

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT

Citimortgage, Inc. v. Nyamusevya

2021-Ohio-219 (Ohio Ct. App. 2021) · No. 20AP-155 · Decided January 28, 2021

SUMMARY

The Ohio Tenth District Court of Appeals held that the trial court lacked jurisdiction to rule on Leonard Nyamusevya's Civ.R. 60(B) motion while his direct appeal from the underlying foreclosure judgment was pending. The appellate court vacated the trial court's ruling and dismissed the appeal because no remand order had authorized the trial court to consider the motion.

CASE DETAILS

COURT	Court of Appeals of Ohio, Tenth Appellate District
WRITING FOR THE COURT	Beatty Blunt, J.; Brown, J.; Luper Schuster, J.
JURISDICTION	Ohio
DECIDED	January 28, 2021
DOCKET	20AP-155
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendant appealed the trial court's denial of his Civ.R. 60(B) motion for relief from the foreclosure judgment while his direct appeal from that judgment was pending.
STANDARD OF REVIEW	The appellate court reviewed whether the trial court had jurisdiction to rule on the Civ.R. 60(B) motion while the direct appeal was pending.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals decision; precedential under the court's published-opinion status.
PARTIES	Leonard Nyamusevya v. Citimortgage, Inc.

TOPICS

- appellate jurisdiction
- appellate procedure
- civil procedure
- motions to dismiss
- foreclosure

PRACTICE AREAS

- civil procedure
- appellate procedure
- mortgage foreclosure
- bankruptcy

QUESTIONS PRESENTED

1. Whether a trial court has jurisdiction to decide a Civ.R. 60(B) motion for relief from judgment while a direct appeal from the underlying judgment is pending.
2. What disposition is appropriate when the trial court rules on the Civ.R. 60(B) motion without a remand order from the reviewing court.

HOLDINGS

1. When a direct appeal from a judgment on the merits is pending, the trial court lacks jurisdiction to decide a Civ.R. 60(B) motion seeking relief from that judgment unless the reviewing court remands the matter for consideration of the motion.
2. When a trial court enters an order on a Civ.R. 60(B) motion without jurisdiction during a pending direct appeal, the appellate court vacates that order and dismisses the appeal from it.

KEY QUOTATIONS

*“But the Supreme Court of Ohio has “expressly held that an appeal divests trial courts of jurisdiction to consider Civ.R. 60(B) motions for relief from judgment * * * [j]urisdiction may be conferred on the trial court only through an order by the reviewing court remanding the matter for consideration of the Civ.R. 60(B) motion.”” (¶ 4)*

“Without a remand order from this court, the trial court lacked jurisdiction to rule upon Nyasumevya's Civ.R. 60(B) motion while his direct appeal remained pending.” (¶ 5)

FACTUAL BACKGROUND

After a jury trial, the Franklin County Court of Common Pleas entered a foreclosure judgment in favor of Citimortgage and authorized sale of the property to satisfy an approximately \$98,500 mortgage deficiency plus interest. Nyamusevya filed a direct appeal, which was stayed during bankruptcy proceedings. Before the direct appeal was argued or decided, he filed a Civ.R. 60(B) motion in the trial court, which denied it without a remand order from the appellate court.

PROCEDURAL HISTORY

Following a foreclosure judgment after a jury trial, Nyamusevya filed a direct appeal. While that appeal was pending, he filed a Civ.R. 60(B) motion in the trial court, which denied the motion. The trial court's ruling was appealed separately, and the appellate court subsequently decided the direct appeal before resolving this appeal.

DISPOSITION

vacated

CASES CITED

- Howard v. Catholic Social Servs. of Cuyahoga Cty., Inc., 70 Ohio St. 3d 141 (1994)
- State ex rel. E. Mfg. Corp. v. Ohio Civ. Rights Comm., 63 Ohio St. 3d 179 (1992)
- Fifth Third Mtge. Co. v. Rankin, 4th Dist. No. 11CA18, 2012-Ohio-2804

- Citimortgage v. Nyasumevya, 10th Dist. No. 18AP-949, 2020-Ohio-5024

OPINION

PER CURIAM.

[Cite as CitiMortgage v. Nyamusevya, 2021-Ohio-219.] IN THE COURT OF APPEALS OF OHIO TENTH APPELLATE DISTRICT Citimortgage, Inc.,: Plaintiff-Appellee,: No. 20AP-155 v.: (C.P.C. No. 10CV-13480) Leonard Nyamusevya,: (ACCELERATED CALENDAR) Defendant-Appellant.: D E C I S I O N Rendered on January 28, 2021 On brief: Dinsmore & Shohl LLP, and Kara A. Czanik, for appellee.

Argued: Kara A. Czanik. On brief: Leonard Nyamusevya, pro se. Argued: Leonard Nyamusevya. APPEAL from the Franklin County Court of Common Pleas BEATTY BLUNT, J. {¶ 1} Defendant-appellant, Leonard Nyasumevya, appeals the decision of the Franklin County Court of Common Pleas denying his pro se motion for relief from judgment in this mortgage foreclosure action. {¶ 2} On November 15, 2018 and following a jury trial, the court rendered a judgment in foreclosure in favor of plaintiff-appellee, Citimortgage, and adjudged that the subject property could be sold at sheriff's auction to cover a mortgage deficiency of approximately \$98,500 plus interest.

Nyasumevya filed a timely direct appeal of that judgment on December 12, 2018, but this court stayed the appeal on May 3, 2019 due to a suggestion of bankruptcy filed the previous day. A discharge in bankruptcy was entered on 2 No. 20AP-155 November 21, 2019, and on January 10, 2020, this court ordered Nyasumevya's direct appeal to be scheduled for argument and thereafter submitted for a decision. {¶ 3} But on February 13, 2020, after the bankruptcy stay was lifted but before his direct appeal was argued or determined by this court, Nyasumevya filed a Civ.R.

60(B) in the trial court. The court denied that motion on February 18, 2020, and Nyasumevya filed the instant appeal of that denial on March 13, 2020. And on October 22, 2020, while this appeal of the trial court's Civ.R. 60(B) ruling was pending, we issued a decision on the merits of Nyasumevya's direct appeal. See Citimortgage v. Nyasumevya, 10th Dist. No. 18AP-949, 2020-Ohio-5024.

Accordingly, Nyasumevya's Civ.R. 60(B) motion was filed and denied by the trial court while the direct appeal of the underlying judgment was pending in this court, and Nyasumevya's direct appeal was determined while this appeal was under submission to this court. {¶ 4} When a direct appeal of a judgment on the merits is filed, the trial court generally loses jurisdiction to consider a motion to vacate that judgment.

Howard v. Catholic Social Servs. of Cuyahoga Cty., Inc., 70 Ohio St.3d 141, 147 (1994). It is true that during an appeal, the trial court retains all jurisdiction not inconsistent with the reviewing

court's jurisdiction to reverse, modify, or affirm the judgment. Id. at 146. But the Supreme Court of Ohio has "expressly held that an appeal divests trial courts of jurisdiction to consider Civ.R.

60(B) motions for relief from judgment * * * [j]urisdiction may be conferred on the trial court only through an order by the reviewing court remanding the matter for consideration of the Civ.R. 60(B) motion." Id. at 147, citing *State ex rel. E. Mfg. Corp. v. Ohio Civ. Rights Comm.*, 63 Ohio St.3d 179, 181 (1992). No such remand order was issued in this case.

Accordingly, a trial court cannot issue relief under Civ.R. 60(B) while a direct appeal is pending. And where a trial court issues an order without jurisdiction to do so, the 3 No. 20AP-155 court of appeals properly vacates the order and dismisses an appeal from that order. See, e.g., *Fifth Third Mtge. Co. v. Rankin*, 4th Dist. No. 11CA18, 2012-Ohio-2804, ¶ 9-10. {¶ 5} Without a remand order from this court, the trial court lacked jurisdiction to rule upon Nyasumevya's Civ.R.

60(B) motion while his direct appeal remained pending. Accordingly, we vacate the trial court's decision and dismiss this appeal. Judgment vacated. BROWN and LUPER SCHUSTER, JJ., concur.