

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

CHACO CREDIT UNION, INC., :
 :
 Plaintiff-Appellee, : CASE NO. CA2014-04-093
 :
 - vs - : OPINION
 : 3/23/2015
 :
 LARRY R. HODGE, et al., :
 :
 Defendants-Appellants. :

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2008-06-2907

Shapiro, Van Ess, Phillips & Barragate, LLP, Phillip Barragate, Ashlyn Heider, 4805
Montgomery Road, Suite 320, Norwood, Ohio 45212, for plaintiff-appellee

Kendo, Alexander, Cooper & Engel, LLP, Andrew M. Engel, Thomas W. Kendo, Jr., 7925
Paragon Road, Dayton, Ohio 45459, for defendants-appellants, Larry R. Hodge & Debbie L.
Hodge

RINGLAND, J.

{¶ 1} Defendants-appellants, Larry and Debbie Hodge, appeal from the decision of
the Butler County Court of Common Pleas granting judgment in favor of plaintiff-appellee,
Chaco Credit Union, Inc. in a foreclosure action.¹

{¶ 2} On June 24, 2008, Chaco filed a foreclosure action against appellants after

1. Pursuant to Loc.R. 6(A), we sua sponte remove this case from the accelerated calendar and place it on the regular calendar for purposes of issuing this opinion.

they defaulted on their mortgage loan payment. After appellants failed to answer the complaint, the trial court entered default judgment in favor of Chaco. The property was subsequently appraised and the trial court issued an order of sale.

{¶ 3} Prior to the sale of the property, appellants filed for Chapter 13 bankruptcy in the U.S. Bankruptcy Court for the Southern District of Ohio. Appellants filed notice of their bankruptcy with the trial court on January 5, 2009. Due to the bankruptcy proceedings, the trial court entered an order withdrawing the sheriff's sale scheduled on the property. The trial court then dismissed the action without prejudice. The dismissal entry provided that the "case may be reactivated upon [Chaco's] motion for good cause shown."

{¶ 4} On February 25, 2013, this action recommenced following the completion of appellants' bankruptcy proceedings. The property was subsequently reappraised and the trial court issued an order of sale.

{¶ 5} At some point following the reactivation of the case, appellants retained counsel. On January 14, 2014, appellants' counsel filed a notice of appearance with the trial court.

{¶ 6} Approximately two months later, on March 18, 2014, Chaco filed a motion for leave to file an amended judgment entry. The motion for leave stated that appellants had made payments on the subject loan during the bankruptcy proceedings and, therefore, the judgment amount should reflect those payments.² On March 31, 2014, the trial court granted Chaco's motion for leave and adopted the amended judgment entry, which provided a lesser principal balance than the original judgment entry. Appellants now appeal, raising one assignment of error for review:

{¶ 7} THE TRIAL COURT ERRED IN AMENDING THE JUDGMENT ENTRY.

2. Pertinent to this appeal, the attached certificate of service to that motion does not indicate whether appellants' counsel was served pursuant to Civ.R. 5(B). Instead, the motion for leave provides that appellants were served individually.

{¶ 8} In their sole assignment of error, appellants challenge the trial court's decision to enter an amended judgment entry. In so doing, appellants claim their attorney was not served with Chaco's motion for leave to file an amended judgment entry pursuant to Civ.R. 5. In addition, appellants also argue the trial court erred by granting Chaco's motion for leave and adopting the amended judgment entry before providing adequate notice or an opportunity to be heard. Appellants claim they were prejudiced by these errors and allege the amended judgment entry does not adequately reflect the amount owed to Chaco based on payments made during the course of the bankruptcy proceedings.

{¶ 9} Based on the facts and circumstances in the present case, we find the trial court erred in entering the amended judgment. In the present case, Chaco was awarded default judgment against appellants and the trial court entered a final judgment entry on August 25, 2008. Since that time, appellants have filed for and completed bankruptcy proceedings, made payments on the subject loan, and entered a notice of appearance of counsel. More than five years after Chaco was granted default judgment, Chaco filed a motion for leave to amend the judgment entry to reflect receipt of those payments.

{¶ 10} While we recognize the amended judgment entry only lowered the amount appellants owed Chaco, we nevertheless find error based on the facts of the present case, as the amended judgment entry included a substantial change based on events transpiring well after the original judgment entry. Pursuant to Civ.R. 60(B), a trial court may relieve a party from a final judgment if "the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Here, the trial court erred in entering the amended judgment entry, as modification of the judgment entry to reflect payments made to Chaco during appellants' bankruptcy proceedings should have been resolved through Civ.R. 60(B). Accordingly, we reverse the decision of the trial court.

{¶ 11} Based upon our decision to remand this matter, appellant's remaining arguments are rendered moot.

{¶ 12} Judgment reversed and the matter is remanded for further proceedings.

M. POWELL, P.J., and HENDRICKSON, J., concur.