2012 IL App (4th) 110452–U

Filed 3/23/12

NO. 4-11-0452

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

CARLINVILLE NATIONAL BANK, n/k/a CNB BANK AND TRUST, N.A., a National Banking Association, Plaintiff-Appellee, v. JERRY L. WOLTMAN, Defendant-Appellant, and REGIONS BANK, as Trustee Under the Provisions of a Trust Agreement Dated October 24, 2005, and Known as Trust No. 90-D587-00; FIRST FINANCIAL BANK, N.A.; MIDLAND STATES BANK, as Trustee of a Trust Known as Trust No. 1856; and UNKNOWN OWNERS AND NONRECORD CLAIMANTS, Defendants.	)	Appeal from Circuit Court of Clark County No. 07CH23 Honorable David W. Lewis, Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices McCullough and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, concluding that (1) defendant had no standing to challenge the timing of the court's decision regarding a motion for substitution of judge and (2) the court did not err by granting summary judgment in plaintiff's favor.

¶ 2 In August 2007, plaintiff, Carlinville National Bank, n/k/a CNB Bank and Trust, N.A., sued to foreclose on two parcels of land that defendant, Jerry L. Woltman, mortgaged to secure a $150,000 loan. The first parcel was held in trust by defendants, First Financial Bank, N.A., and Midland States Bank, and the second parcel was held in trust by defendant, Regions

Bank. (This appeal pertains only to the parcel of land held in trust by Regions Bank.)

¶ 3 In October 2010, the trial court granted Carlinville's motion for summary judgment and ordered a judicial sale of the parcel at issue. Following the subsequent filing and adjudication of numerous postjudgment motions, Woltman *pro se* filed, purportedly on behalf of Regions Bank, a motion for substitution of judge for cause, which the court later denied. In May 2011, Woltman *pro se* filed two separate motions, requesting that the court (1) vacate its denial of certain postjudgment motions and (2) reconsider its denial of his motion for substitution of judge for cause. The court later denied both of Woltman's pleadings.

¶ 4 Woltman *pro se* appeals, arguing that the trial court erred by (1) ruling on a post-judgment motion while his motion for reconsideration of substitution of judge for cause was pending and (2) granting summary judgment in Carlinville's favor. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 In 1999, Woltman mortgaged a parcel of land to secure a $150,000 loan from Carlinville. In August 2007, Carlinville filed a complaint, seeking a judgment of foreclosure on that parcel, which was held in trust by Regions Bank. In October 2007, Woltman and Regions Bank filed separate motions to dismiss Carlinville's suit, which the trial court later denied. In July 2008, Carlinville filed a motion, seeking possession of the parcel, its crops, and associated income pursuant to the terms of the mortgage agreement. Following an August 2008 hearing, the court granted Carlinville's motion.

¶ 7 In September 2008, Woltman filed a petition for bankruptcy in the United States Bankruptcy Court for the Central District of Illinois. In December 2008, the bankruptcy court (1) dismissed Woltman's petition with prejudice, concluding that Woltman had not filed the petition

in good faith and (2) enjoined Woltman from filing any other action for 24 months "to prevent further abuse of the bankruptcy process ***." In re Woltman, No. 08-91793 (Bankr. C.D. Ill. Dec. 31, 2008).

¶ 8 On February 24, 2009, the trial court granted a motion to withdraw filed earlier that month by counsel who had been representing both Woltman and Regions Bank. The court's associated order mandated that Woltman "file a supplemental entry of appearance or retain new counsel within 21 days." At a March 6, 2009, hearing, at which Woltman appeared *pro se*, the court granted Carlinville's motion to strike the amended affirmative defenses Woltman and Regions Bank had earlier pled in their answer to Carlinville's foreclosure complaint.

¶ 9 In July 2009, Woltman *pro se* filed a motion for substitution of judge for cause under section 2-1001(a)(3) of the Code of Civil Procedure (735 ILCS 5/2-1001(a)(3) (West 2008)), alleging that the trial judge, David W. Lewis, was prejudiced. Specifically, Woltman claimed that he (1) was not afforded 21 days to retain different counsel before being "forced" to appear at the March 6, 2009, hearing on Carlinville's motion to strike his amended affirmative defenses and (2) "noticed a particular attitude" that the court displayed against him after July 2008. Following a September 2009 hearing, a different judge, James K. Borbely, denied Woltman's motion, finding Woltman had failed to show any prejudice.

¶ 10 That same month, Carlinville filed a motion for summary judgment, claiming that neither Woltman nor Regions Bank contested (1) the authenticity of the loan instruments at issue or (2) Carlinville's claim that it legally held those instruments. Attached to Carlinville's petition was an affidavit from its (1) vice president, outlining the original terms and current status of the loan made to Woltman and (2) general counsel, detailing the legal fees Carlinville had incurred

since filing its foreclosure suit.

¶ 11 On October 14, 2009, the trial court disposed of the following issues Woltman *pro se* had raised: (1) denied a motion for reconsideration of the court's decision to strike amended affirmative defenses (filed April 6, 2009); (2) dismissed a motion for indirect civil contempt (filed April 9, 2009); (3) rejected a motion to have "separate hearing on separate cases" (filed April 22, 2009) as "unnecessary and without merit"; (4) denied a motion for leave to amend the amended affirmative defenses (filed April 23, 2009) because no proposed amendment was attached; (5) struck a motion, on behalf of Regions Bank as "P.O.A.," to admit and deny facts (filed April 23, 2009); (6) struck an entry of appearance on behalf of another party (filed April 23, 2009) because Woltman was not an attorney; (7) denied as baseless a motion for indirect civil contempt (filed July 27, 2009); (8) denied two motions for leave to file counterclaim (filed September 21 and 29, 2009) because no proposed counterclaim was attached; (9) granted a "motion *** to amend the affidavit for the motion for indirect civil contempt filed on September 21, 2009" (filed September 29, 2009); and (10) granted a "motion *** to amend the affidavit for the motion for indirect civil contempt against Carlinville Bank" (filed October 5, 2009).

¶ 12 On October 26, 2009, Woltman *pro se* filed a motion, seeking reconsideration of his motion for substitution of Judge Lewis for cause. Because Judge Borbely, who denied Woltman's July 2009 motion for substitution of judge for cause, had retired, the matter was assigned to Judge Joseph P. Skowronski, Jr. After several continuances but before Judge Skowronski reconsidered Judge Borbely's denial, Woltman *pro se* filed another motion for substitution of judge for cause. In that January 2010 motion, Woltman argued that Judge Skowronski interfered with his ability to get original copies of the September 2009 hearing

before Judge Borbely on his motion for substitution of Judge Lewis for cause. Following a February 4, 2010, hearing on Woltman's motion for substitution of Judge Skowronski for cause, a different judge, Gordon R. Stipp, denied Woltman's motion. Five days later, Woltman *pro se* filed (1) a motion requesting reconsideration of Judge Stipp's denial and (2) a motion requesting leave to amend an earlier motion that Woltman filed on October 27, 2009, seeking to dismiss Carlinville's summary-judgment motion. At a hearing held later that same month, (1) Judge Stipp denied Woltman's motion for reconsideration and (2) Judge Skowronski denied Woltman's request to reconsider Judge Borbely's denial.

¶ 13 Following a hearing on October 26, 2010, the trial court granted, in pertinent part, Carlinville's motion for summary judgment and ordered a judicial sale of the parcel.

¶ 14 On November 29, 2010, Woltman *pro se* filed the following postjudgment pleadings: (1) motion for hearing to reconsider and vacate foreclosure sale; (2) motion to void the judgment of foreclosure; and (3) motion for sanctions against the Clark County Circuit Clerk, Carlinville, Carlinville's counsel, and to void the judgment of foreclosure sale. On February 3, 2011—while his November 2010 motions were pending—Woltman *pro se* filed a supplemental motion for substitution of judge as a matter of right pursuant to section 2-1001(a)(2) of the Code (735 ILCS 5/2-1001(a)(2) (West 2010)), seeking the removal of Judge Lewis. Thereafter, Woltman *pro se* filed several motions, in part, seeking (1) to add Judge Lewis as a party, (2) strike an affidavit Carlinville attached to its summary-judgment motion, (3) damages against the attorney who represented him in his bankruptcy case, and (4) several motions attacking the trial court's judgment of foreclosure.

¶ 15 On April 13, 2011, the trial court entered an order that (1) denied several of

Woltman's motions, including his supplemental motion for substitution of judge as a matter of right, (2) severed the motions seeking sanctions against the Clark County Circuit Clerk and Carlinville's counsel, and (3) directed the clerk to refile the severed motions as separate cases. The court then scheduled an April 29, 2011, hearing to consider Woltman's remaining post-judgment motions.

¶ 16 On April 21, 2011, Woltman *pro se* filed a motion for substitution of Judge Lewis for cause purportedly on behalf of Regions Bank. Specifically, Woltman claimed, in pertinent part, that Judge Lewis was prejudiced against Regions Bank because Judge Lewis had denied numerous motions Woltman had filed. On April 27, 2011, the trial court denied Woltman's motion, finding that "[n]o valid allegation is made to meet the threshold necessary to require another judge to hear this motion." At the April 29, 2011, hearing—at which Woltman failed to appear—the court denied Woltman's remaining postjudgment motions.

¶ 17 On May 19, 2011, Woltman *pro se* filed a "motion to have the hearing of April 29, 2011, vacated and all motions reheard." The next day, Woltman *pro se* filed a motion requesting reconsideration of the trial court's denial of his motion for substitution of Judge Lewis for cause that he filed purportedly on behalf of Regions Bank. On May 23, 2011, the court denied both motions in the order they were filed. Four days later, the court—by docket entry—reaffirmed its denial of Woltman's motion to vacate the court's April 29, 2011, order, noting that "the continued filings of *** Woltman are intended to do nothing more than cause delay."

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 A. The Timing of the Trial Court's Denial of Woltman's Motion To Reconsider the Denial of His Motion for Substitution of Judge for Cause

¶ 21 Woltman argues that the trial court erred by ruling on a postjudgment motion while his motion for reconsideration of substitution of judge for cause was pending. Specifically, Woltman contends that the court's denial of his motion to vacate the court's April 29, 2011, order is void because the court had yet to rule on his motion requesting reconsideration of the denial of his motion for substitution of Judge Lewis for cause that he filed purportedly on behalf of Regions Bank. Because Woltman bases his claim of error on a right afforded to Regions Bank, we conclude that Woltman lacks standing to assert this claim.

¶ 22 Section 2-1001(a)(3) of the Code, pertaining to substitution of judge for cause, provides as follows:

> "(3) Substitution for cause. When cause exists.
>
> (i) Each party shall be entitled to a substitution or substitutions of judge for cause.
>
> (ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant.
>
> (iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon

> as possible by a judge other than the judge named in the petition. ***." 735 ILCS 5/2-1001(a)(3) (West 2008).

¶ 23 The issue of standing concerns whether the litigant, either in an individual capacity or in a representative capacity, is entitled to have a court decide the merits of a claim. *Powell v. Dean Foods*, 2012 IL 111714, ¶ 36, WL 169759 at *6. Generally, a party cannot claim an error that does not prejudicially affect that party. *Id*. Instead, standing requires parties to assert their own legal rights instead of asserting claims based upon the rights of third parties. *Id*. A party is defined as "[o]ne by or against whom a lawsuit is brought." Black's Law Dictionary 1144 (7th ed. 1999).

¶ 24 In *Aussieker v. City of Bloomington*, 355 Ill. App. 3d 498, 502-03, 822 N.E.2d 927, 930-31 (2005), this court addressed the issue of standing, albeit in the context of a motion for substitution of judge as a matter of right. In that case, we held that although the trial court erroneously denied a party's right to substitution of judge, the remaining 16 plaintiffs did not have standing to raise the court's error because that erroneous ruling did not affect them. *Id*. See *Powell*, 2012 IL 11714, ¶ 43, WL 169759 at *8 (where the supreme court agreed with this court's decision that the 16 plaintiffs in *Aussieker* did not have standing to assert the rights of another party because the trial court's erroneous ruling did not affect them).

¶ 25 We first note that although Woltman filed a motion for substitution of judge for cause purportedly on behalf of Regions Bank, "a corporation[] must be represented by counsel in legal proceedings." *Siakpere v. City of Chicago*, 374 Ill. App. 3d 1079, 1080-81, 872 N.E.2d 495, 497 (2007). See *Edwards v. City of Henry*, 385 Ill. App. 3d 1026, 1036, 924 N.E.2d 978,

988 (2008) ("A corporation may not initiate actions in courts of this state unless the corporation is represented by an attorney"). Here, Woltman was not an attorney and thus, his representation of Regions Bank would have constituted "the unauthorized practice of law rendering the pleading a nullity and any judgment entered on it void." *Id.*

¶ 26 In this case, the issue of whether the trial court erred by denying Woltman's motion to reconsider the court's denial of his motion for substitution of judge for cause purportedly on behalf of Regions Bank is not before us. Instead, Woltman complains about the timing of that denial, alleging that the court should have addressed his motion for reconsideration before denying his motion to vacate the court's April 2011 order. In support of his claim, Woltman cites several cases for the proposition that a pending motion for substitution of judge prohibits that judge from making further rulings. See *People v. Harvey*, 379 Ill. App. 3d 518, 521, 884 N.E.2d 724, 728 (2008) (a judge sought to be replaced loses all power and authority to enter further orders in the case while the substitution motion is pending).

¶ 27 We conclude that Woltman has no standing to raise this claim because the court's ruling did not affect his right under section 2-1001(a)(3) of the Code to raise a substitution of judge for cause on his own behalf. Indeed, the record shows that Woltman (1) asserted his right to substitution of judge for cause on two previous occasions, (2) filed unsuccessful motions to reconsider the denial of those two claims, and (3) did not appeal those determinations. Here, Woltman bases his contention of error on Region Bank's right to substitution of judge for cause. However, the court's timing of its denial did not affect *Woltman's* right in this regard, and as we concluded in *Aussieker*, defendant lacks standing to claim the contrary.

¶ 28 B. The Trial Court's Grant of Summary Judgment

¶ 29 1. *Summary Judgment and the Standard of Review*

¶ 30 "Summary judgment is appropriate where the pleadings, affidavits, depositions, and admissions on file, when viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *West Bend Mutual Insurance v. Norton*, 406 Ill. App. 3d 741, 744, 940 N.E.2d 1176, 1179 (2010). We review *de novo* a trial court's ruling on a motion for summary judgment. *Benson v. Stafford*, 407 Ill. App. 3d 902, 911, 941 N.E.2d 386, 397 (2010). In determining whether the trial court reached the proper result, we need not confine ourselves to the court's rationale but may instead affirm the grant of summary judgment on any basis supported by the record. *Berglind v. Paintball Business Ass'n*, 402 Ill. App. 3d 76, 85, 930 N.E.2d 1036, 1043 (2010).

¶ 31 2. *Woltman's Summary-Judgment Claim*s

¶ 32 Woltman argues that the trial court erred by granting summary judgment in Carlinville's favor. Specifically, Woltman contends that (1) "the evidence in this case has established the property was sold at auction and [Carlinville's vice president] refused to release the mortgage," (2) Carlinville's failure to send notices to Regions Bank invalidates the court's grant of summary judgment, and (3) the affidavits attached to Carlinville's September 2009 motion for summary judgment failed to comply with Illinois Supreme Court Rule 191 (eff. July 1, 2002). For the following reasons, we disagree.

¶ 33 a. Woltman's Claim Regarding Carlinville's Refusal To Release the Mortgage

¶ 34 Woltman contends that "the evidence in this case has established the property was sold at auction and [Carlinville's vice president] refused to release the mortgage." In support of his contention, Woltman cites his October 27, 2009, "motion to dismiss the motion for summary judgment under 735 ILCS 5/2-619 [(West 2008)] and Strike the Two Affidavits." In that motion, Woltman asserted the following:

> "The thing that Carlinville *** and [its vice president] do not refer to in either the Complaint for Foreclosure or in the Motion for Summary Judgment is the [parcel at issue] was sold at public auction *** in 2003 during my first Chapter 12 bankruptcy. I paid [Carlinville's vice president] the money after the sale was closed in November 2003. The total of the sale paid to [Carlinville's vice president] was $35,392.50 less seller's costs. The amounts were paid in cash on six different dates. I thought [Carlinville's vice president] was going to release the mortgage after I paid him the amount on the sale of property."

In support of his motion to dismiss, Woltman attached an affidavit, asserting that he would testify to the aforementioned claim.

¶ 35 Although poorly pled, Woltman was essentially asserting the affirmative defense of payment, which is consistent with a motion to dismiss under section 2-619 of the Code. See 735 ILCS 5/2-613(d) (West 2008) (the affirmative defense of payment, which seeks to avoid or

defeat the cause of action, must be plainly set forth in the answer or reply); see also 735 ILCS 5/2-619(a)(6) (West 2008) (involuntary dismissal is appropriate if the claim set forth in the plaintiff's pleading has been released, satisfied of record, or discharged in bankruptcy).

¶ 36 In this case, however, the record shows that Woltman's claim is unsupported by any competent evidence, such as (1) written documentation setting forth the specific parameters of his agreement with Carlinville, (2) receipts showing that Woltman tendered the six payments to Carlinville, or (3) the appropriate filing documents showing the sale of the parcel and transfer of ownership. Simply put, Woltman urges this court to reverse the trial court's grant of summary judgment in Carlinville's favor based solely on his assertion that he tendered six payments to Carlinville that satisfied the loan obligation absent any competent evidence to support such a claim. We decline to do so.

¶ 37 b. Woltman's Claim Regarding Carlinville's Failure To Send Notices to Regions Bank

¶ 38 Woltman also contends that Carlinville's failure to send notices to Regions Bank invalidates the trial court's grant of summary judgment. We disagree.

¶ 39 By the plain language of his contention, Woltman attempts to invalidate the trial court's grant of summary judgment in Carlinville's favor by claiming a deprivation of a right held by a third party—in this case, Regions Bank. As we have previously explained, however, "[a] proponent must assert his own legal rights and interests, rather than basing his claim for relief upon the rights of third parties." *Town of Northville v. Village of Sheridan*, 274 Ill. App. 3d 784, 786, 655 N.E.2d 22, 24 (1995). Accordingly, because Woltman does not complain that he was deprived of *his* right to notice, we reject Woltman's claim without further analysis.

¶ 40 c. Woltman's Claim Regarding Carlinville's Failure To Comply with Supreme Court Rule 191

¶ 41 Woltman next contends that the affidavits attached to Carlinville's September 2009 motion for summary judgment failed to comply with Supreme Court Rule 191. We disagree.

¶ 42 Illinois Supreme Court Rule 191 provides that "affidavits in support of or in opposition to a motion for summary judgment must be made on the personal knowledge of the affiant and must not consist of conclusions, but of facts admissible in evidence, and must affirmatively show that the affiant could testify competently thereto." *American Service Insurance Co. v. China Ocean Shipping Co. (Americas) Inc.*, 402 Ill. App. 3d 513, 524, 932 N.E.2d 8, 19 (2010)).

¶ 43 In this case, Carlinville attached separate affidavits to its September 2009 motion for summary judgment, detailing (1) the history of the loan made by Carlinville's vice president—who personally managed and serviced the loan from its inception—buttressed by the appropriate business records and (2) a detailed accounting—by date, description, and tenth-of-hour-billing increments—of the legal costs incurred by the attorney responsible for managing Carlinville's suit against Woltman. Notwithstanding these detailed affidavits, Woltman asserts that the affiants' respective statements were made absent personal knowledge in violation of Rule 191. However, the verified affidavits at issue belie Woltman's bald assertion, and absent additional information, which Woltman has failed to provide, we reject his claim.

¶ 44 d. The Basis for Carlinville's Summary-Judgment Motion

¶ 45 Here, the basis for Carlinville's motion for summary judgment is that Woltman

mortgaged, in pertinent part, a tract of land held in trust by Regions Bank for a $150,000 loan that Woltman subsequently defaulted on, which under the terms of the loan agreement, entitled Carlinville to possession and sale of the parcel. The record reveals that aside from Woltman's aforementioned claims, which we have considered and rejected, Woltman neither contests the authenticity of the loan instruments at issue, the terms contained therein, Carlinville's claim that it legally held those instruments, nor disputes Carlinville's claim that Woltman defaulted on his monthly financial obligation. Accordingly, we conclude that the trial court did not err by granting summary judgment in Carlinville's favor.

¶ 46 In so concluding, we recognize the trial court's willingness to deal with what it correctly observed were numerous motions that Woltman filed in an attempt to delay Carlinville's foreclosure suit. While this court commends the trial court for its extraordinary patience, Woltman's groundless filings served only to deplete scarce judicial resources. Given the over four-year history of this litigation, perhaps the trial court should alert Woltman of the various options that the court can impose to deter such frivolous filings—and its willingness to employ such measures—if Woltman continues in this regard.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the trial court's judgment.

¶ 49 Affirmed.