

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

DLJ Mortgage Capital, Inc.,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-394
Stephanie VanTilburg et al.,	:	(C.P.C. No. 10 CVE 07 10719)
Defendants-Appellants.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on November 29, 2012

Reisenfeld & Associates, LPA LLC, and Mathew A. Taulbee; Squire, Sanders & Dempsey (US) LLP, and Colter L. Paulson, for appellee.

Duncan Simonnete, Inc., Brian K. Duncan and Bryan D. Thomas, for appellants.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Stephanie and Timothy VanTilburg are appealing from the refusal of the trial court to sustain their Civ.R. 60(B) motion in their foreclosure case. They assign six errors for our consideration:

[I.] THE TRIAL COURT ERRED WHEN IT FAILED TO VACATE ITS SEPTEMBER 22, 2011 JUDGMENT ENTRY BASED ON CIV. R. 60(B)(1) AND/OR (5).

[II.] THE TRIAL COURT ERRED WHEN IT FAILED TO VACATE ITS SEPTEMBER 22, 2011 JUDGMENT ENTRY PURSUANT TO THE TRIAL COURT'S POLICY AND "LONGSTANDING PRACTICE" WITH RESPECT TO

ADJUDICATING MATTERS ON THEIR MERITS AS
OPPOSED TO PROCEDURAL DEFECTS.

[III.] THE TRIAL COURT ERRED WHEN IT SET FORTH
ITS APRIL 4, 2012 DECISION AND ENTRY, THEREBY
FAILING TO VACATE ITS SEPTEMBER 22, 2011
JUDGMENT ENTRY.

[IV.] THE TRIAL COURT ERRED BY FINDING THAT
DEFENDANTS FAILED TO DEMONSTRATE ANY
MERITORIOUS DEFENSES.

[V.] THE TRIAL COURT ERRED BY FINDING THAT
DEFENDANTS FAILED TO ESTABLISH EXCUSABLE
NEGLECT OR ANY OTHER GROUNDS FOR RELIEF
UNDER CIV. R. 60(B).

[VI.] THE TRIAL COURT ERRED BY FINDING THAT
DEFENDANTS FAILED TO FILE THEIR MOTION WITHIN
A REASONABLE TIME.

{¶ 2} The foreclosure case was filed in July 2010. A judgment entry and decree of foreclosure was journalized in September 2011. A motion to set aside the judgment was filed in January 2012. An evidentiary hearing was held before a magistrate, who issued a magistrate's decision recommending that the Civ.R. 60(B) motion be denied. The magistrate's decision was issued March 8, 2012.

{¶ 3} The trial court judge assigned to the case adopted the magistrate's decision on April 4, 2012. The record does not indicate that counsel for the VanTilburgs filed objections to the magistrate's decision.

{¶ 4} Because no objections were filed to the magistrate's decision, the parties and this appellate court are bound by Civ.R. 53(D)(3)(a)(iii) which reads:

Form; filing, and service of magistrate's decision. A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three days after the decision is filed. A magistrate's decision shall indicate conspicuously that a party shall not assign as error on appeal the court's adoption

of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

{¶ 5} The magistrate's decision in this case clearly and conspicuously advised the parties of this portion of the Ohio Rules of Civil Procedure. No objections were filed.

{¶ 6} All six of the errors now assigned on appeal were addressed as part of the magistrate's decision. Since no objections were filed, all six are barred from our consideration.

{¶ 7} The six assignments of error are overruled. The judgment of the Franklin County Court of Common Pleas is affirmed. Appellee's motion to dismiss this appeal is rendered moot.

Judgment affirmed.

BROWN, P.J., and BRYANT, J. concur.
