SUPREME COURT OF ARKANSAS

No. 11-900

CHASE BANK U.S.A., N.A.
APPELLANT

V.

DYKE, HENRY, GOLDSHOLL & WINZERLING, P.L.C.; REGIONS BANK, N.A.; WANDA JEAN STEPHENS; THE STEPHENS FAMILY LIMITED PARTNERSHIP; RACHEL STEPHENS, MINOR, KATHRYN STEPHENS, ALEX STEPHENS, JENNIFER STEPHENS, MINOR, JOSHUA STEPHENS, MINOR, AND GREG STEPHENS, INDIVIDUALLY AND AS PARENT AND NEXT FRIEND OF ABOVE MOVANTS WHO ARE MINORS
APPELLEES

Opinion Delivered March 28, 2013

CONCURRING OPINION.

PAUL E. DANIELSON, Justice

I respectfully concur, as it is my opinion that the circuit court erred as a matter of law when it did not determine the priority of each party's interest in accord with Arkansas Code Annotated § 18-50-109 (Repl. 2003) and because I believe that factual issues remain in dispute. I therefore would reverse and remand on each of Chase's points on appeal. Specifically, I would reverse and remand the circuit court's grant of partial summary judgment to Regions Bank, the circuit court's grant of the Stephens Heirs' and Wanda Stephens's joint motion for judgment on the pleadings, and the circuit court's grant of the Stephens Family

Limited Partnership's ("the SFLP") motion for summary judgment and/or motion for judgment on the pleadings; the circuit court's dismissal of Chase's motion to deem its requests for admission propounded to Wanda Stephens admitted; the circuit court's dismissal of Chase's motion to disqualify counsel for Wanda Stephens; the circuit court's dismissal of Chase's objection and motion to strike answers to deposition upon written questions propounded to Wanda Stephens; the circuit court's dismissal of Chase's motion for sanctions against Wanda Stephens for failure to attend a deposition; and the circuit court's order distributing the excess proceeds.[1] To that end, and to provide a better understanding of my reasoning for so holding, a recitation of the litigation is warranted.

On July 25, 2001, Wanda Stephens executed a mortgage in favor of Regions Mortgage, Inc., for property located at 6 River Ridge Court in Little Rock. The mortgage was filed for record on August 2, 2001, and the property consisted of two tracts of land—Tract A, that portion on which the home rested, and Tract B. Regions foreclosed on the property after Wanda Stephens fell into default, and the property was sold to the highest bidder for $808,100 at a June 12, 2008 sale. After the indebtedness of $497,507.67 was satisfied and the fees and costs for the foreclosure sale were paid to appellee Dyke, Henry, Goldsholl & Winzerling, P.L.C. ("DHGW"), which executed the foreclosure, DHGW filed a complaint for interpleader with the circuit court, praying that the circuit court would dispose of the remaining funds totaling $308,828.02. The complaint named as defendants

[1]I would also deny Chase's motion to strike the Appellees' statement of the case and supplemental abstract that was submitted with the instant appeal.

Chase; Regions Bank, N.A., and Wanda Stephens, asserting that each of the defendants "may be claiming an interest" in the proceeds at issue.

Chase answered the complaint and cross-claimed, seeking a declaratory judgment. Chase averred that it had loaned Wanda Stephens $222,222 on January 21, 2005, which was secured by a mortgage on the River Ridge property, the current indebtedness of which was $240,406.49, and it requested a declaration that its lien was superior to any held by defendant Regions and that it was entitled to payment of the excess funds from foreclosure before payment to Regions or defendant Wanda Stephens.

Regions also answered, asserting that it too held a mortgage on the property and the home thereon. It contended that Chase held no interest in the home and that Chase only held a subordinate interest, if any, in the adjacent property, which should be considered only after Regions's mortgage was satisfied in full. Regions also cross-claimed, seeking a declaration as to the priority of its mortgage interest.

Wanda Stephens answered as well. She contended that Chase did not have a mortgage on the subject property and that any interest held by Chase would be subordinate to that of Regions, which did have a mortgage on the property. She asserted that because Regions's mortgage interest had priority over any interest held by Chase, and because Regions's mortgage was greater than the available funds, the funds should be paid directly to Regions less any costs or fees to DHGW.

In July 2009, the circuit court granted the SFLP's motion to intervene in the case, finding that it claimed an interest in the property and that it was a necessary and proper party

to the action. The SFLP complained in intervention, asserting that it was the title owner of the property at issue and further contending that Wanda Stephens was not the owner of the property and that Chase's mortgage was erroneous "in that same is/was not on the foreclosed property."

Chase, meanwhile, moved for summary judgment, asserting that there existed no issues of material fact and that it was entitled to the excess funds by virtue of Ark. Code Ann. § 18-50-109. Chase averred that Wanda Stephens granted to it a mortgage lien on Tract B of the property, which was filed of record on February 2, 2005, and acknowledged that Regions was granted a mortgage lien as to both Tracts A and B, which was filed of record on June 10, 2005. Chase claimed, however, that prior to the execution of Regions's mortgage in 2005, Wanda Stephens had conveyed Tract A to the SFLP by quitclaim deed, filed for record on July 3, 2001, and by a corrected quitclaim deed filed February 16, 2005. Chase maintained that because of this transfer, Wanda Stephens was without title to Tract A at the time she conveyed the mortgage lien to Regions. As a result, Chase contended, Regions, like it, obtained a mortgage only to Tract B, and Regions's mortgage was subordinate to that of Chase. Accordingly, Chase urged, the excess proceeds should be applied first to the debt owed it.

In response to the SFLP's intervention complaint, Regions asserted no dispute to Chase's mortgage as to Tract B being recorded prior in time to its interest, "assuming the valid execution, delivery and recording of the Chase Mortgage." It further asserted that the quitclaim deed to the SFLP was of no moment, as the SFLP "was revoked, cancelled and

dissolved" by an agreement dated February 25, 2007, such that title in the property reverted back to Wanda Stephens ab initio, rendering her the owner of the property at the time she executed the 2005 mortgage to Regions.

Regions also responded to Chase's summary-judgment motion and cross-motioned for partial summary judgment, asserting that its 2005 mortgage for both Tracts A and B granted it the first, prior, and superior interest between the defendants in the Tract A property. It stated that, while Chase alleged that the 2005 Regions mortgage may have been executed when the record owner of the property may have been the SFLP, Wanda Stephens was the general partner of the SFLP. But, moreover, it claimed, the conveyance was valid under Ark. Code Ann. § 18-12-601.[2] Regions's motion for partial summary judgment concluded:

> It is without doubt or question that, Regions' claim is superior to the claim of Chase or Stephens on the proceeds of the Tract A sale, and the excess proceeds at issue must be applied to the debt secured by the 2005 Regions Mortgage. The present debt secured by the 2005 Regions Mortgage exceeds [sic] the Court must either divide the escrowed funds by percentage based on outstanding debt or determine the relative values of Tract A and Tract B and divide the proceeds of the sale deposited into the registry of the Court pursuant to a division by percentage of total value which, on information and belief, would result in ninety-five percent (95%) of the deposited funds being delivered to Regions and five percent (5%) of the deposited funds delivered to Chase.

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[2]That section provides:

> If any person shall convey any real estate by deed purporting to convey it in fee simple absolute, or any less estate, and shall not at the time of the conveyance have the legal estate in the lands, but shall afterwards acquire it, then the legal or equitable estate afterwards acquired shall immediately pass to the grantee and the conveyance shall be as valid as if the legal or equitable estate had been in the grantor at the time of the conveyance.

Ark. Code Ann. § 18-12-601 (Repl. 2003).

The SFLP also responded to Chase's summary-judgment motion, asserting that its interest in the property was superior, even to that of Regions Mortgage, Inc., in its original 2001 mortgage on which the foreclosure was based. The SFLP reasoned that because the quitclaim deed signed by Wanda Stephens on June 21, 2001, was prior to the mortgage purportedly granted to Regions Mortgage, Inc., in 2001, Wanda Stephens had no title in the property in which to convey the original mortgage lien. The SFLP further asserted that Wanda Stephens was removed as the general partner of the SFLP on April 22, 2002, and therefore she had no authority to execute the February 25, 2007 agreement purporting to dissolve the SFLP, relied upon by Regions. It averred that when the foreclosure took place, the SFLP was still the owner of the property. For this reason, it claimed, its interest in Tract A of the property was superior to any interest claimed by either Chase or Regions. The SFLP again asserted that the foreclosure should be set aside or, in the alternative, that it was entitled to the monies being held in escrow. The SFLP similarly responded to Regions's motion for partial summary judgment.

Chase, in response to Regions's partial summary-judgment motion, asserted that Regions did not acquire title to Tract A when Wanda Stephens dissolved the SFLP because the dissolution agreement had no legal effect, where it did not comport with the requirements of Ark. Code Ann. § 18-12-201.[3] Chase further contended that Tract A remained in the

[3]That statute provides:

> All deeds and other instruments in writing for the conveyance of any real estate, or by which any real estate may be affected in law or equity, shall be proven or duly acknowledged in conformity with the provisions of this act before they or any of them shall be admitted to record.

SFLP's name because Wanda Stephens had no authority to dissolve the partnership. Notwithstanding these assertions, Chase argued for the first time that, should the circuit court be inclined to find that the dissolution agreement operated to reinstate title to Tract A in Wanda Stephens's name, "Chase, likewise, had a mortgage lien on Tract A, and that lien was superior to Regions' lien." While Chase conceded that its mortgage did not contain the legal description for Tract A, it asserted that it had a pending claim for reformation of its mortgage, based upon mutual mistake and other equitable remedies, to include that tract.[4]

The Stephens Heirs moved to intervene in the matter on January 15, 2010.[5] They asserted that they owned a remainder interest in the property, "which interest is a vested remainder which follows the life estate of Wanda Stephens." They contended that their deed to the property predated the Chase and Regions mortgages and that their claim to the excess funds was superior. Attached to the motion was a warranty deed, filed November 18, 2002, which conveyed to Wanda Stephens "for life and to Greg Stephens and the heirs of his body, in fee tail as Remainder men [sic]" "No. 6 River Ridge Ct." Regions, however, in response,

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Ark. Code Ann. § 18-12-201 (Repl. 2003).

[4]Its pleading concluded:

> For the reasons stated in Chase's Motion for Summary Judgment as well as this pleading, neither Chase nor Regions had mortgage liens on Tract A because the real estate records reflect that Stephens had conveyed title to Tract A prior to her granting the mortgage liens to Chase and Regions. This leaves Chase and Regions with mortgage liens only upon Tract B, and the Stephens Family Limited Partnership with an interest only in Tract A, if any. The proceeds should be distributed towards the debts owed Chase, first, and Regions, second, accordingly.

[5]According to the pleadings, the Stephens Heirs consist of Rachel Stephens, a minor; Kathryn Stephens; Alex Stephens; Jennifer Stephens, a minor; Joshua Stephens, a minor; and Greg Stephens, individually and as parent and next friend of the minors.

claimed that the deed relied on by the Stephens Heirs was declared invalid in 2004 by the Sixth Division of the Pulaski County Circuit Court. Chase responded similarly to the motion to intervene, asking that the Stephens Heirs' motion be denied and asserting that, in addition to the deed relied upon by the Stephens Heirs being declared invalid, the Stephens Heirs had failed in a 2009 attempt to the have the circuit court's 2004 judgment set aside.

On February 2, 2010, the Stephens Heirs filed a brief in support of motion for judgment on the pleadings. In it, they asserted that "Lot 25," or Tract A, belonged to Wanda Stephens for life with the remainder to her heirs and that Chase held a lien as to Tract B. After the filing of multiple motions by Chase, the SFLP filed its motion for summary judgment and/or motion for judgment on the pleadings on August 12, 2010, contending that the uncontroverted facts demonstrated that it was first in priority as to Tract A of the property. The SFLP urged that Chase's mortgage set forth only Tract B in its description of the property, and as such, Chase has no legal title to Tract A. It further asserted that Chase was not entitled to reformation of the mortgage or any equitable remedies and that Regions's 2005 mortgage was behind both deeds of the SFLP.

Wanda Stephens and the Stephens Heirs countered jointly that, while all other parties had valid deeds or mortgages filed of record as to Tract A, Chase had a mortgage as to Tract B only. Regions responded likewise, asserting that Chase had no legal claim to the proceeds from the sale of Tract A and suggesting that the circuit court should enter judgment against Chase as to that tract. It then averred that because Wanda Stephens dissolved the SFLP in 2007, Regions remained first in priority for Tract A due to its 2005 mortgage.

Chase responded, arguing as it did in its November 18, 2008 motion to distribute, that it had obtained a mortgage lien upon Tract B of the property, which lien was superior to any claim by Regions. However, it also pointed to its alternative request for relief under its cross-claim for reformation and the setting aside of the SFLP deed, or by a declaration that its mortgage was a valid lien on the entire property, or by a declaration that it was entitled to an equitable lien on the entire property. Shortly thereafter, on October 27, 2010, Wanda Stephens died. Consequently, the circuit court granted the Stephens Heirs' motion to intervene on February 14, 2011.

A hearing was held in the matter on March 9, 2011. On March 28, 2011, the circuit court filed a letter opinion, in which it ruled that Chase's motion for summary judgment was denied and that the "motions for summary judgment" by the other parties were granted. It further requested the prevailing parties to provide a proposed order and permitted Chase to submit its objections once the proposed order was received by Chase. The circuit court then entered its order, entitled "Final Order and Judgment" on June 3, 2011. In it, the circuit court ruled on each of the outstanding motions of the parties and found, in pertinent part:

> 4. Cross Motion for Partial Summary Judgment filed by Regions August 5, 2009, is granted as to Chase (only);
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> ....
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> 6. Joint Motion for Judgment on the Pleadings filed February 2, 2010, by Wanda Stephens, Greg Stephens, and the Stephens' Heirs is granted as to Chase (only);
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> . . . .
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> 14. Motion for Summary Judgment and/or Motion for Judgment of the Pleadings filed by the Stephens Family Limited Partnership August 10, 2010, is granted as to Chase (only).
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> 15. The Court is holding $308,828.02 in the Court's registry as excess proceeds from a foreclosure sale of two tracts of property, commonly referred to as Tract A and Tract B.

> 16. The parties, Chase, the Stephens Family Limited Partnership, the Stephens' Heirs, and Regions all assert a superior interest in the above proceeds.
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> 17. The Court finds that Chase's interest in the proceeds is not superior to Regions, the Stephens Family Limited Partnership, and the Stephens' Heirs;
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> 18. The Court specifically denies Chase's position that it is entitled to a superior interest in the proceeds pursuant of A.C.A. § 18-40-102 as asserted in its Motion for Summary Judgment. The Court further denies Chase's claims for reformation and (1) to set aside the Deed in favor of the Stephens Family Limited Partnership, (2) for a declaratory judgment finding its mortgage covers Tracts A and B due to a warranty of title contained in Chase's mortgage, and (3) for an equitable lien on Tracts A and B.
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> 19. The Court reserves judgment as to the priority of the remaining interests of Regions, the Stephens' Heirs, and the Stephens Family Limited Partnership.

The circuit court then entered its order of disbursement and distribution in which it awarded one-third of the proceeds to Regions, one-third to the SFLP, and one-third to the Stephens Heirs, and Chase filed a timely notice of appeal.

It is clear from my review of the record that the circuit court's order and distribution award did not comport with Ark. Code Ann. § 18-50-109, which provides:

> The trustee or mortgagee shall apply the proceeds of the sale as follows:
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> (1) To the expenses of the sale, including compensation of the trustee or mortgagee and a reasonable fee by the attorney;
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> (2) To the indebtedness owed;
>
> (3) To all persons having recorded liens subsequent to the interest of the trustee or mortgagee as their interests may appear in the order of the priority; and
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> (4) The surplus, if any, to the grantor of the trust deed or to the successor in interest of the grantor entitled to the surplus.

We review issues of statutory interpretation de novo, as it is for this court to decide what a statute means. *See Arkansas Office of Child Support Enforcement v. Perry*, 2012 Ark. 106. In this respect, we are not bound by the circuit court's decision; however, in the absence of a showing that the circuit court erred, its interpretation will be accepted as correct on appeal. *See id.* The first rule in considering the meaning and effect of a statute is to construe it just

as it reads, giving the words their ordinary and usually accepted meaning in common language. *See id.* When the language of a statute is plain and unambiguous, there is no need to resort to rules of statutory construction. *See id.* When the meaning is not clear, we look to the language of the statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, the legislative history, and other appropriate means that shed light on the subject. *See id.* The basic rule of statutory construction is to give effect to the intent of the General Assembly. *See id.*

In this case, both Chase and the Appellees agree that section 18-50-109 controls the legal issues presented. Notwithstanding their agreement, the Appellees fully concede that they did not ask the circuit court to decide the relative priorities between Regions, the SFLP, and the Stephens Heirs. Instead, they simply asked the circuit court to find that Chase's claim was not superior to that of any by the Appellees. I am of the opinion that the circuit court's failure to determine the priority of the parties, in accord with the plain-language directive of the statute, constituted error as a matter of law. Accordingly, I would reverse the circuit court's order granting the motions for summary judgment and judgment on the pleadings and remand for a determination of the priority of each party's interest with respect to both Tracts A and B.

With respect to Chase's claim that material facts remain in dispute, I agree. As demonstrated by the parties' arguments before the circuit court and on appeal, multiple factual questions remain as to each party's interest in the property, including Chase's. Moreover, in accord with the statute, a determination of the priority of each interest necessarily requires a

determination of the validity of each interest, which will require factual determinations to be made on each party's claims, as set out in detail above. No such determinations were made by the circuit court in its order, and, needless to say, there are many claims regarding the validity of each party's interest. Accordingly, I would reverse the circuit court's order and remand on this basis as well.

In addition to these arguments, Chase asserts that the circuit court erred in denying several of its motions. A review of the circuit court's order reveals that the circuit court did not deny the motions, but instead found them moot and dismissed them. To the extent that the circuit court's dismissal of the motions was premised upon its grants of summary judgment and judgment on the pleadings that I would reverse, as set forth above, I would also reverse and remand the circuit court's rulings on these motions. Finally, because I would reverse and remand the circuit court's grants of summary judgment and judgment on the pleadings, the circuit court's order of distribution also requires reversal.

Because I believe the circuit court erred as a matter of law and because I believe that genuine issues of material fact remain, I would reverse and remand on each of Chase's points on appeal. For these reasons, I respectfully concur.

CORBIN and GOODSON, JJ., join.