

DA 16-0732

IN THE SUPREME COURT OF THE STATE OF MONTANA

2017 MT 194N

JOHN JENKINS, and CANDACE JENKINS,

Plaintiffs and Appellants,

v.

U.S. BANK NATIONAL ASSOCIATION,
Trustee under POOLING AND SERVICING
AGREEMENT dated as of September 1, 2005,
WACHOVIA MORTGAGE LOAN TRUST
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2005-WMCI, AND
DOES 1 THROUGH 50 INCLUSIVE,

Defendants and Appellees.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV-11-1418
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

John Jenkins (Self-Represented), Candace Jenkins (Self-Represented),
Missoula, Montana

For Appellee:

Paul J. Lopach, Bryan Cave LLP, Denver, Colorado

Submitted on Briefs: July 12, 2017
Decided: August 8, 2017

Filed:



Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 John and Candace Jenkins appeal from the District Court's Orders of June 22, 2016, and November 10, 2016, dismissing their claims. We affirm.

¶3 In 2005 the Jenkins borrowed money to buy a house in Missoula, and in 2011 they defaulted on the loan. The lenders or their successors initiated default and foreclosure proceedings. In November 2011 the Jenkins filed suit against the lenders attacking the validity of the foreclosure. The District Court granted summary judgment to the lenders and this Court affirmed. *Jenkins v. U.S. Bank, et al.*, DA 13-0838, 2014 MT 229N, 2014 Lexis 482.

¶4 The lenders proceeded with foreclosure. In May 2016 the Jenkins filed an "Emergency Motion" seeking to enjoin the proceeding. On June 1, 2016, the lenders sold the property at a non-judicial sale. A trustee's deed was issued and recorded. By Order of June 22, 2016, the District Court denied Jenkins' motion as moot. In September 2016 the Jenkins filed a motion seeking to void the sale of the property. On November 10, 2016, the District Court denied the motion and ordered the case closed. Jenkins appeal.

¶5 The Montana Rules of Civil Procedure govern the process to alter a prior court ruling. The Jenkins failed to state any material grounds under M. R. Civ. P. 59 or 60 for relief from the former judgment against them. Moreover, the Jenkins litigated or had the opportunity to litigate their claims in their 2011 action, which was affirmed by this Court. The decision in that case “must be accorded finality as to all issues raised or which fairly could have been raised” because otherwise “judgments might be attacked piecemeal and without end.” *Filler v. Richland Co.*, 247 Mont. 285, 291, 806 P.2d 537, 541 (1991). Clearly the time to pursue further litigation in this matter has ended.

¶6 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, this case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶7 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA

/S/ MICHAEL E WHEAT

/S/ DIRK M. SANDEFUR

/S/ JIM RICE