**[Cite as *Wells Fargo Bank, N.A. v. McGowan*, 2015-Ohio-1544.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
**No. 101779**

## WELLS FARGO BANK, N.A.

PLAINTIFF-APPELLEE

vs.

## AMY R. McGOWAN, ET AL.

DEFENDANTS-APPELLANTS

**JUDGMENT:**
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-10-727574

**BEFORE:** Blackmon, J., Keough, P.J., and Laster Mays, J.
**RELEASED AND JOURNALIZED:** April 23, 2015

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PATRICIA ANN BLACKMON, J.:

**{¶1}** Appellant Amy R. McGowan ("McGowan") appeals from the trial court's Order of Confirmation and Distribution ("Confirmation Order") rendered after granting summary judgment, by agreement of the parties, to appellee Wells Fargo Bank, N.A. ("Wells Fargo") in a foreclosure action. McGowan assigns the following error for our review:

> The trial court erred to the prejudice of the appellant by denying her motion to set aside decree of foreclosure and notice of sale, pursuant to the void nature of the judgment entry, Rule 60(B) of the Ohio Rules of Civil Procedure, Ohio law, and equity, despite having agreed to the jurisdictional and related issues in the denial of the dispositive motion and notwithstanding a void and unenforceable agreement between the parties.

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

**{¶3}** On May 25, 2010, Wells Fargo, successor by merger to Wells Fargo Home Mortgage, Inc. ("WFHMI") filed a complaint against McGowan, John Doe (McGowan's unknown spouse) and Dominic Rocci regarding a promissory note and mortgage relating to a property located at 4302 Swaffield Road, South Euclid, Ohio. Rocci was the previous owner who transferred property to McGowan and failed to list her marital status.

**{¶4}** On July 2, 2010, McGowan answered the complaint. Thereafter, the matter proceeded to mediation, and on January 27, 2012, the trial court terminated mediation.

**{¶5}** On October 18, 2012, Wells Fargo filed a motion for summary judgment. On November 16, 2012, McGowan filed her motion in opposition. On May 29, 2013, by

agreement of the parties, the magistrate issued a decision granting summary judgment on Wells Fargo's claim to foreclose on the mortgage and ordered foreclosure of the property. Pursuant to the agreement of the parties, the magistrate ordered reformation of the deed from Rocci to McGowan. Finally, the magistrate did not award a money judgment against McGowan personally. On July 12, 2013, the trial court adopted the magistrate's decision.

**{¶6}** On November 16, 2013, the trial court entered an order of sale. On January 9, 2014, McGowan filed a motion to set aside the decree of foreclosure and to stay execution of judgment. In the motion, she argued that Wells Fargo did not have standing to foreclose on the property. On January 17, 2014, the trial court denied the motion and issued a journal entry stating in pertinent part that "[t]he parties settled the case and the motion does not address the settlement. Moreover, the plaintiff had standing to file the case."

**{¶7}** On January 29, 2014, the trial court stayed the matter after receiving notice that McGowan had filed for Chapter 13 bankruptcy protection. On April 25, 2014, Wells Fargo filed a notice that McGowan's bankruptcy case had been dismissed.

**{¶8}** On June 30, 2014, the subject property was sold at the sheriff's sale. On July 3, 2014, the order of sale was returned. On July 10, 2014, the trial court issued a Confirmation Order. On August 7, 2014, McGowan filed her notice of appeal.

## Confirmation Order

**{¶9}** As noted at the outset, McGowan filed a notice of appeal from the trial court's order confirming the order of sale. In this respect, we note that a trial court has discretion to confirm or refuse to confirm a judicial sale. *Ohio Sav. Bank v. Ambrose*, 56 Ohio St.3d 53, 563 N.E.2d 1388 (1990). "If the court, after examining the proceedings taken by the officers, finds the sale was made in conformance with R.C. 2329.01 to 2329.61, inclusive, it shall confirm the sale." *Id*. at 55, citing R.C. 2329.31. "While the statute speaks in mandatory terms, it has long been recognized that the trial court has discretion to grant or deny confirmation." *Id*. Therefore, the court's determination will not be reversed absent an abuse of that discretion. Such abuse is connoted by an arbitrary, unreasonable, or unconscionable decision. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

**{¶10}** McGowan may rightly appeal issues related to the Confirmation Order. However, despite filing a notice of appeal from the trial court's Confirmation Order, McGowan's arguments in her sole assigned error relate to the law and procedure culminating in the foreclosure judgment. All of McGowan's arguments revolve around the order of foreclosure and not to the order confirming the sheriff's sale of the property. On January 17, 2014, when the trial court denied her motion to set aside the decree of foreclosure and notice of sale, McGowan should have, but did not, appeal that judgment.

**{¶11}** Unfortunately, McGowan cannot now appeal the foreclosure and sale issues under the guise of an appeal of a later Confirmation Order. Ohio "jurisprudence requires a party to directly appeal an adverse ruling against her when she has raised an issue in the

trial court and had a full and fair opportunity to litigate the matter." *Chem. Bank, N.A. v. Krawczyk*, 8th Dist. Cuyahoga No. 98263, 2013-Ohio-3614, ¶ 26.

**{¶12}** In McGowan's motion to set aside the decree of foreclosure and notice of sale, as well as in her assigned error herein, she argues that Wells Fargo lacked standing to seek foreclosure. While standing is one of a class of issues that can be raised at any time, the issue was actually litigated below. "The often quoted phrase that 'the issue of standing can be raised at anytime' does not equate to 'the issue of standing can be raised many times' or multiple times." *Krawczyk* at ¶ 29. *See id.* at ¶ 47. The trial court's January 17, 2014 journal entry clearly states that the decree of foreclosure was by agreement of the parties and underscored that Wells Fargo had standing to bring the foreclosure case.

**{¶13}** Our review of the record confirms that Wells Fargo had standing to invoke the jurisdiction of the court. Attached to the complaint was proof that McGowan's mortgage had been duly assigned and also a copy of the note endorsed in blank. "[A] party may establish its interest in the suit, and therefore have standing to invoke the jurisdiction of the court when, at the time it files its complaint of foreclosure, it either (1) has had a mortgage assigned or (2) is the holder of the note." *CitiMortgage, Inc. v. Patterson*, 2012-Ohio-5894, 984 N.E.2d 392, ¶ 21 (8th Dist.), *discretionary appeal not allowed*, 135 Ohio St.3d 1414, 2013-Ohio-1622, 986 N.E.2d 30.

**{¶14}** Here, the issue was previously litigated to a determination and became the law of the case when it was left unchallenged. Allowing reargument of issues to which

no appeal was taken from the decisions determining standing is an attempted end run around codified procedures designed for the efficient administration of cases and casts doubt on the validity of the judgment. McGowan has only appealed from the July 10, 2014 order confirming the sale. Consequently, the only arguments properly before this court are those related to the procedures employed in the sale and whether the court abused its discretion in confirming the sale. *See Deutsche Bank Nat'l. Co. v. Caldwell*, 8th Dist. Cuyahoga No. 100594, 2014-Ohio-2982. Accordingly, we overrule the sole assigned error.

**{¶15}** Judgment affirmed.

It is ordered that appellee recover from appellant 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

KATHLEEN ANN KEOUGH, P.J., and
ANITA LASTER MAYS, J., CONCUR