

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

BANK OF AMERICA, NA,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2014-G-3228
MARIO SALWAN, et al.,	:	
Defendants-Appellants,	:	
	:	
THE HAWKSMOOR ASSOCIATION,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 12 F 000122.

Judgment: Appeal dismissed.

Candice L. Musiek and Bryan T. Kostura, McGlinchey Stafford, PLLC, 25550 Chagrin Boulevard, Suite 406, Cleveland, OH 44122-4640 (For Plaintiff-Appellee, Bank of America, NA).

Jordan B. Berns, Paul M. Greenberger and Timothy J. Duff, Berns, Ockner & Greenberger, LLC, 3733 Park East Drive, Suite 200, Beachwood, OH 44122 (For Defendants-Appellants).

Robert E. Kmiecik, Kevin M. Fields and Erika R. Finley, Kaman & Cusimano, LLC, 50 Public Square, Suite 2000, Cleveland, OH 44113 (For Defendant-Appellee, The Hawksmoor Association).

CYNTHIA WESTCOTT RICE, J.

{¶1} On October 2, 2014, appellants, Mario Salwan and Yanna Salwan, by and through counsel of record, filed a notice of appeal from a September 5, 2014 entry of the Geauga County Court of Common Pleas.

{¶2} The record in this matter reveals that this is a foreclosure action initiated by appellee, Bank of America, NA, concerning property owned by appellants. Bank of America named appellee, The Hawksmoor Association, as a party to the action because they had a lien on appellants' property. Hawksmoor filed a cross-claim against appellants. On August 5, 2014, Hawksmoor filed a motion for summary judgment. In the September 5, 2014 entry, the trial court granted Hawksmoor's motion for summary judgment. On that same date, appellants filed a memorandum in opposition to the motion for summary judgment.

{¶3} In a September 17, 2014 judgment, the trial court vacated its September 5, 2014 entry, and explained that "it is apparent that a Judgment Entry Granting Motion for Summary Judgment and Decree of Foreclosure was signed by the undersigned Judge and filed with the Clerk of Courts. The Judgment Entry was inadvertently signed and filed. The Court had not read [appellants'] Memorandum; * * *."

{¶4} On September 19, 2014, appellants filed a motion for relief from judgment pursuant to Civ.R. 60(B)(5). In their motion, appellants acknowledge that the trial court "had jurisdiction to enter the Vacating Judgment * * *"; however, they believe that case law exists in which it could be argued that the trial court lacked the authority to correct its error. Thus, appellants claim that they filed the motion to "properly protect the record."

{¶5} Appellants filed the instant appeal on October 2, 2014, along with a motion to stay the appeal and remand. In an entry dated October 22, 2014, this court remanded the case to the trial court for the sole purpose of the trial court ruling on appellants' September 19, 2014 motion for relief from judgment.

{¶6} Pursuant to our remand, the trial court issued a judgment entry on November 3, 2014, denying appellants' motion for relief from judgment as being moot and stating that "[b]ecause the Judgment has been vacated, there is no judgment from which relief may be granted. In order for this Court to grant relief from the Judgment entered on September 5, 2014, this Court would first have to vacate the Judgment entered on September 17, 2014, that already provided the relief that [appellants] seek."

{¶7} The trial court further explained that it "has the inherent authority to vacate judgments inadvertently filed by mistake. This is not a matter wherein the Court has had a second thought regarding the law applicable to the case; rather, the proposed Judgment Entry should have never been signed, much less filed. The Court has corrected the mistake by vacating the Judgment Entry mistakenly signed and filed. Had the Court not vacated the Judgment Entry of September 5, 2014, [appellants'] Motion for Relief from Judgment would have merit; but, the aforementioned Judgment Entry was vacated prior to [appellants'] filing of a motion seeking relief from that Judgment."

{¶8} On December 4, 2014, appellants filed with this court a motion to determine appellate jurisdiction. In their motion, appellants explain that if the trial court's vacation of its order was valid, then there is no final order, and this court does not have jurisdiction. No brief or memorandum in opposition to the appellants' motion has been filed.

{¶9} Civ.R. 60(A) provides in pertinent part:

{¶10} "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders. * * *"

{¶11} Under Civ.R. 60(A), it is axiomatic that a trial court has the power to correct a clerical error. However, this rule only applies to inadvertent clerical errors. *Palac v. Smith*, 11th Dist. No. 2005-T-0074, 2006-Ohio-5366, at ¶ 23. Substantive changes in judgments or orders are not within the purview of Civ.R. 60(A). *Kuehn v. Kuehn*, 55 Ohio App.3d 245, 247 (1988).

{¶12} “A ‘clerical mistake’ has been defined as follows:

{¶13} “* * * The term “clerical mistake” does not mean that it must be made by a clerk. The phrase merely describes the type of error identified with mistakes in transcription, alteration or omission of any papers and documents which are traditionally or customarily handled or controlled by clerks but which papers or documents may be handled by others. *It is a type of mistake or omission mechanical in nature which is apparent on the record and which does not involve a legal decision or judgment by an attorney.* * * *” (Emphasis in original.) *Dentsply International, Inc. v. Kostas*, 26 Ohio App.3d 116, 118 (1985).

{¶14} Therefore, in the matter before us, when the judgment entries of September 17, 2014 and November 3, 2014 are read in conjunction with the initial judgment entry of September 5, 2014, it is clear that the trial court’s September 5 entry was inadvertently filed. It is also apparent from the November 3, 2014 judgment that the trial court mistakenly signed and filed the September 5 entry, and it corrected its error by vacating that entry on September 17, 2014. Therefore, it is the position of this court that the trial court acted within its authority in sua sponte vacating the September 5 entry on September 17.

{¶15} Based upon the foregoing analysis, appellants' motion to determine appellate jurisdiction is hereby granted, and this appeal is hereby dismissed due to lack of jurisdiction.

{¶16} Appeal dismissed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.