

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BAC HOME LOANS SERVICING, LP	:	JUDGES:
	:	Hon. Julie A. Edwards, P.J.
Plaintiff-Appellee	:	Hon. W. Scott Gwin, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	Case No. 2010-CA-05
JACK R. MOWERY, ET AL	:	2010-CA-07
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Holmes County Court of Common Pleas Court, Case No. 10-CV-011

JUDGMENT: Vacated and Remanded

DATE OF JUDGMENT ENTRY: November 16, 2010

APPEARANCES:

For Plaintiff-Appellee

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50 W. Broad Street, Suite 1200
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For Defendant-Appellant

STEVE KNOWLING
164 East Jackson Street
Millersburg, OH 44654

Gwin, J.

{¶1} In Holmes App. No. 10-CA-005, defendant-appellant Lisa Mowery appeals a summary judgment of the Court of Common Pleas of Holmes County, Ohio, entered in favor of plaintiff-appellee BAC Homes Loans Servicing, LP. In Holmes App. No. 10-CA-007, defendant-appellant Jack Mowery also appeals the same order. Appellants Lisa and Jack Mowery are husband and wife. Each assigns an identical error to the trial court:

{¶2} “I. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT TO APPELLEE BAC HOME LOANS SERVICING LP BY NOT COMPLYING WITH THE LOCAL COURT RULES, THE OHIO RULES OF CIVIL PROCEDURE, OR THE REQUIREMENTS OF DUE PROCESS.”

{¶3} The two appeals will be consolidated for purposes of this opinion. The record indicates appellee filed a complaint in foreclosure against the appellants and the Holmes County Treasurer on January 19, 2010. Both appellants filed answers with affirmative defenses. On March 9, 2010, appellee filed a motion for summary judgment, and as required by Holmes Common Pleas Loc. R. 5, submitted a proposed judgment entry with the motion. The court did not enter a pretrial order as required by the local rules. The trial court did not set the matter for an oral or non-oral hearing, and did not set a cut-off date by which appellants could file any responses to the motion for summary judgment. Instead, one day after the motion was filed, on March 10, 2010, the trial court granted summary judgment in favor of appellee.

{¶4} Civ. R. 56 states in pertinent part:

{¶5} “(C) motion and proceedings

{¶6} “The motion shall be served at least 14 days before the time fixed for hearing. The adverse party, prior to the day of hearing may serve and file opposing affidavits.***”

{¶7} We agree with appellants the trial court failed to give them the opportunity to respond to appellee’s motion.

{¶8} We find the trial court erred in failing to accord the parties due process of law, and in failing to comply with the Civil and Local Rules. Accordingly, we vacate the trial court’s judgment and remand the matter for further proceedings in accord with law and consistent with this opinion.

By Gwin, J.,
Edwards, P.J., and
Wise, J., concur

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BAC HOME LOANS SERVICING, LP	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
JACK R. MOWERY	:	
	:	
	:	
Defendant-Appellant	:	CASE NO. 2010-CA-05

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Holmes County, Ohio, is vacated, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion. Costs to appellee.

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. JOHN W. WISE

