

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

WILMINGTON SAVINGS FUND	:	APPEAL NO. C-190357
SOCIETY, FSB, AS TRUSTEE FOR		TRIAL NO. A-1605443
UPLAND MORTGAGE LOAN TRUST	:	
A,		<i>JUDGMENT ENTRY.</i>
	:	
Plaintiff-Appellee,		
	:	
vs.		
	:	
DEMETRIOUS SMITH, a.k.a.	:	
DEMETRIOUS Y. SMITH,		
	:	
and		
	:	
AMY K. SMITH, a.k.a. AMY SMITH,		
	:	
Defendants-Appellants,		
	:	
and		
	:	
SPRINGLEAF FINANCIAL	:	
SERVICES OF OHIO, INC., f.k.a.		
AMERICAN GENERAL FINANCIAL	:	
SERVICES, INC.,		
	:	
CITY OF CINCINNATI,		
	:	
and		
	:	
STATE OF OHIO, DEPARTMENT OF	:	
TAXATION,		
	:	
Defendants.		

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendants-appellants Demetrious Smith¹ and Amy Smith appeal from the trial court's entry overruling their objections to a magistrate's decision and adopting the magistrate's decision granting summary judgment and a decree of foreclosure to substitute plaintiff-appellee Wilmington Savings Fund Society, FSB, as trustee for Upland Mortgage Loan Trust A ("Wilmington").

In September of 2016, a complaint for foreclosure of the Smiths' residence was filed by Bank of America, N.A. The complaint alleged that Demetrious executed a promissory note made payable to ABN Amro Mortgage Group, Inc., in the principal amount of \$100,000, and that both Demetrious and Amy executed a mortgage against their residence to secure the amounts due and owing under the promissory note. The mortgage subsequently went through a series of assignments and was ultimately acquired by Bank of America, N.A. The complaint further alleged that Demetrious defaulted on his repayment obligations under the note and mortgage, and that Bank of America, N.A., accelerated repayment of the note. The complaint sought to foreclose on the Smiths' property and apply the sale proceeds to the amount due under the note, and to reform the mortgage to include Amy in the granting clause, which it alleged she had been left off of by mutual mistake.

The Smiths filed a motion to dismiss the complaint. They also removed the case to the United States District Court for the Southern District of Ohio. The district court remanded the case back to the Hamilton County Court of Common Pleas and sanctioned the Smiths for the improper removal. Bank of America, N.A.,

¹ Because they share the same surname, we refer to Demetrious Smith and Amy Smith by their first names when referencing them individually.

subsequently filed a motion for a default judgment against the Smiths based on their failure to file an answer to the complaint. The trial court overruled the Smiths' motion to dismiss and granted Bank of America, N.A.'s, motion for a default judgment. The Smiths appealed, and this court reversed the portion of the trial court's judgment granting a default judgment to Bank of America, N.A. *See Bank of America, N.A., v. Smith*, 1st Dist. Hamilton No. C-170654, 2018-Ohio-3638. We held that even though the Smiths had not filed an answer to the complaint, they had appeared and otherwise defended against the allegations in the complaint. *Id.* at ¶ 20.

On remand, the Smiths filed an answer. Bank of America, N.A., moved to substitute Wilmington as the plaintiff in the action because Wilmington had purchased the note and mortgage that were the subject of the foreclosure action. A copy of the mortgage assignment was attached to the motion. The trial court issued an order substituting Wilmington as the plaintiff in the action.

Wilmington moved for summary judgment. The Smiths opposed the motion for summary judgment and removed the case to the United States District Court for the Southern District of New York. The district court remanded the case back to the Hamilton County Court of Common Pleas and threatened sanctions against the Smiths if they attempted to file another improper notice of removal. A magistrate with the court of common pleas granted Wilmington's motion for summary judgment. The Smiths filed objections to the magistrate's decision. The trial court overruled the objections and adopted the magistrate's decision.

In its entry, the trial court found that Demetrious and Amy executed the promissory note and the mortgage, that the payments required by the note had not been made, that the payments due under the note were properly accelerated, and

that the Smiths were in default of their obligations under the note and mortgage. The court further found that because Demetrious and Amy were married at the time the mortgage was executed and it was their intent to both sign the mortgage as borrowers, Wilmington was entitled to have the mortgage reformed to clearly state that both Demetrious and Amy executed it as borrowers. The court ordered that the Smiths' property be foreclosed and sold, with the proceeds of the sale distributed as set forth in the court's entry.

In their first assignment of error, the Smiths argue that the trial court erred when it granted a default judgment to Wilmington. Because the trial court granted summary judgment to Wilmington, rather than awarding it a default judgment, we treat the Smiths' argument as a challenge to the trial court's grant of summary judgment, with which we find no error. The record demonstrates that the Smiths executed a promissory note secured by a mortgage on their residence. The note and mortgage were properly acquired by Wilmington. The Smiths defaulted on their payment obligations under the note, and repayment of the note was accelerated. The record contains no genuine issues of material fact regarding the Smiths' default on their payment obligations and Wilmington's right to enforce the terms of the note, and the trial court did not err in granting summary judgment to Wilmington and ordering that the property be foreclosed and sold. *See* Civ.R. 56(C); *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 639 N.E.2d 1189 (1994). The first assignment of error is overruled.

In their second assignment of error, the Smiths contend that counsel for Wilmington "deceived the court when the[y] misrepresented the fact that the Smith's© [sic] had been ordered to present a supersedeas bond, when there was never an order to do such." We disregard this assignment of error because the

Smiths fail to direct us to the portion of the record where this alleged misrepresentation occurred. *See* App.R. 12(A)(2); App.R. 16(A)(7); *Rummelhoff v. Rummelhoff*, 1st Dist. Hamilton No. C-190355, 2020-Ohio-2928, ¶ 23.

In their third assignment of error, the Smiths argue that the trial court was without subject-matter jurisdiction because Wilmington was not the real party in interest who filed the complaint. This argument is meritless, because “actions in foreclosure are within the subject-matter jurisdiction of a court of common pleas.” *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 20. To the extent that the Smiths challenge Wilmington’s standing, their argument is likewise without merit. The trial court granted the motion to substitute Wilmington as the plaintiff in this action, and the record contains a copy of the assignment of the mortgage from Bank of America, N.A., to Wilmington. The third assignment of error is overruled.

In their fourth assignment of error,² the Smiths argue that “the trial court erred when it wouldn’t allow discovery, interrogatories, nor respond to our ‘Answer with Counter Claims,’ when we rebutted Wilmington’s affidavit, and filed a ‘Motion to Set Aside the Magistrate’s Order Granting Summary, and Default Judgment.’ ” The Smiths again fail to support this assignment of error with citation to the record where the alleged error occurred or with citation to legal authority in support of their argument. We consequently disregard the assignment of error. *See* App.R. 12(A)(2); App.R. 16(A)(7); *Rummelhoff* at ¶ 23.

In their fifth assignment of error, the Smiths argue that “the trial court erred when it granted ‘default judgment’ without sending a notice of when the hearing was

² The Smiths’ appellate brief contains three assignments of error labeled “assignment of error No. 3.” We accordingly number each assignment of error chronologically as they are raised in the brief.

going to be held, as under Civ.R. 55.” Here, the trial court did not grant a default judgment to Wilmington, but rather granted Wilmington’s motion for summary judgment. Because Civ.R. 55 concerns default judgments, it is inapplicable to the Smiths’ argument. On the issue of notice, the record indicates that the Smiths filed objections to the magistrate’s decision granting summary judgment to Wilmington. Counsel for Wilmington appeared at the hearing before the trial court on those objections, but the Smiths did not. The record contains no entry scheduling the hearing and no document providing either party with notice of the hearing. Pursuant to Civ.R. 53(D)(4)(d), after objections are filed to a magistrate’s decision, a trial court is required to “undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.” The trial court conducted the required review in this case, and it issued a detailed entry adopting the magistrate’s decision and setting forth why Wilmington was entitled to summary judgment and a decree of foreclosure. Even if the Smiths failed to receive notice of the hearing, they suffered no prejudice as the trial court conducted the review required by Civ.R. 53(D)(4)(d).

The Smiths additionally argue in this assignment of error that Wilmington was not entitled to reformation because it was not the real party in interest. As discussed above, the record contains sufficient evidence documenting that Wilmington acquired the note and mortgage executed by the Smiths. Wilmington was properly substituted as the plaintiff in this action, and as such was entitled to reformation. The fifth assignment of error is overruled.

In their sixth assignment of error, the Smiths argue that the trial court erred when it failed to address their pleadings and evidence and when it granted reformation. This assignment of error is another attack on the trial court’s grant of

summary judgment, order of foreclosure, and determination that Wilmington was entitled to reformation of the mortgage. We have already addressed these arguments and found them to be without merit. We accordingly overrule the sixth assignment of error.

In their seventh assignment of error, the Smiths argue that “the default judgment is void. Under Federal law, applicable in all states, the U.S. Supreme Court stated if a court is without authority, its judgments are regarded as nullities.” We overrule this assignment of error, as the Smiths have failed to provide any argument in support of the asserted assignment of error, as well as failed to provide any citation to the record or legal authority. *See* App.R. 12(A)(2); App.R. 16(A)(7).

Having overruled all assignments of error, we accordingly affirm the trial court’s judgment.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., MYERS and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on September 17, 2021,
per order of the court _____.
Administrative Judge