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

IN THE MATTER OF THE FORECLOSURE OF LIENS FOR DELINQUENT LAND TAXES BY ACTION IN REM JANE SPOERL, TREASURER, WOOD COUNTY, OHIO

APPELLEE

V.

CERTAIN PARCELS OF LAND ENCUMBERED WITH DELINQUENT TAX LIENS

APPELLANT

COURT OF APPEALS NO. {87}WD-25-067
{87}WD-25-068

TRIAL COURT NO. 2025LF0023

**DECISION AND JUDGMENT**

Decided: August 18, 2026

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
James A. Hoppenjans, Assistant Prosecuting Attorney, for appellee.

Jayson Wiseman and Trena Esparza, pro see, appellants.

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**ZMUDA, J.**

## I. Introduction

**{¶ 1}** This consolidated appeal is before the court, challenging the judgment of the Wood County Court of Common Pleas, which granted summary judgment in favor of appellee, the Wood County Treasurer, in rem, and ordered foreclosure of property owned by appellants Jayson Wiseman and Trena Esparza pursuant to R.C. 5721.18. Finding no error, we affirm.

## II. Background and Procedural History

**{¶ 2}** This matter concerns a foreclosure to collect unpaid property taxes, as provided by R.C. 5721.01 et seq. On March 4, 2025, Jane Spoerl, as Wood County Treasurer, filed a complaint pursuant to R.C. 5721.18(B), alleging she is the duly elected Treasurer of Wood County, that the Wood County Auditor has filed an original master list of delinquent tracts including a parcel at 1130 Sandpiper Lane, Bowling Green, Ohio, "last owned by Jay Wiseman and Trena Esparza" who were known to reside at that address. The Treasurer further alleged that $12,288.89 remains due and owing for unpaid taxes, assessments, charges, penalties, and interest against the subject property, and the delinquent land tax certificate is unredeemed and unpaid for at least two years and is a lien against the subject property. The complaint requested foreclosure, and notice was given by publication for 30 days, with notice also mailed by certified mail to Wiseman and Esparza at the subject property. A property description was attached as an exhibit to the complaint.

**{¶ 3}** The Treasurer perfected service on Wiseman by certified mail, evidenced by signed receipt, returned and received by the court on March 10, 2025. The Treasurer perfected service on Esparza, evidence by signed receipt, returned and received by the court on May 12, 2025.

**{¶ 4}** On April 3, 2025, Wiseman and Esparza filed their joint answer to the complaint, each appearing pro se. Wiseman and Esparza admitted to being owners of the parcel of land at issue and sought dismissal of the complaint for lack of a sufficient claim under Civ.R. 12(B)(6). The trial court denied the motion to dismiss. Wiseman and Esparza filed an appeal from the decision, and we dismissed the appeal for lack of a final, appealable order.

**{¶ 5}** The Treasurer filed a motion for summary judgment on September 8, 2025, with supporting affidavits of the Auditor, Treasurer, and Clerk of Court providing evidence for each element necessary for foreclosure under R.C. 5721.18. The motion filed in the case did not include the affidavits, but the Treasurer separately filed the affidavits contemporaneously with the motion and filed a notice of electronic filing of the affidavits. The trial court followed up by setting a non-oral hearing on the motion for summary judgment and ordered the notice to be served on Wiseman and Esparza.

**{¶ 6}** In his affidavit, the Auditor attested to his responsibility for handling delinquent land tax certificates, stating he reviewed the records of the auditor's office, those records demonstrate unpaid taxes for two consecutive semi-annual tax settlement periods for 2021 taxes and 2022 taxes, and the delinquent parcel was included on the delinquent land list and advertised in the newspaper on November 23, 2022 and November 30, 2022, with delivery of the certificate for the delinquent parcel to the prosecutor on October 8, 2024. A copy of the delinquent tax list was attached to the affidavit as an exhibit.

**{¶ 7}** The Treasurer attested to her responsibility for collecting taxes, penalties, interest, and assessments as charged on the tax duplicate, stating she reviewed the real property tax records and determined the amount currently due for appellants' parcel was $13,126.55 as of August 18, 2025.

**{¶ 8}** Finally, the Clerk of Court attested to the notices sent to Wiseman and Esparza as owners in the foreclosure case, as required by R.C. 5721.18, with service perfected on Wiseman on March 8, 2025 and service perfected on Esparza on May 10, 2025. The Clerk of Court also attached exhibits, evidencing service by publication, on the Clerk of Courts website, and by certified mail.

**{¶ 9}** In response to the Treasurer's motion, Wiseman requested a continuance of the non-oral hearing date set by the court. Wiseman did not raise the issue of missing affidavits in his request for continuance. The trial court granted the continuance, enlarging the time for Wiseman to file a response in opposition.

**{¶ 10}** On October 9, 2025, Wiseman filed his opposition brief, challenging the affidavit evidence as inadmissible hearsay, while also arguing that the Treasurer failed to serve the affidavits with the motion for summary judgment. Although Wiseman acknowledged the affidavits were filed in the case, he argued that the failure to include the affidavits in the motion served on Wiseman was a violation that mandated striking the motion for summary judgment. In the alternative, Wiseman reiterated his argument regarding the sufficiency of the pleading, and challenged the evidence as lacking "account statements, ledgers, bills, or any such verifiable hard evidence that would be required to secure a judgment at trial."

**{¶ 11}** On October 17, 2025, Esparza filed her motion to dismiss the summary judgment motion. Esparza argued that the Treasurer failed to perfect service of the motion on her, attaching affidavits attesting to her failure to receive her own copy of the motion.

**{¶ 12}** The Treasurer filed a reply, addressing both Wiseman's and Esparza's filings, and attached copies of the affidavits to the reply. The trial court overruled Esparza's motion to dismiss, granted summary judgment in favor of the Treasurer, ordered foreclosure of the subject property, and issued an order of sale.

**{¶ 13}** Wiseman and Esparza each filed a timely appeal of the judgment, and we consolidated the appeals. Wiseman and Esparza filed a joint brief in the matter.

## III. Assignments of Error

**{¶ 14}** On appeal, Wiseman and Esparza assert the following as error:

I. The trial court erred by not dismissing the initial complaint for not meeting the basic factual support based on *Twombly, Iqbal,* and Ohio law.

II. The trial court erred by failing to grant appellant Wiseman's motion to dismiss the [Treasurer's] summary judgment motion due to violations of the Rules of Evidence and Civil Procedure.

III. The trial court erred by not dismissing the motion for summary judgment due to lack of service of process to appellant Esparza, violating her Fourteenth Amendment rights and the Rules of Civil Procedure.

## IV. Analysis

**{¶ 15}** In their first assignment of error, Wiseman and Esparza argue that the trial court erred in not granting dismissal of the complaint pursuant to Civ.R. 12(B)(6), applying the standard in *Twombly* and *Iqbal* and "Ohio law." It appears that appellants refer to the "plausibility" standard, a heightened pleading standard applied in federal courts as stated in *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007) and *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009). Ohio, however, is a notice pleading state. (citation omitted) *Banks v. Leading Families Home, Inc.,* 2025-Ohio-4493, ¶ 28 (6th Dist.). Additionally, "[t]he Supreme Court of Ohio has expressly refused to adopt the heightened federal pleading standard." *Banks* at ¶ 30, citing *State ex rel. Ware v. Booth,* 2024-Ohio-2102, ¶ 5, fn. 1, citing *Maternal Grandmother v. Hamilton Cty. Dept. of Job & Family Services,* 2021-Ohio-4096, ¶ 228 (DeWine, J. concurring).[1]

**{¶ 16}** Based on Ohio law, the trial court did not err in denying appellants' request for dismissal for failure to state a claim for relief, pursuant to Civ.R. 12(B)(6). The Treasurer initiated these proceedings with a complaint in foreclosure pursuant to R.C. 5721.18(B), alleging Wiseman's and Esparza's jointly owned property was included in the list of delinquent land tracts delivered by the county auditor to the prosecutor, identifying the amount due, to date, for unpaid taxes, assessments, charges, penalties, and

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[1] As noted by Wiseman, the Ohio Supreme Court accepted an appeal on the issue of modifying our present "notice pleading" standard to adopt the plausibility standard applicable to federal pleadings. *See Bethel Oil & Gas, L.L.C. v. Redbird Dev., L.L.C,* 2024-Ohio-5285 (4th Dist.), jurisdictional appeal accepted, 2025-Ohio-4367. That case was argued before the Ohio Supreme Court in late 2025 and remains pending.

interest against the subject property, and claiming the amount due has remained unpaid for at least two years. The complaint sought foreclosure pursuant to the statute, upon notice of foreclosure to Wiseman and Esparza, the owners of record.

**{¶ 17}** A motion to dismiss pursuant to Civ.R. 12(B)(6) tests the sufficiency of the complaint, and in ruling on the motion, a court must construe all allegations in the complaint as true, drawing all reasonable inferences in the non-moving party's favor. *Mitchell v. Lawson Milk Co.,* 40 Ohio St.3d 190, 192 (1988). Dismissal is only proper where the plaintiff can prove no set of facts that would merit the relief requested. *O'Brien v. Univ. Community Tenants Union, Inc.,* 42 Ohio St.2d 242 (1975), syllabus.

**{¶ 18}** In this case, the allegations in the complaint track the language of R.C. 5721.13 and 5721.18, which governs the action. Pursuant to R.C. 5721.13:

> One year after certification of a delinquent land list, the county auditor shall make in duplicate a certificate, to be known as a delinquent land tax certificate, of each delinquent tract of land, * * * upon which the taxes, assessments, charges, interest, and penalties have not been paid, describing each tract of land or city or town lot in the same manner as it is described on the delinquent tax list and the amount of the taxes, assessments, charges, interest, and penalties due and unpaid, and stating that the amount has been certified to the county prosecuting attorney as delinquent. The certificate shall be signed by the auditor or his deputy, and the original certificate shall be filed with the prosecuting attorney.

R.C. 5721.13(A). As provided by R.C. 5721.18, the prosecutor "shall institute a foreclosure proceeding" upon delivery of the delinquent land tax certificate or master list to the prosecutor, by the auditor.

**{¶ 19}** Construing the factual allegations as true, the complaint identifies the subject property, identifies Wiseman and Esparza as the record owners, and lists the amount due after non-payment of taxes for at least two years, along with the averment that the property was added to the list of delinquent land tracts delivered to the county auditor as lands encumbered by a lien in favor of the state, according to the statute. Based on these allegations, the complaint sets forth a sufficient claim for foreclosure pursuant to R.C. 5721.18(B) to survive a Civ.R. 12(B)(6) motion to dismiss. Moreover, applying the federal "plausibility" standard set forth in *Twombly,* the pleading contained factual allegations demonstrating a right to relief beyond a speculative level, or more than legal conclusions or a recitation of the elements of the claim. *Twombly,* 550 U.S. at 545 ("Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true.")

**{¶ 20}** The first assignment of error, accordingly, is not well-taken.

**{¶ 21}** In their second and third assignments of error, Wiseman and Esparza argue that the trial court erred in failing to grant the motion to dismiss the summary judgment motion, arguing various violations of the Rules of Civil Procedure and the Rules of Evidence relative to Wiseman's and Esparza's respective receipt of the motion. Wiseman and Esparza argue issues of service, but limit that argument to the claimed Rules violations, with no argument related to the impact any violation had on the proceedings. Additionally, Wiseman argues substantive issues concerning the admissibility of the affidavits as evidence. We address each in turn.

**{¶ 22}** First, both Wiseman and Esparza challenge the Treasurer's failure to comply with the Civil Rules of Procedure by serving a copy of the motion for summary judgment and the supporting affidavits pursuant to the Rules. As previously noted, the Treasurer filed a motion for summary judgment on the complaint in foreclosure, attaching the legal description for the subject property and including affidavits (in a separate filing) of Jane Spoerl, Treasurer of Wood County, Matthew Oestreich, Auditor of Wood County, and Douglas Cubberley, Clerk of Courts for Wood County. Both Wiseman and Esparza demonstrated knowledge of the pending motion for summary judgment in their responsive filings.

**{¶ 23}** Wiseman claimed he did not receive the affidavits with service of the motion. However, he referenced the separately filed affidavits in his response in opposition to summary judgment. Wiseman also requested, and received, additional time to respond to the motion, and never raised the lack of notice as a barrier that prejudiced Wiseman in any way. Esparza argued she was not served with the motion for summary judgment at all, but in moving for dismissal of that motion, she conveyed her knowledge of the pending motion. Esparza, also, did not argue any prejudice resulting from her lack of receipt of the motion.

**{¶ 24}** Because the issue on appeal does not concern initial service of the complaint, the matter is governed by Civ.R. 5, which requires "every written motion other than one which may be heard ex parte…shall be served upon each of the parties." Civ.R. 5(A). Pursuant to Civ.R. 5(B)(1) and (2)(c), the Treasurer mailed a copy of the motion for summary judgment to the last known address of Wiseman and Esparza and included a certificate of service with the motion, filed with the trial court, as required by Civ.R. 5(B)(4).

**{¶ 25}** In challenging service under Civ.R.5(B), Esparza proffered affidavits, her own and the affidavit of another adult residing at the subject property, attesting to *no* mail delivery of the motion for summary judgment "addressed to Trena Esparza," noting the same address that the Treasurer listed in the certificate of service. However, Esparza never challenged the initial service of the complaint, she did not claim she lacked knowledge of the summary judgment motion, and she argued no prejudice arising from the failed service. Esparza also did not seek additional time to respond to that motion. Instead, Esparza sought dismissal pursuant to Civ.R. 12(B)(5), procedure appropriate for a pleading based on initial service of process, an issue never challenged and therefore not before the trial court or preserved in the record for appellate review.

**{¶ 26}** Lacking any claim of prejudice by either Wiseman or Esparza, the record in this case provides no basis to reverse the judgment based on the claimed failure to serve the motion for summary judgment according to Civ.R. 5. Contrary to Wiseman's and Esparza's argument, the mere "violation" of a Rule does not mandate the sanction of dismissal or the striking of a motion as remedy. Instead, Civ.R. 1(B) provides that the "rules shall be construed and applied to effect just results by eliminating delay, unnecessary expense and all other impediments to the expeditious administration of justice." Therefore, even if the Treasurer failed to serve the motion under Civ.R. 5, the record demonstrates no prejudice as a result, and striking the motion and requiring the Treasurer to begin anew would have caused delay and additional expense, a result not required under the Civil Rules. *See, e.g., Vance v. Vance,* 2024-Ohio-1533, ¶ 31 (3d Dist.) (failure to comply with Civ.R. 53 not reversible error where no prejudice shown and trial court's action eliminated "further delay and unnecessary expense for the parties").

**{¶ 27}** Finally, regardless of Esparza's actual receipt of the motion or Wiseman's receipt of the affidavits, both were served with the complaint and filed an answer, pro se, and "parties are charged with the duty to keep themselves apprised of entries upon the docket and to monitor the progress of the suit." *CitiMortgage, Inc. v. Bumphus,* 2011-Ohio-4858, ¶ 36 (6th Dist.), citing *Ries Flooring Co., Inc. v. Dileno Constr. Co.,* 53 Ohio App.2d 255, 259 (8th Dist.1977) (additional citation omitted.). Based on their respective filings, both Wiseman and Esparza were aware of the proceedings, and Esparza sought to dismiss the Treasurer's motion and delay those proceedings rather than respond. Accordingly, considering the record, we find no merit in Wiseman's and Esparza's argument concerning a failure to serve under Civ.R.5 as reversible error.

**{¶ 28}** In addition to challenging the denial of Esparza's motion to dismiss the summary judgment motion, Wiseman challenges the grant of summary judgment as lacking sufficient, admissible evidence, arguing the affidavits were inadmissible as hearsay due to his inability to cross-examine the affiants. "We review a trial court's entry of summary judgment de novo, using the same standard as the trial court." *Treasurer of Lucas Cty. v. Sheehan,* 2020-Ohio-3493, ¶ 16 (6th Dist.), citing *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

**{¶ 29}** Summary judgment is governed by Civ.R. 56; a court may grant summary judgment when no genuine issue of material fact remains and, construing the evidence most strongly in favor of the non-moving party, reasonable minds can reach only one conclusion, that the moving party is entitled to judgment as a matter of law. *Wright-Patt Credit Union, Inc. v. Byington,* 2013-Ohio-3963, ¶ 9 (6th Dist.), citing *Harless v. Willis Day Warehousing Co.,* 54 Ohio St.2d 64, 66 (1978). The moving party has the burden of showing an absence of genuine issues of material fact, by proffering appropriate evidence of the type listed in Civ.R. 56(C). *Id.,* citing *Dresher v. Burt,* 75 Ohio St.3d 280, 294 (1996). Once a properly supported motion is presented, the burden shifts to the non-moving party to demonstrate "by affidavit or as otherwise provided in this rule…specific facts showing that there is a genuine issue for trial." *Dresher* at 294*,* quoting Civ.R. 56(E).

**{¶ 30}** In this case, the record demonstrates that the Treasurer complied with all requirements under R.C. 5721.13 and 5721.18. Furthermore, because the foreclosure proceeded under R.C. 5721.18, the certificate delivered by the auditor to the prosecutor constituted "*prima-facie* evidence" of the "amount and validity of the taxes, assessments, charges, penalties, and interest appearing due and unpaid and of their nonpayment." (Emphasis sic) *Sheehan* at ¶ 16, quoting R.C. 5721.18(A).

**{¶ 31}** Wiseman's challenge to the affidavits, moreover, lacks merit. Affidavits are expressly permitted as evidence under Civ.R. 56, with Civ.R. 56(E) providing that "affidavits shall be made on personal knowledge, shall set forth facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit." *Natl. City Bank v. TAB Holdings, Ltd.,* 2011-Ohio-3715, ¶ 12 (6th Dist.), quoting Civ.R. 56(E). In a foreclosure action, an affidavit regarding the outstanding debt by a person having knowledge of the account is sufficient to establish the amount due, requiring the debtor to refute that evidence with evidence of his or her own. (Citations omitted) *Id.* at ¶ 12.

**{¶ 32}** Wiseman challenged the affidavits in the trial court as "hearsay" without any supporting argument or legal authority. Wiseman also relied on his argument regarding sufficiency of the pleading, already overruled by the trial court, and challenged service of the motion. Pursuant to Civ.R. 56, however, Wiseman was required to satisfy his reciprocal burden to rebut appellee's evidence. Wiseman failed to present any evidence and failed to address the prima-facie evidence of the unpaid debt, as provided by R.C. 5721.18(A). Wiseman, furthermore, proffered no evidence of his own in response to the Treasurer's affidavit evidence.

**{¶ 33}** The Treasurer demonstrated an absence of genuine issues of material fact, and Wiseman failed to sustain his reciprocal burden. Accordingly, we find judgment in foreclosure was merited as a matter of law. Based on the foregoing, we find the second and third assignments of error not well-taken.

## V. Conclusion

**{¶ 34}** Finding substantial justice has been done, we affirm the judgment of the Wood County Court of Common Pleas. Wiseman and Esparza are ordered to pay the costs of this appeal pursuant to App.R. 24(A)(2).

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

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| Christine E. Mayle, J. | JUDGE |
| Gene A. Zmuda, J. | JUDGE |
| Myron C. Duhart, J.<br>CONCUR. | JUDGE |