

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

BANK OF AMERICA, N.A.,	:	CASE NO. CA2015-03-039
Plaintiff-Appellee,	:	
	:	<u>OPINION</u>
- vs -	:	6/22/2015
	:	
ELIZABETH R. SMITH,	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case No. CV2012-06-2365

Thompson Hine, LLP, John B. Kopf, 41 South High Street, 17th Floor, Columbus, Ohio 43215, for plaintiff-appellee, Bank of America, N.A.

Elizabeth R. Smith, 2870 Elgin Road, Oxford, Ohio 45056, defendant-appellant, pro se

**S. POWELL, P.J.**

{¶ 1} Defendant-appellant, Elizabeth Smith, appeals pro se following a decision of the Butler County Court of Common Pleas confirming a sale and ordering distribution of the sale proceeds in an action for foreclosure initiated by plaintiff-appellee, Bank of America, N.A.<sup>1</sup> For the reasons outlined below, we affirm.

---

1. This court previously dismissed Smith's husband, Schuyler Smith, as a party to this appeal because he has been declared a vexatious litigator and, pursuant to R.C. 2323.52, was required to make application for leave to

{¶ 2} On June 23, 2012, Bank of America filed a complaint in foreclosure against Elizabeth and Schuyler Smith in regards to their property located at 2870 Elgin Road, Oxford, Butler County, Ohio. Shortly thereafter, on July 3, 2012, a process server personally served the Smiths with a copy of the summons and complaint. The Smiths, however, never filed an answer to the complaint. As a result, the trial court found the Smiths in default and a judgement entry and decree of foreclosure was entered against them on December 20, 2012. The Smiths did not appeal from the trial court's decision.

{¶ 3} On April 8, 2013, the Smiths were served with notice that the Butler County Sheriff would be selling their property on May 23, 2013. Thereafter, on May 10, 2013, Mr. Smith filed several motions, including a motion requesting Judge Craig D. Hedric, the judge originally assigned to the case, be removed. Mr. Smith also filed a motion for relief from judgement under Civ.R. 60(B). Judge Hedric subsequently recused himself from the case on May 17, 2013, thus prompting the trial court's administrative judge to assign the case to Judge Charles L. Pater. Several days later, on May 23, 2013, the property was sold for a bid of \$83,000. However, on May 30, 2013, one day after the Sheriff filed his order of sale, Mr. Smith filed another motion requesting a new judge be assigned to replace Judge Pater. To that end, the trial court's administrative judge assigned the case to Judge Neal B. Bronson. The Ohio Supreme Court later assigned Judge William Walker, a retired judge from the Clermont County Court of Common Pleas, to preside over the matter effective December 26, 2013.

{¶ 4} On February 3, 2014, with Judge Walker presiding, the trial court denied Mr. Smith's motion for relief from judgment. Mr. Smith did not appeal from the trial court's

---

proceed before instituting legal proceedings in this court. No such application had been made. See *Bank of America, N.A. v. Smith*, 12th Dist. Butler No. CA2015-03-039 (Mar. 30, 2015) (Entry Dismissing Appeal with Respect to Schuyler Smith). This court subsequently granted Bank of America's motion to dismiss Mr. Smith in *Bank of America, N.A. v. Smith*, 12th Dist. Butler No. CA2015-03-039 (Apr. 28, 2015) (Entry Granting Motion to Dismiss Appellant, Schuyler Smith, from Appeal and Extending Briefing Deadline).

decision.

{¶ 5} On July 9, 2014, Bank of America filed a motion requesting the trial court confirm the sale of the property. Several months later, on November 18, 2014, Bank of America filed a request for a ruling on its previously filed motion to confirm the sale of the property. The Smiths filed their memorandum in opposition to Bank of America's request the following day. On February 23, 2015, the trial court filed an entry confirming the sale of the subject property and ordering the distribution of the sale proceeds. It is undisputed that as part of this entry, Judge Walker crossed out Judge Hedric's typewritten name before signing his own name to the entry. It is also undisputed that the entry does not contain any date other than the clerk of courts' file stamp noting the entry was filed that day.

{¶ 6} Mrs. Smith now appeals from the trial court's decision confirming the sale of the subject property, raising three assignments of error for review. However, before addressing Mrs. Smith's three assignments of error, we find it necessary to note that parties who appear "pro se are held to the same standard as litigants who are represented by counsel." *Jones v. Nichols*, 12th Dist. Warren No. CA2012-02-009, 2012-Ohio-4344, ¶ 23, citing *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, ¶ 1. In turn, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. *U.S. Bank Natl. Assn. v. Keefer*, 12th Dist. Madison No. CA2013-09-032, 2014-Ohio-4759, ¶ 6. Simply stated, "[p]ro se litigants are not to be accorded greater rights and must accept the results of their own mistakes and errors, including those related to correct legal procedure." *Cox v. Zimmerman*, 12th Dist. Clermont No. CA2011-03-022, 2012-Ohio-226, ¶ 21. It is also not this court's duty to "conjure up questions never squarely asked" or manufacture errors not otherwise assigned. *Combs & Schaefer v. Hoover*, 12th Dist. Butler No. CA98-05-106, 1999 WL 559685, \*1 (Aug. 2, 1999).

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE COURT ERRED BY ALLOWING SALE OF PROPERTY.

{¶ 9} In her first assignment of error, Mrs. Smith argues the trial court erred by confirming the sale of the subject property because Judge Walker backdated his signature on the trial court's entry confirming the sale of the property filed with the clerk of courts on February 23, 2015. However, apart from her bare assertions otherwise, there is nothing in the record to support Mrs. Smith's claim. As the record indicates, the Ohio Supreme Court assigned Judge Walker to preside over this matter effective December 26, 2013, approximately 14 months before the trial court filed its entry confirming the sale of the subject property. Judge Walker, therefore, was in the proper position and had authority to sign the entry confirming the sale of the property at the time it was filed with the clerk of courts.

{¶ 10} Moreover, as this court has stated previously, "[a] trial court speaks through its journal entries, and an entry is effective only when it has been journalized, that is, when it has been reduced to writing, signed by a judge, and filed with the clerk so that it may become a part of the permanent record of the court." *Huntington Natl. Bank v. Donatini*, 12th Dist. Warren No. CA2014-08-105, 2015-Ohio-67, ¶ 10, citing *Bokeno v. Bokeno*, 12th Dist. Butler No. CA2001-07-170, 2002-Ohio-3979, ¶ 17. In turn, because a trial court's entry becomes effective only after it has been journalized, the fact that Judge Walker crossed out Judge Hedric's typewritten name on the entry confirming the sale of the subject property before signing his own name to the entry does not prove he backdated his signature or committed any illegal activity as Mrs. Smith now suggests. Mrs. Smith's first assignment of error is therefore without merit and overruled.

{¶ 11} Assignment of Error No. 2:

{¶ 12} THE COURT ERRED BY NOT FILING DEFENDANTS ANSWERS AND MOTIONS.

{¶ 13} In her second assignment of error, Mrs. Smith argues the clerk of courts erred by not filing a number of her so-called "answers and motions" she supposedly sent to Judge Walker and to counsel for Bank of America. However, as stated in Civ.R. 5(E), except where a party has been given permission to file documents with the judge, the filing of documents with the trial court "shall be made by filing them with the clerk of court[.]" There is nothing to indicate Mrs. Smith was ever given permission to file any documents through any other means than through the clerk of courts. Therefore, because Mrs. Smith did not provide any of these so-called "answers and motions" to the clerk of courts as required by Civ.R. 5(E), Mrs. Smith's second assignment of error is without merit and overruled.

{¶ 14} Assignment of Error No. 3:

{¶ 15} THE COURT ERRED BY LACK OF JURISDICTION.

{¶ 16} In her third assignment of error, Mrs. Smith argues the trial court lacked jurisdiction to confirm the sale of the subject property because Judge Walker backdated his signature on the entry confirming the sale of the property filed with the clerk of courts on February 23, 2015. According to Mrs. Smith, this was improper since "Judge Craig Hedric's name was on this entry while Judge Charles Pater had 'Jurisdiction.'" However, as noted above, the Ohio Supreme Court assigned Judge Walker to preside over this matter effective December 26, 2013. The fact that Judge Walker was not the assigned judge presiding over this matter on the day the sale of the subject property actually occurred is immaterial.

{¶ 17} Furthermore, as stated previously, "[a] trial court speaks through its journal entries, and an entry is effective only when it has been journalized, that is, when it has been reduced to writing, signed by a judge, and filed with the clerk so that it may become a part of the permanent record of the court." *Donatini*, 2015-Ohio-67 at ¶ 10, citing *Bokeno*, 2002-Ohio-3979 at ¶ 17. Therefore, similar to her argument raised in her first assignment of error, Mrs. Smith's claim that Judge Walker was acting without "jurisdiction" and with a "criminal

intent" when he signed the entry confirming the sale of the property is without merit.

Accordingly, Mrs. Smith's third assignment of error is overruled.

{¶ 18} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.