[Cite as *Bank of Am., N.A. v. Sullivan*, 2015-Ohio-2736.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY

BANK OF AMERICA, N.A.,

PLAINTIFF-APPELLEE,

v. **CASE NO. 1-15-09**

WILLIAM CHAD SULLIVAN,

DEFENDANT-APPELLANT,
-and-

O P I N I O N

TREASURER OF ALLEN COUNTY,

DEFENDANT-APPELLEE.

Appeal from Allen County Common Pleas Court
Trial Court No. CV20140743

Judgment Affirmed

Date of Decision: July 6, 2015

APPEARANCES:

Brian D. Thomas **for Appellant**

Rachel M. Kuhn **for Appellee, Bank of America, N.A.**

PRESTON, J.

{¶1} Defendant-appellant, William C. Sullivan ("Sullivan"), appeals the January 21, 2015 judgment of the Allen County Court of Common Pleas granting default judgment in favor of plaintiff-appellee, Bank of America, N.A. ("Bank of America"). For the reasons that follow, we affirm.

{¶2} On December 4, 2014, Bank of America filed a foreclosure complaint against Sullivan, his unknown spouse (if any), and the Allen County Treasurer. (Doc. No. 1). In its complaint, Bank of America requested a judgment in the amount of $164,530.58 plus interest on the outstanding principal balance at a rate of five percent per annum from June 1, 2014. (*Id.*). Sullivan was served the complaint by personal service on December 7, 2014. (Doc. No. 6).

{¶3} On December 10, 2014, the Allen County Treasurer filed an answer to the complaint. (Doc. No. 8). Neither Sullivan nor any unknown spouse of Sullivan filed an answer to the complaint.

{¶4} Bank of America filed a motion for default judgment on January 20, 2015. (Doc. No. 11). The trial court granted Bank of America's motion for default judgment on January 21, 2015. (Doc. No. 14).

{¶5} On February 4, 2015, Sullivan entered an appearance through counsel for the first time and filed a "motion for reconsideration of [the trial] court's January 21, 2015 judgment entry." (Doc. Nos. 15, 16).[1]

{¶6} Sullivan filed his notice of appeal on February 19, 2015. (Doc. No. 18). Sullivan raises one assignment of error.

Assignment of Error

> **The Trial Court Abused its Discretion by Granting Bank of America's Motion for Default Judgment, as William Sullivan was Not Afforded an Adequate Opportunity to Respond, Pursuant to Allen County Court of Common Pleas Local Rule 3.03.**

{¶7} In his assignment of error, Sullivan argues that the trial court abused its discretion by granting Bank of America's motion for default judgment one day after it filed its motion in contravention to Allen County Court of Common Pleas Loc.R. 3.03, which provides a 14-day period for a party against whom a motion is filed to respond. In particular, Sullivan argues that the trial court's ruling on Bank of America's motion for default judgment one day after filing the motion effectively foreclosed his ability to appear and respond to the motion.

{¶8} "We review a trial court's decision to grant a motion for default judgment under an abuse of discretion standard." *Wells Fargo Bank, N.A. v. Thompson*, 3d Dist. Hancock No. 5-12-200, 2013-Ohio-644, ¶ 8, citing *Fitworks*

[1] The trial court did not rule on Sullivan's motion for reconsideration.

Holding, LLC v. Sciranko, 8th Dist. Cuyahoga No. 90593, 2008-Ohio-4861, ¶ 4, citing *Discover Bank v. Hicks*, 4th Dist. Washington No. 06CA55, 2007-Ohio-4448, ¶ 6. An abuse of discretion suggests the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶9} With respect to the entry of a default judgment, Civ.R. 55(A) provides:

> When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing or orally to the court therefor; but no judgment by default shall be entered against a minor or an incompetent person unless represented in the action by a guardian or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least seven days prior to the hearing on such application.

"A default judgment is a judgment entered against a defendant who has failed to timely plead in response to an affirmative pleading." *Ohio Valley Radiology*

Assoc., Inc. v. Ohio Valley Hosp. Assn., 28 Ohio St.3d 118, 121 (1986), citing *McCabe v. Tom*, 35 Ohio App. 73 (6th Dist.1929).

> "A default by a defendant * * * arises only when the defendant has failed to contest the allegations raised in the complaint and it is thus proper to render a default judgment against the defendant as liability has been admitted or 'confessed' by the omission of statements refuting the plaintiff's claims."

Id., quoting *Resse v. Proppe*, 3 Ohio App.3d 103, 105 (8th Dist.1981). "It is only when the party against whom a claim is sought fails to contest the opposing party's allegations by either pleading or 'otherwise defend[ing]' that a default arises." *Id.*

{¶10} Bank of America filed its foreclosure complaint against Sullivan on December 4, 2014. Sullivan was served the complaint by personal service on December 7, 2014. Under Civ.R. 12, Sullivan was required to "serve his answer within twenty-eight days after service of the summons and complaint upon him." Civ.R. 12(A)(1). On January 20, 2015, at which time Sullivan neither answered the allegations in Bank of America's complaint nor entered an appearance in the action, Bank of America filed a motion for default judgment. *See Dan Eynon Ents. v. Mid-Am. Diesel*, 12th Dist. Butler No. CA2014-06-140, 2015-Ohio-1089, ¶ 10 ("When a defendant fails to answer according to Civ.R. 12(A), the plaintiff

may move for default judgment."), citing Civ.R. 55. On January 21, 2015, the trial court granted Bank of America's motion for default judgment.

{¶11} Sullivan argues that the trial court erred by granting Bank of America's motion for default judgment in contravention to Allen County Court of Common Pleas Loc.R. 3.03, titled "Hearings on Motions Other than Summary Judgment," which provides:

> All motions shall be accompanied by a brief stating the grounds thereof and citing the authorities relied upon. The opposing counsel or party may file an answer brief by the fourteenth day after the day on which the motion was filed. Thereafter, the motion shall be deemed submitted to the judge to whom the case is assigned. Unless ordered by the Court, oral argument will not be allowed accept [sic] on leave of the trial judge upon written request by a party prior to a submission and the time of hearing and length of such argument shall be fixed by said judge.
>
> This rule shall apply to all motions, including motions for new trial, motions for judgment notwithstanding the verdict, and motions for reconsideration except as otherwise provided herein.

Loc.R. 3.03.

{¶12} We hold that the trial court did not abuse its discretion by granting Bank of America's motion the day after it was filed because Allen County Court of Common Pleas Loc.R. 3.03 does not apply to a defendant who has not appeared in an action prior to the proper filing of a motion for default judgment.

{¶13} Although Sullivan does not allege that the trial court erred in granting Bank of America' motion for default judgment under Civ.R. 55, Civ.R. 55 is insightful to our analysis. In particular, Civ.R. 55(A) provides that a defendant shall receive written notice of the application for default judgment at least seven days prior to the hearing on that application. However, because a defendant who does not appear in an action admits the allegations in a complaint, that defendant is not protected by the notice and hearing requirements of Civ.R. 55(A). *See Hover v. O'Hara*, 12th Dist. Warren No. CA2006-06-077, 2007-Ohio-3614, ¶ 12 (under Civ.R. 55(A), a party who has not appeared prior to the filing of a motion for default judgment is not entitled to the seven-day notice of the application), citing *Ohio Valley Radiology Assoc*., 28 Ohio St.3d at 121; *L.S. Industries v. Coe*, 9th Dist. Summit No. 22603, 2005-Ohio-6736, ¶ 17 (the notice and hearing requirements of Civ.R. 55(A) were not applicable to the defendant because the defendant failed to answer or appear prior to the filing of the plaintiff's motion for default judgment). Therefore, the Supreme Court of Ohio has concluded that, because a defendant effectively admits the allegations in a

complaint by failing to appear in an action and because that defendant is not entitled to the hearing and notice requirements of Civ.R. 55(A) as a result of that failure to appear, default judgment may be entered without notice. *See Wells Fargo Bank, N.A. v. Deel*, 9th Dist. Summit No. 25876, 2012-Ohio-3782, ¶ 10 ("The Ohio Supreme Court has stated that '[i]f the defending party has failed to appear in the action, a default judgment may be entered without notice.'"), quoting *Ohio Valley Radiology Assoc.* at 120.

{¶14} No fewer than two Ohio Courts of Appeals have concluded that, because a default judgment may be entered without notice against a defendant who failed to appear in an action, a local rule setting a deadline for a party's response to a motion is not applicable to that defendant. *See Hover* at ¶ 13 ("Where there is no requirement that appellant be provided notice of the filing of the default motion, a local rule that sets the deadlines for a party's response to a filed motion is simply not applicable to this situation."), citing *L.S. Industries* at ¶ 11-13 ("local rule providing for response time after receipt of motion is inapplicable in cases where default judgment is appropriate and defaulting party has not entered appearance in case at time default motion filed") and *Davis v. Immediate Medical Services, Inc.*, 80 Ohio St.3d 10, 15 (1997) ("defendant's right to force plaintiff to prove claim depends upon defendant's compliance with Civil Rules and timely filing of an answer to the complaint; otherwise, sanctions for noncompliance

would lose their deterrent effect"). In making that conclusion, these courts reasoned that default judgment without notice is appropriate because "no response can reasonably be anticipated" and waiting for a party who has not appeared in an action to respond circumvents the canons of justice and judicial economy. *See L.S. Industries* at ¶ 14, 17. *See also Hover* at ¶ 13.

{¶15} Sullivan effectively admitted the allegations in the complaint because he neither answered the allegations in the complaint nor appeared prior to the filing of Bank of America's motion for default judgment. Thus, Sullivan was not entitled to the notice and hearing requirements of Civ.R. 55(A), and a default judgment could be entered against him without notice. As such, the 14-day period provided in Allen County Court of Common Pleas Loc.R. 3.03 is not applicable to him, and the trial court was not required to allow Sullivan 14 days to respond to Bank of America's motion for default judgment prior to ruling on that motion.

{¶16} Moreover, Sullivan's argument that the trial court's ruling on Bank of America's motion for default judgment foreclosed him from appearing and responding to the motion is meritless. Indeed, Sullivan was not foreclosed from filing a motion for relief from judgment under Civ.R. 60(B) if he had a valid defense to Bank of America's motion for default judgment. *L.S. Industries* at ¶ 14 ("In the case where a defendant has a valid defense to default judgment, he is not foreclosed from filing a motion for relief from judgment pursuant to Civ.R.

60(B).”). Sullivan made the tactical decision not to pursue that avenue for relief. Instead, Sullivan filed a motion for reconsideration of the trial court’s entry granting default judgment in favor of Bank of America. “[M]otions for reconsideration of a final judgment in the trial court are a nullity.” *Miller v. Cass*, 3d Dist. Crawford No. 3-09-15, 2010-Ohio-1930, ¶ 44, quoting *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 379 (1981). The trial court’s January 21, 2015 judgment entry granting foreclosure is a final, appealable order. *See Estate of Small v. Bank of New York*, 3d Dist. Van Wert No. 15-13-10, 2014-Ohio-3546, ¶ 26, citing *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, ¶ 26. Accordingly, Sullivan’s motion for reconsideration is a nullity.

{¶17} Therefore, the trial court did not abuse its discretion in granting Bank of America’s motion for default judgment. Sullivan’s assignment of error is overruled.

{¶18} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed

ROGERS, P.J. and SHAW, J., concur.

/jlr