

[Cite as *Wright-Patt Credit Union, Inc. v. Danes*, 2015-Ohio-2184.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

WRIGHT-PATT CREDIT UNION, INC.	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 26433
	:	
v.	:	Trial Court Case No. 2014-CV-4340
	:	
CHRISTINA D. DANES, et al.	:	(Civil Appeal from
	:	Common Pleas Court)
Defendants-Appellant	:	
	:	

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OPINION

Rendered on the 5th day of June, 2015.

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Defendant-Appellant, *pro se*

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FAIN, J.

{¶ 1} Defendant-appellant Christina Danes appeals, pro se, from a judgment of

foreclosure rendered in favor of plaintiff-appellee Wright-Patt Credit Union. Danes has failed to identify any specific assignments of error, but raises numerous factual issues that were not raised in the trial court, which cannot be considered on appeal. Therefore, the judgment of the trial court will be affirmed.

{¶ 2} Danes also argues that she was not properly served with the complaint, and that the trial court lacked personal jurisdiction to render a default judgment against her. We note that the issue regarding proper service remains pending in the trial court, which is without authority to consider the issue until this appeal is no longer pending. After the trial court rules on the issue of service, the parties will have the opportunity to appeal from that ruling.

I. The Course of Proceedings

{¶ 3} On July 25, 2014, Wright-Patt Credit Union brought this foreclosure action against Danes in Montgomery County Common Pleas Court. The complaint alleges that Danes entered into a loan agreement with Wright-Patt Credit Union in 2012, to borrow the sum of \$47,130.00. The loan was secured by a mortgage on Danes's residence. Danes does not deny that she defaulted on the loan agreement when she was unable to make all monthly payments due to unexpected maintenance and repair costs. The record shows that Wright-Patt initially tried to serve Danes with a copy of the complaint and summons by certified mail at her residential address, but service was returned unclaimed. Thereafter, Wright-Patt asked the clerk of courts to send the complaint and summons to Danes by regular mail. The docket reflects that the complaint and summons was sent to Danes by regular mail to her residential address on September 4, 2014. The summons

notified Danes that she was required to file an answer to the complaint within 28 days. Danes did not file a timely answer to the complaint. On October 9, 2014 Wright-Patt moved for default judgment, asking the court to render judgment against Danes, without a trial or hearing, based on her failure to file a timely answer. On October 14, 2014, the trial court granted the motion for default judgment and entered a decree of foreclosure, declaring that Danes was in default of her loan agreement, which allowed the bank to foreclose the mortgage by selling Danes's residential property to satisfy the amount owed on the loan. The trial court found that the amount due on the loan, as of March 1, 2014, was \$45,711.65, plus annual interest at the rate of 3.625 percent. On October 15, 2014, the court issued an order of sale authorizing the sheriff to conduct an auction to sell the foreclosed property.

{¶ 4} On October 23, 2014, Danes made her first appearance in the trial court by filing a "Motion to Object/Appeal Judgment Entry on Case Number 2014 CV 04340/Affidavit of Inability to Give Security." Danes also filed a properly sworn and notarized affidavit, in which Danes stated that she "was never served with any type of notification or summons to come to court on behalf of a foreclosure being filed." The affidavit provides other facts to explain that because of the major issues with the house, she was forced to vacate the house, and was no longer residing there. The motion to object/Appeal was docketed as a notice of appeal, which suspended the trial court's authority to rule on the motion. It remains pending.

{¶ 5} In support of her appeal, Danes filed a memorandum that contains no specific assignments of error, and cites no law in support of her claims. The document exclusively focuses on factual allegations to explain the circumstances that gave rise to

the foreclosure action, and attaches exhibits and other evidentiary support that was never presented to the trial court. Danes accuses Wright-Patt of engaging in predatory lending and bad faith by providing an improper appraisal and home inspection causing her “financial hardship, stress, mental and emotional” and placing her family in an “unsuitable, unsafe and hazardous environment.” She refers to a “countersuit,” but the record does not reflect that she ever filed an answer and counterclaim in the trial court.

{¶ 6} In response to Danes’s memorandum, Wright-Patt does not respond to any of the factual allegations raised by Danes. Wright-Patt confines its argument to a review of what happened in the trial court and argues that the civil rules were followed by serving Danes by regular mail after certified mail was returned unclaimed. Wright-Patt contends that after Danes failed to file a timely answer to the complaint, the court properly rendered default judgment against Danes. Wright-Patt urges this court to affirm the judgment of the trial court.

II. Scope of Review

{¶ 7} In the appeal of a foreclosure judgment, the role of the appellate court is limited to a review of the proceedings in the trial court. The appellate court does not have authority to conduct a trial, or review new evidence, to decide the outcome of a foreclosure dispute. Legal issues and the factual evidence relating to those issues must first be presented in, and decided by, the trial court, before appellate review of those issues and evidence can be had. The trial court is required to follow the guidelines set forth in the Ohio Rules of Civil Procedure to assure that legal claims are presented correctly and uniformly. The Rules of Civil Procedure include rules and procedures for

serving parties with copies of pleadings and set deadlines for responding to pleadings. The rules apply to all parties in a civil action, regardless of whether they are represented by an attorney or if they represent themselves, pro se.

{¶ 8} In the case before us, Danes has failed to specifically identify any assignments of error, as required by App. R. 16. Pursuant to App. R. 12 (A)(1)(b), the appellate court is only required to determine the merits of the assignments of error set forth in the briefs in accordance with App. R. 16. Pursuant to App. R. 12 (A)(2), the appellate court is authorized to dismiss alleged errors that are not presented or argued properly. All of the claims raised by Danes in her brief are defenses based on factual issues that were not raised or tried in the trial court.

{¶ 9} We have recognized that a homeowner's grounds for challenging a foreclosure not raised in the trial court are waived and may not be raised on appeal. *Bank of America v. Thompson*, 2d Dist. Montgomery No. 26316, 2015-Ohio-456, ¶ 19; see also, *FirstMerit Bank, N.A. v. Shaheen*, 5th Dist. Stark No. 2011-CA-00079, 2011-Ohio-6146, ¶13. The *Shaheen* decision relies on a rule of law established by the Supreme Court when it stated, "errors which arise during the course of a trial, which are not brought to the attention of the trial court by objection or otherwise, are waived and may not be raised upon appeal." *Stores Realty Co. v. Cleveland*, 41 Ohio St.2d 41, 43, 322 N.E.2d 629 (1975).

{¶ 10} Therefore, we find that Danes has not properly presented any error for our review at this time.

III. Service Issue May be Addressed by the Trial Court

{¶ 11} We note that Danes does argue one legal issue that she raised in the trial court in the same pleading containing her notice of appeal. In its reply brief, Wright-Patt also recognizes that Danes has raised the issue of whether service was sufficient to allow the court to render a default judgment against Danes. However, the timing of Danes's challenge to service did not permit the trial court to rule on the issue -- it lost jurisdiction to consider the issue during the pendency of the appeal. *Wells Fargo Fin. Ohio 1 Mtge. Group v. Lieb*, 2d Dist. Montgomery No. 23855, 2010-Ohio-6111, ¶¶ 9-10.

{¶ 12} We acknowledge that the trial court may, after the conclusion of this appeal, determine whether Danes has sufficiently raised the service issue and if so, whether to conduct a hearing to determine the credibility of her claim in order to reach a conclusion whether Danes has sufficiently rebutted the presumption of valid service.

{¶ 13} We have held that when service of process was sent to a defendant at the defendant's correct address and the defendant filed a 60(B) motion with a self-serving affidavit that she did not receive service of process, the court must hold a hearing to determine whether service was proper. *Portfolio Recovery Assoc., L.L.C. v. Thacker*, 2d Dist. Clark No. 2008 CA 119, 2009-Ohio-4406, ¶ 31; *Cincinnati Ins. Co. v. Lafitte*, 2d Dist. Montgomery No. 21055, 2006-Ohio-1806, ¶ 7. After conducting a hearing and evaluating the testimony on the matter, a trial court is permitted to find that the defendant's testimony is not credible and that the presumption of valid service of process has not been satisfactorily rebutted, or the court may find that the defendant's testimony is credible, in which case the default judgment must be vacated. *Thacker* at ¶ 31; *Ohio Civ. Rights Comm. v. First Am. Properties, Inc.*, 113 Ohio App.3d 233, 238-39, 680 N.E.2d 725 (2d Dist. 1996); *Lafitte* at ¶ 8.

{¶ 14} Unfortunately, Danes presented her motion in the same pleading as the notice of appeal, and therefore, the trial court was not given the opportunity to consider the issue, and Wright-Patt was not given the opportunity to refute Danes’s claim that she did not receive service. The issue of service is not properly before us until it has been ruled upon by the trial court.

IV. Conclusion

{¶ 15} Based on Danes’s failure to identify any assignments of error, or to brief any legal issue that was properly raised and decided in the trial court, we are prevented from reviewing the trial court’s judgment for errors. Accordingly, the judgment of the trial court is Affirmed. Upon conclusion of this appeal, the trial court will regain jurisdiction to address Danes’s claim that she was not properly served. If the trial court issues a final appealable order finding that Danes has not properly raised the issue of service, or that she has failed to sufficiently rebut the presumption of valid service, Danes may file another appeal for our review of the service issue. If the trial court finds that Danes has properly raised and rebutted the issue of valid service, the case will be reopened and proceed in accordance with the Rules of Civil Procedure.

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FROELICH, P.J., and HALL, J., concur.

Copies mailed to:

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Hon. Dennis J. Adkins