

[Cite as *Flagstar Bank, FSB v. Moore*, 2009-Ohio-6222.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92882

FLAGSTAR BANK, FSB

PLAINTIFF-APPELLEE

vs.

ROOSEVELT MOORE, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:
REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-611006

BEFORE: McMonagle, J., Cooney, A.J., and Blackmon, J.

RELEASED: November 25, 2009

JOURNALIZED: November 25, 2009

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ON RECONSIDERATION¹

¹ The original announcement of decision, *Flagstar Bank, FSB v. Moore*,

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendants-appellants Roosevelt Moore and Rick Braxton appeal the February 18 and 27, 2009 trial court judgments, which collectively overruled their objections to the magistrate's decision, adopted the magistrate's decision, awarded a monetary judgment in favor of the plaintiff, and ordered a decree of foreclosure in favor of the plaintiff. We remand for further proceedings consistent with this opinion.

{¶ 2} In December 2006, Sovereign Bank, FSB, initiated this foreclosure action against Moore, Braxton, and other defendants.² Flagstar Bank, FSB, was later substituted as the plaintiff. The complaint sought a monetary judgment against Moore only.³ The bank also sought a decree of foreclosure and requested that the other defendants answer and set forth their claims to the subject premises.

{¶ 3} Moore and Braxton jointly answered the bank's complaint and alleged several affirmative defenses. Wilder also appeared and set forth a

Cuyahoga App. No. 92882, 2009-Ohio-5703, released October 29, 2009, is hereby vacated. An opinion addressing the merits will be issued after this limited remand.

²Those defendants were: (1) Jane Doe (the unknown spouse of Moore); (2) Jane Doe (the unknown spouse of Braxton); (3) the Department of Revitalization of Shaker Heights; (4) Manorcare, Inc.; and (5) Irma J. Wilder (she was named as "Wilber" in the complaint, but a correspondence from her stated that her last name is "Wilder").

³Attached to the complaint were copies of the note and mortgage. The note was executed by Moore; the mortgage was executed by Moore and Braxton as "borrowers."

claim to the property. In August 2007, the bank filed a motion for default judgment against defendants Jane Doe (the unknown spouse of Braxton), the Department of Revitalization of Shaker Heights, and Manorcare, Inc. The court granted the default motion against “defendants Martin Schreiber and Tina Schreiber.” In September 2007, the bank filed a motion for summary judgment against Moore and Braxton, which they opposed.

{¶ 4} The court subsequently “corrected” its previous judgment on the default motion to reflect that “defendants Martin Schreiber and Tina Schreiber filed an answer.” In that same entry, the court granted the bank’s summary judgment motion and requested the magistrate issue a decision making specific findings as to the rights and liabilities of the parties.

{¶ 5} The magistrate filed her decision, which granted the bank’s motions for summary judgment and default judgment. The default was taken against the two Jane Does, the Department of Revitalization of Shaker Heights and Manorcare, Inc. Moore and Braxton filed objections.

{¶ 6} The court overruled the objections and adopted the magistrate’s decision in February 2008. The court found that there was no just cause for delay and Moore and Braxton appealed. This court dismissed for lack of a final appealable order. *Flagstar Bank, FSB v. Moore*, Cuyahoga App. No. 91145, 2008-Ohio-6163. Specifically, this court noted that, “[t]o constitute a final appealable order, the trial court’s journal entry must be a separate and

distinct instrument from that of the magistrate's order and must grant relief on the issues originally submitted to the court." *Id.* at ¶1 (citations omitted.)

{¶ 7} On remand, the court issued two judgments in February 2009 that collectively overruled Moore's and Braxton's objections to the magistrate's decision, adopted the magistrate's decision, awarded a monetary judgment in favor of the bank, and ordered a decree of foreclosure in favor of the bank. Moore and Braxton appeal from these judgments.

{¶ 8} As already stated, in order to have a final appealable order, the trial court, separate and apart from the magistrate's decision, "must grant relief on the issues originally submitted to the court." *Flagstar Bank, FSB*, at ¶1. Although the court's judgments on remand granted relief to the bank on its claim against Moore, it did not grant relief relative to the remaining defendants. The magistrate's decision addressed the remaining defendants (except Braxton), but "[a] magistrate lacks authority to issue 'orders' under Civ.R. 53(E),"⁴ and therefore, the court's language in its February 27, 2009 judgment that it "adopts the magistrate's decision, dated October 25, 2007, attached hereto and incorporated herein," without stating its own judgment

⁴*In re Jerry A. Zinni*, Cuyahoga App. No. 89599, 2008-Ohio-581, ¶21, citing *Barker v. Barker* (1997), 118 Ohio App.3d 706, 693 N.E.2d 1164.

against the remaining defendants, is insufficient to create a final appealable order.⁵

{¶ 9} Accordingly, this appeal is remanded to the trial court until December 14, 2009 for further proceedings consistent with this opinion. After remand, the court will reset the case for oral argument for the earliest feasible date and proceed to determine the matter on its merits.

It is ordered that appellees and appellants equally share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

CHRISTINE T. McMONAGLE, JUDGE

COLLEEN CONWAY COONEY, A.J., and
PATRICIA A. BLACKMON, J., CONCUR

⁵Moreover, the court's prior judgment ruling on the bank's motion for default judgment did not concern the defendants named in this case.