

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

**David L. Humphrey, Trustee of the
AnnaRose Trudell Declaration of
Trust,**

Plaintiff-Appellee,

V.

**Thomas O. Mustric, Trustee of the
Helen L. Mustric Revocable Trust,**

Defendant-Appellant,

Franklin County Treasurer,

Defendant-Appellee.

[illegible]

No. 14AP-949
(C.P.C. No. 13CV-9818)

(REGULAR CALENDAR)

DECISION

Rendered on July 28, 2015

David L. Humphrey, pro se.

Thomas Mustric, pro se.

APPEAL from the Franklin County Court of Common Pleas

PER CURIAM

{¶ 1} Defendant-appellant, Thomas O. Mustric, Trustee of the Helen L. Mustric Revocable Trust, appeals from a judgment of the Franklin County Court of Common Pleas granting the motion for summary judgment of plaintiff-appellee, David L. Humphrey, Trustee of the AnnaRose Trudell Declaration of Trust. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} In September 2013, Humphrey, as Trustee of the AnnaRose Trudell Declaration of Trust, initiated a foreclosure action against Mustric, as Trustee of the Helen Mustric Revocable Trust, and the Franklin County Treasurer. Humphrey alleged Mustric defaulted on a settlement agreement and the related mortgage regarding the property located at 687 Evening Street in Worthington, Ohio. In June 2014, Humphrey moved for summary judgment and requested foreclosure on the mortgage. In October 2014, the trial court filed a decision granting Humphrey's motion for summary judgment and ordering the foreclosure sale of the property at issue. Mustric appeals from that decision.

II. Assignments of Error

{¶ 3} Mustric assigns the following errors for our review:

[1.] The trial court erred in granting plaintiff-appellee David Humphrey summary judgment, then making moot defendant-appellant Thomas Mustric pro se's timely filed motion for a new trial, when new judge in Civ.R.56(C) omits outstanding issues as objectionable to summary judgment.

[2.] The trial court erred when replaced visiting judge did not certify to understand case complexity in the case history docket, pursuant to Civ.R. 63, or optionally to grant a new trial.

[3.] The trial court erred to grant plaintiff-appellee David Humphrey summary judgment, when the court allowed interest to enjoin 13DR2678 party defendant-appellant Marcellina Mustric with council Tricia McCann in defendant-appellant Thomas Mustric's motion in objection then not to hold a hearing, to deny his due process when third party is without interest: 1) not a named party to the Helen L. Mustric trust; 2) not with dower interest in trust held real estate, 3) when any remainder interest rests with children that live in the residence in foreclosure, thus, to deny children's due process rights to have interest for ad litem representation assigned in 13DR2678; and, to determine aspects of alleged "malicious interference" to cause the foreclosure as motive in personal gain payment for attorney McCann to have sophisticated legal claim in contrived accumulation of spousal support with contempt delays to collect some \$20,000 after the sheriff's sale, if to have a filed answer to plaintiff-appellee's

original complaint, where the court omitted in error consideration of the best interests of the children.

(Sic passim.)

III. Discussion

{¶ 4} The arguments Mustric raises in his three assignments of error are not entirely clear. It appears Mustric is challenging the trial court's granting of summary judgment in favor of Humphrey and alleging error under Civ.R. 63.

{¶ 5} Mustric fails to demonstrate the trial court erred in granting Humphrey's motion for summary judgment. An appellate court reviews summary judgment under a de novo standard. *Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 41 (9th Dist.1995); *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579, 588 (8th Dist.1994). Summary judgment is appropriate only when the moving party demonstrates (1) no genuine issue of material fact exists, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds could come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence most strongly construed in its favor. Civ.R. 56(C); *State ex rel. Grady v. State Emp. Relations Bd.*, 78 Ohio St.3d 181, 183 (1997). Pursuant to Civ.R. 56(C), the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record demonstrating the absence of a material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). Once the moving party discharges its initial burden, summary judgment is appropriate if the nonmoving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial. *Dresher* at 293; *Vahila v. Hall*, 77 Ohio St.3d 421, 430 (1997); Civ.R. 56(E).

{¶ 6} Before the trial court, Humphrey submitted evidence establishing he held a valid and properly recorded mortgage, executed by Mustric, on the property at issue, and that the mortgage secured the amounts due under the settlement agreement referenced in the complaint. The evidence further demonstrated Mustric was in default as to his obligations under the settlement agreement and the mortgage. Mustric presented no evidence demonstrating any genuine issue of material fact necessitating a trial on the

matter. Therefore, it was not error for the trial court to find Humphrey satisfied the requirements of Civ.R. 56 and thus to order the foreclosure of the property.

{¶ 7} Mustric's contention that the trial court violated Civ.R. 63 is also without merit. In this matter, a visiting judge, and not the originally assigned judge, issued the decision granting summary judgment. Citing Civ.R. 63, Mustric argues the visiting judge should have affirmatively certified his understanding of the case and ability to familiarize himself with the record. Under Civ.R. 63(A), if for any reason a judge is unable to continue to preside over a trial that has commenced, the successor judge must certify on the record that he or she is familiarized with the record. And, pursuant to Civ.R. 63(B), if for any reason the judge before whom an action has been tried is unable to perform the duties to be performed by the court after a verdict has been returned or findings of fact and conclusions of law are filed, a successor judge may perform those duties unless he or she is satisfied that he or she cannot do so. Here, the case was resolved at summary judgment and did not proceed to trial. Thus, Civ.R. 63 did not apply.

{¶ 8} In sum, Mustric has failed to demonstrate error in this appeal. Accordingly, we overrule Mustric's first, second, and third assignments of error.

IV. Conclusion

{¶ 9} Having overruled Mustric's three assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK, KLATT, and LUPER SCHUSTER JJ., concur.
