

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

WELLS FARGO BANK, N.A.,	:	APPEAL NO. C-220527
SUCCESSOR BY MERGER TO	:	TRIAL NO. A-1804234
WACHOVIA BANK,	:	
	:	<i>JUDGMENT ENTRY.</i>
Plaintiff-Appellee,	:	
	:	
vs.	:	
	:	
PATRICK C. SHEAR,	:	
	:	
and	:	
	:	
SANDRA A. SHEAR,	:	
	:	
Defendants-Appellants.	:	

The court sua sponte removes this cause from the regular calendar and places it on the 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.

Defendants-appellants Patrick C. Shear and Sandra A. Shear (“Shear”) appeal an order issued by the Hamilton County Court of Common Pleas on October 19, 2022. This order arises from an ongoing foreclosure action involving the real property located at 539 Chaswil Drive, Cincinnati, Ohio. In its order, the trial court denied a motion filed by Shear that was captioned as a “Motion to Dismiss.” Shear now argues that the motion was in essence a motion to vacate the foreclosure judgment under Civ.R. 60(B) on the basis of newly-discovered facts. Regardless of its title, the motion asserted that plaintiff-appellee Wells Fargo Bank, N.A. (“Wells Fargo”), as the successor to Wachovia

Bank, was not the real party in interest to the foreclosure action. The trial court denied the motion.

In its order, the trial court also imposed sanctions on Shear pursuant to Civ.R. 11. The order found that Shear had “engaged in a pattern and practice of filings \* \* \* that display a willful disregard for well-established law and the undisputed facts on the record.” Based on this finding, the trial court required Shear to obtain leave of court to file any pleading that asserted, among other arguments, that Wells Fargo was not the real party in interest or lacked standing to pursue the foreclosure.

On appeal, Shear fails to mount any meaningful challenge to the trial court’s imposition of sanctions under Civ.R. 11. “In the interest of justice, we will consider all cognizable contentions presented but will not create an argument if a pro se litigant fails to develop one.” *Marreez v. Jim Collins Auto Body, Inc.*, 1st Dist. Hamilton No. C-210192, 2021-Ohio-4075, ¶ 4. Because Shear failed to develop any argument challenging the sanctions imposed by the trial court, that portion of the trial court’s October 19, 2022 order is affirmed.

Shear does, however, ask us to review the trial court’s denial of what he characterizes as a Civ.R. 60(B) motion. Appellate courts review the denial of a Civ.R. 60(B) motion for an abuse of discretion. *Andwan v. Eichert*, 1st Dist. Hamilton No. C-220542, 2024-Ohio-267, ¶ 8.

Even construing Shear’s “Motion to Dismiss” as a Civ.R. 60(B) motion, we find no abuse of discretion by the trial court, because the arguments Shear raises with regard to Wells Fargo’s standing as the real party in interest are barred by res judicata. Shear previously appealed the trial court’s award of summary judgment to Wells Fargo on the underlying foreclosure action. *See Wells Fargo Bank, N.A. v. Shear*, 1st Dist. Hamilton No. C-190466 (March 12, 2021). The sole assignment of

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

error he raised in that appeal related to the application of the double-dismissal rule. *Id.* Had Shear intended to challenge Wells Fargo's standing as the real party in interest to the foreclosure, he could have raised it in his first appeal. His failure to do so bars him from now litigating the issue. *See Pioneer Automotive, LLC v. Village Gate, LLC*, 1st Dist. Hamilton No. C-220630, 2023-Ohio-4501, ¶ 13. We therefore hold that Shear's challenge to Wells Fargo's status as the real party in interest is barred by doctrine of res judicata and overrule Shear's assignments of error on this basis.

We accordingly affirm the trial court's October 19, 2022 order in all respects.

Further, 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.

**BOCK, P.J., ZAYAS and KINSLEY, JJ.**

To the clerk:

Enter upon the journal of the court on February 2, 2024

per order of the court \_\_\_\_\_.  
Administrative Judge