

United States Court of Appeals
for the Fifth Circuit

No. 26-60059

United States Court of Appeals
Fifth Circuit

FILED

September 4, 2026

Lyle W. Cayce
Clerk

CURTIS G. SNELL, SR.; TYWANIC L. SNELL,

Plaintiffs—Appellants,

versus

21ST MORTGAGE CORPORATION; JOHN DOES ONE THROUGH
TEN,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:24-CV-146

Before STEWART, GRAVES, and WILSON, *Circuit Judges*.

PER CURIAM:*

Curtis Snell, Sr., and his wife, Tywanic Snell (collectively “Snell”) appeal the district court’s grant of summary judgment to 21st Mortgage Corporation. Because the district court did not err, we AFFIRM.

I.

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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Snell entered into a promissory note to purchase a mobile home and certain real property in Oktibbeha County, Mississippi, that was secured by a deed of trust in favor of 21st Mortgage. Beginning on September 1, 2022, the monthly mortgage payment owed by Snell was \$971.30. Snell missed the September 1, 2023, and October 1, 2023, payments. 21st Mortgage notified Snell that the loan was in default and the amount to cure the default was \$2,201.98. Snell began sending partial payments of varying amounts but 21st Mortgage refused the payments, claiming that they were insufficient to cure the ongoing default. On April 9, 2024, a Substituted Trustee's Notice of Sale was posted at the Oktibbeha County Chancery Courthouse notifying the public that a foreclosure sale would take place on May 9, 2024. 21st Mortgage also advertised the Notice of Sale in the Starkville Daily News on April 18, 2024, April 25, 2024, and May 2, 2024. On April 10, 2024, 21st Mortgage sent Snell a letter stating that the amount to cure was then \$8,149.91. Snell continued sending partial payments but each was returned by 21st Mortgage. A foreclosure sale was held on May 9, 2024, and 21st Mortgage was the highest bidder, purchasing the property for \$61,244.40.

On August 2, 2024, Snell filed an action in district court for injunctive relief to set aside the foreclosure sale. The district court entered a show cause order regarding federal jurisdiction. Snell responded and successfully sought to amend the complaint. Following discovery, both parties moved for summary judgment. The district court entered an order granting 21st Mortgage's motion for summary judgment and denying Snell's motion for summary judgment on January 7, 2026. Snell appealed.

II.

We review a district court's grant of summary judgment *de novo*, viewing all evidence in the light most favorable to the non-moving party and drawing all reasonable inferences in that party's favor. *Dediol v. Best*

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Chevrolet, 655 F.3d 435, 439 (5th Cir. 2011). Summary judgment is proper when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A genuine dispute of material fact exists “if the evidence is such that a reasonable jury could return a verdict for the non-moving party.” *Crawford v. Formosa Plastics Corp.*, 234 F.3d 899, 902 (5th Cir. 2000) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

III.

A. Notice

Snell asserts that the district court erred in granting summary judgment because there is a genuine issue of material fact as to whether 21st Mortgage properly posted notice of the foreclosure sale at the Oktibbeha County Courthouse. *See* Miss. Code Ann. § 89-1-55. Snell argues that the district court simply accepted 21st Mortgage’s word that the notice was posted at the door of the courthouse as required by section 89-1-55. But Snell states there is no evidence that the notice was physically posted. Thus, Snell argues there is an issue of fact.

21st Mortgage asserts that the district court correctly found that the notice included all relevant information and was signed and dated by the Land Records Clerk for Oktibbeha County Chancery Court. 21st Mortgage also asserts that, by failing to pursue and address the notice issue in their filings with the district court, Snell abandoned this claim under section 89-1-55.

Regarding the sale of land sold under mortgage, section 89-1-55 provides, in relevant part:

Sale of said lands shall be advertised for three (3) consecutive weeks preceding such sale, in a newspaper published in the county, or, if none is so published, in some paper having a general circulation therein, and by posting one notice at the

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courthouse of the county where the land is situated, for said time, and such notice and advertisement shall disclose the name of the original mortgagor or mortgagors in said deed of trust or other contract. No sale of lands under a deed of trust or mortgage, shall be valid unless such sale shall have been advertised as herein provided for, regardless of any contract to the contrary.

Miss. Code Ann. § 89-1-55.

The record includes the Substituted Trustee's Notice of Sale, which the district court found contained all relevant information required by statute and was signed and dated by Natasha Powers, the Land Records Clerk for Oktibbeha County Chancery Court on April 9, 2024. We agree. The district court also found that Snell abandoned this claim by failing to address it on summary judgment. However, even if Snell had not abandoned it, mere unsupported allegations are insufficient to create a genuine issue of material fact to defeat summary judgment. *See Flowers v. Wal-Mart Inc.*, 79 F.4th 449, 452 (5th Cir. 2023). Thus, we affirm the district court on this issue.

B. Payments

Snell asserts that the attempt to reinstate the loan by making payments to cure the arrearages was improperly thwarted by 21st Mortgage's refusal to accept the checks in violation of section 89-1-59.

Snell made several partial payments that were returned. For example, on November 10, 2023, Snell sent a payment of \$970. On January 19, 2024, Snell sent a payment of \$971, which 21st Mortgage returned on February 5, 2024. 21st Mortgage included a letter with each returned payment that said the amount of the payment "did not cure your default." As stated previously, the notice of sale was posted on April 9, 2024, with the foreclosure sale scheduled for May 9. 21st Mortgage sent Snell a letter on April 10 that stated the amount to cure the default was then \$8,149.91,

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including late fees. Snell then made additional payments of \$960 on April 16, \$965 on April 22, and two payments of \$1,000 each on April 30. On May 3, 21st Mortgage returned those payments as well. On May 1, Snell sent a payment of \$2,220, which 21st Mortgage returned on May 13, 2024. The district court said that Snell maintained some \$10,081 in payments were returned by 21st Mortgage.

Snell asserts that 21st Mortgage improperly failed to apply the payments toward the balance owed. Snell also maintains that there is no requirement that the full amount to cure default must be made in one payment.

Section 89-2-50 allows, in relevant part, a debtor in default such as Snell to:

[S]top a threatened sale under the powers contained in such instrument or stop any proceeding in any court to enforce such lien by paying the amount of the note or installment then due or past due by its terms, with all accrued costs, attorneys' fees and trustees' fees on the amount actually past due by the terms of such instrument or lien, rather than the amount accelerated, and such taxes or insurance premiums due and not paid, with proper interest thereon, if such should have been paid by any interested party to such instrument. Any such payment or payments shall reinstate, according to the terms of such instrument, the amount so accelerated, the same as if such amount not due by its terms had not been accelerated or put in default.

Miss. Code Ann. § 89-1-59.

The district court cited *Weems v. Transamerica Mortgage Co.*, 770 So. 2d 936, 937-39 (Miss. 2000), for the proposition that the Mississippi Supreme Court has held that section 89-1-59 does not require a lender to accept partial payments. Snell asserts that *Weems* is distinguishable because

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Snell made several payments that were all rejected. While it is correct that Snell made several payments that were rejected, there is no indication that Snell would have paid that total amount had each individual payment been accepted by 21st Mortgage rather than rejected. Thus, they cannot be aggregated prematurely. Additionally, Weems made more than one payment. *Id.* at 937. Regardless, the number of payments is not a basis for distinction when the payments were not payment in full. *Id.* at 939. Further, as the district court pointed out, the clear language of Snell's deed of trust allowed the lender to return partial payments insufficient to bring the loan current.

IV.

For the reasons stated herein, the order of the district court granting summary judgment in favor of 21st Mortgage is AFFIRMED.