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IN THE COURT OF APPEALS OF INDIANA

U.S. Bank Trust National Association as Trustee of American Homeowner Preservation Trust Series 2015 A+,

Appellant-Plaintiff,

v.

Joshua R. Dugger, Patrice M. Jones, William Baldridge, and Sara Baldridge,

Appellees-Defendants.

June 16, 2022

Court of Appeals Case No. 21A-MF-2562

Appeal from the Delaware Circuit Court

The Honorable Linda Ralu Wolf, Judge

Trial Court Cause No. 18C03-0905-MF-61

Friedlander, Senior Judge.

[1] U.S. Bank appeals the trial court's order denying its motion for leave to file a praecipe for sheriff's sale. We reverse and remand.

[2] In October 2009, Everhome Mortgage Company obtained a judgment of foreclosure against Joshua Dugger. On three separate occasions (December 15, 2009; April 13, 2010; July 19, 2010), Everhome moved for a praecipe for sheriff's sale. *See* Appellant's App. Vol. 2, pp. 60-62. Sheriff's sales scheduled in March and July 2010 were canceled. *See id.* at 64, 63.

[3] In September 2010, Dugger filed a Chapter 7 bankruptcy and received a bankruptcy discharge in January 2011.

[4] In July 2021, U.S. Bank was substituted as plaintiff after it acquired Everhome's interest in the property and moved to amend the judgment to an in rem judgment, which the court granted. That same month, U.S. Bank moved the court for a praecipe for sheriff's sale. Prior to the sale taking place, however, William and Sara Baldridge (the Baldridges) moved to intervene and asked the court to reconsider its amendment of U.S. Bank's judgment. The court granted the motion to intervene, vacated its order amending the judgment, and removed the property from the sheriff's sale.

[5] U.S. Bank again moved for a praecipe for sheriff's sale in October 2021. The trial court denied the motion, and U.S. Bank appeals that denial.[1]

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[1] The remaining Appellee, Patrice M. Jones, was joined as a defendant based on any interest she might claim in the property by virtue of the judgment she obtained against Dugger in a small claims action. *See* Appellant's App. Vol. 2, p. 15 (Complaint on Note and to Foreclose Mortgage on Real Estate, ¶ 12).

[6] We begin by noting that none of the Appellees have filed a brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments for the appellee, and we apply a less stringent standard of review. *Jenkins v. Jenkins*, 17 N.E.3d 350 (Ind. Ct. App. 2014). Thus, we may reverse if the appellant establishes prima facie error, which is error at first sight, on first appearance, or on the face of it. *Id.* Yet, we remain obligated to correctly apply the law to the facts in order to determine whether reversal is required. *Id.*

[7] U.S. Bank contends the trial court erred when it denied the bank's motion for leave to file a praecipe for sheriff's sale. U.S. Bank filed its motion for leave pursuant to Indiana Code section 34-55-1-2(a) (1998), which provides:

> (a) After the lapse of ten (10) years after:
>
> (1) the entry of judgment; or
>
> (2) issuing of an execution;
>
> an execution can be issued only on leave of court, upon motion, after ten (10) days personal notice to the adverse party, unless the adverse party is absent or a nonresident, or cannot be found.

[8] We will review the trial court's refusal to grant U.S. Bank leave to file a praecipe for sheriff's sale for abuse of discretion because the statute states that execution of the judgment can be issued *only on leave of court*. *See id.* This language demonstrates the intent to grant the trial court discretion when ruling on these requests. *See, e.g.*, *Tapia v. State*, 753 N.E.2d 581 (Ind. 2001) (stating that post-conviction court's refusal to amend petition is reviewed for abuse of discretion because rule states certain motions to amend may be granted only by

leave of court). "'An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.'" *Willis v. Dilden Bros., Inc.*, 184 N.E.3d 1167, 1182 (Ind. Ct. App. 2022) (quoting *Poiry v. City of New Haven*, 113 N.E.3d 1236, 1239 (Ind. Ct. App. 2018)).

[9] We are mindful that the determination that is the subject of this appeal is the court's order denying U.S. Bank's motion for leave to file praecipe for sheriff's sale. In that order, however, the court stated, "Court refers to the Motion to Reconsider and the Order granting Motion to Reconsider" and explained that due to the order granting the motion to reconsider, it would not be appropriate to proceed with a sheriff's sale. Appellant's App. Vol. 2, p. 177. Thus, we must look to the prior motion and corresponding order.

[10] The Baldridges' motion to reconsider stated that in September 2020 they purchased the property from Steven Dugger who had purchased it from Joshua Dugger in December 2016. The Baldridges asserted that, at the time of their purchase, U.S. Bank's judgment against Joshua Dugger "ceased to exist due to [U.S. Bank]'s failure to renew the lien pursuant to Indiana Code 34-55-1-2." *Id.* at 170. Further, the Baldridges alleged that U.S. Bank was attempting to deceive the court when it requested the court to amend the judgment based on their contention that the "in personam judgment against Joshua Dugger has expired. To re-open that judgment and convert it to in rem would be extremely prejudicial." *Id.* at 171. The court's order granting the motion to reconsider

vacated its previous order granting U.S. Bank's motion to amend judgment and removed the property from the sheriff's sale. *Id.* at 173.

[11] We begin by addressing the Baldridges' allegation that U.S. Bank's judgment against Joshua Dugger ceased to exist because the bank had not renewed the lien. Because of the confusion concerning judgments and judgment liens, we will unpack the Baldridges' contention piece by piece.

[12] Indiana Code section 34-55-9-2 (1998) provides that all final judgments for the recovery of money constitute a lien until the expiration of ten years after the judgment is issued. Although a *judgment lien* expires after ten years, a *judgment* still exists for at least another ten years. *See* Ind. Code § 34-11-2-12 (1998) (judgment is considered satisfied after twenty years). Nevertheless, we have been careful to note that Section 34-11-2-12 does not indicate "'an intention to utterly destroy judgments after the lapse of 20 years.'" *Lewis v. Rex Metal Craft, Inc.*, 831 N.E.2d 812, 818 (Ind. Ct. App. 2005) (quoting *Odell v. Green*, 72 Ind. App. 65, 77, 122 N.E. 791, 791 (1919) (opinion on rehearing)).[2]

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[2] Indiana Code section 34-11-2-12

> is not in any sense a limitation on the life of a judgment. It is merely a legislative declaration of a rule of evidence. A judgment less than 20 years of age is of itself prima facie proof of a valid and subsisting claim but under this rule a judgment more than 20 years of age stands discredited, the lapse of that period of time being prima facie proof of payment. But in either case the presumption is rebuttable.

Lewis, 831 N.E.2d at 818 (quoting *Odell v. Green*, 72 Ind. App. 65, 75, 121 N.E. 304, 307 (1918) (internal citations and emphases omitted)).

[13] While a judgment may be renewed, we are unaware of any requirement to renew. Rather, it has been noted that "[b]ecause of the confusing complexity of execution and proceedings supplemental, and the added uncertainty caused by the two attendant decade-long time periods, most sophisticated judgment creditors 'renew' their judgments shortly before the expiration of the first (and each successive) decade after judgment." *Lewis*, 831 N.E.2d at 823 (Mathias, J., concurring).[3]

[14] Nevertheless, the judgment may still be executed upon ten years after its entry even if it has not been renewed. Indiana Code section 34-55-1-2(a) provides that a creditor holding a judgment that is more than ten years old may, only with leave of court, execute the judgment against the debtor's real estate during the remainder of the life of the judgment. *See, e.g.*, Ind. Code § 34-55-1-3(1) (1998) (one of three kinds of execution of judgments is execution against property of judgment debtor).

[15] Here, while the judgment lien has expired, the judgment has not. And, there being no evidence that U.S. Bank renewed the judgment prior to the ten-year mark, it must obtain leave of court in order to execute on the judgment. See Ind. Code § 34-55-1-2(a); *see also Borgman v. Aikens*, 681 N.E.2d 213 (Ind. Ct.

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[3] "A renewal complaint pleads the existing judgment, alleges liquidated, accrued interest, and seeks entry of a new judgment in the amount of the original judgment." *Lewis*, 831 N.E.2d at 823 n.13 (citing Ind. Code § 34-55-1-6 (1998)).

App. 1997) (citing predecessor of Section 34-55-1-2 and determining that where judgment creditors failed to seek renewal of judgment prior to end of ten years after entry of judgment, execution of judgment could only be had by leave of court), *trans. denied* (1998).

[16] Next, we turn to the Baldridges' allegation of deception on the part of U.S. Bank as to its request that the court amend the judgment to an in rem judgment. "'A mortgage is an interest in real property that secures a creditor's right to repayment.'" *McCullough v. CitiMortgage, Inc.*, 70 N.E.3d 820, 827 (Ind. 2017) (quoting *Johnson v. Home State Bank*, 501 U.S. 78, 82, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991)). Accordingly, an action to foreclose a mortgage is an in rem (i.e., against the property) proceeding. *Dipert v. Killingbeck*, 124 Ind. App. 18, 112 N.E.2d 306 (1953); 20 Ind. Law Encyc. *Mortgages* § 149 (2022). Upon a debtor's default, in addition to the remedy of an in rem action of foreclosure, a creditor may sue to establish the debtor's in personam (i.e., personal) liability for any deficiency on the debt and may enforce a judgment against the debtor's personal assets. *McCullough*, 70 N.E.3d 820. A defaulting debtor, however, can protect himself from personal liability by obtaining a discharge in a Chapter 7 bankruptcy because such a discharge extinguishes the personal liability—but *only* the personal liability—of the debtor. *Id.* Thus, a bankruptcy discharge removes the ability of creditors to seek to collect against the debtor personally, but a mortgage lien, which is in rem (i.e., a right against the property), survives the bankruptcy and remains enforceable. *Id.*

[17] Although U.S. Bank obtained a personal judgment against Dugger, that was in addition to the in rem decree of foreclosure issued by the court. When Dugger received a discharge in bankruptcy in 2011, only his personal liability for the mortgage loan was eliminated. Nevertheless, U.S. Bank's right to collect the debt against the property is still enforceable. Hence, U.S. Bank's request to amend the judgment to an in rem judgment was proper and not an attempt to deceive the court.

[18] U.S. Bank filed its motion for leave to file praecipe for sheriff's sale pursuant to Indiana Code section 34-55-1-2(a). Subsection (b) of this statute provides that leave shall not be given unless it is established that the judgment remains unsatisfied and due. In its motion, the bank stated that the underlying mortgage remains in default. Given that U.S. Bank made the required showing and that the court's denial of the bank's motion was based upon its earlier ruling grounded on the erroneous information in the Baldridges' motion to reconsider, we conclude the trial court abused its discretion in denying U.S. Bank's motion for leave to file praecipe for sheriff's sale.

[19] Based on the foregoing, we vacate the trial court's order denying U.S. Bank's motion for leave to file praecipe for sheriff's sale and reverse and remand this action for proceedings consistent with this opinion.

[20] Judgment reversed.

Mathias, J., and Molter, J., concur.