

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. Nyasumeyya, 10th Dist. No. 18AP-949, 2020-Ohio-5024

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