[Cite as *U.S. Bank, N.A. v. Wiggins*, 2015-Ohio-1145.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101510

U.S. BANK NATIONAL ASSOCIATION

PLAINTIFF-APPELLEE

vs.

ZINA P. WIGGINS, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-815353

BEFORE: Blackmon, J., Celebrezze, A.J., and McCormack, J.

RELEASED AND JOURNALIZED: March 26, 2015

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PATRICIA ANN BLACKMON, J.:

{¶1} Appellant Zina P. Wiggins, ("Wiggins") appeals the trial court's decision granting summary judgment in the foreclosure action brought by U.S Bank National Association ("U.S. Bank"). Wiggins assigns the following errors for our review:

> I. The trial court erred in granting summary judgment for plaintiff-appellee, U.S. Bank. Where a plaintiff fails to name an interest owner, the plaintiff cannot foreclose that interest. [sic]
>
> II. The trial court erred in granting summary judgment for plaintiff-appellee, U.S. Bank. Where the plaintiff cannot establish the existence of an actual controversy, the Court lack jurisdiction over plaintiff's claims. [sic]
>
> III. The trial court erred in granting summary judgment for plaintiff-appellee, U.S. Bank. Where the plaintiff failed to present an actual controversy to the court cannot establish the existence of an actual controversy, the plaintiff lacks standing. [sic]

{¶2} Having reviewed the record and pertinent law, we affirm the trial court's decision. The apposite facts follow.

{¶3} On February 10, 2006, Florence Catledge, now deceased, signed a fixed-rate note in favor of Wells Fargo Bank, N.A. ("Wells Fargo") in the amount of $92,700 ("Note"). That same day, as security for the Note, Florence Catledge and Joe Catledge signed a mortgage ("Mortgage"), naming Wells Fargo as lender for the residential property located at 3264 East 142nd Street, Cleveland, Ohio 44120.

{¶4} On February 17, 2012, Florence Catledge transferred the property to daughter, Wiggins, via a deed. On April 16, 2012, Wells Fargo assigned the Mortgage to U.S. Bank. On February 28, 2013, Florence Catledge passed away. After Wiggins became the titleholder of the subject property, she never assumed the note, loan modification, or mortgage by any written agreement. According to the record, no probate estate was opened following Florence Catledge's death.

{¶5} On October 10, 2013, U.S. Bank filed a foreclosure complaint alleging that the Note and Mortgage were in default under the term of the agreements. The complaint named Wiggins, her husband, Marvin Wiggins, and the deceased Florence Catledge as defendants. In the complaint, U.S. Bank indicated that it was not seeking a personal judgment against decedent Florence Catledge, but only attempting to enforce its security interest.

{¶6} On November 18, 2013, the Wigginses filed a joint answer and request for mediation. The magistrate referred the matter for mediation, but mediation was ultimately unsuccessful.

{¶7} On March 26, 2014, U.S. Bank filed a motion for summary judgment. In support of its motion, U.S. Bank attached the affidavit of Tarra S. Singletary ("Singletary"), the Vice President of Loan Documentation with Wells Fargo as servicing agent for U.S. Bank. Singletary averred that she had reviewed the business records that the decedent Florence Catledge executed in the original amount of $92,700. Singletary also averred that at the time of the filing of the complaint, U.S. Bank was in possession of the Note and Mortgage that had been duly indorsed.

{¶8} Singletary further averred that the account was in default; the last payment having been received on June 3, 2013, and applied to the April 2013 payment. Singletary averred that because no subsequent payments have been made to bring the loan current, U.S. Bank has accelerated the account, pursuant to the terms of the loan, making the entire balance becoming due. Singletary finally averred that as a result of the acceleration of the debt, U.S. Bank was owed a total of $93,704.02.

{¶9} On May 9, 2014, following the Wigginses' failure to oppose the motion, the magistrate issued a decision granting U.S. Bank's motion for summary judgment. The

Wigginses did not file any objections to the magistrate's decision. On June 6, 2014, the trial court issued an order adopting the magistrate's decision.

Summary Judgment

{¶10} We will address Wiggins's assigned errors collectively because of their common assertion that the trial court erred when it granted summary judgment to U.S. Bank.

{¶11} We review an appeal from summary judgment under a de novo standard of review. *Baiko v. Mays*, 140 Ohio App.3d 1, 746 N.E.2d 618 (8th Dist.2000), citing *Smiddy v. The Wedding Party, Inc.*, 30 Ohio St.3d 35, 506 N.E.2d 212 (1987); *N.E. Ohio Apt. Assn. v. Cuyahoga Cty. Bd. of Commrs.*, 121 Ohio App.3d 188, 699 N.E.2d 534 (8th Dist.1997). Accordingly, we afford no deference to the trial court's decision, and independently review the record to determine whether summary judgment is appropriate.

{¶12} Under Civ.R. 56, summary judgment is appropriate when (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) when viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion that is adverse to the nonmoving party.

{¶13} The moving party carries an initial burden of setting forth specific facts that demonstrate his or her entitlement to summary judgment. *Brigadier Constr. Servs. v. JLP Glass Prods.*, 8th Dist. Cuyahoga No. 98672, 2013-Ohio-825, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). If the movant fails to meet this burden, summary judgment is not appropriate; if the movant does meet this burden, summary judgment will be appropriate only if the nonmovant fails to establish the existence of a genuine issue of material fact. *Id*.; *Dresher* at 293.

{¶14} In the instant case, Wiggins argues that the trial court erred in granting summary judgment to U.S. Bank, because the bank failed to name her mother, decedent Florence Catledge, or her mother's estate as a party to the action. Wiggins contends that the trial court lacked jurisdiction because of U.S. Bank's failure to name decedent Florence Catledge.

{¶15} It is a generally accepted principle that a decedent may not be a party to an action. *JPMorgan Chase Bank, N.A. v. Taylor*, 2d Dist. Montgomery No. 25568, 2013-Ohio-2760, citing *Hicks v. Estate of Mulvaney*, 2d Dist. Montgomery No. 22721, 2008-Ohio-4391, ¶ 26. A deceased's estate is not required to be named as a party when the estate had no interest in the foreclosure action. *Id*., citing *James B. Nutter & Co. v. Phillips*, 2013-Ohio-184, 986 N.E.2d 579 ¶ 7.

{¶16} Initially, we note that Wiggins presented new evidence that an estate was opened in probate court for the decedent Florence Catledge. Even if evidence had been presented that an estate had been opened for Florence Catledge, the estate would not have owned the property in question, because Catledge had transferred the subject property to Wiggins prior to death.

{¶17} Further, the record reveals that U.S. Bank was not seeking to hold Florence Catledge or the estate, if one had been opened, liable for the debt under the note. A mortgagee is not required to make a deceased mortgagor's estate a party to a foreclosure action unless it seeks to hold the estate liable for the debt. *Fifth Third Mtge. Co. v. Perry*, 4th Dist. Pickaway No. 12CA13, 2013-Ohio-3308, citing *Chaco Credit Union, Inc. v. Perry*, 12th Dist. Butler No. CA2011-05-089, 2012-Ohio-1123, ¶ 12. Put another way, it is only when the mortgagee seeks a money judgment that the estate must be made a party to the action. *Id*.

{¶18} Here, a review of the complaint in foreclosure clearly indicates that U.S. Bank was not seeking to hold Florence Catledge or her unopened estate liable for the debt. Rather, U.S.

Bank by its complaint sought a finding that its mortgage is a valid lien upon the property, that the mortgage is in default, that the mortgage be foreclosed, the property sold, and the proceeds distributed. As such, U.S. Bank had no obligation to include Florence Catledge or the estate, if one had been opened, as parties to the action in foreclosure.

{¶19} Wiggins also argues that U.S. Bank lacked standing at the time it filed the complaint.

{¶20} The current holder of the note and mortgage is the real party in interest in a foreclosure action. *Deutsche Bank Trust Co. v. Newble*, 8th Dist. Cuyahoga No. 99372, 2013-Ohio-5019, citing *Wells Fargo Bank, N.A. v. Stovall*, 8th Dist. Cuyahoga No. 91802, 2010-Ohio-236. A party that fails to establish an interest in a note or mortgage at the time it files suit has no standing to invoke the jurisdiction of the court. *ABN Amro Mtge. Group, Inc. v. Evans*, 8th Dist. Cuyahoga No. 98777, 2013-Ohio-1557, citing *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 28.

{¶21} In the instant case, the record established that U.S. Bank was the real party in interest at the time the complaint for foreclosure was filed. As previously noted, U.S. Bank filed the foreclosure complaint on October 10, 2013. U.S. Bank attached, among other things, exhibit C, an "Assignment of Mortgage" dated April 16, 2012. The assignment reflects that Wells Fargo assigned and transferred all interest in the note and mortgage to U.S. Bank. As such, U.S. Bank had standing to bring the instant foreclosure action. Consequently, we find Wiggins's assertion without merit. Accordingly, we overruled Wiggins's assigned errors.

{¶22} Judgment affirmed.

It is ordered that appellee recover from appellants 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.

PATRICIA ANN BLACKMON, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
TIM McCORMACK, J., CONCUR