

[Cite as *FirstMerit Bank, N.A. v. Wood*, 2009-Ohio-5889.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF LORAIN    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

FIRSTMERIT BANK, N.A.

C.A. No.     09CA09586

Appellee

v.

WILLIAM M. WOOD, ET AL.

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.     06CV145416

Appellants

DECISION AND JOURNAL ENTRY

Dated: November 9, 2009

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MOORE, Presiding Judge.

{¶1} Appellants, William and Vicki Wood appeal from the judgment of the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} On March 3, 2006, Appellee, FirstMerit Bank, filed a complaint against the Woods. On March 10, 2006, the Lorain County Clerk of Courts sent the complaint to the Woods via certified mail at the address listed on the complaint. The complaint was returned unclaimed. The Lorain County Clerk of Courts then sent the complaint by ordinary mail, again to the address listed on the complaint. The Woods did not respond to the complaint, and on July 28, 2006, FirstMerit filed a motion for default judgment. The motion was unopposed. The trial court granted the motion. Subsequently, on January 17, 2007, FirstMerit obtained an order for examination of judgment debtor. On January 31, 2007, the Woods were personally served with notice of the examination at the address to which the original complaint was sent. The debtor

examination was held on February 2, 2007. On February 10, 2009, FirstMerit filed a writ of execution, which was again personally served on the Woods. The Woods filed a request for a hearing. Prior to the hearing on the writ, the Woods filed a motion to vacate the default judgment. On April 29, 2009, the trial court denied the Woods' motion. The Woods timely appealed this decision. They have raised two assignments of error, which we have combined for ease of review.

## II.

### **ASSIGNMENT OF ERROR I**

“THE TRIAL COURT ERRED, AS A MATTER OF LAW, AND ABUSED ITS DISCRETION WHEN IT DISREGARDED [THE WOODS'] UNCHALLENGED SWORN STATEMENTS THAT THEY DID NOT RECEIVE SERVICE OF PROCESS AND DENIED [THE WOODS'] MOTION TO VACATE THE DEFAULT JUDGMENT WITHOUT EVIDENCE OF ACTUAL SERVICE OF PROCESS IN DIRECT CONTRAVENTION OF NINTH DISTRICT COURT OF APPEALS' PRECEDENT.”

### **ASSIGNMENT OF ERROR II**

“THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT BASED ITS DENIAL OF [THE WOODS'] MOTION TO VACATE ON CIV.R. 60(B) RATHER THAN UTILIZING ITS INHERENT POWER TO VACATE A JUDGMENT THAT WAS VOID AB INITIO.”

{¶3} In their two assignments of error, the Woods contend that the trial court erred in denying their motion to vacate the default judgment. We do not agree.

{¶4} The Woods specifically contend that the trial court erred when it disregarded their affidavit that they did not receive service of the initial complaint and when it based its denial of the motion to vacate on Civ.R. 60(B) rather than utilizing its inherent power to vacate a judgment. In other words, they contend that the trial court should have vacated the default judgment because the trial court did not have personal jurisdiction over them and therefore the default judgment was void. We do not agree.

{¶5} We begin by noting that pursuant to App.R. 9(A), the record on appeal must contain “[t]he original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court[.]” It is the appellant’s duty to transmit the transcript of proceedings to the court of appeals. App.R. 10(A); Loc.R. 5(A). This duty falls to the appellant because the appellant has the burden of establishing error in the trial court. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. In the absence of an adequate record, we must presume regularity in the trial court proceedings. *Id.* The record before this Court does not contain the defense motion to vacate or the accompanying affidavit. As these pleadings are necessary for a determination of the Woods’ assignments of error, this Court must presume regularity in the trial court’s proceedings and affirm the judgment of the trial court. Accordingly, the Woods’ assignments of error are overruled.

### III.

{¶6} The Woods’ assignments of error are overruled. The judgment of the Lorain County Court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the

period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

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CARLA MOORE  
FOR THE COURT

CARR, J.  
BELFANCE, J.  
CONCUR

APPEARANCES:

MICHAEL R. NIEDERBAUMER, Attorney at Law, for Appellants.

ROSEMARY TAFT MILBY and MATTHEW G. BURG, Attorneys at Law, for Appellee.