

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Paul S. Kormanik, Guardian of the	:	
Estate of Sigrid P. Haley, Incompetent,	:	
	:	
Plaintiff-Appellee,	:	No. 12AP-18
	:	(Prob. No. 520928A)
v.	:	
	:	(REGULAR CALENDAR)
Sigrid P. Haley and Mortgage Electronic	:	
Registration Systems, Inc.,	:	
	:	
Defendants-Appellees,	:	
	:	
HSBC Mortgage Corporation,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on December 18, 2012

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*Michael L. Miller*, for appellee Kormanik.

*The Law Offices of John D. Clunk, Co., L.P.A., Jason A. Whitacre and Laura C. Infante*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas,  
Probate Division

BRYANT, J.

{¶1} Defendant-appellant, HSBC Mortgage Corporation ("HSBC"), appeals from the December 8, 2011 judgment of the Franklin County Court of Common Pleas, Probate Division, adopting the magistrate's decision that (1) denied HSBC's Motion for Relief from Judgment and (2) concluded the company lacked standing to challenge subsequent

entries and orders. Because the probate court did not abuse its discretion in resolving HSBC's claims, we affirm.

### **I. Facts and Procedural History**

{¶2} On January 30, 2006, Sigrid P. Haley obtained a loan for the purchase of real property in Columbus, Ohio. Haley signed a note promising to repay the loan and secured the note with a mortgage to Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for HSBC.

#### *A. Complaint to Sell Real Estate*

{¶3} Plaintiff-appellee, Paul S. Kormanik, was appointed guardian of the person and the estate of Haley on August 11, 2010. The next day, Kormanik filed against Haley, MERS, and HSBC in the Franklin County Court of Common Pleas, Probate Division, a "Complaint of Guardian to Sell Real Estate." The complaint sought permission to sell Haley's interest in the Columbus property acquired in 2006. HSBC received a copy of the complaint via certified mail on August 18, 2010, and MERS received a copy via certified mail on August 20, 2010. Both parties failed to respond. During this time period, MERS executed an Assignment of Mortgage, assigning its interest in the property to HSBC.

{¶4} On September 22, 2010, Kormanik moved for default judgment against both parties based on their failure to file an answer or otherwise defend the action; the probate court granted the motion on the same day. On September 23, 2010, a Franklin County appraiser appraised the property at \$40,000. After receiving the appraisal, the probate court issued an "Order of Sale" to Kormanik on October 29, 2010, instructing him to proceed with the sale of the subject property "appraised at \$40,000.00, on the following terms: at private sale cash at closing for not less than the appraised value or at public sale for not less than two-thirds of the appraised value."

{¶5} Pursuant to the order, Kormanik sold the property at public sale on December 4, 2010 for \$27,483.70, and the probate court filed a journal entry confirming the sale on December 8, 2010. On December 16, 2010, the court granted Kormanik's application for release and satisfaction of the mortgage and lien HSBC held. The court filed an entry on January 10, 2011 allocating the sale's proceeds and ordering distribution.

#### *B. Foreclosure Action*

{¶6} In a separate action, HSBC filed a foreclosure complaint in the Franklin County Court of Common Pleas, General Division, on August 25, 2010, alleging that Haley defaulted under the terms of the note and mortgage. At the time of filing, counsel for HSBC obtained a preliminary judicial report that revealed Haley was subject to a guardianship, but the report listed only information for a former Guardian Ad Litem ("GAL"). HSBC's counsel served the former GAL with a copy of the foreclosure complaint, to which the GAL responded that his appointment terminated three years earlier and that he was not a proper party to the foreclosure action. HSBC's counsel then obtained a final judicial report, dated November 8, 2010, which noted the appointment of Kormanik as the guardian for Haley and included information on the guardianship land sale. Counsel's employees contacted Kormanik on November 16, 2010, and Kormanik advised that an order for sale had been issued.

{¶7} On January 11, 2011, the common pleas court dismissed the foreclosure action because the probate court had obtained prior jurisdiction.

*C. Motion for Relief from Default Judgment*

{¶8} On January 14, 2011, HSBC filed in the probate court a combined motion seeking to set aside the September 22, 2010 default judgment pursuant to Civ.R. 60(B) and to vacate the December 4, 2010 sale, the December 8, 2010 journal entry confirming the sale and ordering deed, and the December 16, 2010 journal entry of release of mortgage. Kormanik responded with a memorandum opposing the motion, to which HSBC filed a reply.

{¶9} The trial court referred the matter to a magistrate for an evidentiary hearing. Applying the three-pronged "*GTE* test" to HSBC's Civ.R. 60(B) motion, the magistrate found HSBC's motion alleged a meritorious defense, as required under the first prong of the test. *GTE Automatic, Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976). The magistrate nonetheless concluded HSBC failed to meet the other two prongs, as its motion was untimely and did not establish HSBC's entitlement to relief under one of the provisions of Civ.R. 60(B)(1) through (5). Accordingly, the magistrate determined HSBC's motion for relief from default judgment should be denied. The magistrate further determined that "as the default judgment rendered against HSBC is

not set aside, HSBC does not have standing to move to vacate later entries." (Magistrate's Decision, at 14.)

{¶10} HSBC filed objections to the magistrate's decision; Kormanik responded to HSBC's objections. By a December 8, 2011 entry, the probate court overruled HSBC's objections and adopted the magistrate's decision. The court concluded the magistrate properly determined HSBC was not entitled to relief under Civ.R. 60(B) and the company therefore lacked standing to challenge the subsequent entries and orders.

## **II. Assignments of Error**

{¶11} HSBC appeals, assigning the following errors:

### **First Assignment of Error**

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FOUND THAT, BECAUSE IT HAD NOT YET SUCCEEDED IN SETTING ASIDE THE DEFAULT JUDGMENT, HSBC LACKED STANDING TO ATTACK ANY SUBSEQUENT ENTRIES OR ORDER AND FURTHER WHEN IT REFUSED TO ADDRESS ANY OF THE GLARING STATUTORY VIOLATIONS BY THE RECEIVER IN SELLING THE REAL ESTATE.

### **Second Assignment of Error**

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FOUND THAT HSBC FAILED TO MAKE A DEMONSTRATION OF EXCUSABLE NEGLECT UNDER CIV.R. 60(B)(1) IN SUPPORT OF ITS MOTION FOR RELIEF FROM JUDGMENT.

### **Third Assignment of Error**

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT FAILED TO APPLY THE APPROPRIATE STANDARD AND LAW TO HSBC'S ARGUMENT FOR EQUITABLE RELIEF UNDER CIV.R. 60(B)(5).

For ease of discussion, we address appellant's assignments of error out of order.

## **III. Transcript of Magistrate's Hearing**

{¶12} HSBC did not submit to the trial court with its objections a transcript of the magistrate's hearing or an affidavit of the evidence. A party challenging a magistrate's

factual findings is required to provide the trial court with a transcript of the hearing before the magistrate "or an affidavit of that evidence if a transcript is not available." Civ.R. 53(D)(3)(b)(iii). Absent a transcript or affidavit, the trial court must presume the validity of the magistrate's proceedings and the ensuing findings of fact unless the court holds further hearings. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980). The trial court need only determine whether the magistrate's factual findings support the conclusions of law in the magistrate's decision. *O'Brien v. O'Brien*, 167 Ohio App.3d 584, 2006-Ohio-1729, ¶ 14 (8th Dist.), citing *Hearn v. Broadwater*, 105 Ohio App.3d 586 (11th Dist.1995). Accordingly, the probate court here properly noted its review was "limited to determining whether the Magistrate committed errors of law based on the findings of fact that cannot be objected to absent a transcript." (Decision and Entry, at 3.)

{¶13} HSBC filed the necessary transcript with its notice of appeal to this court. An appellate court, however, limits its review to the trial court's record, the assignments of error and oral argument, unless waived. App.R. 12(A)(1)(b); *Chupka v. Saunders*, 28 Ohio St.3d 325, 328 (1986), citing *State v. Ishmail*, 54 Ohio St.2d 402 (1978), paragraph one of the syllabus. Accordingly, we may not consider the transcript in resolving HSBC's assigned errors. Our determination, like that of the trial court, is limited to the application of law to the magistrate's findings of fact. Civ.R. 53(D)(3)(a).

#### **IV. Second and Third Assignments of Error - Civ.R. 60(B) Motion for Relief**

{¶14} HSBC's second and third assigned errors together contend the trial court erred in denying HSBC's Civ.R. 60(B) motion for relief from judgment.

{¶15} In order to prevail on a motion for relief from judgment under Civ.R. 60(B), a movant generally must demonstrate: (1) the movant has a meritorious defense or claim to present if relief is granted; (2) the movant is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time. *Perry v. Gen. Motors Corp.*, 113 Ohio App.3d 318, 320 (10th Dist.1996), citing *GTE Automatic*. If Civ.R. 60(B)(1), (2), or (3) are grounds for relief, the motion must be made within one year after the judgment, order, or proceeding was entered or taken; otherwise, the motion must be made within a reasonable time. *Perry*. Where any one of the noted prerequisites is not satisfied, Civ.R. 60(B) relief is improper. *State ex rel. Richard v. Seidner*, 76 Ohio St.3d 149, 151 (1996). The decision to grant or

deny a Civ.R. 60(B) motion is left to the sound discretion of the trial court and will not be reversed on appeal absent a showing of abuse of discretion. *Id.*

*A. Grounds for Relief under Civ.R. 60(B)(1) and (5)*

{¶16} HSBC's appeal centers on its contention that the probate court erred in finding the company is not entitled to relief pursuant to Civ.R. 60(B)(1) and (5). Civ.R. 60(B)(1) allows the court to relieve a party from a final judgment for "mistake, inadvertence, surprise or excusable neglect"; Civ.R. 60(B)(5) allows the same for "any other reason justifying relief from the judgment."

1. Excusable Neglect Under Civ.R. 60(B)(1)

{¶17} HSBC's second assignment of error claims the trial court abused its discretion in concluding the company failed to set forth a factual basis for excusable neglect pursuant to Civ.R. 60(B)(1). When determining whether neglect is "excusable," a reviewing court must consider all the surrounding facts and circumstances. *Winona Holdings, Inc. v. Duffey*, 10th Dist. No. 10AP-1006, 2011-Ohio-3163, ¶ 14. *See also Keaton v. Purchase Plus Buyers Group, Inc.*, 145 Ohio App.3d 796, 802 (4th Dist.2001). The Supreme Court of Ohio has defined the term by exclusion, stating that "the inaction of a defendant is not 'excusable neglect' if it can be labeled as a 'complete disregard for the judicial system.'" *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20 (1996), quoting *GTE Automatic* at 153.

{¶18} According to the magistrate's factual findings, an HSBC employee in the Depew, New York office signed for the complaint via certified mail service on August 18, 2010. Indeed, HSBC acknowledges it received service of the complaint in accordance with the civil rules but the complaint was not forwarded to the appropriate individual or individuals. It nonetheless asserts that the circumstances "satisfied the test set forth by the Tenth District Court of Appeals for the demonstration of excusable neglect as the result of corporate delay." (Appellant's Brief, at 1, 13.)

{¶19} Although "the failure to plead or respond after admittedly receiving a copy of a complaint is generally not excusable neglect," a motion for relief from default judgment, depending on the facts, " 'may be granted on the basis of excusable neglect when service is properly made on a corporation but a corporate employee fails to forward the summons and complaint to the appropriate person.' " *LaSalle Natl. Bank v. Mesas*,

9th Dist. No. 02CA008028, 2002-Ohio-6117, ¶ 13; *Bowling v. Grange Mut. Cas. Co.*, 10th Dist. No. 05AP-51, 2005-Ohio-5924, ¶ 43, quoting *Hopkins v. Quality Chevrolet, Inc.*, 79 Ohio App.3d 578, 582 (4th Dist.1992). Even so, "a party's failure to submit a summons or any legal process to the responsible person is not automatically excusable neglect." *Bowling*, citing *T.S. Expediting Servs., Inc. v. Mexican Industries, Inc.*, 6th Dist. No. WD-01-060, 2002-Ohio-2268 (determining that, where the defendant company was properly served but argued the person who received service did not notify appropriate company officials, neglect was inexcusable since no operative facts were offered to justify inaction).

{¶20} As HSBC acknowledges, Ohio case law "has developed a two-part test for determining whether internal corporate errors should be legally excused." *Bowling* at ¶ 44. A party must present circumstances " 'sufficient to show (1) that there is a set procedure to be followed in the corporate hierarchy for dealing with legal process, and (2) that such procedure was, inadvertently, not followed until such time as a default judgment had already been entered against the corporate defendant.' " *Perry* at 324, quoting *Hopkins* at 583.

{¶21} Here, the only evidence HSBC proffered to address the circumstances surrounding the complaint's receipt and processing was the affidavit and testimony of Foreclosure Manager and Vice-President of its Brandon, Florida office, Maria Vadney. The magistrate found, pursuant to Vadney's testimony, that HSBC decided in August 2010 "to centralize foreclosure files to the Brandon, Florida office due to the experience of that staff," and Vadney accordingly executed an assignment of mortgage on August 18, 2010 "for the purpose of transferring the mortgage on the subject property from HSBC's Depew, N.Y. office to HSBC's Brandon, Florida office." (Magistrate's Decision, at 4.) The magistrate further found that "[d]espite executing the Assignment, Ms. Vadney testified that she had no personal knowledge of the facts and circumstances involving this case." (Magistrate's Decision, at 5.)

{¶22} The magistrate determined the proffered evidence to be lacking, as "[a]side for [sic] generally asserting that HSBC has an internal procedure for the handling of receipt of summons company wide, Ms. Vadney could offer no insight into what the procedure and process is, and in what ways the procedure was not followed." (Magistrate's Decision, at 4.) The magistrate further noted that Vadney "was unable to

present evidence of the specific policies and procedures concerning the receipt of summons, and was only able to testify as to what she would have done if she received service. Ms. Vadney was unable to testify as to when she became aware of the Complaint filed in this action, noting only that she was aware of it now." (Magistrate's Decision, at 10.)

{¶23} Measuring the magistrate's findings of fact against the standard articulated in *Perry*, the probate court concluded Vadney's testimony failed to provide any information regarding the procedures followed in HSBC's corporate hierarchy to handle summons and complaints, beyond the bare assertion that procedures existed. Further, because she had "no knowledge of the facts and circumstances surrounding the receipt of the summons in this case," Vadney did not, and could not, say whether employees followed the usual procedure here or whether the appropriate person in the corporate hierarchy ever received the summons and complaint. (Decision and Entry, at 7.) Observing that Vadney's testimony only established that HSBC "transferred its mortgage in the subject property from one office to another, at the same time that service of the Complaint was accomplished," the probate court concluded HSBC did not set forth facts with sufficient specificity to demonstrate excusable neglect pursuant to the applicable standard. (Decision and Entry, at 7.)

{¶24} The probate court properly applied the relevant law to the magistrate's findings of fact. "Where the movant alleges inadvertence and excusable neglect as grounds for relief from judgment under Civ.R. 60(B)(1), but does not set forth any operative facts to assist the trial court in determining whether such grounds exist, the court does not abuse its discretion in denying the motion for relief from judgment." *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17 (1988), syllabus; *see also Fifth Third Mtge. Co. v. Sardella*, 10th Dist. No. 11AP-276, 2011-Ohio-6458, ¶ 36 (agreeing with the magistrate's conclusions "regarding appellant's failure to meet the threshold requirements for relief" pursuant to Civ.R. 60(B)(1) because appellant "failed to set forth operative facts proving excusable neglect").

{¶25} Although HSBC submitted its employee's affidavit in an attempt to meet its burden, that employee had no knowledge of the circumstances surrounding the subject complaint's receipt. HSBC's evidence neither explained what its typical processes



for responding to complaints entail nor detailed in what way those processes failed in the present instance. Further, although HSBC claims "procedure was not followed in this case because of the coincidental timing of the Assignment of Mortgage and transfer of the loan servicing from New York to Florida," the company does not explain how the transfer affected the normal procedure. (HSBC's Combined Motion, at 15.)

{¶26} On appeal, HSBC cites several cases where a defendant corporation filed a motion for relief from judgment; HSBC claims the cases set forth "the standard which HSBC has clearly met." (Appellant's brief, at 12.) *See Hopkins* at 582-83; *Beck-Durell Creative Dept., Inc. v. Imaging Power, Inc.*, 10th Dist. No. 02AP-281, 2002-Ohio-5908. The cases are distinguishable and, in fact, highlight the weakness of HSBC's evidence.

{¶27} In each of the cases, the defendant corporation's motion included the affidavits of officers and employees who not only could attest to the circumstances surrounding the summons' and complaint's delay in reaching the appropriate person, but also could explain how a breakdown in the established procedure prevented the documents from reaching that person. Unlike the corporations in the cases it cites, HSBC set forth no operative facts sufficient to demonstrate it had an accepted procedure to be followed in the corporate hierarchy for dealing with legal process, or that such procedure was not followed and resulted in the complaint's delay in reaching the proper party in charge of legal matters. Accordingly, the probate court properly determined the facts, as the magistrate found, were insufficient to suggest HSBC's inaction was the result of excusable neglect.

{¶28} Accordingly, HSBC's second assignment of error is overruled.

## 2. Equitable Relief Under Civ.R. 60(B)(5)

{¶29} HSBC's third assignment of error claims the probate court should have granted its motion pursuant to Civ.R. 60(B)(5) because "[t]he meritorious defense and request for equitable relief asserted by HSBC, both stemming from its valid first lien on the property supported by a Note and Mortgage attached to its Motion, provided the Probate Court with operative facts sufficient to justify relief from the judgment." (Appellant's brief, at 16.) In particular, HSBC points to its allegations detailing "the windfall to the Estate if its lien were to be stripped from the property" and "the severe loss and prejudice which would befall HSBC in the event the default judgment stood,"

contending those factors support affording it relief "based on equitable principles." (Appellant's brief, at 16.)

{¶30} Civ.R. 60(B)(5) is a catch-all provision reflecting "the inherent power of a court to relieve a person from the unjust operation of a judgment." *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64 (1983), paragraph one of the syllabus. Civ.R. 60(B)(5), however, should only be "utilized 'in an extraordinary and unusual case when the interests of justice warrants it,' " and the grounds for invoking the provision must be substantial. *Social Psychological Servs., Inc. v. Magellan Behavioral Health, Inc.*, 10th Dist. No. 10AP-326, 2010-Ohio-6531, ¶ 17, quoting *Adomeit v. Baltimore*, 39 Ohio App.2d 97, 105 (8th Dist.1974).

{¶31} Although HSBC contends the probate court "summarily dismiss[ed]" its Civ.R. 60(B)(5) argument because HSBC received adequate service of the summons and complaint, HSBC's argument misrepresents the probate court's holding. (Appellant's brief, at 15.) In weighing HSBC's equitable relief claim, the court outlined the relevant facts and circumstances, including HSBC's receiving valid service of the summons and complaint, but nothing in the decision indicates HSBC's receipt of service was the determining factor in the court's analysis. Instead, the court found HSBC's Civ.R. 60(B)(5) contention that "justice requires relief" unpersuasive in light of the company's "fail[ure] to take even minimal steps to protect its rights in the property to prevent the land sale from happening." (Decision and Entry, at 9.)

{¶32} The probate court's holding adheres to the "well established" principle "that the 'other reason' clause of Civ.R. 60(B) will not protect a party who ignores its duty to take legal steps to protect its interest." *Mt. Olive Baptist Church v. Pipkins Paints and Home Improvement Ctr. Inc.*, 64 Ohio App.2d 285, 288 (8th Dist.1979). The court's reasoning focused on HSBC's missed opportunities to guard its interest in the subject property, including the company's failure to inquire into the guardianship situation despite the information revealed in the course of its foreclosure investigation, its failure to act on the information obtained in early November from both the final judicial report and Kormanik himself about the impending land sale, and its failure to "contact the court or obtain documents relevant to the proceeding" at any time. (Footnote deleted.) (Decision and Entry, at 10.)

{¶33} The court acknowledged HSBC's claim that it would "lose approximately \$90,000 it is owed, and the remaining creditors will receive a windfall," but the court determined HSBC ultimately bore responsibility for its loss, stressing in particular that "[h]ad HSBC acted, *it could have prevented the sale from occurring on December 4, 2010.*" (Emphasis sic.) (Decision and Entry, at 9, 10.) The probate court thus resolved HSBC's claim that it was entitled to equitable relief in the "interest of justice" by concluding instead that "justice requires the judgment to stand to protect the third-party buyer and the Ward herself." (Decision and Entry, at 10.)

{¶34} HSBC nonetheless contends that not only is its holding a lien on the property a meritorious defense in accordance with the first prong of the *GTE* test, the lien itself obligated the probate court to find in HSBC's favor pursuant to Civ.R. 60(B)(5). To support its argument, HSBC relies on *Aurora Loan Servs. v. Brown*, 12th Dist. No. CA2010-01-010, 2010-Ohio-5426, which HSBC claims is "similar to the [case] at bar." (Appellant's brief, at 14.)

{¶35} Unlike *Aurora*, the present matter involves no controversy surrounding respective "first liens" on the property; nor does the probate court's decision here, unlike that in *Aurora*, contain unsupported assumptions that the lien holder's evidence challenges. Moreover, unlike *Aurora*, where one of the lien holders filed its motion for relief two and one-half months before the scheduled sheriff's sale, here the probate court had to consider the post-sale interests of a third-party purchaser and of the Ward, and do so within the context of a sale that the court concluded HSBC could have prevented. The record demonstrates the probate court considered HSBC's evidence establishing its valid interest in the property but reasonably determined other equitable factors counseled against HSBC's motion despite HSBC's mortgage and note.

{¶36} The probate court's decision properly and adequately considered HSBC's Civ.R. 60(B)(5) claim pursuant to applicable law. HSBC's third assignment of error therefore is overruled.

#### B. Timeliness

{¶37} The requirements for Civ.R. 60(B) relief are listed in the conjunctive; if any one is not met, the motion must be denied. *Swan v. Swan*, 10th Dist. No. 04AP-1089, 2005-Ohio-4636, ¶ 12. Having concluded the probate court did not abuse its

discretion in concluding HSBC failed to demonstrate its entitlement to relief under Civ.R. 60(B)(1) or (5), we need not address the motion's timeliness.

#### **V. First Assignment of Error - Standing**

{¶38} HSBC's first assignment of error contends the probate court erred when it determined HSBC did not have standing to challenge the validity of the entries and orders filed after default judgment.

{¶39} HSBC's brief does not provide any argument advancing its contention that it retained standing after default judgment; nor does the brief set forth any "reasons in support of the contentions" or "citations to the authorities, statutes, and parts of the record on which appellant relies," as App.R. 16(A)(7) requires. Instead, HSBC proceeds directly to the substance of the probate court's determinations. Despite the deficiencies in HSBC's argument, in the interest of justice, we resolve HSBC's claim on its merits.

{¶40} The probate court decided that once default judgment was entered against HSBC, its "interest in the property ceased unless and until HSBC was successful in setting aside the judgment against it." (Decision and Entry, at 5.) Since HSBC was not successful in setting aside the default judgment, the probate court concluded HSBC was no longer a party in interest when the subject entries and orders were issued and therefore lacked standing to challenge those entries and orders. Because the probate court did not abuse its discretion in denying HSBC's Civ.R. 60(B) motion for relief from judgment, the remaining issue is whether HSBC nevertheless retained standing to attack subsequent entries and orders after default judgment was properly entered against it.

{¶41} The doctrine of standing requires a litigant to be in the proper position to assert a claim or seek judicial enforcement of a duty or right. *Irwin Mtge. Corp. v. DuPee*, 12th Dist. No. CA2011-08-144, 2012-Ohio-1594, ¶ 13, citing *Black's Law Dictionary* 1442 (8th Ed.2004). The burden is on HSBC to establish it "has a present interest in the subject matter of the litigation and that [it] has been prejudiced." *In re Guardianship of Love*, 19 Ohio St.2d 111, 113 (1969); *Tschantz v. Ferguson*, 49 Ohio App.3d 9, 13 (10th Dist.1989).

{¶42} In its September 22, 2010 entry granting default judgment, the probate court authorized Kormanik to sell "the entire interest in the real estate \* \* \* free of the claims, interest and liens" of HSBC. The sale was completed and money distributed as of

January 10, 2011; HSBC did not file objections until January 14, 2011. By that time, HSBC had no further interest in the subject property; its "equity of redemption" was "forever cut off, barred, and foreclosed." Cf. *Union Bank Co. v. North Carolina Furniture Express, L.L.C.*, 189 Ohio App.3d 538, 2010-Ohio-4176, ¶ 5 (3d Dist.) (holding default judgment foreclosed party's interest in property). Under those circumstances, HSBC cannot establish the court's refusal to consider HSBC's objections prejudiced HSBC, as HSBC's interest in the property already was extinguished and the default judgment against HSBC was not vacated. Cf. *Sampson v. Hughes*, 4th Dist. No. 98CA2435 (July 22, 1999) (holding that a party lacks standing to appeal where she "has no personal interest in the outcome of the appeal").

{¶43} Accordingly, HSBC's first assignment of error is overruled.

#### **VI. Disposition**

{¶44} Having overruled HSBC's first, second, and third assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas, Probate Division.

*Judgment affirmed.*

KLATT and FRENCH, JJ., concur.

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