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No. 50763-3-II

COURT OF APPEALS, DIVISION TWO,
OF THE STATE OF WASHINGTON

JERRY C. REEVES,

Appellant,

v.

PNC BANK N.A., et al.,

Respondents.

ANSWERING BRIEF BY RESPONDENT
PNC BANK, N.A.

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

This appeal represents the latest in a series of meritless attempts by Appellant Jerry Reeves to prevent PNC Bank, N.A. (“PNC”) from completing its foreclosure on the real property located at 1601 Guild Road, Woodland, Washington 98674 (the “Property”), which secured a 2001 loan from PNC’s predecessor-in-interest to the then-owners of the Property, Charles and Marylou Babitzke (the “Babitzkes”). As the foreclosing, first-position lienholder on the Property, PNC merely desires to be made whole on its defaulted loan to the Babitzkes as soon as possible, either through ownership of the Property or receipt of the full redemption amount under RCW 6.23.080. Accordingly, PNC repeatedly informed the Sheriff and the trial court that it did not take a position on whether Mr. Reeves, or any other competing purported redemptioner, was adjudged to have a right to redeem the Property and that it would not challenge any determination that they had such a right. CP 209, 236. Nonetheless, in light of the clear legal and factual deficiencies with Mr. Reeves’ appeal, PNC respectfully requests that this Court affirm the trial court’s ruling, for the following reasons.

In his appeal, Mr. Reeves challenges a single aspect of the Superior Court’s ruling denying his eleventh-hour Motion seeking an order authorizing him to redeem the Property from PNC. CP 141-149 & 244-45; Appellant’s Opening Brief (“Op. Br.”), at 6-7. The sole basis for relief that Mr. Reeves identifies is his argument that the trial court improperly denied him the right to exercise his right to redeem the Property – a right

he claims to have possessed as the “successor in interest” to the Babitzkes, who were the “undisputed judgment debtors” under the Judgment and Decree of Foreclosure that formed the basis for the Sheriff’s sale of the Property. Op. Br. at 6-7. However, Mr. Reeves’ claim to be the Babitzkes’ successor in interest, and to have a right of redemption in the Property, is wholly inconsistent with longstanding Washington law. Indeed, the case law demonstrates that in order for a non-mortgagor, non-judgment debtor like Mr. Reeves to qualify as the “successor in interest” to a judgment debtor and to be able to exercise redemption rights, he or she must receive an *express transfer* of the judgment debtor’s redemption rights (along with a transfer of the judgment debtor’s underlying interest in the subject property) *after* the foreclosure sale has occurred and the redemption rights have come into existence. Further, the record demonstrates that even if he could prove that he was entitled to redeem the Property (he cannot), Mr. Reeves failed to provide the Sheriff with the documentation that RCW 6.23.080 requires in order to exercise that right. For these reasons, this Court should deny Mr. Reeves’ appeal, affirm the trial court’s ruling, and award PNC its fees and expenses incurred in connection with this appeal.

In the event this Court disagrees with the trial court’s ruling and determines that Mr. Reeves has the right to redeem the Property, PNC respectfully requests that it order Mr. Reeves to exercise that right within 14 days following issuance of this Court’s mandate by tendering the full redemption amount under RCW 6.23.080 to the Sheriff.

II. RESPONSE TO APPELLANT'S STATEMENT OF THE ISSUES

PNC agrees that the central issue presented in Mr. Reeves' appeal in this case is whether he had a right to redeem the Property pursuant to RCW 6.23.010 on the basis that he was allegedly a "successor in interest" to the "undisputed judgment debtors, Charles and Mary Lou Babitzke." Op. Br., at 6-7. However, PNC disagrees with much of the rest of Mr. Reeves' framing of his sole assignment of error, including his statement that he "supplied all of the paperwork required by the statute to show that he was the successor in interest to the undisputed judgment debtors." *Id.* at 7.

PNC also notes that Mr. Reeves has *not* raised an assignment of error with two other rulings by the Superior Court: (1) that he was not entitled to an extension of the July 29, 2017 redemption date; and (2) that he had no right to receive notice of the expiration of the redemption period pursuant to RCW 6.23.030. CP 141-149 & 238-45; Verbatim Report of Proceedings for July 26, 2017 ("RP") 1-19. As Mr. Reeves failed to raise any assignment of error or argument regarding these issues in his Opening Brief, he has waived review of these issues and the trial court's rulings on them. *See* RAP 2.5, 12.1; *Mangat v. Snohomish Cty.*, 176 Wn. App. 324, 334 (2013); *US W. Commc'ns, Inc. v. Wash. Utilities & Transp. Comm'n*, 134 Wn.2d 74, 112 (1997), as corrected (Mar. 3, 1998).¹

¹ In any event, the trial court's rulings on both of these issues were clearly correct. RP 1-19. With regard to Mr. Reeves' request for an extension of the redemption date on equitable grounds, the Washington Court of Appeals has specifically held that "a trial

III. STATEMENT OF THE CASE

A. PNC's 2001 Loan to the Babitzkes and Resulting Deed of Trust on the Property

PNC, through its predecessor by merger, made a loan to the Babitzkes in October 2001, evidenced by a promissory note (the "Note") and secured by a deed of trust on the Property (the "Deed of Trust"). CP 2, 4, 9-27. In the Deed of Trust, the Babitzkes agreed that any sale or transfer of the Property or any of their interests therein without PNC's prior written consent would give PNC the right to require immediate payment of all amounts secured by the Deed of Trust. CP 24 ¶ 18.

B. Mr. Reeves' 2006 Transaction with the Babitzkes

In November 2006, the Babitzkes and Mr. Reeves entered into what Mr. Reeves has characterized as a "wrap around" transaction, Op. Br. at 1, pursuant to which the Babitzkes executed a "Corrected Statutory Warranty Deed" purporting to transfer some interest in the Property to Mr. Reeves (the "2006 Deed"). CP 154. In exchange, Mr. Reeves signed

court may not provide equitable rights expanding a statutory grant of the substantive right to redeem property" and reversed a trial court ruling equitably expanding the redemption period beyond the one-year statutory redemption right granted by RCW 6.23.020(1). *See Ocwen Loan Servicing, LLC v. Bauman*, 195 Wn. App. 763, 772 (2016), *as amended on denial of reconsideration* (Oct. 20, 2016). Here, there was no statutory basis to extend the redemption period as no other party had previously redeemed the Property. *See* RCW 6.23.040. Similarly, Mr. Reeves' false claim that the redemption period should be extended because he failed to receive notice pursuant to RCW 6.23.030 has no merit—that provision applies only when the property is subject to a homestead. The Property here was not subject to a homestead, as Mr. Reeves never affirmed he lived on the Property and has consistently identified a property in Oregon as his address in sworn pleadings submitted to both the trial court and to this Court. *See, e.g.*, CP 31 & Opp. Br., at 13 (both identifying Mr. Reeves' address as 14300 SW McKinley Drive, Sherwood, OR 97140). In any event, the record demonstrates that Mr. Reeves did in fact receive such notice through his counsel of record. CP 129-140.

a promissory note in their favor (the “Reeves Note”) and gave them a “deed of trust” securing the note (the “Reeves Deed of Trust”). CP 155-159. Notably, none of the documents memorializing this transaction includes any express transfer of a right of redemption or any interest or obligation under PNC’s Note or Deed of Trust from the Babitzkes to Mr. Reeves.

C. The Babitzkes Default and PNC’s Judicial Foreclosure

In May 2012, the Babitzkes defaulted on the Note by failing to make their monthly loan payment and have not made a payment since. CP 5. What should have been a simple judicial foreclosure started with PNC filing its complaint on March 18, 2015, against the Babitzkes, Mr. Reeves, and various other parties with liens on or interests in the Property. CP 1-8. PNC moved for summary judgment (CP 34-46); Mr. Reeves opposed it and PNC replied to his arguments. CP 47-104. The trial court rejected Mr. Reeves’ arguments, struck the supposed forensic declaration on which most of his arguments relied, and granted PNC summary judgment on its claims. CP 105-107.

On March 30, 2016, the trial court entered a Judgment and Decree of Foreclosure in favor of PNC that expressly identified the Babitzkes, but not Mr. Reeves, as judgment debtors. Supplemental CP 250-256. Mr. Reeves approved the form of that final Judgment and Decree of Foreclosure. *Id.* at 256. Nonetheless, Mr. Reeves appealed the trial court’s order granting PNC summary judgment and the judgment to this

Court (case number 48929-5-II), but then abandoned that appeal, which was dismissed on September 27, 2016.

D. The Sheriff Properly Conducts a Foreclosure Sale and PNC Properly Provides Notice of Redemption

While Mr. Reeves' first appeal was pending, PNC obtained an order of sale. Supplemental CP 257-258. The Sheriff properly noticed and conducted a foreclosure sale on July 29, 2016, and PNC was the successful purchaser. Supplemental CP 259-271. PNC confirmed the sale and obtained a certificate of sale. CP 114-128. PNC timely sent a notice of expiration of the redemption period (CP 129-134), and a subsequent timely amended notice (CP 135-140) to the Babitzkes, Mr. Reeves' attorneys of record, and to the Property address. CP 133-134, 139-140.

E. Mr. Reeves Fails to Show His Right to Redeem to the Sheriff and Trial Court

On or about May 25, 2017, Mr. Reeves contacted the Sheriff to redeem the Property but failed to provide sufficient documentation of his right to redeem. CP 151-167. The Sheriff contacted PNC for the redemption amount and asked for its opinion on whether Mr. Reeves was a proper redemptioner. As requested, PNC provided the redemption amount, raised the issue of whether Mr. Reeves had provided sufficient documentation under RCW 6.23.080, and provided its view that Mr. Reeves was not entitled to redeem the Property but stated it would not challenge a determination by the Sheriff that Mr. Reeves was entitled to redeem the Property. CP 233-237.

Mr. Reeves failed to satisfy the Cowlitz County Sheriff that he had a right to redeem the Property. CP 151-159, 169-176, 179-183. Notably, Mr. Reeves never claimed to inhabit the Property. A third party, Gravity Segregation LLC (“Gravity”), which claims to be an assignee of the Babitzkes’ rights of redemption, also informed the Sheriff it planned to redeem the Property (although it ultimately failed to do so). CP 186-201.

F. The Trial Court Correctly Held that Mr. Reeves Could Not Redeem or Extend the Time to Redeem

In a motion filed on July 11, 2017, and at the resulting hearing he noted for July 26, 2017 (three days before the redemption period expired), Mr. Reeves moved the trial court for an order requiring the Sheriff to allow him to redeem the Property from PNC and also sought to extend the redemption period for 60 days. CP 141-205. PNC responded to Mr. Reeves’ motion, again making it clear that it took no position as to whether Mr. Reeves or Gravity had a superior redemption right. CP 206-237. Mr. Reeves filed a supplemental brief the day before the hearing, raising a new, false claim that PNC did not send him the redemption expiration notice, ignoring that he was not a judgment debtor, that the Property was not a homestead, and that PNC sent the notice to the Property and Mr. Reeves’ attorneys of record. CP 133-134, 139-140.

At the hearing on Mr. Reeves’ motion, the trial court found that the Property was not a homestead so RCW 6.23.030 does not apply. RP 17. It also found that only the judgment debtor had a right to redemption and that Mr. Reeves was not the judgment debtor. RP 17-18. Thus, the trial

court found there was no basis to extend the redemption period for Mr. Reeves and it denied his motion. RP 18; CP 244-245.

IV. STANDARD OF REVIEW

Mr. Reeves challenges the trial court's decision that he could not redeem the Property under RCW 6.23.010. The Court reviews questions of statutory interpretation *de novo*. *Performance Constr., LLC v. Glenn*, 195 Wn. App. 406, 415 (2016). Alternatively, Mr. Reeves' motion would likely be reviewed *de novo* as it is akin to a motion to dismiss. *In re Washington Builders Benefit Tr.*, 173 Wn. App. 34, 80 (2013). As this Court's review of the trial court's ruling is *de novo*, it can affirm the trial court's order on any grounds. *Emeson v. Dep't of Corr.*, 194 Wn. App. 617, 626 n.5 (2016). This Court should affirm the trial court's ruling, which correctly denied Mr. Reeves' motion to force the Sheriff to accept his redemption tender or extend the time to do so.

V. ARGUMENT

A. The Trial Court's Ruling Should Be Affirmed Because Mr. Reeves Did Not Have a Right of Redemption on the Property

The trial court's ruling denying Mr. Reeves' right to redemption was clearly correct: Mr. Reeves has no right to redeem because he does not fall into any of the limited categories of redemptioners set forth in RCW 6.23.010. Therefore, this Court should affirm the trial court's ruling and deny Mr. Reeves the relief he seeks.

Mr. Reeves is not – and has never claimed to be – a “creditor having a lien by judgment, decree, deed of trust, or mortgage” on any portion of the Property, or the successor in interest to such a creditor. *See, e.g.,* Opp. Br. at 8-9 (highlighting only portions of RCW 6.23.010 relating to judgment debtors). Nor is Mr. Reeves a judgment debtor, as he repeatedly admits in his Opening Brief. *See, e.g., id.*, at 1, 3, 4, 7, 8, 10-12.²

Mr. Reeves’ appeal thus requires him to demonstrate that he was a “successor in interest” to the Babitzkes as judgment debtors. He attempts to do so by arguing that the 2006 Deed conveying the Babitzkes’ ownership interest in the Property somehow made him the successor in interest to the Babitzkes’ status as judgment debtors and related redemption rights, both of which arose *10 years later*, following the 2016 Judgment and Decree of Foreclosure and sheriff’s sale, respectively. Supplemental CP 250-271.³ But governing Washington law, including the very cases Mr. Reeves himself cites, and logic thoroughly refute his position, for several reasons.

² Mr. Reeves also approved the final Judgment that expressly named the Babitzkes, and not himself, as a judgment debtor (*see* Supplemental CP 250-256; appeal at case number 48929-5-II) and therefore cannot complain that the final judgment omitted him as a judgment debtor. *See e.g., In re Marriage of Morris*, 176 Wn. App. 893, 900–01 (2013) (invited error doctrine barred review of child support award against party who made strategic decision to not challenge it).

³ Mr. Reeves has not claimed or offered any evidence showing that he obtained any interest in the Babitzkes’ status as judgment debtors or in their redemption right.

First, Mr. Reeves cannot prove that he succeeded to the Babitzkes' status as judgment debtors or to their right of redemption by virtue of the 2006 Deed because the Babitzkes were neither judgment debtors nor had a redemption right at the time the 2006 Deed was executed. The Babitzkes became judgment debtors only in March 2016 when "they were adjudged to owe and pay the sum found due in the judgment under which the execution sale was made"—that is, when the foreclosure judgment named them judgment debtors. *Fid. Mut. Sav. Bank v. Mark*, 112 Wn.2d 47, 51, 52 (1989) (citing Hackman, *Statutory Redemption Rights*, 3 Wash.L.Rev. 177, 178 (1928)); *see also id.* (The "status of a 'successor in interest' for the purpose of [RCW 6.23.010] arises in relation to the property sold at the foreclosure sale."); Supplemental CP 250-256. Indeed, in 2006, the Babitzkes had not even defaulted on PNC's loan, so there was no possibility that they were judgment debtors. *See See v. Hennigar*, 151 Wn. App. 669, 674–75, 213 P.3d 941, 944 (2009), as corrected (Oct. 6, 2009); CP 5 [¶ 18].

Similarly, the Babitzkes' redemption rights came into existence only after the Sheriff sold the Property on July 29, 2016. Supplemental CP 259-271. A redemption right is "the mortgagor's statutory right to redeem after a judicial foreclosure and sale," which arises "after the foreclosure and sale." *Mark*, 112 Wn.2d at 51 (citing 9 G. Thompson, *Real Property* § 4822 (1958); 3 C. Wiltsie, *Real Property Mortgage*

Foreclosure § 1060 (5th rev. ed. 1939)). Thus, prior to July 29, 2016, the Babitzkes had no redemption rights to convey to Mr. Reeves.

Under long-established Washington law, the Babitzkes could not convey to Mr. Reeves rights in the 2006 Deed that did not exist at that time. *See e.g., Hennigar*, 151 Wn. App. at 674–75 (“It is axiomatic that a person cannot convey a greater interest in real estate than she owns”); *Hoglund v. Omak Wood Prods., Inc.*, 81 Wn. App. 501, 505, 914 P.2d 1197, 1200 (1996) (“The Lampkins and the Eberles could not convey [timber rights in] what they did not own”).

Second, Mr. Reeves’ attempt to rely on the 2006 Deed as the basis for his claimed redemption right fails because that document does not purport to assign or transfer any redemption right in the Property from the Babitzkes to Mr. Reeves. CP 154-159. As the Washington Supreme Court has held, while exercise of a redemption right is linked to the judgment debtor’s ownership interest in the property, the redemption right itself is “not an interest in real property” and is instead a “personal privilege given by statute to the mortgagor.” *Mark*, 112 Wn.2d at 52 (*citing* 2 L. Jones, *Mortgages of Real Property* § 1335, at 798 (8th ed. 1928); 3 C. Wiltsie, *Real Property Mortgage Foreclosure* §§ 1067–68; and *In re Faber*, 11 F. Supp. 555, 558 (W.D. Wash. 1935)).

Accordingly, the Washington courts “have consistently recognized that a valid conveyance is necessary to transfer the right of redemption.” *Id.* at 53, (*citing Gray v. C.A. Harris & Son*, 200 Wn. 181, 187 (1939));

Ford v. Nokomis State Bank, 135 Wn. 37, 45-46 (1925); *DeRoberts v. Stiles*, 24 Wn. 611, 618-20 (1901); and *Perry v. Safety Fed. Sav. & Loan Ass'n*, 25 Ariz. App. 443, 445 (1976)). Here, there is no dispute that the Babitzkes never assigned their redemption rights in the Property to Mr. Reeves. He therefore cannot be the successor in interest to the Babitzkes with respect to those rights.

Third, the cases Mr. Reeves relies on do not support his claim that he is a successor to the Babitzkes as judgment debtors or to their redemption rights. Instead, those cases all involve ***express conveyances of redemption rights***, along with separate conveyances of the judgment debtor's or redemptioner's interest in the subject property, executed ***after*** entry of a foreclosure judgment and completion of a foreclosure sale. *See Capital Inv. Corp. of Wash. v. King Cty.*, 112 Wn. App. 216, 228 (2002) (denying redemption rights of party that had received written assignment of rights in redemption certificate following entry of judgment and foreclosure sale; denial based on lack of transfer of underlying judgment); *Glenn*, 195 Wn. App. at 417 (denying redemption rights of party that received written assignment of redemption rights following entry of judgment and foreclosure sale; denial based on lack of transfer of underlying interest in subject property); *Central Life Assur. Soc'y v. Spangler*, 216 N.W. 116, 117 (Iowa 1927) (upholding redemption where, following foreclosure sale, judgment debtors executed warranty deed transferring both ownership of property and redemption rights to son).

These cases explicitly recognize the need for an express transfer of redemption rights, and implicitly require that such transfer occur after the foreclosure sale is completed and the judgment debtor's redemption rights are created. Mr. Reeves has not satisfied either of those requirements.

In addition, the specific language that Mr. Reeves cites from *Capital Inv. Corp.* directly contradicts his argument that he qualifies as the "successor in interest" to the Babitzkes as judgment debtors pursuant to RCW 6.23.010. Op. Br. at 9-11 (*quoting* 112 Wn. App. at 224). As the *Capital Inv. Corp.* court noted, while the term "successor in interest" is not defined in RCW 6.23.010, "the words themselves suggest that a 'successor in interest' is one who has acquired or succeeded to an interest once held by a predecessor." 112 Wn. App. at 224 (*citing* BLACK'S LAW DICTIONARY 1431-32 (6th ed.1990); *Mark*, 112 Wn.2d at 52). This necessarily implies a situation where the Babitzkes initially became the judgment debtors (it is undisputed they did) and then subsequently assigned or otherwise transferred their judgment debtor status and associated rights, including the right of redemption, to Mr. Reeves. Yet, Mr. Reeves' claim that he is the Babitzkes' "successor in interest" relies not on the subsequent transfer that *Capital Inv. Corp.* requires, but on the 2006 Deed executed 10 years earlier, which is clearly insufficient.

Finally, Mr. Reeves' inability to redeem the Property, despite being the legal owner prior to the running of the redemption period, is not an improper or unfair outcome. Indeed, the redemption statute mandates

it. The legislature, in RCW 6.23.010, specifically defined who could redeem—judgment debtors and their successors, and other lienholders. It did not mention a titleholder or legal owner. If the legislature intended Mr. Reeves (and people in his situation) to be a successor through merely holding legal title, it could have said so, but it did not. The legislature presumptively means exactly what it says, and omissions are deemed intentional exclusions. *See Wright v. Lyft, Inc.*, 406 P.3d 1149, 1152–53 (Wash. 2017); *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571 (1999). It is the legislature’s province to change the statute to include people like Mr. Reeves. *See State v. Hubbard*, 200 Wn. App. 246, 257 (2017).

Mr. Reeves is not entitled to redeem the Property primarily because he and the Babitzkes concocted a scheme to sell the Property to avoid triggering the acceleration clause of the Deed of Trust and to avoid paying off PNC’s Note. Op. Br., p. 1; CP 24 § 18. Had they instead implemented a proper transaction with the involvement of PNC (*e.g.*, one involving an assignment of the Babitzkes’ rights and obligations under the Deed of Trust to Mr. Reeves with PNC’s consent, or a transaction in which Mr. Reeves obtained a new Note and Deed of Trust from PNC and the Babitzkes’ Note was paid off and their Deed of Trust reconveyed), Mr. Reeves would have ultimately been the mortgagor and judgment debtor with a right of redemption. Thus, Mr. Reeves’ inability to claim

and exercise a redemption right is a direct result of his own improper actions.

B. The Trial Court's Ruling Should Be Affirmed Because Mr. Reeves did Not Properly Submit the Statutorily Required Documents Evidencing His Redemption Right.

RCW 6.23.080(2) sets forth the proof a redemptioner must provide to the Sheriff in order to exercise a right of redemption. The Sheriff determined that Mr. Reeves failed to provide proof of his right to redeem. CP 173, 182-184. Mr. Reeves did not provide the Sheriff with a copy of any judgment, mortgage or deed of trust he held on the Property, or any document purporting to assign him any such judgment, mortgage, deed of trust or redemption right on the Property. Indeed, despite now claiming to be a "successor in interest" to the Babitzkes as judgment debtors, Mr. Reeves failed to provide the Sheriff with a copy of the Judgment and Decree of Foreclosure – the very document that established the Babitzkes' status as the judgment debtors. Instead, the only documents he provided the Sheriff were the 2006 Deed, the Reeves Note and Reeves Deed of Trust, and a copy of PNC's original foreclosure complaint. CP 152-159. Accordingly, even if Mr. Reeves did qualify as a person who can redeem under RCW 6.23.010, he did not properly trigger the right to redeem under the statute.⁴

⁴ To the extent Mr. Reeves claims PNC interfered with his right to redeem, that claim is baseless. The Sheriff asked for PNC's opinion on Mr. Reeves' right to redeem, which it gave, but expressly noted that PNC would not challenge a determination by the Sheriff that Mr. Reeves had the right to redeem the Property. CP 175-176, 222, 233-237. The Sheriff determined, through its independent legal counsel Dana Gigler, that Mr. Reeves failed to meet RCW redemption requirements and that a superior redemptioner indicated it would redeem. CP 173, 183.

Finally, even if Mr. Reeves had a right to redeem—which he did not—his argument fails because he never actually tendered the redemption amount to the Sheriff. He does not claim he provided any money to the Sheriff and the Sheriff refused the tender. Indeed, Mr. Reeves has never asserted in any pleadings, here or in the trial court, that he even *could* tender by July 29, 2017, much less provide any evidence of tender; to the contrary, Mr. Reeves indicated to the trial court on July 26, 2017, that he did not have the funds available to pay the redemption amount. RP 11 (“my lenders have gone away”). At the end of the hearing on his Motion, Mr. Reeves specifically asked whether the trial court was denying him the right to redeem the Property, and the judge informed him that he was not. RP 18 (“MR. REEVES: Your Honor, you’re not addressing whether or not I’m allowed to redeem? THE COURT: No sir.”). At that point, Mr. Reeves could have attempted to tender the redemption amount to the Sheriff in the three days between that hearing and the close of the redemption period. Had the Sheriff refused that attempted tender, Mr. Reeves could have established that he was prejudiced by the trial court’s order (assuming he could establish a right to redeem). But he made no such attempt. Having failed to do so, Mr. Reeves cannot show the necessary prejudice to obtain a reversal of the trial court’s ruling. See *Saleemi v. Doctor’s Associates, Inc.*, 176 Wn.2d 368, 380 (2013) (“error without prejudice is not grounds for reversal.” (citation omitted)).

C. If the Court Allows Mr. Reeves to Redeem, He Should Be Ordered to Redeem in 14 Days and to Pay the Full Redemption Amount Set Forth in RCW 6.23.020.

Under RCW 6.23.020, a redemptioner of the Property must pay PNC, as the purchaser at the foreclosure sale:

- (a) The amount of the bid, with interest thereon at the rate provided in the judgment to the time of redemption, together with (b) the amount of any assessment or taxes which the purchaser has paid thereon after purchase, and like interest on such amount from time of payment to time of redemption.

PNC has been carrying the defaulted loan on the Property without payment since 2012 (and has been paying the taxes on the Property) and has litigated Mr. Reeves' extensive and unwarranted challenges to its foreclosure lawsuit and subsequent efforts to complete that foreclosure sale. *See generally* Supplemental CP 250-256; Trial Court Docket; appeal at case number 48929-5-II. PNC has been unable to sell the Property in light of this ongoing appeal. Thus, if the Court finds Mr. Reeves has a right to redeem that he is still entitled to exercise notwithstanding the expiration of the redemption period, he must pay PNC's bid amount and the taxes it paid, all with interest up to the date he redeems. *See* CP 136-137, 233 (setting forth redemption amounts with per diem interest). Furthermore, if this Court rules that Mr. Reeves can proceed to redeem the Property, it should impose a short period for him to make these payments, *e.g.*, 14 days from the issuance of this Court's mandate.

D. The Court Should Award PNC Its Fees and Expenses

The Court should award PNC its attorneys' fees and expenses under RAP 18.1(a) incurred in connection with Mr. Reeves' meritless appeal. "[I]n general, where a prevailing party is entitled to attorney fees below, they are entitled to attorney fees if they prevail on appeal." *Gray v. Bourgette Const., LLC*, 160 Wn. App. 334, 345 (2011). PNC may obtain its costs and fees under RCW 4.84.330 because Mr. Reeves is claiming he is a judgment debtor under PNC's foreclosure on the Deed of Trust and PNC's Note and Deed of Trust contain fee and cost provisions. CP 11, 21 [§9], 25 [§26]. "A provision in a contract providing for the payment of attorneys' fees in an action to collect any payment due under the contract includes both fees necessary for trial and those incurred on appeal as well." *Boyd v. Davis*, 127 Wn.2d 256, 264 (1995) (citation omitted) (affirming award of fees on appeal under RCW 4.84.330).

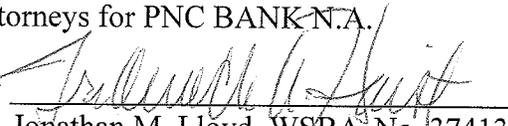
VI. CONCLUSION

For the reasons set forth above, this Court should affirm the trial court's order denying Mr. Reeves' motion, deny Mr. Reeves' appeal and grant PNC its attorneys' fees and expenses incurred in connection with this appeal.

RESPECTFULLY SUBMITTED this 5th day of March, 2018.

Davis Wright Tremaine LLP
Attorneys for PNC BANK N.A.

By



Jonathan M. Lloyd, WSBA No. 37413

Frederick A. Haist, WSBA No. 48937

CERTIFICATE OF SERVICE

The undersigned, hereby certifies and declares, that on this day she electronically filed the foregoing document with the Washington State Court of Appeals, Division II, which will serve the parties of record at their email addresses shown below.

The undersigned further certifies and declares that on this day she served the foregoing document on the following parties via email and Fed Ex, overnight mail:

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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 5th day of March 2018, at Seattle, Washington.



Christine Kruger, Legal Secretary

DAVIS WRIGHT TREMAINE LLP

March 05, 2018 - 10:58 AM

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