COURT OF APPEALS
DECISION
DATED AND FILED

March 13, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP932 **Cir. Ct. No. 2010CV2757**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

US BANK NATIONAL ASSOCIATION,

PLAINTIFF-RESPONDENT,

V.

SHERRI BENES-TEALE,

DEFENDANT-APPELLANT,

CAPITOL ONE BANK, A/K/A CAPITOL ONE BANK USA AND UNITED STATES OF AMERICA,

DEFENDANTS.

APPEAL from a judgment of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Sherri Benes-Teale ("Teale") appeals from a summary judgment of foreclosure. The sole issue on appeal is whether the circuit court erred in substituting plaintiffs. We affirm.

¶2 Teale secured a mortgage from Wells Fargo Bank, N.A., in 2005. She had difficulty paying and the mortgage was modified in 2008. In 2009, Teale had further difficulty and stopped making payments on the mortgage.

¶3 A foreclosure action against Teale was filed on February 23, 2010. The plaintiff as listed on the summons and complaint was "UBS Real Estate Securities Inc. c/o Wells Fargo Bank, N.A." When Teale, who was *pro se* for circuit court proceedings, filed her answer on March 19, 2010, she complained that there was no evidence that UBS held her mortgage note.

¶4 On May 6, 2010, an assignment of Teale's mortgage was recorded with the Milwaukee County Register of Deeds. Wells Fargo transferred the mortgage to "US Bank National Association, as Trustee for the holders of MASTR Asset Backed Securities Trust 2005-WF1." On June 7, 2010, US Bank petitioned the circuit court for an order substituting it as the plaintiff. Teale did not object to the petition at that time, and the circuit court granted the substitution.

¶5 US Bank subsequently moved for summary judgment, and a hearing was set for December 6, 2010. There, Teale complained that the foreclosure suit had not been commenced by a proper party, but she did not dispute the delinquency on her mortgage. The circuit court adjourned to allow the parties an opportunity to present supplemental documentation. Following supplementation, the circuit court granted the summary judgment of foreclosure. Relevant to this appeal, the circuit court also concluded that the plaintiff—at that point, US Bank—had standing and was the real party in interest. Teale appeals.

¶6 Teale's sole argument on appeal is that the circuit court "erroneously exercised its discretion when [it] allowed for a substitution of plaintiffs when the original plaintiff lacked standing." She asserts that there is no link between UBS and US Bank, only Wells Fargo and US Bank. Thus, while WIS. STAT. § 803.10(3) (2009-10)[1] allows the substitution of parties due to a transfer of interest, no such substitution was appropriate here because UBS never had nor transferred an interest in Teale's mortgage to US Bank.

¶7 This case depends on our reading of statutes. Statutory interpretation and application of the statues to sets of facts are questions of law that we review *de novo*. *See* ***State v. Jensen***, 2010 WI 38, ¶8, 324 Wis. 2d 586, 782 N.W.2d 415.

¶8 WISCONSIN STAT. § 803.01(1) provides as follows:

> No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

This rule is intended to "minimize the consequences and injustice of dismissing an action where an honest mistake has been made in choosing the party in whose name the action has been filed." Clausen and Lowe, *The New Wisconsin Rules of Civil Procedure, Chapters 801-803*, 59 Marq. L. Rev. 1, 74 (1976). In other

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

words, this statute provides that an error in naming the real plaintiff in interest can be corrected by substitution.

¶9 Teale implies that "substitution" for purposes of WIS. STAT. § 803.01(1) is only acceptable if it comports with one of the five reasons for substitution specified in WIS. STAT. § 803.10: death, incompetency, transfer of interest, death or separation from office of a public officer, or death after verdict. We do not read such a limitation into § 803.01.

¶10 We see no reason why, prior to US Bank's substitution, Wells Fargo could not have asked to be substituted as the plaintiff. The ostensible basis for that substitution would have been only that it was an error to indicate that UBS was the plaintiff. That substitution would comport with the intent of WIS. STAT. § 803.01(1) but would not be a substitution of the types specified in WIS. STAT. § 803.10. The substitution of US Bank, in light of Wells Fargo's transfer, is no different.

¶11 In her attempt to persuade us otherwise, Teale argues, "If any generic plaintiff can file suit and the defect can be cured by allowing the correct plaintiff to have standing later, the judicial process's and Wisconsin's standards of notice to parties are clearly no longer applicable. A defendant should know whom he/she/it is being sued by." However, Teale's concerns are exaggerated.

¶12 As the circuit court attempted to explain, the summons and complaint listed the plaintiff as UBS in care of Wells Fargo, and a copy of the original note with Wells Fargo was attached. Thus, the question of who Teale was "being sued by" should not have been a mystery to her.

¶13 Further, "Wisconsin long ago abandoned the highly formal concepts of common law form pleading in favor of more functional concepts defined in terms of the underlying transaction, occurrence or event that forms the basis of the claim." ***Korkow v. General Cas. Co of Wis.***, 117 Wis. 2d 187, 192, 344 N.W.2d 108 (1984). The summons and complaint here put Teale on notice of the transaction and events—the mortgage and her default—which formed the basis of the claim against her.

¶14 Moreover, Teale does not complain that an unreasonable amount of time was allowed for substitution, *see* WIS. STAT. § 803.01(1), nor did she object at the time substitution was sought. Her continuing objection based on standing relates to a party who is no longer part of the case. Teale did not dispute that she had defaulted on the mortgage, and does not dispute that US Bank is now the proper holder of that mortgage. She also does not appear to dispute that, if the case were dismissed and re-filed in US Bank's name, that foreclosure would be a proper remedy. In short, Teale seeks merely to elevate the form of the pleadings over their substance. We decline to do so. *See* ***Korkow***, 117 Wis. 2d at 193 (Legal disputes should be resolved "on the merits of the case rather than on the technical niceties of pleading.").

By the Court.—Judgment affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.