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NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION III

FILED  
COURT OF CIVIL APPEALS  
STATE OF OKLAHOMA

DLJ MORTGAGE CAPITAL, INC., )

JUN 15 2023

Plaintiff/Appellant, )

JOHN D. HADDEN  
CLERK

vs. )

Case No. 120,578

ANNETTA J. BEELER a/k/a ANNETTA BEELER a/k/a )  
ANNETTA JEAN BEELER, )

Defendant/Appellee, )

and )

JOHN DOE, her spouse, if married; )

Occupants of the premises; )

AAMES CAPITAL CORPORATION f/k/a )

AAMES FUNDING CORPORATION; )

ASSOCIATES FIRST CAPITAL CORPORATION, )

a Delaware Corporation successor )

by reason of merger with )

ASSOCIATES FINANCIAL SERVICES COMPANY )

OF OKLAHOMA, INC.; ARVEST BANK; )

DANNY BEELER, )

Defendants. )

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APPEAL FROM THE DISTRICT COURT OF  
TULSA COUNTY, OKLAHOMA

HONORABLE CAROLINE WALL, JUDGE

AFFIRMED

Brian J. Rayment,  
KIVELL, RAYMENT & FRANCIS, P.C.,  
Tulsa, Oklahoma,

For Plaintiff/Appellant,

Brian R. Huddleston,  
HUDDLESTON LAW OFFICES, PLLC,  
Tulsa, Oklahoma,

For Defendant/Appellee.

Opinion by Bay Mitchell, Chief Judge:

¶1 In this mortgage foreclosure proceeding filed eighteen years ago, Plaintiff/Appellant DLJ Mortgage Capital, Inc. (DLJ), like its plaintiff predecessors, seeks judgment against Defendant/Appellee Annetta Beeler (Beeler). Throughout the case, the plaintiffs have been unsuccessful in establishing standing to pursue the claim. On appeal, now for the third time, we affirm the district court's order finding the plaintiff lacks standing because the record on appeal does not show error.

¶2 On October 23, 1998, Beeler executed a note in favor of Defendant Aames Funding Corporation in the amount of \$170,500 and secured the note with a mortgage for property located in Tulsa County. On October 15, 2004, Beeler defaulted on the note when she failed to make the required payments.

¶3 On March 18, 2005, former plaintiff, the Bank of New York, Trust U/A Dated 12/1/01 (EQCC Trust 2001-2), commenced foreclosure proceedings claiming to be the present holder of the note and mortgage through prior assignments. The original mortgage and several assignments were attached as exhibits to the petition. However,

the note secured by the mortgage and an assignment or indorsement showing the plaintiff was the present holder of the note were not included. On August 12, 2005, default judgment was entered in favor of the plaintiff when Beeler failed to answer or otherwise plead. On May 23, 2006, Beeler filed for bankruptcy protection.

¶4 On October 12, 2010, Beeler moved to vacate the default judgment asserting the plaintiff was not the present holder of the note and lacked standing. The court denied the motion, Beeler appealed, and on May 15, 2013, the Court of Civil Appeals reversed and remanded the judgment for the plaintiff's lack of standing (*The Bank of New York, Trust U/A Dated 12/1/01 (EQCC Trust 2001-2) v. Beeler*; Case No. 109, 341, mandate issued May 15, 2013).

¶5 On remand on June 3, 2014, with the judgment vacated, NationsCredit Financial Services Corporation was substituted as the plaintiff claiming to be the present holder of the note. On the same day, the new plaintiff filed an amended petition and attached the note, mortgage, allonges, and indorsements. On September 29, 2016, the plaintiff filed a second amended petition attaching two undated allonges that were inadvertently left off the previous petition. The plaintiff filed a motion for summary judgment, and Beeler filed a counter-motion. The court granted the plaintiff's motion and denied Beeler's motion.

¶6 On August 30, 2017, Beeler filed a motion to reconsider<sup>1</sup> asserting NationsCredit was no longer the holder of the note as the note had been transferred to DLJ on May 12, 2017. On July 3, 2018, the court granted leave to substitute DLJ as the plaintiff. On December 4, 2018, the court entered final judgment in favor of DLJ. Beeler appealed, and the Court of Civil Appeals reversed and remanded the case finding DLJ failed to prove the original plaintiff had standing at the time the suit was commenced, and therefore, the court lacked jurisdiction to adjudicate the foreclosure (*DLJ v. Beeler*; Case No. 117,657, mandate issued June 29, 2020).

¶7 On remand on March 17, 2021, a Motion to Dismiss, Retain Jurisdiction, and Amend Petition with attached note, mortgage, allonges, and indorsements was filed by “the original Plaintiff, The Bank of New York, Trust U/A Dated 12-1-01 (EQCC Trust 2001-2), the substitute Plaintiff, NationsCredit Home Equity Services Corporation, and the present holder of the note, DLJ Mortgage Capital, Inc.”<sup>2</sup> Beeler responded, and on February 23, 2022, the court denied DLJ’s motion finding it presented no new facts or

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<sup>1</sup> “A ‘motion to reconsider’ does not technically exist within the statutory nomenclature of Oklahoma practice and procedure.” *Smith v. City of Stillwater*, 2014 OK 42, ¶10, 328 P.3d 1192, 1196-97.

<sup>2</sup> Despite the purported “parties” listed on DLJ’s motion, DLJ is the sole plaintiff in this lawsuit as the Bank of New York, Trust U/A Dated 12/1/01 (EQCC Trust 2001-2) was replaced and removed from the case pursuant to its motion to substitute on May 28, 2014, and NationsCredit Financial Services Corporation (not NationsCredit Home Equity Services Corporation as listed) was replaced and removed from the case when the court granted its motion to substitute on September 7, 2018. The substitution of parties is “the replacement of one litigant by another...” *Black’s Law Dictionary* 1568 9th ed. 2009), therefore, the substituted plaintiffs are no longer parties to this action.

arguments for the court to consider. On March 17, 2022, the court dismissed DLJ's claims.

¶8 On April 4, 2022, DLJ filed a motion to reconsider the order of dismissal.<sup>3</sup> On June 23, 2022, after reviewing Beeler's response and conducting a hearing, the court denied DLJ's motion and entered an interlocutory order<sup>4</sup> certifying the ruling for appeal. It is from this order, DLJ appealed on July 19, 2022. On October 6, 2022, the court entered a final order adjudicating all remaining claims of all parties.

¶9 The order on appeal is the order attached to the petition in error. Here, DLJ attached the order denying its motion to reconsider. While a motion to reconsider does not technically exist, it may be treated as a motion for new trial if filed within ten days of the order pursuant to 12 O.S. §§651 and 653 or as a motion to modify or vacate the order under the terms of 12 O.S. §§1031 and 1031.1 if filed more than ten days but fewer than thirty days of the order. See *Smith*, 2014 OK 42, ¶10, 328 P.3d at 1196-97. Here, DLJ's motion to reconsider was filed eighteen days after the order was entered, therefore, it may not be construed as a motion for new trial. It may be construed as a motion to modify or vacate as the court looks to the content and substance of a motion rather than the title given to it to determine how the motion

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<sup>3</sup> This motion was not included in the record on appeal.

<sup>4</sup> Defendant, Arvest Bank, has a mortgage which the court determined was a "second, prior, and superior lien" upon the same real estate. The court did not enter a final order on all claims because Arvest Bank's claim remained outstanding.

should be treated. *Kerr v. Clary*, 2001 OK 90, ¶7, 37 P.3d 841, 843. However, the motion to reconsider was not included in our record on appeal, and we are unable to ascertain the contents of the motion and whether it could be construed as a motion to vacate or modify. Our authority is limited to correcting errors appearing on the record. See 12 O.S. §952(a). Because we do not know the grounds raised in the motion to reconsider we cannot judge the correctness of the order denying that motion. “In the absence of a complete record, all presumptions operate in favor of the trial court's judgment.” *Fent v. Okla. Nat. Gas Co.*, 1994 OK 108, n. 10, 898 P.2d 126, 132. The lack of a complete record leaves this Court unable to determine there was reversible error.

¶10 The judgment of the trial court is AFFIRMED.

PRINCE, P.J., and BELL, J., concur.