

[Cite as *Bank of New York Mellon v. Dudley*, 2015-Ohio-1740.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 101659**

---

**BANK OF NEW YORK MELLON**

PLAINTIFF-APPELLEE

vs.

**ANGELA DUDLEY**

DEFENDANT-APPELLANT

---

**JUDGMENT:**  
AFFIRMED

---

Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-12-796617

**BEFORE:** Keough, P.J., Blackmon, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** May 7, 2015

**ATTORNEYS FOR APPELLANT**

James R. Douglass  
Marc E. Dann  
Mary Grace Doberdruk  
Daniel M. Solar  
Dann, Doberedruk & Harshman  
P.O. Box 6031040  
Cleveland, Ohio 44103

**ATTORNEYS FOR APPELLEE**

Joshua J. Epling  
Laurito & Laurito, L.L.C.  
7550 Paragon Road  
Dayton, Ohio 45459

Tyler K. Ibom  
Mallory M. Mohler  
David A. Wallace  
Carpenter, Lipps & Leland, L.L.P.  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215

KATHLEEN ANN KEOUGH, P.J.:

{¶1} Defendant-appellant, Angela Dudley (“Dudley”), appeals from the trial court’s judgment denying her Civ.R. 60(B) motion for relief from judgment. Finding no merit to the appeal, we affirm.

## I. Background

{¶2} In 2012, plaintiff-appellee Bank of New York Mellon f.k.a. The Bank of New York, as Trustee for the Certificate Holders of CWALT, Inc., Alternative Loan Trust 2007-OH2, Mortgage Passthrough Certificates Series 2007-OH2 (“Bank of New York”), filed a complaint for foreclosure against Dudley. The matter was assigned to a magistrate. Dudley filed an answer, counterclaim, and third-party complaint against the Bank of America, N.A. (“Bank of America”), pro se.

{¶3} Following discovery, Dudley, Bank of New York, and Bank of America filed motions for summary judgment. All parties filed respective opposing briefs. The magistrate subsequently issued a decision granting the motions for summary judgment of Bank of New York and Bank of America and denying Dudley’s motion. Dudley did not file any objections to the magistrate’s decision. The trial court issued an order adopting the magistrate’s decision, finding the note and mortgage valid, and granting a decree of foreclosure on the property. Dudley did not appeal the trial court’s decision.

{¶4} Instead, she filed a Civ.R. 60(B) motion for relief from judgment. The magistrate set a hearing on the motion. Dudley did not appear at the hearing, and her counsel did not offer any evidence at the hearing. The magistrate issued a decision denying Dudley’s Civ.R. 60(B) motion for relief from judgment, and the trial court subsequently issued an entry adopting the magistrate’s decision. Dudley now appeals from the trial court’s judgment denying her Civ.R.

60(B) motion.

## II. Analysis

{¶5} A reviewing court will not disturb a trial court's decision regarding a Civ.R. 60(B) motion unless there is an abuse of discretion. *State ex rel. Russo v. Deters*, 80 Ohio St.3d 152, 153, 684 N.E.2d 1237 (1997). To prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party must demonstrate (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (B)(5);<sup>1</sup> and (3) the motion is made within a reasonable time, and where the grounds for relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment was entered. *GTE Automatic Elec. v. ARC Ind.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. Dudley asserts two assignments of error on appeal, both of which challenge Bank of New York's standing in this matter. In her first assignment of error, Dudley contends that the trial court erred in not dismissing the action for lack of subject matter jurisdiction because Bank of New York did not produce sufficient evidence demonstrating its interest in the note and mortgage, and therefore lacked standing to pursue foreclosure. In her second assignment of error, Dudley contends that the trial court erred in granting summary judgment to Bank of New York because the bank lacked standing.

{¶6} In *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, the Ohio Supreme Court explained that standing is a jurisdictional requirement that must exist at the time a suit is filed in order to invoke the

---

<sup>1</sup>The grounds for relief under Civ.R. 60(B) are (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Civ.R. 59(B); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged; and (5) any other reason justifying relief from the judgment.

jurisdiction of the trial court. *Id.* at ¶ 22. The Supreme Court also explained that if a plaintiff does not have an interest in a note or mortgage at the time it files suit, it lacks standing to commence a foreclosure action. *Id.* at ¶ 28. In such cases, “[t]he lack of standing \* \* \* requires dismissal of the complaint \* \* \*.” *Id.* at ¶ 40.

{¶7} Following *Schwartzwald*, the Ohio Supreme Court considered a party’s ability to collaterally attack a judgment in a foreclosure action by asserting the issue of standing in a Civ.R. 60(B) motion for relief from judgment. In *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 21 N.E.3d 1040, the Supreme Court held that when a defendant fails to appeal from a trial court’s judgment in a foreclosure action, the defendant is prevented from using the standing issue to obtain relief in a Civ.R. 60(B) motion. *Id.* at ¶ 25. The Supreme Court found that although standing is required in order to invoke the jurisdiction of the court over a foreclosure action, a party’s lack of standing does not affect the subject-matter jurisdiction of the common pleas court. *Id.* Thus, a bank’s alleged lack of standing in a foreclosure matter does not preclude a defendant from appearing and presenting a full defense, including lack of standing. *Id.* at ¶ 14. Accordingly, because the issue of standing can be raised on appeal, a Civ.R. 60(B) motion cannot be used as a substitute for a timely appeal from the judgment in foreclosure on the issue of standing. *Id.* at ¶ 16. When a defendant fails to appeal from a trial court’s judgment in a foreclosure action, the doctrine of res judicata applies to bar a party from asserting lack of standing in a motion for relief from judgment. *Bank of Am. v. Friedman*, 8th Dist. Cuyahoga No. 100625, 2014-Ohio-5034, ¶ 9, citing *Kuchta* at ¶ 8.<sup>2</sup>

{¶8} Here, Dudley could have raised the issue of standing on direct appeal of the trial

---

<sup>2</sup>The *Kuchta* court also held that allegations of fraud relating to standing in a foreclosure case are not the type of fraud contemplated by Civ.R. 60(B)(3).

court's judgment granting foreclosure. Because she did not do so, she is now precluded from collaterally attacking the foreclosure judgment by asserting lack of standing in a Civ.R. 60(B) motion. Thus, the trial court did not abuse its discretion in denying Dudley's motion. The assignments of error are overruled, and the judgment is affirmed.

{¶9} 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and  
ANITA LASTER MAYS, J., CONCUR