[Cite as *Fifth Third Bank, Natl. Assn. v. Hrivnak*, 2023-Ohio-2490.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

FIFTH THIRD BANK, NATIONAL ASSOCIATION, :

Plaintiff-Appellee, :

No. 112350

v.

CHRIS HRIVNAK, ET AL., :

Defendants-Appellants. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 20, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-22-960083

Appearances:

Weltman Weinberg & Reis Co. LPA, and Roy J. Schechter, *for appellee*.

Chris Hrivnak, *pro se*.

MICHAEL JOHN RYAN, J.:

{¶ 1} Defendant-appellant, Chris Hrivnak, appeals the trial court's decision to grant summary judgment in favor of Fifth Third Bank, N.A. ("Fifth Third"). For the reasons that follow, we affirm.

{¶ 2} In 2005, Hrivnak took out a line of credit with Fifth Third secured by a mortgage on real property located in Solon, Ohio. Hrivnak stopped paying on the line of credit and Fifth Third declared his indebtedness due in the principal sum of $83,107.31, plus interest and late fees.

{¶ 3} In February 2022, Fifth Third filed a complaint for foreclosure on the property. Hrivnak, proceeding pro se, answered the complaint, asserting the following defenses: the complaint failed to state a claim upon which relief may be granted; he was "immune from liability" because he had filed bankruptcy; unclean hands; and laches, waiver, and estoppel. Hrivnak filed a request for production of documents and Fifth Third responded.

{¶ 4} In July 2022, Fifth Third moved for summary judgment. Hrivnak opposed the motion. In an opinion dated August 30, 2022, the magistrate found that Hrivnak was in default of his payment obligations and granted summary judgment in favor of Fifth Third.

{¶ 5} In its findings, the magistrate considered the arguments Hrivnak raised in his opposition to the bank's motion for summary judgment claiming that Fifth Third did not fully respond to his discovery requests and should not have loaned him the money. The magistrate was not persuaded by Hrivnak's allegation that Fifth Third's response to discovery was inadequate because Hrivnak never set forth what he had received in discovery and how discovery responses were lacking, did not offer the discovery responses as an exhibit to his brief in opposition, and never moved to compel discovery.

{¶ 6} The magistrate was also unpersuaded by Hrivnak's argument that Fifth Third should not have loaned him the money. The magistrate cited Hrivnak's affidavit, in which he stated he was approved for a loan that exceeded the amount he applied for, while making only "$18 to $20 an hour," and concluded that Hrivnak's general and unsubstantiated allegations did not raise a question of fact that precluded summary judgment.

{¶ 7} Hrivnak did not file objections to the magistrate's decision. On January 18, 2023, the trial court issued its order adopting the magistrate's decision and ordered foreclosure of the property. Hrivnak moved for a stay pending appeal, which the trial court granted.

{¶ 8} Hrivnak filed the within pro se appeal and raises the following assignment of error:

> The trial court erred and abused its discretion in granting Plaintiffs Motion for Summary Judgment opposite to [Civ.R. 56(C), (F)] without due process regard for the discovery requirements therein and cited in Defendant's Brief in Opposition to Motion for Summary Judgment.

{¶ 9} In his sole assignment of error, Hrivnak contends that the trial court erred when it granted summary judgment in favor of Fifth Third.

{¶ 10} We review summary judgment rulings de novo, applying the same standard as the trial court. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Under Civ.R. 56, summary judgment is appropriate when no genuine issue exists as to any material fact and, in viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one

conclusion that is adverse to the nonmoving party, entitling the moving party to judgment as a matter of law.

{¶ 11} In a motion for summary judgment, the moving party carries an initial burden of identifying specific facts in the record that demonstrate their entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). If the moving party fails to meet this burden, summary judgment is not appropriate; if the moving party meets this burden, the nonmoving party has the reciprocal burden to point to evidence of specific facts in the record demonstrating the existence of a genuine issue of material fact for trial. *Id.* at 293. Summary judgment is appropriate if the nonmoving party fails to meet this burden. *Id.*

{¶ 12} In his assignment of error, Hrivnak contends that the trial court erred in granting Fifth Third's motion for summary judgment and should have proceeded with discovery and trial.

{¶ 13} Under Civ.R. 53(D)(3)(b)(i), a party must file objections within 14 days of the filing of the magistrate's decision. The objections must be "specific and state with particularity all grounds for objection." Civ.R. 53(D)(3)(b)(ii). "Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law * * *, unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Civ.R. 53(D)(3)(b)(iv). "'In essence, the rule is based on the principle that a trial court

should have a chance to correct or avoid a mistake before its decision is subject to scrutiny by a reviewing court.'" *Nationstar Mtge. L.L.C. v. Jessie*, 8th Dist. Cuyahoga No. 109394, 2021-Ohio-439, ¶ 19, quoting *Liming v. Damos*, 4th Dist. Athens No. 08CA34, 2009-Ohio-6490, ¶ 14.

{¶ 14} If a party fails to raise an issue in its objections to a magistrate's decision, the party has waived the issue for purposes of appeal. Civ.R. 53(D)(3)(b). Hrivnak has waived his arguments set forth herein because he did not raise them to the trial court by filing objections to the magistrate's decision.

{¶ 15} Moreover, Hrivnak has not claimed plain error. Therefore, we need not address it. *Jessie* at ¶ 21; *see also State v. Gavin*, 4th Dist. Scioto No. 13CA3592, 2015-Ohio-2996, ¶ 25, citing *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 17-20 (an appellate court need not consider plain error where appellant fails to timely raise plain-error claim); *State v. Sims*, 10th Dist. Franklin No. 14AP-1025, 2016-Ohio-4763, ¶ 11 (appellant cannot meet burden of demonstrating error on appeal when she only preserved plain error but did not argue it on appeal).

{¶ 16} As this court noted in *Jessie*:

> "[i]n appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself."

Jessie at ¶ 22, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus.

{¶ 17} We have independently reviewed the evidence presented in this case and conclude that this is not the extremely rare case that would seriously affect the fairness, integrity, or public reputation of the judicial process if the plain-error doctrine were not invoked.

{¶ 18} Accordingly, Hrivnak's sole assignment of error is overruled.

{¶ 19} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL JOHN RYAN, JUDGE

ANITA LASTER MAYS, A.J., and
LISA B. FORBES, J., CONCUR