

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

THE BANK OF NEW YORK MELLON,	:	APPEAL NOS. C-220438
	:	C-230041
Plaintiff-Appellee,	:	TRIAL NO. A-1902593
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
NECOLE MITCHELL,	:	
and	:	
MICHAEL L. GRIFFIN,	:	
Defendants-Appellants.	:	

The court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, 1st Dist. Loc.R. 11.1(C)(1), 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.

In June 2021, the trial court entered summary judgment for plaintiff-appellee Bank of New York Mellon ("BONY") on its foreclosure claims against defendants-appellants Necole Mitchell and Michael L. Griffin. This court affirmed the trial court's judgment on appeal, overruling all 11 assignments of error raised by Ms. Mitchell and Mr. Griffin. *Bank of New York Mellon v. Mitchell*, 1st Dist. Hamilton No. C-210354, 2022 Ohio App. LEXIS 1621, *discretionary appeal not allowed*, 167 Ohio St.3d 1527, 2022-Ohio-3322, 195 N.E.3d 164. They then filed a Civ.R. 60(B) motion to vacate the trial court's judgment, which the trial court denied. Now, on appeal, they again raise 11 assignments of error, essentially restating arguments previously raised and rejected on appeal in the case numbered C-210354. Additionally, they appeal the trial court's

denial of their December 7, 2022 “Motion to Vacate Sheriff Sale as Void,” in which they raised arguments similar to those raised previously on appeal, and also challenged the clerk of courts’ July 12, 2022 order of sale authorizing a private selling officer to begin selling the relevant property. This court previously dismissed a third appeal, numbered C-230039, for lack of a final appealable order. We consolidated the two remaining appeals.

After a review of the record, the briefs, the arguments, and the prior appeal, this court determines that all arguments raised by Ms. Mitchell and Mr. Griffin in the present appeal were previously raised and rejected or could have been raised previously on appeal. Although we appreciate the emotional weight of this case and acknowledge Ms. Mitchell and Mr. Griffin’s passionate pursuit of their appeal, “[i]t is well established that a Civ.R. 60(B) motion cannot be used as a substitute for an appeal and that the doctrine of res judicata applies to such a motion.” *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 16, citing *Harris v. Anderson*, 109 Ohio St.3d 101, 2006-Ohio-1934, 846 N.E.2d 43, ¶ 8-9. “Res judicata bars relitigation of a matter that was raised or could have been raised on direct appeal when a final, appealable order was issued in accordance with the law at the time.” *State v. Griffin*, 138 Ohio St.3d 108, 2013-Ohio-5481, 4 N.E.3d 989, ¶ 3. In other words, after a party had a chance to fairly litigate their case, they can’t ask for a do-over just because they don’t like the result. If they could, litigation would never end. Accordingly, we overrule all 11 assignments of error insofar as they challenge the trial court’s judgment denying Ms. Mitchell and Mr. Griffin’s Civ.R. 60(B) motion to vacate the trial court’s order granting summary judgment to BONY.

Furthermore, to the extent their appeals can be construed as challenging the trial court’s denial of their motion to vacate the court’s July 12, 2022 order of sale, the appeals are not taken from a final appealable order, and therefore must be dismissed. In foreclosure actions, just two judgments are final, appealable orders: the order of foreclosure and the confirmation of sale.

OHIO FIRST DISTRICT COURT OF APPEALS

CitiMortgage, Inc. v. Roznowski, 139 Ohio St.3d 299, 2014-Ohio-1984, 11 N.E.3d 1140, ¶ 39. The July 12, 2022 order of sale represents neither, and thus it is not a final appealable order. “If an order is not final, then an appellate court has no jurisdiction.” *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989). Therefore, insofar as Ms. Mitchell and Mr. Griffin challenge that order, their appeals are dismissed.

In sum, we overrule all 11 assignments of error regarding the trial court’s denial of the Civ.R. 60(B) motion to vacate judgment, dismiss the appeals insofar as they challenge the July 12, 2022 order of sale, and affirm the judgments of the trial court.

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

CROUSE, P.J., ZAYAS and BERGERON, JJ.

To the clerk:

Enter upon the journal of the court on December 1, 2023,
per order of the court _____.

Administrative Judge