COURT OF APPEALS
DECISION
DATED AND FILED

December 11, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP628 **Cir. Ct. No. 2011CV420**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CITIFINANCIAL, INC.,

PLAINTIFF-RESPONDENT,

V.

AMANDA L. WUNDERLIN N/K/A AMANDA L. VANNATTA,

DEFENDANT-APPELLANT,

JOEL A. VANNATTA,

DEFENDANT.

APPEAL from a judgment of the circuit court for Grant County: CRAIG R. DAY, Judge. *Affirmed*.

Before Blanchard, P.J., Lundsten and Sherman, JJ.

¶1 LUNDSTEN, J. Amanda VanNatta appeals a foreclosure judgment entered against her in favor of CitiFinancial, Inc., after a trial to the circuit court. VanNatta contends that CitiFinancial failed to prove that it was entitled to enforce the underlying note. However, as CitiFinancial points out, VanNatta repeatedly admitted in responsive pleadings that CitiFinancial was the "owner and holder" of the note. VanNatta does not dispute that her admissions, if binding, would resolve the matter, but argues that she should not be bound by her admissions. We reject this argument and affirm.

Background

¶2 CitiFinancial filed a foreclosure complaint against VanNatta relating to residential property VanNatta owned with Joel VanNatta.[1] In both her amended answer and her second amended answer, VanNatta admitted that CitiFinancial was the "owner and holder" of the underlying mortgage note on the property. VanNatta affirmatively alleged several defenses, including unclean hands, breach of contract, and satisfaction.

¶3 CitiFinancial moved for summary judgment. Consistent with her admissions, in her summary judgment arguments VanNatta did not dispute CitiFinancial's rights in the note, and did not object, during the course of a summary judgment hearing, when CitiFinancial expressly referred to VanNatta's admissions and the lack of such a dispute. Rather, VanNatta asserted unrelated affirmative defenses consistent with those she had alleged. The circuit court

[1] Joel VanNatta is not a party to this appeal.

denied CitiFinancial's summary judgment motion, concluding that there were material factual disputes relating to VanNatta's defenses.

¶4 At the subsequent court trial, VanNatta appeared to question, for the first time, whether CitiFinancial was entitled to enforce the note. The circuit court, acting as a fact finder, found that "[a]ll rights to enforce the Note and Mortgage were held by CitiFinancial at the time of trial." The circuit court also resolved other factual disputes in favor of CitiFinancial, rejecting VanNatta's defenses.

Discussion

¶5 On appeal, VanNatta argues only that CitiFinancial failed to prove that it was entitled to enforce the note at the time of trial. CitiFinancial responds with several arguments, including that proof on this point was unnecessary because VanNatta repeatedly admitted in her responsive pleadings that CitiFinancial was the "owner and holder" of the note. Although it is unclear to what extent the circuit court relied on VanNatta's admissions, we uphold the circuit court based on those admissions. *See* ***Finch v. Southside Lincoln-Mercury, Inc.***, 2004 WI App 110, ¶42, 274 Wis. 2d 719, 685 N.W.2d 154 ("[W]e will usually permit a respondent to employ any theory or argument on appeal that will allow us to affirm the trial court's order, even if not raised previously.").

¶6 As far as we can tell, VanNatta does not dispute that her admissions, if binding, would resolve the issue of CitiFinancial's right to enforce the note. As we explain below, she argues instead that she should not be bound by her admissions. We are not persuaded by this argument, and instead agree with CitiFinancial that VanNatta is bound by her admissions.

¶7 As CitiFinancial points out, the general, longstanding rule is that a plaintiff is bound by admissions, and a defendant need not introduce evidence to support an admitted allegation. *See* ***Kramer Heating & Mfg., Inc. v. United Bonding Ins. Co.***, 47 Wis. 2d 191, 195-96, 177 N.W.2d 119 (1970) ("It is elementary law that allegations not denied may properly be accepted by the court as a verity."); ***Denton v. White***, 26 Wis. 679, 686 (1870) ("[A]dmission of the answer is conclusive, and not open to contradiction or disproof by the party who made it."); ***Hartwell v. Page***, 14 Wis. 53, [*49], 56, [*52] (1861) ("If a fact sustaining the plaintiff's right is expressly admitted in any part of the answer, that fact is to be taken as true against the defendant, and the plaintiff is relieved from the necessity of proving it …."); *see also* WIS. STAT. § 802.02(4) (2011-12) ("Averments in a pleading to which a responsive pleading is required, other than those as to the fact, nature and extent of injury and damage, are admitted when not denied in the responsive pleading ….").

¶8 VanNatta does not dispute this general rule. Instead, she argues that her pleadings are "irrelevant" because CitiFinancial itself produced evidence at trial showing that CitiFinancial no longer owned or held the note, contradicting VanNatta's admissions. Thus, as we understand it, VanNatta argues that she should not be bound by her admissions. We reject this argument because it is forfeited and, regardless of forfeiture, because (1) VanNatta fails to provide legal support for the argument, and (2) VanNatta does not persuade us that CitiFinancial introduced evidence that contradicted VanNatta's admissions.

¶9 VanNatta argues, for the first time on appeal, that her admissions are not binding. Her failure to clearly and timely raise the argument before the circuit court constitutes forfeiture. *See* ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997) ("The general rule is that issues not presented to the circuit

court will not be considered for the first time on appeal."); *see also* ***Schill v. Wisconsin Rapids Sch. Dist.***, 2010 WI 86, ¶45 & n.21, 327 Wis. 2d 572, 786 N.W.2d 177 (appellate courts generally do not address forfeited issues).

¶10 Although VanNatta questioned CitiFinancial's right to enforce the note at trial, she failed to explain to the circuit court that she was, in effect, seeking relief from her admissions by raising this challenge. At no time during trial did VanNatta argue with any prominence or clarity that trial evidence presented by CitiFinancial undercut CitiFinancial's right to rely on VanNatta's admissions. The closest VanNatta's counsel came to even suggesting this argument at trial was when CitiFinancial's counsel sought to rely on VanNatta's admissions, prompting VanNatta's counsel to assert, without further explanation, that CitiFinancial had "changed" the facts after filing its complaint. This assertion was insufficient to preserve the argument VanNatta makes on appeal.

¶11 VanNatta does not argue that her failure to more plainly raise the relief-from-admissions issue should be excused because she had reason to believe that CitiFinancial had forfeited its right to rely on her admissions. Regardless, we would reject such an argument. While we acknowledge that CitiFinancial could have made its reliance on the admissions clearer at the time of trial, the trial should be viewed in the larger context of the proceedings as a whole. Prior to trial, during the summary judgment stage, VanNatta's continued acquiescence to CitiFinancial's right to enforce the note would have naturally led CitiFinancial to believe that its right to enforce the note would not be a disputed issue at trial, and that it could rely on VanNatta's admissions. Under all of the circumstances, VanNatta should have expected that she needed to explain at trial if her position was that, despite her admissions and her posture on this issue during summary judgment proceedings, CitiFinancial had to prove its right to enforce the note.

¶12 Moreover, even if VanNatta had not forfeited her appellate argument, we would reject it for the following reasons.

¶13 First, VanNatta fails to cite any supporting legal authority addressing party admissions or to otherwise provide adequate legal reasoning supporting her argument. More specifically, VanNatta does not present support for her apparent legal assumption that a party may be relieved from an admission due to changed circumstances, let alone explain the parameters of such a rule. Accordingly, we reject her argument on this basis. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("Arguments unsupported by references to legal authority will not be considered.").

¶14 Second, even if we accepted VanNatta's apparent legal assumption that admissions may or must be set aside when the benefitting party introduces evidence at trial contradicting the admissions, VanNatta fails to convince us that the evidence CitiFinancial introduced contradicts VanNatta's admissions. We discuss that evidence below.

¶15 The primary trial evidence that VanNatta cites consists of two assignments CitiFinancial introduced into evidence, the first dated January 28, 2013, assigning the mortgage from CitiFinancial to another company, and the second dated March 22, 2013, assigning the mortgage from that company *to CitiFinancial*. VanNatta does not explain, and we fail to see, how these assignments show that CitiFinancial no longer owned or held the note at the time of trial in December 2013.

¶16 VanNatta also refers us to testimony by a CitiFinancial employee showing that, in July 2010, CitiFinancial physically transferred the original note to a related entity for purposes of servicing the mortgage. While this testimony may

have supported a finding that CitiFinancial did not physically *possess* the note for at least some period of time after July 2010, VanNatta does not explain why this necessarily shows that CitiFinancial no longer owned the note at the time of trial.

¶17 Finally, VanNatta points out that CitiFinancial failed to produce the original note at trial and that *VanNatta* introduced correspondence showing that servicing, and possibly ownership, of her loan was transferred to another entity in 2013. However, VanNatta does not explain why the absence of the original note or the presence of evidence that *she* introduced supports her argument that *CitiFinancial* introduced evidence contradicting VanNatta's admissions.

Conclusion

¶18 For the reasons above, we affirm the judgment of foreclosure.[2]

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

[2] As an alternative basis on which to affirm, CitiFinancial argues that it was entitled to summary judgment. Given our discussion and conclusions above, we see no reason to address this alternative argument.