[Cite as *Bayview Loan Servicing, L.L.C. v. Salem*, 2015-Ohio-2615.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

BAYVIEW LOAN SERVICING	C.A. No. 27460
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
KAREN E. SALEM, et al.	
Appellant	CASE No. CV-2012-12-6917

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

WHITMORE, Judge.

{¶1} Defendant-Appellant, Karen Salem, appeals from the judgment of the Summit County Court of Common Pleas, granting summary judgment in favor of Plaintiff-Appellee, Bayview Loan Servicing, LLC ("Bayview"), and issuing a decree of foreclosure. This Court dismisses.

I

{¶2} On March 28, 2006, Salem executed a note in the amount of $104,800 in favor of American Midwest Mortgage Corporation ("American Midwest") for property located at 4248 Johnson Road in Norton. The note was secured by a mortgage on the same property in favor of American Midwest. American Midwest recorded the mortgage on April 5, 2006. It later assigned the mortgage to JP Morgan Chase Bank, N.A. ("JP Morgan"), as successor in interest to Washington Mutual Bank ("Washington Mutual").

{¶3} On December 19, 2012, JP Morgan, as the current holder of her note and mortgage, filed a complaint in foreclosure against Salem. JP Morgan attached to its complaint a copy of the recorded assignment of Salem's mortgage from American Midwest as well as a copy of Salem's note. The note reflected an endorsement from American Midwest to Washington Mutual, followed by an endorsement in blank from Washington Mutual. Salem answered the complaint wherein she admitted that she was in default "due to [an] unexpected disability."

{¶4} Subsequently, JP Morgan filed a motion to substitute Bayview as party plaintiff because Bayview was the current holder of Salem's note and mortgage. The trial court granted the motion, and Bayview later filed a motion for summary judgment. Salem responded in opposition to the motion for summary judgment and presented two affidavits in support of her motion. Thereafter, Bayview filed a reply and Salem filed a rebuttal. The trial court ultimately granted Bayview's motion for summary judgment. It awarded Bayview $97,708.16, plus interest from July 1, 2011, and ordered foreclosure.

{¶5} Salem now appeals from the court's judgment and decree of foreclosure and raises two assignments of error for our review. We combine the assignments of error.

II

Assignment of Error Number One

> THE TRIAL COURT ERRED WHEN IT AWARDED THE PLAINTIFF SUMMARY JUDGMENT IN A FORECLOSURE PROCEEDING WHEN THE MOTION WAS NOT SUPPORTED BY THE AFFIDAVIT OF AN INDIVIDUAL WHO WAS ABLE TO DEMONSTRATE THAT HE/SHE HAD PERSONAL KNOWLEDGE OF THE MATERIAL CONTAINED IN THE AFFIDAVIT[.]

Assignment of Error Number Two

THE TRIAL COURT ERRED WHEN IN (sic) RESOLVED AN ISSUE OF MATERIAL FACT IN THE AWARD OF SUMMARY JUDGMENT.

{¶6} In her assignments of error, Salem argues that the trial court erred by granting Bayview's motion for summary judgment. Specifically, she argues that Bayview's affiant lacked personal knowledge of the matters to which she attested and that genuine issues of material fact remain for trial. Because the trial court docket reflects that Salem's appeal is moot, however, we do not address the merits of her assignments of error.

{¶7} "Appellate courts will not review questions that do not involve live controversies." *Aurora Loan Servs. v. Kahook*, 9th Dist. Summit No. 24415, 2009-Ohio-2997, ¶ 6. "Once the rights and obligations of the parties have been extinguished through satisfaction of the judgment, a judgment on appeal cannot have any practical effect upon the issues raised by the pleadings." *Akron Dev. Fund I, Ltd. v. Advanced Coatings Internatl., Inc.*, 9th Dist. Summit No. 25375, 2011-Ohio-3277, ¶ 21. It is well established "'that a satisfaction of judgment renders an appeal from that judgment moot.'" *Bankers Trust Co. of California, N.A. v. Tutin*, 9th Dist. Summit No. 24329, 2009-Ohio-1333, ¶ 8, quoting *Blodgett v. Blodgett*, 49 Ohio St.3d 243, 245 (1990). In a foreclosure case, satisfaction of judgment occurs when the subject property has been sold and the proceeds of the sheriff's sale have been distributed. *See Tutin* at ¶ 6-16. *Accord Kahook* at ¶ 5-7.

{¶8} After Salem filed her notice of appeal, her property was sold at sheriff's sale. *See N. Trust Bank FSB v. Bolognue Holdings, Inc.*, 9th Dist. Summit No. 26290, 2012-Ohio-4913, ¶ 3 ("[A] court may consider evidence that is outside the record to determine if a case is moot."). Salem filed motions to stay the sale of her property and to stay the confirmation of that sale, but both motions were denied. The court confirmed the sale of the property and ordered the

distribution of the proceeds. Salem never asked the trial court to stay the distribution and, while this matter was pending on appeal, the proceeds were distributed.

{¶9} Upon review of the record, this Court issued a show cause order to the parties, ordering them to file responses with regard to whether Salem's appeal was moot. In her response, Salem acknowledged our decision in *Tutin*, but asked that we reconsider our precedent and conclude that R.C. 2329.45 protects her right to seek restitution. She argues that this Court's holding in *Tutin* deprives her of her constitutional right "to have an appellate court review her foreclosure's adherence to the rules and concepts defining her liability to Bayview * * *."

{¶10} We have previously declined an invitation to reconsider *Tutin*. *See Saxon Mtge. Servs., Inc. v. Whitely*, 9th Dist. Summit No. 26739, 2013-Ohio-3221, ¶ 8. Although other courts have held that R.C. 2329.45 creates an exception to the mootness doctrine in foreclosure cases, this Court has rejected that reading of the statute. *See id.* at ¶ 7-8. "[R.C. 2329.45] can only be construed to address appeals that have been taken from the confirmation of sale [wherein] the appealing party sought and obtained a stay of the distribution of proceeds pursuant to Civ.R. 62(B) and App.R. 7(A)." *Tutin* at ¶ 15. This appeal does not concern the confirmation of sale that the trial court issued, and Salem never sought a stay of the distribution of the proceeds in the trial court. Accordingly, R.C. 2329.45 does not apply.

{¶11} As we noted in *Tutin*, there are only two recognized exceptions to the mootness doctrine. *Tutin* at ¶ 9. Specifically, a case is not moot if it either: (1) concerns issues that "are capable of repetition, yet evading review"; or (2) "involves a matter of public or great general interest." *Id.*, quoting *In re Appeal of Suspension of Huffer from Circleville High School*, 47 Ohio St.3d 12, 14 (1989). Salem has not explained how either exception applies here, and we decline to construct an argument on her behalf. *See* App.R. 16(A)(7). Because the proceeds of

the sheriff's sale have been distributed, no live controversy exists. *See Whitely* at ¶11. *Accord Tutin* at ¶ 16. The appeal is, therefore, dismissed as moot.

III

{¶12} Salem's appeal is moot. As such, the appeal is dismissed.

Appeal dismissed.

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.

BETH WHITMORE
FOR THE COURT

HENSAL, P. J.
MOORE, J.
CONCUR.

APPEARANCES:

MARC E. DANN, Attorney at Law, for Appellant.

ADAM R. FOGELMAN, Attorney at Law, for Appellee.