

IN THE SUPREME COURT OF OHIO

12-0669

EVERBANK MORTGAGE COMANY,

Plaintiff – Appellee,

- Vs -

CHRISTINE COLLEEN SPARKS,

Defendants – Appellants,

On Appeal from the
Warren County
Court of Appeals
12th Appellate District

Case No: CA2011 – 03 – 021

Memorandum in Support

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SUPREME COURT OF OHIO

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HISTORY OF THE CASE

The history surrounding this case is the fact that the Defendant/Appellant, Christine C. Sparks, has never been served any legal documentation pertaining to foreclosure in the process of both the trial court and the appellate court. Ms. Sparks was a victim of domestic Violence from Shawn R. Sparks, who is also listed as a Defendant in this said case. He was arrested for both wrongful restraint and domestic violence, to which he had plead guilty to. On June 22, 2010, a complaint for foreclosure had been filed by the Plaintiff, Everbank. On July 10, 2010, one Sierra K. Mitchell, who is a minor child and of no relation to any of the Defendants mentioned in this said case, had signed for legal documents on behalf of Shawn R. Sparks. On August 31, 2010, Mr. Sparks had answered the complaint for Foreclosure. At this time, Ms. Sparks is still unaware that foreclosure proceedings have begun. Christine C. Sparks had been approved for a refinance from the Plaintiff. There was A case pending at the time of these proceedings for this case in the domestic relations court. All Christine C. Sparks was waiting for to complete the refinance process was a quitclaim deed signed by Shawn R. Sparks, which to this day, he has not signed. Rather than sign the document, Mr. Sparks has kept violating Civil Rule 2921.11, which is perjury, which holds a third degree Felony. Mr. Sparks had never told the Appellant nor the Appellant's legal counsel at the time about the foreclosure. On September 24, 2010, a default judgment entry was created. On September 27, 2010, an agreed final judgment entry was made. The home was ordered for Sheriff's sale on October 5, 2010. On December 21, 2010, the property was placed on sheriff's Sale. On February 1, 2011, an entry confirming the sale was made. On March 3, 2011, an appeal

was filed on behalf of said Defendant Christine C. Sparks who had just become aware two days earlier of the entire situation from an online docket. No notification from either regular mail, Process server, or certified mail had been issued to Christine C. Sparks, as well as the other Defendant, Shawn R. Sparks and his counsel had never notified Christine of any of the proceedings occurring. A motion for appeal was filed, a series of multiple motions have been Filed as well, including motions to stay and sanctions, on April 6, 2011, as well as multiple Motions for the 12th District Court of Appeals and the trial court. On September 27, 2011, two Motions were filed, one 60 (B) motion and a motion to dismiss the Plaintiff's complaint. None of the motions filed have been heard and recently, on March 19, 2012, an objection had been filed by Christine C. Sparks and to this day, Ms. Sparks has not received any documents from neither the trial court nor the appellate court by process server, certified mail, nor regular Mail. During the appellate court process, there had been multiple questions asked. The Plaintiff had made promises to Ms. Sparks, yet their counsel was not aware of any of these, including the Refinance, which there had been documentation provided. The three appellate judges had not Provided any information to Ms. Sparks about an agreement made by Mr. Sparks and Everbank. This is new evidence that Ms. Sparks had discovered when Ms. Sparks had to obtain documents from the Warren County Clerk of Courts office. The entry was filed on March 5, 2012 and this Entry, Ms. Sparks had noticed the agreement made by Everbank and Mr. Sparks stating that Mr. Sparks would not be held liable for the foreclosure. The 12th District Court of Appeals had known about the agreement yet had failed to supply that information to said Defendant, Christine C. Sparks both prior to and during the oral argument. This is a large error because if there was an agreement made, Mr. Sparks' name would not be on the documents, yet his name

is still on the documents. Now, on March 19, 2011, an objection was filed against the 12th District Court of Appeals by Ms. Sparks and it has yet to be heard for Ms. Sparks feels that Both courts have been biased against her.

MEMORANDUM OF SUPPORT

This court does have jurisdiction over all courts in Ohio, including the 12th District Court of Appeals. The only court higher than the State Supreme Court is the United States Supreme Court, which has jurisdiction over all the courts of the land. This court does indeed have jurisdiction due to the fact that the lower court has made numerous errors as well as the appellate court. First and foremost, the appellate court has violated the rights of Ms. Sparks by not mailing Ms. Sparks any documentation pertaining to the entry that had taken the appellate court two calendar months to make a ruling on. Ms. Sparks, after seeing the Online docket, had realized an entry had been filed and had to obtain said entry from the Warren County Clerk of Courts office. In said entry, there had been multiple errors made. First error and the most important error, was new evidence being discovered yet the facts were withheld from Ms. Sparks during both the trial court process and the appellate court process. This was about an agreement made by the Plaintiff, Everbank and Mr. Sparks stating that Mr. Sparks would not be held liable for any of the foreclosure dealings. If this is truly so, then why would Mr. Sparks' name be still on the foreclosure documents as still liable for the foreclosure, yet the agreement was made on September 27, 2010 when the

Default judgment was made and the appellate court had known of this information and had failed to mention this information to Ms. Sparks during the oral argument in the 12th District Court of Appeals. The only question asked was if there was an agreement made by the Plaintiff and Ms. Sparks. Ms. Sparks said yes because of the refinance and of the federal "Making Home Affordable" program, yet during the entire process, the Plaintiff had refrained from mentioning about the agreement made with Mr. Sparks and the Plaintiff nor had they mentioned the foreclosure to Ms. Sparks was never informed of any foreclosure proceedings by the Plaintiff, including default judgments while Ms. Sparks was still in contact with the Plaintiff. There is documents to show that Ms. Sparks had indeed had a refinance as well as documents to show that she had "Making Home Affordable". This is certainly a paper trail to prove that Ms. Sparks had made agreements with the Plaintiff yet the Plaintiff had not mentioned anything about the foreclosure nor the agreement they had made with Mr. Sparks, which violates the civil rights of Ms. Sparks. Ms. Sparks did make a mention of her agreement with the Plaintiff to the appellate court, yet she was totally unaware of the agreement made by the Plaintiff and Mr. Sparks and in this the appellate court had violated the civil rights of Ms. Sparks by having knowledge of the agreement made by the Plaintiff and Mr. Sparks, yet not mentioning this to Ms. Sparks neither prior to nor during the oral argument. Mr. Sparks keeps mentioning the divorce decree to the Plaintiff in which that the agreement was made clearing Mr. Sparks of responsibility yet Ms. Sparks had also provided the same decree to the Plaintiff during her refinance. Since the divorce decree was not signed by all parties, Ms. Sparks was informed by the Plaintiff that the decree is not a legal document since both parties did not sign the decree, thus the quitclaim deed was required

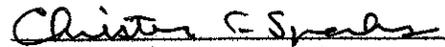
To complete the refinance process. Everyone has knowledge of the fact that a legal document must be signed by all parties involved to make the document legal and binding. Even a real estate attorney had confirmed this fact to Ms. Sparks that both parties had to sign the legal document to make it binding, yet for some strange reason, the Plaintiff had made the agreement with Mr. Sparks to not hold him liable for the foreclosure by using the same unsigned decree that the Plaintiff had told Ms. Sparks was not a legal document. This is why the situation was in the domestic relations court because of Mr. Sparks continuing to violate Civil Rule 2921.11. No court can uphold perjury, not even this court.

During the appellate court process, there was multiple errors shown to the appellate court, yet if one reads the entry, the appellate court states that no errors were shown by the Appellant, yet the appellate court contradicts themselves by stating the Appellant did indeed show some errors made. Another important error omitted in the appellate court was the fact that a fourteen year old child had signed for and received important legal documents on the behalf of Mr. Sparks. Technically, Mr. Sparks was not served for it is common knowledge a minor cannot sign for any legal documents such as court proceedings, nor can a minor enter in any agreement of a legal standpoint. This information was mentioned during the oral argument, yet the only questions asked to Ms. Sparks was if Ms. Mitchell had posed as Ms. Sparks. Ms. Sparks had stated that Mr. Sparks had had someone pose as Ms. Sparks to Diamler-Chrysler before shortly after Mr. Sparks was incarcerated for domestic violence and wrongful restraint. If Ms. Mitchell posed as Ms. Sparks, it was possible, yet Ms. Mitchell was a fourteen year old child and she does try to look older than she is if one looks at a

photograph of her. Did the Warren County sheriff violate the law by not looking at identification during the serving process and leaving important documents with a minor child. This minor also has no ties to neither Mr. Sparks nor Ms. Sparks through blood or marriage to even receive legal documents yet this was never mentioned in the entry made by the 12th District Court of Appeals. During the oral argument, the legal counsel for the Plaintiff had mentioned that the trial court did not need to perform status hearings in these sorts of hearings. It is not so. One does need a status hearing to confirm that all documents have been received and the court can be made aware of all proceedings in the case thus far. This way, if the agreement was made by the Plaintiff and Mr. Sparks, the court could have then dismissed the case and told the Plaintiff to refile and hold Ms. Sparks liable then. This did not happen. This is why there were multiple errors in the lower court. This is also why Ms. Sparks had filed both a 60 (B) motion and a motion to dismiss the Plaintiff's complaint. Ms. Sparks had become aware of when she filed her appeal with 12th District Court of Appeals that Ms. Sparks' counsel at the time, one Patrick E. McKnight, had knowledge of the foreclosure and had refrained from mentioning the foreclosure to Ms. Sparks. Had Ms. Sparks known about the foreclosure, she could have went to the lower court and shown her documentation then of the refinance, the "Making Home Affordable", and her agreement with the Plaintiff. This is why Mr. McKnight will be facing disbarment and other charges against him because of his knowledge and not mentioning anything to Ms. Sparks, this is why the appeal with this honorable court is being made. There is evidence and documentation to support the multiple errors made by both the lower court and the appellate court. On a final note, the Plaintiff, after Ms. Sparks had filed her appeal and a motion to stay, had broken into

the residence in question, breaking the door locks and causing vandalism, forcing Ms. Sparks to immediately vacate the premises after the appeal and motion to stay had been filed. The Plaintiff should have waited until all court processes had been exhausted. This is a clear Violation of Ms. Sparks' civil rights as well as being a large error. This is why this case is being appealed to this court.

Respectfully Submitted,



Christine Colleen Sparks

Defendant Pro se

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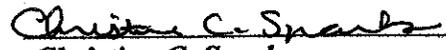
(513) 616 - 4075

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing notice of Appeal was served upon the following persons by regular U.S. Mail, this 16th day of April, 2012.

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Defendant Pro se


Christine C. Sparks
Appellant Pro se

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

COURT OF APPEALS
WARREN COUNTY
FILED

MAR - 5 2012

James L. Spaeth, Clerk
LEBANON OHIO

EVERBANK MORTGAGE COMANY, :

Plaintiff-Appellee, :

CASE NO. CA2011-03-021

JUDGMENT ENTRY

- VS -

SHAWN R. SPARKS, et al., :

Defendants-Appellants. :

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

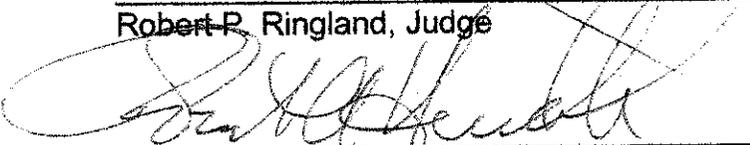
Costs to be taxed in compliance with App.R. 24.



Stephen W. Powell, Presiding Judge



Robert R. Ringland, Judge



Robert A. Hendrickson, Judge

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

COURT OF APPEALS
WARREN COUNTY
FILED

MAR - 5 2012

James L. Spaeth, Clerk
LEBANON OHIO

EVERBANK MORTGAGE COMPANY, :

Plaintiff-Appellee, :

- vs - :

SHAWN R. SPARKS, et al., :

Defendant-Appellant. :

CASE NO. CA2011-03-021

OPINION
3/5/2012

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 10 CV 77463

Shapiro, Van Ess, Phillips & Barragate, LLP, Christopher G. Phillips, 4805 Montgomery Road, Suite 320, Cincinnati, Ohio 45212

Christine C. Sparks, P.O. Box 181642, Fairfield, Ohio 45018, defendant-appellant, pro se

RINGLAND, J.

{¶ 1} Defendant-appellant, Christine C. Sparks, appeals pro se from a Warren County Court of Common Pleas decision confirming the sale of property located at 410 Teakwood Lane, Springboro, Ohio, and ordering distribution of the proceeds. For the reasons outlined below, we affirm.

{¶ 2} On June 22, 2010, plaintiff-appellee, Everbank Mortgage Company (Everbank), filed a complaint seeking foreclosure of its mortgage on the Teakwood Lane property alleging

appellant, as well as her now former husband, Shawn R. Sparks, had defaulted on their promissory note. That same day, Everbank filed a praecipe for personal service on appellant at the Teakwood Lane property and for service by certified mail on appellant's post office box. Everbank was subsequently notified that the personal service at the Teakwood Lane property had failed and that the certified mail service upon appellant's post office box was returned unclaimed.

{¶ 3} On July 22, 2010, Everbank filed a praecipe for service by ordinary mail to appellant's post office box. A certificate of mailing was completed by the clerk the following day. The record is devoid of any evidence indicating the ordinary mail envelope sent to appellant's post office box was returned undelivered.

{¶ 4} On September 24, 2010, Everbank filed a motion seeking default judgment against appellant. As part of this motion, Everbank provided proof of service to appellant's post office box by ordinary mail.

{¶ 5} On September 27, 2010, the trial court granted default judgment in Everbank's favor and issued a final judgment entry ordering the Teakwood Lane property be sold. As part of the final judgment entry, the trial court found Everbank had agreed to waive "any right to deficiency judgment and shall not have any personal judgment against Defendant Shawn Sparks as said Defendant was to be held harmless on the debt pursuant to a divorce decree with [appellant.]" No appeal was taken from this judgment.

{¶ 6} On November 30, 2010, Everbank sent a notice of the sheriff's sale to appellant's post office box by ordinary mail. There is no evidence indicating the ordinary mail envelope was returned undelivered. An advertisement listing the date, time, and place of the sheriff's sale was also published in a newspaper of general circulation in Warren County for three consecutive weeks prior to the sale.

{¶ 7} On December 20, 2010, Everbank purchased the Teakwood Lane property at

the sheriff's sale. The trial court filed its judgment entry confirming the sale and ordering distribution of the proceeds on February 1, 2011. Appellant now appeals.¹

{¶ 8} At the outset, and even though this court did so previously in *Sparks v. Sparks*, 12th Dist. No. CA2010-10-096, 2011-Ohio-5746, we find it necessary to remind appellant that although she is appearing pro se in this appeal she is nevertheless bound by the same rules and procedures as licensed attorneys. *Countrywide Home Loans, Inc. v. Reece*, 12th Dist. No. CA2010-08-078, 2011-Ohio-541, ¶ 12. In addition, because the burden of affirmatively demonstrating error on appeal falls squarely upon her, we once again stress to appellant that it is not this court's duty to "root out" arguments that can support her contentions. *Hausser & Taylor, LLP v. Accelerated Systems Integration, Inc.*, 8th Dist. No. 84748, 2005-Ohio-1017, ¶ 10; *State v. Hairston*, 9th Dist. No. 05CA008768, 2006-Ohio-4925, ¶ 11. Furthermore, in reviewing her appeal, appellant must understand that we will not "conjure up questions never squarely asked or construct full-blown claims from convoluted reasoning." *Aegis v. Sedlacko*, 7th Dist. No. 07 MA 128, 2008-Ohio-3190, ¶ 16, quoting *Karmasu v. Tate*, 83 Ohio App.3d 199 (4th Dist.1992).

{¶ 9} In reviewing appellant's brief, we find appellant has failed to include a statement that specifically lists the assignments of error she would like this court to review as required by App.R. 16(A)(3) and Loc.R. 11(A)(2). However, as part of her argument, appellant does aver to three so-called "errors" in the lower court's proceedings. Specifically, appellant claims that the common pleas court erred by confirming the sale of the Teakwood Lane property when she was not served "by either a process server or by certified mail," erred by failing to hold a "status hearing" prior to confirming the sale of the property, and erred by allowing the foreclosure action to proceed when "the property situation was still tied up in the

1. Appellant's former husband, Shawn R. Sparks, has not appealed from the common pleas court's decision.

Warren County Domestic Relations Court."² Each of appellant's three so-called "errors" will be addressed more fully below.

Service Proper by Ordinary Mail

{¶ 10} Initially, appellant argues that the trial court erred by confirming the sale of the Teakwood Lane property when she was not served "by either a process server or by certified mail." While this may be true, the record clearly indicates appellant was properly served with Everbank's complaint seeking foreclosure by ordinary mail to her post office box in accordance with Civ.R. 4.6(D). As Civ.R. 4.6(D) states, service by ordinary mail is proper when the certified mail envelope is returned unclaimed. Such is the case here.

{¶ 11} The record also indicates that Everbank served appellant with a notice of the date, time, and place of sheriff's sale by ordinary mail in accordance with R.C. 2329.26(A)(1)(a)(i) and Civ.R. 5. Nothing in the record indicates that any of these documents went undelivered. In fact, besides admitting during oral argument that the post office box is her mailing address, appellant also used that post office box as her mailing address when filing this appeal. Appellant's first error is therefore overruled.

No Hearing Required Before Confirming Sale in Foreclosure Action

{¶ 12} Next, appellant argues that the common pleas court erred by failing to hold a "status hearing" before confirming the sale of the property. However, "[t]he Ohio Supreme Court has consistently held due process does not require an individual be afforded a hearing

2. Appellant raises numerous other so-called "errors" as part of her reply brief. It is well-established that a reply brief may only be used to respond to, or rebut, the appellee's brief, and may not be used to raise new assignments of error or new issues for review. See *Baker v. Meijer Stores Ltd. Partnership*, 12th Dist. No. CA2008-11-136, 2009-Ohio-4681, ¶ 17; see also App.R. 16(C) and Loc.R. 11(A)(3). Appellant has offered no explanation as to why she failed to argue these so-called "errors" in her original brief. We therefore decline to address these additional arguments. See, e.g., *Meadowood Manor, Inc. v. Ohio Dept. of Health*, 12th Dist. No. CA2006-08-010, 2007-Ohio-2067, ¶ 27 (prior decision from this court declining to address additional assignments of error raised for the first time in a reply brief); *State ex rel. Colvin v. Brunner*, 120 Ohio St.3d 110, 2008-Ohio-5041, ¶ 61 (prior decision from the Ohio Supreme Court finding party was forbidden from raising new arguments in its reply brief).

prior to the confirmation of sale in a foreclosure proceeding." *Ohio Farm Bur. Fedn., Inc. v. Amos*, 5th Dist. No. 07-COA-006, 2008-Ohio-459, ¶ 43, citing *Union Bank Co. v. Brumbaugh*, 69 Ohio St.2d 202, 209 (1982); R.C. 2329.31(A). Appellant's second error is therefore overruled.

Common Pleas Court Properly Proceeded on Foreclosure Action

{¶ 13} Finally, appellant argues that the common pleas court erred by allowing Everbank to foreclose on the Teakwood Lane property when "the property situation was still tied up in the Warren County Domestic Relations Court." However, contrary to appellant's claim, the record is devoid of any evidence to indicate the common pleas court could not proceed with the foreclosure action. Any action Everbank had against the property was separate and distinct from those claims appellant alleges were "tied up" in the domestic relations court. Appellant's third argument is therefore overruled.

{¶ 14} In light of the foregoing, we find no merit to any of appellant's three so-called "errors." In addition, after thorough review of the record, we find no reason to overturn the common pleas court's decision confirming the sale of the Teakwood Lane property and ordering distribution of the proceeds. The record makes it clear that the sale of the property was properly conducted in accordance with R.C. 2329.01 through R.C. 2329.61, inclusive.

{¶ 15} Judgment affirmed.

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

This opinion or decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/ROD/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>