

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

BAC Home Loans Servicing LP,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-350 (C.P.C. No. 10CV-02-2897)
Michael T. Ferguson,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on December 4, 2012

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*Reimer, Arnovitz, Chernek and Jeffrey Co., L.P.A., and  
Darryl E. Gormley, for appellee.*

*Duncan Simonette, Inc., Brian K. Duncan and Bryan D.  
Thomas, for appellant.*

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APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Michael T. Ferguson, appeals a judgment of the Franklin County Court of Common Pleas that granted foreclosure to plaintiff-appellee, BAC Home Loans Servicing LP ("BAC"). For the following reasons, we affirm.

{¶ 2} On February 24, 2010, BAC filed a complaint asserting that Ferguson had defaulted on a promissory note and the mortgage securing the note by failing to make the required payments. BAC alleged that it was the holder of the note and mortgage, and it sought a monetary judgment against Ferguson and an order directing the sale of the mortgaged property.

{¶ 3} Although Ferguson was properly served with a summons and complaint, he failed to answer the complaint. Therefore, on July 7, 2010, BAC moved for default judgment. The trial court granted BAC's motion and entered a judgment in foreclosure on July 14, 2010. Two days later, Ferguson responded to BAC's motion for default judgment. Ferguson explained in his response that he had completed and submitted a form requesting foreclosure mediation and an extension of time to answer the complaint. Ferguson attached to his motion a document confirming transmittal of the faxed form to the Franklin County Foreclosure Mediation Project on April 9, 2010. Since the record contained no entry reflecting the request for mediation and extension, Ferguson postulated that his paperwork was not properly processed.

{¶ 4} After ascertaining that the trial court had already entered judgment when he filed his response, Ferguson filed a motion requesting that the trial court vacate the July 14, 2010 judgment and reinstate the action. Ferguson pointed out that the trial court granted BAC's motion only seven days after BAC filed it, thus depriving Ferguson of the 14-day response period provided by Loc.R. 21.01 of the Franklin County Court of Common Pleas, General Division.

{¶ 5} On September 10, 2010, the trial court issued a judgment vacating its July 14, 2010 judgment pursuant to Civ.R. 60(A). The judgment also referred the case to mediation.

{¶ 6} Mediation sessions occurred in the fall of 2010 and at various times throughout 2011. On May 5, 2011, while mediation was ongoing, Ferguson sought leave to file an answer within 14 days after the filing of a mediation report referring the case back to the court. The trial court granted Ferguson's motion.

{¶ 7} On August 1, 2011, Ferguson's attorneys sought the trial court's permission to withdraw because Ferguson had failed to pay them or provide them with needed financial documents. In relevant part, the motion stated, "At this stage of the case the defendant still has leave to file an answer or otherwise respond to the Complaint, if necessary after the Mediation is completed." (R. 97 at 2.) Ferguson signed the motion to signify that he acknowledged and accepted it. The trial court issued a judgment allowing Ferguson's attorneys to withdraw on August 10, 2011.

{¶ 8} The Franklin County Foreclosure Mediation Project entered a mediation outcome report into the record on January 9, 2012. The report stated that mediation had occurred, but the parties had not reached a resolution.

{¶ 9} Ferguson did not file an answer after the entry of the mediation outcome report. On February 28, 2012, BAC renewed its motion for default judgment. Ferguson did not respond to the renewed motion.

{¶ 10} On March 20, 2012, the trial court entered a default judgment granting BAC foreclosure. The next day, new counsel for Ferguson entered an appearance before the trial court. That counsel subsequently filed a motion asking the trial court to reconsider its March 20, 2012 judgment. The trial court had not ruled on that motion when Ferguson filed notice that he was appealing the March 20, 2012 judgment to this court.

{¶ 11} On appeal, Ferguson assigns the following errors:

1. THE TRIAL COURT ERRED WHEN IT FAILED TO VACATE ITS MARCH 20, 2012 JUDGMENT ENTRY PURSUANT TO THE TRIAL COURT'S POLICY AND "LONGSTANDING PRACTICE" WITH RESPECT TO ADJUDICATING MATTERS ON THEIR MERITS AS OPPOSED TO PROCEDURAL DEFECTS.
2. THE TRIAL COURT ERRED WHEN IT FAILED TO CONDUCT A HEARING ON DEFENDANT'S MOTION FOR RECONSIDERATION.
3. THE TRIAL COURT ERRED BY FAILING TO NOTIFY DEFENDANT THAT THE CASE WAS REACTIVATED FROM THE MEDIATION PROCESS AS THE MEDIATION OUTCOME REPORT DID NOT ADDRESS THE SAME, CONTRARY TO THE PROCEDURE OF THIS COURT, AND SUBSEQUENTLY GRANTING A DECREE IN FORECLOSURE.

{¶ 12} Because they are interrelated, we will consider Ferguson's first and second assignments of error together. By those assignments of error, Ferguson argues that the trial court erred in failing to grant, or provide a hearing on, his motion for reconsideration. We disagree.

{¶ 13} While interlocutory orders are subject to motions for reconsideration, final orders are not. *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 379 (1981), fn. 1; *Perritt v. Nationwide Mut. Ins. Co.*, 10th Dist. No. 03AP-1008, 2004-Ohio-4706, ¶ 11. Therefore,

a motion seeking reconsideration of a final judgment is a nullity. *Pitts* at 379; *Kelley v. Stauffer*, 10th Dist. No. 10AP-235, 2010-Ohio-4522, ¶ 6; *Estate of Millhon v. Millhon Clinic, Inc.*, 10th Dist. No. 07AP-413, 2007-Ohio-7153, ¶ 38.

{¶ 14} A judgment in foreclosure is a final appealable order. *Third Natl. Bank of Circleville v. Speakman*, 18 Ohio St.3d 119, 120 (1985); *Freedom Mtge. Corp. v. Groom*, 10th Dist. No. 08AP-761, 2009-Ohio-4482, ¶ 16. Consequently, Ferguson's motion for reconsideration of the March 20, 2012 judgment in foreclosure was a nullity. We thus conclude that the trial court did not err in ignoring that motion. Accordingly, we overrule Ferguson's first and second assignments of error.

{¶ 15} By Ferguson's third assignment of error, he argues that the trial court erred in not notifying him that litigation of the case would proceed because mediation was over. Ferguson points to no statute, rule, or order directing the trial court to notify the parties of the return of a case to the trial court's active docket after the completion of mediation. Our research uncovered no such statute, rule, or order. In the absence of such a statute, rule, or order, we cannot find any error in the trial court's actions.

{¶ 16} Moreover, we are not persuaded by Ferguson's argument that the trial court acted unjustly in granting the motion for default judgment because he was unaware that proceedings before the trial court had recommenced. Ferguson does not dispute that the record contains a mediation *outcome* report. Logically, the mediator could not report an outcome unless the mediation was over. Ferguson knew that an answer was due after mediation ended; the motion to withdraw, which he signed, said so. Nevertheless, Ferguson neither filed an answer nor responded to BAC's motion for default judgment. In these circumstances, we find nothing unjust in the grant of a default judgment. Accordingly, we overrule Ferguson's third assignment of error.

{¶ 17} For the foregoing reasons, we overrule all of Ferguson's assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BRYANT and FRENCH, JJ., concur.

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