

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

WELLS FARGO FINANCIAL	:	O P I N I O N
OHIO 1, INC.,	:	
	:	
Plaintiff-Appellee,	:	CASE NO. 2014-T-0085
	:	
- vs -	:	
	:	
VALERIE J. MULROONEY, et al.,	:	
	:	
Defendants-Appellants.	:	
	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2013 CV 01680.

Judgment: Affirmed.

Scott A. King and Terry W. Posey, Jr., Thompson Hine, LLP, Austin Landing 1, 10050 Innovation Drive, Suite 400, Dayton, OH 45342 (For Plaintiff-Appellee).

John H. Chaney, III, Daniel Daniluk, L.L.C., 1129 Niles-Cortland Road, S.E., Warren, OH 44484 (For Defendants-Appellants).

DIANE V. GRENDELL, J.

{¶1} Defendants-appellants, Valerie J. Mulrooney and Timothy J. Mulrooney, appeal the Entry Granting Summary Judgment and Decree in Foreclosure, rendered by the Trumbull County Court of Common Pleas, in favor of plaintiff-appellee, Wells Fargo Financial Ohio 1, Inc. The issue before this court is whether a sheriff’s return of service satisfies the requirements of Civil Rule 4.1(B), allowing the court to exercise personal

jurisdiction over a defendant. For the following reasons, we affirm the decision of the court below.

{¶2} On August 16, 2013, Wells Fargo filed a Complaint in Foreclosure against the Mulrooneys, Capital One, N.A., Wells Fargo Financial Bank, the Trumbull County Treasurer, and various John Doe defendants.

{¶3} On August 22, 2013, the Trumbull County Treasurer filed an Answer and Consent to Decree in Foreclosure.

{¶4} On August 23, 2013, a Return was filed in the trial court by Sheriff's Deputy, J. Weaver. The Return provided:

RETURN OF SERVICE OF SUMMONS (PERSONAL)

I RECEIVED THIS SUMMONS ON 8/19 2013, AT 3:06 O'CLOCK P.M., AND MADE PERSONAL SERVICE OF IT UPON VALERIE MULROONEY/TIMOTHY MULROONEY BY LOCATING HIM-THEM AND TENDERING A COPY OF SUMMONS AND ACCOMPANYING DOCUMENTS, ON 8/22, 2013.

{¶5} On August 28, 2013, a certified mail return was filed in the trial court for Timothy Mulrooney marked: "RETURN TO SENDER UNABLE TO FORWARD."

{¶6} On December 11, 2013, with leave of court, Valerie Mulrooney filed an Answer.

{¶7} On August 1, 2014, Wells Fargo filed a Motion for Default Judgment against Timothy Mulrooney, Capital One, and Wells Fargo Financial Bank, and a Motion for Summary Judgment.

{¶8} On August 29, 2014, Timothy Mulrooney filed, by special appearance, a Memorandum in Opposition to Plaintiff’s Motion for Default Judgment and Motion for Summary Judgment. Timothy argued that summary judgment and default judgment must be denied because “Defendant [Timothy] has not received proper and legal service of the Complaint in Foreclosure.” Timothy cited “the notation on the docket dated August 28, 2013, [that] service was attempted but unsuccessful, upon Defendant.”

{¶9} On September 5, 2014, the trial court rendered an Entry Granting Summary Judgment and Decree in Foreclosure. The court found that “all necessary parties have been properly served, are properly before the Court, and that the defendants, Timothy J. Mulrooney, Capital One, N.A., and Wells Fargo Financial Bank, are in default of Motion or Answer.” The court further found that Valerie and Timothy Mulrooney owe Wells Fargo a principal balance of \$100,450, and that Wells Fargo is entitled to foreclose the Mulrooneys’ equity of redemption.

{¶10} On October 2, 2014, the Mulrooneys filed a Notice of Appeal. On appeal, they raise the following assignment of error:

{¶11} “The trial court erred to the prejudice of Appellants in issuing the September 5, 2014 Decree of Foreclosure, when service of process was never perfected upon Defendant-Appellant, TIMOTHY J. MULROONEY.”

{¶12} Pursuant to Civil Rule 56(C), summary judgment is proper when (1) the evidence shows “that there is no genuine issue as to any material fact” to be litigated, (2) “the moving party is entitled to judgment as a matter of law,” and (3) “it appears from the evidence * * * that reasonable minds can come to but one conclusion and that

conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence * * * construed most strongly in the party's favor." A trial court's decision to grant summary judgment is reviewed by an appellate court under a de novo standard of review. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). "Under this standard, the reviewing court conducts an independent review of the evidence before the trial court and renders a decision de novo, i.e., as a matter of law and without deference to the conclusions of the lower court." (Citation omitted.) *Bank of Am., N.A. v. Curtin*, 11th Dist. Portage No. 2013-P-0082, 2014-Ohio-5379, ¶ 13.

{¶13} On appeal, the Mulrooneys contend that Timothy "has never been properly and legally served with the Complaint for Foreclosure," citing "a notation [on the docket] dated August 28, 2013, that service was attempted, but was unsuccessful." Appellant's brief at 2.

{¶14} "It is axiomatic that for a court to acquire jurisdiction there must be a proper service of summons or an entry of appearance, and a judgment rendered without proper service or entry of appearance is a nullity and void." *Lincoln Tavern, Inc. v. Snader*, 165 Ohio St. 61, 64, 133 N.E.2d 606 (1956); *Maryhew v. Yova*, 11 Ohio St.3d 154, 156, 464 N.E.2d 538 (1984) ("[i]t is rudimentary that in order to render a valid personal judgment, a court must have personal jurisdiction over the defendant").

{¶15} "A civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant * * *." Civ.R. 3(A).

When process issued from * * * a court of common pleas * * * is to be served personally under this division, the clerk of the court shall

deliver the process and sufficient copies of the process and complaint * * * to the sheriff of the county in which the party to be served resides or may be found. * * * The person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served. When the copy of the process has been served, the person serving process shall endorse that fact on the process and return it to the clerk, who shall make the appropriate entry on the appearance docket.

Civ.R. 4.1(B).

{¶16} “The law in the state of Ohio remains that service is proper in cases where the Civil Rules on service are followed, unless rebutted by sufficient evidence.” *In re Estate of Popp*, 94 Ohio App.3d 640, 650, 641 N.E.2d 739 (8th Dist.1994); *Kerr Bldgs., Inc. v. Bishop*, 3rd Dist. Henry No. 7-14-07, 2014-Ohio-5391, ¶ 26 (cases cited).

The plaintiff in a case bears the burden of achieving proper service on a defendant. * * *. In those instances where the plaintiff follows the Ohio Civil Rules governing service of process, courts presume that service is proper unless the defendant rebuts this presumption with sufficient evidence of non-service. * * * The “party attempting to avoid jurisdiction has the burden of showing a defect or irregularity in the process.”

(Citation omitted.) *Bank of Am., N.A. v. Moore*, 2nd Dist. Montgomery No. 25762, 2014-Ohio-1111, ¶ 8.

{¶17} In the present case, Sheriff's Deputy Weaver endorsed the fact that Timothy Mulrooney was personally served with a copy of the summons and accompanying documents and duly returned the process to the clerk, who filed the same on August 23, 2013. This satisfied the requirements of Civil Rule 4.1(B) for personal service. The failure of service by certified mail does not rebut, compromise, or otherwise create an issue regarding the fact that Timothy was personally served with summons and thereby subjected to the court's jurisdiction.

{¶18} The sole assignment of error is without merit.

{¶19} For the foregoing reasons, the judgment of the Trumbull County Court of Common Pleas, granting summary judgment in favor of Wells Fargo and entering a decree of foreclosure against the Mulrooneys, is affirmed. Costs to be taxed against the appellants.

CYNTHIA WESTCOTT RICE, J., concurs,

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