

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-299

Filed: 20 June 2017

Buncombe County, No. 12 SP 258

IN THE MATTER OF THE FORECLOSURE OF A DEED OF TRUST EXECUTED BY CANDICE BOEHM IN THE ORIGINAL AMOUNT OF \$211,680.00 DATED NOVEMBER 30, 2005, RECORDED IN BOOK 4146, PAGE 265, AND MODIFICATION IN BOOK 4520, PAGE 434, BUNCOMBE COUNTY REGISTRY

SUBSTITUTE TRUSTEE SERVICES, INC. SUBSTITUTE TRUSTEE

Appeal by respondent-appellant from order entered 26 June 2015 by Judge Mark E. Powell in Superior Court, Buncombe County. Heard in the Court of Appeals 19 September 2016.

The Hutchens Law Firm, by Jeffrey A. Bunda, for appellee.

Candice Boehm, pro se, appellant.

STROUD, Judge.

Candice Boehm appeals from an order allowing foreclosure of her real property. The trial court ordered “[t]hat the Substitute Trustee is authorized to schedule and conduct a duly noticed foreclosure sale” and “that the foreclosure sale shall not be stayed pending further appeal unless the Respondents post a bond in accordance with

IN RE: BOEHM

Opinion of the Court

N.C. Gen. Stat. § 1-292.” *See generally* N.C. Gen. Stat. § 1-292 (2015) (requiring a bond to stay a judgment for real property). Ms. Boehm appealed but failed to post bond and took no further action to stay the foreclosure sale. The real property was subsequently sold at the foreclosure sale and Substitute Trustee Services, Inc. conveyed the real property by a trustee’s deed which was duly recorded in the office of the Register of Deeds of Buncombe County on 3 March 2016.

Ms. Boehm raises many arguments on appeal, most of which deal with whether MTGLQ Investors, LP (“MTGLQ”) was really the holder of the note, its right to foreclose, and evidentiary issues. In addition to challenging all of these issues, MTGLQ’s brief contends this appeal is moot since the property has been sold, and therefore the rights of the parties fixed. “A case is moot when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy.” *Roberts v. Madison County Realtors Assn*, 344 N.C. 394, 398–99, 474 S.E.2d 783, 787 (1996) (quotation marks omitted). This case is indeed moot. *See* N.C. Gen. Stat. § 45-21.29A (2015) (“If an upset bid is not filed following a sale, resale, or prior upset bid within the period specified in this Article, the rights of the parties to the sale or resale become fixed.”); *In re Cornblum*, 220 N.C. App. 100, 106, 727 S.E.2d 338, 342 (2012); (“Therefore, under *Hackley*, when the trustee’s deed has been recorded after a foreclosure sale, and the sale was not stayed, the parties rights to the real property become fixed, and any attempt to disturb the foreclosure sale is

IN RE: BOEHM

Opinion of the Court

moot. That rule is binding upon this panel.”); *In re Foreclosure of Hackley*, 212 N.C. App. 596, 604-06, 713 S.E.2d 119, 124-25 (2011) (taking judicial notice of the Trustee’s Deed and concluding that “[h]ere, the subject real property was sold and the Trustee’s Deed was recorded. There is no indication in the record that respondent paid a bond to stay the foreclosure sale; nor was there an upset bid during the 10 day period, or any indication in the record that respondent obtained a temporary restraining order or preliminary injunction prior to the end of the ten-day upset bid period. Therefore, respondent’s and the secured creditor’s rights in the subject real property are fixed and respondent’s appeal is moot. Accordingly, we dismiss respondent’s appeal.” (citations omitted)); *Goad v. Chase Home Fin., LLC*, 208 N.C. App. 259, 263, 704 S.E.2d 1, 4 (2010) (“Thus, the rights of the parties to the foreclosure sale became fixed at a point when no upset bid was filed and no temporary restraining order or preliminary injunction had been properly obtained. After the date upon which the parties’ rights became fixed, the defendants filed a motion seeking to have plaintiffs’ effort to enjoin the foreclosure proceedings dismissed as moot. This Court upheld the trial court’s decision to dismiss plaintiffs’ complaint, explaining that, once the rights to a foreclosure sale are fixed, a court cannot issue a prohibitory injunction” and that the dispositive issue of law was in fact mootness.”) (citation, quotation marks, and brackets omitted)).

IN RE: BOEHM

Opinion of the Court

In her reply brief, Ms. Boehm has not noted any facts or any cognizable legal argument challenging petitioner's argument that this appeal is moot.

As this appeal is moot, we dismiss.

DISMISSED.

Chief Judge McGEE and Judge INMAN concur.

Report per Rule 30(e).