[Cite as *Wells Fargo Bank, N.A., v. Dombroski*, 2012-Ohio-5858.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Wells Fargo Bank, N.A.,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-331 (C.P.C. No. 11CVE-08-10558)
Betty L. Dombroski,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 11, 2012

Thompson Hine LLP, Scott A. King and *Terry W. Posey, Jr.*, for appellee.

Betty L. Dombroski, pro se.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶1} Defendant-appellant, Betty L. Dombroski, appeals from a judgment of the Franklin County Court of Common Pleas denying her motion to reconsider the default judgment against her on the complaint in foreclosure filed by plaintiff-appellee, Wells Fargo Bank, N.A. Because we conclude that the trial court did not err in denying the motion for reconsideration, we affirm.

{¶2} On August 24, 2011, appellee filed a complaint in foreclosure asserting that appellant was in default on a promissory note that was secured by a mortgage on real property located at 906 Lakeway Court East, Westerville, Ohio 43081. In the complaint, appellee acknowledged that appellant's personal obligations on the note had been discharged pursuant to bankruptcy, and, therefore, appellee was not seeking personal judgment against appellant but, instead, was seeking to enforce appellant's security

interest. Appellant entered an appearance by requesting an extension of time to answer and mediation pursuant to the Franklin County Foreclosure Mediation Project. On September 29, 2011, the court referred the case to mediation. Appellant did not attend the mediation which was scheduled for January 27, 2012. Nor did appellant file an answer. Appellee moved for default judgment on February 9, 2012. Appellant did not oppose the motion. On March 14, 2012, the trial court granted the default judgment and entered a decree of foreclosure. The court noted, however, that, because appellant's personal obligations had been discharged, it did not grant personal judgment against appellant for the amount due on the note.

{¶3} On April 10, 2012, appellant filed a "combined" motion for reconsideration, motion to vacate, motion for leave to respond or plead, and motion for stay of post-judgment proceedings. The trial court denied the motion the following day.

{¶4} Appellant appeals from the trial court's denial of her motion for reconsideration, assigning the following errors[1] for this court's review:

> First Assignment of Error
>
> THE TRIAL COURT ERRED WHEN IT FAILED TO VACATE ITS MARCH 14, 2012 JUDGMENT ENTRY PURSUANT TO THE TRIAL COURT'S POLICY AND "LONGSTANDING PRACTICE" WITH RESPECT TO ADJUDICATING MATTERS ON THEIR MERITS AS OPPOSED TO PROCEDURAL DEFECTS.
>
> Second Assignment of Error
>
> THE TRIAL COURT ERRED WHEN IT SET FORTH ITS APRIL 11, 2012 DECISION AND ENTRY, THEREBY FAILING TO VACATE ITS MARCH 14, 2012 JUDGMENT ENTRY.
>
> Third Assignment of Error
>
> THE TRIAL COURT ERRED WHEN IT FAILED TO CONDUCT A HEARING ON DEFENDANT'S MOTION FOR RECONSIDERATION.

[1] We note that appellant has stated five different assignments of error in her Statement Regarding Assignments of Error at page v of her brief, rather than the four assignments of error outlined in the table of contents. Because appellant only addressed the four assignments of error outlined in the table of contents, as connoted by headings within her brief, we will only address the four assignments of error outlined in the table of contents.

Fourth Assignment of Error

> THE TRIAL COURT ERRED WHEN IT HELD THAT DEFENDANT'S FAILURE TO ANSWER WAS WILLFUL NEGLECT WHEN IT WAS THE ACTIONS AND/OR INACTIONS OF PLAINTIFF THAT WAS A DIRECT CAUSE OF NOT ONLY DEFENDANT'S ALLEGED BREACH, BUT ALSO DEFENDANT'S FAILURE TO TIMELY RESPOND TO PLAINTIFF'S COMPLAINT WHICH CONSTITUTES EXCUSABLE NEGLECT.

{¶5} We will begin by addressing the first, second, and third assignments of error together as they challenge the trial court's assessment of appellant's motion. We have reviewed the trial court's April 11, 2012 decision denying appellant's motion. We agree with the trial court's assessment that appellant has filed a motion for reconsideration, despite also referring to it as a motion to vacate. Careful review of the the motion reveals that, other than arguing excusable neglect, appellant made no effort to address the necessary elements of a motion to vacate pursuant to Civ.R. 60(B). Only in her brief on appeal does appellant attempt to address the elements required by Civ.R. 60(B), all the while still referring to her motion as a motion for reconsideration. Now it is too late. As such, the motion before the trial court was not a motion to vacate.

{¶6} "The application for a motion for reconsideration after a final judgment is simply a legal fiction created by counsel, which has transcended into a confusing, clumsy and 'informal local practice.' " *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 381 (1981), citing *Kauder v. Kauder*, 38 Ohio St.2d 265 (1974), and *Kent, Odds & Ends*, 49 Cleve.Bar J. 280. "[M]otions for reconsideration of a final judgment in the trial court are a nullity." *Pitts* at 379. Nevertheless, even if we were to construe the motion as a motion to vacate, we do not find that appellant's failure to answer constituted excusable neglect. She requested mediation but did not attend. She requested a 120-day extension to file an answer, but did not file an answer within that time. She also did not address whether her motion was timely.

{¶7} Finally, appellant does state in her memorandum accompanying her motion that she has not been afforded an opportunity to raise her various claims and defenses, including, but not limited to: the appraised value of the property; the amount allegedly due and owing under the mortgage; whether appellee violated the Real Estate Settlement

Procedures Act and/or Fair Debt Collection Practices Act; allocation of payments; doctrine of unclean hands; equitable estoppel; whether the mortgage was properly executed; whether appellee is in fact a holder in due course and/or had standing to bring this action, pursuant to Ohio law; and whether appellee joined all necessary and proper parties to this action. In the affidavit accompanying her memorandum, appellant states that she disputes these same things, "among other things." She has done no more than make a bare allegation that she has these defenses. A "moving party" "'must allege supporting operative facts with enough specificity to allow the trial court to decide that the movant has a defense he could have successfully argued at trial.'" *Miller v. Susa Partnership, L.P.*, 10th Dist. No. 07AP-702, 2008-Ohio-1111, ¶15, quoting *Mattingly v. Deveaux*, 10th Dist. No. 03AP-793, 2004-Ohio-2506, ¶10. Appellant has not alleged supporting operative facts. Furthermore, she asserts later in her memorandum that she "needs time to conduct discovery to decide whether [she] has counterclaims or defenses against [appellee]." (Memo at 4.) We do not consider appellant's recitation of a litany of potential defenses to be an assertion of meritorious defense pursuant to Civ.R. 60(B).

{¶8} With this in mind, we find that the trial court did not err in refusing to vacate its March 14, 2012 judgment entry and did not err in refusing to conduct a hearing on the motion for reconsideration.

{¶9} Accordingly, appellant's first, second, and third assignments of error are without merit and are overruled. Furthermore, appellant's fourth assignment of error is rendered moot by our determination that the motion filed by appellant was a nullity and/or that appellant failed to present operative facts.

{¶10} For the foregoing reasons, appellant's first, second, and third assignments of error are overruled, appellant's fourth assignment of error is moot, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN, P.J., and CONNOR, J., concur.
