

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

DEUTSCHE BANK NATIONAL TRUST  
COMPANY

C.A. No.       28069

Appellee

v.

KENNETH S. TAYLOR, et al.

Appellant

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CV 2007 11 8364

DECISION AND JOURNAL ENTRY

Dated: September 30, 2016

---

HENSAL, Judge.

{¶1} Kenneth Taylor appeals a judgment of the Summit County Court of Common Pleas that confirmed the sheriff's sale of his foreclosed property and ordered the proceeds of the sale distributed. For the following reasons, this Court affirms.

I.

{¶2} In 2007, Mr. Taylor and his wife defaulted on a promissory note that was secured by a mortgage on property that they owned in Twinsburg. Deutsche Bank, which had been assigned the note and mortgage, subsequently filed a foreclosure action against the Taylors. Mr. Taylor counterclaimed, but the trial court granted Deutsche Bank summary judgment on its claims and Mr. Taylor's counterclaims. This Court upheld the award of summary judgment to Deutsche Bank on its claims and most of Mr. Taylor's counterclaims, and any claims that were not resolved by summary judgment have since been dismissed by the trial court. *See Deutsche*

*Bank Natl. Trust Co. v. Taylor*, 9th Dist. Summit No., 25281, 2011-Ohio-435, *Deutsche Bank Natl. Trust Co. v. Taylor*, 9th Dist. Summit No. 26626, 2013-Ohio-4278.

{¶3} On August 21, 2015, Deutsche Bank bought the Taylor’s property at a sheriff’s sale. Over Mr. Taylor’s objection, the trial court confirmed the sale on December 10, 2015. Mr. Taylor has appealed, assigning ten errors.

## II.

### ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED BY CONFIRMATION OF SALE WHERE THE LOAN AND SECURITY WAS VOID, BEFORE CONFIRMATION, AS A [ ] RESULT OF DEFENDANT[’]S NOTICE OF RECISSION NOTICE BEING MAILED, AND SEVERAL MOTIONS WERE FILED TO VACATE SALE AND DISMISS CASE BASED ON RESCISSION BY TAYLOR’S AND DENIED BY TRIAL COURT AND JUDGE.

{¶4} Mr. Taylor argues that the trial court erred when it confirmed the sheriff’s sale because the underlying loan was void. According to Mr. Taylor, he rescinded the original transaction in 2008 pursuant to the Truth in Lending Act. There was no mortgage, therefore, for Deutsche Bank to foreclose.

{¶5} The trial court previously rejected Mr. Taylor’s rescission argument when it granted Deutsche Bank summary judgment on his counterclaims. This Court affirmed its decision on appeal. Under the doctrine of law of the case, “the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.” *Nolan v. Nolan*, 11 Ohio St.3d 1, 3 (1984). Because Mr. Taylor already made this same Truth in Lending Act argument to the trial court and we affirmed the decision that rejected the argument, we conclude that Mr. Taylor may not repeat his argument in this appeal. Mr. Taylor’s first assignment of error is overruled.

## ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED BY CONFIRMATION OF SALE WHEN JUDGEMENT (SIC) WAS VOID AS A RESULT OF DORMANCY BY DENYING DEFENDANT[’S] MOTION TO VACATE AND OBJECTIONS TO CONFIRMATION BASED ON DORMANCY UNDER ORC 2329.07 JUDGMENT MAY BECOME DORMANT.

{¶6} Mr. Taylor argues that the trial court incorrectly confirmed the sale because the judgment that precipitated it was dormant under Revised Code Section 2329.07. According to Mr. Taylor, because the judgment was dormant, the sale should not have occurred. Section 2329.07(A)(1) provides, in part, that, if execution on a judgment does not occur within five years, “the judgment shall be dormant and shall not operate as a lien upon the estate of the judgment debtor.” We note that the trial court granted summary judgment to Deutsche Bank on its foreclosure action in January 2010 and that the sale did not occur until August 2015. The sale in this case, however, was required by Section 2323.07, which provides that, “[w]hen a mortgage is foreclosed \* \* \*, a sale of the property \* \* \* shall be ordered by the court having jurisdiction \* \* \*.” Upon review of the record, we conclude that Section 2329.07 did not prohibit the sale of the Taylor’s property. Mr. Taylor’s second assignment of error is overruled.

## ASSIGNMENT OF ERROR III

THE TRIAL COURT ERRED BY CONFIRMING SALE DENYING DEFENDANT[’S] REQUEST FOR HEARING BY MOTION PRIOR TO CONFIRMATION OF SALE.

{¶7} Mr. Taylor next argues that the trial court abused its discretion when it confirmed the sheriff’s sale without holding a hearing, in violation of his constitutional rights. The Ohio Supreme Court has held that due process “does not require that the mortgagor in a foreclosure proceeding must be afforded a hearing prior to the confirmation of sale[.]” *Union Bank Co. v. Brumbaugh*, 69 Ohio St.2d 202 (1982), syllabus. Instead, if the trial court has complied with “all

of the statutory requirements contained in R.C. 2329.01 to 2329.61, inclusive[.]” whether to hold “a hearing lies within the sound discretion of the trial court.” *Id.*

{¶8} In his brief, Mr. Taylor cites general due process case law but he does not develop an argument as to why the trial court abused its discretion by not holding a hearing before confirming the sale in this case. Because Mr. Taylor has not shown this Court why due process required a hearing in his particular case, he has not established that the trial court abused its discretion when it failed to hold a hearing. *See* App.R. 16(A)(7). Mr. Taylor’s third assignment of error is overruled.

#### ASSIGNMENT OF ERROR IV

THE TRIAL COURT ERRED IN CHANGING SUA [SPONTE], EXPARTE THE PLAINTIFF[’S] NAME IN CAPTION OF JUDGE[’]S ORDER WHERE THERE IS NO EVIDENCE TO SUPPORT SUCH CHANGE AND DENYING APPELLANT’S MOTION AND OBJECTIONS TO CHANGE.

{¶9} Mr. Taylor next argues that the trial court erred because it wrote in the caption of its order that confirmed the sheriff’s sale that the plaintiff was “Deutsche Bank National Trust Company” when it is actually “Deutsche Bank National Trust Company, as Trustee for Certificateholders of Soundview Home Loan Trust2006-Opt2, Asset-backed Certificates, Series 2006-Opt2.” He asserts that the change in the caption is evidence of the fraud that has occurred throughout this case wherein names on documents do not match up with the parties involved in the foreclosure action. He also asserts that the name change demonstrates that the plaintiff is not the real party in interest and did not have standing to bring the foreclosure action.

{¶10} The names that appear in the caption of a case do not determine the parties of the suit. *Gibbs v. Lemley*, 33 Ohio App.2d 220, 221-222 (4th Dist. 1972). Because the caption of a case is merely “the handle to identify it[.]” we conclude that the fact that the trial court

abbreviated the parties' names in the caption of its confirmation order did not prejudice Mr. Taylor. *Id.*, quoting *Hoffman v. Halden*, 268 F.2d 280, 303 (9th Cir.1959).

{¶11} To the extent Mr. Taylor argues that Deutsche Bank is not the real party in interest, we conclude that his argument is barred. 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.

{¶12} The Ohio Supreme Court has also 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.

{¶13} *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*, Mr. Taylor’s appeal is limited to issues arising out of the confirmation process. He may not contest Deutsche Bank’s standing in this appeal, which would give him a second bite at the validity of the foreclosure judgment. *Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, at ¶ 40. That is, he cannot have a do-over of his prior appeal. Mr. Taylor’s fourth assignment of error is overruled.

#### ASSIGNMENT OF ERROR V

THE TRIAL COURT ERRED BY ALLOWING CONFIRMATION OF SALE BASED ON FRAUD WHERE THIRD PARTY PURCHASERS CLAIMED TO BE THE PLAINTIFF AT SALE, WHERE PLAINTIFF, NOR LENDER NOR CREDITOR ATTENDED SHERIFF’S SALE AUCTION OR BID OR PURCHASED PROPERTY AT SALE. WHEN THAT VALUE WAS BASED UPON FALSE AND FRAUDULENT INFORMATION AND WAS BASED UPON A SHERIFF SALE PRICE.

{¶14} Although Mr. Taylor’s next assignment of error appears to concern the sheriff’s sale, the argument in the body of his brief challenges whether the originator of the loan actually existed and contests whether the loan documents were properly transferred to Deutsche Bank.<sup>1</sup>

---

<sup>1</sup> Mr. Taylor’s brief contains references to various motions that he filed in the trial court. To the extent that he is attempting to rely on the arguments he developed in those documents to support his assignment of error, such attempt is improper. *State v. Wright*, 9th Dist. Summit No. 18941, 1999 WL 420377, \*1 (June 23, 1999). Parties cannot simply incorporate by reference arguments that they made to the trial court in their appellate brief. *Id.*; *Children’s Hosp. Med. Ctr. v. S. Lorain Merchants Assn.*, 9th Dist. Summit No. 22881, 2006-Ohio-2407, ¶ 12. This Court may disregard arguments that do not comply with Appellate Rule 16(A)(7). App.R. 12(A)(2).

As this Court explained earlier, however, Mr. Taylor's appeal is limited to issues arising out of the confirmation process. *Id.* While Mr. Taylor also notes that the court is required, under Section 2329.31, to determine whether the sheriff's sale complied with Sections 2329.01 to 2329.61 before confirming the sale, he does not identify how he believes the trial court failed to comply with those statutes. This Court cannot consider arguments that do not relate to the confirmation order. Mr. Taylor's fifth assignment of error is overruled.

#### ASSIGNMENT OF ERROR VI

TRIAL COURT AND JUDGE HAS ERRED PASSING TITLE TO PLAINTIFFS WITH NO DEED OR NOTE.

{¶15} Mr. Taylor next argues that the trial court incorrectly confirmed the sale because there is no perfected encumbrance on his property and because Deutsche Bank does not own the note or mortgage. As previously explained, Mr. Taylor may not contest the validity of the foreclosure judgment in this limited appeal of the confirmation proceedings. *Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, at ¶ 40. According to the Ohio Supreme Court, the issues that can be raised in this appeal include "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[,]" which are "wholly distinct from the issues appealed from the order of foreclosure." *Id.* Because Mr. Taylor's argument does not involve any issue that he may raise in this appeal, this Court cannot address it. Mr. Taylor's sixth assignment of error is overruled.

#### ASSIGNMENT OF ERROR VII

THE TRIAL COURT JUDGE ERRED BY ORDERING CONFIRMATION WHICH TAKES TAYLOR[']S PROPERTY AND GIVES IT AWAY FREELY, FOR NO COST TO A NON-CREDITOR AND WITHOUT DUE PROCESS IS PREJUDICIAL.

{¶16} Mr. Taylor supports his seventh assignment of error by repeating his argument that Deutsche Bank is not the correct party to bring this action or to receive the proceeds from the sheriff's sale. According to Mr. Taylor, the correct lender has yet to ask the trial court to confirm the sale. As we have explained earlier, however, Mr. Taylor may not challenge Deutsche Bank's standing to foreclose on the mortgage in this appeal. *Id.* Mr. Taylor's seventh assignment of error is overruled.

#### ASSIGNMENT OF ERROR VIII

THE TRIAL COURT DENIED ALL TAYLOR[']S 13 MOTIONS FILED PRIOR TO CONFIRMING SALE WITHOUT EXPLANATION FROM JUDGE OR AND A RESPONSIVE PLEADING OR ANSWERS TO MOTIONS BY PLAINTIFF.

{¶17} Mr. Taylor also argues that the trial court incorrectly denied the various motions he filed with that court. Mr. Taylor has not developed an argument in his brief, however, with respect to any particular motion to explain why the motion should have been granted. Appellate Rule 16(A)(7) requires the argument in an appellant's brief to contain "the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." Because Mr. Taylor has failed to develop an argument regarding any of the individual motions that the trial court denied, we will disregard his assignment of error. App.R. 12(A)(2); App.R. 16(A)(7). Mr. Taylor's eighth assignment of error is overruled.

#### ASSIGNMENT OF ERROR IX

THE JUDGE HAS NEVER ALLOWED ANY DISCOVERY. HE DENIED ALL TAYLOR[']S DISCOVERY AND MOTIONS TO COMPEL DISCOVERY IN THIS CASE.

{¶18} Mr. Taylor argues that there is no evidence in the record that he ever missed a payment on his loan. He asserts that Deutsche Bank failed to prove that he defaulted on the note

or that it was the company that was supposed to receive his payments. According to Mr. Taylor, Deutsche Bank has failed to establish that it was injured or suffered any loss. Because Mr. Taylor's argument once again challenges the foreclosure judgment, which is not before this Court in this appeal, instead of the confirmation process, we conclude that we are prohibited from addressing its merit. *Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, at ¶ 40. It is too late for Mr. Taylor to make this argument to this Court. Mr. Taylor's ninth assignment of error is overruled.

#### ASSIGNMENT OF ERROR X

THE JUDGMENT FAILS TO PROTECT THE DEFENDANTS FROM FURTHER CLAIMS FROM ANY PERSONS WHO MAY [FIND THE] NOTE THAT IS LOST, PRESENT A COPY OF NOTE FROM PUBLIC RECORDS, PRESENT A COPY OF AN ASSIGNMENT FROM ANY DOCUMENT MILL.

{¶19} Mr. Taylor's final argument is that the trial court's judgment does not protect him from being sued by the real creditor of his loan. According to Mr. Taylor, the paperwork that Deutsche Bank presented to establish that it is the holder of the note and mortgage is fraudulent. The trial court, therefore, erred when it allowed Deutsche Bank to proceed with its foreclosure action. For the reasons stated above, however, we conclude that Mr. Taylor's arguments cannot be made in this appeal. *Id.* at ¶ 39-40. If Mr. Taylor wanted this Court to consider this argument, he needed to make it in his prior appeal. Mr. Taylor's tenth assignment of error is overruled.

#### III.

{¶20} Mr. Taylor's assignments of error are overruled. 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, P. J.  
SCHAFFER, J.  
CONCUR.

APPEARANCES:

KENNETH S. TAYLOR, pro se, Appellant.

SHERRIE M. MIDAY, Attorney at Law, for Appellee.

ALEX E. WALLIN and CHRISSY DUNN DUTTON, Attorneys at Law, for Appellee.

JOHN R. WRITHLIN, Attorney at Law for Appellee.