[Cite as *Columbus v. Ohio Wholesale Auto Sales, L.L.C.*, 2026-Ohio-4386.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus, Ohio, a municipal corporation,	:	
Petitioner-Appellee,	:	No. 25AP-467
v.	:	(C.P.C. No. 21CV-5236)
Ohio Wholesale Auto Sales, LLC et al.,	:	(REGULAR CALENDAR)
Respondents-Appellees,	:	
Wiltshire Capital Partners, LP,	:	
Respondent-Appellant.	:	

D E C I S I O N

Rendered on November 5. 2026

On brief: *Haynes*, *Kessler*, *Myers & Postalakis,* and *Christopher T. Cline*, for appellee, Ohio Wholesale Auto Sales, LLC. **Argued:** *Christopher T. Cline*.

On brief: *Joquetta S. Wells*, for appellant. **Argued:** *Joquetta S. Wells*.

APPEAL from the Franklin County Court of Common Pleas

DINGUS, J.

{¶ 1} Respondent-appellant, Wiltshire Capital Partners, LP ("Wiltshire"), appeals from a judgment of the Franklin County Court of Common Pleas, in this eminent domain action, vesting title in certain real property to petitioner-appellee, City of Columbus, upon the city's $4,014 payment to respondent-appellee, Ohio Wholesale Auto Sales, LLC ("Ohio Wholesale Auto Sales"). For the following reasons, we reverse and remand.

I. Facts and Procedural History

{¶ 2} In August 2021, the City of Columbus filed a petition for appropriation of real property declaring its intention to use eminent domain to appropriate a fee simple interest and a temporary easement for a 0.082-acre parcel of land in Clinton Township and to appropriate a temporary construction easement for a 0.016-acre parcel of land in Clinton Township. The eminent domain proceedings were initiated "for the purposes of making, constructing, repairing or improving a state, U.S. or interstate highway which shall be open to the public, without charge" as part of the Hudson Street Sidewalks Project. (Aug. 17, 2021 Petition at ¶ 7.) In its appropriation petition, the City of Columbus named nine entities who have, claim to have, or may have, the following estate interest or right in the real property: (1) Ohio Wholesale Auto Sales, fee simple interest; (2) Doug Davis and Marilyn Bernard, mortgage of record; (3) William L. Bowersock, mortgage of record; (4) Florence Odita, mortgage of record; (5) Wiltshire, mortgage of record; (6) State of Ohio, Department of Taxation, judgment of record; (7) Don's Garage, Inc., judgment of record; (8) City of Columbus, notice of lis pendens; and (9) Franklin County Treasurer, property taxes and assessments. Based on various dismissals and default judgments, only three respondents remained as of April 18, 2022: Wiltshire, Ohio Wholesale Auto Sales, and the Franklin County Treasurer.

{¶ 3} On August 2, 2022, the trial court held a status conference and, based on the parties' representations at that conference, set the matter for an evidentiary hearing "to determine Defendant Wiltshire Capital Partners' LP's standing in this matter." (Aug. 3, 2022 Order.) Before the scheduled hearing, the trial court issued an August 11, 2022 order vacating the hearing order and directing the parties to submit briefing and any evidence regarding Wiltshire's "standing," stating it would "rule on the issue without oral arguments." (Aug. 11, 2022 Order.) The court ordered the parties to submit their briefs and any evidence by August 26, 2022. Ohio Wholesale Auto Sales timely filed a brief indicating that Wiltshire had filed a complaint for foreclosure in 2017, under Franklin C.P. case No. 17CV-7723, involving Wiltshire's same mortgage interest at issue in the current eminent domain action. Conversely, Wiltshire submitted an untimely brief on September 1, 2022, along with a motion for leave to file it. The court denied Wiltshire's motion for leave

and did not consider Wiltshire's brief. Neither the City of Columbus nor the Franklin County Treasurer submitted a brief.

{¶ 4} On July 24, 2023, the trial court issued a "Decision and Entry Regarding Status of Defendant Wiltshire Capital Partners LP." In the decision and entry, the trial court determined that because Wiltshire had its claim decided adversely against it in a separate foreclosure action involving the same mortgage interest at issue here, res judicata applied and Wiltshire "no longer has a stake in any matter relating to the mortgage and cannot claim some real interest in the subject matter of the action to fulfill its jurisdictional requirement." (Decision & Entry at 5.) Based on this finding, the trial court determined that Wiltshire "has no standing and its claim is barred by res judicata" and, thus, ordered that Wiltshire "is barred from presenting any claims based on the mortgage and promissory note which it first advanced in the 2017 Foreclosure." *Id.* Wiltshire timely appealed, but this court did not reach the merits because it dismissed the appeal for lack of a final, appealable order. *Columbus Mun. Corp. v. Wiltshire Capital Partners, LP*, 2024-Ohio-2180, ¶ 19 (10th Dist.).[1]

{¶ 5} On April 2, 2025, the trial court reinstated the matter to active status and scheduled a status conference "to discuss the procedural posture of [the] litigation." (Apr. 2, 2025 Order to Reinstate & Notice of Status Conference.) At the status conference, counsel for the City of Columbus indicated that a settlement had been reached with Ohio Wholesale Auto Sales, but that Wiltshire had objected to that settlement based on its asserted interest in the property. Counsel for Ohio Wholesale Auto Sales argued that, for multiple reasons, Wiltshire had no valid mortgage interest in the property and that, therefore, the matter should move forward to final judgment, with approval of the settlement agreement and transfer of title with payment to Ohio Wholesale Auto Sales. Opposing this resolution, Wiltshire's counsel argued that the status conference should have been limited to the case's procedural posture, not substantive issues.

[1] Although this court did not reach the merits of the appeal, this court noted that the trial court's purported determination of Wiltshire's lack of "standing" was contrary to general notions of standing, as the City of Columbus named Wiltshire as a defendant in the appropriation action. *See Columbus Mun. Corp.* at ¶ 17 ("An assertion of lack of standing is typically understood as a challenge to the capacity of party to bring an action.") (Emphasis deleted.). Whether res judicata precludes Wiltshire from claiming a mortgage interest in the subject property is not a standing issue.

{¶ 6} On May 2, 2025, the trial court filed an entry noting that "[a]t issue in this case is Wiltshire's contention that it possesses a mortgage interest in the property sought to be taken through eminent domain by" the City of Columbus. (May 2, 2025 Entry at 1.) It also noted that on July 24, 2023, it "determined that Wiltshire's right to assert a mortgage interest in the premises has been foreclosed and terminated by an earlier mortgage foreclosure filed by Wiltshire that the Court dismissed, pursuant to Civil Rule 41(B)(1), for failure to prosecute." *Id.* In addition to this determination, the trial court agreed with Ohio Wholesale Auto Sales' contention that Wiltshire was "precluded from asserting its alleged interest in the premises because of its failure to set forth an interest in the premises and apparent assignment of the note that underlies its mortgage." *Id.* at 2. Consequently, the trial court filed an agreed judgment entry on settlement and an entry vesting title in the real property in the City of Columbus.

{¶ 7} Wiltshire timely appeals.

II. Assignments of Error

{¶ 8} Wiltshire assigns the following six assignments of error for our review:

> I. The trial court erred by ruling, contrary to law, that a Civ.R. 41(B)(1) dismissal for failure to prosecute a foreclosure action in which service of process on the defendant(s) has not been obtained, constitutes an adjudication on the merits and, therefore, (a) bars the plaintiff from refiling the foreclosure action and (b) by vitiation of the mortgage related to the foreclosure action, precludes a mortgagee from the status of "owner" within the meaning of R.C. 163.01(E) and from the status of Defendant/Respondent in an appropriation proceeding brought pursuant to Chapter 163 of the Ohio Revised Code.
>
> II. The trial court erred in ruling that Appellant Wiltshire does not have standing to participate in any manner in an eminent domain proceeding that seeks to appropriate property that is encumbered by a mortgage lien held by Wiltshire.
>
> III. The trial court abused its discretion to Wiltshire's substantial prejudice by denying Appellant Wiltshire, the Mortgagee of specific property sought for appropriation, leave to file its brief and thereby be meaningfully heard during the trial court's determinations on the issue of Wiltshire status in the proceeding for appropriation of the mortgaged property, and further abused its discretion by also denying Appellant

> Wiltshire's Motion For Reconsideration made on the grounds of excusable neglect.
>
> IV. The trial court's actions of entering an Order barring respondent-appellant Wiltshire from presenting claims based on Wiltshire's mortgage interest on the property sought for appropriation, then subsequently entering an Order adverse to Wiltshire based on a rationale of Wiltshire's failure to present claims advancing its mortgage interest constitutes an unreasonable abuse of discretion.
>
> V. The trial court erred as a matter of law and to respondent-appellant Wiltshire's substantial prejudice by imposing on Wiltshire an Order barring Wiltshire from presenting claims based on his mortgage in the eminent domain case.
>
> VI. The trial court erred by proceeding on a hearing of an oral R.C. 163.18 motion for distribution at a hearing event docketed as a "status conference" to discuss the "procedural posture" of the litigation in Case Number 21CV-5236.

III. Discussion

{¶ 9} Because they involve interrelated issues, we discuss together Wiltshire's first, second, fourth, and fifth assignments of error. Wiltshire's first assignment of error contends that the trial court erred in ruling that the Civ.R. 41(B)(1) dismissal in case No. 17CV-7723 was an adjudication on the merits and precluded Wiltshire from claiming the status of owner under R.C. 163.01(E) for the purpose of the City of Columbus' appropriation action. Wiltshire's second assignment of error alleges that the trial court erred in ruling that Wiltshire lacked standing to participate in the appropriation action. And in both its fourth and fifth assignments of error, Wiltshire contends that the trial court erred in barring it from presenting any claims based on its mortgage interest in the property. Thus, each assignment of error challenges the trial court's determination that res judicata barred Wiltshire from asserting its claimed interest in the property in the appropriation action. These assignments of error have merit.

{¶ 10} The doctrine of res judicata encompasses both claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel. *State v. C.L.H.*, 2019-Ohio-3786, ¶ 15 (10th Dist.). At issue here is whether Wiltshire was precluded, in the appropriation action, from asserting a mortgage interest in the property based on the previous dismissal, pursuant to Civ.R. 41(B)(1), for failure to

prosecute the mortgage foreclosure action filed by Wiltshire. The trial court found that the dismissal of the foreclosure action precluded Wiltshire from asserting its interest in the appropriation action. We disagree.

{¶ 11} In August 2017, Wiltshire filed a mortgage foreclosure complaint, which was assigned case No. 17CV-7723. In that action, on March 5, 2018, the trial court filed a notice of intent to dismiss, pursuant to Civ.R. 4(E), for failure to obtain service of process. The entry states that Wiltshire failed to obtain service within six months after filing the complaint and that, absent good cause shown, the action would be dismissed without prejudice for failure to obtain service. In its next entry, filed March 19, 2018, the trial court, "[p]ursuant to Civ.R. 41(B)(1), and after proper notice to [Wiltshire]," dismissed the entire case for Wiltshire's failure to prosecute the action. (Mar. 19, 2018 Entry Dismissing Case for Failure to Prosecute.) Thus, we must determine whether the court's dismissal, pursuant to Civ.R. 41(B)(1), for failure to prosecute was an adjudication on the merits.

{¶ 12} Civ.R. 41(B)(1) states that "[w]here the plaintiff fails to prosecute, or comply with these rules or any court order, the court upon motion of a defendant or on its own motion may, after notice to the plaintiff's counsel, dismiss an action or claim." Additionally, Civ.R. 41(B)(3) states that "[a] dismissal under division (B) of this rule and any dismissal not provided for in this rule, except as provided in division (B)(4) of this rule, operates as an adjudication upon the merits unless the court, in its order for dismissal, otherwise specifies." Pursuant to Civ.R. 41(B)(4)(a), a dismissal for "[l]ack of jurisdiction over the person or the subject matter" "operate[s] as a failure otherwise than on the merits[.]" The trial court entries relating to Wiltshire's foreclosure action also implicate Civ.R. 4(E), which states: "If a service of the summons and complaint is not made upon a defendant within six months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion." "Both Civ.R. 4(E) and 41(B)(1) provide the authority for a court, on its own initiative, or on motion by a party, to dismiss the plaintiff's case." (Emphasis deleted.) *Thomas v. Freeman*, 1997-Ohio-395, ¶ 25. And both Civ.R. 4(E) and 41(B)(1) "expressly require that notice be provided to a plaintiff before the

trial court dismisses an action on its own motion, even where the dismissal is without prejudice." *Kramer v. Raterman*, 2005-Ohio-2742, ¶ 27 (1st Dist.).

{¶ 13} In harmonizing the provisions of Civ.R. 4(E) with 41(B), concerning when a dismissal operates as an adjudication on the merits, the Supreme Court of Ohio in *Thomas* resolved that "where the facts indicate that a plaintiff has not acquired service on the defendant, the court may characterize its dismissal as a failure to prosecute pursuant to Civ.R. 41(B)(1), or as a failure to obtain service under Civ.R. 4(E), but the dismissal under either rule will be otherwise than on the merits under Civ.R. 41(B)(4)." *Thomas* at 226. This conclusion applies here. It is undisputed that, in case No. 17CV-7723, Wiltshire did not obtain service on, or waiver from, Ohio Wholesale Auto Sales or any other defendant, except for the Franklin County Treasurer. Therefore, except as to the Franklin County Treasurer, the trial court lacked personal jurisdiction over Ohio Wholesale Auto Sales or the other defendants. *See Williams v. Gray Guy Group, L.L.C.*, 2016-Ohio-8499, ¶ 18 (10th Dist.) (absent a waiver, proper service of process is a prerequisite for personal jurisdiction). Ohio Wholesale Auto Sales argues that *Thomas* is inapplicable because service was completed on one defendant, the Franklin County Treasurer. We disagree. Although the court had personal jurisdiction over the Franklin County Treasurer, meaning that the action had been commenced,[2] that did not give the court personal jurisdiction over any other named defendant, including the fee simple owner of the property being foreclosed, Ohio Wholesale Auto Sales. And the court, after giving notice, dismissed the case—that is, the action—because of Wiltshire's failure to perfect service. Therefore, pursuant to *Thomas*, the court's dismissal of the action for failure to prosecute in case No. 17CV-7723 was without prejudice. Consequently, we conclude that the court erred in precluding Wiltshire from asserting this claim in the appropriation action based on the dismissal of Wiltshire's previously filed foreclosure action. We make no finding as to the merits of Wiltshire's claim or whether it has a valid and enforceable mortgage interest in the property at issue. On remand, however, Wiltshire must be given the opportunity to assert this claim and argue the related validity and enforceability issues.

[2] *See* Civ.R. 3(A) ("A civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant."); *Fong v. Faires*, 2025-Ohio-1032, ¶ 13 (10th Dist.) (analyzing the requirement for commencement of an action set forth in Civ.R. 3(A)).

{¶ 14} For these reasons, we sustain Wiltshire's first, second, fourth, and fifth assignments of error.

{¶ 15} Wiltshire's third assignment of error contends that the trial court erred in denying its request for leave to file a brief regarding its standing, and in denying its motion for reconsideration of that denial. In its sixth assignment of error, Wiltshire contends that the court erred in considering an oral R.C. 163.18 motion for distribution at a hearing, even though the hearing was docketed as a status conference to discuss the procedural posture of case No. 21CV-5236. Because we reversed the court's judgment and remanded this matter on Wiltshire's first, second, fourth, and fifth assignments of error, its third and sixth assignments of error are moot. *See State v. Gideon*, 2020-Ohio-5635, ¶ 26 ("[A]n assignment of error is moot when an appellant presents issues that are no longer live as a result of some other decision rendered by the appellate court.").

IV. Disposition

{¶ 16} Having sustained Wiltshire's first, second, fourth, and fifth assignments of error, and found as moot its third and sixth assignments of error, we reverse the judgment of the Franklin County Court of Common Pleas and remand this matter to that court for further proceedings consistent with law and this decision.

Judgment reversed;
cause remanded.

EDELSTEIN and LELAND, JJ., concur.