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IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION IV

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

NOV - 4 2026

SELDEN JONES
CLERK

GWYNNCO PROPERTY INVESTMENTS, LLC,

Plaintiff/Appellee,

vs.

KENNETH E. RICHERSON III, et al.,[1]

Defendants/Appellants.

Case No. 123,903

APPEAL FROM THE DISTRICT COURT OF
MUSKOGEE COUNTY, OKLAHOMA

HONORABLE TIMOTHY KING, DISTRICT JUDGE

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REVERSED AND REMANDED

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For Plaintiff/Appellee

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For Defendants/Appellants

OPINION BY GREGORY C. BLACKWELL, PRESIDING JUDGE:

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[1] We note that Oklahoma Supreme Court Rule 1.25(b) prohibits the use of "et al." in the caption of the petition in error and requires that "[e]ach party shall be designated in the caption as they were in the trial court ...." However, Rule 1.172 states that "[a] case assigned to a division [of the Court of Civil Appeals] shall continue to bear the original caption and number given it in the Supreme Court." We yield to the latter rule and leave the caption as it came to this court.

Kenneth E. Richerson appeals from the court's grant of summary judgment in favor of GwynnCo Property Investments, LLC (GwynnCo), and the court's grant of GwynnCo's attorney fees. Upon careful review, we find that GwynnCo has not demonstrated it is the party entitled to enforce the note; therefore, it is not entitled to foreclose on the property. Thus, the order granting summary judgment and the related fee order are reversed, and this matter is remanded for further proceedings.

I.

On January 7, 2008, the Federal National Mortgage Association conveyed real property located in Muskogee, Oklahoma, to RECA Limited Partnership by general warranty deed. The deed was recorded in the Muskogee County land records at Book 3799, Page 22, on January 15, 2008.

In March of that year, Mr. Richerson[2] executed a note for $19,400 in favor of RECA. The note was secured by an "Agreement for Deed." Under that instrument, RECA agreed to convey title upon Mr. Richerson's completion of the required monthly payments. The agreement likewise provided that "the purchaser agrees to convert these documents to a Deed and Mortgage" and that "the seller has the right to [sell] his/her/their agreement or mortgage to another party." ROA, Tab 1, *Petition*, Exhibit B.

After the 2008 transaction, title to the property was conveyed through a series of deeds, and the note was separately indorsed through a series of

[2] The record reflects that the defendant was at times referred to as Mr. Richardson.

allonges. The allonges reflect that the note was assigned in the following sequence: from RECA to Home Solutions Partners IV REO, LLC; from Home Solutions to Transportation Alliance Bank Inc.; from Transportation Alliance Bank Inc. to Home Opportunity, LLC; from Home Opportunity, LLC to Greyt Estates, LLC.

In October 2020, Greyt Estates initiated a foreclosure action against Mr. Richerson. The copy of the note attached to the petition identified RECA as the lender and bore no indorsement. The trial court later dismissed the petition with leave to amend, and Greyt Estates filed an amended petition that included a chain of indorsements culminating in an assignment to Greyt Estates. Greyt Estates then moved for summary judgment, and the trial court granted summary judgment to Greyt Estates. Mr. Richerson appealed the court's grant of summary judgment and on July 27, 2022, Division II of this court vacated the summary judgment and the related award of attorney's fees and remanded for further proceedings. *Greyt Estates, LLC, vs. Kenneth E. Richerson*, No. 119,980 (COCA Div. II Jul. 27, 2022) (unpublished) ("prior opinion").

In vacating the summary judgment, this court held that no certified or sworn copy of the note had been presented during the summary judgment proceeding as required by 12 O.S. § 2056. Accordingly, the court found that Greyt Estates failed to establish that it was entitled to enforce the note and foreclose the mortgage. In footnote 3 of the prior opinion, we also observed the chain of indorsements was "somewhat suspect," specifically noting that Transportation Alliance Bank appeared to have transferred its interest to Home

Opportunity seventeen days before receiving that interest. The court expressly noted that "[t]he question of whether the plaintiff had the legal right to sue on the note at the time of the amended petition remains open on remand." *Prior Opinion*, n. 3, pg. 3.

On remand, Transportation Alliance Bank executed a "Note Allonge (Corrective)," stating that its purpose was to "correct errors in date (sic) of the prior Allonge to Note/Assignment of Note involving the same parties dated October 28, 2013 and to affirmatively state that Transportation Alliance Bank, ... did not obtain any interest in the Note until on or after November 14, 2013." ROA, Tab 1, *Petition*, Exhibit A. Further, in October 2024, Greyt Estates executed an "Authorization to Void Note Allonge," acknowledging that it held no right, title, or interest in the note and authorizing the prior Greyt Estates allonge to be voided. *Id.* Greyt Estates, LLC, also dismissed the remanded first foreclosure action.

On December 6, 2024, GwynnCo filed the present foreclosure action against Mr. Richerson as a new suit. GwynnCo alleged that it was entitled to enforce the note, that Mr. Richerson had defaulted by failing to make the payments, and that there remained due and owing a principal sum of $9,209.85, with interest accruing at ten percent per annum from February 1, 2020, together with costs and attorney's fees. Mr. Richerson filed an answer, claiming, among other things, that GwynnCo lacked standing. Mr. Richerson also counterclaimed for breach of contract. GwynnCo filed a motion for summary judgment, asking for judgment in its favor on the foreclosure as well as Mr. Richerson's

counterclaim. The record reflects that the court decided the issue on the briefs, and granted summary judgment in favor of GwynnCo.

GwynnCo then moved for attorney fees. Mr. Richerson did not dispute the plaintiff's entitlement to fees; rather, he contested their reasonableness. After a fee hearing, the court granted GwynnCo's request for fees in the amount requested.

Mr. Richerson now appeals both orders.

II.

A court's grant of summary judgment is reviewed *de novo*. *Sustainable Journalism Found. v. State ex rel. Bd. of Regents of Univ. of Oklahoma*, 2026 OK 2, ¶ 6, 582 P.3d 1142, 1146. *De novo* review involves a plenary, independent, and non-deferential examination of the issues presented. *TIB-The Indep. Bankers Bank v. Goerke*, 2023 OK 61, ¶ 7, 531 P.3d 114, 116. To affirm an award of summary judgment, the record must show no dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. *Oklahoma Ass'n of Broadcasters, Inc. v. City of Norman, Norman Police Dep't*, 2016 OK 119, ¶ 15, 390 P.3d 689, 694.

III.

A.

In his petition in error, Mr. Richerson alleges that the plaintiff lacked standing to bring this suit because it was not registered as a limited liability company, the agreement for deed was not recorded until more than a decade after its execution, and the plaintiff breached the written terms of the agreement

for deed. Although the standing arguments as raised in the petition in error are misguided,[3] we do agree with Mr. Richerson's general statement that the plaintiff could not enforce the note at issue and was therefore unable to succeed on its foreclosure action.

Oklahoma courts have consistently held that "[t]o commence a foreclosure action in Oklahoma, a plaintiff must demonstrate it has a right to enforce the note and, absent a showing of ownership, the plaintiff lacks standing." *Deutsche Bank Nat. Tr. Co. v. Richardson*, 2012 OK 15, ¶ 6, 273 P.3d 50, 53. Because the note is a negotiable instrument, it is subject to the requirements of Article 3 of the UCC. *Id.* A foreclosing entity has the burden of proving it is a "person entitled to enforce an instrument" by showing it was "(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or subsection (d) of Section 3-418 of this title." 12A O.S. § 3-301. Importantly, unless the plaintiff can show it was entitled to enforce the note at the time the suit was filed, it cannot maintain its foreclosure action. *Deutsche Bank Nat. Tr. Co.*, ¶ 9.

In its motion for summary judgment, GwynnCo stated that it was "the person entitled to enforce the Note and Mortgage and was so entitled at the time of the filing of Plaintiff's Petition herein." ROA, Tab 4, *Motion for Summary*

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[3] Although the issue addressed in this opinion was not explicitly raised by Mr. Richerson on appeal, standing may be raised as an issue at any stage of the judicial process by any party or by the court sua sponte. *J.P. Morgan Chase Bank Nat. Ass'n v. Eldridge*, 2012 OK 24, ¶ 2, n. 1, 273 P.3d 62, 64.

Judgment, pg. 3. GwynnCo does not further explain how it is the holder, the nonholder in possession, or is otherwise entitled to enforce the instrument pursuant to 12A O.S. § 3-301. GwynnCo does, however, cite to an affidavit executed by the mortgage servicer for the plaintiff, which is attached to the motion as Exhibit D. The mortgage servicer provided the following information about the note at issue:

> 6. On March 7, 2008, Borrower, for good and valuable consideration, made, executed and delivered to RECA Limited Partnership the Note, in writing, promising and agreeing to pay the holder thereof the sum of $19,400 with interest thereon at the rate of 10.00000% per annum on the unpaid balance according to the terms of the Note.
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> 7. Attached hereto as Exhibit "D-1" is a true, correct and authentic copy of the original Note as it exists in Plaintiff's business records. The Note was made in the regular course of business and was made at or near the time of the execution of the mortgage, i.e. March 7, 2008. The copy of the Note attached hereto is an accurate reproduction of the original Note as it exists in Plaintiff's business records.

ROA, Tab 4, *Motion for Summary Judgment*, Exhibit D.[4] The copy of the note attached to the affidavit reflects that it was executed by Mr. Richerson, in favor of RECA.

B.

As stated above, a plaintiff is entitled to enforce the note if it is the holder of that note. To be a holder of the note the plaintiff must prove it is "in possession of the note and the note is either 'payable to bearer' (blank indorsement) or to an

[4] In its petition, GwynnCo also stated that its attorney, Matthew Hudspeth, currently possesses the original note. ROA, Tab 1, *Petition*, pg. 2. This is verified by the affidavit which confirms that the copy of the note attached is an accurate reproduction of the original note contained in the plaintiff's business records.

identified person that is the person in possession (special indorsement). Therefore, both possession of the note and an indorsement on the note or attached allonge are required in order for one to be a 'holder' of the Note." *U.S. Bank, Nat. Ass'n v. Moore*, 2012 OK 32, ¶ 18, 278 P.3d 596, 601 (citing 12A O.S. § 1-201(b)(21)). Title 12A O.S. § 3-205(a) provides that when an "indorsement is made by the holder of an instrument ... and the indorsement identifies a person to whom it makes the instrument payable, it is a 'special indorsement'. When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person." *Id.* An instrument is negotiated when it is transferred, either voluntarily or involuntarily, by a person other than the issuer to a person who thereby becomes its holder. 12A O.S. § 3-201. A subsequent indorsement should then appear on an affixed allonge, because "a paper affixed to the instrument is a part of the instrument." *Id.* § 3-204.

It is undisputed that GwynnCo is in possession of the note. The note explicitly stated that it was payable "to the order of RECA Limited Partnership or its assigns." ROA, Tab 4, *Motion for Summary Judgment*, Exhibit D-1. RECA then specially indorsed the note by attaching an allonge which stated "pay to the order of: Home Solutions Partners IV REO, LLC." *Id.* From that point forward, interest in the note was negotiated several times. We must therefore determine whether there was a subsequent special indorsement to GwynnCo on any of the attached allonges, or a blank indorsement, making GwynnCo a holder in possession entitled to pursue this foreclosure action.

The note at issue was negotiated through a series of allonges, which are documented in GwynnCo's petition and motion for summary judgment. The note was assigned in the following sequence: from RECA to Home Solutions; from Home Solutions to Transportation Alliance Bank Inc.; from Transportation Alliance Bank Inc. to Home Opportunity; from Home Opportunity to Greyt Estates; and finally, from Greyt Estates to CWS Investments. As we explained in Section I of this opinion, the allonge to the note from Transportation Alliance Bank to Home Opportunity was dated October 28, 2013, but the allonge from Home Solutions to Transportation Alliance Bank was dated November 14, 2013. According to those dates, Transportation Alliance Bank would not have had any interest in the note to transfer, an issue which this court flagged in its prior opinion.

To remedy that issue, on September 12, 2024, Transportation Alliance Bank executed a "Note Allonge (Corrective)," clarifying that it did not obtain any interest in the note until November 14, 2013. ROA, Tab 4, *Motion for Summary Judgment*, Exhibit D-1. This note allonge has a blank indorsement; however, GwynnCo does not argue that this corrective allonge made the note bearer paper entitling it to holder status. And, we note that this allonge could not have such an effect. We find nothing in 12A O.S. § 1-201 *et seq.* which would prohibit Transportation Alliance Bank from correcting the date on the allonge; indeed, § 3-113 provides that an instrument may be antedated or postdated. However, § 3-205 makes clear that special and blank indorsements are made "by the holder." Thus, by correcting the dates, Transportation Alliance Bank parted with

all of its interest when it delivered and indorsed the note to Home Opportunity. Home Opportunity became the holder and Transportation Alliance Bank became a stranger to the instrument and therefore could not supply GwynnCo with a blank indorsement.

Because Transportation Alliance Bank corrected the dates and the transfer to Home Opportunity was valid, we will next examine the subsequent allonges to determine whether they result in GwynnCo obtaining "holder" status pursuant to 12A O.S. § 3-301. Home Opportunity assigned its interest in the note to Greyt Estates, and Greyt Estates subsequently assigned its interest to CWS Investments. As explained above, a specially indorsed instrument may be negotiated only by the indorsement of the holder. 12A O.S. § 3-205(a). Thus, it appears that the note could only pass beyond CWS if CWS itself indorsed it directly to GwynnCo or in blank. Instead of making such an indorsement, CWS Investments executed a "Disclaimer of Interest in Note," stating that it did not have "any right, title or interest in and to the Note dated March 7, 2008." ROA, Tab 4, *Motion for Summary Judgment*, Exhibit D-1.

The legal effect of this disclaimer is unclear. Abandoning an interest is not the same as conveying it. Title to a note moves only by negotiation, which requires a special indorsement or one made payable to the bearer. An indorsement is a "signature ... that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument ...." 12A O.S. § 3-204(a). CWS never made an indorsement to GwynnCo, and if it had, GwynnCo would be a holder of the note entitled to enforce it. Instead, GwynnCo

remains a stranger to the note, as it did not obtain any enforcement right from CWS's purported withdrawal.

In the same way CWS's disclaimer did not transfer interest forward to GwynnCo, the disclaimer also did not allow Greyt Estates to reacquire its interest. Section 3-207 addresses the narrow situation in which an instrument returns to a prior holder: "Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument." We reiterate that abandoning one's interest is not the same as conveying it. Nothing in the "Disclaimer of Interest in Note" could be read as a transfer of interest back to Greyt Estates because a transfer occurs only when the instrument "is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument." *Id.* § 3-203. The record does not reflect that CWS delivered the note to Greyt Estates, indorsed it back to Greyt Estates, or otherwise returned it to Greyt Estates' possession. The disclaimer transfers the note to no one.

And, even if the disclaimer had been effective in that way, Greyt Estates' attempt to void its allonge and disclaim its interest is also problematic, and, importantly, does not result in a transfer of interest in the note to GwynnCo. On the same day CWS disclaimed its interest in the note, Greyt Estates executed an

"Authorization to Void Note Allonge." ROA, Tab 4, *Motion for Summary Judgement*, Exhibit D-1. It reads as follows:

> Statement of Purpose: This Authorization to Void Note Allonge is given for the purpose of acknowledging that the undersigned [Greyt Estates] does not have any right, title or interest in and to the Note dated March 7, 2008 in the amount of $19,400 from Kenneth E. Richerson III a/k/a Kenneth Richerson to RECA Limited Partnership and to authorize GwynnCo Property Investments, LLC, its loan servicer and/or its attorneys to void the original allonge, a copy of which is attached hereto, by striking through the body of the allonge and affixing the word "VOID" thereon.

Id. The authorization to void disclaims Greyt Estates' interest in and to the note, while also authorizing GwynnCo[5] or its servicer to void the Home Opportunity to Greyt Estates allonge. In the same way that a disclaimer of interest does nothing to negotiate the note, voiding an allonge does not somehow bestow note enforcement rights upon GwynnCo. Neither the disclaimer nor the attempt to void can be construed as a transfer of interest in the note, especially to a party that was never indorsed in any of the allonges contained in this record.

Because the note was never specially indorsed to GwynnCo and was not indorsed in blank, the note was never transferred or negotiated to GwynnCo. 12A O.S. §§ 3-201, 3-203. CWS's disclaimer of interest and Greyt Estates' voiding of

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[5] Neither Greyt Estates nor GwynnCo explains how GwynnCo, who is a stranger to the instrument, would have the authority to void the allonge between Greyt Estates and Home Opportunity. Title 12A O.S. § 3-604(a) governs discharge of an instrument by cancellation or renunciation. Specifically, it provides that "a person entitled to enforce an instrument ... may discharge the obligation of a party to pay the instrument" by adding "words to the instrument indicating discharge." As this court acknowledged above, a person entitled to enforce is the holder, a nonholder in possession with the rights of a holder, or a non-possessor in very limited circumstances. Additionally, § 3-207 limits the ability to cancel prior indorsements to "a former holder who reacquires the instrument," and only as to indorsements "made after the reacquirer first became a holder." *Id.* Even assuming CWS's disclaimer of interest resulted in Greyt Estates "reacquiring" the note, that would give Greyt Estates, not GwynnCo, the authority to cancel the note.

its allonge do not accomplish a negotiation. While both CWS and Greyt Estates attempted to withdraw themselves from the allonge chain, they failed to transfer any interest in the note to GwynnCo. GwynnCo is not a holder of the note entitled to enforce it pursuant to 12A O.S. § 3–301.

c.

Next, we will address whether GwynnCo is a nonholder in possession of the note. *See id.* The Oklahoma Supreme Court has held that to be a nonholder in possession who has the rights of the holder "you must be in possession of a note that has not been indorsed either by special indorsement or blank indorsement." *Deutsche Bank Nat. Tr. Co. v. Matthews*, 2012 OK 14, ¶ 8, 273 P.3d 43, 46. As explained above, negotiation is the voluntary or involuntary transfer of an instrument by a person other than the issuer to a person who thereby becomes its *holder.* 12A O.S. § 3-201 (emphasis supplied). However, transfer occurs when the instrument is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument. *Id.* § 3-203. Thus, while negotiation is how a plaintiff can establish holder status, if a plaintiff can show a note has been transferred to it, even without a specific indorsement, it can show nonholder status.

Regarding nonholder status, the Oklahoma Supreme Court has clarified that delivery of the note still has to occur even though there is no negotiation. *Bank of Am., NA v. Kabba*, 2012 OK 23, ¶ 7, 276 P.3d 1006, 1009. Delivery is defined as the voluntary transfer of possession. 12A O.S. § 1-201(b)(15). The transferee is then vested with any right of the transferor to enforce the note. *Id.*

§ 3-203(b). Our Supreme Court has held that to enforce a negotiable instrument as a nonholder in possession, the plaintiff must show "(i) that the party possessed the negotiable instrument when suit was filed; (ii) how possession was achieved; and (iii), if necessary, that the purpose of the transfer was to transfer rights of enforcement." *U.S. Bank, Nat. Ass'n v. Moore*, 2012 OK 32, ¶ 13, 278 P.3d 596, 600.

Here, GwynnCo established that it had possession of the note when suit was filed. It does not, however, show how or why it came into possession. As we explained in detail above, the note at issue bears several allonges ending with a special indorsement to CWS. The note was never indorsed to GwynnCo and GwynnCo does not state that CWS, or even Greyt Estates or Home Opportunity, delivered the note to it. Further, CWS's and Greyt Estates' disclaimers of interest and Greyt Estates' authorization to void an earlier allonge do not provide proof of delivery of the note to GwynnCo, only that they wish to relinquish their interest in the note. Accordingly, GwynnCo has not established that it is a nonholder in possession of the note with rights of the holder pursuant to 12A O.S. § 3-301.

D.

Lastly, GwynnCo is entitled to enforce the note if it can show that it is "a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or subsection (d) of Section 3-418 of this title." *Id.* Section 3-309 provides that a person who is not in possession of the note may enforce it if the note is lost, destroyed, or stolen. GwynnCo is in possession of the note and does not otherwise contend that the note itself or any

attached allonges have been lost, destroyed, or stolen. Section 3-418 addresses payment or acceptance of an instrument by mistake. Nothing in this record suggests GwynnCo paid for the note by mistake and then sought recovery pursuant to its mistake. GwynnCo is not entitled to enforce the note pursuant to 12A O.S. §§ 3-309, 3-418.

* * *

A foreclosing entity has the burden of proving it is a "person entitled to enforce an instrument" by showing it was "(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3-309 or subsection (d) of Section 3-418 of this title." 12A O.S. § 3-301. For the reasons explained above, GwynnCo has not made this showing. Accordingly, we reverse both the court's order granting summary judgment and its associated fee award and remand for further proceedings.

REVERSED AND REMANDED.

BARNES, J., and HUBER, J., concur.

November 4, 2026