[Cite as *Wells Fargo Bank, N.A. v. Vasquez*, 2015-Ohio-717.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

WELLS FARGO BANK, NA	C.A. No. 13CA0086-M
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
CHEYLENE L. VASQUEZ, et al.	COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO
Appellants	CASE No. 12CIV0530

DECISION AND JOURNAL ENTRY

Dated: March 2, 2015

MOORE, Judge.

{¶1} Defendants Cheylene L. and George Vasquez appeal from the judgment of the Medina County Court of Common Pleas. We affirm.

I.

{¶2} In 2012, Wells Fargo Bank, NA ("Wells Fargo") filed a complaint for foreclosure and reformation of a mortgage, in which it named the Vasquezes as defendants. The complaint sought monetary judgment on a note signed by the Vasquezes and foreclosure on the mortgage that secured the note. The Vasquezes did not answer the complaint, and Wells Fargo moved for default judgment against them. On May 31, 2012, the trial court granted default judgment and issued a decree in foreclosure. On July 30, 2013, the Vasquezes filed a common law motion to vacate the foreclosure decree, in which they specifically maintained that Civ.R. 60(B) was inapplicable to their motion. The trial court denied the motion in a journal entry dated October 11, 2013.

{¶3} The Vasquezes timely appealed from the October 11, 2013 journal entry, and they now present one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

> THE TRIAL COURT ERRED WHEN IT DENIED [THE VASQUEZES] COMMON LAW MOTION TO VACATE VOID JUDGMENT WHEN THE SUBJECT JUDGMENT WAS NEITHER A FINAL APPEALABLE ORDER NOR HAD THE SUBJECT MATTER JURISDICTION OF THE COURT BEEN INVOKED BY THE PLEADING OF A JUSTICIABLE CONTROVERSY IN THE COMPLAINT OF [WELLS FARGO.]

{¶4} In their sole assignment of error, the Vasquezes argue that the trial court erred in denying their common law motion to vacate. We disagree.

{¶5} Initially, we note that the Vasquezes argue on appeal that the trial court's decree of foreclosure was not a final appealable order. We will address this argument first, as it raises an issue as to our jurisdiction to review this matter.

{¶6} Section 3(B)(2), Article IV of the Ohio Constitution limits an appellate court's jurisdiction to appeals from final orders. When an order is not final, the decision declining to vacate that order is also not a final appealable order. *See State ex rel. Bd. of State Teachers Retirement Sys. of Ohio v. Davis*, 113 Ohio St.3d 410, 2007-Ohio-2205, ¶ 48, citing *Pinson v. Triplett*, 9 Ohio App.3d 46 (10th Dist.1983); *Kalapodis v. Hall*, 9th Dist. Summit No. 22386, 2005-Ohio-2567, ¶ 10 ("[T]he denial of relief from a non-final order is, itself, not a final appealable order.").

{¶7} "A judgment entry ordering a foreclosure sale is a final, appealable order pursuant to R.C. 2505.02(B) if it resolves all remaining issues involved in the foreclosure. This includes the questions of outstanding liens * * * and the amounts that are due the various claimants." (Citations omitted.) *Mtge. Electronic Registration Sys., Inc. v. Green Tree Servicing, L.L.C.*, 9th

Dist. Summit No. 23723, 2007-Ohio-6295, ¶ 9. However, an exception exists "where the computation of damages is mechanical and unlikely to produce a second appeal because only a ministerial task similar to assessing costs remains." *Citimortgage v. Arnold*, 9th Dist. Summit No. 25186, 2011-Ohio-1350, ¶ 7, quoting *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 546 (1997).

{¶8} The Vasquezes maintain that the trial court's foreclosure decree, which they sought to vacate, was not a final, appealable order because it failed to set forth the amount owed for the following expenses: "advances made for the payment of real estate taxes and assessments and insurance premiums, and all costs and expenses incurred for the enforcement of the [n]ote and [m]ortgage, except to the extent the payment of one or more specific such items is prohibited by Ohio law." The Vasquezes maintain that these expenses could include property preservation expenses and attorney fees, and they maintain that these amounts were required to be set forth in the decree.

{¶9} In regard to expenses associated with property preservation, the Vasquezes rely heavily on the Fifth District case of *CitiMortgage, Inc. v. Roznowski*, 5th Dist. Stark No. 2012-CA-93, 2012-Ohio-4901, ¶ 9, 12. There, the Fifth District held that the computation of the dollar amount for "for costs of evidence of title required to bring th[e] action, for payment of taxes, [and for] insurance premiums" were easily ascertainable by normal diligence, and the absence of these amounts from the foreclosure decree did not affect its finality. *Id.* at ¶ 9. However, it concluded that "expenses incurred in property inspections, appraisal, preservation and maintenance" were not easily ascertainable. *Id.* Because amounts owed for property preservation were not easily ascertainable, the Fifth District held that when these expenses were awarded, the amounts were required to be included in the foreclosure decree. *Id.* at ¶ 9, 12.

{¶10} However, after the briefs were filed in the present matter, the Ohio Supreme Court reversed the Fifth District's holding in part by determining that "[a] judgment decree in foreclosure that allows as part of recoverable damages unspecified amounts advanced by the mortgagee for inspections, appraisals, property protection, and maintenance is a final, appealable order pursuant to R.C. 2505.02(B)(1)." *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 305, 2014-Ohio-1984, paragraph one of the syllabus.

{¶11} Accordingly, the foreclosure decree here was not required to include specific money amounts for property preservation for it to constitute a final, appealable order.

{¶12} In regard to attorney fees, "Ohio has long adhered to the 'American rule' with respect to recovery of attorney fees: a prevailing party in a civil action may not recover attorney fees as a part of the costs of litigation." *Wilborn v. Bank One Corp.*, 121 Ohio St.3d 546, 548, 2009-Ohio-306, ¶ 7, citing *Nottingdale Homeowners' Assn., Inc. v. Darby*, 33 Ohio St.3d 32, 33-34 (1987), and *State ex rel. Beebe v. Cowley*, 116 Ohio St. 377, 382 (1927). "However, there are exceptions to this rule. Attorney fees may be awarded when a statute or an enforceable contract specifically provides for the losing party to pay the prevailing party's attorney fees, * * * or when the prevailing party demonstrates bad faith on the part of the unsuccessful litigant[.]" *Wilborn* at ¶ 7, citing *Nottingdale* at 34, and *Pegan v. Crawmer*, 79 Ohio St.3d 155, 156 (1997).

{¶13} Here, Wells Fargo did not in its complaint request attorney fees pursuant to any of these exceptions, nor did it file a motion for attorney fees during these proceedings. Accordingly, we cannot agree that the language in the foreclosure decree awarding Wells Fargo "expenses incurred for the enforcement of the [n]ote and [m]ortgage" included attorney fees.

{¶14} Therefore, we conclude that the foreclosure decree here was a final appealable order, and thus the denial of the Vasquezes' motion to vacate the foreclosure decree was likewise

a final, appealable order. Accordingly, we will proceed to review the remainder of the Vasquezes' assignment of error.

{¶15} The Vasquezes maintain that the trial court lacked subject matter jurisdiction to enter the foreclosure decree because Wells Fargo did not plead sufficient facts to demonstrate that it had standing in this matter.

{¶16} "[T]he issue of subject-matter jurisdiction can be challenged at any time[,] and * * * a court's lack of subject-matter jurisdiction renders that court's judgment void ab initio." *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 79, 2014-Ohio-4275, ¶ 17, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, ¶ 11. "Challenges to a trial court's jurisdiction present questions of law and are reviewed by this Court de novo." (Citation and quotations omitted). *State ex rel. DeWine v. 9150 Group, L.P.*, 9th Dist. Summit No. 25939, 2012-Ohio-3339, ¶ 8, quoting *Eisel v. Austin*, 9th Dist. Lorain No. 09CA009653, 2010-Ohio-816, ¶ 8.

{¶17} In *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶ 41-42, the Ohio Supreme Court determined that a plaintiff must have standing at the time it files the complaint in order to invoke the jurisdiction of the court. However, the Ohio Supreme Court recently clarified that "a court of common pleas that has subject-matter jurisdiction over an action does not lose that jurisdiction merely because a party to the action lacks standing." *Kuchta* at ¶ 17. Instead, standing relates to "jurisdiction over a particular case, not subject-matter jurisdiction." *Id.* at ¶ 22. "If a court possesses subject-matter jurisdiction, any error in the invocation or exercise of jurisdiction over a particular case causes a judgment to be voidable rather than void." *Id.* at ¶ 19.

{¶18} Therefore, because the lack of standing does not deprive the trial court of subject matter jurisdiction, we conclude that the trial court did not error in denying the Vasquezes'

common law motion to vacate on this basis. *See 9150 Group* at ¶ 7 (where a judgment sought to be vacated is void, a common law motion to vacate is appropriate, but where the judgment is voidable, the requirements of Civ.R. 60(B) apply). "In light of the fact that [the Vasquezes] specifically told the trial court that their motion did not seek relief under Rule 60(B) and did not make any arguments to the court regarding that rule, they may not seek to overturn the trial court's decision on that basis on appeal." *Three Dimes Ents., Inc. v. Arwen Inc.*, 9th Dist. Summit No. 27145, 2014-Ohio-2039, ¶ 10, citing *Deutsche Bank Natl. Trust Co. v. Holden*, 9th Dist. Summit No. 26970, 2014-Ohio-1333, ¶ 16.[1]

{¶19} Accordingly, we overrule the Vasquezes' sole assignment of error.

III.

{¶20} The Vasquezes' assignment of error is overruled. The judgment of the Medina County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

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[1] Our opinion should not be read to imply that the Vasquezes would be successful in challenging standing through a Civ.R. 60(B) motion, as the Ohio Supreme Court has held that "[a]n allegation that a plaintiff fraudulently claimed to have standing may not be asserted as a ground for vacating the judgment under Civ.R. 60(B)(3)," and "[l]ack of standing is an issue that is cognizable on appeal, and therefore it cannot be used to collaterally attack a judgment in foreclosure." *Kuchta*, 141 Ohio St.3d 75, at paragraphs one and two of the syllabus.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

CARLA MOORE
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

MARC E. DANN, GRACE M. DOBERDRUK and DANIEL M. SOLAR, Attorneys at Law, for Appellants.

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