

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

WELLS FARGO BANK, N.A.	:	O P I N I O N
SUCCESSOR BY MERGER TO WELLS		
FARGO HOME MORTGAGE, INC.,	:	
		CASE NO. 2011-G-3041
Plaintiff-Appellee,	:	
- vs -	:	
DINO T. MESSINA, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Geauga County Court of Common Pleas, Case No. 06F000595.

Judgment: Affirmed.

Richard A. Freshwater, and *Scott A. King*, Thompson Hine, L.L.P., 3900 Key Center, 127 Public Square, Cleveland, OH 44114 (For Plaintiff-Appellee).

James R. Douglass, James R. Douglass Co., L.P.A., 20521 Chagrin Boulevard, Suite D, Shaker Heights, OH 44122-9736 (For Defendants-Appellants).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellants, Dino T. Messina, et al., appeal from the judgment of the Geauga County Court of Common Pleas confirming the Sheriff's sale of their property. We affirm.

{¶2} On June 14, 2006, a complaint in foreclosure was filed by appellee, Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage, Inc., against appellants. After appellants failed to enter an appearance, appellee moved for default

judgment. On October 26, 2006, the court entered a default judgment in foreclosure. Appellants did not seek relief from this judgment, nor did they file a direct appeal to this court.

{¶3} A sheriff's sale was scheduled, but the proceedings were stayed due to the commencement of bankruptcy proceedings. Once the stay was lifted, the sheriff's sale was scheduled. Appellee withdrew the property from sheriff's sale several times for varying reasons; on December 16, 2010, however, the property was ultimately sold. And, in January 2011, appellee moved for a confirmation of sale. Appellants filed objections to the confirmation of sale, but, on September 2, 2011, the trial court entered judgment confirming the sheriff's sale.

{¶4} Appellants now appeal and assign two errors for our review. Their first assignment of error provides:

{¶5} "Whether or not the Court erred when it confirmed a Sheriff's sale in a foreclosure complaint when the Plaintiff was unable to demonstrate it was/is a real party in interest."

{¶6} Under this assigned error, appellants contend that appellee failed to establish it is the real party in interest and therefore lacked standing as a matter of law to bring the action. Accordingly, appellants maintain the trial court erred in confirming the sale to a "legal stranger to the case." Appellants' argument lacks merit.

{¶7} As noted above, appellants did not appeal the default judgment in foreclosure, which was a final appealable order. *BCGS, L.L.C. v. Raab*, 11th Dist. No. 98-L-041, 1998 Ohio App. LEXIS 6584, *4 (July 17, 1998); see also *Ohio Dept. of Taxation v. Plickert*, 128 Ohio App.3d 445, 446-447 (11th Dist.1998). Accordingly,

appellants' argument rests upon their presupposition that standing is a jurisdictional issue, i.e., an issue that can be raised at any point in the proceedings. Appellants' assumption is false.

{¶8} The issue of standing is not jurisdictional, but rather procedural. See e.g. *Northland Ins. Co. v. The Illuminating Co.*, 11th Dist. Nos 2002-A-0058 and 2002-A-0066, 2004-Ohio-1529, ¶17. (compliance with Civ.R. 17, requiring every action to be prosecuted in the name of the real party in interest procedural, not jurisdictional). Because an allegation that a party lacks standing does not implicate jurisdiction, it is an error that may render a judgment voidable, but not void. See e.g. *Bank of New York v. Blanton*, 12th Dist. No. CA2011-03-019, 2012-Ohio-1597, ¶11. Appellants were consequently required to challenge the issue of standing on a direct appeal from the default judgment in foreclosure or collaterally attack that judgment via a motion filed pursuant to Civ.R. 60(B). *Id.* Appellants failed to utilize either of these mechanisms and, as a result, their challenge is barred by res judicata. *Id.* Because appellants are precluded from collaterally attacking the issue of standing through an appeal of a separate final order, we hold the trial court did not err in confirming the sale.¹

{¶9} Appellants' first assignment of error lacks merit.

{¶10} Appellants' second assignment of error provides:

1. Moreover, appellants' reliance upon *Wells Fargo Bank, N.A. v. Jordan*, 8th Dist. No. 91675, 2009-Ohio-1092 is misplaced. In that case, the mortgagees filed a direct appeal from the trial court's entry of summary judgment in a foreclosure action. The Eighth Appellate District reversed the judgment because the mortgagor was not the real party in interest when the complaint was filed. As discussed above, appellants' failure to file a direct appeal and challenge appellee's status as a real party in interest rendered the issue res judicata.

{¶11} “Whether or not the Court erred when it confirmed the Sheriff’s Sale when there is no evidence that appraisers actually viewed the property as required by statute.”

{¶12} Appellants assert the trial court erred in entering judgment confirming the sale because appellee failed to comply with statutory mandates requiring appraisers to actually view the premises. Appellants’ claim is belied by the record.

{¶13} Appellants are correct that R.C. 2329.17(A) provides:

{¶14} When execution is levied upon lands and tenements, the officer who makes the levy shall call an inquest of three disinterested freeholders, residents of the county where the lands taken in execution are situated, and administer to them an oath impartially to appraise the property so levied upon, upon actual view. They forthwith shall return to such officer, under their hands, an estimate of the real value of the property in money.

{¶15} The record demonstrates that two separate appraisals were given in this case, one on January 11, 2007 and one on January 10, 2008. Both appraisals demonstrate that three disinterested freeholders, who were residents of Geauga County, were administered an oath and appraised the property upon actual view. According to the record, after actually viewing the premises, the three appraisers valued the property at \$315,000 on the first appraisal and \$325,000 on the second. Appellants’ argument merely states, in conclusory fashion, that the appraisers did not enter upon the property. Without additional, independent evidence to substantiate their allegation, the sworn documentation in the record suffices to meet the statutory mandate.

{¶16} Appellants' second assignment of error is without merit.

{¶17} For the reasons discussed in this opinion, the judgment of the Geauga County Court of Common Pleas is therefore affirmed.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.