

[Cite as *Heller v. U.S. Bank, N.A.*, 2011-Ohio-1514.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

DAWN HELLER

Appellant

v.

US BANK, et al.

Appellee

C.A. No. 25493

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2009-05-3817

DECISION AND JOURNAL ENTRY

Dated: March 30, 2011

BELFANCE, Judge.

{¶1} Dawn Heller, pro se, appeals from two judgments entered in the Summit County Court of Common Pleas. For the reasons stated below, we affirm.

I.

{¶2} Ms. Heller’s brief in the present appeal does not set forth a clear and concise statement of the facts in this case. The Court has reviewed the complaint Ms. Heller filed in the Summit County Court of Common Pleas against U.S. Bank, N.A. (“U.S. Bank”), Ohio Fair Plan, Ameriquest Mortgage Company (“Ameriquest”), and Mortgage Information Services, Inc., (“MIS”). In the complaint, she states that she is suing for wrongful foreclosure, unethical and illegal business practices, negligent and intentional infliction of emotional distress, and breach of contract. It appears, upon reading the facts she sets forth in the complaint, that her primary allegation is wrongful foreclosure.

{¶3} Ms Heller alleges, in the complaint, that she and her husband obtained a loan from Ameriquest in 2005. The loan refinanced their mortgage and they intended to use the proceeds to buy a rental property. She alleges that Ameriquest misrepresented certain essential terms of the loan and was not given proper notice when the mortgage loan was transferred.

{¶4} Ms. Heller further alleges that because she did not know which bank actually held her mortgage at the time of her divorce, she was then unable to exercise her contractual right to be considered for a new loan. She dealt only with the mortgage servicer. During her divorce, the mortgage servicer also refused partial payments and would not negotiate payment arrangements with her. She asserts that as a result of these actions on the part of the lenders and servicer, she was later the victim of a wrongful foreclosure. The complaint does not set forth specific details, such as dates and a case number, of the foreclosure proceedings.

{¶5} Ms. Heller also alleges that the property was vandalized in 2005 and Ms. Heller filed a claim with her homeowners' insurance. The insurer, Ohio Fair Plan, refused to release the proceeds of the insurance claim without authorization from the mortgage holder. U.S. Bank did not authorize the release of funds. U.S. Bank also refused to release the funds when Ms. Heller sought to use them to make a down payment on a separate property.

{¶6} Ms. Heller's complaint does not include details of any foreclosure actions, although she does allege that she has lost three properties as a result of Defendants' actions.

{¶7} U.S. Bank filed a motion for summary judgment in the trial court, arguing that Ms. Heller's action was barred by res judicata. U.S. Bank's motion was based on a foreclosure action (Case No. 2007-05-3572) it had filed against Ms. Heller and her husband in 2007, based on the loan Ms. Heller discusses in her complaint. According to U.S. Bank, Ms. Heller did not

file a response in the foreclosure action and the court entered a default judgment against her. U.S. Bank purchased the property at a sheriff's sale in 2008 and sold it in March 2009.

{¶8} In its motion for summary judgment, U.S. Bank asserted that all the claims Ms. Heller now seeks to bring against it are barred by res judicata. It argued that Ms. Heller seeks to bring claims that, pursuant to Civ.R. 13, were compulsory counterclaims in the foreclosure action. As Ms. Heller did not respond in that case and judgment was entered against her by default, U.S. Bank argued that she cannot now raise issues that were decided in that case or bring claims that should have been raised in that litigation. The trial court agreed with U.S. Bank and granted summary judgment on those grounds. Ms. Heller now appeals that order.

{¶9} On the same day as it entered the order granting summary judgment on Ms. Heller's claims against U.S. Bank, the court also denied Ms. Heller's Motion for Stipulation to Set Aside and Strike Order of Summary Judgment, Motion for Continuance, Motion for Transference and Disposition to Criminal Proceedings against Defendant [MIS], and Motion and Application for Entry of Default against Ameriquest Mortgage. Ms. Heller also appeals from the order denying those motions. We have combined Ms. Heller's assignments of error to facilitate our discussion.

{¶10} Ms. Heller lists her assignments of error as follows:

“Judicial Assignment of Error #1:

“Pg. 4 of Court order for Summary Judgment in favor of US Bank National Association, in their final appealable order. Siding with the defense party against the manifest weight of the evidence.

“Judicial Assignment of error #2:

“The courts Did err in ruling a dismissal and in Not Overturning Dismissal of The Case against ACC Capital Corporation; as Majority Stock Holding Company for the Originator Ameriquest Mortgage, ruling states that it was not served timely, and plaintiff shows cause for overturning.

“Judicial Attorney Assignment of Error #3:

“Judge Hunters Judicial Attorney Gave direct advice to the Defendant counsel for US Bank National through Unethical cross talk, as to how to best proceed with his case. As shown in Plaintiff’s argument made on: Assignment of errors noted by the court, but not responded to.

“Judicial Assignment of error #4: In regards to Mortgage Information Services Inc. The Courts did err in ruling in favor of the Defense party MIS’ Inc. in ruling for summary Judgment made March 11, 2010. The courts failed to recognize the manifest weight of the evidence in regards to discovery presented by MIS’ in the form of Original Origination Documents ‘Unexecuted.’

“Assignment of Error #5: Defendant Counsel for MIS’:

“Defense Counsel Did err, in Failure to submit true, lawful, accurate and complete discovery in regards to all Mortgage documents filed, according to ORC: 317.08. properly made ‘GFE’, any truth in lending documents or right of rescission properly made. Pre-approval, signed dated Credit Application , They further failed to give disclosure of affiliated businesses, who must needs be affiliated by exemption, when they are not licensed by the State. Forfeiture applies where missing, omitted and altered documents are submitted. See Civil Rule 37 , 16 and 26(b).

“Assignment of Error #6: Defense Counsel for MIS’ Inc.

“The Defense Counsel did err In Making Harrassing and intimidating commentary, throughout deposition, manipulating other court cases to confuse dates and times, then mocking and giving advice to the Plaintiff off the record. Preventing deposition made by the plaintiff because of scheduling conflicts, and not responding to written deposition. This party submitted partial discovery and submitted the first and only legal mortgage document made on May 5, 2005, They Submitted the Unexecuted mortgage document made before loan switches were made. Both they and the courts, refuse to discuss it any further.

“Assignment of error #7 The Counsel for Ohio Fair Plan:

“The Defense counsel did err, in that they submitted fraudulent Insurance Contracts, with held the truth about Joint Underwriting responsibilities, as outlined by law, brought forth as evidence a policy written by the wrong party, in the wrong person’s name, and for the wrong term of coverage/year. They further failed to submit any other lawful discovery requested in regards to insurance valuations, insurance inspections for repairs to the Security Instrument and affiliation through Joint Underwriting practices and in making repairs to the security instrument contractually as a third party insurer, and its impact on PMI Insurance payments and collections.”

“We first note that pro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold Appellants to the same standard as any represented party.” (Internal citations omitted.) *Sherlock v. Myers*, 9th Dist. No. 22071, 2004-Ohio-5178, ¶3.

{¶11} App.R. 16(A) provides, inter alia, that an appellant’s brief must include

“(3) A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.

“(4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.

“(5) A statement of the case briefly describing the nature of the case, the course of proceedings, and the disposition in the court below.

“(6) A statement of facts relevant to the assignments of error presented for review, with appropriate references in the record in accordance with [App.R. 16(D)].

“(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

“(8) A conclusion briefly stating the precise relief sought.” App.R. 16(A).

Although Ms. Heller’s brief includes the applicable section headings, such as “Statement of the Issues Presented” and “Statement[] of the Case[,]” the text that follows those headings does not fit the descriptions given in App.R. 16(A). Her brief contains no factual or procedural history, no prayer for relief, and no citations to the record. Although Ms. Heller cites a variety of code

sections and rules, those citations are not organized in support of any argument that would entitle Ms. Heller to relief.

{¶12} It is apparent that Ms. Heller challenges the trial court's two orders of June 15, 2010, but her brief does not identify the basis of that challenge. We recognize the difficulties that pro se litigants face and do not seek to deny access to the courts to those laypersons who are unable to obtain counsel. "It is not, however, our duty to create an argument where none is made." *Deutsche Bank Natl. Trust Co. v. Taylor*, 9th Dist. No. 25281, 2011-Ohio-435, at ¶7, citing *Cardone v. Cardone* (May 6, 1998), 9th Dist. No. 18349, at *8.

{¶13} Because Ms. Heller's brief does not comply with the requirements of App.R. 16(A), present an argument for this Court to consider, or suffice to give notice of the basis upon which she seeks to challenge the trial court's judgments, we are unable to address her assignments of error. Accordingly, we overrule her assignments of error.

Judgment affirmed.

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 Summit, 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 Appellant.

EVE V. BELFANCE
FOR THE COURT

DICKINSON, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

DAWN M. HELLER, pro se, Appellant.

PAMELA S. PETAS, Attorney at Law, for Appellee.