

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

PHH Mortgage Corporation,	:	
Plaintiff-Appellee,	:	No. 12AP-312
v.	:	(C.P.C. No. 09CV-18597)
Dustin S. Therrien et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees,	:	
5872 O'Reily Drive Foreclosure Defense Trust, c/o Brian K. Urbanski Trustee,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 15, 2012

Shapiro, Van Ess, Phillips & Barragate, LLP, Phillip Barragate and Steven M. Palmer, for appellee PHH Mortgage Corporation.

Eric J. Whittenberg Co. LPA, Eric J. Whittenberg and Jennifer L. Route, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Appellant, Brian K. Urbanski, appeals from a judgment of the Franklin County Court of Common Pleas, granting summary judgment in favor of appellee PHH Mortgage Corporation ("PHH") and appeals the trial court's granting of PHH's motion to strike his amended answer and counterclaim in this foreclosure action. For the following

reasons, Urbanski was not a party to the action, and we dismiss his appeal for lack of standing.

{¶ 2} In December 2009, PHH filed the instant foreclosure action alleging that it was the owner and holder of a promissory note that was secured by a mortgage on real property located at 5872 O'Reily Drive, Galloway, Ohio. The complaint named various defendants including Dustin S. Therrien, Kristy R. Therrien, and a trust identified as the "5872 OREILY DRIVE FORECLOSURE DEFENSE TRUST C/O BRIAN K. URBANSKI TRUSTEE" (hereinafter "the trust"). Urbanski was not personally named as a defendant in the caption of the complaint, and none of the claims within the complaint were asserted against him as a party.

{¶ 3} In the following months, Urbanski purported to represent the trust in a pro se capacity by filing various motions and pleadings. In November 2010, PHH filed a motion seeking both summary judgment against the trust and seeking default judgment against the Therriens for failure to respond or otherwise defend. PHH alleged that the Therriens had defaulted on their payment obligation under the note and violated a separate provision prohibiting the Therriens from transferring property without the lender's consent.

{¶ 4} After PHH alleged that Urbanski was engaging in the unauthorized practice of law, Urbanski retained counsel who, in February 2011, obtained leave to file an amended answer and counterclaim on behalf of Urbanski. Urbanski's counsel also obtained leave to file a separate answer and counterclaim on behalf of the Therriens.

{¶ 5} PHH moved to strike the amended answer and counterclaim filed by Urbanski's counsel on the ground that Urbanski was not personally a party to the foreclosure action and lacked standing to assert claims on his own behalf. The trial court granted PHH's motion in a decision filed February 10, 2011. In its decision, the trial court found that Urbanski was not a party to the action and ordered stricken all motions and pleadings filed by or on behalf of Urbanski. Over five months later, Urbanski filed a motion for reconsideration, which the trial court denied.

{¶ 6} PHH moved for summary judgment against the Therriens, which the trial court granted in a decision and entry filed on March 19, 2012. Urbanski now appeals, presenting the following three assignments of error for our consideration:

[I.] The trial court erred in ruling that trusts cannot own real property under Ohio law and in ruling that Defendant Brian K. Urbanski, as trustee, lacked standing to defend the foreclosure action and to bring and prosecute a counterclaim.

[II.] The trial court erred in granting the Motion to Strike and in denying Defendant Brian K. Urbanski's Motion for Reconsideration.

[III.] The trial court erred in granting the Plaintiff's Motion for Summary Judgment when the legal and factual issues raised in Defendant Urbanski's Counterclaim remain unresolved.

{¶ 7} For ease of discussion, we will address all of Urbanski's assignments of error together. Urbanski's first and second assignments of error challenge the trial court's decision striking his amended answer and counterclaim, and his third assignment of error argues that the trial court erred by granting summary judgment in favor of PHH without considering his amended answer and counterclaim. PHH presents several arguments in response, but we will begin with PHH's argument regarding Urbanski's standing to appeal, as we find it to be dispositive.

{¶ 8} "To have standing to appeal, a person must either have been a party to the case or have attempted to intervene as a party." *Lopez v. Veitran*, 1st Dist. No. C-110511, 2012-Ohio-1216, ¶ 10; *Eaton Natl. Bank & Trust Co. v. Glass*, 10th Dist. No. 08AP-829, 2009-Ohio-1186, ¶ 4-5. "Merely appearing in a proceeding and presenting an argument does not make a person a party to an action with a right to appeal." *Lopez* at ¶ 10, citing *In re Adoption of T.B.S.*, 4th Dist. No. 07CA3139, 2007-Ohio-3559, ¶ 7; *In re Estate of Markovich*, 9th Dist. No. 06CA008868, 2006-Ohio-6064, ¶ 11.

{¶ 9} Here, Urbanski was not named as a defendant in the complaint, nor was he referenced in any of the counts within the complaint. *See* Civ.R. 10(A) ("In the complaint the title of the action shall include the names and addresses of all the parties."). While Urbanski suggests that he was named by virtue of the designation "C/O BRIAN K. URBANSKI TRUSTEE" in the caption of the complaint, such a designation is insufficient to individually name him as a party. *See Ohio Dept. of Transp. v. Storage World, Inc.*,

9th Dist. No. 11CA0002-M, 2012-Ohio-4437, ¶ 9 (designation "c/o" in complaint insufficient to name individual as a party defendant).

{¶ 10} Moreover, Urbanski did not file a motion to intervene pursuant to Civ.R. 24. Although he referred to Civ.R. 24 in his reply brief in support of his motion for reconsideration, he never actually sought to intervene as a party under that rule. *See* Civ.R. 24(C) (outlining the procedure for filing a motion to intervene under Civ.R. 24(A) or (B)). Thus, because Urbanski was not a party to the action and did not move to intervene as a party, he lacks standing, and we must dismiss his appeal. *See State ex rel. Jones v. Wilson*, 48 Ohio St.2d 349, 350 (1976); *Lopez* at ¶ 13; *Glass* at ¶ 6.

{¶ 11} Accordingly, Urbanski's appeal is hereby dismissed.

Appeal dismissed.

BROWN, P.J., and TYACK, J., concur.
