, a 'debtor must expect to suffer a loss.' ") (quoting *World Savings & Loan Ass'n v. Amerus Bank*, 317 Ill. App. 3d 772, 780 (2000)). Unless there is fraud or some 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. Thus, "in the absence of mistake, fraud or violation of duty by the officer conducting the sale, mere inadequacy of price is not a sufficient reason to disturb a judicial sale." *Amerus Bank*, 317 Ill. App. 3d at 780. "This rule is premised on the policy which provides stability and permanency to judicial sales and on the well-established acknowledgement that property does not bring its full value at forced sales and that the price depends on many circumstances for which the debtor must expect to suffer a loss." *Amerus Bank*, 317 Ill. App. 3d at 780.

¶ 30 We recognize that "[c]ourts have the discretion to disapprove a judicial sale where the amount bid is so grossly inadequate that it shocks the conscience of a court of equity. [Citation.]"

(Internal quotation marks omitted.) *Burtley*, 371 Ill. App. 3d at 8. Defendants here, however, have failed to provide any reason why the sale amount here was "conscious-shocking." Defendants did not provide an independent appraisal of the property, or any other evidence to challenge the sales amount, but instead argue that plaintiffs should have been required to disclose their full appraisal rather than just the appraisal company's executive summary. They present the 2014 offer as "compelling evidence of fair market value at the time it was made." Defendants contend that the 2014 offer for $275,000 more than the eventual 2015 sale price is evidence that the property was undervalued and sold at an unfair price. We disagree, and find that the sale price of $1.9 million—which is 87% of the 2014 offer of $2,175,000—is neither unfair nor unconscionable.

¶ 31 We are also not persuaded by defendants' argument that the court should have held an evidentiary hearing on the sufficiency of the credit bid at the judicial sale because the "temptation exists that a note purchaser will award itself a substantial discount on the date of sale, and where there is evidence of a fair market price negotiated at arm's length between the property owner and the purchaser at the foreclosure sale." According to the parties' representations, the notice procedures were properly followed and several potential buyers contacted them in the days leading up to the property auction. As noted above, the judgment of foreclosure had a number of requirements, including that the property was to be sold to the highest bidder who must pay 10% in cash at the sale and the remainder within 24 hours. Plaintiff was the highest bidder at the sale. We disagree with defendants that these are such unique circumstances that an evidentiary hearing is required.

¶ 32 For all of these reasons, we find no error in the trial court's confirmation of the judicial sale of the Northbrook property.

¶ 33 ii. Attorney Fees

¶ 34 Next, defendants PWS Northbrook and Swanson contend certain attorneys' fees were assessed them in error. Specifically, defendants argue that the Foreclosure Law does not permit a mortgagee to recover, through the order confirming the sale, costs incurred prior to the entry of the judgment of foreclosure. Defendants' argument, essentially, is that attorneys' fees incurred before the judgment was entered but presented to the court between the judgment and sale do not arise during that period and, therefore, cannot be recovered under section 15-1508(b) of the Foreclosure Law. We disagree.

¶ 35 The July 13, 2015 Judgment of Foreclosure reflects an attorneys' fee award of $30,864.50, specifically for fees incurred through January 31, 2015. After delineating the costs and fees incurred, including mortgage indebtedness and costs of suit (including the attorneys' fees incurred through January 31, 2015), the court included the following paragraph:

> "7. That advances made in order to collect the foregoing indebtedness and protect the lien of the Judgment and to preserve the Property, such as, but not limited to, payment of real estate taxes and special assessments, property maintenance, inspections and appraisals, insurance premiums, and reasonable legal fees and expenses incurred by Plaintiff and not included in this Judgment, but which shall be incurred prior to the foreclosure sale, shall become an additional indebtedness secured by this Judgment Lien, and bear interest from the date of advance by the Plaintiff at the interest rate upon the Mortgage."

Then, in their motion to confirm, plaintiff requested additional fees and costs, including $21,000 in attorneys' fees which accrued prior to the entry of the judgment of foreclosure.

¶ 36 Defendants argue that the $21,000 portion of the attorneys' fees represented in this submission was untimely because these fees accrued prior to the entry of the judgment of foreclosure. The judgment of foreclosure, entered on July 23, 2015, awarded attorneys' fees for the time period from the inception of the case through January 31, 2015. According to defendants, plaintiffs are "not allowed to retroactively request fees for time expended prior to the entry of the Judgment of Foreclosure at the confirmation stage." Instead, relying on section 15-1508(b)(1) of the Foreclosure Law, plaintiffs argue that only fees accruing subsequent to the entry of the judgment of foreclosure may be awarded in conjunction with an order confirming the sale.

¶ 37 Mortgagees can recover expenses associated with the preservation of the foreclosed property during the foreclosure process via section 15-1504 of the Foreclosure Law (735 ILCS 5/15-1504 (West 2014)). See, *e.g., BMO Harris Bank, N.A. v. Wolverine Properties, LLC*, 2015 IL App (2d) 140921, ¶ 20. By subsection (d) of section 15-1504, mortgagees are permitted to seek attorney fees, real estate taxes, insurance, and other fees and costs incurred during the foreclosure process. 735 ILCS 5/15-1504 (West 2014). Subsection (e)(3) of section 15-1504 provides that, if not timely redeemed, the mortgaged property may "be sold as directed by the court, to satisfy the *amount due to the plaintiff as set forth in the judgment* together with the interest thereon at the statutory rate." (Emphasis added.) 735 ILCS 5/1504(e)(3) (West 2014). Accordingly, the mortgagee may recover allowable expenses under section 15-1504 that were included in the amount of the judgment of foreclosure, along with the interest on the judgment that accrues thereafter. "A plaintiff must seek to include in the judgment of foreclosure all debts sought; that is a definitive purpose of the judgment of foreclosure." *Wolverine Properties, LLC*, 2015 IL App (2d) 140921, ¶ 29.

¶ 38 Additionally, a mortgagee may recover certain expenses that arise after the judgment of foreclosure and before the entry of the order confirming the sale. See 735 ILCS 5/15-1508(b)(1) (West 2014) (the order confirming the sale may "approve the mortgagee's fees and costs arising between the entry of the judgment of foreclosure and the confirmation hearing, those costs and fees to be allowable to the same extent as provided in the note and mortgage and in Section 15-1504.").

¶ 39 The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. *People ex rel. Madigan v. Kinzer*, 232 Ill. 2d 179, 184 (2009). We begin with the statutory language to determine the intent of the legislature. *People ex rel. Madigan*, 232 Ill. 2d at 184. Courts will not depart from the plain language of a statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent. *Solon v. Midwest Medical Records Ass'n*, 236 Ill. 2d 433, 441 (2010). We naturally presume that the legislature did not intend to produce an absurd, inconvenient, or unjust result. *Brucker*, 227 Ill. 2d at 514.

¶ 40 We think it defies logic to require a plaintiff to prove-up all expenses it is in the process of incurring, including those which may not yet have been calculated. This is an absurd result the legislature would not intend. Plaintiffs here did not obfuscate these fees in any manner; the court and the defendants were clearly on notice that the fees presented and awarded by the judgment of foreclosure were only those fees accrued through January 31, 2015. The parties surely contemplated that further fees were forthcoming, as upwards of five months elapsed between January 31 and the day the judgment of foreclosure was entered. While we recognize that it may be better practice for parties to supplement their fee requests more frequently, it is disingenuous for defendants to now act as though they were not aware that further bills would arise. We note that defendants neither objected to the fact that the fees only covered the time through January 31

at the time of the judgment of foreclosure, nor did they request an immediate accounting of attorneys' fees.

¶ 41 Defendants' reliance *Wolverine Properties* does not persuade us differently, where the *Wolverine* court addressed the impact at the confirmation of sale from a plaintiff's failure to include a large real estate tax payment in its foreclosure filings. *Wolverine Properties, LLC*, 2015 IL App (2d) 140921, ¶ 3. The *Wolverine Properties* court held that the plaintiff could not recover a real estate tax payment made before the judgment of foreclosure, which the plaintiff had failed to seek prior to the entry of that judgment or even prior to the sale. *Wolverine Properties, LLC*, 2015 IL App (2d) 140921, ¶ 27.

¶ 42 We find no error in the award of attorney fees here.

¶ 43 III. CONCLUSION

¶ 44 For all of the foregoing reasons, the decision of the circuit court of Cook County is affirmed.

¶ 45 Affirmed.