STATE OF MICHIGAN

COURT OF APPEALS

In re CLAIM FOR OVERBID PROCEEDS OF 21315 CONSTITUTION STREET.

LANRE and RIKKI ATIGARIN,

Petitioner/Claimant-Appellants,

v

BANK OF AMERICA NA,

Respondent-Appellee.

UNPUBLISHED
April 16, 2019

No. 342471
Oakland Circuit Court
LC No. 2017-160652-PZ

Before: TUKEL, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

Petitioners Lanre and Rikki Atigarin appeal by right the trial court order denying their motion for the release of "overbid proceeds" following a sheriff's sale. We affirm for the reasons stated in this opinion.

I. BASIC FACTS

This case arises out of the sheriff's sale of property at 21315 Constitution Street, Southfield, Michigan. The record reflects that in 2008 the Atigarins obtained a $227,360 loan secured by a mortgage against the Southfield property. Subsequently, in 2013, they filed for Chapter 7 bankruptcy protection; the bankruptcy discharge extinguished their financial obligations under the promissory note, but did not extinguish Bank of America's security interest, i.e., mortgage on the Southfield property. In 2017, Bank of America initiated a foreclosure by advertisement on the property.

There appears to be some dispute as to the outstanding balance on the mortgage: the Atigarins contend that the balance was $184,413.26, whereas Bank of America asserts that it was $185,002.71, exclusive of foreclosure costs and legal fees. Regardless, at the sheriff's sale, Bank

of America made a partial credit bid of either $100,000 or $102,750, but a third-party purchaser bid and paid $141,750 for the property.

Thereafter, the Atigarins filed a claim for overbid proceeds with the Oakland County Sheriff's Department, contending that there was a surplus as a result of the sale. In September 2017, the Atigarins filed a complaint in circuit court seeking the alleged "surplus money" from the sheriff's sale. In October 2017, the Atigarins filed a motion to compel the release of the "surplus money." In doing so, they argued that because their financial obligation under the promissory note secured by the mortgage on the property was discharged in bankruptcy, the difference between Bank of America's partial credit bid and the final bid on the property constituted "surplus money" under MCL 600.3252 to which they, not Bank of America, were entitled to receive.

In response, Bank of America argued that the mortgage was not "satisfied" by its partial credit bid, so MCL 600.3252 was inapplicable. Additionally, Bank of America pointed out that because the amount owed was $185,002.71 and the property only sold for $141,750, there was a deficiency, not a surplus. The trial court agreed with Bank of America, denied the Atigarins' motion, and dismissed the complaint.

This appeal follows.

II. STATUTORY INTERPRETATION

A. STANDARD OF REVIEW

The Atigarins argue that the trial court erred by interpreting MCL 600.3252. Interpretation of a statute is an issue that we review de novo. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 278; 831 NW2d 204 (2013).

B. ANALYSIS

When interpreting a statute, we must give effect to the Legislature's intent as derived from the language of the statute. *D'Agostini Land Co LLC v Dep't of Treasury*, 322 Mich App 545, 554; 912 NW2d 593 (2018). "The Legislature is presumed to intend the meaning clearly expressed, and this Court must give effect to the plain, ordinary, or generally accepted meaning of the Legislature's terms." *Id*. "If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted." *Kincaid v Flint*, 311 Mich App 76, 82; 874 NW2d 193 (2015) (quotation marks and citation omitted). If a statute defines a term, that definition controls. *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). If a word is undefined by the statute, we may consult a dictionary to determine its plain and ordinary meaning. *Johnson v Pastoriza*, 491 Mich 417, 436; 818 NW2d 279 (2012).

MCL 600.3252 provides:

> If after any sale of real estate, made as herein prescribed, there shall remain in the hands of the officer or other person making the sale, any surplus money after satisfying the mortgage on which the real estate was sold, and payment of the costs and expenses of the foreclosure and sale, the surplus shall be

> paid over by the officer or other person on demand, to the mortgagor, his legal representatives or assigns, unless at the time of the sale, or before the surplus shall be so paid over, some claimant or claimants, shall file with the person so making the sale, a claim or claims, in writing, duly verified by the oath of the claimant, his agent, or attorney, that the claimant has a subsequent mortgage or lien encumbering the real estate, or some part thereof, and stating the amount thereof unpaid, setting forth the facts and nature of the same, in which case the person so making the sale, shall forthwith upon receiving the claim, pay the surplus to, and file the written claim with the clerk of the circuit court of the county in which the sale is so made; and thereupon any person or persons interested in the surplus, may apply to the court for an order to take proofs of the facts and circumstances contained in the claim or claims so filed. Thereafter, the court shall summon the claimant or claimants, party, or parties interested in the surplus, to appear before him at a time and place to be by him named, and attend the taking of the proof, and the claimant or claimants or party interested who shall appear may examine witnesses and produce such proof as they or either of them may see fit, and the court shall thereupon make an order in the premises directing the disposition of the surplus moneys or payment thereof in accordance with the rights of the claimant or claimants or persons interested.

It is clear that the statute only applies to "any surplus money after satisfying the mortgage on which the real estate was sold . . . ." MCL 600.3252. Therefore, in order for the Atigarins to be entitled to anything under MCL 600.3252, the mortgage on the Southfield property must have been "satisfied" and there must be "surplus money" remaining after the mortgage is satisfied. Neither requirement is met in this case.

The word "satisfied" is not defined by the statute. *Merriam-Webster's Collegiate Dictionary* (11th ed) defines "satisfy," in relevant part, as "to carry out the terms of (as a contract): DISCHARGE," and "to meet a financial obligation to." Here, the amount due and owing on the mortgage was either $184,413.26 or $185,002.71. Therefore, in order to meet the financial obligation under the mortgage, the property had to sell for either $184,413.26 or $185,002.71. It was only sold, however, for $141,750. As a result, the mortgage was not satisfied by the sheriff's sale. It was only *extinguished*. See *Powers v Golden Lumber Co*, 43 Mich 468, 471; 5 NW 656 (1880) (explaining that a mortgage is extinguished upon the foreclosure sale, but the underlying promissory note is only extinguished to the extent of the proceeds of the mortgage sale). Moreover, even if the extinguishment of the mortgage upon the foreclosure sale was sufficient to satisfy the mortgage, it is clear that there was no "surplus money" after the mortgage was extinguished. A "surplus" is defined, in relevant part, by *Merriam-Webster's Collegiate Dictionary* (11th ed) as "the amount that remains when use or need is satisfied." Here, because the property sold for less than the amount due and owing on the mortgage, it was impossible for a surplus to exist. Accordingly, the mortgage was not satisfied by a final bid that amounted to less than the amount due and owing on the mortgage, and there was no surplus money.

On appeal, the Atigarins argue that Bank of America's partial credit bid was sufficient to satisfy the mortgage. However, they offer no authority in support of that argument. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then

leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, we conclude that the Atigarins have abandoned their argument that the partial credit bid was offered in full satisfaction of the mortgage so as to preclude Bank of America from recovering anything other than the amount of their bid.

Affirmed.

/s/ Jonathan Tukel
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly