

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Deutsche Bank National Trust Company,
as Trustee for Fremont Home Loan
Trust 2006-1

Court of Appeals No. E-10-006

Trial Court No. 2008 CV 0263

Appellee

v.

Kurt Greene, et al.

DECISION AND JUDGMENT

Appellant

Decided: June 9, 2011

* * * * *

Scott A. King and Terry W. Posey, Jr., for appellee.

Daniel L. McGookey, Richard B. Hardy III and Lauren
McGookey, for appellant.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court on a motion by appellant, Kurt Greene, to reconsider our decision of April 22, 2011. *Deutsche Bank Nat. Trust Co. v. Greene*, 6th Dist. No. E-10-006, 2011-Ohio-1976. Appellee, Deutsche Bank National Trust Company, has filed a memorandum in opposition. Appellant has responded with a reply memorandum and a supplemental memorandum in support.

{¶ 2} "The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or not fully considered by the court when it should have been." *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, 143. "A motion for reconsideration is not designed for use in instances when a party merely disagrees with the conclusions reached and the logic used by the appellate court." *In re Richardson*, 7th Dist. No. 01-CA-78, 2002-Ohio-6709, ¶ 2, citing *Audia v. Rossi Bros. Funeral Home, Inc.* (2001), 140 Ohio App.3d 589. Neither is a motion for reconsideration an opportunity to raise new arguments that a party neglected to make in earlier proceedings. *Walter v. Walter*, 7th Dist. No. 04-JE-27, 2005-Ohio-5632, ¶ 3.

{¶ 3} In our original decision, we held that appellee was a proper party to pursue a foreclosure by virtue of an assignment of the original note and a legal inference that the mortgage transferred as well. In doing so, we followed the reasoning articulated by the Fifth District Court of Appeals in *Bank of N.Y. v. Dobbs*, 5th Dist. No. 2009-CA-002, 2009-Ohio-4742. *Deutsche Bank*, supra, at ¶ 15. *Dobbs*, at ¶ 17-41, followed the Restatement of the Law 3d, Property –Mortgages (1997), 380, Section 5.4(b), which directs that a mortgage and note are presumed to transfer together, absent an overriding U.C.C. requirement or a clear manifestation that the parties intended otherwise.

{¶ 4} On reconsideration, appellant urges that this case is distinguishable from *Dobbs* because there is evidence of a contrary intention found in the trust prospectus of

the Fremont Home Loan Trust which states that, on closing, the note and the mortgage are to be immediately assigned to the trust. Since this did not happen, appellant argues, *Dobbs* cannot control.

{¶ 5} Appellee responds that, whatever the evidentiary import of the trust prospectus, it was not before the trial court until appellant filed his Civ.R. 60(B) motion on the summary judgment. Since the judgment appealed was the summary judgment, not the Civ.R. 60(B) decision (which was still pending at the time this appeal was filed), appellee insists the prospectus may not now be considered.

{¶ 6} Appellee is correct. The trust prospectus was not before the trial court when summary judgment was issued and may not now be considered on appeal. App.R. 9. Moreover, it is not clear how the prospectus, even if it were enforceable, affects these parties.

{¶ 7} Appellant also insists that there was no evidence that appellee "owned" the note that was foreclosed. He directs our attention to a certification of conflict pending before the Ohio Supreme Court. The certified question being whether, "[t]o have standing as a plaintiff in a mortgage foreclosure action, a party must show that it owned the note and mortgage when the complaint was filed." See *U.S. Bank N.A. v. Duvall*, 128 Ohio St.3d 1443, 2011-Ohio-1618.

{¶ 8} Appellee responds that the certification of conflict in this instance signifies nothing more than that the *U.S. Bank* holding on this issue is contrary to multiple other appellate districts that have considered this issue. Moreover, appellee insists, even were

the Ohio Supreme Court to adopt the *U.S. Bank* reasoning, the present matter would be unaffected because the evidence here shows that appellee recorded its assignment more than a year prior to bringing the foreclosure action.

{¶ 9} The conflict between *U.S. Bank* and other cases goes to the timing of a bank's acquisition of a foreclosable interest in property rather than the quality of that interest. In that regard, whatever the result of the certified conflict, it would not affect the present matter.

{¶ 10} As a result, appellant has failed to call to our attention any obvious error or unconsidered issue in our original decision. Accordingly, appellant's motion for reconsideration is found not well-taken and is, hereby, denied. Further, appellant's request for an oral hearing on this matter is also denied.

MOTIONS DENIED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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