

(hereinafter "Wells Fargo") filed the foreclosure action in 2007 after Appellants failed to make mortgage payments on their \$337,000 mortgage refinance loan. The court granted judgment to Wells Fargo in September of 2009 and Appellants filed both an appeal of that judgment and a Civ.R. 60(B) motion for relief from judgment. The court overruled the Civ.R. 60(B) motion in January of 2010, and Appellants filed this second appeal while the appeal of the initial foreclosure judgment remains pending in this Court. Generally, a trial court does not have the authority to rule on a Civ.R. 60(B) motion once a direct appeal has been filed, unless the appellate court issues an order granting the trial court leave to rule. Appellants did not seek and were not granted leave for the trial court to rule on the Civ.R. 60(B) motion. Thus, the court had no jurisdiction to rule on the motion. The trial court's ruling is a nullity and we must dismiss this appeal for lack of a final appealable order.

History of the Case

{¶ 2} On March 21, 2005, Wells Fargo refinanced Appellants' home at 300 Tait Road, Kettering, Ohio. The amount of the mortgage refinance loan was \$337,340.16. Appellants failed to make their monthly mortgage payments, and Wells Fargo filed a complaint in foreclosure on March 14, 2007. The complaint attempted to recover both a personal judgment against Mr. Lieb on the promissory note, and also sought to foreclose the mortgage.

{¶ 3} On August 30, 2007, Mrs. Lieb filed an amended answer, counterclaim and crossclaim, and requested a declaratory judgment that the mortgage was void. Mrs. Lieb also asserted claims under the Truth in Lending Act ("TILA"), and asked

the court to quiet title on the property. She argued that she had been induced to sign the mortgage by fraudulent representations. She further alleged that a deed dated March 8, 2005, transferring her interest in the property to Michael Lieb was fraudulent, forged, and void.

{¶ 4} On June 2, 2008, Mrs. Lieb filed a motion for summary judgment. On November 19, 2008, Wells Fargo filed a motion for summary judgment seeking personal judgment on the note, foreclosure of the mortgage, and judgment on Mrs. Lieb's TILA claim.

{¶ 5} On January 2, 2009, a magistrate granted judgment to Wells Fargo on the promissory note but overruled the balance of both parties' remaining claims for summary judgment regarding the mortgage. On January 16, 2009, Wells Fargo filed objections to the magistrate's decision arguing that there were no material facts in dispute as to the validity of the mortgage, that the mortgage was facially valid, and that Appellants presented no evidence in opposition to the validity of the mortgage. The Liebs did not respond to these objections.

{¶ 6} On February 10, 2009, the trial court entered judgment sustaining Wells Fargo's objections. The court granted summary judgment to Wells Fargo on the note and on the foreclosure action, and also granted judgment to Wells Fargo in defense of Mrs. Lieb's TILA claim and her quiet title action. Mrs. Lieb filed a notice of appeal of this judgment, but it was later dismissed on July 14, 2009, for lack of a final appealable order.

{¶ 7} On September 8, 2009, the trial court entered final judgment. Mrs. Lieb filed a notice of appeal on October 8, 2009, which is pending as Montgomery

Cty. App. No. CA23688.

{¶ 8} Also on October 8, 2009, Mrs. Lieb filed a Civ.R. 60(B) motion for relief from judgment. The trial court overruled the motion for relief from judgment on January 4, 2010. This appeal was filed on February 3, 2010.

APPEAL OF A MOTION FOR RELIEF FROM JUDGMENT

{¶ 9} This appeal challenges the trial court's ruling on Appellants' Civ.R. 60(B) motion for relief from judgment. It is clear from the record that Appellants filed the motion for relief from judgment on the same day that they filed a direct appeal of the same judgment entry. The trial court's final judgment entry on the foreclosure action was filed on September 8, 2009, and the direct appeal and motion for relief from judgment were both filed on October 8, 2009. The motion for relief from judgment was not ruled on until January 4, 2010.

{¶ 10} It has been the longstanding rule in Ohio that a direct appeal divests a trial court of jurisdiction to rule on a Civ.R. 60(B) motion for relief from judgment. *State ex rel. East Mfg. Corp. v. Ohio Civ. Rights Comm.* (1992), 63 Ohio St.3d 179, 181, citing *Klinginsmith v. Felix* (1989), 62 Ohio App.3d 147, 150-151. "Jurisdiction may be conferred on the trial court only through an order by the reviewing court remanding the matter for consideration of the Civ.R. 60(B) motion." *Howard v. Catholic Social Servs. of Cuyahoga Cty., Inc.* (1994), 70 Ohio St.3d 141, 147. Appellants did not request a remand from this Court to allow the trial court to rule on the Civ.R. 60(B) motion, and no such remand was issued. Without a limited remand from this Court, the trial court lacked jurisdiction to issue its judgment overruling the

motion for relief from judgment, and that judgment is null and void. *Wells v. Spirit Fabricating, Ltd.* (1996), 113 Ohio App.3d 282, 290.

{¶ 11} "A void judgment is necessarily not a final and appealable order." *Beck v. Jones*, Cuyahoga App. Nos. 90120, 91056, 2008-Ohio-5343, ¶14. Since there is no final, appealable order under review in this appeal, we lack jurisdiction to consider the appeal. This appeal is hereby dismissed for lack of a final appealable order.

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GRADY, J. and FROELICH, J., concur.

(Hon. Cheryl L. Waite, Seventh District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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