[Cite as *In re Foreclosure of Liens*, 2015-Ohio-1258.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

IN THE MATTER OF THE: FORECLOSURE OF LIENS AND FORFEITURE OF PROPERTY FOR DELINQUENT LAND TAXES BY ACTION IN REM. COUNTY TREASURER OF LAKE COUNTY, OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-L-102**
- vs -	:	
PARCELS OF LAND ENCUMBERED WITH DELINQUENT TAX LIENS (TIPPICANOE CO. LLC),	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 14 CF 000588.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Eric A. Condon,* Assistant Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee, Lake County Treasurer).

Richard D. Eisenberg, 1413 Golden Gate Boulevard, Suite 200, Mayfield Heights, OH 44124 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Appellant, Tippicanoe Co. LLC, as the owner of certain parcels encumbered with delinquent tax liens, appeals from the judgments of the Lake County Court of Common Pleas, denying its Motion to Dismiss and Motion for Judgment on the

Pleadings and granting plaintiff-appellee, the Lake County Treasurer's, Motion for Default Judgment. The issues to be determined in this case are whether Civil Rule 4 rules of service apply in an in rem tax delinquency foreclosure action and whether default judgment can be entered when a defendant appears before the court but fails to file an answer to the complaint. For the following reasons, we affirm the judgment of the lower court.

{¶2} On March 11, 2014, the Lake County Treasurer filed a Complaint for Real Estate Tax Foreclosure Pursuant to R.C. 5721.18(C), bringing an in rem tax foreclosure action to recover unpaid real estate taxes on two parcels of land located in Lake County, Ohio in the amount of $272,581.56. The Treasurer noted that delinquent land tax certificates had been issued by the Lake County Auditor with respect to the listed parcels and there was a lien against the parcels, and requested their sale/foreclosure.

{¶3} On March 19, 2014, the Lake County News Herald returned to the court a document confirming the last date of publication of a legal notice in this matter would be March 31, 2014. The News Herald subsequently filed an Affidavit of Publication, stating that the notice of proceedings was published on March 17, 24, and 31, 2014.[1]

{¶4} Also on March 19, 2014, the trial court issued a Notice to Owner, Lienholders, and Other Parties, which explained the action that had been instituted, the amount of taxes sought, and noted that any interested party could file an answer, due on April 28, 2014. This Notice was sent by certified mail to Tippicanoe. It was served on March 22, 2014, and the return receipt was filed with the court.

1. For reasons unclear from the record, subsequently, a second legal notice, which was substantially similar to the previous one, aside from the answer due dates, was published on August 1, 8, and 15, 2014, which was attested to in an affidavit from the News Herald. A second notice was also sent via certified mail to Tippicanoe, but was returned unclaimed.

{¶5} On April 17, 2014, Tippicanoe filed a Motion to Dismiss on the grounds that it was not "properly served with process." It argued that it had received only a "notice to Owner, Lienholders, and Others acknowledged by the Lake County Clerk of Courts" and had not received a copy of the Complaint. Tippicanoe also argued that its address was public record and thus, pursuant to Civ.R. 4.4, service by publication was not proper.

{¶6} The Lake County Treasurer filed a Response on May 5, 2014, asserting that Tippicanoe was properly served by certified mail, to the address in the official records of the Lake County Treasurer and Auditor, and by publication.

{¶7} On May 8, 2014, Tippicanoe filed a Motion for Judgment on the Pleadings.

{¶8} In a May 29, 2014 Journal Entry, the trial court denied the Motion to Dismiss, finding that "certified mail service was made on Tippicanoe * * *, as well as service pursuant to R.C. 5721.18(C)." The court also denied the Motion for Judgment on the Pleadings.

{¶9} On August 20, 2014, the Treasurer filed a Motion for Default Judgment, due to the defendant's failure to file an answer or other pleading.

{¶10} On August 28, 2014, an affidavit of the deputy treasurer, Joyce Payne, was filed, attesting that, as of August 15, 2014, $280,546.23 was owed in taxes on the parcels.

{¶11} A Judgment Decree of Foreclosure was filed on September 9, 2014. The court held that Tippicanoe was properly served and was in default of answer. It awarded a judgment in favor of the Treasurer in the amount of $280,546.23 and ordered that the property be foreclosed upon if this was not paid. Tippicanoe filed a Motion in Opposition to default judgment on September 10, 2014.

{¶12} Tippicanoe timely appeals and raises the following assignments of error:

{¶13} "[1.] The trial court erred in denying Appellant's Motion to Dismiss and for Judgment on the Pleadings.

{¶14} "[2.] The trial court erred in granting Motion for Default Judgment against Appellant."

{¶15} "The application of a civil rule is a question of law, which we review *de novo.*" *Haskett v. Haskett*, 11th Dist. Lake No. 2011-L-155, 2013-Ohio-145, ¶ 17; *Ohio Bell Tel. v. Pub. Util. Comm*., 64 Ohio St.3d 145, 147, 593 N.E.2d 286 (1992) (a determination on questions of law is reviewed de novo).

{¶16} In its first assignment of error, Tippicanoe argues that it was served only with a Notice to Owner. It asserts that the procedure for service set forth in Civ.R. 4 was not followed, in that a summons for service was to be issued and served with a copy of the complaint. It further argues that service of process could not be completed by publication since publication is only permitted if other methods of service fail, which should not have occurred here, since its address was public record.

{¶17} The Treasurer asserts that, in an in rem real estate tax foreclosure proceeding, there are specific service requirements that apply, outside of those in the Civil Rules, pursuant to R.C. 5721.18(B)(1), and these procedures were followed.

{¶18} Pursuant to R.C. 5721.18, an action in rem for foreclosure may be filed when there is a tax delinquency on a property. Such proceedings may be instituted under divisions (B) or (C). In the present matter, the proceedings were instituted under division (C), which "shall conform to all of the requirements of division (B) of this section," except for differences including the requirement for a title search, the necessity

of interested parties' addresses being listed in the complaint, and who must receive service of the notice of proceedings. R.C. 5721.18(C)(1)-(3).

{¶19} As such, the service requirements in R.C. 5721.18(B)(1) would apply in the present case:

> Within thirty days after the filing of a complaint, the clerk of the court in which the complaint was filed shall cause a notice of foreclosure substantially in the form of the notice set forth in division (B) of section 5721.181 of the Revised Code to be published once a week for three consecutive weeks in a newspaper of general circulation in the county. * * *
>
> After the third publication, the publisher shall file with the clerk of the court an affidavit stating the fact of the publication and including a copy of the notice of foreclosure as published. Service of process for purposes of the action in rem shall be considered as complete on the date of the last publication.
>
> Within thirty days after the filing of a complaint and before the final date of publication of the notice of foreclosure, the clerk of the court also shall cause a copy of a notice substantially in the form of the notice set forth in division (C) of section 5721.181 of the Revised Code to be mailed by certified mail, with postage prepaid, to each person named in the complaint as being the last known owner of a parcel included in it, or as being a lienholder or other person with an interest in a parcel included in it. The notice shall be sent to the address of each such person, as set forth in the complaint, and the

clerk shall enter the fact of such mailing upon the appearance docket. * * *

{¶20} Tippicanoe does not address the foregoing procedure for service as it relates to in rem proceedings. Instead, it argues that service of the Complaint was required under the general rules of Civil Procedure. Civ.R. 4(A) and (B) ("Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption. * * * A copy of the complaint shall be attached to each summons.") Moreover, it argues that, since its address was known, pursuant to Rule 4.4(A), service by publication was not proper.

{¶21} We find that the service requirements in this case are those outlined in R.C. 5721.18(B)(1), which require a notice of the foreclosure proceedings to be provided to the owner and publication of the notice for three consecutive weeks. There appears to be no dispute in this case that both of these requirements were met, as an affidavit of publication was filed and Tippicanoe admits to receiving the Notice to Owner, which was docketed as served via certified mail on March 22, 2014.

{¶22} Courts that have considered the procedure set forth in R.C. 5721.18(B), under the same or similar versions of the statute, have found that it is sufficient to comply with due process requirements. *In re Foreclosure of Liens for Delinquent Taxes*, 62 Ohio St.2d 333, 405 N.E.2d 1030 (1980), paragraph two of the syllabus[2]; *Lake County Treasurer v. Parcels of Land*, 11th Dist. Lake No. 2004-L-046, 2005-Ohio-3260, ¶ 18. This court has held that, under the foregoing procedure, when certified mail was attempted and publication completed, "we cannot say that * * * the

2. The version of the statute considered there required service of the notice by ordinary mail rather than certified mail.

steps taken were not reasonably calculated to provide [appellant] with notice of the instant action." *Id.* at ¶ 19.

{¶23} While Tippicanoe does not address the applicability of this procedure but, rather, contends that the requirements for service of the complaint in the Civil Rules apply, this argument has not been accepted by other courts. The Ninth District rejected the argument that service was not properly made pursuant to Civ.R. 4 in tax foreclosure proceedings, explaining: "[T]he civil rules, 'to the extent that they would by their nature be clearly inapplicable, shall not apply to * * * special statutory proceedings[,]' where the statute establishes specific procedures to be followed based on the nature of the action. Civ.R. 1(C)(7). Such is the case in a tax foreclosure action." *Lorain Cty. Treasurer v. Schultz*, 9th Dist. Lorain No. 08CA009487, 2009-Ohio-1828, ¶ 11; *Hall v. Parcels of Land*, 10th Dist. Franklin No. 96APE02-160, 1996 Ohio App. LEXIS 3222, 7 (July 25, 1996). The court further found that notification of foreclosure by certified mail and publication was in compliance with the service requirements contained in R.C. 5721.18. *Schultz* at ¶ 12. *See also Martin v. Parcels of Land Encumbered with Tax Liens*, 11th Dist. Lake No. 94-L-072, 1995 Ohio App. LEXIS 5854, 11 (Dec. 29, 1995) (holding that the Civil Rules apply in tax foreclosure actions where the statute does not set forth a specific procedure, but clarifying that such a specific procedure exists as to service of notice on the parties). It is logical that, if specific requirements are set forth for service regarding in rem proceedings, the general procedure followed in other types of actions would not apply.

{¶24} Tippicanoe argues that it was "without the ability to answer or assert any claim or defense" due to its "lack of knowledge of the contents of the complaint." However, there appears to be no reason why Tippicanoe could not simply review the

Complaint as filed, given that it received notice of the Complaint's existence as required by R.C. 5721.18. Its receipt of the notice of the foreclosure proceedings is consistent with the requirements of the statute for service. R.C. 5721.18 (B)(1) (requiring that a "notice of foreclosure," the form of which is prescribed in R.C. 5721.181, be published and sent by certified mail for service of process to be complete); *Hall* at 6-8 (where a notice of tax foreclosure was sent via certified mail and was published, the matter was properly before the court).

{¶25} The first assignment of error is without merit.

{¶26} In the second assignment of error, Tippicanoe argues that, since it appeared before the court, default judgment was not proper.

{¶27} The Treasurer agrees that Tippicanoe did appear but argues that, since it failed to file an answer and was given notice of the application for default judgment, such judgment was properly entered.

{¶28} "A trial court's decision to grant or deny a motion for default judgment is reviewed under an abuse of discretion standard." (Citations omitted.) *Linville v. Kratochvill*, 11th Dist. Geauga No. 2013-G-3161, 2014-Ohio-1153, ¶ 17.

{¶29} Pursuant to App.R. 55(A), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing or orally to the court therefore * * *. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least seven days prior to the hearing on such application."

{¶30} In the present case, Tippicanoe does not argue that default judgment was improper because it was issued without notice or a hearing. Instead, Tippicanoe argues that "this Defendant has appeared, and default was inappropriate." Appearance alone, however, does not prevent the granting of default judgment. "A party who has appeared in a civil action can still be subject to a default judgment if he has otherwise failed to defend the case and received proper notice of the default judgment motion," which is supported by the fact that "Civ.R. 55(A) states a specific procedure for obtaining a default judgment even after the defending party has made an appearance." *Fed. Home Loan Mortg. Corp. v. Koch*, 11th Dist. Geauga No. 2012-G-3084, 2013-Ohio-4423, ¶ 18.

{¶31} Here, despite receiving the notice of the foreclosure proceedings via certified mail and the successful notice by publication, Tippicanoe argued that it was not required to file an Answer until it received a copy of the complaint pursuant to Civ.R. 4. The trial court rejected this position in a May 29, 2014 Journal Entry. Tippicanoe still failed to file an answer even after its position had been rejected by the trial court, causing the Treasurer to file its August 20, 2014 Motion for Default Judgment. Although Tippicanoe argues that it attempted to answer, the only attempts to respond were arguments regarding service. Tippicanoe never attempted to address the merits of the claim, which were readily apparent from the type of action taken (failure to pay taxes on the property). Based on the foregoing, we cannot find that the trial court abused its discretion in granting default judgment.

{¶32} Although more pertinent to the first assignment of error, Tippicanoe also argues that, pursuant to R.C. 5721.18(A), "foreclosure proceedings shall be instituted and prosecuted in the same manner as is provided by law for the foreclosure of mortgages on land," i.e., the Civil Rules should have been followed. Tippicanoe does

not provide this statute in context, however, because section (A) does not apply to in rem proceedings instituted under division (B) and (C), which follow the rules described in the first assignment of error. R.C. 5721.18(A) ("[t]his division applies to all foreclosure proceedings not instituted and prosecuted under * * * division (B) or (C) of this section").

{¶33} Finally, Tippicanoe argues that Lake County Court of Common Pleas Local Rule 3.04(G) requires that "[a] motion for default judgment will not be granted without supporting evidence establishing default, damages or truth of allegation," which Tippicanoe argues was not attached to the Motion for Default Judgment. This court has noted that "violations of local court rules do not typically constitute grounds for reversal" since "[i]t is well-settled that the enforcement of Local Rules is a matter within the discretion of the court promulgating the rules." *Allen v. Allen*, 11th Dist. Trumbull No. 2009-T-0070, 2010-Ohio-475, ¶ 33, citing *Dvorak v. Petronzio*, 11th Dist. Geauga No. 2007-G-2752, 2007-Ohio-4957, ¶ 30 (citations omitted). While the Treasurer did not attach evidence, such as the docket or notice of service to the Motion for Default Judgment, the facts supporting the claim of default were readily available on the docket and were further established in Tippicanoe's Motion to Dismiss and the Treasurer's response. Since the court determined it was able to discern the facts necessary to grant default judgment, and we find this holding to be proper, there is no basis for reversal on this ground.

{¶34} The second assignment of error is without merit.

{¶35} For the foregoing reasons, the judgments of the Lake County Court of Common Pleas, denying Tippicanoe's Motion to Dismiss and Motion for Judgment on

the Pleadings, and granting the Treasurer's Motion for Default Judgment against Tippicanoe are affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.