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2013 IL App (3d) 120007-U

Order filed January 15, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

RESIDENTIAL CREDIT SOLUTIONS, INC.) Appeal from the Circuit Court
) of the 21st Judicial Circuit,
Plaintiff-Appellee,) Kankakee County, Illinois,
)
v.) Appeal No. 3-12-0007
) Circuit No. 10-CH-275
)
ADRIENNE JARRETT,) Honorable
) Ronald J. Gerts,
Defendant-Appellant.) Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justice Carter concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held:* The trial court did not err by granting summary judgment in favor of the mortgage servicer because counsel for defendant did not challenge the mortgage servicer's standing in the trial court. The *pro se* notice of appeal was proper, but any issue regarding standing was forfeited for purposes of appeal.

¶ 2 Defendant, Adrienne Jarrett (Jarrett), appeals the trial court's orders granting summary judgment in favor of plaintiff, Residential Credit Solutions, Inc. (Residential Credit), and entering a judgment of foreclosure against Jarrett. On appeal, Jarrett argues the trial court erred

by granting summary judgment in favor of Residential Credit because there was a genuine issue of material fact as to whether Residential Credit, as the mortgage servicer, had standing to foreclose on the mortgage. After concluding Jarrett's counsel forfeited this argument by failing to raise the issue of standing in the trial court, we affirm.

¶ 3

FACTS

¶ 4 On May 10, 2010, Residential Credit filed a mortgage foreclosure complaint against Jarrett alleging Jarrett signed a mortgage on March 5, 2008 for the property located at 596 Moore Street in Kankakee, Illinois, but, beginning on February 1, 2010, failed to pay the monthly installments pursuant to the mortgage agreement. The complaint further alleged Residential Credit was a “mortgagee” with the legal capacity to foreclose on the mortgage in question.¹ A copy of the mortgage was attached to the complaint. The mortgage identified Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for the lender, BankUnited, FSB, and specifically named MERS as a mortgagee with the power to foreclose in the property.

¶ 5 On January 7, 2011, attorney Michael J. Duval (Duval) filed an answer to the mortgage foreclosure complaint on Jarrett’s behalf which neither admitted nor denied Residential Credit, the mortgage servicer, had standing to foreclose on the mortgage. Duval did not file any affirmative defenses on behalf of Jarrett.

¶ 6 On May 6, 2011, Residential Credit filed a motion for an order of default against Jarrett. The trial court continued the case on May 11, 2011, because Residential Credit failed to serve Duval with the motion for default.

¹Jarrett was personally served with the summons and complaint on May 12, 2010, and the summons identified Residential Credit as the “mortgage servicer.” Jarrett filed a *pro se* appearance on June 8, 2010.

¶ 7 On June 8, 2011, the attorney for Residential Credit advised the court he would be filing a motion for summary judgment. On the next status date of June 29, 2011, an attorney for Residential Credit and an attorney from Duval's firm appeared before the court and agreed to a briefing schedule for the motion for summary judgment.

¶ 8 On September 21, 2011, the parties appeared for a status hearing when the trial court discovered that Residential Credit had not filed the motion for summary judgment with the court. On that date, Residential Credit served Duval with a copy of the motion for summary judgment in open court, and a new briefing schedule was set. Again, the matter was continued to November 30, 2011, to give the parties an opportunity to respond to the motion for summary judgment.

¶ 9 On July 1, 2011, Jarrett wrote a letter to the Attorney Registration & Disciplinary Commission of the Supreme Court of Illinois (ARDC) requesting the ARDC investigate her claims that Duval misappropriated her funds and performed unsatisfactory work on her behalf. In response, the ARDC asked Jarrett to keep the ARDC informed of Duval's conduct as the foreclosure case progressed. Duval eventually admitted to his misconduct in proceedings currently pending before the ARDC.

¶ 10 On November 30, 2011, Duval was not present in court and had not filed a written response to the motion for summary judgment he received on September 21, 2011. The court indicated Duval had the "stomach flu" and was unable to appear in court that day. Jarrett asked the court for an additional 28 days to hire another attorney.

¶ 11 The court denied this request for continuance after stating it had been "waiting forever for Mr. Duval to do things in this case" and acknowledging the existence of "a rather long line in

[sic] complaints against Mr. Duval.” The court also stated, “I can’t keep delaying your case for that reason.” The court denied Jarrett's request for a continuance after her attorney failed to appear, granted Residential Credit’s motion for summary judgment without argument from either party, and entered a judgment of foreclosure.² The court informed Jarrett that she had 90 days to hire another lawyer to “upset the foreclosure” during the period of redemption. Jarrett appealed by filing a *pro se* notice of appeal on December 30, 2011.

¶ 12

ANALYSIS

¶ 13 On appeal, Jarrett makes two different, but related, arguments. First, she argues the trial court erred by granting the motion for summary judgment because Residential Credit lacked standing to file the mortgage foreclosure complaint. Second, she argues summary judgment was improper because Residential Credit failed to attach documentation to the complaint showing the assignment of the mortgage from either BankUnited, FSB, or MERS to Residential Credit, in violation of section 2-606 of the Code of Civil Procedure. 735 ILCS 5/2-606 (West 2010).

¶ 14 Residential Credit responds by arguing that this court does not have jurisdiction to hear the appeal because Jarrett filed a *pro se* notice of appeal at the time she was technically still represented by Duval. In addition, Residential Credit argues that it had standing, as the mortgage servicer, to file the mortgage foreclosure complaint. Residential Credit also contends Jarrett forfeited any issue pertaining to Residential Credit’s standing for purposes of this appeal because the issue was not raised in the trial court.

¶ 15 First, we consider the validity of the *pro se* notice of appeal. Illinois Supreme Court Rule 303(a) (eff. June 4, 2008) provides that a notice of appeal must be filed 30 days after entry of a

² For some reason, the trial court also entered an order of default against Jarrett as well.

final judgment in the trial court. In this case, Jarrett’s counsel failed to act on her behalf by responding to the motion for summary judgment, or appearing to oppose the motion for summary judgment, before the court entered a judgment of foreclosure against her. Based on these circumstances, Jarrett was justified in filing her own *pro se* notice of appeal in order to comply with the strict timeliness requirements for filing a notice of appeal. See *People v. Stanford*, 2011 IL App 2d 090420, ¶ 25 (defendant was not unreasonable in filing *pro se* notice of appeal and postjudgment motion where appointed counsel was preoccupied with his own surgery and recovery). Accordingly, we reject the notion that this court is without jurisdiction to consider this appeal.

¶ 16 Next, Jarrett contends Residential Credit did not have standing as the mortgage servicer to file the complaint for a judgment of foreclosure. Residential Credit does not argue that it was assigned the loan. Rather, directing this court to *Mortgage Electronic Registration Systems, Inc. v. Barnes*, 406 Ill. App. 3d 1, 7 (2010), Residential Credit argues a mortgage servicer qualifies as a “mortgagee” with the power to file a foreclosure action under the Illinois Mortgage Foreclosure Law because the case law provides that a “mortgagee” is anyone designated or authorized to act on behalf of the mortgage holder. *Id.*

¶ 17 However, the facts at issue in *Mortgage Electronic Registration Systems, Inc.* are distinguishable from the facts in the case at bar. The mortgage in that case granted MERS the power to foreclose on the mortgage but the language of the mortgage at issue in this case indicates that MERS, *not* Residential Credit, was given the authority to foreclose on the mortgage. Thus there appears to be merit to Jarrett’s argument that Residential Credit lacked standing to file the foreclosure complaint in this case.

¶ 18 Nonetheless, the record reveals that the answer to the complaint, prepared by Duval, did not deny Residential Credit's allegation that it was the “mortgagee” with capacity to foreclose on the property. Moreover, Duval did not file an affirmative defense challenging Residential Credit’s standing, nor did he respond to the motion for summary judgment. The case law provides that issues which were not addressed in the trial court will not be considered on appeal, even in summary judgment cases. *Chandler v. Doherty*, 299 Ill. App. 3d 797, 806 (1998). *Id.*

¶ 19 We are not unsympathetic to the fact that Jarrett hired an attorney who, self-admittedly, failed to provide her with any meaningful representation. Yet, the case law provides that a client is bound by the acts or omissions of her attorney during the course of the attorney’s legal representation. *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 9 (2004). Therefore, since the trial court was not asked to deny the motion for summary judgment based on Residential Credit’s lack of standing, we conclude this issue has been forfeited for purposes of appeal.

¶ 20 We note that Jarrett does not allege that the trial court abused its discretion by denying her request to secure another attorney to file a response to the motion for summary judgment, although she refers to the trial court’s refusal to allow her request for a continuance in her brief on appeal. Jarrett does not contend this is a basis for reversing the ruling on summary judgement. Therefore, based on the issues raised in this appeal, we affirm the decision of the trial court awarding summary judgment in favor of Residential Credit following Jarrett's failure to respond to the motion for summary judgment.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Kankakee County is affirmed.

¶ 23 Affirmed.

¶ 24 JUSTICE McDADE, dissenting.

¶ 25 Although our decision appears to be technically correct, I dissent from the judgment because I do not believe it adequately comports with our traditional notions of due process. It is, in my opinion, neither fair nor fundamentally just.

¶ 26 We have: a complaint and motion for summary judgment asserting, without challenge but contrary to the mortgage documents in the record, that the plaintiff has standing to foreclose the defendant's mortgage; an attorney who actually and admittedly did nothing for his client except file a generic answer; a client who reported to the Attorney Registration and Disciplinary Committee the attorney's dereliction and alleged misappropriation of her funds; a trial judge whose comments suggested that he knew about the attorney's shortcomings and nonetheless refused to give his client time to seek other counsel, instead holding her responsible for all of the litigation delay – even though the *plaintiff* (1) caused the continuance of a motion hearing by failing to serve notice on opposing counsel and (2) failed to timely file its summary judgment motion, necessitating a new delayed briefing schedule. I would find that the refusal to allow the defendant time to retain new counsel in this factual context was an abuse of the court's discretion.

¶ 27 The net effect of these circumstances is that the defendant has lost her house without having had her day in court. We ought to be able to do better than that.