[Cite as *U.S. Bank Trust Natl. Assn. v. Diallo*, 2026-Ohio-4464.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

U.S. Bank Trust National Association,	:	
Plaintiff-Appellee,	:	No. 26AP-474 (C.P.C. No. 23CV-3206)
v.	:	(ACCELERATED CALENDAR)
Mamadou Diallo,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 10, 2026

On brief: *Mamadou Diallo*, pro se.

APPEAL from the Franklin County Court of Common Pleas

EDELSTEIN, J.

{¶ 1} Defendant-appellant, Mamadou Diallo, appeals from a decision and entry of the Franklin County Court of Common Pleas denying his motion to vacate the default judgment entered in favor of plaintiff-appellee, U.S. Bank Trust National Association ("U.S. Bank"). U.S. Bank did not file an appellate brief. For the following reasons, we reverse.

I. Facts and Procedural History

{¶ 2} This matter involves a foreclosure action for real property located on Noe Bixby Road in Columbus, Ohio ("property"). On October 13, 2017, Mr. Diallo executed a promissory note in favor of JPMorgan Chase Bank, N.A., secured by a mortgage on the property. (Compl. Ex. A; Compl. Ex. B.) On May 4, 2023, Nationstar Mortgage, LLC, the mortgagee by assignment or merger, filed a complaint in foreclosure in rem against Mr. Diallo, Fatoumata Diallo, JPMorgan Chase Bank, N.A., Synchrony Bank, the State of Ohio Department of Taxation, and the Franklin County Treasurer, alleging Mr. Diallo

defaulted on the note and mortgage. The complaint stated Mr. Diallo had filed for bankruptcy and had been discharged and released from the indebtedness due on the promissory note and, thus, Nationstar Mortgage did not seek a deficiency or personal money judgment from Mr. Diallo. (Compl. at ¶ 7.)

{¶ 3} On August 22, 2023, after obtaining leave of court, Nationstar Mortgage filed an amended complaint adding the unknown spouse of Mr. Diallo, if any, as a party defendant. Nationstar Mortgage subsequently filed a notice of dismissal of defendant Fatoumata Diallo, pursuant to Civ.R. 41(A), because she is deceased. Mr. Diallo and Fatoumata Diallo were married until her September 2021 death.

{¶ 4} On April 26, 2024, the trial court substituted U.S. Bank as owner trustee for RCAF Acquisition Trust as the plaintiff and subsequently granted U.S. Bank leave to file a second amended complaint. On June 6, 2024, U.S. Bank filed the second amended complaint for foreclosure in rem against Mr. Diallo, JPMorgan Chase Bank, N.A., Synchrony Bank, the State of Ohio Department of Taxation, the Franklin County Treasurer, and the unknown spouse, if any, of Mr. Diallo. At the time U.S. Bank filed its second amended complaint, Mr. Diallo was incarcerated at Southeastern Correctional Institution ("SCI"). After service by certified mail to Mr. Diallo initially failed, U.S. Bank requested service by process server on Mr. Diallo at SCI. The process server certified on August 16, 2024 that substitute service on Mr. Diallo was accomplished by leaving a copy of the summons and second amended complaint with the intake officer at SCI. Additionally, the docket noted service on Mr. Diallo by certified mail as completed on August 15, 2024 by delivery to SCI.

{¶ 5} On September 17, 2024, U.S. Bank filed a motion for default judgment noting service on Mr. Diallo had been perfected by certified mail on August 15, 2024. In an October 21, 2024 final judgment entry, the trial court granted U.S. Bank's motion for default judgment and entered a decree of foreclosure in rem. The trial court then entered an order of sale for the property on November 3, 2024. On April 8, 2025, U.S. Bank filed a notice of sheriff's sale indicating the property was scheduled for auction on April 25, 2025. Sale of the property was completed on April 25, 2025. U.S. Bank filed a motion to confirm the sale on July 3, 2025, and the trial court entered a judgment entry confirming sale and ordering distribution on August 5, 2025.

{¶ 6} Approximately two months later, on October 6, 2025, Mr. Diallo filed a motion for distribution of excess funds in the amount of $61,060.07 from the sheriff's sale of the property. Separately, on November 5, 2025, the Estate of Fatoumata Diallo ("the estate") filed its own motion for distribution of the excess funds. Following a November 12, 2025 hearing, the magistrate denied Mr. Diallo's motion for distribution of excess funds and granted the estate's motion for distribution of excess funds. (Mag.'s Decision at 7-8.) The magistrate determined that Mr. Diallo was not entitled to the excess sale proceeds because he had been convicted of murdering his wife. *See* R.C. 2105.19(A) ("no person who is convicted of . . . [murder] shall in any way benefit by the death. All property of the decedent . . . shall pass or be paid or distributed as if the person who caused the death of the decedent had predeceased the decedent"). (Mag.'s Decision at 7.) Thus, the magistrate determined the entire balance of excess sale proceeds from the foreclosure and sale of the property is owed to the estate. (Mag.'s Decision at 7.)

{¶ 7} Mr. Diallo filed objections to the magistrate's decision on December 8, 2025. Mr. Diallo disagreed with the magistrate's factual and legal conclusions but did not raise any defenses related to insufficient service of process of the underlying foreclosure action. In a December 9, 2025 entry and order, the trial court overruled Mr. Diallo's objections, adopted the magistrate's decision, and ordered the Clerk of Courts to disburse all funds on deposit to the estate. Mr. Diallo appealed the trial court's December 9, 2025 entry and order. This court sua sponte dismissed the appeal on May 26, 2026 for Mr. Diallo's failure to file an appellate brief. (May 26, 2026 Journal Entry of Dismissal, case No. 26AP-16.)

{¶ 8} On March 24, 2026, Mr. Diallo filed a motion to vacate judgment, raising insufficiency of service of process for the first time. That motion was stricken due to non-compliance with Civ.R. 11 and improper hybrid representation. On April 14, 2026, Mr. Diallo filed a common-law motion to vacate the default judgment granting the decree of foreclosure in rem and the subsequent sheriff's sale. Mr. Diallo argued service of the foreclosure action was insufficient, he never received a summons or complaint, he was not properly served within the timeline required by Civ.R. 3(A), and he did not learn of the foreclosure action or the sheriff's sale until September 15, 2025. U.S. Bank filed a motion for extension of time to file a response.

{¶ 9} In lieu of ruling on U.S. Bank's motion for extension of time, the trial court instead issued a May 1, 2026 decision and entry denying Mr. Diallo's motion to vacate, noting the court did not require any opposition to rule on the motion. The trial court determined Mr. Diallo waived the defense of insufficiency of process by failing to raise the defense in a timely fashion and failing to explain his delay in raising the defense once he learned of the foreclosure action. The trial court specifically noted Mr. Diallo appeared before the court several times between October 2025 and January 2026 in his attempt to obtain distribution of excess funds from the sheriff's sale of the property but did not raise insufficiency of service in any of those appearances or filings. (Decision and Entry at 2-3.) Thus, the trial court denied Mr. Diallo's motion to vacate judgment and found U.S. Bank's motion for extension of time to be moot. Mr. Diallo timely appeals.

II. Assignments of Error

{¶ 10} Mr. Diallo raises the following two assignments of error for our review:

> I. The trial court erred as a matter of law when it determined Appellant waived his insufficiency of service defense.
>
> II. The trial court abused its discretion when it denied the, unopposed, motion to vacate without holding a hearing.

III. First Assignment of Error – Waiver of Insufficiency of Service Defense

{¶ 11} In his first assignment of error, Mr. Diallo argues the trial court erred when it determined he waived the defense of insufficiency of service and denied his motion to vacate on that basis without further inquiry. Mr. Diallo asserts he could not waive the defense of lack of personal jurisdiction due to insufficient service because the court had already rendered judgement in the foreclosure decree before he took any action that could constitute waiver of service.

{¶ 12} To render a valid judgment, a court must have personal jurisdiction over the defendant. *Maryhew v. Yova*, 11 Ohio St.3d 154, 156 (1984); *Harris v. Mapp*, 2006-Ohio-5515, ¶ 9 (10th Dist.), quoting *NetJets, Inc. v. Binning*, 2005-Ohio-3934, ¶ 4 (10th Dist.) (" 'Personal jurisdiction is the authority of a particular forum to enter judgment constitutionally binding on a particular defendant.' "). A judgment rendered by a court without personal jurisdiction over the defendant is void ab initio, not merely voidable. *GEICO Indem. Co. v. August*, 2023-Ohio-1196, ¶ 14 (10th Dist.), citing *Mun. Tax Invest.*,

L.L.C. v. Pate, 2016-Ohio-7791, ¶ 9 (10th Dist.); *Columbus, Div. of Income Tax v. Yockey*, 2020-Ohio-3290, ¶ 13 (10th Dist.), quoting *Green v. Huntley*, 2010-Ohio-1024, ¶ 11 (10th Dist.); *Third Fed. S. & L. Assn. v. Taylor*, 2017-Ohio-7620, ¶ 11 (10th Dist.). The appropriate method to challenge a judgment as void due to lack of personal jurisdiction is through a common-law motion to vacate. *Chuang Dev., L.L.C. v. Raina*, 2017-Ohio-3000, ¶ 29 (10th Dist.), citing *C & W Invest. Co. v. Midwest Vending, Inc.*, 2003-Ohio-4688, ¶ 7 (10th Dist.).

{¶ 13} Generally, an appellate court reviews a trial court's denial of a common-law motion to vacate for an abuse of discretion. *Yockey* at ¶ 11, citing *Third Fed. S. & L. Assn.*, at ¶ 11. An abuse of discretion connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983); *State ex rel. DeBlase v. Ohio Ballot Bd.*, 2023-Ohio-1823, ¶ 27. However, the issue of whether the trial court acquired personal jurisdiction is a question of law we review de novo. *Yockey* at ¶ 11, citing *Star Seal of Ohio, Inc. v. Tri State Pavement Supplies, L.L.C.*, 2010-Ohio-2324, ¶ 10 (10th Dist.); *Shannon Village Homeowners Assn. v. Miller*, 2023-Ohio-1449, ¶ 9 (10th Dist.), citing *Williams v. Gray Guy Group, L.L.C.*, 2016-Ohio-8499, ¶ 18 (10th Dist.); *Kauffman Racing Equip., L.L.C. v. Roberts*, 2010-Ohio-2551, ¶ 27.

{¶ 14} A trial court lacks personal jurisdiction to enter judgment against a defendant if the plaintiff fails to perfect service of process and the defendant has neither voluntarily appeared in the action nor waived service. *GEICO Indem. Co.* at ¶ 13, citing *Bowling v. Grange Mut. Cas. Co.*, 2005-Ohio-5924, ¶ 27 (10th Dist.); *Shannon Village Homeowners Assn.* at ¶ 10 ("In the absence of service of process or a waiver of service by the defendant, a court usually cannot exercise power over a named defendant."), citing *Williams* at ¶ 18, citing *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). The duty to perfect service of process rests with the plaintiff, and defendants have no duty to assist plaintiffs in fulfilling this obligation. *Gliozzo v. Univ. Urologists of Cleveland, Inc.*, 2007-Ohio-3762, ¶ 16, citing *Maryhew* at 159. In order for a court to render a valid judgment against a defendant who has not been properly served with process, " 'the record must demonstrate that the defendant voluntarily submitted to the court's jurisdiction or committed other acts to constitute a waiver of the defense of lack of personal jurisdiction.' " *Yockey* at ¶ 14, quoting *Green* at ¶ 12.

{¶ 15} In his motion to vacate, Mr. Diallo set forth two main arguments: (1) he was not properly served with the summons and complaint in the foreclosure action within the one-year time period set forth in Civ.R. 3(A); and (2) service was otherwise insufficient because he never actually received service. Rather than consider the merits of Mr. Diallo's arguments, the trial court determined Mr. Diallo waived the defense of insufficient service by failing to raise it in a timely fashion after he first appeared and participated in the action in pursuit of distribution of excess funds. The court then relied on its finding that Mr. Diallo waived the defense of insufficient service to deny his motion to vacate, failing to make any factual findings related to when or whether service was accomplished. We find the court erred in failing to reach the merits of Mr. Diallo's motion.

{¶ 16} As a general matter, we agree with the trial court that a defendant can waive the defense of lack of personal jurisdiction due to insufficient service of process by actively participating in the action without adequately preserving the defense. *See*, *e.g.*, *Shah v. Simpson*, 2014-Ohio-675, ¶ 15 (10th Dist.), quoting *Stewart v. Forum Health*, 2010-Ohio-4855, ¶ 36 (7th Dist.) (" 'the defense of insufficiency of service of process can be waived in one of two ways: (1) if a motion is made raising other Civ.R. 12(B) defenses and it is not included in that motion and (2) if there is no such motion, if it is not raised by separate motion or included in the responsive pleading"), citing *Gliozzo* at ¶ 9. Here, however, the court fundamentally misunderstood the role of waiver of the defense of insufficient service in determining whether a trial court had personal jurisdiction to enter judgment against a defendant.

{¶ 17} Waiver of service of process through active participation in a case is one method by which a trial court can acquire personal jurisdiction over a defendant. *Yockey*, 2020-Ohio-3290, at ¶ 14 (10th Dist.) (a court can acquire personal jurisdiction over a defendant through one of three methods: "(1) proper service of process, (2) the defendant's voluntary appearance and submission to the court's jurisdiction, and (3) acts by the defendant or the defendant's counsel that involuntarily subject the defendant to the court's jurisdiction"), citing *Green*, 2010-Ohio-1024, at ¶ 12 (10th Dist.). Thus, when a defendant alleges the trial court failed to acquire personal jurisdiction before entering judgment against the defendant, a trial court is correct to examine whether a defendant waived any objection to personal jurisdiction by voluntarily appearing and participating in the action.

See Chuang Dev., L.L.C., 2017-Ohio-3000, at ¶ 28 (10th Dist.), citing *State ex rel. Ballard v. O'Donnell*, 50 Ohio St.3d 182 (1990), paragraph one of the syllabus. In this context, a defendant's failure to timely raise the defense of insufficient service of process is properly understood as the defendant's voluntary submission to the court's personal jurisdiction. *Williams*, 2016-Ohio-8499, at ¶ 19 (10th Dist.), citing *Wells Fargo Bank, N.A. v. Sekulovski*, 2012-Ohio-5973, ¶ 10 (10th Dist.), citing *Maryhew*, 11 Ohio St.3d at 156.

{¶ 18} It is fundamental, however, that the available methods for a defendant to properly raise or waive the affirmative defenses of lack of personal jurisdiction and/or insufficiency of service of process occur ***before*** a court enters judgment. *See, e.g., Gliozzo*, 2007-Ohio-3762, at ¶ 7-9, citing Civ.R. 12(B) and (H)(1) ("Civ.R. 12 explains how defenses may be waived," and "the defense of insufficiency of service of process is waived if a motion is made raising other Civ.R. 12(B) defenses and it is not included in that motion, or, if there is no such motion, if it is not raised by separate motion or included in the responsive pleading"). Critically, because any judgment entered by a court without personal jurisdiction is void ab initio, the conduct supporting waiver of the defense of insufficient service is only relevant when it occurs ***before*** the trial court enters judgment over the defendant. *Kerby v. Zerick*, 2024-Ohio-5665, ¶ 14 (10th Dist.), quoting *Ostendorf v. Darling*, 2021-Ohio-2781, ¶ 10 (10th Dist.), citing *Third Fed. S. & L. Assn.*, 2017-Ohio-7620, at ¶ 11 (10th Dist.), and *Young v. Locke*, 2014-Ohio-2500, ¶ 21 (10th Dist.) (" 'If a trial court renders a judgment without ***first obtaining*** personal jurisdiction over the defendant, that judgment is void ab initio' ") (emphasis added). A judgment that is void ab initio is void from the moment it is entered and is a nullity. It follows, then, the defendant's conduct subsequent to the entry of the void judgment cannot operate to cure the jurisdictional defect. *See Locke* at ¶ 21, citing *Fifth Third Bank v. Hatfield*, 2004-Ohio-755, ¶ 12 (10th Dist.); *McCualsky v. Appalachian Behavioral Healthcare*, 2017-Ohio-1064, ¶ 11 (10th Dist.), quoting *Fravel v. Columbus Rehab. & Subacute Inst.*, 2016-Ohio-5807, ¶ 15 (10th Dist.) (" 'A legal nullity by definition is something that never occurred.' ") (Further internal quotations and citation omitted.).

{¶ 19} Instead, because a judgment entered on a complaint without personal jurisdiction is void ab initio, the proper recourse is for the trial court to vacate the void judgment through a motion to vacate, regardless of any post-judgment participation by the

defendant. *Chuang Dev., L.L.C.* at ¶ 29 (10th Dist.), citing *C & W Invest. Co.*, 2003-Ohio-4688, at ¶ 17 (10th Dist.) ("The authority to vacate a void judgment . . . constitutes an inherent power possessed by Ohio courts," and "when a party claims a trial court lacked personal jurisdiction over them due to improper service of process, the appropriate method to challenge such void judgment is through a common law motion to vacate.").

{¶ 20} Here, Mr. Diallo argued the trial court entered the decree of foreclosure without first acquiring personal jurisdiction over him. To determine whether Mr. Diallo waived a defense based on insufficient service, the court considered only Mr. Diallo's efforts to obtain distribution of excess funds. However, because that conduct occurred several months ***after*** the court entered the judgement of foreclosure, it was not relevant to determining whether a personal jurisdiction defense was waived and therefore could not cure any jurisdictional defect at the time the court entered the judgment. Thus, the court erred in finding Mr. Diallo's engagement with the case after the court entered judgment operated as a waiver of the defense of insufficient service of process and failing to address the merits of Mr. Diallo's motion. We must reverse the court's decision denying Mr. Diallo's motion to vacate and remand the matter for the court to determine, in the first instance, whether it obtained personal jurisdiction over Mr. Diallo through proper service of process or some other method prior to its entry of the foreclosure decree.

{¶ 21} We sustain Mr. Diallo's first assignment of error.

IV. Second Assignment of Error – Denial of Motion without a Hearing

{¶ 22} In his second assignment of error, Mr. Diallo argues the trial court erred in denying his motion to vacate without first holding a hearing. Because we determined in our resolution of Mr. Diallo's first assignment of error that we must reverse the decision of the court and remand the matter for further proceedings, his second assignment of error is moot, and we decline to address it. *See White v. Ross Corr. Inst.*, 2026-Ohio-1002, ¶ 29 (10th Dist.), citing App.R. 12(A)(1)(c).

V. Disposition

{¶ 23} Based on the foregoing reasons, the trial court erred in failing to consider the merits of Mr. Diallo's motion to vacate. Having sustained Mr. Diallo's first assignment of error, rendering moot Mr. Diallo's second assignment of error, we reverse the judgment of

the Franklin County Court of Common Pleas and remand the matter to that court for further proceedings in accordance with law and consistent with this decision.

Judgment reversed;
cause remanded.

BOGGS, P.J., and BEATTY BLUNT, J., concur.
