

WELLS FARGO BANK, N.A.

v.

CLARA WELCH-GALLANT

Submitted on Briefs April 25, 2018
Decided May 10, 2018

Panel: ALEXANDER, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

On remand after the first appeal in this action, *see Wells Fargo Bank, N.A. v. Welch-Gallant*, 2017 ME 105, ¶¶ 1, 7, 162 A.3d 827, the District Court (Rumford, *Beliveau, J.*) entered a judgment against Wells Fargo Bank, N.A., dismissing with prejudice its foreclosure complaint against Clara Welch-Gallant as a sanction for pretrial misconduct, pursuant to M.R. Civ. P. 16A(d). Wells Fargo appeals from that judgment. *See* 14 M.R.S. § 1901 (2017); M.R. App. P. 2B(c)(1).

Contrary to Wells Fargo's contention, the court did not abuse its discretion by dismissing Wells Fargo's complaint with prejudice as a sanction. *See Bayview Loan Servicing, LLC v. Bartlett*, 2014 ME 37, ¶ 10, 87 A.3d 741 (abuse of discretion standard of review). Further, given the opinions we issued after *Green Tree Servicing, LLC v. Cope*, 2017 ME 68, 158 A.3d 931, *see Pushard v. Bank of Am., N.A.*, 2017 ME 230, ¶¶ 22-26, 31-36, 175 A.3d 103; *Fed. Nat'l Mortg. Ass'n v. Deschaine*, 2017 ME 190, ¶¶ 17-22, 30-37, 170 A.3d 230, which reiterate the principle that a dismissal with prejudice operates as an adjudication on the merits and bars any future litigation of claims that were or could have been presented, *see Johnson v. Samson Constr. Corp.*, 1997 ME 220,

¶ 8, 704 A.2d 866, and given that Wells Fargo did not move for the court to limit the procedural effect of the judgment, it was not necessary for the court to provide any further explanation about the effect of the dismissal with prejudice.

Finally, the court did not abuse its discretion by awarding Welch-Gallant attorney fees as a sanction. *See* M.R. Civ. P. 16A(d) (permitting, as a sanction, “the imposition of costs, including attorney fees”); *Homeward Residential, Inc. v. Gregor*, 2017 ME 128, ¶ 12, 165 A.3d 357 (reviewing an award of attorney fees for an abuse of discretion); *Ehret v. Ehret*, 2016 ME 43, ¶ 9, 135 A.3d 101 (stating that absent a motion for further factual findings, pursuant to M.R. Civ. P. 52(b), “we ordinarily assume that a trial court found all of the facts necessary to support its judgment”).

The entry is:

Judgment affirmed.

Daniella Massimilla, Esq., Litchfield Cavo, LLP, Lynnfield, Massachusetts, for appellant Wells Fargo Bank, N.A.

David W. Austin, Esq., Rumford, for appellee Clara Welch-Gallant