PHH MORTGAGE CORP. V. WEBB

PHH MORTGAGE CORPORATION,
Plaintiff-Appellee,
v.
LEIGH G. WEBB a/k/a L. GEOFFREY WEBB, PATRICIA GAY WEBB, and CHARLES SCHWAB BANK, N.A.,
Defendants-Appellants.

NO. 34,437

COURT OF APPEALS OF NEW MEXICO

November 21, 2016

APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY Francis J. Mathew, District Judge

COUNSEL

Rose L. Brand & Associates, P.C. Eraina M. Edwards, Albuquerque, NM, for Appellee

Eric Ortiz & Associates Eric N. Ortiz, Joseph C. Gonzales Richard Pener Albuquerque, NM, for Appellants

JUDGES

RODERICK T. KENNEDY, Judge. WE CONCUR: M. MONICA ZAMORA, Judge, STEPHEN G. FRENCH, Judge

AUTHOR: RODERICK T. KENNEDY

MEMORANDUM OPINION

KENNEDY, Judge.

{1} Defendants, Leigh and Patricia Webb (the Webbs) filed a motion under Rule 1-060(B) NMRA after default judgment had been entered against them and the subject property had been sold. During the hearing on the motion, the Webb's main argument

was that under *Bank of New York v. Romero*, 2014-NMSC-007, 320 P.3d 1, PHH Mortgage Corporation (the Bank) had no standing to foreclose because standing was jurisdictional, and they were entitled to relief. The Webbs also made short, cursory arguments in support of the motion, arguing excusable neglect and exceptional circumstances existed to vacate the judgment and order. The district court denied the motion, and the Webbs appealed.

{2} While this case was on appeal, the New Mexico Supreme Court issued its opinion in *Deutsche Bank National Trust Co. v. Johnston*, 2016-NMSC-013, 369 P.3d 1046, making standing in mortgage foreclosure actions prudential rather than jurisdictional. Applying *Johnston*, we conclude that the Webbs waived their challenge to the Bank's prudential standing and that the Webbs failed to show the existence of grounds for relief under Rule 1-060(B). We therefore conclude that the district court did not abuse its discretion in denying the Webbs' Rule 1-060(B) motion, and we affirm.

I. BACKGROUND

{3} On August 14, 2003, the Webbs executed a note to Charles Schwab Bank, N.A. (Schwab), secured by a mortgage that was recorded on August 28, 2003. In May 2004 the Webbs granted Schwab a second mortgage in the amount of $119,900. The Webbs defaulted, and on November 21, 2011, the Bank, claiming to own the note, filed and served a complaint against the Webbs and Schwab seeking foreclosure. The Webbs, despite having been served with the complaint and summons, did not file any responsive pleadings. On May 13, 2013, the Bank filed a motion for default judgment pursuant to Rule 1-055 NMRA, asserting that the Webbs and Schwab failed to appear, plead, or otherwise answer the complaint filed in November 2011. The district court granted the Bank's motion for default judgment. In its order granting default judgment, the district court concluded that the allegations made in the Bank's complaint were "sustained by the evidence" and adopted those allegations as findings of fact. It then concluded that the Bank was entitled to foreclosure as requested in the complaint.

{4} On October 16, 2013, Schwab filed a motion to set aside the default judgment entered against it. On January 31, 2014, the district court entered a stipulated order reflecting an agreement between Schwab and the Bank, revising the default judgment order so that the allegations in the complaint were adopted as findings of fact against the Webbs only. The property was advertised and sold on April 8, 2014, the special master filed a report of sale, and the district court issued an order approving the sale on July 10, 2014.

{5} On August 8, 2014, the Webbs filed an "emergency motion" seeking relief under Rule 1-060(B) and asking the district court to set aside the default judgment and the order approving sale. The district court held a hearing on the motion. During that hearing, the Webbs argued that the district court did not possess subject matter jurisdiction. The Webbs also argued for relief under Rule 1-060(B)(1) and (B)(6). In response, the Bank argued that the arguments under Rule 1-060(B)(1) were untimely, being more than a year late, and that, at any rate, the Webbs had not met their burden

of showing excusable neglect under Rule 1-060(B)(1) nor exceptional circumstances under Rule 1-060(B)(6).

{6} The district court denied the Webbs' emergency motion, finding that it was untimely, having been filed more than a year after default judgment was entered against them. It then concluded that the Webbs failed to present evidence to support their motion under Rule 1-060(B)(1) or (B)(6). The Webbs appealed the district court's order denying their motion. We discuss additional facts as necessary below.

II. DISCUSSION

A. The Webbs Waived Their Right to Challenge the Bank's Standing

{7} Our Supreme Court's opinion in *Johnston* guides our analysis in this case. In *Johnston*, the Court sought to clarify certain aspects of the standing issue in mortgage foreclosure cases; namely, whether standing is jurisdictional, whether standing can be waived, and whether standing can be attacked through a Rule 1-060(B) motion. *See Johnston*, 2016-NMSC-013, ¶ 12. The *Johnston* court began by noting that a cause of action to enforce a promissory note existed prior to the adoption of the Uniform Commercial Code. *Id.* Noting that "standing is jurisdictional in the context of statutory causes of action rather than all causes of action[,]" *id.* ¶ 10, the Court held that "standing is not a jurisdictional prerequisite in mortgage foreclosure cases in New Mexico." *Id.* ¶ 9. The Court further concluded that "only prudential rules of standing apply" to a cause of action originating from the common law. *Id.* ¶ 10.

{8} In *Johnston*, the Court next addressed whether prudential standing, unlike jurisdictional standing, could be waived. In doing so, the Court analogized prudential standing challenges to assertions that a litigant failed to state a legal cause of action, reasoning that "both implicate the properly limited role of courts in a democratic society and are relevant concerns throughout a litigation." *Id.* ¶ 16 (omission, internal quotation marks, and citation omitted). Using this analogy, the Court used the language of Rule 1-012(H)(2) NMRA to conclude that prudential standing may not be waived "prior to the completion of a trial on the merits[,]" *Johnston*, 2016-NMSC-013, ¶ 16, explaining that "a foreclosure defendant cannot voluntarily waive a challenge to the plaintiff's standing *during the course of the litigation*." *Id.* ¶ 19 (emphasis added); *see* Rule 1-012(H)(2) ("A defense of failure to state a claim upon which relief can be granted . . . may be made in any pleading permitted or ordered . . . or by motion for judgment on the pleadings, or at the trial on the merits."). Thus, "[w]hen standing is a prudential consideration, it can be raised for the first time at any point in an *active* litigation[.]" *Johnston*, 2016-NMSC-013, ¶ 18 (emphasis added).

{9} In *Johnston*, the Court also noted that lower courts had vacated foreclosure judgments using Rule 1-060(B) based on a lack of subject matter jurisdiction, and sought to "clarify the practical implications of [its] holding that standing is not jurisdictional in mortgage foreclosure cases." *Johnston*, 2016-NMSC-013, ¶ 33. While recognizing that a challenge to subject matter jurisdiction may be raised at any time, the

Court clarified that prudential standing, like a defense for failure to state a claim, "may only be raised during the pendency of the action[.]" *Id.* ¶ 34 (internal quotation marks and citation omitted). It concluded that while a final judgment may be collaterally attacked using jurisdictional standing, a final judgment in a mortgage foreclosure "is not voidable under Rule 1-060(B) due to a lack of prudential standing." *Johnston*, 2016-NMSC-013, ¶ 34.

{10} There is little ambiguity in our Supreme Court's holding that the issue of standing in mortgage foreclosure actions is not jurisdictional, and can be waived. *See id.* ¶ 11. The question governing the outcome of this appeal, then, is whether the Webbs waived their prudential standing challenge.

{11} Default judgment in this case precluded a trial on the merits by declaring the rights of the party in the mortgaged premises and foreclosing the mortgage. *See Speckner v. Riebold*, 1974-NMSC-029, ¶ 9, 86 N.M. 275, 523 P.2d 10. Adjudication of the homeowner's indebtedness becomes a final judgment if no appeal is taken. *Id.* ¶ 8. The Webbs did not appeal the default judgment within 30 days as required by Rule 12-201(A)(2) NMRA. The default judgment therefore stands as the final judgment. *See Speckner*, 1974-NMSC-029, ¶ 9 (explaining that a judgment of foreclosure is "final as to determining the rights of the plaintiff under the mortgage" (internal quotation marks and citation omitted)); *see also Sundance Mech. & Util. Corp. v. Atlas*, 1990-NMSC-031, ¶ 27, 109 N.M. 683, 789 P.2d 1250 ("Where a complaint requests relief of a certain type or amount and a court has jurisdiction to award the relief, and where the defendant defaults in responding to the complaint or fails to comply with a lawful order regarding the complaint, the defendant waives his right to litigate the propriety of the relief requested and consents, in effect, to entry of judgment by default awarding plaintiff the relief requested."); *Gallegos v. Franklin*, 1976-NMCA-019, ¶ 25, 89 N.M. 118, 547 P.2d 1160 (holding that a default judgment was a final judgment in favor of a non-defaulting party). *Compare* Rule 1-055(C) (allowing for default judgments and granting courts discretion to set aside a default judgment under Rule 1-060), *with* Rule 1-060(B) (allowing courts to grant relief from *final* judgments, orders, or proceedings (emphasis added)). Thus, following the entry of default judgment, Rule 1-012(H)(2) and *Johnston* allow for Rule 1-060(B) challenges to standing to be waived. *See* Rule 1-060(B)(6) ("A motion under this paragraph does not affect the finality of a judgment or suspend its operation.").

{12} The Webbs in this case filed their Rule 1-060(B) motion, in which they challenge the Bank's standing for the first time, more than a year after default judgment was entered. There is no dispute that they were properly served with the suit, or that they were in any way mistaken about its intended result. Counsel for the Webbs even conceded during oral argument before this Court that the challenge to standing was being raised "after the fact." We therefore conclude that, under *Johnston*, 2016-NMSC-013, ¶¶ 15-19,the Webbs waived their right to challenge the Bank's prudential standing by failing to raise it prior to the entry of default judgment. *See Ealy v. McGahen*, 1933-NMSC-033, ¶ 19, 37 N.M. 246, 21 P.2d 84 ("Where an action or suit is regularly commenced and prosecuted, judgment regularly entered, even though by default, the

defendant cannot thereafter on motion vacate . . . on the ground of existence of a complete defense to the action, which defense was available to the defendant before the entry of the judgment."). Accordingly we therefore do not consider the Webbs' standing arguments when considering whether the district court properly denied the Rule 1-060(B) motion.

B. The District Court Did Not Abuse Its Discretion by Denying the Webbs' Motion

1. Standard of Review

{13} We review a district court's denial of relief under Rule 1-060(B) for an abuse of discretion. *See Meiboom v. Watson*, 2000-NMSC-004, ¶ 29, 128 N.M. 536, 994 P.2d 1154. "To reverse the trial court it must be shown that the court's ruling exceeds the bounds of all reason or that the judicial action taken is arbitrary, fanciful, or unreasonable." *Id.* (alteration, internal quotation marks, and citation omitted). "An abuse of discretion occurs when the ruling is clearly against the logic and effect of the facts and circumstances of the case." *State v. Moreland*, 2008-NMSC-031, ¶ 9, 144 N.M. 192,185 P.3d 363 (internal quotation marks and citation omitted). "When there exist reasons both supporting and detracting from a trial court decision, there is no abuse of discretion." *Id*. (internal quotation marks and citation omitted). However, the scope of Rule 1-060(B) and application of that rule to the facts is a question of law that we review de novo. *See N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 7, 127 N.M. 654, 986 P.2d 450 ("[E]ven when we review for an abuse of discretion, our review of the application of the law to the facts is conducted de novo." (internal quotation marks and citation omitted)).

C. The Webbs' Rule 1-060(B) Motion Was Untimely

{14} The Webbs filed the motion to set aside the default judgment and order approving the sale in district court under Rule 1-060(B)(1) and (B)(6). The district court found the motion untimely, and the Webbs contest that finding on appeal.

1. The Webbs' Rule 1-060(B)(1) Challenges

{15} Motions requesting relief under Rule 1-060(B)(1) must be made within one year of the final order or judgment. *See* Rule 1-060(B)(6). The Webbs assert that, because the motion was filed less than a month after the order approving the sale was entered and the motion requests the district court reconsider that order, the motion was timely.

{16} The Webbs' attempted end-run around the timing requirements for challenges pursuant to Rule 1-060(B)(1) is unavailing. The Webbs moved to set aside the order approving sale of the property seeking relief solely under Rule 1-060(B)(1), which requires the movant demonstrate "excusable neglect," but proffered no meritorious argument to support that any neglect that existed in the case was excusable.[1] Despite asserting in their docketing statement that the district court erred by concluding that the

Rule 1-060(B)(1) arguments were untimely, the Webbs' brief in chief neither addresses the timeliness issue with regard to Rule 1-060(B)(1), nor suggests that the district court's denial of the Rule 1-060(B)(1) motion was reversible error. As such, the issues with regard to Rule 1-060(B)(1) are deemed abandoned.[2] *See State v. Fish*, 1985-NMCA-036, ¶ 3,102 N.M. 775, 701 P.2d 374 ("[I]ssues listed in the docketing statement but not briefed are deemed abandoned.").

{17} The Webbs also argue that because the motion challenged the order approving the sale within a month of that order, it was timely under Rule 1-060(B)(1) and the Rule 1-060(B)(6) challenges should also be considered timely. We are unpersuaded by this argument, as the default judgment and the order approving sale constitute two separate final judgments. The distinct nature of the judgments challenged functionally separates the motion into two distinct Rule 1-060(B) motions; one challenging the default judgment, and one challenging the order approving sale. The possibility that one judgment was timely challenged does not necessitate a conclusion that a motion challenging the other judgment was also timely.

2. The Webbs' Rule 1-060(B)(6) Challenge

{18} Rule 1-060(B)(6) requires that motions be made "within a reasonable time." The Webbs suggest that because Rule 1-060(B)(6) does not specifically delineate a time frame for a motion under that subsection, their motion is timely. What constitutes a reasonable time under Rule 1-060(B)(6) depends on the circumstances of each case. *Freedman v. Perea*, 1973-NMSC-124, ¶ 6, 85 N.M. 745, 517 P.2d 67.

{19} The Webbs filed their Rule 1-060 motion more than one year after default judgment was entered. They proffer no evidence in the district court to suggest that the time of filing was reasonable under the circumstances. On appeal, they neither point to anything in the record explaining the one year delay in filing, nor provide any other justification for the delay. We therefore cannot conclude that the district court abused its discretion in concluding that the motion was untimely.

D. Rule l-060(B)(6)'s "Exceptional Circumstances" Requirement

{20} Generally, courts deciding issues under Rule 1-060(B) balance the interests of finality against relief from unjust judgments. *Kinder Morgan C02 Co.*, 2009-NMCA-019, ¶ 10. "A party seeking relief from a default judgment must [first] show the existence of grounds for relief under Rule 1-060(B)," and then show that a meritorious defense exists to the allegations of the complaint. *Sunwest Bank of Albuquerque v. Roderiguez*, 1989-NMSC-011, ¶ 4, 108 N.M. 211, 770 P.2d 533. A party seeking relief under Rule 1-060(B)(6) must prove the existence of exceptional circumstances and reasons for relief other than those set out in Rule 1-060(B)(1) through (5). Exceptional circumstances under Rule 1-060(B)(6) are those that "require an exercise of a 'reservoir of equitable power' to assure that justice is done." *Stein v. Alpine Sports, Inc.*, 1998-NMSC-040, ¶ 17, 126 N.M. 258, 968 P.2d 769. Whether that power need be exercised is a decision left to the sound discretion of the district court. *Id.*

{21} The Webbs argued in district court that they were entitled to relief from the default judgment due to the existence of exceptional circumstances under Rule 1-060(B)(6).[3] In *Rodriguez*, the Court decided that a failure to notify the defendant of default judgment proceedings did not warrant reversal of the judgment. *See Rodriguez*, 1987-NMSC-040, ¶ 17. The Court acknowledged the rule that defendants are entitled to notice of default judgment where they have "appeared in the action." *Id.* ¶ 13 (internal quotation marks and citation omitted); Rule 1-055(B). The Court went on to elaborate, however, that due process notice requirements were satisfied by the service of process within the summons and complaint, and because the defendant had failed to appear, he was not entitled to notice on constitutional grounds. *See Rodriguez*, 1987-NMSC-040, ¶ 16.

{22} The record is clear that the Webbs were aware of the Bank's complaint for foreclosure and were personally served with the summons and complaint. The record is also clear that the Webbs did not appear in the case until the default judgment had been entered. Thus, the Webbs are no more entitled to notice than the defendant in *Rodriguez*.

{23} The Webbs argue that exceptional circumstances existed in this case because the Bank had all contact information for the Webbs but failed to give notice that it was seeking default judgment against them. Despite the express language of the summons requiring a response and informing them that failure to respond could result in default judgment, the Webbs chose not to respond. Instead, they assumed that their correspondence with the Bank regarding loan modification and loss mitigation was adequate to satisfy the response requirement of the summons. The Webbs do not point to any authority that could reasonably support such an argument. *See ITT Educ. Servs., Inc. v. Taxation & Revenue Dep't*, 1998-NMCA-078, ¶ 10,125 N.M. 244, 959 P.2d 969 (stating that an appellate court does not consider propositions that are unaccompanied by citations to authority). As such, we cannot conclude that the district court abused its discretion in concluding that the Bank's failure to notify the Webbs of the default judgment proceedings against them was an exceptional circumstance warranting relief.

{24} The Webbs also suggest that the large amount of money at issue in this case justifies relief from default judgment as an exceptional circumstance. As support, they again cite to *Rodriguez*, 1987-NMSC-040, ¶ 9. Our Supreme Court, in affirming the district court's exercise of discretion in granting a Rule 1-060(B) motion, acknowledged a general rule that "if it reasonably can be avoided, cases involving large sums of money should not be determined by default judgments." *Rodriguez*, 1987-NMSC-040, ¶ 22. This was mere dicta; the basis for the Court's decision was the deference given to the discretion of the district court, stating, "we cannot say as a matter of law that the district court could not have found exceptional circumstances and other reasons justifying relief under Rule 1-060(B)(6)." *Rodriguez*, 1987-NMSC-040, ¶ 22.

{25} We likewise defer to the district court's discretion in this case, and decline to conclude, as a matter of law, that a district court's actions are "clearly against the logic and effect of the facts and circumstances of the case" where it concludes the amount of

money in a mortgage foreclosure case does not constitute an "exceptional circumstance" for the purpose of granting a Rule 1-060(B)(6) motion. *Moreland*, 2008-NMSC-031, ¶ 9. As the record is clear that by having been served with the summons and complaint, the Webbs were aware that default judgment could be entered against them if they failed to answer the complaint, we conclude that the district court did not abuse its discretion in concluding that no exceptional circumstances existed to warrant relief under Rule 1-060(B)(6). Because the Webbs have failed to prove that exceptional circumstances exist, we need not continue to an inquiry of whether they had a meritorious defense to the allegation in the complaint.

III. CONCLUSION

{26} Applying our Supreme Court's holding in *Johnston*, we conclude that the Webbs waived their Rule 1-060(B) challenge to the Bank's prudential standing by failing to raise it prior to the entry of default judgment or the order confirming sale of the property. The majority of the Webbs' motion and argument centered on the standing issue, and as a result, they failed to prove the merits of their Rule 1-060(B) motion. Having failed to establish exceptional circumstances under Rule 1-060(B)(6) and having abandoned their excusable neglect argument under Rule 1-060(B)(1), we conclude that the Webbs failed to show the existence of grounds for relief under Rule 1-060(B). *See Sunwest Bank of Albuquerque*, 1989-NMSC-011, ¶ 4. We therefore affirm the district court's denial of the Webbs' motion.

{27} IT IS SO ORDERED.

RODERICK T. KENNEDY, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

STEPHEN G. FRENCH, Judge

1In determining whether neglect is excusable under Rule 1-060(B)(1), courts balance several factors, including "the danger of prejudice to the non-moving party, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Kinder Morgan CO2 Co. v. Taxation & Revenue Dep't*, 2009-NMCA-019, ¶¶ 12-13,145 N.M. 579, 203 P.3d 110 (alteration, internal quotation marks, and citation omitted).

2In their briefs, the Webbs did not include any argument for relief from the order due to excusable neglect. Instead, they focus solely on their Rule 1-060 (B)(6) arguments.

Thus, even if we were to conclude that Rule 1-060(B)(1) challenge to the order approving the sale was timely, the Webbs have abandoned any argument that the district court erred in concluding that no excusable neglect existed pursuant to Rule 1-060(B)(1). The Webbs have the obligation, as noted above, to clearly point out errors in fact or law having to do with the proceedings approving the sale of the property, distribution of the proceeds, or rights in the distribution of any surplus funds resulting therefrom. They have not done so.

3To the extent that the Webbs argue that the Bank had no standing to bring suit, thereby depriving the district court of subject matter jurisdiction and rendered the default judgment void, their argument would be a challenge under Rule 1-060(B)(4). *See* Rule 1-060(B)(4) (allowing reconsideration of a void judgment). Thus, despite their assertions to the contrary, lack of standing does not constitute an exceptional circumstance in this case. *See Rodriguez v. Conant*, 1987-NMSC-040, ¶ 22,105 N.M. 746, 737 P.2d 527 (stating that the party seeking relief under Rule 1-060(B)(6) must prove "the existence of exceptional circumstances and reasons for relief *other than those set out in Rule[] 1-060(B)(1) through (5)*" (emphasis added)).