[Cite as *Nationstar Mtge., L.L.C. v. Hayhurst,* 2015-Ohio-2900.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

NATIONSTAR MORTGAGE LLC,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2014-T-0102**
- vs -	:	
DAWN HAYHURST, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2012 CV 00055.

Judgment: Affirmed.

John B. Kopf and *Todd M. Seaman,* Thompson Hine LLP, 41 South High Street, 17th Floor, Columbus, OH 43215 (For Plaintiff-Appellee).

Bruce M. Broyles, 5815 Market Street, Suite 2, Youngstown, OH 44512 (For Defendants-Appellants).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellants, Dawn Roberts (fna Dawn Hayhurst) and Harold Roberts, appeal the summary judgment entered by the Trumbull County Court of Common Pleas in favor of appellee, Nationstar Mortgage LLC, on its complaint for foreclosure. We are asked to consider whether any genuine issue of material fact existed, precluding summary judgment in favor of Nationstar. For the reasons that follow, we affirm.

{¶2} On April 18, 2007, appellant, Dawn Roberts, obtained a mortgage loan from Lawrence J. Hickman Associates Inc. to purchase a parcel of real estate in Girard, Ohio. In exchange for the loan, Ms. Roberts signed a promissory note in favor of Hickman in the amount of $115,000.

{¶3} Subsequently, Hickman endorsed the note to Flagstar Bank, FSB. Thereafter, but prior to the filing of the complaint in this action, the note was transferred to Nationstar and the note remains in its possession.

{¶4} Also on April 18, 2007, in order to secure the note, Ms. Roberts signed a mortgage in favor of Mortgage Electronic Registration Systems, Inc. ("MERS"), acting as nominee for the lender, Hickman.

{¶5} On December 21, 2011, prior to the filing of the complaint, MERS, as nominee for Hickman, assigned the mortgage to Nationstar by written assignment.

{¶6} Ms. Roberts defaulted on the mortgage loan by failing to make the payment due for May 1, 2011, or any subsequent installments. The amount due under the loan as of that date was $112,063, plus interest. There is no dispute as to Ms. Roberts' default or the balance due.

{¶7} Following Ms. Roberts' default, Nationstar sent her a letter, dated September 21, 2011, notifying her that her loan was in default and that unless she brought her account current by October 26, 2011, Nationstar would accelerate the full amount owed and foreclose the mortgage. Ms. Roberts did not make the payment necessary to bring her account current, and Nationstar accelerated the entire balance owed.

{¶8} On January 9, 2012, Nationstar filed its complaint in foreclosure against Ms. Roberts and her unknown spouse, who was later identified as Harold Roberts. In its complaint, Nationstar alleged that it was entitled to enforce the note; that the note was secured by a mortgage, which had been assigned to Nationstar; that Ms. Roberts was in default; and that Nationstar had declared the debt to be due. Attached to the complaint were copies of the note, the mortgage, and the mortgage assignment. Nationstar prayed for judgment against Ms. Roberts for the balance owed on the note in the amount of $112,063, plus interest, and that the mortgage be foreclosed.

{¶9} Appellants filed an answer, denying the material allegations of the complaint and asserting a counterclaim.

{¶10} On May 31, 2012, Nationstar served on appellants its First Set of Requests for Admissions. Request No. 8 asked appellants to admit that the exhibits attached to the complaint, i.e., the note, the mortgage, and the assignment of the mortgage, were true and correct copies of the originals. Appellants did not answer Nationstar's Requests for Admissions. On August 29, 2012, Nationwide filed a copy of its Requests for Admissions with the trial court and notified the court that appellants had failed to answer its Requests and that they are now deemed admitted. Pursuant to Civ.R. 36, the effect of their failure to answer Request No. 8 was that the authentication of these instruments was deemed admitted.

{¶11} Subsequently, Nationstar moved for summary judgment on its complaint and on appellants' counterclaim. In support, Nationstar attached the affidavit of Daniel Robinson, an Assistant Secretary of Nationstar. Mr. Robinson testified by affidavit that, based on his review of Nationstar's business records for this account, on April 18, 2007,

Ms. Roberts signed the note and mortgage for this loan in the amount of $115,000, plus interest. Mr. Robinson said that Nationstar currently has possession of the note and had possession of it prior to the filing of the complaint. Further, Mr. Robinson said that Nationstar has the right to enforce the note. He also authenticated the copies of the note and mortgage attached to his affidavit.

{¶12} The assignment of the mortgage attached to the complaint provides that on December 21, 2011, prior to the filing of the complaint, MERS, as nominee for Hickman, assigned the mortgage to Nationstar.

{¶13} Mr. Robinson said in his affidavit that the account is due for the May 1, 2011 payment; that Ms. Roberts has not made any subsequent payments or cured her default; and that Nationstar accelerated the account, making the balance due in the amount of $112,063, plus interest.

{¶14} Appellants filed a brief in opposition to summary judgment, but they did not file any evidentiary materials in support. The trial court entered summary judgment in favor of Nationstar (on its complaint and on appellants' counterclaim) and a foreclosure decree. Appellants appeal the trial court's judgment, asserting the following for their sole assignment of error:

{¶15} "The trial court erred in granting summary judgment to Appellee when there were genuine issues of material fact still in dispute."

{¶16} Summary judgment is proper when: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the nonmoving party, that party being entitled to have the evidence construed most

strongly in his favor. Civ.R. 56(C); *Leibreich v. A.J. Refrigeration, Inc*., 67 Ohio St.3d 266, 268 (1993).

{¶17} The party seeking summary judgment on the ground that the nonmoving party cannot prove his case bears the initial burden of informing the trial court of the basis for the motion and of identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential elements of the nonmoving party's case. *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). The moving party must point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates the nonmoving party has no evidence to support his case. *Dresher, supra*, at 293.

{¶18} If this initial burden is not met, the motion for summary judgment must be denied. *Id.* However, if the moving party meets his initial burden, the nonmoving party must then produce competent evidence showing there is a genuine issue for trial. Civ.R. 56(E). If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against him. *Dresher, supra.*

{¶19} Since a trial court's ruling on a motion for summary judgment involves only questions of law, we conduct a de novo review of the judgment. *DiSanto v. Safeco Ins. of Am*., 168 Ohio App.3d 649, 2006-Ohio-4940, ¶41 (11th Dist.).

{¶20} In a mortgage foreclosure action, the mortgage lender must establish an interest in the promissory note or in the mortgage in order to have standing to invoke the jurisdiction of the common pleas court. *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶28. "The requirement of an 'interest' can be met by showing an assignment of *either the note or mortgage*." (Emphasis added.) *Fed. Home Loan Mtge. Corp. v. Koch*, 11th Dist. Geauga No. 2012-

G-3084, 2013-Ohio-4423, ¶24. Further, because standing is required to invoke the trial court's jurisdiction, standing is determined as of the filing of the complaint. *Schwartzwald, supra,* at ¶24.

{¶21} The Supreme Court of Ohio recently held in *Wells Fargo Bank, N.A. v. Horn*, __ Ohio St.3d __, 2015-Ohio-1484: "Although the plaintiff in a foreclosure action must have standing at the time suit is commended, proof of standing may be submitted subsequent to the filing of the complaint. *Id*. at syllabus.

{¶22} Whether standing exists is a matter of law that we review de novo. *Bank of Am., NA v. Barber*, 11th Dist. Lake No. 2013-L-014, 2013-Ohio-4103, ¶19.

{¶23} Appellants do not appeal the trial court's summary judgment in favor of Nationstar on their counterclaim. Instead, their appeal is limited to the court's grant of summary judgment in favor of Nationstar on its complaint. Appellants assert that genuine issues of material fact remain so that Nationstar is not entitled to summary judgment. Appellants raise the following issues: (1) whether the affidavit of Daniel Robinson, Nationstar's Assistant Secretary, was made on his personal knowledge; (2) whether Nationstar demonstrated it was in possession of the original note and whether Nationstar authenticated the mortgage assignment; and (3) whether Nationstar had standing to file this action.

{¶24} For their first issue, appellants argue that Mr. Robinson's affidavit was insufficient to support summary judgment because, they argue, his affidavit was not made on personal knowledge.

{¶25} Civ.R. 56(E) provides in pertinent part: "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible

in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit."

{¶26} The "mere assertion of personal knowledge satisfies the personal knowledge requirement of Civ.R. 56(E) if the nature of the facts in the affidavit combined with the identity of the affiant creates a reasonable inference that the affiant has personal knowledge of the facts in the affidavit." *Bank of Am., N.A. v. Merlo,* 11th Dist. Trumbull No. 2012-T-0103, 2013-Ohio-5266, ¶25. Further, it is well settled that "personal knowledge may be inferred from the contents of an affidavit." *Id.* at ¶26.

{¶27} It has been held that an officer of the lender could authenticate copies of the loan documents in her affidavit in support of summary judgment based on her review of the lender's loan documents. *Bank of New York v. Dobbs*, 5th Dist. Knox No. 2009-CA-000002, 2009-Ohio-4742, ¶40.

{¶28} Moreover, an affiant providing the foundation for a recorded business activity is not required to have firsthand knowledge of the transaction at issue. *Merlo, supra,* at ¶27. However, it must be shown that the witness is sufficiently familiar with the operation of the business and with the circumstances of the record's preparation and maintenance so that he can testify the record is what it purports to be and was made in the ordinary course of business. *Id*.

{¶29} Mr. Robinson stated in his affidavit that as Assistant Secretary for Nationstar, he is authorized to execute his affidavit on behalf of Nationstar. He said that as a regular part of his job, he is familiar with business records maintained by Nationstar for the purpose of servicing mortgage loans. He said that, based on his knowledge of Nationstar's practices, these business records were made at the time of the occurrence

of the events referenced therein by persons with firsthand knowledge of these events. He said these records are maintained in the course of Nationstar's regularly-conducted business. He said it is Nationstar's business practice to electronically store duplicates of the originals of all notes and other debt instruments, mortgages, and assignments thereof. He said he made his affidavit based on his personal knowledge obtained from his personal review of Nationstar's business records for the instant mortgage loan. He said that Nationstar is currently in possession of the subject note; that Nationstar was in possession of it when the complaint was filed; and that Nationstar has the right to enforce the note. Further, based on his review of Nationstar's records for the instant loan, Mr. Robinson said that Ms. Roberts failed to make her payment for May 1, 2011; that Nationstar accelerated the debt; and that the principal balance due is $112,063, plus interest. He also said the copies of the note and mortgage attached to his affidavit are true copies of the electronically-stored duplicates of the originals. The foregoing information was sufficient to create a reasonable inference that Mr. Robinson's affidavit was based on personal knowledge. *Merlo, supra*.

{¶30} As a result, Mr. Robinson's affidavit shifted the burden to appellants to present evidentiary materials demonstrating that Mr. Robinson's affidavit was not based on personal knowledge. In *Bank of Am., N.A. v. Jones*, 11th Dist. Geauga No. 2014-G-3197, 2014-Ohio-4985, ¶33, this court observed:

> **{¶31}** The Ohio Supreme Court has stated that "[t]he specific allegation in [an] affidavit that it was made upon personal knowledge is sufficient to meet this requirement of Civ.R. 56(E) and, *if the adverse party contends otherwise, an opposing affidavit setting forth the*

appropriate facts must be submitted." (Emphasis added.) *State ex rel. Corrigan v. Seminatore*, 66 Ohio St.2d 459, 467 (1981).

{¶32} Because appellants disputed Mr. Robinson's contention that his affidavit is based on personal knowledge, they were required to submit countervailing evidentiary materials. Having failed to do so, they did not create a genuine issue of material fact with respect to whether Mr. Robinson's affidavit was made on personal knowledge.

{¶33} With respect to their second issue, appellants argue that Nationstar failed to show it has possession of the original note. However, Mr. Robinson's affidavit testimony that Nationstar was in possession of the subject note was sufficient to raise an inference that Nationstar was in possession of the original note itself. This court addressed essentially the same issue in *Merlo*, *supra*, in which this court stated:

> **{¶34}** Ms. Pordash [the mortgage lender's affiant] stated in her affidavit that BAC "has possession of the note." Since she did not qualify her testimony by saying the bank has possession of a copy of the note, she was referring to the actual note itself, i.e., the original, rather than a copy. "An 'original' of a writing * * * is the writing * * * itself," as opposed to a 'duplicate,' which "reproduce[s] the original." Evid.R. 1001(3) and (4). *Merlo* at ¶18.

{¶35} Moreover, Mr. Robinson's statement in his affidavit that the copy of the note attached to his affidavit is an exact copy of an electronically-stored duplicate of the original implies that he compared the copy attached to his affidavit to both the electronically-stored duplicate and the original note and that both are in Nationstar's possession.

{¶36} The foregoing evidence was sufficient to raise an inference that Nationstar was in possession of the original note when it filed the complaint and was sufficient to shift the burden to appellants to submit evidentiary materials showing that Nationstar was not in possession of the original note. Having failed to do so, appellants have not demonstrated the existence of a genuine issue of material fact regarding Nationstar's possession of the original note.

{¶37} As part of their second issue, appellants also argue that Nationstar did not authenticate the assignment of the mortgage. However, appellants did not raise this argument in the trial court. It is therefore waived on appeal. A reviewing court will generally not consider an error that could have been, but was not, called to the trial court's attention at a time when the trial court could have avoided or corrected such error. *Mortgage Elec. Registration Sys. v. Petry*, 11th Dist. Portage No. 2008-P-0016, 2008-Ohio-5323, ¶21.

{¶38} In any event, because the copy of the mortgage assignment attached to the complaint shows it was notarized, it is self-authenticating. Where an instrument, such as a mortgage assignment, bears a notarial seal, the seal makes it self-authenticating. Evid.R. 902(8) provides that "[e]xtrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to * * * [d]ocuments accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public * * *." In *U.S. Bank N.A. v. Rex Station Ltd*., 2d Dist. No. 26019, 2014-Ohio-1857, ¶22, the Second District held that because the copies of the mortgage and the assignment thereof attached to the complaint bore notarial seals, they were

self-authenticating. *Accord Lorain Cty. Bar Assn. v. Papcke*, 81 Ohio St.3d 91, 93 (1998) ("documents acknowledged by [a notary] are self-authenticating.")

{¶39} Moreover, as noted above, Nationstar's Request for Admission Number 8 propounded to appellants asked them to admit the copies of the note, mortgage, and mortgage assignment attached to the complaint were accurate copies of the originals. However, appellants failed to answer Nationstar's Requests for Admissions. Civ.R. 36(A) provides, in pertinent part:

> **{¶40}** A party may serve upon any other party a written request for the admission * * * of the truth of any matters within the scope of Civ.R. 26(B) set forth in the request, that relate to statements or opinions of fact or of the application of law to fact, *including the genuineness of any documents described in the request.*
>
> **{¶41}** (1) The matter is admitted unless, within * * * twenty-eight days after service of the request * * *, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. (Emphasis added.)

{¶42} This court stated in *JPMorgan Chase & Co. v. Indus. Power Generation*, Ltd., 11th Dist. Trumbull No. 2007-T-0026, 2007-Ohio-6008, ¶27:

> **{¶43}** Construing [Civ.R. 36], the Ohio Supreme Court has stated that "[f]ailure to respond * * * to the requests [for admissions] will result in the requests becoming admissions" which "can be used to establish a fact, even if it goes to the heart of the case." *Cleveland*

> *Trust Co. v. Willis*, 20 Ohio St.3d 66, 67 (1985). Following *Willis*, this court has held "[r]equests for admissions conclusively establish facts for the purpose of the pending action. * * * Further, unanswered requests for admissions are a written admission fulfilling the requirements for summary judgment, pursuant to Civ.R. 56." *Balli v. Zukowski*, 11th Dist. [Geauga] No. 2004-G-2560, 2004-Ohio-6702, ¶36 (citation omitted); *accord Mayer v. Medancic*, 11th Dist. [Geauga] Nos. 2000-G-2311, 2000-G-2312, and 2000-G-2313, 2001 Ohio App. LEXIS 5863, *22 (Dec. 21, 2001) (citation omitted); *State Farm Fire & Cas. Ins. Co. v. Kall*, 11th Dist. [Geauga] No. 98-G-2203, 2000 Ohio App. LEXIS 1402, *15 [(March 31, 2000)] (finding the rule regarding the failure to respond to a request for admissions "unequivocal") (citation omitted).

{¶44} By failing to answer Nationstar's Requests for Admissions, appellants are deemed to have admitted the matters contained in each, including, with respect to Request No. 8, that the copy of the mortgage assignment attached to the complaint is an exact copy of the original.

{¶45} For their third issue, appellants argue that Nationstar failed to demonstrate it had standing to file this action. Appellants point out that Nationstar incorrectly argued below that it was the "holder" of the note because the note was endorsed in blank and it had possession of the note. Appellants correctly argue that the note was *not* endorsed in blank, but rather, was endorsed to a nonparty, Flagstar Bank, and, thus, Nationstar was not entitled to enforce the note as its holder.

{¶46} Nationstar implicitly concedes on appeal that it was not entitled to enforce the note as its holder because it was endorsed to Flagstar, not Nationstar. However, Nationstar argues it was still entitled to enforce the note as a "nonholder in possession" of the note.

{¶47} Nationstar cites the axiom that an appellate court will not reverse the trial court's judgment when it is properly entered, albeit for the wrong reason. Nationstar thus implies the trial court based its award of summary judgment on Nationstar's incorrect argument that it was the holder of the note. However, this principle does not apply here because the trial court generally granted summary judgment without specifying the grounds on which Nationstar had standing and the record reveals Nationstar was entitled to enforce the note as a nonholder in possession.

{¶48} R.C. 1303.31(A) identifies those persons who are "entitled to enforce" an instrument such as a promissory note. As pertinent here, they include: (1) the "holder" of the note, and (2) a "nonholder" in possession of the note who has the rights of a holder.

{¶49} A "holder" is a person in possession of a note that is payable either to bearer or to an identified person. R.C. 1301.201(B)(21).

{¶50} "Negotiation" is a particular type of transfer. "Negotiation" means "a * * * transfer of possession of an instrument * * * to a person who by the transfer becomes the holder of the instrument." R.C. 1303.21(A). "[I]f an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated

by transfer of possession alone." R.C. 1303.21(B). Thus, in order for a person to become a "holder" of a note, it must have been transferred to him by negotiation.

{¶51} "An instrument is transferred when it is delivered by a person other than its [maker] for the purpose of giving to the person receiving delivery the right to enforce the instrument." R.C. 1303.22(A). Further, "[t]ransfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument." R.C. 1303.22(B). Thus, a note can be transferred by a method other than negotiation. *Self Help Ventures Fund v. Jones,* 11th Dist. Ashtabula No. 2012-A-0014, 2013-Ohio-868, ¶36.

{¶52} "A 'nonholder' is one in possession of the instrument who acquired it by some method of transfer other than negotiation." *Id*. at ¶37, citing Official Comment 2 to R.C. 1303.22. "A nonholder is entitled to enforce the instrument if the transferor was a holder at the time of transfer." *Self Help, supra*. "Although the transferee is not a 'holder,' he has the rights of the transferor as holder pursuant to R.C. 1303.22(B)." *Self Help, supra,* citing Official Comment to R.C. 1303.22.

{¶53} The Second District in *LaSalle Bank Natl. Assn. v. Brown*, 2d Dist. Montgomery No. 25822, 2014-Ohio-3261, stated, "a person need not be a 'holder' of the instrument in order to be entitled to enforce it. Instead, a person can be a non-holder in possession of the instrument who has the rights of a holder. This status can be bestowed in various ways." *Id*. at ¶36. By way of explanation, the Second District in *Brown* quoted *In re Veal*, 450 B.R. 897 (Bankr.9th Dist.Ariz.2011), as follows:

> **{¶54}** [A] person becomes a nonholder in possession if the physical delivery of the note to that person constitutes a "transfer" but not a

> "negotiation." * * * Under the UCC, a "transfer" of a negotiable instrument "vests in the transferee any right of the transferor to enforce the instrument." [R.C. 1303.22(B).] As a result, if a holder transfers the note to another person by a process not involving an Article 3 negotiation * * * that other person (the transferee) obtains from the holder the right to enforce the note even if no negotiation takes place and, thus, the transferee does not become an Article 3 "holder." *Brown, supra,* at ¶36, quoting *Veal* at 911.

{¶55} To further explain the point, the Second District in *Brown* quoted *Fifth Third Mtge. Co. v. Bell*, 12th Dist. Madison No. CA2013-02-003, 2013-Ohio-3678, a case strikingly similar to the one before us, as follows:

> **{¶56}** [Fifth Third's] allegations that it was in possession of a note and entitled to enforce it, combined with the copy of the unendorsed note, at the very minimum, demonstrated that [Fifth Third] was entitled to enforce as a nonholder in possession. *See* R.C. 1303.22(B) * * *. The note attached to the complaint was payable to State Savings Bank. Therefore, State Savings Bank was the initial holder because the note was payable to it as an identified person. R.C. 1303.25(A). The fact that [Fifth Third] was in possession of the unendorsed note along with * * * the assignment of the mortgage [to Fifth Third] * * * indicated that State Savings Bank or some other person transferred the note to [Fifth Third] with the intent that [Fifth Third] be entitled to enforce the note. * * * Based on these facts,

> [Fifth Third] had an interest in the note as a non-holder in possession. *Brown* at ¶37, quoting *Bell* at ¶20-22.

{¶57} Ohio Appellate Districts have repeatedly held that a note can be transferred by assignment of a contemporaneous mortgage. In *Dobbs*, *supra*, the Fifth District held that the assignment of a mortgage, without an express transfer of the note, is sufficient to transfer both the mortgage and the note, if the record indicates that the parties intended to transfer both. *Id*. at ¶31. This court found the Fifth District's reasoning in *Dobbs* to be persuasive and followed it in several cases, including *Self Help, supra,* at ¶39. The intent to keep the instruments together is demonstrated where the note and mortgage cross-reference each other. *Dobbs* at ¶36.

{¶58} Here, the note attached to the complaint was payable to Hickman, which then endorsed the note to Flagstar, a non-party. Thus, Flagstar, not Nationstar, was a holder of the note. However, Mr. Robinson stated in his affidavit that at the time of the filing of the complaint, and continuously since, Nationstar has been in possession of the promissory note. Mr. Robinson's testimony that Nationstar has been in possession of the note since the complaint was filed along with the assignment of the mortgage to Nationstar indicated that Flagstar or some other entity transferred the note to Nationstar with the intent that Nationstar be entitled to enforce the note. Moreover, the note and mortgage cross-reference each other, indicating the parties to the original transaction intended to keep the mortgage and note together. Thus, Nationstar had an interest in the note as a nonholder in possession.

{¶59} We therefore hold that, even though Nationstar did not have an interest in the note as a holder, Nationstar's continuous possession of the note since the complaint

was filed along with the assignment of the mortgage to it were sufficient to transfer both the mortgage and the note to Nationstar. Thus, Nationstar had the right to enforce the note as a nonholder in possession with the rights of a holder. And, since the mortgage and note were transferred to Nationstar before the complaint was filed, it had standing.

{¶60} Alternatively, even if Nationstar did not have an interest in the note when the complaint was filed, MERS' assignment of the mortgage to Nationstar was sufficient to give it standing. *Schwartzwald, supra*. Thus, Nationstar also had standing to file this action based on its interest in the mortgage.

{¶61} In summary, Nationstar established it had standing to file this action based on its status as a nonholder of the note in possession and/or as the assignee of the mortgage, and appellants failed to present any countervailing evidence. We therefore hold the trial court did not err in entering summary judgment in favor of Nationstar.

{¶62} For the reasons stated in the opinion of this court, the assignment of error is overruled. It is the judgment and order of this court that the judgment of the Trumbull County Court of Common Pleas is affirmed.

THOMAS R. WRIGHT, J., concurs,

COLLEEN MARY O'TOOLE, J., concurs in judgment only.