

RENDERED: FEBRUARY 25, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001168-MR

JASON LE (AKA JASON DUNG LE,
DUNG LE, AND DUNG VAN LE);
SOVIN LE (FKA SOVIN ROM, AKA
SAVIN LE); AND CUC VAN LE,
SPOUSE OF SOVIN LE

APPELLANTS

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE JOHN R. GRISE, JUDGE
ACTION NO. 09-CI-00343

WELLS FARGO BANK, N.A.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL AND WINE, JUDGES; SHAKE,¹ SENIOR JUDGE.

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

NICKELL, JUDGE: This is a foreclosure action wherein the Warren Circuit Court entered a default judgment and order of sale after Wells Fargo Bank, N.A. foreclosed on the mortgage of Jason Le. Le, *pro se*, appeals from the May 20, 2009, Judgment and Order of Sale. We affirm.

Le purchased property in Bowling Green, Kentucky, and borrowed \$55,800.00 from Wells Fargo Home Mortgage, Inc., with the loan secured by a first mortgage lien. Wells Fargo Home Mortgage, Inc., subsequently merged with Wells Fargo Bank, N.A. (“Wells Fargo”). When Le defaulted on the mortgage loan, Wells Fargo instituted a foreclosure action against him² to recover its balance owed of \$43,404.08. Le failed to file an answer to the complaint.

On May 20, 2009, Wells Fargo obtained a default judgment and order of sale, and the matter was referred to the master commissioner for sale of the property. Prior to the sale, on June 15, 2009, Le filed a *pro se* answer to the complaint. On June 18, 2009, Le filed a notice of appeal from the judgment and order of sale. At no time did Le seek to set aside the default judgment. On July 23, 2009, the master commissioner filed its report stating the sale originally scheduled for August 20, 2009, had been cancelled. An order confirming the report was entered on August 13, 2009.

Because Le is appealing directly from a default judgment, the only issue which may properly be considered by this Court is whether the pleadings are

² At the time of the filing of the action, Le had transferred his interest in and to the subject property to his step-mother, Sovin Le. Cuc Van Le is Le’s father and Sovin’s husband. Sovin and Cuc Van were thus named as parties to the action as subsequent title holders of the property. For purposes of this appeal, the three Le’s shall be referred to singularly as “Le.”

sufficient to support the judgment. *Jeffrey v. Jeffrey*, 153 S.W.3d 849, 851-52 (Ky. App. 2005). We will not overturn a trial court's decision regarding a default judgment absent an abuse of discretion. *PNC Bank, N.A. v. Citizens Bank of Northern Kentucky, Inc.*, 139 S.W.3d 527, 530 (Ky. App. 2003).

Our review of the pleadings in this case reveals them to be more than sufficient to uphold entry of the default judgment. Wells Fargo alleged in its complaint that Le was indebted to Wells Fargo, that Wells Fargo was the holder of a valid mortgage interest in Le's real property, that Le had transferred his interest in the real property to his step-mother who was properly made a party to the action along with her spouse, that Le had defaulted on the debt, and that Wells Fargo was entitled to foreclosure to satisfy the outstanding mortgage indebtedness. Wells Fargo's pleadings also showed proper service upon all parties and that Le, without any cause shown, had failed to respond to Wells Fargo's claims. Therefore, the pleadings were sufficient to support the default judgment.

We further note that Le's brief before this Court is merely a restatement of his belated answer filed in the trial court. In contravention of CR 76.12, Le's brief does not contain a single reference to the record indicating whether and how any issues were preserved for appellate review. The brief is also devoid of citation to any legal authority supportive of Le's position. None of the statements presented were reviewed nor ruled upon by the trial court. It is axiomatic that a trial court must be given a chance to deliberate and decide upon an issue before it is ripe for appellate review. *Florman v. MEBCO Ltd. Partnership*,

207 S.W.3d 593, 607 (Ky. App. 2006). Le has failed to preserve any claims of error in the trial court, and thus cannot now be heard to complain for the first time in this appeal. *See Lawrence v. Risen*, 598 S.W.2d 474, 476 (Ky. App. 1980).

Therefore, for the foregoing reasons, the judgment of the Warren Circuit Court is AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jason Dung Le,
also known as Dung Le,
also known as Dung Van Le, *pro se*
Lowell, Massachusetts

Sovin Le,
also known as Savin Le,
formerly known as Sovin Rom, *pro se*
Lowell, Massachusetts

BRIEF FOR APPELLEE:

Shannon O'Connell Egan
Cincinnati, Ohio