

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

PRAMILA M. DOMADIA, et al.,	:	O P I N I O N
Plaintiffs-Appellees,	:	
- VS -	:	CASE NO. 2009-G-2899
MARY A. BRIGGS, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 07 F 000821.

Judgment: Affirmed.

Paul A. Newman, Newman & Brice, L.P.A., 214 East Park Street, Chardon, OH 44024
(For Plaintiffs-Appellees).

Carolyn J. Paschke, Law Offices of Carolyn J. Paschke Co., L.P.A., 10808 Kinsman
Road, P.O. Box 141, Newbury, OH 44065 (For Appellant Mary A. Briggs).

MARY JANE TRAPP, P.J.

{¶1} Ms. Briggs appeals from the trial court’s judgment overruling her motion for relief from default judgment, finding she failed to submit any meritorious grounds for relief from the trial court’s grant of default judgment and issuance of a foreclosure.¹

{¶2} Ms. Briggs contends that the trial court erred in denying her motion for relief from judgment because the trial court incorrectly noted that she failed to make an

1. We address Ms. Briggs’ appeal from the original foreclosure decree, which granted default judgment in favor of the Domadias in the companion case of *Domadia v. Briggs*, 11th Dist. No. 2008-G-2847.

appearance or file an answer in the foreclosure action, and made such a finding in the court's foreclosure decree. She further contends that the trial court improperly shifted the burden of proof to her because the Domadias did not make a prima facie showing that default judgment was warranted.

{¶3} We agree with the trial court, finding Ms. Briggs' contentions to be without merit. The trial court held two hearings on Ms. Briggs' motion for relief from default judgment, leniently allowing her ample time to submit evidence of the alleged settlement agreement. The court agreed with Ms. Briggs that the initial finding that she did not make an appearance was incorrect, but that in any case, it had no effect on the validity of the judgment as Ms. Briggs did appear, was present at both hearings, and defended herself actively in the suit. She failed to submit any evidence that the original judgment that prompted the Domadias' foreclosure action and their motion for default judgment was satisfied or that a settlement agreement had been reached. Furthermore, the Domadias clearly established a prima facie case by submitting evidence of an unsatisfied judgment and enforceable judgment lien on her property.

{¶4} Thus, we find Ms. Briggs' assignments of error to be without merit and affirm.

{¶5} Substantive and Procedural Facts

{¶6} The genesis of this case was an original money judgment against Ms. Briggs in the amount of \$146,560.75. Thereafter, a judgment lien encumbered Ms. Briggs' property located in Claridon Township.

{¶7} In August of 2007, the Domadias filed a foreclosure action, and in November of 2007, they filed a motion for default judgment. Two hearings were held on

the motion for default judgment, the first on March 5, 2008, where the Domadrias presented evidence as to the outstanding amount of the judgment. Ms. Briggs appeared at the default hearing and requested a continuance, believing the case could be settled, and informed the court she was prepared to give the Domadrias a check for \$14,000 that very day.

{¶8} The court did continue the hearing on the motion for default judgment and noted that Ms. Briggs had not filed an answer. Ms. Briggs contended that she never received the original complaint. The court reviewed the case file and showed her that service was proper. The court also offered her the entire court file for viewing. Ms. Briggs did make the payment, which the Domadrias accepted at the end of this hearing, and the amount was later credited to her in the final foreclosure decree.

{¶9} At the second hearing, held on May 16, 2008, the court reminded Ms. Briggs that she was not before the court to defend the original cognovit judgment that had been entered in the previous case. The court explained that the Domadrias' current action was a foreclosure action to execute the judgment lien. The court further explained to Ms. Briggs that the only defense to the foreclosure action would be that the judgment was paid in full. It is beyond dispute that Ms. Briggs failed to submit any evidence of satisfaction of the judgment or, for that matter, any evidence of an executory settlement agreement. The court further found that the parties were unable to settle the matter and directed the Domadrias' attorney to submit an appropriate judgment entry.

{¶10} Several weeks later, on June 4, 2008, the court granted the Domadrias' motion for default judgment and issued the foreclosure decree, finding that Ms. Briggs,

although duly served, failed to answer or make an appearance. The court found that \$147,373.60, plus interest at a rate of 8% per annum, remained due and owing on a judgment in favor of the Domadias from March 5, 2008 (crediting Ms. Briggs with the \$14,000 payment). The court further found that all necessary parties were properly served and that two other parties, including Geauga Savings Bank, failed to attend the two hearings before the court.

{¶11} The court ordered that Ms. Briggs' property be sold and the liens marshalled, concluding that the Domadias, as the first and best lien holders, were entitled to satisfaction of the lien, and that the Geauga County Treasurer was owed accrued real property taxes, assessments, penalties, and interest.

{¶12} Both Ms. Briggs and Geauga Savings Bank filed motions for relief from default judgment. At the same time, both Ms. Briggs and the bank filed appeals from the court's grant of default judgment to the Domadias. We issued a stay of execution in Geauga Savings Bank's appeal and remanded the matter to allow the trial court to rule on the bank's motion for relief from judgment. Geauga Savings Bank's appeal was dismissed after its claim was settled. We discuss Ms. Briggs' appeal of the foreclosure decree in the companion case, *Domadia v. Briggs*, 11th Dist. No. 2008-G-2847.

{¶13} The court held a hearing on Ms. Briggs' motion for relief from judgment on February 20, 2009. The basis of her argument was an incorrect finding in the trial court's June 4, 2008 foreclosure decree that she failed to appear or file an answer. The court responded that although the finding was incorrect because Ms. Briggs did appear, the error had no effect on the final determination of the case.

{¶14} Ms. Briggs also argued that she made a substantial payment of \$14,000 at the March 5, 2008 hearing, and that she had reached a settlement agreement with the Domadrias' counsel. The court noted that all the parties agreed that the \$14,000 had been paid and due credit was given to her in the foreclosure decree.

{¶15} On direct examination, Ms. Briggs revealed that she had taped several conversations with the Domadrias' counsel. She further claimed that they had numerous settlement discussions, and that, in fact, a settlement had been reached. She submitted several checks to the Domadrias in April and May of 2008, but they were never cashed. She further purported to have evidence of a settlement agreement documented by tape recordings that if Ms. Briggs could pay half the balance and guarantee the rest, the Domadrias would dismiss the foreclosure action.

{¶16} The court continued the hearing in order for Ms. Briggs to produce the recorded conversations, and for the parties to brief the issue of whether the Domadrias' counsel was now a witness in the case. In addition, the court noted it would not issue a ruling on Ms. Briggs' motion for relief from default judgment until after that time.

{¶17} Ms. Briggs did offer one recorded telephone conversation with the Domadrias' counsel. The date of the call was not given. In the transcript, Ms. Briggs inquired as to a conversation she had with counsel the day before, where he indicated that he would not file the foreclosure decree if Ms. Briggs secured a commitment for the loan. Counsel denied he agreed to the time delay, and informed Ms. Briggs that it was the court that had the power to delay the order. After some back and forth disagreement about their past conversation, Ms. Briggs conceded she did not have the full amount or a loan commitment.

{¶18} After holding a hearing on April 3, 2009, the court denied Ms. Briggs' motion for relief from default judgment, finding that the \$14,000 the Domadias accepted after the March 5, 2008 hearing was credited to Ms. Briggs in the foreclosure decree. The court further reviewed that on February 20, 2009, Ms. Briggs testified she had proof by way of recorded phone conversations with the Domadias' counsel that a settlement had been reached, but that she filed only one such recorded conversation on March 12, 2009. The court found that the transcript "clearly and unambiguously shows that Plaintiffs' counsel had not entered into an agreement or settlement with Defendant Briggs. At most, the transcript demonstrates that counsel was willing to consider settlement if Defendant Briggs could obtain and provide to Plaintiffs' counsel a valid loan commitment."

{¶19} The court explicitly addressed the claim that the June 4, 2008 judgment entry contained an incorrect finding that Ms. Briggs did not make an appearance in the action. The court agreed that such finding was incorrect, but that fact did not change the validity of the foreclosure decree.

{¶20} The court overruled Ms. Briggs' motion for relief and granted a stay of the foreclosure only, as the original monetary judgment against Ms. Briggs in favor of the Domadias for \$146,560.70 was never appealed.

{¶21} Ms. Briggs' now timely appeals the court's denial of her motion for relief from default judgment in the Domadias' foreclosure action, raising two assignments of error:

{¶22} "[1.] The trial court erred in granting a default judgment and by failing to properly address the issue of defendant's appearance in the case at hand.

{¶23} “[2.] The trial court improperly misplaced the burden of proof at the default judgment hearing.”

{¶24} Standard of Review - Motion for Relief From Judgment

{¶25} “A reviewing court reviews a trial court’s decision on a motion for relief from judgment to determine if the trial court abused its discretion.” *Miller v. Sun Castle Enterprises, Inc.*, 11th Dist. No. 2007-T-0054, 2008-Ohio-4669, ¶48, (citations omitted), quoting *Bank One, NA v. SKRL Tool and Die, Inc.*, 11th Dist. No. 2003-L-045, 2004-Ohio-2602, ¶15. See, also, *GTE Automatic Electric v. ARC Industries*, 47 Ohio St.2d 146, 150. The term “abuse of discretion” connotes more than error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219.

{¶26} “Relief from judgment may be granted pursuant to Civ.R. 60(B), which states in relevant part:

{¶27} “On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Civ.R. 59(B); (3) fraud (whether hereto denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) 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; or (5) any other reason justifying relief from the judgment.” *Id.* at ¶49-50; quoting Civ.R. 60(B).

{¶28} “Regarding the moving party’s obligations for a Civ.R. 60(B) motion, the Supreme Court of Ohio has held:

{¶29} “To prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment, order, or proceeding was entered or taken.” *Id.* at ¶51-52, quoting *GTE Automatic Electric* at paragraph two of the syllabus.

{¶30} Failure to Make an Appearance or File an Answer

{¶31} In her first assignment of error, Ms. Briggs contends the trial court erred in finding that she failed to appear or file an answer in the foreclosure action. We find this argument to be wholly without merit.

{¶32} At the outset we note that Ms. Briggs’ contention is moot. Ms. Briggs was present for both hearings on the Domadias’ motion for default judgment and defended herself in the action. Quite simply, the court granted the Domadias’ motion and ordered the foreclosure because Ms. Briggs offered no evidence that the judgment was satisfied or that a settlement agreement had been reached. Thus, it is clear the trial court did not abuse its discretion in finding that the incorrect statement as to her lack of appearance did not change the validity of the foreclosure decree.

{¶33} We recognize that “[d]efault judgment is a disfavored procedure. Therefore, in the main, Ohio courts have interpreted the requirement that a party to be held in default must have ‘appeared’ in the case, in order to be entitled to notice of the

default hearing, with extreme liberty. Essentially, a party has appeared, for purposes of Civ.R. 55(A), if it has had any contact, however informal, indicating it intends to defend the suit, with the party moving for default judgment.” *Qualchoice v. Baumgartner*, 11th Dist. No. 2007-T-0086, 2008-Ohio-1023, ¶14, citing, *Rocha v. Salsbury*, 6th Dist. No. F-05-014, 2006-Ohio-2615, ¶19-20.

{¶34} Ms. Briggs’ appearance, however, does not equate to sufficient grounds for relief from the default judgment when the original money judgment that underlies this case clearly remains unsatisfied. Ms. Briggs actively defended herself on the motion for default judgment. She was present for both hearings on March 5, 2008, and May 16, 2008. The court continued the March 5, 2008 hearing so that Ms. Briggs could submit evidence of an alleged settlement to satisfy the judgment.

{¶35} Ms. Briggs, however, apart from correctly claiming that she did appear, offered no evidence upon which relief could be granted. Indeed, she presented no meritorious defense, no evidence of mistake, inadvertence, surprise or excusable neglect; no newly discovered evidence; no evidence of fraud, no evidence the judgment had been satisfied, or any “other reason justifying relief from the judgment.”

{¶36} The Domadiaz filed the foreclosure action in order to satisfy their judgment which had been granted in a separate case in January of 2007. Ms. Briggs contends she did present evidence of a settlement agreement in the form of two checks she issued to the Domadiaz in April and May of 2008. Ms. Briggs admits these checks were not cashed.

{¶37} She is correct that on the day of the March 5, 2008 hearing, she gave the Domadiaz a check for \$14,000, which was cashed. The court took notice of the

\$14,000 payment and credited this amount to Ms. Briggs against the total amount due on the judgment in the foreclosure decree. Quite simply, Ms. Briggs offered no evidence of a settlement agreement and did not satisfy the outstanding judgment against her.

{¶38} To support her assertion that the parties had reached a settlement agreement to stop the foreclosure action, Ms. Briggs submitted one recorded conversation with the Domadias' counsel, which only reinforced the fact that a settlement agreement had not been reached. After holding two hearings on her motion for relief from default judgment, and a record that is devoid of any evidence of a settlement agreement, we find no abuse of discretion in the trial court's judgment overruling Ms. Briggs' motion for relief from default judgment.

{¶39} Ms. Briggs' first assignment of error is without merit.

{¶40} Misplaced Burden of Proof

{¶41} In her second assignment of error, Ms. Briggs contends that the trial court misplaced the burden of proof at the original hearings on the Domadias' motion for default judgment. Ms. Briggs contends that the Domadias merely submitted an affidavit with their complaint, and that they failed to prove a prima facie case with proper evidence.

{¶42} We find Ms. Briggs' contention to be wholly without merit. The Domadias properly submitted evidence of the judgment they received in January of 2007. They then filed the instant foreclosure action and motion for default judgment to collect their judgment eight months later when the judgment remained unsatisfied. Ms. Briggs offered no evidence in rebuttal, and failed to appeal the original judgment.

{¶43} During the hearings on her relief from default judgment, Ms. Briggs submitted no evidence that a settlement agreement had been reached or that the judgment had been satisfied. Quite simply, she provided no meritorious grounds upon which the trial court could grant relief from the default judgment. The court allowed her ample time, indeed, patiently granting her a continuance between the hearings on her motion for relief to allow her to submit proof of a settlement. Ms. Briggs simply submitted an undated recording of her telephone conversation with the Domadias' counsel that actually proves no agreement was reached.

{¶44} The Domadias presented the court with evidence of an unsatisfied judgment and an enforceable judgment lien combined with a request for marshalling of liens and sale of real property within the court's jurisdiction. Ms. Briggs failed to rebut this evidence with proof of payment in full that the lien was satisfied or evidence that a settlement agreement had been reached. Thus, her second assignment of error is clearly without merit.

{¶45} The judgment of the Geauga County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.