

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Federal National Mortgage Association, :
Plaintiff-Appellee, :
v. : Nos. 11AP-1033
Richard C. Slavin and Melissa A. Slavin, : and 12AP-153
(C.P.C. No. 10CVE-11-17178)
Defendants-Appellants. : (REGULAR CALENDAR)

D E C I S I O N

Rendered on August 9, 2012

Lerner, Sampson & Rothfuss, and *Patricia K. Block*, for appellee.

Richard C. Slavin, pro se; *Richard C. Slavin*, for appellant
Melissa A. Slavin.

APPEALS from the Franklin County Court of Common Pleas

CONNOR, J.

{¶ 1} Defendants-appellants, Richard C. Slavin and Melissa A. Slavin ("appellants"), bring these two consolidated appeals from judgments rendered by the Franklin County Court of Common Pleas in a foreclosure action brought by plaintiff-appellee, Federal National Mortgage Association ("FNMA").

{¶ 2} FNMA filed its complaint on November 23, 2010, and perfected service on both appellants by personal service on December 5, 2010. Appellants filed a request for referral to foreclosure mediation and a motion for an extension of time to file their answer. By entry dated January 6, 2011, the trial court referred the matter for mediation,

and ordered that appellants' answer would be due no later than 28 days after completion of the mediation process.

{¶ 3} Mediation did not resolve the matter and on August 26, 2011, the case returned to the active docket. Appellants did not file an answer by the due date of September 23, 2011. FNMA filed for default judgment on October 11, 2011, and a certificate of service attached to this filing indicates service by ordinary mail on both appellants. The record does not contain any indication that the court or the clerk of court independently provided notice of the pending default judgment.

{¶ 4} On October 26, 2011, the trial court granted default judgment in favor of FNMA. Two days later, on October 28, 2011, appellants, apparently unaware of the court's judgment, entered a motion for leave to file their answer in the matter. Appellants then filed a timely notice of appeal to this court from the trial court's default judgment granting foreclosure. This initial notice of appeal gives rise to case No. 11AP-1033.

{¶ 5} Appellants also moved, pursuant to Civ.R. 60(B), for relief from judgment in the trial court. The trial court denied that motion by decision and entry entered January 27, 2012. Appellants have also timely appealed from this later judgment, giving rise to case No. 12AP-153. Appellants bring the following two assignments of error:

I. THE TRIAL COURT ERRED IN GRANTING A DEFAULT JUDGMENT AS THERE HAD ALREADY BEEN AN APPEARANCE BY APPELLANTS SLAVIN IN THE CASE. THUS, REQUIRING THAT APPELLANTS SLAVIN BE PROVIDED A HEARING AS TO APPELLEE'S MOTION FOR DEFAULT JUDGMENT.

II. THE TRIAL COURT ERRED WITH RESPECT TO APPELLANT[S]' SLAVIN 60(B) REQUEST AS RULE 60(B) ALLOWS FOR THE TRIAL COURT TO RECTIFY A MISTAKE IN THE PROCESS AS OCCURRED IN THE INSTANT CASE.

{¶ 6} Appellants' first assignment of error asserts that the trial court erred in granting default judgment in favor of FNMA. This assignment of error has merit and is sustained.

{¶ 7} The Franklin County Court of Common Pleas, by local rule, has imposed additional procedural safeguards in default judgment cases. Loc.R. 55.01 of the Franklin

County Court of Common Pleas provides that "[i]f the party against whom judgment by default is sought has appeared in the action, written notice of the hearing on the motion along with the date and time fixed by the Assignment Commissioner with the concurrence of the Trial Judge shall be served upon that party." Appellants' motion for referral to mediation and an extension of time to file an answer constituted an appearance in the case. *Union Sav. Bank v. Duffy*, 10th Dist. No. 11AP-927, 2012-Ohio-3232. While FNMA argues that in the present case its service upon appellants of the motion for default judgment provided sufficient notice that the motion would, pursuant to App.R. 55, be deemed submitted to the trial court seven days after filing, the trial court was not free to disregard its own local rule in the present case and proceed to grant default judgment without independently docketing the matter for a non-oral hearing and giving appellant notice of that date.

{¶ 8} While on the present facts that conclusion may seem to unduly raise procedure over substance in the case, our decision in *Cuervo v. Snell*, 10th Dist. No. 99AP-1442 (Sept. 26, 2000), is directly on point: " '[H]owever hurried a court may be in its efforts to reach the merits of a controversy, the integrity of procedural rules is dependent upon consistent enforcement because the only fair and reasonable alternative thereto is complete abandonment.' " *Id.*, quoting *Miller v. Lint*, 62 Ohio St.2d 209, 215 (1980). If a court, therefore, disregards the response time created by rule, this can constitute reversible error. *Id.*, citing *Gibson-Myers & Assoc. v. Pearce*, 9th Dist. No. 19358 (Oct. 27, 1999).

{¶ 9} In summary, we hold that the trial court erred in granting default judgment in favor of FNMA because the proceedings in the trial court did not comply with Loc.R. 55.01 of the Franklin County Court of Common Pleas.

{¶ 10} Appellants' second assignment of error addresses the propriety of the trial court overruling their motion for relief from judgment. In light of our disposition of the first assignment of error, the appeal in case No. 12AP-153 is rendered moot and is dismissed.

{¶ 11} In summary, appellants' first assignment of error is sustained, appellants' second assignment of error is rendered moot, the trial court's judgment appealed in case

No. 11AP-1033 is reversed and remanded to the trial court, and the appeal in case No. 12AP-153 is dismissed.

*Judgment reversed;
cause remanded in case No. 11AP-1033;
appeal dismissed in case No. 12AP-153.*

KLATT and TYACK, JJ., concur.
