

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

Motion to Stay

Christine Colleen Sparks
P. O. Box 181642
Fairfield, Ohio 45018
(513) 616 – 4075
Pro se Defendant – Appellant,

Christopher G. Phillips (# 0074249)
4805 Montgomery Road, Suite 320
Norwood, Ohio 45212
(513) 396 – 8100
Counsel for Plaintiff – Appellee,
Everbank

FILED
APR 19 2012
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

EVERBANK MORTGAGE COMANY,

Plaintiff – Appellee,

Case No: CA2011 – 03 – 021

Date of Entry: March 5, 2012

- Vs -

CHRISTINE COLLEEN SPARKS,

Defendant – Appellant,

MOTION FOR IMMEDIATE STAY

A motion for immediate stay from a judgment entry filed from the 12th District Court of Appeals should be granted on multiple grounds. The said Defendant, Christine C. Sparks, had never received any documentation pertaining to foreclosure from neither the lower court nor the appellate court. The appellate court had never sent any documents to Christine C. Sparks. Ms. Sparks had obtained a copy from the Warren County Clerk of Courts office. There had been new evidence discovered in this judgment entry that had never been presented to Christine C. Sparks. Therefore, an immediate motion of stay should be granted on behalf of the Defendant Christine C. Sparks based upon multiple errors of both the trial court and the appellate court.

Respectfully Submitted,


Christine Colleen Sparks

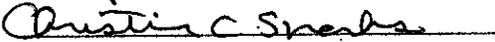
Defendant Pro se
P.O. Box 181642
Fairfield, Ohio 45018 – 1642
(513) 616 – 4075

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.

Christopher G. Phillips (#0074249)
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Everbank

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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 P. 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.

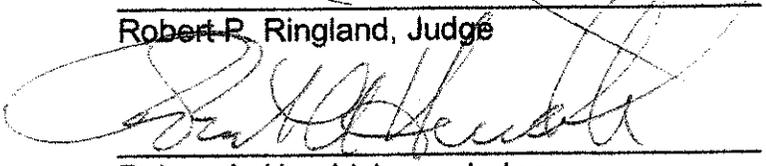
Costs to be taxed in compliance with App.R. 24.



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, :

CASE NO. CA2011-03-021

- vs -

OPINION
3/5/2012

SHAWN R. SPARKS, et al., :

Defendant-Appellant. :

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>