

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ALLISON STRAKER,

Appellant

v.

WELLS FARGO BANK, NA AS TRUSTEE
FOR ABFC 2006-OPT1 TRUST, ABFC
ASSET-BACKED CERTIFICATES SERIES
2006 OPT1; AND PHELAN HALLINAN &
SCHMIEG, LLP; AND FRANCIS
HALLINAN; AND DANIEL SCHMIEG,

Appellees

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2700 EDA 2013

Appeal from the Orders Entered August 29, 2013
In the Court of Common Pleas of Carbon County
Civil Division at No(s): 13-2011

BEFORE: FORD ELLIOTT, P.J.E., OLSON AND STABILE, JJ.

MEMORANDUM BY OLSON, J.:

FILED JULY 09, 2014

Appellant, Allison Straker, appeals *pro se* from the orders entered on August 28, 2013 by the Court of Common Pleas of Carbon County. One order dismissed Appellant's complaint as to defendant/Appellee Wells Fargo Bank NA, as Trustee for ABFC *et al* ("Wells Fargo") and barred Appellant from filing *pro se* actions against Wells Fargo, or related defendants, raising the same or related claims without leave of court. The other order dismissed Appellant's complaint as to defendants/Appellees Phelan Hallinan & Schmieg LLP, Francis Hallinan, and Daniel G. Schmieg (collectively "PHS Defendants") and barred Appellant from filing *pro se* actions against the PHS

Defendants, or related defendants, raising the same or related claims without leave of court. We affirm.

The trial court summarized the factual and procedural history of this case as follows:

This action was commenced by [Appellant] on February 1, 2013 as a result of Wells Fargo obtaining default judgment in a mortgage foreclosure action against [Appellant] for the property located at 223A Chestnut Lane, a/k/a Lot 223 Hickory Run Forest, Albrightsville, Carbon County, Pennsylvania 18210 (hereinafter "[p]roperty"). The instant [case] is the most recent tactic being undertaken by [Appellant] in a long history of litigation. . . . [A] comprehensive review of the related litigation is essential to a thorough understanding of [the trial court's] action in granting [the] motions for dismissal pursuant to [Pennsylvania Rule of Civil Procedure] 233.1.

On June 19, 2007, Wells Fargo filed an action in mortgage foreclosure against [Appellant]. After proper service and no answer having been filed, judgment was entered in favor of Wells Fargo and against [Appellant] on August 8, 2007, in the amount of [\$251,025.65]. Shortly thereafter, on August 23, 2007, Wells Fargo filed the first of many writs of execution. On October 10, 2007, two [] days prior to the first scheduled sheriff's sale, [Appellant] filed a Chapter 13 Bankruptcy which was dismissed by the United States Bankruptcy Court for the Middle District of Pennsylvania on January 8, 2008. [**See In re Straker**, 07bk52636 (Bankr. M.D. Pa. Jan. 8, 2008).] Plaintiff again filed for bankruptcy on January 31, 2008. That action was dismissed on July 8, 2008. [**See In re Straker**, 08bk50260 (Bankr. M.D. Pa. July 8, 2008).]

By deed dated September 8, 2008, [Appellant] conveyed the property to herself and her husband, Anthony Daley (hereinafter "Daley"). This deed was recorded with the Carbon County Recorder of Deeds on October 21, 2008. [Appellant] then filed a petition to set aside the sheriff's sale on October 29, 2008 which was denied on November 3, 2008. In the interim, [Appellant] sent to Wells Fargo what she alleged to be qualified written requests under the Real Estate Settlement Procedures Act ("RESPA") and a notice to produce, which she had filed with the

[trial c]ourt on October 16, 2008. As a result of this filing, the foreclosure was placed on hold and the scheduled sheriff's sale was postponed.

On February 26, 2009, [Appellant] again filed for bankruptcy. [On June 17, 2009, the bankruptcy court granted Wells Fargo relief from the automatic stay.¹ **See *In re Straker***, 09bk1295 (Bankr. M.D. Pa. June 17, 2009).] On September 11, 2009, Daley filed for bankruptcy and Wells Fargo was granted relief from the automatic stay on January 15, 2010. Daley's bankruptcy action was dismissed on January 15, 2010. [**See *In re Daley***, 09bk7013 (Bankr. M.D. Pa. Jan. 15, 2010).] On August 11, 2010, [Appellant] filed an emergency petition to stay sheriff's sale and a motion to compel. The sale was voluntarily stayed by Wells Fargo due to the pending motion to compel, however the motion to compel was denied on September 13, 2010.

On October 15, 2010, [Appellant] filed a [motion for reconsideration]. This motion was denied on October 27, 2010. Daley filed for bankruptcy for the second time on November 5, 2010. This bankruptcy action was dismissed on April 26, 2011. [**See *In re Daley***, 10bk9047 (Bankr. M.D. Pa. Apr. 26, 2011).] A sixth writ of execution was filed in the foreclosure action and a sheriff's sale was scheduled for September 9, 2011. On September 8, 2011, [Appellant] filed a petition to set aside sheriff's sale. This petition was denied and a sheriff's sale was finally held at which time Wells Fargo was the successful bidder for the subject property. The successful bid of Wells Fargo represented the judgment amount of [\$365,891.92].

After the sale, on September 27, 2011, Daley filed a petition to intervene and set aside sheriff's sale. This petition was denied

¹ In its Rule 1925(a) opinion, the trial court stated that the bankruptcy court dismissed Appellant's bankruptcy petition. However, we take judicial notice that the bankruptcy petition was not dismissed. On September 20, 2013, Appellant was granted a Chapter 7 discharge. ***In re Straker***, 09bk1295 (Bankr. M.D. Pa. Sept. 20, 2013). However, on June 17, 2009, the bankruptcy court ordered that, "the automatic stay of [11 U.S.C.] § 362(a) be, and the same hereby is, modified to permit Wells Fargo . . . to foreclose its mortgage, and, without limitation, to exercise any other rights it has under the mortgage or with respect to the property[.]" ***In re Straker***, 09bk1295 (Bankr. M.D. Pa. June 17, 2009) (capitalization removed).

and dismissed on December 19, 2011. The sheriff's deed conveying the subject property to Wells Fargo was finally executed and recorded with the Carbon County Recorder of Deeds on December 22, 2011. After Wells Fargo became the lawful record owner of the property, [Appellant] filed a motion to set aside the sheriff's sale. [Appellant] alleged in this motion that she had been deceived by both Wells Fargo and PHS Defendants.

Th[e trial c]ourt entered an [o]rder on November 29, 2012 denying [Appellant]'s motion to set aside the sheriff's sale. On December 10, 2012, [Appellant] filed a motion for reconsideration of the [trial c]ourt's November 29, 2012 [o]rder. Following oral argument, [the trial court] denied reconsideration on March 5, 2013. [Appellant] appealed th[e trial c]ourt's [o]rder regarding her request for reconsideration[, which this Court quashed. **See Wells Fargo Bank, NA v. Straker**, 826 EDA 2013 (Pa. Super. Apr. 23, 2013).]

On January 12, 2012, Wells Fargo filed an ejectment action. [Appellant] was served with Wells Fargo's [c]omplaint on March 26, 2012. [Appellant] filed an [a]nswer to the [c]omplaint on April 13, 2012. After approximately one [] year of litigation, judgment in ejectment was entered in favor of Wells Fargo on January 10, 2013[, which this Court affirmed.] **See Wells Fargo Bank, NA v. Straker**, 420 EDA 2013 (Pa. Super. Dec. 23, 2013) (unpublished memorandum).]

On February 1, 2013, [Appellant] filed [a c]omplaint initiating the instant action against Wells Fargo and PHS Defendants. [Appellant]'s [c]omplaint raises [11] claims that have been considered, rejected[,] and resolved in the prior actions before th[e Court of Common Pleas of Carbon County]. PHS Defendants and Wells Fargo filed motions to dismiss [Appellant]'s complaint on April 10, 2013 and May 2, 2013, respectively. [Appellant] filed a response to PHS Defendants' motion on May 3, 2013 and a response to both Wells Fargo's and PHS Defendants' motion[s] on June 6, 2013. Th[e trial c]ourt heard argument on the matter on June 13, 2013. On August 2[9], 2013, th[e trial c]ourt granted the motions to dismiss filed by Wells Fargo and PHS Defendants and barred [Appellant] from filing further *pro se* litigation against the same or related defendants raising the same or related claims without leave of court pursuant to [Pennsylvania Rule of Civil Procedure] 233.1.

Trial Court Opinion, 11/27/13, at 2-6 (footnotes omitted). This timely appeal followed.²

Appellant raises four issues for our consideration:

1. Was it the intent of the Supreme Court pursuant to Rule 233.1, [] to provide relief to [d]efendants as a result o[f] a single new [a]ction?
2. Was it the intent of the Supreme Court pursuant to Rule 233.1, [] to provide relief to [a d]efendant as a result of a single new [a]ction when that [d]efendant was a “non-defendant” and “non[-]party” prior to the single new [a]ction?
3. Can a [l]aw [f]irm who was not a [d]efendant and party in a foreclosure case, wherein allegations were made against that [l]aw [f]irm, prior to a single new complaint, receive[] a dismissal of the complaint pursuant to Rule 233.1?
4. Can a [l]aw [f]irm representing a client be a party in a foreclosure case while the [l]aw [f]irm is representing its client in that case pursuant to [Pa.R.C.P. 1002]?

Appellant’s Brief at 4.³

All of Appellant’s issues on appeal require us to construe provisions of the Pennsylvania Rules of Civil Procedure. As such, our standard of review is *de novo* and our scope of review is plenary. **Keller v. Mey**, 67 A.3d 1, 5 (Pa. Super. 2013) (citation omitted). “The object of all interpretation and

² On September 27, 2013, the trial court ordered Appellant to file a concise statement of errors complained of on appeal (“concise statement”). **See** Pa.R.A.P. 1925(b). Appellant filed her concise statement on October 9, 2013. The trial court issued its Rule 1925(a) opinion on November 27, 2013. All issues raised on appeal were included in Appellant’s concise statement.

³ We have re-numbered the issues for ease of disposition.

construction of rules [of civil procedure] is to ascertain and effectuate the intention of [our] Supreme Court.” Pa.R.C.P. 127(a).

Appellant’s first three issues challenge the trial court’s decision to dismiss her complaint and bar her from filing any future action raising similar claims against the same or related defendants pursuant to Pennsylvania Rule of Civil Procedure 233.1. That rule provides, in relevant part, that:

(a) Upon the commencement of any action filed by a *pro se* plaintiff in the court of common pleas, a defendant may file a motion to dismiss the action on the basis that

(1) the *pro se* plaintiff is alleging the same or related claims which the *pro se* plaintiff raised in a prior action against the same or related defendants, and

(2) these claims have already been resolved pursuant to a written settlement agreement or a court proceeding.

* * *

(c) Upon granting the motion and dismissing the action, the court may bar the *pro se* plaintiff from pursuing additional *pro se* litigation against the same or related defendants raising the same or related claims without leave of court.

Pa.R.C.P. 233.1.

In her first three issues on appeal, Appellant alleges that our Supreme Court did not intend for Rule 233.1 to cover instances where a plaintiff only files one civil action against a defendant. In other words, Appellant argues that a trial court does not have authority to dismiss a complaint under Rule

233.1 unless a plaintiff has previously filed a civil complaint against that particular defendant.

Appellant's first three issues on appeal are almost identical to issues we resolved in **Gray v. Buonopane**, 53 A.3d 829 (Pa. Super. 2012), *appeal denied*, 64 A.3d 632 & 70 A.3d 811 (Pa. 2013). In **Gray**,

Gray argue[d] specifically that Rule 233.1(a)(1) [could not] apply to her [] claims as she was not the plaintiff in the prior action but, as the action was one in mortgage foreclosure, was a defendant. She argue[d] further that the claims she raise[d] [could not] be deemed resolved in the prior action pursuant to Rule 233.1(a)(2), as the causes of action stated in her [] complaints were not at issue in the prior mortgage foreclosure action.

Gray, 53 A.3d at 836.

In rejecting Gray (and her husband's) argument, we stated that, "Whatever the legal rectitude of the court's order . . . , the court reached its conclusion in a 'court proceeding' convened in response to Gray's own motion, and thereby 'resolved' the Grays' claims[.]" **Id.** at 838. Thus, we determined that even when a plaintiff in a later action did not raise a claim in a prior proceeding in which she was a plaintiff, the requisites of Rule 233.1 may be satisfied if the issue was raised in the prior proceeding and the court adjudicated that claim. We summarized our holding as follows:

Rule 233.1 does not require the highly technical prerequisites of *res judicata* or collateral estoppel to allow the trial court to conclude that a *pro se* litigant's claims are adequately related to those addressed in prior litigation. **Nor does it require an identity of parties or the capacities in which they sued or were sued.** Rather, it requires a rational relationship evident in the claims made and in the [parties'] relationships with one

another to inform the trial court's conclusion that the bar the Rule announces is justly applied.

Gray, 53 A.3d at 838 (emphasis added); **see also Coulter v. Ramsden**, 2014 WL 2787216, *6 (Pa. Super. June 20, 2014).

Appellant does not contend on appeal that the trial court's factual findings in relation to her prior claims are unsupported by the record. Instead, she only challenges the ability of the trial court to dismiss a *pro se* action under Rule 233.1 when it is the first action that she filed against the instant defendants. As such, we do not address the particular claims raised by Appellant in this case. We only focus on the narrow legal issue presented by Appellant.

Rule 233.1 permits a trial court to dismiss an action and bar subsequent litigation based upon a prior action in which the *pro se* party was a defendant. In both **Gray** and the instant case, claims adjudicated in a mortgage foreclosure action were sufficiently related to the claims raised in subsequent civil litigation to warrant dismissal under Rule 233.1. To the extent that Appellant contends that the PHS Defendants are not related parties under Rule 233.1, her contention is without merit. Although the PHS defendants were not parties to the foreclosure action (or the bankruptcy proceedings), they acted as attorneys for Wells Fargo in that litigation. The claims she asserts in the present litigation are premised upon the same claims she raised against Wells Fargo in the prior litigation. Such a connection is sufficient under Rule 233.1 to warrant dismissal and a filing

injunction. As such, Appellant's first, second, and third issues on appeal are without merit.⁴

Appellant's last issue on appeal is premised upon the assumption that the PHS Defendants had to be parties to the prior mortgage foreclosure litigation in order to be afforded the benefits of Rule 233.1.⁵ However, as we have noted above, Rule 233.1 merely requires that the party seeking relief under Rule 233.1 be related to the parties in the prior litigation. As such, Appellant's fourth issue on appeal is without merit.

In sum, we conclude that the trial court properly granted defendants' motions to dismiss and properly barred Appellant from filing further *pro se* litigation arising out of the mortgage foreclosure without leave of court. We commend the trial court for taking decisive action to curtail such frivolous litigation which not only squandered the defendants' resources but also the finite resources of the courts of this Commonwealth.

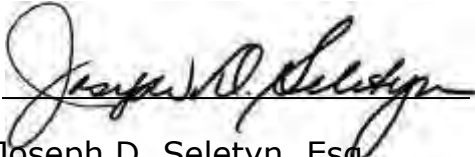
Orders affirmed.

⁴ To the extent that Appellant argues that Rule 233.1 is unconstitutional as applied, that argument is waived for failure to include it in her statement of questions involved section of her brief and for failure to develop the argument with citations to legal authority and the record. **See** Pa.R.A.P. 2116 and 2119.

⁵ Although not clear from the phrasing of the question presented, Appellant essentially argues that an attorney is not a party under Rule 1002 and therefore, because being a party is a prerequisite to a Rule 233.1 dismissal, dismissal of her claims against the PHS Defendants was improper.

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Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/9/2014