

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Wells Fargo Bank, NA,	:	
Plaintiff-Appellee,	:	No. 15AP-243
v.	:	(C.P.C. No. 12CV-3792)
Sharon L. Parrish et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on September 30, 2015

Sharon L. Parrish and Donald Parrish, pro se.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, P.J.

{¶ 1} This is an appeal by defendants-appellants, Sharon L. and Donald Parrish, from a confirmation entry of sale and distribution of proceeds entered by the Franklin County Court of Common Pleas in a foreclosure action.

{¶ 2} On March 23, 2012, plaintiff-appellee, Wells Fargo Bank, NA ("Wells Fargo"), filed a complaint against appellants to enforce a promissory note and foreclose on a mortgage on property located at 1430 Lilley Avenue, Columbus. The complaint alleged that Sharon executed a promissory note in favor of Real Living Mortgage, LLC ("Real Living Mortgage"), secured by a mortgage executed by both Sharon and Donald. According to the complaint, the note and mortgage were in default, and the amount of \$90,968.45, plus interest, was due on the outstanding principal balance.

{¶ 3} Wells Fargo attached various documents to the complaint, including: (1) the note, dated April 14, 2006, listing Real Living Mortgage as the lender, and signed by

Sharon L. Parrish, as borrower; (2) the mortgage, dated April 14, 2006, listing Sharon L. Parrish as mortgagor, and Real Living Mortgage as the lender, and containing the signatures of both Sharon L. and Donald Parrish as borrowers; (3) an assignment of mortgage from Real Living Mortgage to Wells Fargo recorded April 17, 2006, assigning all rights, title and interest to the mortgage executed by Sharon L. Parrish on April 14, 2006; and (4) a loan modification agreement, dated November 23, 2009, between Sharon L. Parrish as borrower and Wells Fargo as lender.

{¶ 4} On May 30, 2013, the trial court held a bench trial on the foreclosure action. On August 21, 2013, the trial court filed a judgment entry and decree in foreclosure, entering judgment for the total amount due on the note in favor of Wells Fargo and against Sharon, and ordering foreclosure of the mortgage and sale of the property. No appeal was taken from the trial court's entry and decree in foreclosure.

{¶ 5} On May 27, 2014, Wells Fargo filed a praecipe for order of sale, and, on June 12, 2014, it filed a notice of sale. On June 19, 2014, appellants filed an "AFFIDAVIT OF TRUTH and * * * Motion to Stay." On July 16, 2014, Wells Fargo filed a brief in opposition to appellants' motion to stay. On August 22, 2014, the property was sold at a sheriff's sale. On March 4, 2015, the trial court filed a confirmation entry of sale and distribution of proceeds. Appellants filed a notice of appeal on April 2, 2015.

{¶ 6} On appeal, appellants have filed a pro se brief in which their assignment of error does not comply with the requirements of the Ohio Appellate Rules. In the interests of justice, however, we will attempt to discern the error(s) alleged on appeal.

{¶ 7} In the first sentence of their appellate brief, under the heading "assignment of error," appellants contend the trial court "is compelled to right this wrong or to inform the proper [authorities] they are not the real Party of Interest." Appellants also argue that Wells Fargo committed "fraud * * * on the foreclosure May 30, 2013" by coming to court "with no Original Note ever, but a Copy was used, and a Due Process Violation for an inappropriate notice." Appellants thus argue that the trial court "[r]uled in [e]rror * * * concerning title to [the] real estate." Appellants further maintain they submitted documents to the trial court proving their "superior interest on the Instrument," and that "the property is Tendered paid in full."

{¶ 8} Under Ohio law, "[a] trial court has discretion to confirm or refuse to confirm a judicial sale." *Deutsche Bank Natl. Co. v. Caldwell*, 8th Dist. No. 100594, 2014-Ohio-2982, ¶ 13. Accordingly, the trial court's determination "will not be reversed absent an abuse of that discretion." *Id.*

{¶ 9} As can be gleaned from the averments set forth above, appellants argue that Wells Fargo was not the real party in interest with standing to seek foreclosure, and that Wells Fargo committed fraud during the 2013 foreclosure hearing by failing to present the original note. Appellants also contend they submitted "Secure Party Creditor" documents to the trial court as proof of their superior interest to the property.

{¶ 10} At the outset, we note that the trial court, in its judgment entry and decree in foreclosure filed August 21, 2013, held in part as follows:

The matter came before the Court on a bench trial on May 30, 2013 * * *. Plaintiff, by its counsel, appeared for the trial along with its duly authorized representative Donnie R. Jones. Defendants Sharon and Donald Parrish also appeared. Plaintiff's evidence presented at the trial was uncontroverted and its trial exhibits were admitted into evidence without objection.

* * *

The Court finds that Sharon L. Parrish, Donald Parrish, as Possible Spouse to Sharon L. Parrish * * * have been served with a Summons and Complaint but did not file an Answer or other responsive pleading. The Court notes that Defendants Sharon L. Parrish and Donald Parrish appeared for trial. Based upon the testimony and other evidence presented, the Court enters judgment in favor of Plaintiff for the relief sought by Plaintiff in its Complaint.

* * *

Based upon the evidence presented, the Court finds that Sharon L. Parrish executed the promissory note referenced in the Complaint (the "Note") * * *. The Court also finds that Sharon L. Parrish and Donald Parrish executed and delivered the mortgage referenced in the Complaint (the "Mortgage") and that the Mortgage secures the amounts due under the Note.

The Court finds that the Note and Mortgage are in default because payments required to be made under the Note and Mortgage have not been made. The Court further finds that the conditions of the Mortgage have broken, the break is absolute, and Plaintiff is entitled to have the equity of redemption and dower of the current title holders foreclosed.

Based upon the testimony presented, the Court finds that the total due the Plaintiff on said Note through May 1, 2013 is \$104,250.60. * * * As a result, the Court hereby enters judgment for the amount due on the Note in favor of Plaintiff and against Sharon L. Parrish.

{¶ 11} Under Ohio law, "[t]here are two judgments that are appealable in foreclosure actions. * * * The first is the order of foreclosure and sale. The second is the confirmation of the sale." *U.S. Bank, N.A. v. Majchrowicz*, 8th Dist. No. 100174, 2014-Ohio-2530, ¶ 14. With respect to the former, "[t]he order of foreclosure determines the extent of each lienholder's interest, sets forth the priority of the liens, and determines the other rights and responsibilities of each party in the action." *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, ¶ 39. In an appeal from an order of foreclosure, "the parties may challenge the court's decision to grant the decree of foreclosure," but "[o]nce the order of foreclosure is final and the appeals process has been completed, all rights and responsibilities of the parties have been determined and can no longer be challenged." *Id.* By contrast, "[t]he confirmation process is an ancillary one in which the issues present are limited to whether the sale proceedings conformed to law." *Id.* at ¶ 40.

{¶ 12} Thus, "a judgment in foreclosure is a final appealable order." *BAC Home Loans Servicing, LP v. Ferguson*, 10th Dist. No. 12AP-350, 2012-Ohio-5670, ¶ 14, citing *Third Natl. Bank of Circleville v. Speakman*, 18 Ohio St.3d 119, 120 (1985).

{¶ 13} As noted under the facts, appellants did not file an appeal from the trial court's entry and decree in foreclosure, which contained Civ.R. 54(B) "no just reason for delay" language. Rather, the only timely appeal in this case is from the trial court's March 4, 2015 confirmation entry of sale and distribution of proceeds. The issues raised in appellants' pro se brief, however, focus essentially on the merits of the foreclosure judgment and proceedings, rather than the order confirming the sale. In general, where a party fails to timely appeal a foreclosure action, "any issues concerning the mortgage have

been waived, and those issues may not be raised in an appeal from the order confirming the sheriff's sale." *Fed. Home Loan Mtge. Corp. v. McDaniel*, 9th Dist. No. 17142 (Aug. 2, 1995). *See also US Bank, N.A. v. Alex*, 8th Dist. No. 101276, 2015-Ohio-871, ¶ 19 (Because appellants elected not to appeal foreclosure entry, they are precluded from raising the issue of standing for the first time "in a limited appeal from a confirmation of sale").

{¶ 14} However, assuming the issue of standing to be properly before this court, the "uncontroverted" evidence, as cited by the trial court in its entry decree in foreclosure, supports the trial court's determination that Wells Fargo established its interest in the suit. As noted under the facts, Wells Fargo attached to its complaint in foreclosure the note, the mortgage, the assignment of mortgage, and a loan modification agreement. The last page of the note contains two signature stamps, and one of the stamps states: "Pay to the order of Wells Fargo Bank, N.A. without recourse Real Living Mortgage, LLC Joan M. Mills, Vice President." The other signature stamp states: "Without recourse pay to the order of Wells Fargo Bank, N.A. By Joan M. Mills, Vice President." Both of the stamps bear the signature of Joan M. Mills. The assignment of mortgage, endorsed by Real Living Mortgage to Wells Fargo, bears a stamp with a recording date of April 17, 2006. Accordingly, the record indicates the mortgage was assigned to Wells Fargo before it filed its complaint, and, therefore, it had standing to foreclose. *See Wells Fargo Bank, N.A. v. McGowan*, 8th Dist. No. 101779, 2015-Ohio-1544, ¶ 13, quoting *CitiMortgage, Inc. v. Patterson*, 8th Dist. No. 98360, 2012-Ohio-5894, ¶ 21 (" '[A] party may establish its interest in the suit, and therefore have standing to invoke the jurisdiction of the court when, at the time it files its complaint of foreclosure, it either (1) has had a mortgage assigned or (2) is the holder of the note.' "). (Emphasis omitted.)

{¶ 15} Finally, we observe the following with respect to appellants' claim that they submitted copies of "Secure Party Creditor documents" showing that "the property is Tendered paid in full." Filings before the trial court indicate that appellants made various handwritten notations on several Wells Fargo account statements, including the notations "Money Order," "Tender of Payment," and "Money Order Payed [sic] in Full."¹ The documents before the trial court also included a Uniform Commercial Code ("UCC")

¹ We note that one of the account statements containing such handwritten notations reflects an unpaid principal balance of \$90,968.45 as of February 1, 2014, and total overdue payments in the amount of \$23,708.06.

financing statement in which the "debtor's name," as well as the "Secured Party's Name," are both listed as Donald Parrish. The handwritten notations on the account statements, as well as representations on other documents submitted before the trial court, appear to be "characteristic of the sovereign citizen movement," and we note that federal courts have rejected similar documents submitted by self-described "sovereign citizens." *Williams v. 2720 Realty Co.*, E.D.N.Y. No. 12 Civ. 6408 (BMC) (Jan. 3, 2013) (finding that plaintiff's self-issued "money order" did not constitute legal tender of payment). *See also Bryant v. Washington Mut. Bank*, 524 F.Supp.2d 753, 760 (W.D.Va.2007) (dismissing action in which plaintiff filed various UCC financing statements listing herself as both debtor and secured party, and rejecting plaintiff's "claim that her Bill of Exchange is a legitimate negotiable instrument" as "clearly nonsense in almost every detail"); *Santiago v. Century 21/PHH Mtge.*, N.D.Ala. No. 1:12-CV-02792-KOB (Mar. 27, 2013) (dismissing plaintiff's action in which he filed various secured party creditor documents following foreclosure, and noting that "[t]he attempt to divide oneself into two separate entities, with only one being liable for incurring debts, is a legal fiction and has been struck down consistently in courts around the country").

{¶ 16} Based upon this court's review of the record, appellants have presented no arguments to support a finding that the trial court abused its discretion in confirming the sheriff's sale. Accordingly, appellants' single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.
