

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

PHH Mortgage Corporation fka	:	
Cendant Mortgage Corporation dba	:	
Coldwell Banker Home Loans,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 11AP-562
v.	:	(C.P.C. No. 10CVE-03-4606)
	:	
Nancy L. Santiago,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 8, 2012

Lerner, Sampson & Rothfuss, LPA, and Adam R. Fogelman,
for appellee.

Jump Legal Group, LLC, John Sherrod and Sarah Williams,
for appellant.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Defendant-appellant, Nancy L. Santiago ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas denying appellant's motion for relief from a default judgment granted in favor of plaintiff-appellee, PHH Mortgage Company fka Cendant Mortgage Corporation dba Coldwell Banker Home Loans ("appellee"). For the reasons that follow, we affirm.

{¶ 2} Appellant obtained a loan from Coldwell Banker Home Loans for the purchase of a condominium. Appellant 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 Coldwell Banker Home Loans.¹ Appellant asserts that, in December 2009, she approached a company named National Homeownership Assistance Foundation ("NHAF") regarding obtaining a loan modification. Appellant claims that she entered into a contract with NHAF to secure a loan modification and that NHAF "implied" she should stop making payments on her mortgage. Appellant also asserts that NHAF instructed her that she was not allowed to contact appellee or any of its representatives regarding her mortgage. (Appellant's brief at 9.)

{¶ 3} On March 24, 2010, appellee filed a foreclosure complaint against appellant, asserting that appellant was in default under the terms of the note and the mortgage. Although appellant admits that she received a copy of the foreclosure complaint, she did not file an answer to the complaint. Appellee moved for default judgment based on appellant's failure to file an answer or otherwise defend the action, and on July 22, 2010, the trial court granted judgment in favor of appellee. The court ordered the sale of the property at a sheriff's sale. Appellee purchased the property at the sheriff's sale on November 19, 2010.

{¶ 4} On December 27, 2010, appellant filed a motion under Civ.R. 60(B) for relief from the default judgment. The trial court referred the case to a magistrate for a hearing on appellant's motion. The magistrate conducted a hearing and rendered a decision denying appellant's motion for relief from judgment. On June 13, 2011, the trial court entered an order adopting the magistrate's decision and denying appellant's motion for relief from judgment.

{¶ 5} Appellant appeals from the trial court's order adopting the magistrate's decision and denying appellant's motion for relief from judgment, setting forth one assignment of error for this court's review:

The trial court abused its discretion in denying Defendant-Appellant's motion for relief from judgment pursuant to Civ.R. 60(B).

{¶ 6} Civ.R. 60(B) provides that, under certain circumstances, a court may relieve a party from a final judgment, order, or proceeding. Appellant correctly asserts that a trial

¹ Appellee asserts that it is the successor in interest to Coldwell Banker Home Loans as owner of the note because Coldwell Banker Home Loans was a trade name for appellee. Additionally, appellee attached to its complaint a copy of an assignment of the mortgage from MERS to appellee.

court's decision on a motion for relief from judgment under Civ.R. 60(B) is generally subject to review for abuse of discretion. *See Foy v. Trumbull Corr. Inst.*, 10th Dist. No. 11AP-464, 2011-Ohio-6298, ¶ 10. However, as explained herein, that standard of review does not apply to the present appeal.

{¶ 7} As noted above, pursuant to Civ.R. 53 and Loc.R. 99.02 of the Franklin County Court of Common Pleas, General Division, the trial court referred the case to a magistrate for a hearing on appellant's motion for relief from judgment. The magistrate conducted a hearing on the motion and prepared a written decision in accordance with the requirements of Civ.R. 53(D)(3)(a). Appellant was then entitled to file written objections to the magistrate's decision within 14 days of the filing of that decision. Civ.R. 53(D)(3)(b)(i). However, appellant did not file objections to the magistrate's decision.

{¶ 8} Civ.R. 53(D)(3)(b)(iv) provides that "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Accordingly, because appellant failed to file objections to the magistrate's decision, we are limited to plain error review in considering her appeal. *See In re G.S.*, 10th Dist. No. 10AP-734, 2011-Ohio-2487, ¶ 6 ("It is well-settled that a party's failure to file objections to a magistrate's decision waives all but plain error."); *Nyamusevya v. Nkurunziza*, 10th Dist. No. 11AP-137, 2011-Ohio-5287, ¶ 9 ("Appellant did not raise this issue in his objections to the magistrate's decision, nor at any other time before the trial court. Therefore, pursuant to Civ.R. 53(D)(3)(b)(iv), we will consider only whether the trial court committed plain error.").

{¶ 9} In civil cases, the plain error doctrine will only apply in the "extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus. The doctrine implicates errors that are "clearly apparent on the face of the record and [are] prejudicial to the appellant." *Brooks-Lee v. Lee*, 10th Dist. No. 11AP-284, 2012-Ohio-373, ¶ 26, citing *Reichert v. Ingersoll*, 18 Ohio St.3d 220, 223 (1985).

{¶ 10} We note that appellant has not asserted any plain error on the face of the

magistrate's decision, nor raised any arguments relating to the fairness, legitimacy, or reputation of the judicial process. *See In re Estate of Sheares*, 10th Dist. No. 07AP-02, 2007-Ohio-3624, ¶ 11; *Fifth Third Mtge. Co. v. Sardella*, 10th Dist. No. 11AP-276, 2011-Ohio-6458, ¶ 30. Rather, appellant asserts the same substantive arguments in favor of her motion for relief from judgment that she argued before the magistrate. Here, this is insufficient to demonstrate plain error in the magistrate's decision.

{¶ 11} The magistrate evaluated appellant's motion for relief from judgment pursuant to the standard articulated by the Supreme Court of Ohio in *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976). Under that standard, a party seeking relief from judgment under Civ.R. 60(B) "must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party 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, and, where the grounds of relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment, order or proceeding was entered or taken." *Id.* at paragraph two of the syllabus. The magistrate found that appellant failed to demonstrate that she had a meritorious defense to present if relief from judgment was granted. The magistrate also concluded that appellant failed to demonstrate that she was entitled to relief under one of the grounds provided in Civ.R. 60(B)(1) through (5), specifically finding that her failure to answer the foreclosure complaint did not constitute excusable neglect. Finally, the magistrate concluded that under the circumstances of the case, appellant's motion for relief from judgment was not timely. Upon review, we do not find any error on the face of the magistrate's decision. Likewise, this case does not present exceptional circumstances affecting the basic fairness, integrity, or public reputation of the judicial process. Therefore, we find no plain error in the magistrate's decision or the trial court order adopting that decision.

{¶ 12} For the foregoing reasons, appellant's assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.
