**[Cite as *U.S. Bank N.A. v. Smith*, 2018-Ohio-2489.]**

# IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

U.S. BANK, NATIONAL ASSOCIATION,

Plaintiff-Appellee,

v.

RONALD J. SMITH, et al.,

Defendants-Appellants.

---

**OPINION AND JUDGMENT ENTRY**
**Case No. 17 MA 0093**

---

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 05 CV 3869.

**BEFORE:**
Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

---

**JUDGMENT:**
Affirmed.

---

*Atty. David A. Wallace* and
*Atty. Karen M. Cadieux*, Carpenter, Lipps & Leland LLP, 280 Plaza, Suite 1300, 280 North High Street, Columbus, Ohio 43215
*Atty. Matthew J. Richardson*, Manley, Deas, Kochalski LLC, P.O. Box 165028, Columbus, Ohio 43216-5028, for Plaintiff-Appellee

*Ronald J. and Nancy L. Smith*, Pro se Appellants, 1625 Gully Top Lane, Canfield, Ohio 44406

Dated: June 21, 2018

---

**WAITE, J.**

**{¶1}** *Pro se* Defendants-Appellants, Ronald and Nancy Smith, appeal two judgment entries of the Mahoning County Court of Common Pleas, the first overruling their motion to vacate summary judgment and the resulting decree in foreclosure entered January 12, 2007 and the second seeking to vacate a "dormant" judgment also entered January 12, 2007. Appellants contend that Plaintiff-Appellee, U.S. Bank National Association as Trustee for Certificate Holders of Bear Stearns ("U.S. Bank") and their counsel committed a fraud on the court by seeking an order of sale because U.S. Bank was not the owner of the note and mortgage at the time U.S. Bank's complaint was filed. Appellants further contend that the initial order of foreclosure entered January 12, 2007 became dormant when five years passed between orders of sale. For the following reasons, Appellants' issues on appeal are not well-taken and the judgment of the trial court is affirmed.

Facts and Procedural History

**{¶2}** Appellants executed an adjustable rate note in favor of Encore Credit Corporation on March 5, 2004 in the original amount of $528,500.00, which was secured by a mortgage on real property located at 1625 Gully Top Lane, Canfield, Ohio. The note and mortgage were transferred through assignment to LaSalle Bank National Association, as Trustee for Certificate Holders of Bear Stearns Asset Backed Securities I LLC Asset Back Certificates, Series 2004-HE5 ("LaSalle") on March 22, 2004.

**{¶3}** Within three months of the execution of the note and mortgage, Appellants stopped making monthly payments on the note. In October of 2004, with five payments in arrears, they executed a forbearance agreement, however, they defaulted on that

agreement. In April of 2005, with seven payments in arrears, they executed a second forbearance agreement and again defaulted. In October of 2005, they executed their third and final forbearance agreement, but made only one payment under that plan.

**{¶4}** As trustee for Bear Stearns, LaSalle initiated foreclosure proceedings against Appellants on October 13, 2005. On January 12, 2007, the trial court granted summary judgment in favor of LaSalle, ordering foreclosure and the sale of the property ("foreclosure order"). No direct appeal of the foreclosure order was ever taken.

**{¶5}** In the eleven and a half years that have followed, no less than seven proposed sales of the property have been avoided, largely based on unsuccessful legal actions undertaken by Appellants. The property was first scheduled for sheriff's sale on August 3, 2007 (proposed sale #1). On that day, Appellants filed a Chapter 13 petition in bankruptcy court, which automatically stayed the sale of the property. Consequently, the order of sale was withdrawn. The bankruptcy stay was lifted on October 15, 2007 after the bankruptcy case was dismissed. In October of 2007, Bank of America Corporation acquired ABN Amro North America Holding Company, the parent company of LaSalle. (3/15/17 Mot. To Vacate, Def. Exh. A.)

**{¶6}** The property was ordered to sheriff's sale a second time and a notice of sale was issued on May 16, 2008 (proposed sale #2). Prior to the sale, Appellants were granted a second stay based on a Truth in Lending Act complaint they had filed against LaSalle in federal court. On October 10, 2009, the stay was lifted after this federal case was dismissed.

**{¶7}** Thereafter, a praecipe for an order of sale was filed (proposed sale #3), but Appellants filed yet another motion to stay the sheriff's sale based on a case they

had initiated against LaSalle in the common pleas court. In this case Appellants asserted claims similar to those advanced in their earlier federal complaint. In March of 2010, prior to the court ruling on the motion to stay, Appellants asked the trial court to reconsider its October 10, 2009 order lifting the stay. While the magistrate stayed the sheriff's sale until September 1, 2010, in February of 2011 the trial court vacated the magistrate's order.

**{¶8}** A praecipe for order of sale was filed on March 8, 2011 (proposed sale #4). On March 16, 2011, Appellants filed a motion for reconsideration of the original foreclosure order. That same day they also filed a Civ.R. 60(B) motion for relief from judgment. An order of sale was issued to the sheriff on April 12, 2011.

**{¶9}** In both 2011 motions Appellants argued that LaSalle was not the real party in interest. Therefore, they alleged LaSalle had committed fraud on the court. They also claimed that LaSalle violated the Pooling and Servicing Agreement ("PSA") that governed the manner in which the mortgage was to be placed in the Bear Stearns Trust. On May 4, 2011, the trial court overruled the motions. This decision prompted Appellants' first appeal.

**{¶10}** During the pendency of the appeal, Appellants sought a stay of the foreclosure order. The trial court denied the stay, but we granted a stay conditioned on a bond being posted in the amount of $750,000.00. Although Appellants did not file the required bond, LaSalle moved to withdraw the pending order of sale because the parties were engaging in ongoing settlement negotiations. On July 7, 2011, the trial court granted the motion to stay and the order of sale was withdrawn.

**{¶11}** On August 27, 2012, we held that the judgment entry of foreclosure was a final order. Consequently, Appellants' motion for reconsideration was a nullity. We also held that the Civ.R. 60(B)(5) motion, filed four years and three months after the foreclosure order was issued, was untimely. *LaSalle Bank Natl. Assoc. v. Smith*, 7th Dist. No. 11 MA 85, 2012-Ohio-4040 ("*Smith I*").

**{¶12}** On April 15, 2013, Appellants filed another motion in the trial court seeking to vacate the foreclosure order, as well as a motion to stay any sale of the property pending resolution of the motion to vacate. Appellants' common law motion was based on their theory that LaSalle lacked standing to bring the foreclosure action. Appellants argued that LaSalle did not possess the promissory note or an interest in the mortgage at the time the complaint in foreclosure was filed because the note was obtained in a manner which violated the PSA. They also claimed that the trial court did not have subject matter jurisdiction in the foreclosure action because LaSalle lacked standing and, hence, the judgment in foreclosure was void.

**{¶13}** The motion to vacate the foreclosure order was overruled by the trial court on July 30, 2013, and Appellants' motion to stay was overruled as moot. Appellants' second appeal followed.

**{¶14}** After Appellants' notice of appeal was filed, the Supreme Court of Ohio resolved a conflict between appellate districts regarding the issue of standing and subject matter jurisdiction as they relate to foreclosure actions. In *Bank of America, N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, the Court held an allegation that a plaintiff fraudulently claimed to have standing may not be asserted as a basis to vacate the judgment in foreclosure pursuant to Civ.R. 60(B)(3). As lack of

standing is an issue cognizable on appeal, it cannot be used to collaterally attack a judgment in foreclosure. The Court also held that, although standing is required in order to invoke the jurisdiction of the court of common pleas over a particular action, lack of standing does not affect the subject-matter jurisdiction of the court. *Id.* at syllabus.

**{¶15}** Accordingly, on December 30, 2015 we affirmed the decision of the trial court to overrule Appellants' motions. Our decision was filed just thirteen days prior to the ninth anniversary of the issuance of the foreclosure order in this matter. *LaSalle Bank Natl. Assn. v. Smith*, 7th Dist. No. 13 MA 148, 2015-Ohio-5597, ¶ 7 ("*Smith II*"). While Appellants attempted a further appeal of our decision, the Ohio Supreme Court declined jurisdiction on May 18, 2016.

**{¶16}** On June 3, 2016, U.S. Bank filed an alias praecipe for an order of sale. In the caption, U.S. Bank identified itself as "Trustee, successor in interest to Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for Bear Stearns Asset Backed Securities I Trust 2004-HE5, Asset Backed Certificates, Series 2004-HE5I." U.S. Bank did not file a notice of substitution of party. Civil Rule 25 provides that, "[i]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party." Civ.R. 25(C). The trial court did not issue such an order.

**{¶17}** An alias order of sale was issued to the sheriff on July 12, 2016 (proposed sale #5). However, the trial court vacated this sale order on July 29, 2016, pursuant to a motion to vacate filed by U.S. Bank. While nothing in the record explains the

reasoning behind the trial court's decision to vacate this sale order, according to Appellants' brief it was vacated because Appellants had submitted a loan modification application.

**{¶18}** A praecipe for order of sale was filed by U.S. Bank on September 19, 2016. An alias order of sale was issued to the sheriff and sale was scheduled for January 31, 2017 (proposed sale #6). On January 5, 2017, Appellants filed a motion to vacate the sale. Five days later, U.S. Bank also filed a motion to vacate the order of sale. U.S. Bank cited a "payment/research" dispute. The trial court granted U.S. Bank's motion.

**{¶19}** On February 23, 2017, U.S. Bank filed another alias praecipe for order of sale (proposed sale #7). On March 7, 2017, Appellants filed a motion to strike and vacate the praecipe for order of sale, alleging that U.S. Bank was not the judgment creditor as required by R.C. 2329.01 and it had not legally validated the debt. Both motions were overruled on March 27, 2017.

**{¶20}** In the interim, on March 15, 2017, Appellants filed a motion to vacate the original 2007 foreclosure order arguing that it had become a dormant judgment and so, unenforceable. They also filed a motion to vacate the praecipe order of sale. The motion to vacate the foreclosure order was overruled on April 3, 2017 and the motion to vacate the praecipe order of sale was overruled as moot.

**{¶21}** On April 4, 2017, Appellants filed a second motion seeking to vacate an allegedly dormant judgment directed to the initial foreclosure order, and another motion to stay the praecipe order of sale pending the outcome of their second motion to vacate a dormant judgment. On April 5, 2017, the trial court issued an alias order of sale. On

April 19, 2017, the trial court overruled Appellants' second motion to vacate a dormant judgment and ruled that the motion to vacate the praecipe order of sale was moot.

**{¶22}** On April 26, 2017, Appellants filed a motion to vacate the 2007 summary judgment granting the decree in foreclosure pursuant to Civ.R. 60(B)(5) and filed a motion to vacate the alias order of sale issued to the sheriff on April 5, 2017, pursuant to Civ.R. 60(B)(1)(3)(5). Both motions were overruled on May 10, 2017.

**{¶23}** On May 5, 2017, Appellants filed their third motion seeking to vacate a dormant judgment pursuant to Civ.R. 60(B)(4)(5). Shortly thereafter, on May 19, 2017, they filed a notice of appeal of the April denial of their second motion to vacate a dormant judgment and of the May denial of their motion to vacate summary judgment of the original foreclosure. On May 24, 2017, the trial court denied the third motion to vacate a dormant judgment. Appellants then filed an amended notice of appeal on June 5, 2017.

**{¶24}** On June 5, 2017, U.S. Bank filed a motion to vacate the order of sale and withdraw the property from the June 20, 2017 sale schedule, which the trial court denied on June 14, 2017. On June 16, 2017, Appellants filed a motion to vacate the order of sheriff's sale, which the trial court denied on June 19, 2017. On that same day, Appellants filed a Chapter 13 petition in bankruptcy court, which automatically stayed the sale of the property, eleven and one-half years after the issuance of the foreclosure order. The bankruptcy petition was dismissed on October 4, 2017 pursuant to 11 U.S.C. 1307(c) for failure to comply with the Chapter 13 plan. See *In re: Smith*, N.D. Ohio No. 4:17-BK-4199.

## Analysis

**{¶25}** Appellants advance two arguments on appeal. First, Appellants assert that U.S. Bank is not the owner of the note and mortgage in this foreclosure action and, based on this argument, that U.S. Bank committed a fraud on the court by seeking the issuance of an order of sale on the property. Second, they contend that the foreclosure order had become a dormant judgment and is unenforceable.

ASSIGNMENT OF ERROR NO. 1

> THE TRIAL COURT ERRED IN DENYING THE MOTION TO VACATE SUMMARY JUDGMENT AND DECREE IN FORECLOSURE.

**{¶26}** Civ.R. 60(B) allows a trial court to relieve a party from a final judgment. The Ohio Supreme Court set out the controlling test for Civ.R 60(B) motions in *GTE Automatic Elec., Inc. v. Arc Industries, Inc.,* 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus:

> To prevail on a motion brought under Civ. R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ. R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ. R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken.

If the movant fails to satisfy any of the above elements, the court must deny relief. *Argo Plastic Products Co. v. Cleveland*, 15 Ohio St.3d 389, 391, 474 N.E.2d 328 (1984), citing *GTE*, at 151.

**{¶27}** The grounds for relief under the second *GTE* element are:

> (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment.

Civ.R. 60(B). It is well established that a Civ.R. 60(B) motion cannot be used as a substitute for an appeal and that the doctrine of *res judicata* applies to such a motion. *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, ¶ 8-9.

**{¶28}** Although Civ.R. 60(B)(5) is considered a catch-all provision reflecting the inherent power of a court to relieve a person from the unjust operation of a judgment, the grounds for relief asserted under Civ.R. 60(B)(5) must be substantial. *Caruso–Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 66, 448 N.E.2d 1365 (1983). See also *Coulson v. Coulson*, 5 Ohio St.3d 12, 15, 448 N.E.2d 809 (1983) (substantial grounds include active participation in fraud upon the court by an officer of the court, such as an attorney). Use of the fifth ground for relief is limited to the extraordinary or unusual case requiring relief from the unjust operation of a judgment. *Home Fed. S. & L. Assn. of Niles v. Keck*, 7th Dist. No. 15 MA 0041, 2016-Ohio-651, 59 N.E.3d 706, ¶ 20, appeal not allowed, 146 Ohio St.3d 1428, 2016-Ohio-4606, 52 N.E.3d 1204, ¶ 20.

**{¶29}** A trial court has the discretion to summarily deny a Civ.R. 60(B) motion without a hearing. *Carkido v. Hasler*, 129 Ohio App.3d 539, 549, 718 N.E.2d 496 (7th Dist.1998). A hearing is not necessary if the grounds for relief from judgment are not sufficiently alleged on the face of the record. *Id.* at 550.

**{¶30}** The standard of review used to evaluate the trial court's decision to grant or deny a Civ.R. 60(B) motion is abuse of discretion. *Ohio Dept. of Job & Family Servs. v. State Line Plumbing & Heating, Inc.*, 7th Dist. No. 15 MA 0067, 2016-Ohio-3421, ¶ 12. An abuse of discretion connotes conduct which is unreasonable, arbitrary, or unconscionable. *State ex rel. Edwards v. Toledo City School Dist. Bd. of Edn.,* 72 Ohio St.3d 106, 107, 647 N.E.2d 799 (1995).

**{¶31}** In their brief, Appellants cite *Kuchta* for the proposition that "[f]ailure to establish ownership of the note and mortgage at the time a complaint in foreclosure is filed renders the original filing 'voidable' due to lack of standing." Appellants argue that U.S. Bank "failed in any way to 'codify' its role in the case" and that the note and mortgage have not been assigned to U.S. Bank. (Appellants' Brf., p. 9.) They assert that there is no problem with the timeliness of their motion to vacate because U.S. Bank appeared in the case less than a year prior to filing of the current Civ.R. 60(B) motion.

**{¶32}** However, Appellants have failed to demonstrate a meritorious defense or even to raise any reason at all to justify relief from the order of sale under the second part of the *GTE* test. The order in summary judgment they seek to vacate here was entered in 2007. Appellants base their request for relief solely on their contention that U.S. Bank committed a fraud on the court when it filed the praecipe for order of sale on

February 23, 2017 because U.S. Bank has admitted that it does not own the note and mortgage on the property.

**{¶33}** Appellants' fraud claim is based on correspondence from U.S. Bank dated August 16, 2016. This letter, however, clearly states that U.S. Bank is the trustee representing the trust that does own the note and mortgage on the property. The correspondence further explains that U.S. Bank is not the lender or servicer for the mortgage on the property, and that the servicer, which the authority and responsibility to make decisions and take action regarding individual mortgage loans, is a party to the trust. (8/11/16 Correspondence, attached to 60(B) motion as Def. Exh. A1-2.)

**{¶34}** Based on this correspondence, as well as U.S. Bank's marketing materials, Appellants somehow conclude that U.S. Bank is not the real party in interest and thus that it has perpetrated a fraud on the court by seeking an order of sale. However, Appellants misunderstand U.S. Bank's role in this foreclosure action. The trust owns the mortgage and note on the property just as it did when LaSalle was the trustee. The ownership of the note and mortgage has not changed; only the trustee assigned to execute the sale of the property has changed. U.S. Bank appears in this case as a successor in interest to the previous trustee. Civ.R. 25 does not require that U.S. Bank file a notice of substitution. Due to this crucial fact, Appellants have not shown any fraud on the part of U.S. Bank.

**{¶35}** Because Appellants have not articulated a meritorious defense nor shown any reason justifying relief from judgment in the 2007 foreclosure, the record shows that the trial court did not abuse its discretion in overruling the Civ.R. 60(B) motion without a hearing. Appellants' first assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED WHEN IT OVERRULED THE SECOND MOTION TO VACATE A DORMANT JUDGMENT.

**{¶36}** Appellants contend that the 2007 foreclosure order became dormant on April 16, 2016. They contend that the last order of sale was issued on behalf of LaSalle on April 16, 2011 and that after five years with no action taken on the part of the bank, the matter became dormant and unenforceable. After the April 16, 2011 order of sale, no further order was issued until an order of sale dated July 7, 2016. Appellants contend that "[d]uring the 5.25-year gap, there was nothing happening in the case that prevented [U.S. Bank] from executing the Judgment, or filing a Certificate of Renewal." (Appellants' Brf., p. 6.)

**{¶37}** Dormant judgments in Ohio are governed by statute. Under the dormant judgment statute, a prevailing party has five years to collect on a judgment or otherwise preserve the right to collect. R.C. 2329.07(A)(1). An appellate court reviews a lower court's interpretation and application of a statute *de novo*. *Adlaka v. Montella*, 7th Dist. No. 11 MA 133, 2013-Ohio-1276, ¶ 19.

**{¶38}** In interpreting statutes, a reviewing court should make every effort to give effect to each word, phrase and clause. *Boley v. Goodyear Tire & Rubber Co.*, 125 Ohio St.3d 510, 2010-Ohio-2550, 929 N.E.2d 448, ¶ 21. In addition, "[s]tatutes must be construed, if possible, to operate sensibly and not to accomplish foolish results." *State ex rel. Saltsman v. Burton*, 154 Ohio St. 262, 268, 95 N.E.2d 377 (1950). A court's primary concern in statutory construction is the legislative intent in the statute's enactment, which is normally found in the words and phrases of the statute, read in

context according to standard rules of grammar and common usage. *State ex rel. Mager v. State Teachers Retirement Sys. of Ohio*, 123 Ohio St.3d 195, 2009-Ohio-4908, 915 N.E.2d 320, ¶ 14.

**{¶39}** R.C. 2329.07 states, in pertinent part:

> (B)(1) A judgment that is not in favor of the state is dormant and shall not operate as a lien against the estate of the judgment debtor unless one of the following occurs within five years from the date of the judgment or any renewal of the judgment, whichever is later:
>
> (a) An execution on a judgment is issued.
>
> (b) A certificate of judgment for obtaining a lien upon lands and tenements is issued and filed, as provided in sections 2329.02 and 2329.04 of the Revised Code.
>
> (c) An order of garnishment is issued or is continuing, or until the last garnishment payment is received by the clerk of courts or the final report is filed by the garnishee, whichever is later.
>
> (d) A proceeding in aid of execution is commenced or is continuing.

**{¶40}** Over a century ago, the Ohio Supreme Court recognized that the dormancy statute does not apply to foreclosure judgments. *Moore v. Ogden*, 35 Ohio St. 430 (1880). In so doing, the Court reasoned that a foreclosure case does not become closed after the issuance of a foreclosure order, but remains open until the property is sold and the sale confirmed. In *Moore*, the Court held that, "[t]he judgment or decree did not become dormant, though five years elapsed without issuing an order of sale. As between the parties the case was still pending." *Id*. at 432, citing *Beaumont*

*v. Renick*, 24 Ohio St. 445 (1873). In other words, the dormancy statute does not apply to decrees or judgments for the sale of specific property, only to specific monetary judgments. *Id.*

**{¶41}** This rationale is supported by the plain language of the statute, which cites the commencement or continuation of a proceeding in aid of execution as an exception to the five-year dormancy rule. Clearly, an open foreclosure action is the continuation of a proceeding in aid of execution. Based on the plain language of the statute and on the Supreme Court's interpretation of this language, the trial court correctly determined that the dormancy statute is inapplicable here.

**{¶42}** Even if the dormancy statute did apply, U.S. Bank filed its alias praecipe for order of sale on June 3, 2016. The April 12, 2011 order of sale was vacated on July 7, 2011. U.S. Bank filed its alias praecipe for order of sale within five years of the order vacating the previous sale. A sale is commenced, not with an order of sale, but with an alias praecipe asking the trial court to issue an order of sale. Therefore, this record directly shows that "a proceeding in aid of execution" was commenced prior to the expiration of the claimed five-year statutory deadline.

**{¶43}** In summary, the dormancy statute is wholly inapplicable, and in any event, U.S. Bank instituted a proceeding in aid of execution prior to the expiration of the five-year deadline. Appellants' second assignment of error is also without merit.

Conclusion

**{¶44}** Based on the above, the trial court correctly overruled Appellants' Civ.R. 60(B)(5) motion. Appellants have failed to demonstrate that any of the facts in this case constitute the extraordinary or unusual case requiring relief from the unjust operation of

a judgment. Appellants have failed to offer any evidence of fraud on the part of U.S. Bank or their counsel.

**{¶45}** Further, the dormancy statute is inapplicable to foreclosure orders, and foreclosure is the issue in this appeal. The Ohio Supreme Court has determined that the dormancy statute applies only to execution of judgments for money. This decision has remained unchallenged for over one hundred years. Appellants are also mistaken in their belief that five years elapsed between vacation of the 2011 order of sale and U.S. Bank's filing of the alias praecipe for order of sale in June of 2016. For the foregoing reasons, the judgment entry of the trial court is affirmed.

Donofrio, J., concurs.

Robb, P.J., concurs.

---

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellants.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**