

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

WASHINGTON MUTUAL BANK

C.A. No. 26737

Appellee

v.

DOTTIE ZAMPINIO, et al.

Appellants

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2007-09-6607

DECISION AND JOURNAL ENTRY

Dated: March 31, 2015

HENSAL, Presiding Judge.

{¶1} Dottie Zampino and David Kniceley appeal a judgment entry of the Medina County Court of Common Pleas, which confirmed a sale of real estate to Washington Mutual Bank (“WaMu”). For the following reasons, this Court affirms.

I.

{¶2} In 2007, WaMu filed a complaint for foreclosure against Ms. Zampino and others. After the defendants did not file an answer, the trial court granted default judgment to WaMu and issued an order of sale to the county sheriff. The sale was stayed after Ms. Zampino filed a petition in bankruptcy and, again, after she moved to vacate the judgment. The trial court denied her motion, and the property was sold at sheriff’s sale in November 2012. On November 21, 2012, the trial court confirmed the sale and ordered the proceeds distributed. Ms. Zampino and Mr. Kniceley have appealed the court’s confirmation order, assigning as error that the trial court incorrectly awarded WaMu judgment on its foreclosure complaint.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN CONCLUDING THAT PLAINTIFF-APPELLEE WAS ENTITLED TO JUDGMENT AS A MATTER OF LAW ON ITS FORECLOSURE COMPLAINT (FINAL JUDGMENT ENTRY – CONFIRMATION OF SALE – DATED NOVEMBER 21, 2012).

{¶3} Ms. Zampino and Mr. Kniceley argue that WaMu did not have standing to foreclose on Ms. Zampino’s mortgage because it did not acquire an interest in their property until after it filed its complaint. They argue that, under *Federal Home Loan Mortgage Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, the sale of the property must be vacated, and the case dismissed.

{¶4} In *Schwartzwald*, 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 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.

{¶5} An important difference between this case and *Schwartzwald* is that Ms. Zampino and Mr. Kniceley did not appeal the trial court’s 2007 foreclosure decree, waiting instead until the property was sold and the sale confirmed. The Ohio Supreme Court has recognized that “two judgments are appealable in foreclosure actions: the order of foreclosure and sale and the order of confirmation of sale.” *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, ¶ 35.

The order of foreclosure determines the extent of each lienholder’s interest, sets forth the priority of the liens, and determines the other rights and responsibilities of each party in the action. On appeal from the order of foreclosure, the parties

may challenge the court's decision to grant the decree of foreclosure. Once the order of foreclosure is final and the appeals process has been completed, all rights and responsibilities of the parties have been determined and can no longer be challenged.

Id. at ¶ 39. On the other hand,

[t]he confirmation process is an ancillary one in which the issues present are limited to whether the sale proceedings conformed to law. Because of this limited nature of the confirmation proceedings, the parties have a limited right to appeal the confirmation. For example, on appeal of the order confirming the sale, the parties may challenge the confirmation of the sale itself, including computation of the final total owed by the mortgagor, accrued interest, and actual amounts advanced by the mortgagee for inspections, appraisals, property protection, and maintenance. The issues appealed from confirmation are wholly distinct from the issues appealed from the order of foreclosure. In other words, if the parties appeal the confirmation proceedings, they do not get a second bite of the apple, but a first bite of a different fruit.

Id. at ¶ 40.

{¶6} The Ohio Supreme Court also recently held that “a particular party’s standing, or lack thereof, does not affect the subject-matter jurisdiction of the court in which the party is attempting to obtain relief.” *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, ¶ 23. In *Kuchta*, the Supreme Court explained that “a court of common pleas that has subject-matter jurisdiction over an action does not lose that jurisdiction merely because a party to the action lacks standing.” *Id.* at ¶ 17. Consequently, “the doctrine of res judicata applies to bar a party from asserting lack of standing in a motion for relief from judgment.” *Id.* at ¶ 8.

{¶7} *Kuchta* makes clear that a foreclosure judgment is not “void ab initio” even if the plaintiff who filed the action did not have standing to bring it. *Id.* at ¶ 24. We, therefore, conclude that, under *Roznowski*, Ms. Zampino’s and Mr. Kniceley’s appeal is limited to issues arising out of the confirmation process. They may not contest WaMu’s standing in this appeal, which would give them a second bite at the validity of the foreclosure judgment. *Roznowski* at ¶ 40. Ms. Zampino’s and Mr. Kniceley’s assignment of error is overruled.

III.

{¶8} Ms. Zampino and Mr. Kniceley may not contest WaMu's standing on appeal from an order of confirmation of sale. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
CANNON, J.
CONCUR.

(Cannon, J., of the Eleventh District Court of Appeals, sitting by assignment.)

APPEARANCES:

JAMES R. RUSSELL, JR. and MARK RIEMER, Attorneys at Law, for Appellants.

ANNE MARIE SFERRA, Attorney at Law, for Appellee.

CHRISTINA R. EDMONDSON, Attorney at Law, for Appellee.