

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
HURON COUNTY

Wells Fargo Bank, N.A.

Court of Appeals No. H-12-027

Appellee

Trial Court No. CVE 20120494

v.

Taffy L. Griffiths, et al.

**DECISION AND JUDGMENT**

Appellant

Decided: August 9, 2013

\* \* \* \* \*

Scott A. King and Richard A. Freshwater, for appellee.

Daniel L. McGookey, Kathryn M. Eyster, and Lauren McGookey,  
for appellant.

\* \* \* \* \*

**YARBROUGH, J.**

**I. Introduction**

{¶ 1} Appellant, Billy Griffiths, appeals the order of the Huron County Court of Common Pleas, granting default judgment against him in a foreclosure action.

### **A. Facts and Procedural Background**

{¶ 2} On October 28, 2003, appellant and his wife executed a promissory note, payment of which was secured by a mortgage in favor of The American Eagle Mortgage Corp. After the death of his wife, appellant used the social security checks his son received to make the mortgage payments. Unbeknownst to him, in January 2012, social security did not deposit the check and failed to deposit it for the following three months. It was then that appellant realized he was three months behind on his mortgage.

{¶ 3} On June 7, 2012, appellee, Wells Fargo Bank, N.A., filed a complaint seeking to recover the balance due on the promissory note and to foreclose the mortgage. Appellant failed to file an answer. Consequently, on August 28, 2012, Wells Fargo moved for default judgment. The trial court entered an order of default on September 20, 2012. This appeal ensued.

{¶ 4} Shortly thereafter, appellant requested that this court stay his appeal in order to file a Civ.R. 60(B) motion for relief from judgment in the trial court. We granted the stay and remanded the case back to the trial court. Appellant filed his Civ.R. 60(B) motion, which the trial court denied. On February 15, 2013, we reinstated appellant's appeal. Notably, appellant did not amend his original notice of appeal to include the trial court's denial of his Civ.R. 60(B) motion, nor did he separately appeal the denial of his Civ.R. 60(B) motion.

## B. Assignments of Error

{¶ 5} Appellant now raises one assignment of error:

1. The trial court erred in denying Griffitts' motion for relief from judgment and further erred when it failed to hold an evidentiary hearing.

## II. Analysis

{¶ 6} In his sole assignment of error, appellant contends that his Civ.R. 60(B) motion was improperly denied. Appellee, on the other hand, argues that because the Civ.R. 60(B) motion is a final appealable order, in order to be considered, the original notice of appeal must have been amended to include it, or a new notice of appeal must have been filed from it.

{¶ 7} The threshold issue we must resolve is whether we have jurisdiction to consider the assignment of error relating to the Civ.R. 60(B) motion. Specifically, whether we have jurisdiction over that issue where appellant files a notice of appeal from a default judgment, we stay his appeal so that he can file a Civ.R. 60(B) motion in the trial court, the trial court denies the Civ.R. 60(B) motion, the original appeal is reinstated, and appellant fails to file a new notice of appeal or amend his original notice of appeal to include the judgment denying his Civ.R. 60(B) motion.

{¶ 8} App.R. 3(A) states in part that the untimely filing of an appeal is the only jurisdictional bar to review in an appellate court. *Transamerica Ins. Co. v. Nolan*, 72 Ohio St.3d 320, 322, 649 N.E.2d 1229 (1995). A party must file a notice of appeal within 30 days of the entry of judgment it wishes to appeal pursuant to App.R. 4(A).

App.R. 3(D) requires that a notice of appeal designate the judgment, order or part thereof seeking to be appealed. *Regan v. Paxton*, 6th Dist. Lucas No. L-01-1205, 2002-Ohio-383. When seeking to include subsequent orders regarding the same proceeding, appellant is permitted to amend his or her initial appeal to include the subsequent order pursuant to App.R. 3(F). Thus, after a notice of appeal is filed, if a subsequent final appealable order is entered, then in order to vest the appellate court with jurisdiction over the subsequent order, appellant must either file a new notice of appeal or amend the original notice of appeal. *See Regan v. Paxton, supra* (concluding that the appellate court lacks jurisdiction when appellant failed to file a separate notice of appeal or to amend the original notice of appeal to include a subsequent judgment from the same proceeding); *State v. Dixon*, 9th Dist. Summit No. 21463, 2004-Ohio-1593 (the court concluded that it lacked authority to consider the denial of appellant's motion to withdraw a guilty plea, where appellant filed his motion prior to filing his notice of appeal from his conviction, that motion was denied after the initial notice of appeal had been filed, and appellant failed to file a separate notice of appeal or amend his initial notice of appeal to include the denial of that motion).<sup>1</sup>

{¶ 9} Here, appellant argues the denial of his Civ.R. 60(B) motion for relief from judgment in his brief. However, appellant's original notice of appeal was filed for review

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<sup>1</sup> We also believe that this approach is consistent with App.R. 4(B)(2), which states that after the trial court has ruled on the post-judgment filing on remand, any party who wishes to appeal from the trial court's orders or judgments on remand shall do so by amending the original notice of appeal or filing a new notice of appeal.

of the default judgment granted against him. Appellant has failed to either amend his original notice of appeal to include the subsequent Civ.R. 60(B) motion, or to file a new notice of appeal from the Civ.R. 60(B) motion. Therefore, appellant's failure to timely appeal the denial of his Civ.R. 60(B) motion precludes this court from having jurisdiction to review that judgment.

{¶ 10} Accordingly, appellant's assignment of error is not well-taken.

### III. Conclusion

{¶ 11} Appellant having brought no assignments of error related to the default judgment, we affirm the judgment of the Huron County Court of Common Pleas.

Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

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JUDGE

Stephen A. Yarbrough, J.

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JUDGE

James D. Jensen, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.