[Cite as ***Wells Fargo Bank, NA v. Reed*, 2009-Ohio-7055.]**

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

WELLS FARGO BANK, NA, AS TRUSTEE :

Plaintiff-Appellee : C.A. CASE NO. 23136

v. : T.C. NO. 08 CV 1936

JOHN L. REED, et al. : (Civil appeal from Common Pleas Court)

Defendants-Appellants :

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O P I N I O N

Rendered on the 30th day of December, 2009.

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JOHN A. REED, 7940 Guilford Drive, Dayton, Ohio 45414
Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} This matter is before the court on the pro se notice of appeal of John A. Reed ("Son"), filed December 9, 2008. Son appeals from the November 13, 2008 Decision of the trial court finding that Wells Fargo Bank, NA, as trustee for Securitized Asset Backed Receivables LLC 2006-OPI Mortgage Pass-Through Certificates, Series 2006-OPI ("Wells Fargo"), is

entitled to a decree of foreclosure on property located at 7940 Guilford Dr., in Dayton.

{¶ 2} Wells Fargo filed its Complaint in Foreclosure on February 27, 2008, against, in relevant part, John L. Reed ["Father"], Son, and Donna D. Reed. Donna Reed was married to Father and is now deceased.

{¶ 3} Wells Fargo filed a motion for summary judgment in July, 2008, arguing that Son was estopped from preventing foreclosure because he had forged the signature of his Father on the mortgage and promissory note at issue. Wells Fargo also argued that it was entitled to an equitable lien and to have the property deemed to be in a constructive trust for Wells Fargo's benefit. Father opposed the motion and filed a motion for summary judgment, and Son opposed Well Fargo's motion.

{¶ 4} On August 26, 2008, the trial court denied the dispositive motions filed by Wells Fargo and Father. The trial court determined, there "is a dispute of fact as to who signed the mortgage and note, and who retained the proceeds of the mortgage. It appears the funds were deposited in an account for [Son], but a check was made out to cash for the majority of the funds. The Court cannot tell at this point in time if [Father] signed the mortgage and/or note, or received any of the proceeds from the same. The property was transferred from [Son] to [Father], and then back again to [Son]. The Court cannot say, at this time, that [Son] and/or [Father] are not liable for the mortgage and/or note, or that Plaintiff is entitled to foreclose on the property until the disputes of fact are resolved."

{¶ 5} The matter proceeded to a bench trial on October 1, 2008.

{¶ 6} In its decision following trial, the trial court incorporated Wells Fargo's proposed findings of fact, filed on October 15, 2008, which provide as follows:

{¶ 7} "[Son], at all relevant times, has lived at the real property known as 7940 Guilford Drive, Dayton, Ohio. [Father] is [Son's] 81 year old father and has never lived at the property * * * . On June 9, 2006, [Son] executed a promissory note ('Note') and mortgage ('Mortgage') in favor of H&R Block Mortgage Corporation that purported to be from 'John L. Reed, a single man.' [Father] did not execute the Mortgage and Note and has no interest in the property [at issue] as of the date of execution or recordation of the Mortgage.

{¶ 8} "The loan proceeds underlying the promissory note and mortgage were disbursed as follows:

{¶ 9} "(1) $9,546.03 was used to satisfy delinquent real estate taxes underlying Montgomery County Case Number 2005 CV 3529;

{¶ 10} "(2) $44.00 was used to pay court costs [in the above matter];

{¶ 11} "(3) the remaining $83,855.89 was paid to [Son].

{¶ 12} "[Son] deposited the money in an account at People Savings Bank on or about June 15, 2005. [Son] withdrew $78,000.00 from the account on or about June 20, 2005.

{¶ 13} "H&R Block Mortgage Corporation subsequently assigned the debt underlying the Note and Mortgage to Option One Mortgage Corporation ('Option One'). Option One then sold the Note and Mortgage to Barclays Bank PLC. Barclays Bank PLC, in turn, sold the debt underlying the Note and Mortgage to Securitized Asset Backed Receivables LLC. On January 26, 2006, Securitized Asset backed Receivables LLC deposited the debt underlying the Note and Mortgage into Trust, with Plaintiff Wells Fargo Bank, National Association acting as Trustee for the Trust. Plaintiff Wells Fargo Bank, National Association as Trustee for Securitized Asset Backed Receivables LLS 2006-OPI Mortgage Pass-Through Certificates, Series 2006-OPI

('Wells Fargo') became the holder of the Note and Mortgage as of January 26, 2006.

{¶ 14} "[Son] defaulted on the Note and Mortgage in September, 2007 as a result of non-payment. Plaintiff Wells Fargo then accelerated the debt. There is due on the Note, the principle balance of $98,0871.91, with interest at the rate of 10.6400 per annum from August 1, 2007, together with advances for taxes, insurance and otherwise expended [sic], plus costs."

{¶ 15} The trial court then entered the following conclusions of law: Wells Fargo "is entitled to a decree of foreclosure. The Court finds that [Son] is estopped to contest foreclosure of the mortgage based on his acceptance of the proceeds of the mortgage for his own purposes, and his signing of the Mortgage and Note in the name of [Father].

{¶ 16} "Further, the Court also finds that Plaintiff Wells Fargo is entitled to an equitable lien and a constructive trust as to the property [at issue], and is entitled to foreclose said equitable lien and constructive trust. * * * ."

{¶ 17} Wells Fargo filed a Motion to Dismiss Son's appeal due to his failure to properly file and cite to a transcript of the proceedings below in his brief. Son's brief is 35 pages long, and it contains an additional 60 pages devoted to exhibits, and 8 pages listing multiple authorities. It does not set forth specific assignments of error. On June 1, 2009, we overruled Wells Fargo's motion to dismiss, and we granted Son an extension of time to file a transcript. Our Decision and Entry provides in part, "Appellant shall have thirty (30) days from the journalization of this entry to (1) make arrangements for the filing of the transcript in accordance with App.R. 9(A) and (2) amend his brief to include the necessary citations from the trial transcript."

{¶ 18} On June 10, 2009, Son filed a DVD recording of the proceedings below, but he

did not file a written transcript. Son filed, on June 29, 2009, a document styled "Addendums & Am[e]ndments to Appellate Brief," as well as a third document, on August 10, 2009, which contains sections entitled "Statement of the Case," "Argument," "Statement of Assignments of Error," enumerating 18 "errors," "Argument in response to Plaintiff's listed Authorities," and "Conclusion." Neither document contains citations to the transcript of the trial.

{¶ 19} "Litigants who choose to proceed pro se are presumed to know the law and correct procedure, and are held to the same standard as other litigants." *Yocum v. Means*, Darke App. No. 1576, 2002-Ohio-3803. A litigant proceeding pro se "cannot expect or demand special treatment from the judge, who is to sit as an impartial arbiter." Id. (Internal citations omitted).

{¶ 20} App.R. 16 provides,

{¶ 21} "(A) Brief of the appellant

{¶ 22} "The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

{¶ 23} "(1) A table of contents, with page references.

{¶ 24} "(2) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where cited.

{¶ 25} "(3) A statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected.

{¶ 26} "(4) A statement of the issues presented for review, with references to the assignments of error to which each issue relates.

{¶ 27} "(5) A statement of the case briefly describing the nature of the case, the course

of proceedings, and the disposition in the court below.

{¶ 28} "(6) A statement of facts relevant to the assignments of error presented for review, with appropriate references to the record in accordance with division (D) of this rule.

{¶ 29} "(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

{¶ 30} "(8) A conclusion briefly stating the relief sought.

{¶ 31} "* * *

{¶ 32} "(D) References in brief to the record

{¶ 33} "References in the briefs to parts of the record shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p.2, Transcript p. 231. * * * "

{¶ 34} Son's failure to comply with App.R. 16 is grounds to strike his brief or sua sponte dismiss his appeal. *Daimler Chrysler Financial Services Americas v. Humphrey*, Champaign App. No. 2007 CA 39, 2008-Ohio-5903, ¶ 9. Further, App.R. 9(A), to which we directed Son's attention, provides in part, " The original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases. * * * When the transcript of proceedings is in the videotape medium, counsel shall type or print those portions of such transcript necessary for the court to determine the questions presented, certify their accuracy, and append such copy of the portions of the transcripts to their briefs." "A party challenging a trial court's judgment has the duty under

App.R. 9(B) and 10(A) to properly file a record of the proceedings with the reviewing court to demonstrate its claims of error. *Rose Chevrolet, Inc. V. Adams* (1988), 36 Ohio St.3d 17, 19 * * * . 'When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm.' *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 200 * * * ." *Chester v. Commsys, Inc.* (April 7, 2000), Montgomery App. No. 17793.

{¶ 35} Son's brief does not comply with the appellate rules and our previous order, and given the absence of a written transcript of the record, we must presume the validity of the trial court's proceedings and affirm.

Judgment affirmed.

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BROGAN, J. and FROELICH, J., concur.

Copies mailed to:

Amelia A. Bower
David Van Slyke
John A. Reed
Hon. Timothy N. O'Connell