

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

Jo Dee Fantozz, Treasurer

Court of Appeals No. E-10-059

Appellee

Trial Court No. 2007-CV-0241

v.

Paul Clark, et al.

Appellees

[American General Financial Services

**DECISION AND JUDGMENT**

Appellant]

Decided: October 14, 2011

\* \* \* \* \*

Patrick E. Gammons, for appellee Linda Clark.

John M. Alten, for appellant.

\* \* \* \* \*

YARBROUGH, J.

{¶ 1} Appellant, American General Financial Services ("American General"), appeals from a judgment of the Erie County Court of Common Pleas, in which the trial court denied its Civ.R. 60(A) motion to amend the judgment entry of foreclosure. For the following reasons, we affirm.

{¶ 2} In April 2007, the Erie County Treasurer initiated a foreclosure action due to a tax delinquency on property located at 14216 State Route 113, Wakeman, Ohio 44889 ("the Clark property"). Paul Clark doing business as Clarks Auto Body ("Clark"), Linda Clark, and Clarks Auto Body were named as defendants. Also named as defendants were lienholders on the Clark property including appellant, Echo Valley Golf Club ("Echo Valley"), and CACV of Colorado, LLC ("CACV"). Appellant and CACV filed answers and cross-claims against the Clarks. On July 31, 2008, over one year after the initial complaint, the Erie County Treasurer filed a notice of voluntary dismissal as the Clarks paid their delinquent property taxes in full. Thereafter, on August 5, 2008, the trial court notified the remaining cross-claimants that they were to file dispositive motions no later than September 2, 2008, or the court would dismiss their claims pursuant to Civ.R. 41(B)(1) for want of prosecution.

{¶ 3} In response, Echo Valley filed a motion for leave to file a cross-claim, a cross-claim against Clark, and a motion for summary judgment, which was granted by the trial court on October 28, 2008. In the same judgment entry granting summary judgment to Echo Valley, the trial court dismissed the cross-claims of appellant and CACV pursuant to Civ.R. 41(B)(1) because they failed to file dispositive motions or take any other action. The record reflects that appellant was sent notice of this judgment entry.

{¶ 4} On November 18, 2008, the trial court issued a judgment entry of foreclosure on the Clark property which marshaled the Echo Valley lien. The order

directed that the Clark property be sold and that the Erie County Clerk of Courts was to be paid first from the proceeds of the sale, with second priority to the Erie County sheriff, and then to Echo Valley, with the remainder to return to the Clerk of Courts for later disbursement. The Clerk was directed to serve all parties, including appellant, of the judgment entry of foreclosure, pursuant to Civ.R. 58(B) and 5(B).

{¶ 5} No action was taken on the case until March 2010, when American General appeared in the trial court and sought leave to file an amended answer, cross-claim and counterclaim. These motions were denied by the trial court on April 21, 2010.

{¶ 6} Thereafter, on June 11, 2010, appellant and Echo Valley filed a joint motion to amend the November 18, 2008 judgment entry of foreclosure, pursuant to Civ.R. 60(A). In this motion, appellant sought to have its lien marshaled on the judgment entry of foreclosure. The motion did not include a certificate of service. Subsequently, on July 27, 2010, appellant voluntarily withdrew its motion and contemporaneously filed an identical joint motion with a certificate of service. Linda Clark opposed the motion.<sup>1</sup>

{¶ 7} In denying the joint motion, the trial court noted that its judgment entry of foreclosure was final and appealable, and therefore the proper remedy for appellant would have been to file a notice of appeal within 30 days from that judgment. The trial court also stated:

{¶ 8} "Assuming arguendo, that this Court had the ability, over eighteen (18) months after the fact, to amend a Final Appealable Order, this Court could not ascertain

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<sup>1</sup>The record reflects that Paul Clark passed away on September 25, 2009.

the proper amount of any judgment to be awarded to American General. American General never moved for judgment and failed to establish the amount of its interest. The Cross-Claim in which American General sought to obtain a money judgment against the Clarks and foreclose upon this parcel of land, was dismissed on the merits (i.e. 'with prejudice') and any attempt to now obtain a money judgment and seek to Foreclose would be barred by res judicata[.]"

Appellant filed its notice of appeal on November 4, 2010, and its merit brief on January 10, 2011—three days after it was required to file its brief in this court. Further, after requesting and being granted leave to amend its issue presented for review, appellant failed to file an amended brief. Therefore, we will utilize appellant's brief, as initially submitted, for this appeal.

{¶ 9} Appellant asserts the following assignment of error:

{¶ 10} "THE COURT BELOW ERRED IN DENYING THE MOTION OF DEFENDANT-APPELLANT FOR RELIEF FROM JUDGMENT. (NOVEMBER 16, 2010 DECISION AND JUDGMENT)"

{¶ 11} We initially note that there is no judgment entry in the record journalized on November 16, 2010. Further, appellant failed to attach the judgment entry from which it appeals to its merit brief as required by 6th Dist.Loc.App.R. 10(D). The rule provides, "\* \* \* the appendix of appellant's brief shall contain a copy of the judgment entry from which the appeal is taken." Nevertheless, we have determined that appellant is actually

appealing the trial court's judgment journalized on November 4, 2010, which is contained in the record.

{¶ 12} In the trial court, appellant filed its motion to amend the judgment entry of foreclosure pursuant to Civ.R. 60(A), which provides, in part, that "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders."

{¶ 13} "Civ.R. 60(A) permits a trial court, in its discretion, to correct clerical mistakes that are apparent on the record, but does not authorize a trial court to make substantive changes in judgments. The term 'clerical mistake' refers to a mistake or omission, mechanical in nature and apparent on the record that does not involve a legal decision or judgment." *Brewer v. Brewer*, 10th Dist. No. 09AP-146, 2010-Ohio-1319, ¶ 13, quoting *Atwater v. Delaine*, 155 Ohio App.3d 93, 2003-Ohio-5501. The record reflects no mistakes or omissions when the trial court made its judgment entry regarding the foreclosure of property and order of sale. Rather, it is apparent that the trial court deliberately excluded appellant's lien because appellant failed to file a dispositive motion by September 2, 2008. Thereafter, the trial court dismissed appellant's cross-claim pursuant to Civ.R. 41(B)(1), and issued the judgment entry of foreclosure on the Clark property.

{¶ 14} We note that appellant now attempts to boot-strap its appeal from the trial court's denial of its Civ.R. 60(A) motion into an appeal from a denial of a Civ.R. 60(B)

motion. Appellant boldly states in its merit brief that "[o]n July 27, 2010, American General and Echo Valley filed a joint motion pursuant to Rule 60(B) for relief from the trial court's earlier order that American General 'should be' dismissed." This is simply not true. The basis for appellant's joint motion to amend the judgment entry of foreclosure was clearly pursuant to Civ.R. 60(A). In fact, appellant's Civ.R. 60(A) motion to amend the judgment entry of foreclosure specifically stated that "[appellant and Echo Valley] have stipulated that the Decree of Foreclosure should be amended to marshal [sic] the first mortgage lien of American General, and Civ. R. 60(A) provides the proper authority to do so." Further, in its merit brief filed in this appeal, appellant noted that "[t]he Joint Motion in the trial court cited to Rule 60(A) because it seemed clear to American General that the 2008 order was the mistake of 'oversight or omission.'" Also, appellant's motion in the trial court was not styled as a motion for relief from judgment, but was instead titled "joint motion to amend judgment entry of foreclosure." Therefore, our review is limited to whether appellant is entitled to relief pursuant to Civ.R. 60(A). We hold that it is not. It is clear that a clerical mistake was not the reason the judgment entry of foreclosure did not marshal the lien of appellant. Therefore, this court will not reverse the judgment of the trial court.

{¶ 15} Accordingly, we find appellant's assignment of error not well-taken. Costs are taxed to appellant, pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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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:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.