

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

|                            |   |                             |
|----------------------------|---|-----------------------------|
| AURORA LOAN SERVICES, LLC, | : | <b>O P I N I O N</b>        |
| Plaintiff-Appellee,        | : |                             |
| - VS -                     | : | <b>CASE NO. 2011-A-0070</b> |
| CHRISTINE CART, a.k.a.     | : |                             |
| CHRIS CART, et al.,        | : |                             |
| Defendant-Appellant.       | : |                             |

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2008 CV 664.

Judgment: Affirmed

*Jennifer B. Madine and Adam R. Fogelman*, Lerner, Sampson & Rothfuss, L.P.A., 120 East Fourth Street, 8th Floor, P.O. Box 5480, Cincinnati, OH 45202 (For Plaintiff-Appellee).

*Christine Cart*, pro se, 1380 U.S. Route 322, Orwell, OH 44076 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Christine Cart, appeals the Judgment Entry of the Ashtabula County Court of Common Pleas, denying her Verified Amended Emergency Motion to Vacate All Judgments Entered in this Action Based on Newly Discovered Evidence. The issue before this court is whether a party's alleged fraud in invoking the court's jurisdiction by claiming to be the assignee of a note and mortgage renders void

all subsequent proceedings by the court. For the following reasons, we affirm the decision of the court below.

{¶2} On May 9, 2008, plaintiff-appellee, Aurora Loan Services, LLC, filed a Complaint against Christine Cart, Steve Cart, and Joan Hoyt. Aurora Loan alleged that it was the “owner and holder of a note,” secured by a mortgage, and that Cart was in default in the amount of \$85,070.74. Aurora Loan sought to have the mortgage foreclosed and the subject property sold.

{¶3} On August 29, 2008, upon Aurora Loan’s Motion for Default, the trial court entered a Judgment and Decree in Foreclosure and Reformation of Mortgage.

{¶4} On November 17, 2008, the subject property was sold at auction for \$46,000, to Aurora Loan.

{¶5} On January 9, 2009, the trial court entered its Journal Entry Confirming Sale, Ordering Deed and Distributing Sale Proceeds.

{¶6} On June 29, 2010, Cart filed a Verified Objection to Judgment Entry and Motion to Vacate Void Judgment Based on Newly Discovered Evidence.

{¶7} On November 8, 2011, Cart filed a Verified Amended Emergency Motion to Vacate All Judgments Entered in this Action Based on Newly Discovered Evidence.

{¶8} On November 21, 2011, the trial court denied Cart’s Motion to Vacate All Judgments. The court’s Judgment Entry stated: “The record in this matter indicates that the initial Motion to Vacate based on New Evidence filed by Defendant on June 29, 2010 has been denied pursuant to *Arthur v. Arthur*, (1998) 130 Ohio App.3d 398, 413, 720 N.E.2d 176, 186 (where a trial court fails to rule upon a motion, it is generally

presumed that the trial court overruled the motion). Since the motion has already been denied, Defendant cannot amend it as a matter of course.”

{¶9} On December 9, 2011, Cart filed her Notice of Appeal.<sup>1</sup>

{¶10} On appeal, Cart raises the following assignments of error:

{¶11} “[1.] The trial court erred to the prejudice of Appellant-Defendant in its Judgment Entry where the trial judge’s interpretation of *Arthur v. Arthur*, (1998) 130 Ohio App.3d 398, 413[,] is misplaced and is distinguishable from the instant matter.”

{¶12} “[2.] The trial court erred to the prejudice of Appellant-Defendant in its Judgment Entry when it allegedly denied Appellant’s June 29, 2010 MTV where the record below is devoid of such entry thereby depriving Appellant of her due process right to appeal to this Court.”

{¶13} “[3.] The trial court erred to the prejudice of Appellant-Defendant by denying Appellant an appealable judgment or order of the June 29, 2010 MTV and the required notice of the alleged entry thereby depriving Appellant of her right to due process and equal protection to the right of appeal and the Constitutional protections against the dispossession of *Property* without due process and a trial by jury as required by the Fifth Amendment of the United States Constitution.”

{¶14} “[4.] The trial judge erred and denied Appellant due process to the prejudice of Appellant by not reaching the merits of Appellant’s November 8, 2011

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1. On December 15, 2011, Cart was removed by the Ashtabula County Sheriff’s Office from the foreclosed premises. Additional details regarding the history of this case may be found in these prior appeals: *Aurora Loan Servs., LLC v. Cart*, 11th Dist. No. 2009-A-0026, 2010-Ohio-1157 (denial of Cart’s May 8, 2009 Motion to Vacate Void Judgment and Dismiss Action); *Aurora Loan Servs., LLC v. Cart*, 11th Dist. No. 2010-A-0023, 2010-Ohio-4085 (appeal dismissed for lack of final order); *Aurora Loan Servs., LLC v. Cart*, 11th Dist. No. 2010-A-0024, 2011-Ohio-2450 (denial of Cart’s April 21, 2010 Emergency Verified Motion to Vacate Void Foreclosure Judgment and Dismiss Complaint with Prejudice); and *Cart v. Fed. Natl. Mtge. Assn.*, 11th Dist. No. 2011-A-0059, 2012-Ohio-2241 (dismissal of Cart’s April 6, 2011 action to quiet title).

Amended Motion because of his erroneous denial of the June 29, 2010 MTV wherein the core issue before the trial court in both motions was that the trial court never had legal or lawful subject-matter jurisdiction over the matter due to fraud upon the court upon the filing of the complaint.”

{¶15} In Cart’s first three assignments of error, she argues that the trial court erred in its application of the general rule that the failure of a court to rule on a motion gives rise to the presumption that it has overruled the motion. *Arthur v. Arthur*, 130 Ohio App.3d 398, 413, 720 N.E.2d 176 (5th Dist.1998) (“[w]hen a trial court fails to rule upon a motion, an appellate court generally will presume the trial court overruled the motion”). We agree.

{¶16} This court has recognized that, as a “general proposition, if a trial court fails to issue a written ruling on a pending motion prior to the release of the final judgment in a civil action, it is presumed that the court intended to deny that motion.” *State ex rel. Fontanella v. Kontos*, 11th Dist. No. 2007-T-0055, 2007-Ohio-5213, ¶ 9; *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 13. The presumption has been applied “to a wide variety of motions,” including post-judgment motions. *Fontanella* at ¶ 9; *State v. Kramer*, 2nd Dist. No. 2010-CA-03, 2011-Ohio-3504, ¶ 40 (post-conviction relief). Commenting on the reasons for the presumption, this court has stated, “this rule is obviously based upon the logic that, by issuing a final judgment in a pending case, the trial court has exhibited an intent to completely dispose of the entire proceeding; under such circumstances, it must be presumed that the court wanted to dispose of all other pending motions in a manner consistent with the final disposition of the case.” *Fontanella* at ¶ 9.

{¶17} Accordingly, the rule may be stated that, when a trial court enters and journalizes a final judgment that grants relief adverse to or inconsistent with the relief sought in a pending motion, it may be presumed that the court intended to deny that motion.

{¶18} The circumstances giving rise to the presumption do not exist in the present case. Cart filed her initial Motion to Vacate Void Judgment Based on Newly Discovered Evidence on June 29, 2010. The only Judgment Entry entered by the trial court between the filing of the initial Motion to Vacate and the filing of the Amended Motion on November 8, 2011, was an Entry filed on October 13, 2010, reactivating the proceedings following an automatic bankruptcy stay. The reactivation of the proceedings following a bankruptcy stay is not adverse or inconsistent with the relief sought in the Motion to Vacate. Therefore, the lower court incorrectly ruled that the initial Motion to Vacate was presumptively overruled and, thus, unable to be amended.

{¶19} The conclusion that the trial court's reasons for denying Cart's Motions to Vacate were erroneous is not determinative of the appeal.

{¶20} "[I]t is the definitely established law of this state that where the judgment is correct, a reviewing court is not authorized to reverse such judgment merely because erroneous reasons were assigned as the basis thereof." *Agricultural Ins. Co. v. Constantine*, 144 Ohio St. 275, 284, 58 N.E.2d 658 (1944); *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St.3d 217, 222, 631 N.E.2d 150 (1994) ("a reviewing court is not authorized to reverse a correct judgment merely because erroneous reasons were assigned as a basis thereof").

{¶21} Therefore, we must consider the arguments raised in Cart's fourth assignment of error.

{¶22} Cart contends that "all judgments and orders in the court below are void because Plaintiff committed fraud upon the Court when it filed the action." Appellate Brief of Christine Cart, 11. *Ohio Pryo, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 25 ("[w]hen a judgment was issued without jurisdiction or was procured by fraud, it is void and is subject to collateral attack"). More specifically, Cart asserts: "Plaintiff is not and never was the owner of the Note and Mortgage, as alleged in the complaint, and it had no legal or lawful right to foreclose. The complaint is a fraud upon the Court." Appellate Brief of Christine Cart, 14.

{¶23} Consideration of Cart's arguments is barred by the doctrines of res judicata and/or law of the case, i.e., Cart has previously raised this argument in the trial court and on appeal in this court. *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984) ("the [law of the case] doctrine provides that the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels").

{¶24} On May 8, 2009, Cart filed a Motion to Vacate Void Judgment and Dismiss Action, in which she similarly claimed the foreclosure proceedings were void ab initio: "Plaintiff never owned the mortgage and note in question, by their own admission, throughout this procedure, but led the court to believe they did. \* \* \* This is a complete, blatant and undisputed fraud upon the court."

{¶25} The denial of Cart's May 8, 2009 Motion to Vacate was affirmed by this court in *Aurora Loan Servs., LLC v. Cart*, 11th Dist. No. 2009-A-0026, 2010-Ohio-1157.

We note that the same argument was also rejected in a collateral attack on the foreclosure. *Cart v. Fed. Natl. Mtge. Assn.*, 11th Dist. No. 2011-A-0059, 2012-Ohio-2241, ¶ 68 (“Aurora Loan Services’ alleged misrepresentations as to ownership of the mortgage do not rise to the level of fraud so as to affect the fundamental validity of the previous judgment”).

{¶26} The fact that Cart says she discovered additional evidence to support her argument does not compel the trial court to reconsider the merits of the argument. Evidence that could have been discovered at the time of judgment through the exercise of due diligence does not constitute “newly discovered evidence” for the purpose of vacating the prior judgment. *Cuyahoga Support Enforcement Agency v. Guthrie*, 84 Ohio St.3d 437, 442, 705 N.E.2d 318 (1999).

{¶27} The fourth assignment of error is without merit.

{¶28} For the foregoing reasons, the Judgment Entry of the Ashtabula County Court of Common Pleas, denying Cart’s Amended Motion to Vacate All Judgments, is affirmed. Costs to be taxed against appellant.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.