

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

COUNTRYWIDE HOME LOANS, INC. f.k.a. :
Countrywide Funding Corporation,

Plaintiff-Appellee,

- vs -

VIRGINIA REECE, et al.,

Defendants-Appellants.

CASE NO. CA2010-08-078

OPINION
2/7/2011

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 2007 CV 70103

Carlisle, McNellie, Rini, Kramer & Ulrich Co., L.P.A., Bradley P. Toman, 24755 Chagrin Blvd., Suite 200, Cleveland, Ohio 44122, for plaintiff-appellee

Mary Louis Lewis, 251 W. Central Avenue #165, Franklin, Ohio 45005, intervening plaintiff-appellant, pro se

RINGLAND, J.

{¶1} Intervenor-plaintiff-appellant, Mary Louis Lewis, appeals pro se from the Warren County Court of Common Pleas decision granting summary judgment to plaintiff-appellee, Countrywide Home Loans, Inc. f.k.a. Countrywide Funding Corporation d.b.a. America's Wholesale Lender (Countrywide). For the reasons outlined below, we affirm.

{¶2} In 1991, appellant built a home located at 8760 Deardoff Road, Franklin,

Warren County, Ohio. The property was encumbered by a mortgage held by Wells Fargo Bank Minnesota, N.A. (Wells Fargo).

{¶13} On August 12, 2002, after appellant defaulted on her mortgage, Wells Fargo filed a complaint in foreclosure. On August 22, 2006, following a number of delays, the trial court entered a default judgment against appellant. In so holding, the trial court stated, in pertinent part, that appellant was "forever barred from asserting any right, title or interest in and to" the property. On October 23, 2006, Wells Fargo purchased the property at a sheriff's sale.

{¶14} On March 15, 2007, Wells Fargo sold the property to appellant's 72-year-old mother, Virginia L. Reece, who financed the transaction through Countrywide. On December 14, 2007, after Reece defaulted on the mortgage, Countrywide filed a complaint in foreclosure. On February 20, 2008, Countrywide received a default judgment against Reece. The trial court then scheduled a sheriff's sale for the property.

{¶15} On March 13, 2009, appellant filed a motion to intervene, a motion to stay the sheriff's sale, a motion to vacate the default judgment against Reece, and a motion for leave to file a third-party complaint. On March 19, 2009, the trial court granted all of appellant's motions.

{¶16} On March 27, 2009, appellant filed a third-party complaint against Countrywide and a number of third-party defendants, including, among others, R.T. Mortgage, Inc., Creative Environments USA, LLC, and Alan Lane, an apparent mortgage broker. In her complaint, appellant alleged fraud, breach of contract, conspiracy, and violations of the Ohio Consumer Sales Practice Act and the Ohio Mortgage Brokers Act.

{¶17} On December 14, 2009, Countrywide filed a motion for summary judgment. On February 26, 2010, appellant filed a "Motion for Extension of Time." Attached to appellant's motion for an extension of time was a copy of an alleged March 27, 2007 survivorship deed

that, according to her, established her interest in the property. The trial court subsequently denied appellant's motion.

{¶8} On March 3, 2010, appellant filed a motion entitled "Responding to Summary Judgment." Aside from a list of potential "witness[es] on [the] case," which included a brief recitation of their alleged involvement in the scheme, appellant did not attach any evidence supporting her allegations levied against Countrywide.

{¶9} On March 18, 2010, a magistrate issued a decision granting summary judgment to Countrywide by finding appellant "no longer has any legally cognizable interest in the subject property." On March 30, 2010, Appellant filed objections to the magistrate's decision, which included, among others, an assertion that the magistrate failed to properly consider the alleged March 27, 2007 survivorship deed. On July 30, 2010, the trial court overruled appellant's objections and adopted the magistrate's decision granting summary judgment to Countrywide in its entirety.

{¶10} Appellant now appeals from the trial court's decision, raising one assignment of error for review.¹

{¶11} "THE TRIAL COURT ERRED BY GRANTING APPELLEE' MOTION FOR SUMMARY JUDGMENT." [sic]

{¶12} At the outset, we find it appropriate to inform appellant that although she is appearing pro se in this appeal, she is bound by the same rules and procedures as licensed attorneys, and therefore, must "accept the results of [her] own mistakes and errors, including those related to correct legal procedures." *Cat-The Rental Store v. Sparto*, Clinton App. No. CA2001-08-024, at 5, 2002-Ohio-614, citing *Holman v. Keegan* (2000), 139 Ohio App.3d

1. Although not subject to this appeal, following a September 20, 2010 bench trial, the trial court ordered R.T. Mortgage, Inc. to pay appellant more than \$105,000 in compensatory and punitive damages, as well as over \$25,000 in attorney fees, after it was found guilty of fraud, breach of contract, and for violating the Ohio Mortgage Brokers Act. Appellant also received a default judgment against Creative Environments USA, LLC and Alan Lane.

911, 918. Furthermore, because the burden of affirmatively demonstrating error on appeal falls squarely upon her, we will not "conjure up questions never squarely asked * * *." *Aegis v. Sedlacko*, Mahoning App. No. 07 MA 128, 2008-Ohio-3190, ¶16, quoting *Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 206.

{¶13} That being said, in her sole assignment of error, although couched in a claim regarding the trial court's decision to overrule her objections to the magistrate's decision granting summary judgment to Countrywide, appellant actually argues that the trial court erred by "discount[ing] the existence" of the alleged March 27, 2007 survivorship deed in rendering its decision. In support of her claim, appellant argues the trial court should have taken this document into consideration as "it did indeed raise[] a genuine issue of material fact and did indeed establish [her] legally cognizable interest in the [p]roperty." We disagree.

{¶14} When ruling on a motion for summary judgment, a trial court must consider only admissible evidence. *Koop v. Speedway SuperAmerica, LLC*, Warren App. No. CA2008-09-110, 2009-Ohio-1734, ¶6; *Tokles & Sons, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, 631, fn. 4. In order for any document presented to be admissible evidence for summary judgment purposes, it must be accompanied by a personal certification that such document is, in fact, genuine. *Bowmer v. Dettelbach* (1996), 109 Ohio App.3d 680, 684, citing *Biskupich v. Westbay Manor Nursing Home* (1986), 33 Ohio App.3d 220, 222-223; see, also, Civ.R. 56(E). Documents submitted in opposition to a motion for summary judgment that are neither sworn or certified, nor authenticated by affidavit, have no evidentiary value and may not be considered by the trial court in ruling on a motion for summary judgment. *Schriever v. Burkhart* (Jan. 21, 1992), Butler App. No. CA91-01-019, at 5; *Douglass v. Salem Community Hosp.*, 153 Ohio App.3d 350, 2003-Ohio-4006, ¶25.

{¶15} In this case, the trial court determined that the alleged March 27, 2007 survivorship deed "was not recorded" nor "verified by affidavit," and therefore, it was

"insufficient to create a genuine issue of material fact * * *." After a thorough review of the record, we find no error in the trial court's decision.

{¶16} While appellant did attach the alleged March 27, 2007 survivorship deed to her February 26, 2010 "Motion for Extension of Time," she did not attach the unrecorded deed to her memorandum in opposition to Countrywide's motion for summary judgment, nor did she attach any accompanying certification to indicate the deed was, in fact, genuine. In turn, because appellant failed to properly verify the alleged March 27, 2007 survivorship deed upon which she now relies, we find the trial court did not err by declining to consider it in rendering its decision. See *Estate Planning Legal Services, P.C. v. Cox*, Butler App. Nos. CA2006-11-140, CA2006-12-141, 2008-Ohio-2258, ¶¶24-29; *Ihenacho v. Coverall of S. Ohio*, 173 Ohio App.3d 13, 2007-Ohio-4206, ¶20, citing *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d 94, 97, 1995-Ohio-202; see, also, *Wells Fargo Bank, NA v. Shalvey*, Delaware App. No. 06CAE090060, 2007-Ohio-3928, ¶20. Accordingly, appellant's sole assignment of error is overruled.

{¶17} Judgment affirmed.

BRESSLER, P.J., and HENDRICKSON, J., concur.

[Cite as *Countrywide Home Loans, Inc. v. Reece*, 2011-Ohio-541.]