

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

PRAMILA M. DOMADIA, et al.,	:	OPINION
Plaintiffs-Appellees,	:	
- vs -	:	CASE NO. 2008-G-2847
MARY A. BRIGGS, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 07 F 000821.

Judgment: Affirmed.

Paul A. Newman, Newman & Brice, L.P.A., 214 East Park Street, Chardon, OH 44024 (For Plaintiffs-Appellees).

Carolyn J. Paschke, Law Offices of Carolyn J. Paschke Co., L.P.A., 10808 Kinsman Road, P.O. Box 141, Newbury, OH 44065 (For Appellant Mary A. Briggs).

MARY JANE TRAPP, P.J.

{¶1} Mary A. Briggs appeals from the judgment of the Geauga County Court of Common Pleas, which upon a motion for default judgment ordered a foreclosure of Ms. Briggs' property to satisfy a judgment lien. The court found that Ms. Briggs, although duly served, failed to file an answer or make an appearance, and that the Domadias were due \$146,373.60 plus interest at the rate of 8% per annum from March 5, 2008.

{¶2} Ms. Briggs contends the court erred in granting the Domadias' motion for default judgment and ordering a foreclosure because she did make an appearance, and

further, that the Domadias violated the parties' oral settlement agreement by proceeding with the foreclosure action.

{¶3} We determine that Ms. Briggs' contentions are without merit. In the first instance, the issue of Ms. Briggs' failure to make an appearance is moot, as the trial court addressed the issue upon a remand from this court in an appeal filed by a different defendant.¹ In that judgment entry, which is also on appeal in Ms. Briggs' companion case, *Domadia v. Briggs*, 11th Dist. No. 2009-L-2899, the court corrected the clerical error that noted her failure to appear or file an answer in the June 4, 2008 judgment entry. The trial court found it did not change the validity of that judgment because it is evident that Ms. Briggs did present a defense, and most fundamentally, produced no meritorious defense to the Domadias' motion for default judgment.

{¶4} We also determine that Ms. Briggs' second argument, that the Domadias violated their oral agreement to dismiss the foreclosure action, is without merit because Ms. Briggs introduced no evidence of a settlement agreement. The court gave her ample time to produce evidence that allegedly supported the existence of a settlement agreement by continuing the hearing on the motion for default judgment, and delaying the filing of the final foreclosure decree.

{¶5} As the trial court continually reminded her, and as we must also note, Ms. Briggs has been trying to appeal the underlying judgment lien obtained in a separate case by the Domadias in January of 2007. Ms. Briggs failed to appeal the judgment from that case, and, therefore, the original judgment lien remains.

{¶6} Thus, we determine Ms. Briggs' appeal is without merit and affirm.

1. Geauga Savings Bank's appeal of the default judgment was later dismissed by this court on December 15, 2008.

{¶7} Substantive and Procedural Facts

{¶8} The genesis of this case was an original money judgment against Ms. Briggs in the amount of \$146,560.75. Thereafter, a judgment lien encumbered Ms. Briggs' property located in Claridon Township.

{¶9} In August of 2007, the Domadias filed a foreclosure action, and in November of 2007, they filed a motion for default judgment. Two hearings were held on the motion for default judgment, the first on March 5, 2008, where the Domadias presented evidence as to the outstanding amount of the judgment. Ms. Briggs appeared at the default hearing and requested a continuance, believing the case could be settled, and informed the court she was prepared to give the Domadias a check for \$14,000 that very day.

{¶10} The court did continue the hearing on the motion for default judgment and noted that Ms. Briggs had not filed an answer. Ms. Briggs contended that she never received the original complaint. The court reviewed the case file and showed her that service was proper. The court also offered her the entire court file for viewing. Ms. Briggs did make the payment, which the Domadias accepted at the end of this hearing. The amount was later credited to her in the final foreclosure decree.

{¶11} At the second hearing, held on May 16, 2008, the court reminded Ms. Briggs that she was not before the court to defend the original cognovit judgment that had been entered in the previous case. The court explained that the Domadias' current action was a foreclosure action to execute upon the judgment lien. The court further explained to Ms. Briggs that the only defense to the foreclosure action would be that the judgment was paid in full. It is beyond dispute that Ms. Briggs failed to submit any

evidence of satisfaction of the judgment or, for that matter, any evidence of an executory settlement agreement. The court further found that the parties were unable to settle the matter and directed the Domadias' attorney to submit an appropriate judgment entry.

{¶12} Several weeks later, on June 4, 2008, the court granted the Domadias' motion for default judgment and issued the foreclosure decree, finding that Ms. Briggs, although duly served, failed to answer or make an appearance. The court found that \$147,373.60, plus interest at a rate of 8% per annum, remained due and owing on a judgment in favor of the Domadias from March 5, 2008 (crediting Ms. Briggs with the \$14,000 payment). The court further found that all necessary parties were properly served and that two other parties, including Geauga Savings Bank, failed to attend the two hearings before the court.

{¶13} The court ordered that Ms. Briggs' property be sold and the liens marshalled, concluding that the Domadias, as the first and best lien holders, were entitled to satisfaction of the lien, and that the Geauga County Treasurer was owed accrued real property taxes, assessments, penalties, and interest.

{¶14} Both Ms. Briggs and Geauga Savings Bank filed motions for relief from default judgment and, at the same time, both Ms. Briggs and the bank filed appeals from the court's grant of default judgment to the Domadias. We issued a stay of execution in Geauga Savings Bank's appeal and remanded the matter to allow the trial court to rule on the bank's motion for relief from judgment. Geauga Savings Bank's appeal was dismissed after its claim was settled. We stayed Ms. Briggs' appeal as well in case the trial court's ruling had some effect or bearing on this appeal.

{¶15} Ms. Briggs now raises two assignments of error regarding the trial court's ruling upon the Domadias' motion for default judgment and foreclosure decree:

{¶16} “[1.] The trial court erred in granting a default judgment for foreclosure on appellant's residence by finding that appellant failed to appear.

{¶17} “[2.] Plaintiffs violated the parties' oral agreement by moving forward with the foreclosure.”

{¶18} Standard of Review - Motion for Default Judgment

{¶19} “The granting of a default judgment, analogous to the granting of a dismissal, is a harsh remedy which should only be imposed when ‘the actions of the defaulting party create a presumption of willfulness or bad faith.’” *Hale v. Steri-Tec Services, Inc.*, 11th Dist. No. 2008-G-2876, 2009-Ohio-3935, ¶25, quoting *Johnson Controls, Inc. v. Cadle Co.*, 11th Dist. No. 2006-T-0030, 2007-Ohio-3382, ¶16, quoting *Zimmerman v. Group Maintenance Corp.*, 11th Dist. No. 2003-A-0105, 2005-Ohio-3539, ¶21 (citations omitted). “A trial court's decision to grant or deny a motion for default judgment is reviewed under an abuse of discretion standard.” *Id.*, citing *Huffer v. Cicero* (1995), 107 Ohio App.3d 65, 74. An abuse of discretion is no mere error of law or judgment; rather it connotes an unreasonable, arbitrary, or unconscionable attitude on the part of the trial court. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶20} Failure to Appear or File an Answer

{¶21} In her first assignment of error, Ms. Briggs contends the trial court erred in finding that she failed to appear or file an answer. We find this assignment of error to be moot, as the court recognized Ms. Briggs' appearance at the two hearings and intent

to defend on the motion for default judgment, considered her arguments, and then corrected the finding of her failure to appear in a later judgment entry on April 6, 2009.

{¶22} Ms. Briggs concedes that she failed to file an answer, and that she was present for both hearings with the intent to defend. There is no question the court allowed her to present a defense, considered her arguments, and leniently allowed her additional time to satisfy the judgment lien before issuing the foreclosure decree.

{¶23} Ms. Briggs is correct in her assertion, as the court noted, that she “appeared” for all intents and purposes, pursuant to Civ.R. 55, indicating her intent to defend against the Domadias’ motion for default judgment.

{¶24} We recognize that “[d]efault judgment is a disfavored procedure. Therefore, in the main, Ohio courts have interpreted the requirement that a party to be held in default must have ‘appeared’ in the case, in order to be entitled to notice of the default hearing, with extreme liberty. Essentially, a party has appeared, for purposes of Civ.R. 55(A), if it has had any contact, however informal, indicating it intends to defend the suit, with the party moving for default judgment. *Qualchoice v. Baumgartner*, 11th Dist. No. 2007-T-0086, 2008-Ohio-1023, ¶14, citing, *Rocha v. Salsbury*, 6th Dist. No. F-05-014, 2006-Ohio-2615, ¶19-20.

{¶25} Ms. Briggs put forth an active defense during the hearings on the motion for default judgment. She was present for both hearings on March 5, 2008, and May 16, 2008. The court continued the March 5, 2008 hearing so that Ms. Briggs could submit evidence of an alleged settlement agreement to satisfy the judgment. Apart from noting the court’s error in finding that she failed to appear, Ms. Briggs offered no evidence upon which relief could be granted. Indeed, she presented no meritorious

defense; no evidence of mistake, inadvertence, surprise or excusable neglect; no newly discovered evidence; no evidence of fraud, no evidence that the judgment had been satisfied, or any “other reason justifying relief from the judgment.”

{¶26} The Domadias filed the foreclosure action in order to satisfy their judgment which had been granted in a separate case in January of 2007. Ms. Briggs contends she did present evidence of a settlement agreement in the form of two checks she issued to the Domadias in April and May of 2008. Ms. Briggs admits these checks were not cashed.

{¶27} She is correct that on the day of the March 5, 2008 hearing, she gave the Domadias a check for \$14,000, which was cashed. The court took notice of the \$14,000 payment and credited this amount to Ms. Briggs against the total amount due on the judgment in the foreclosure decree. Quite simply, Ms. Briggs offered no evidence of a settlement agreement and did not satisfy the outstanding judgment against her.

{¶28} Thus, we find no abuse of discretion in the trial court’s award of default judgment and the issuance of the foreclosure order.

{¶29} Ms. Briggs’ first assignment of error is without merit.

{¶30} Grounds for Relief from Default Judgment - Oral Settlement Negotiations

{¶31} In her second assignment of error, Ms. Briggs contends the trial court erred in granting the Domadias’ motion for default judgment because the parties allegedly had a settlement agreement, whereby she would pay and did duly pay, the sum of \$14,000 at the hearing in good faith; and that she continued to send several checks thereafter to satisfy the money judgment against her.

{¶32} As noted above, there is no merit to Ms. Briggs' contention that a settlement agreement had been reached. The \$14,000 payment tendered at the close of the March 5, 2008 hearing was credited against the original judgment in the June 4, 2008 foreclosure decree. The Domadias did not cash any of Ms. Briggs' sporadic checks of varying amounts that were sent thereafter.

{¶33} There is, quite simply, no evidence that a settlement agreement had been reached or that the original judgment had been satisfied. The court had no choice but to order the foreclosure. In fact, during the hearing on March 5, 2008, Ms. Briggs requested a 30 to 60 day continuance, believing that the parties could settle the matter, and in that amount of time she could satisfy the judgment. The court allowed her this extra time and continued the hearing on the motion for default judgment until May 16, 2008. The court also cautioned Ms. Briggs that the issue now before the court was in regard to a foreclosure action and that the time to appeal the original money judgment had passed.

{¶34} At the hearing, Ms. Briggs offered no evidence that would warrant relief from default judgment. The court explained the "harsh reality" was that the only defense to the present suit was that the judgment had been satisfied in full. The court further concluded that the parties were unable to settle the matter and there was no evidence of a settlement agreement and, therefore, directed the Domadias' counsel to prepare an appropriate foreclosure entry. The court then promised Ms. Briggs it would not sign the foreclosure decree until May 30, 2008, to give her an additional two weeks to satisfy the original judgment. The judgment remained unsatisfied, and the foreclosure decree was issued on June 4, 2008.

{¶35} Thus, we find no abuse of discretion in the court's award of default judgment to the Domadias.

{¶36} Ms. Briggs' second assignment of error is without merit.

{¶37} The judgment of the Geauga County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.