[Cite as *Fed. Natl. Mtge. Assn. v. Walton*, 2015-Ohio-2855.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101650

FEDERAL NATIONAL MORTGAGE ASSOCIATION

PLAINTIFF-APPELLEE

vs.

SEABER WALTON, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED IN PART AND REVERSED IN PART

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-800089

BEFORE: Jones, P.J., E.T. Gallagher, J., and Stewart, J.

RELEASED AND JOURNALIZED: July 16, 2015

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LARRY A. JONES, SR., P.J.:

{¶1} The appellants in this case are Seaber Walton and Christine C. Walton, a.k.a. Christine Walton. They were defendants in this foreclosure action that was initiated by plaintiff-appellee Federal National Mortgage Association ("Fannie Mae"). The complaint also named "PNC Bank, National Association, successor by merger to National City Bank" as a defendant. The Waltons appeal the trial court's final judgment ordering foreclosure upon the subject property and reforming the deed. We affirm in part and reverse in part.

I.

{¶2} In January 2013, Fannie Mae initiated this "complaint in foreclosure reformation of deed" against the Waltons and PNC Bank. Fannie Mae alleged that it was in "possession of, and entitled to enforce a note executed by Ramon L. Walton, deceased."[1] Attached to its complaint was exhibit A, which was a November 3, 1997 note under which Ramon Walton was the borrower and National City Bank was the lender. The note contains two indorsements. One was from National City Bank, Cleveland to National City Mortgage Co. The other one, dated December 1, 1997, is in blank from National City Mortgage Co., and was signed by "Marti Malloy, Delivery Shipper."

{¶3} Fannie Mae alleged in its complaint that there had been a default under the terms of the note, and that the note was secured by a mortgage, which constituted the valid

[1]The preliminary judicial report indicates that Ramon Walton passed away on May 3, 2006, and that pursuant to a transfer on death deed he executed, the title to the property vested in Seaber Walton.

first lien on the subject property. Exhibit B of the complaint was the mortgage. The mortgagor was "Ramon L. Walton Unmarried," and the security interest was granted to National City Bank. The mortgage was notarized on November 3, 1997. It also contained the following language:

> 31st Day of Oct. 1997
>
> For valuable consideration we hereby sell, assign, transfer and set over unto National City Mortgage Company, 3232 Newark Drive, Miamisburg, Ohio 45342, all our rights, title and interest in and to the within mortgage and note secured by the same.
>
> National City Bank
>
> /s/ Barbara Bedford MLO

{¶4} The complaint further alleged that the mortgage was recorded in the county recorder's records and had been assigned to Fannie Mae. The assignments were attached as exhibits C and D. The assignment of mortgage in exhibit C stated that "National City Real Estate Services, LLC successor by merger to National City Mortgage, Inc. formerly known as National City Mortgage Co." assigned the mortgage to "PNC Bank, National Association." The assignment was signed by Angela Boddie as an "authorized signer"; her signature was notarized.

{¶5} Exhibit D stated that "PNC, National Association" assigned the mortgage to "Federal National Mortgage Association." The assignment was signed by Angela Boddie, again as an "authorized signer," and her signature was again also notarized.

{¶6} Fannie Mae also attached an exhibit E to its complaint. Exhibit E was a warranty deed relative to the subject property, dated November 6, 1997, and purportedly

signed by appellants, the Waltons.[2]

{¶7} In the complaint, Fannie Mae alleged that Seaber Walton "may claim an interest in the subject property by virtue of being a current titleholder thereof." It also alleged that Christine Walton "may claim an interest in the subject property as the current spouse of the defendant-titleholder, Seaber Walton." The complaint further alleged that PNC Bank "may claim an interest in the * * * property by virtue of a mortgage from Ramon L. Walton, filed for record on 10/23/00 in * * * [the] County Recorder's Records."

{¶8} The reformation portion of the complaint sought to have the deed reformed to reflect that Seaber Walton was married to Christine Walton at the time of the conveyance. Exhibits E and F were submitted in support of this claim. Exhibit E was, as mentioned, a warranty deed, and exhibit F was a probate court case summary for the "marriage of Seaber David Walton to Christine Ann Spangler." The filing date and license issue date were listed as Monday, January 1, "1900"; the "status date" was listed as Thursday, November 23, 2000.

{¶9} Fannie Mae's request for relief was for (1) a finding of default in the amount of $7,097.69, with interest and other costs and charges; (2) reformation of the deed; (3) a declaration that its mortgage be declared a valid first lien on the property and that the property be sold and the balance on the note be paid out of the proceeds of the sale; and (4) that the defendants "set up their liens or interests in [the property] or be forever barred

[2]The typed out signature on the deed reads "Christine Walton." The actual signature contains a middle initial; it cannot be discerned whether the initial is an "A" or a "C."

from asserting same."

{¶10} In April 2013, Fannie Mae filed a motion for default judgment. A hearing was held on the motion in June 2013, at which the Waltons did not appear; the motion was granted and the magistrate's decision was filed. In his decision, the magistrate found, in part, that: (1) all necessary parties had been served; (2) the defendants failed to answer or appear and, therefore, had confessed the allegations in the complaint to be true; and (3) at the time of the November 6, 1997 deed, Seaber Walton was married and Fannie Mae was entitled to have the deed reformed to reflect that status, with "Christine C. Walton aka Christine Walton" as his wife.[3]

{¶11} The day following the filing of the magistrate's decision, the Waltons appeared in the action, filing a motion to dismiss on the ground that an indispensable party or parties had not been joined, that is, the estate of Ramon Walton or his heirs.

{¶12} Several days later, the Waltons filed objections to the magistrate's decision. In their objections, they renewed their contention that an indispensable party or parties had not been joined, which they maintained was particularly necessary because Fannie Mae sought a monetary judgment. They contended that the magistrate's decision did not provide who would be responsible if there was a deficiency judgment after the sheriff's sale, leaving them liable even though they were not obligors on the note.

{¶13} In May 2014, the trial court overruled the Waltons' objections, and in June 2014, it adopted the magistrate's decision. The Waltons now appeal, raising the

[3]In making this finding, the court relied on the deed and the "marriage license."

following two assignments of error:

> I. The trial court erred when it granted a judgment of foreclosure when appellee Fannie Mae lacked standing.
>
> II. The trial court erred by overruling Appellants' objections to the Magistrate's Decision when the obligor on the note was deceased and Appellee sought a monetary judgment but never named the Estate of Ramon L. Walton or the Unknown Heirs of Ramon L. Walton as parties to the foreclosure.

II.

Fannie Mae's Standing

{¶14} For their first assignment of error, the Waltons contend that Fannie Mae lacked standing. Specifically, they note that the original lender was National City Bank, no merger documentation was attached to the complaint to establish that PNC Bank was able to assign the mortgage to Fannie Mae, and the assignments of the mortgage were executed in the wrong order.

{¶15} Fannie Mae contends that by failing to answer the complaint, the Waltons admitted the allegations in the complaint and also waived the defense of lack of standing. We agree that the Waltons waived the right to challenge standing under the circumstances in this case.

{¶16} Not only did the Waltons fail to answer Fannie Mae's complaint, but they also failed to raise the issue post-default judgment, that is, in either their motion to dismiss or their objections to the magistrate's decision. The Eleventh Appellate District held that a defendant in a foreclosure action is "not entitled to prevail on a motion to vacate a default judgment when he failed to support his motion with evidence that the plaintiff

lacked standing to bring the action." *Fed. Home Loan Mtge. Corp. v. Koch*, 11th Dist. Geauga No. 2012-G-3084, 2013-Ohio-4423, ¶ 32, citing *U.S. Bank, N.A. v. Kapitula*, 12th Dist. Clermont No. CA2012-08-058, 2013-Ohio-2638, ¶ 6. Here, the Waltons did not even raise the issue below, much less support it.

> **{¶17}** Further, it is important to recognize, as this court has done, that standing and subject matter jurisdiction are distinct concepts. *Deutsche Bank Natl. Trust Co. v. Jackson*, 8th Dist. Cuyahoga No. 100937, 2014-Ohio-4215, ¶ 4. [A] plaintiff can have standing to bring a claim but fail to invoke the subject matter jurisdiction of the court; a court may have subject matter jurisdiction over a controversy but a plaintiff can lack standing to seek relief.

Id. Based on this distinction, when a court lacks subject matter jurisdiction any judgment it renders is void, as compared to a lack of standing that renders a judgment voidable. *Id.*, citing *Wells Fargo Bank, N.A. v. Perkins*, 10th Dist. Franklin No. 13AP-318, 2014-Ohio-1459, ¶ 12. Thus, because of the voidable nature of standing, the Ohio Supreme Court has held that the issue of standing is waivable. *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St.3d 520, 2014-Ohio-2382, 13 N.E.3d 1101, ¶ 16; *see also Jackson* at ¶ 5.

{¶18} This record supports a finding that the Waltons waived the issue of standing by failing to raise it in either their motion to dismiss or their objections to the magistrate's decision. Notwithstanding their failure to raise standing, we consider it, and find their contention of lack of standing to be without merit.

{¶19} A party commencing litigation must have standing to sue in order to invoke the jurisdiction of the court. *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio

St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 38. To have standing, a plaintiff must have "a personal stake in the outcome of the controversy and have suffered some concrete injury that is capable of resolution by the court." *Bank of Am., N.A. v. Adams*, 8th Dist. Cuyahoga No. 101056, 2015-Ohio-675, ¶ 7, citing *Tate v. Garfield Hts.*, 8th Dist. Cuyahoga No. 99099, 2013-Ohio-2204, ¶ 12, and *Middletown v. Ferguson*, 25 Ohio St.3d 71, 75, 495 N.E.2d 380 (1986).

{¶20} In a foreclosure action, a party has standing, "when, at the time it files its complaint of foreclosure, it either (1) has had the mortgage assigned to it, or (2) it is the holder of the note." *CitiMortgage, Inc. v. Patterson*, 2012-Ohio-5894, 984 N.E.2d 392, ¶ 21 (8th Dist.), citing *Schwartzwald* at ¶ 28 (where plaintiff failed to establish an interest in the note or mortgage at the time it filed foreclosure action, it had no standing to invoke the jurisdiction of the common pleas court).

{¶21} The record demonstrates that Fannie Mae had standing as the holder of the note. There are two ways that a party can become the holder of a negotiable instrument. R.C. 1303.25. One way is by specific indorsement to an identified payee. R.C. 1303.25(A). The other way is by holding the negotiable instrument while it is indorsed in blank. R.C. 1303.25(B). Attached to the complaint was the note, which contained a blank indorsement. Fannie Mae alleged in its complaint that it was entitled to enforce the note. Thus, Fannie Mae was the holder of the note indorsed in blank.

{¶22} Further, Fannie Mae also had standing as the mortgage assignee. Attached to the complaint were exhibits that included a mortgage to National City Bank with an

assignment from National City Bank to National City Mortgage Co., an assignment of the mortgage from National City Real Estate Services, L.L.C. successor by merger to National City Mortgage Inc. formerly known as National City Mortgage Co. to PNC Bank, National Association, and an assignment from PNC Bank, National Association to Fannie Mae. Fannie Mae, as the assignee of the mortgage, was, therefore, entitled to enforce the note.

{¶23} The Waltons contend that Fannie Mae lacked standing because it appears that the assignment from National City Bank to National City Mortgage Co. took place prior to the note and mortgage being signed. The Waltons did not have standing to challenge the assignment, however. The Waltons were neither a party to nor a third-party beneficiary of the assignment and, therefore, they lacked standing to challenge the validity of the mortgage assignment between National City Bank and National City Mortgage Co. *See Bank of New York Mellon v. Froimson*, 8th Dist. Cuyahoga No. 99443, 2013-Ohio-5574, ¶ 17-18.

{¶24} The Waltons also contend that PNC took assignment three days after it signed its assignment to Fannie Mae. We again find that the Waltons did not have standing to bring this challenge. PNC, the party with standing to challenge the assignment, did not do so. We decline, as this court has recently done so, to analyze this case under *Slorp v. Lerner*, 587 Fed. Appx. 249 (Sept. 14, 2014), as the Waltons suggest we do. *See Bank of New York Mellon Trust Co., N.A. v. Unger*, 8th Dist. Cuyahoga No. 101598, 2015-Ohio-769, ¶ 7, fn.1.

{¶25} In light of the above, the first assignment of error is overruled.

Failure to Name Estate or Heirs as Defendants

{¶26} For their second assignment of error, the Waltons contend that because Ramon Walton was deceased and Fannie Mae sought a money judgment, Ramon Walton's estate or heirs should have been joined in the action. At oral argument, Fannie Mae maintained that it did not seek a money judgment.

{¶27} It is true that, generally, following one's death all real estate passes to the heirs. Upon such happening, the next of kin have an immediate beneficial interest in the real estate. *Brownfield v. Home Owners Loan Corp.*, 38 Ohio Law Abs. 30, 49 N.E.2d 92 (1942). Here, however, Ramon Walton executed a transfer on death deed, under which upon his death, which was May 3, 2006, the property immediately transferred to Seaber Walton. Thus, Ramon Walton's heirs had no interest in the property. A deceased's estate is not required to be named as a party when the estate had no interest in the foreclosure action. *U.S. Bank Natl. Assn. v. Wiggins*, 8th Dist. Cuyahoga No. 101510, 2015-Ohio-1145, ¶ 15.

{¶28} Further, upon review of the foreclosure complaint and taking into account Fannie Mae's representation at oral argument, Fannie Mae was not seeking to hold Ramon Walton's heirs 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." *Id.* at ¶ 17, citing *Fifth Third Mtge. Co. v. Perry*, 4th Dist. Pickaway No. 12CA13, 2013-Ohio-3308 and *Chaco Credit Union, Inc. v. Perry*, 12th Dist. Butler No. CA2011-05-089, 2012-Ohio-1123. Here, Fannie Mae sought to have its "mortgage

be adjudged a valid first lien upon the real estate described [in the complaint], that said mortgage be foreclosed; that said real property may be ordered sold, and that the balance of the note be paid out of the proceeds of such sale." *See* complaint, prayer for relief. Because Fannie Mae did not seek a money judgment against Ramon Walton's heirs, the estate did not need to be a party to the action.

{¶29} In light of the above, the second assignment of error is overruled.

Reformation of Deed

{¶30} Although not specifically assigned as error, the Waltons raise the issue of the reformation of the deed and we consider it. The bank sought to have the deed reformed to reflect that Seaber Walton was married to Christine C. Walton, a.k.a. Christine Walton.

{¶31} In support of its request, the bank submitted, and the trial court relied on, exhibits E and F. Exhibit E is a warranty deed relative to the subject property, dated November 6, 1997, and purportedly signed by appellants, the Waltons. One of the typed out names on the deed reads "Christine Walton." The actual signature contains a middle initial, but it cannot be discerned whether the initial is an "A" or a "C." Exhibit F is a probate court case summary for the "marriage of Seaber David Walton to Christine Ann Spangler." The filing date and license issue date was listed as Monday, January 1, "1900" and the "status date" was listed as Thursday, November 23, 2000.

{¶32} On this record, the trial court erred in reforming the deed. Exhibit F was not a marriage license, as the court found. Further, the dates in the exhibit do not establish that Seaber Walton was married at the time of the November 1997 conveyance.

The exhibit also does not establish who, if anyone, Seaber Walton was married to.

{¶33} In light of the above, the portion of the trial court's judgment reforming the deed is reversed.

{¶34} Judgment affirmed in part and reversed in part. The portion of the trial court's judgment granting relief in favor of Fannie Mae is affirmed. The portions of the trial court's judgment relating to the deed reformation are reversed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas 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.

LARRY A. JONES, SR., PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
MELODY J. STEWART, J., CONCUR