

[Cite as *Wells Fargo Bank, N.A. v. Russell*, 2017-Ohio-5630.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

WELLS FARGO BANK, N.A.

C.A. No. 28055

Appellee

v.

CATHERINE RUSSELL, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV-2011-08-4496

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2017

CARR, Presiding Judge.

{¶1} Appellant, Catherine Russell, appeals the judgment of the Summit County Court of Common Pleas. This Court dismisses the appeal.

I.

{¶2} On August 12, 2011, Wells Fargo Bank, N.A., as trustee for SABR Trust, filed a foreclosure complaint against Catherine Russell. The case concerned the property located at 3592 Greenwich Road in Norton, Ohio. Russell filed an answer to the complaint denying all of the allegations therein and requesting mediation. After an unsuccessful attempt at mediation, the trial court placed the case back on its active docket on September 25, 2012.

{¶3} Wells Fargo filed a motion for summary judgment. Russell did not respond. On October 24, 2013, the trial court granted summary judgment and issued a decree of foreclosure.

{¶4} One week later, Russell filed a motion to vacate the judgment, citing Civ.R. 60(B). Wells Fargo filed a brief in opposition to the motion. The trial court denied the motion to vacate on December 11, 2013.

{¶5} Russell retained new counsel and filed a common law motion to vacate on June 30, 2014. Wells Fargo filed a brief in opposition and Russell replied thereto. The trial court denied Russell's motion on the basis of res judicata. Russell filed a notice of appeal. This Court dismissed the appeal for lack of jurisdiction on the basis that the underlying foreclosure decree, which was the subject of the motion to vacate, failed to resolve all of the issues related to the outstanding liens on the property.

{¶6} Thereafter, Wells Fargo moved the trial court to add a defendant on the basis that Barberton Hospital was inadvertently omitted from the original complaint. Russell opposed the motion on the grounds that Wells Fargo was required to vacate the existing judgment and file an amended complaint pursuant to Civ.R. 15. The trial court rejected this argument and granted the motion, concluding that Civ.R. 21 allowed Wells Fargo to add a party at any point in the action and that adding Barberton Hospital as a named defendant would not prejudice Russell.

{¶7} Subsequently, on April 9, 2015, Wells Fargo filed an amended foreclosure complaint against Russell, naming Barberton Hospital as a defendant. Other named defendants included the United States of America, Akron General Medical Center, and the Ohio Department of Taxation. Though Russell filed an answer to the amended complaint, Wells Fargo successfully moved to have the answer stricken on the basis that the answer was "a nullity[.]" Wells Fargo then filed a motion to "fix priority of liens[.]" On June 5, 2015, the trial court issued an order setting out the priority of liens. This Court again dismissed Russell's attempted

appeal on the basis that the trial court's order setting out the priority of liens did not address the amounts due to the various lienholders.

{¶8} Wells Fargo filed a motion asking the trial court to “set value of junior liens[.]” On November 19, 2015, the trial court issued an order granting the motion identifying the priority and value of the liens on the property. The trial court further stated that it was amending its June 5, 2015 order to reflect that the United States of America had disclaimed any interest in the property.

{¶9} In her notice of appeal, Russell gives notice of her intent to appeal the October 24, 2013 summary judgment order as well as the November 19, 2015 order resolving the priority of liens.

{¶10} Now before this Court, Russell raises one assignment of error.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT GRANTED A JUDGMENT OF FORECLOSURE WHEN MATERIAL ISSUES OF FACT REMAINED INVOLVING POSSESSION AND APPEARANCE OF THE ORIGINAL NOTE[.]

{¶11} In her sole assignment of error, Russell contends that the trial court erred by granting summary judgment in favor of Wells Fargo because material issues of fact remained regarding whether Wells Fargo had standing.

{¶12} This Court is obligated to raise sua sponte questions related to our jurisdiction. *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.*, 29 Ohio St.2d 184, 186 (1972). This Court has jurisdiction to hear appeals only from final judgments. Article IV, Section 3(B)(2), Ohio Constitution; R.C. 2501.02. “For a judgment to be final and appealable, the requirements of R.C. 2505.02 and Civ.R. 54(B), if applicable, must be satisfied.” *LEH Properties, Inc. v. Pheasant*

Run Assn., 9th Dist. Lorain No. 07CA009275, 2008-Ohio-4500, ¶ 10, citing *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 88 (1989).

{¶13} This case contains an unfortunate and complicated procedural history. Generally speaking, “there is a firm and longstanding principle that final judgments are meant to be just that- final.” *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, ¶ 22. In this case, however, the trial court had yet to issue a foreclosure decree that constituted a final, appealable order at the time Wells Fargo filed its amended complaint on April 9, 2015. “The filing of an amended complaint supplants the original or any prior complaint.” *Schaffer v. Huntington Natl. Bank*, 9th Dist. Lorain No. 14CA010574, 2015-Ohio-207, ¶ 5. “An amended complaint takes the place of the original, which is then totally abandoned.” *Harris v. Ohio Edison Co.*, 7th Dist. Mahoning No. 91 C.A. 108, 1992 WL 188511, *2 (Aug. 3, 1992); *Nationstar Mtge., L.L.C. v. Wagener*, 8th Dist. Cuyahoga No. 101280, 2015-Ohio-1289, ¶ 21. The summary judgment order and initial foreclosure decree in this case related to the original complaint filed in 2011. After filing the amended complaint, Wells Fargo filed several motions aimed at resolving issues involving the priority of liens on the property. The only journal entries issued by the trial court thereafter were proposed orders that dealt exclusively with the priority of liens. Significantly, however, Wells Fargo never filed a dispositive motion with respect to the amended complaint, and the trial court never issued an order subsequent to the filing of the amended complaint that addressed the claims raised therein.

{¶14} Russell has not appealed from a final order in this case. In a foreclosure action, a judgment entry is final and appealable under R.C. 2505.02(B) ““if it resolves all remaining issues involved in the foreclosure.”” *Wells Fargo Bank N.A. v. Vasquez*, 9th Dist. Medina No. 13CA0086-M, 2015-Ohio-717, ¶ 7, quoting *Mtge. Electronic Registration Sys., Inc. v. Green*

Tree Servicing, LLC, 9th Dist. Summit No. 23723, 2007-Ohio-6295, ¶ 9. Here, the trial court never issued an order disposing of the underlying claims raised in the amended complaint. Wells Fargo points to the trial court's order granting the motion to add a party wherein the trial court stated that adding Barberton Hospital as a defendant would not require vacation of its prior judgment or "alter the underlying merits of this foreclosure action." Assuming without deciding that it was proper for the trial court to allow Wells Fargo to add a party to the original complaint pursuant to Civ.R. 21, the subsequent filing of an amended complaint had the effect of supplanting the original pleading. *See Schaffer* at ¶ 5. The trial court's October 24, 2013 summary judgment order that was germane to the first complaint was not pertinent to the amended complaint. *See Schaffer* at ¶ 5-8. Because the trial court's November 19, 2015 order that was issued after the filing of the amended complaint addressed only the priority of liens, but did not speak to the underlying mortgage default issues, the trial court has not issued a final, appealable order in this matter.

{¶15} For these reasons, the appeal is dismissed.

III.

{¶16} Because Russell has not appealed from a final, appealable order, this Court cannot consider the merits of her assignment of error. The attempted appeal is dismissed for lack of jurisdiction.

Appeal dismissed.

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(C). 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.

DONNA J. CARR
FOR THE COURT

HENSAL, J.
SCHAFFER, J.
CONCUR.

APPEARANCES:

MARC E. DANN and GRACE M. DOBERDRUK, Attorneys at Law, for Appellant.

BARBARA FRIEDMAN YAKSIC and AMANDA L. HOLZHAUER, Attorneys at Law, for Appellee.