[Cite as *JP Morgan Chase Bank, N.A. v. Johnson*, 2015-Ohio-1939.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY

JP MORGAN CHASE BANK, N.A., et al.	:	Appellate Case No. 2014-CA-27
Plaintiffs-Appellees	:	Trial Court Case No. 2013-CV-8
v.	:	(Criminal Appeal from Common Pleas Court)
NICHOLAS JOHNSON, et al.	:	
Defendants-Appellants	:	

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O P I N I O N

Rendered on the 15th day of May, 2015.

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Defendants-Appellants

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HALL, J.

{¶ 1} Nicholas and Kimberly Johnson appeal pro se from the judgment of foreclosure entered against them on the complaint filed by JPMorgan Chase Bank, N.A.

Finding no error, we affirm.

I. BACKGROUND

{¶ 2} In 2002, Janet and Robert Johnson executed a promissory note that was secured by a mortgage on a house located in Mechanicsburg, Ohio. Janet and Robert died, and in 2008, Nicholas and Kimberly inherited the property. They moved into the house and started making the monthly mortgage payments. They stopped making payments in April 2011.

{¶ 3} In January 2013, JPMorgan filed suit against the Johnsons, seeking to foreclose on the property. A year later, JPMorgan, after withdrawing its first motion for summary judgment, filed a renewed motion for summary judgment. The mortgage was assigned to Federal National Mortgage Association (Fannie Mae) in March 2014, and Fannie Mae was substituted as the plaintiff in this case. The trial court granted the summary-judgment motion in July and the following month entered judgment against the Johnsons.

{¶ 4} The Johnsons appealed.

II. ANALYSIS

{¶ 5} The Johnsons' pro se brief presents no assignments of error. It relates the facts that lead to the foreclosure action and concludes with this request: "We are asking the court to reverse this decision [the trial court's grant of summary judgment] and give us the chance to at least speak/work with the lender of record and try to save our home, by procuring a new loan or reinstating this loan with Chase or whomever holds the note."

{¶ 6} Rule 16 of the Ohio Rules of Appellate Procedure requires an appellant's brief to include a "statement of the assignments of error presented for review, with

reference to the place in the record where each error is reflected." App.R. 16(A)(3). This rule also requires several other things missing from the Johnsons' brief: a table of contents, with page references, App.R. 16(A)(1); a table of cases, App.R. 16(A)(2); a statement of the case or statement of the facts relevant to the assignment of errors, App.R. 16(A)(5) and (6); and an "argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies," App.R. 16(A)(7). Appellate Rule 12 provides that a court of appeals may "disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App. R. 16(A)." App.R. 12(A)(2).

{¶ 7} "Litigants who choose to proceed pro se," we have said, "are presumed to know the law and correct procedure, and are held to the same standard as other litigants." *Dunina v. Stemple,* 2d Dist. Miami No. 2007 CA 9, 2007-Ohio-4719, ¶ 3; *see also Am. Gen. Fin. Servs., Inc. v. Mosbaugh*, 2d Dist. Montgomery No. 24575, 2011-Ohio-5557, ¶ 12 (quoting the same); *Cincinnati Ins. Co. v. Jacob*, 2d Dist. Montgomery No. 25407, 2013-Ohio-2573, ¶ 38 (quoting the same). What we have said in those cases applies equally here: "We cannot give Appellant special treatment in this appeal and craft arguments and assignments of error that he has failed to create himself." *Mosbaugh* at ¶ 12; *see also Jacob* at ¶ 38 (quoting the same).

{¶ 8} Still, in cases in which it was clear what issue the appellant was raising, we have considered that issue. *E.g.*, *Mosbaugh* at ¶ 12 (considering "whether any error is

indicated in the judgment entry * * * on appeal" where it was "apparent from the record that only one issue could have been presented in this appeal"); *Jacob* at ¶ 38 (following *Mosbaugh*'s lead and doing the same). Here, whether the trial court erred by entering summary judgment is the only issue that could have been raised, and we will consider it. *Compare Jacob* at ¶ 38 (saying that "the only issue that could have been raised is whether the trial court erred in rendering summary judgment on behalf of [the plaintiff]").

{¶ 9} "We review summary judgment decisions de novo, which means that we apply the same standards as the trial court." (Citations omitted.) *GNFH, Inc. v. W. Am. Ins. Co.,* 172 Ohio App.3d 127, 2007-Ohio-2722, 873 N.E.2d 345, ¶ 16 (2d Dist.). "A trial court may grant a moving party summary judgment pursuant to Civ.R. 56 if there are no genuine issues of material fact remaining to be litigated, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to only one conclusion, and that conclusion is adverse to the nonmoving party, who is entitled to have the evidence construed most strongly in his favor." (Citation omitted.) *Smith v. Five Rivers MetroParks,* 134 Ohio App.3d 754, 760, 732 N.E.2d 422 (2d Dist.1999).

{¶ 10} To properly support a motion for summary judgment in a foreclosure action, a plaintiff must present evidentiary-quality materials showing (1) that the movant is the holder of the note or mortgage, or is a party entitled to enforce the instrument; (2) the chain of assignments and transfers, if the movant is not the original mortgagee; (3) that the mortgagor is in default; (4) that all conditions precedent have been met; and (5) the amount of principal and interest due. *JP Morgan Chase Bank, N.A. v. Massey,* 2d Dist. Montgomery No. 25459, 2013-Ohio-5620, ¶ 20. An affidavit stating that the plaintiff is the owner of the note and mortgage and that the loan is in default generally is sufficient to

permit a trial court to enter summary judgment and order foreclosure, unless there is evidence that controverts the averments. *See Bank One v. Swartz,* 9th Dist. Lorain No. 03CA008308, 2004-Ohio-1986, ¶ 14, citing *Yorkwood S. & L Assoc, v. Jacobs,* 2d Dist. Montgomery No. 11998, 1990 WL 107840 (Jul. 31, 1990).

{¶ 11} Here, incorporated into the affidavit in support of summary judgment are copies of the promissory note and the mortgage to Coldwell Banker Mortgage. Also incorporated is the Assignment of Mortgage from Coldwell to Chase Home Finance LLC and a Certificate of Merger stating that Chase Home Finance merged with and into JPMorgan Chase Bank, N.A. The affidavit further incorporates the notice of default sent to the Johnsons and the Johnsons' payment history from November 2007 to September 8, 2011. The affidavit states that the Johnsons failed to make the payment due on April 1, 2011, that they have not made the loan current, and that the entire balance is owed. The Johnsons offered no evidence contradicting the averments that the loan is in default and that the entire balance is now owed. In their responses to requests for admission, they admitted receiving notice of default. Although they later submitted affidavits which suggested they did not recall receiving a notice of default or acceleration, the trial court correctly determined that the Johnsons' responses to the requests for admissions conclusively established that the Johnsons received notice of default in the absence of the court allowing withdrawal of the admitted facts. Accordingly, they have not raised a genuine issue of material fact in this regard.

{¶ 12} The affidavit and supporting documentation are sufficient to support the motion for summary judgment. The trial court carefully analyzed the motion and the supporting and opposing pleadings. We find no error in the decision to render summary

judgment for Fannie Mae.

{¶ 13} The trial court's judgment is affirmed.

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FROELICH, P.J., and WELBAUM, J., concur.

Copies mailed to:

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