

[Cite as *Citizens Bank, N.A. v. David*, 2018-Ohio-3676.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106575

CITIZENS BANK, N.A., ETC.

PLAINTIFF -APPELLEE

vs.

ABRAHAM DAVID, ET AL.

DEFENDANTS-APPELLEES

[Appeal by Frederick Harris]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-855258

BEFORE: Keough, J., E.T. Gallagher, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: September 13, 2018

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(Continued)

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For Jane Doe and John Doe, Tenants

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KATHLEEN ANN KEOUGH, J.:

{¶1} Appellant Frederick Harris appeals the trial court’s decision denying his motion to intervene. For the following reasons, we affirm.

{¶2} In 2006, Abraham David executed a home equity line of credit agreement that was secured by a mortgage on real property located on Cedar Road in Beachwood, Ohio. David defaulted on the credit line agreement when he stopped making payments. In December 2015, Citizens Bank filed a complaint against David seeking judgment on the balance due and an order of foreclosure on the property.

{¶3} Harris was also named as a defendant in the foreclosure complaint because he “[has] or may claim to have an interest in the real property described.” The complaint was served on Harris by regular U.S. Mail after service by Federal Express and certified mail were returned as “unclaimed.” He did not respond to the complaint, and as a result, a default judgment was entered against Harris in May 2017. No appeal was taken from that decision.

{¶4} On June 16, 2017, however, Harris filed a Civ.R. 60(B) motion for relief from judgment contending that he did not receive service of the complaint and that he had an interest in the property. He also sought leave to plead. Both motions were subsequently denied. Again, no appeal was taken.

{¶5} Instead, Harris sought a stay of the sheriff’s sale of the property and filed a joint motion to reconsider and an amended Civ.R. 60(B) request for relief from judgment.

The trial court again denied Harris’s motions finding that (1) Harris “was never joined as

a defendant,” and “[b]efore filing motions he must first move to intervene in this case”; (2) his proper relief was to appeal the trial court’s denial of his original Civ.R. 60(B) motion; and (3) he failed to allege operative facts showing that he had a meritorious defense or an interest in the subject property. In response to the court’s journal entry, Harris filed a motion to intervene pursuant to Civ.R. 24. The trial court subsequently denied this request.

{¶6} Harris now appeals, raising as his sole assignment of error that the trial court abused its discretion when it denied his motion to intervene.

{¶7} Civ.R. 24 governs a nonparty’s right to intervene in an action. *See Huntington Natl. Bank v. Mortgage Zone, Inc.*, 8th Dist. Cuyahoga No. 93840, 2010-Ohio-3316; *see also Whitehall v. Olander*, 10th Dist. Franklin No. 14AP-6, 2014-Ohio-4066; *Chase Bank USA, N.A. v. Jacobs*, 10th Dist. Franklin No. 11AP-343-2012-Ohio-64; 1970 Staff Note, Civ.R. 24 (“Intervention under Rule 24 ‘rounds out’ joinder of parties theories of the rules of procedure. Thus, a potential party who is not a party to the action may, under certain circumstances and by his own initiative, intervene in the action as a party.”).

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{¶8} In this case, Harris moved to intervene in an action in which he was already a named party defendant who was subject to a default judgment entered in May 2017. Admittedly, the trial court incorrectly stated that Harris was not a “defendant” in its journal entry denying Harris’s second motion for relief from the judgment. However, this misstatement does not warrant this court reversing the trial court’s subsequent decision denying Harris’s motion to intervene. If Harris wished to defend his interest in this matter, he should have appealed to this court after the trial court denied his first Civ.R. 60(B) motion for relief from judgment.

{¶9} Accordingly, because Harris was already named a party defendant, the trial court did not abuse its discretion denying his Civ.R. 24 motion to intervene. The assignment of error is overruled.

{¶10} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed. It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

EILEEN T. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR