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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1977-22

U.S. BANK TRUST NATIONAL
ASSOCIATION, not in its
individual capacity but solely as
owner trustee of LH-NP-STRAT
DELAWARE OWNER TRUST,

Plaintiff-Respondent,

v.

PARRIS DEVELOPMENT
PROJECTS, LLC, ANGELINA'S
REALTY, LLC, and THE STATE
OF NEW JERSEY,

Defendants,

and

LESTER PARRIS,

Defendant-Appellant.

Submitted March 13, 2024 – Decided June 5, 2024

Before Judges Accurso and Gummer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket
No. F-009487-20.

Lester Parris, appellant pro se.

Chartwell Law, attorneys for respondent (John J.
Winter and Robert J. Murtaugh, on the brief).

PER CURIAM

In this foreclosure action, defendant Lester Parris appeals from a January 31, 2022 final judgment, a February 6, 2023 order denying his motion to vacate that judgment, and a March 1, 2023 order denying his motion to vacate that order. Perceiving no abuse of discretion, we affirm.

I.

On November 23, 2020, plaintiff U.S. Bank Trust National Association filed a "complaint in mortgage foreclosure," naming as defendants Parris Development Projects LLC (PDP), as the mortgagor; Lester Parris, as a guarantor and sole member of PDP; Angelina's Realty LLC and the State of New Jersey as "subsequent encumbrancer[s]"; and some fictitious defendants. Plaintiff alleged PDP had borrowed \$1,273,000.00 (the "Loan") from Gudz Solutions LLC ("Lender") and executed and delivered to the Lender a promissory note ("Note") dated January 3, 2020, and a mortgage "dated January 3, 2020, in the original principal amount of \$1,273,000.00, on the real property

located at 33 Oak Bend Road, Township of West Orange" (the Mortgage), which was "commercial in nature." It also alleged that "[a]s security for PDP's obligations with respect to the Loan," Parris had "executed and delivered to Lender a Guaranty dated January 3, 2020, in the original principal amount of \$1,273,000.00." Plaintiff included documentation and information regarding subsequent assignments, including a September 10, 2020 assignment of the Mortgage to plaintiff and an allonge assigning the Note to plaintiff. Plaintiff alleged PDP and Parris had defaulted by failing to make the June 1, 2020 payment or any other subsequently-due payment. Plaintiff also asserted that on or about October 13, 2020, it had sent to PDP and Parris a Notice of Intent to Accelerate and Foreclose pursuant to the Fair Foreclosure Act, N.J.S.A. 2A:50-53 to -68, even though, in its view, it wasn't required to send the notice because of the purported commercial nature of the mortgaged property.

Plaintiff submitted a request for default against PDP and Parris on July 1, 2021. On November 1, 2021, plaintiff moved for entry of final judgment. On November 17, 2021, PDP and Parris moved to vacate default and opposed the motion for entry of final judgment. The court entered an order denying the

motion to vacate on January 21, 2022.¹ Finding PDP and Parris had been served with but failed to answer the complaint and that the Note, Mortgage, and assignments had "been presented and marked as [e]xhibits by the [c]ourt," the court granted plaintiff's motion for final judgment and entered final judgment on January 31, 2022.

Parris moved to vacate default judgment pursuant to Rule 4:50-1 (a), (d), and (f). In a certification he submitted in support of the motion, Parris faulted plaintiff for not certifying it had physical possession of the Note and Mortgage and for not being named as the lender in the Note. In a February 6, 2023 order with an attached statement of reasons, the court denied the motion, finding Parris had not asserted a meritorious defense to the foreclosure and that plaintiff had demonstrated it had standing and was the holder of the Note by virtue of the assignment and allonge and because plaintiff had included in its motion for final judgment "true copies of the note and mortgage in plaintiff's physical possession and a proper certification of plaintiff's interest."

¹ The appellate record does not include copies of the notice of motion to vacate default or any documents submitted in support of that motion or the documents submitted in support of or in opposition to the motion for final judgment. Parris did not appeal the order denying the motion to vacate default.

Parris moved to vacate the February 6, 2023 order.² In a March 1, 2023 order with an attached statement of reasons, the court denied that motion, finding Parris had "provide[d] insufficient grounds for vacation or reconsideration under R[ule] 4:50-1." The court rejected Parris's argument that the court had failed to comply with Rule 1:7-4 and found plaintiff had standing to bring the foreclosure action and Parris had not presented a meritorious defense or established excusable neglect.

On appeal, Parris argues the court in its February 6, 2023 order failed to appropriately exercise its discretion pursuant to Rule 4:50-1 and failed to provide pursuant to Rule 1:7-4 a legal determination based on the facts raised in the certification he had submitted in support of the motion. According to Parris, his certification "contained proof justifying relief based upon the grounds set forth in Rule 4:50-1 (d) and (f)."³ We disagree and affirm.

² The appellate record does not include copies of the notice of motion or documents submitted in support of the motion.

³ In response, plaintiff contends the appeal is moot because it "is the owner of the property by Sheriff's Deed." Plaintiff fails to explain why that would render moot an appeal of the final judgment and fails to provide any evidence supporting that assertion.

II.

"The decision whether to vacate a judgment . . . is a determination left to the sound discretion of the trial court, guided by principles of equity." F.B. v. A.L.G., 176 N.J. 201, 207 (2003). Therefore, on appeal, "[t]he decision granting or denying an application to open a judgment will be left undisturbed unless it represents a clear abuse of discretion." Hous. Auth. of Morristown v. Little, 135 N.J. 274, 283 (1994); see also U.S. Bank Nat'l Ass'n v. Guillaume, 209 N.J. 449, 467 (2012) (trial court's determination under Rule 4:50-1 "warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion"). We also review a trial court's order on a reconsideration motion under an abuse-of-discretion standard. Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). An abuse of discretion exists "when a decision is 'made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis.'" Guillaume, 209 N.J. at 467-68 (quoting Iliadis v. Wal-Mart Stores, Inc., 191 N.J. 88, 123 (2007)).

Rule 1:7-4(a) requires a court to make findings of fact and conclusions of law "on every motion decided by a written order that is appealable as of right." See also Schwarz v. Schwarz, 328 N.J. Super. 275, 282 (App. Div. 2000) (noting "an articulation of reasons is essential to the fair resolution of a case"). The

court articulated the factual bases and legal reasons for its decision to deny Parris's motion to vacate the final judgment, albeit briefly, in the statement of reasons accompanying the February 6, 2023 order. The court spelled out the factual history of the case, including the issuance of the Loan and the default under the terms of the Loan. The court set forth the requirements under Rule 4:50-1 to vacate a judgment and explained why it concluded Parris had failed to establish a meritorious defense warranting vacation of the judgment. We perceive no violation of Rule 1:7-4.

And we see no abuse of discretion in either the decision to deny the motion to vacate the judgment or the decision to deny the subsequent motion for reconsideration. In support of his motion to vacate the judgment, Parris cited subparts (a), (d), and (f) of Rule 4:50-1, which authorize a court to vacate a judgment due to: "(a) mistake, inadvertence, surprise, or excusable neglect"; "(d) the judgment or order is void"; or "(f) any other reason justifying relief from the operation of the judgment or order."

Under Rule 4:50-1(a), "[a] defendant seeking to set aside a default judgment must establish that his failure to answer was due to excusable neglect and that he has a meritorious defense." Deutsche Bank Nat'l Tr. Co. v. Russo, 429 N.J. Super. 91, 98 (App. Div. 2012) (alteration in original) (quoting

Goldhaber v. Kohlenberg, 395 N.J. Super. 380, 391 (App. Div. 2007)). Excusable neglect refers to "an honest mistake that is compatible with due diligence or reasonable prudence." Ibid. (quoting Guillaume, 209 N.J. at 468). A meritorious defense is necessary to prevail under Rule 4:50-1(a) to avoid vacating a judgment "on the ground of mistake, accident, surprise or excusable neglect, only to discover later that the defendant had no meritorious defense. The time of the courts, counsel and litigants should not be taken up by such a futile proceeding." Guillaume, 209 N.J. at 469 (quoting Schulwitz v. Shuster, 27 N.J. Super. 554, 561 (App. Div. 1953)).

Parris did not identify any excusable neglect explaining his failure to answer the complaint, and the court properly concluded he lacked a meritorious defense. In his certification in support of the motion, Parris complained plaintiff was not the lender and had not certified it had physical possession of the Note and Mortgage. The court found plaintiff had submitted true copies of the Note and Mortgage in its possession with "a proper certification of plaintiff's interest" and had established standing by virtue of the prior allonge and assignment to it. Parris has provided no basis to disturb that conclusion. Cf. Deutsche Bank Nat'l Tr. Co. v. Mitchell, 422 N.J. Super. 214, 222 (App. Div. 2011) (finding "Deutsche Bank did not have standing when it filed the original complaint

because it did not have an assignment nor did it demonstrate that it possessed the note at that time").


"A Rule 4:50-1(d) motion, based on a claim that the judgment is void, does not require a showing of excusable neglect," Russo, 429 N.J. Super. at 98, but it does require some articulated basis for finding the judgment void. Parris did not identify any reason to declare the judgment void. He did not, for example, claim the judgment was void due to defective personal service. See Jameson v. Great Atl. & Pac. Tea Co., 363 N.J. Super. 419, 425 (App. Div. 2003) (finding defective service generally renders void a default judgment). He also did not relate any exceptional circumstances that would support relief under Rule 4:50-1(f). See Guillaume, 209 N.J. at 484 (finding a defendant must demonstrate exceptional circumstances to obtain relief under Rule 4:50-1(f)).

Because the court did not abuse its discretion or violate Rule 1:7-4 in denying Parris's motion to vacate the judgment, we affirm the February 6, 2023 order. In this appeal, Parris did not provide us with the basis for his motion for reconsideration of the February 6, 2023 order and did not explain how the court erred in denying that motion. He did not argue, much less demonstrate, the court had "expressed its decision based upon a palpably incorrect or irrational basis" or had "not consider[ed], or failed to appreciate the significance of probative,

competent evidence." Medina v. Pitta, 442 N.J. Super. 1, 18 (App. Div. 2015) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Accordingly, we affirm the March 1, 2023 order denying Parris's motion to vacate the February 6, 2023 order. Finally, although Parris included the January 31, 2022 final judgment in his notice of appeal, he provided no legal argument as to how the judge erred in granting the motion for final judgment, thereby waiving that argument. See N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015) (finding "[a]n issue that is not briefed is deemed waived upon appeal"). Thus, we affirm the January 31, 2022 final judgment.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office



CLERK OF THE APPELLATE DIVISION