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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-002327-MR

PATRICK WOODS, NOW KNOWN AS
EL-PTAH SAA AMENTI RA

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM, JR., JUDGE
ACTION NO. 10-CI-401370

US BANK NATIONAL ASSOCIATION, AS
TRUSTEE OF CSMC MORTGAGE-BACKED
PASS-THROUGH CERTIFICATES, SERIES
2007-6

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON, LAMBERT, AND MAZE, JUDGES.

CAPERTON, JUDGE: The Appellant, Patrick Woods (NKA El-Ptah Saa Amenti Ra), appeals the December 16, 2011, final judgment and order of the Jefferson Circuit Court, wherein the court adjudged that the Appellee, U.S. Bank N.A. (as

Trustee on behalf of the holdings of the CSMC Mortgage-Backed Pass-Through Certificates, Series 2007-6)(hereinafter “U.S. Bank”) should be allowed to sell property at issue owned by Woods, who was in default on the mortgage and note held by U.S. Bank. Woods argues that the granting of default judgment was in error, and U.S. Bank disagrees. Upon review of the record, the arguments of the parties, and the applicable law, we affirm.

U.S. Bank, by and through its servicer and attorney-in-fact, Select Portfolio Servicing, Inc., filed an initial complaint in this matter on March 31, 2010. That complaint sought to enforce a mortgage on the real property at 5919 Wood Haven Ridge Court, Louisville, Kentucky, 40291, and an accompanying note that was signed by the defendants, Patrick Woods and Felicia Woods.

The Jefferson County Sheriff’s Department reported that service was completed on Patrick and Felicia Woods by April 16, 2010. Patrick Woods accepted service on behalf of Felicia Woods, stating that he had a power of attorney for her. Soon afterwards, on April 16, 2010, Patrick Woods and U.S. Bank entered into a forbearance plan. Woods later defaulted on the plan payments, and U.S. Bank moved for a default judgment on January 4, 2011.

On January 7, 2011, Woods moved to dismiss the case, claiming that the assignment to U.S. Bank was “fabricated” and violated securities laws, and that U.S. Bank had failed to serve him and Felicia Woods. The motion and an accompanying affidavit were signed by an unnamed person (whom U.S. Bank

presumes was Mr. Woods) as an “Authorized Agent” on behalf of Mr. Woods.

U.S. Bank opposed Woods’s motions as untimely and improper.

Upon review of the docket, Master Commissioner Edith Halbleib determined that Woods did not actually have a power of attorney to accept service on behalf of Felicia Woods, and noted that Mr. Woods changed his name to El-Ptah Saa Amenti Ra. She recommended that his motion to dismiss be denied, and that U.S. Bank serve Felicia Woods directly.

Patrick Woods then moved to extend the time to respond to the complaint. Woods signed that motion as El-Ptah Saa Amenti Ra in the capacity of a trustee for a trust named the “EPSAR TRUST.” Beside each signature was the notation “not individually, but as trustee.” On February 2, 2011, Master Commissioner Halbleib noted that Woods could not submit the motion as a trustee because a trustee “cannot practice law.” She also held that Woods’s claims of surprise and lack of knowledge were false because Woods had been served the previous year, and had even accepted service on behalf of Felicia Woods.

The court below held a hearing on all pending motions on February 25, 2011, and allowed Woods to testify as to the facts and argue the law. Thereafter, the court held that U.S. Bank was entitled to judgment, excepting the fact that because Patrick Woods’s acceptance of service on behalf of Felicia Woods was improper and that she would accordingly have to be served again. The court also indicated that it denied Woods’s motion to dismiss because his arguments were “rambling and disjointed,” relying on “bare allegations and legal

arguments unsupported by any credible evidence of record or legal authority.” The court also made three findings of fact regarding Woods’s request for extension of time: (1) The evidence showed that Mr. Woods was served in April 2010; (2) Mr. Woods had no defenses in any case; and (3) U.S. Bank would be prejudiced by further delay. On that basis, the court denied Woods’s request for an extension of time to file an answer.

As directed by the court, U.S. Bank perfected service on Felicia Woods. She ultimately disclaimed any interest in the subject property on May 2, 2011, and requested to be dismissed from the action. U.S. Bank also filed an amended complaint using Patrick Woods’s new name, which was entered on March 29, 2011. Woods never answered or made any other filings in response to the amended complaint. Six months later, on September 28, 2011, U.S. Bank moved for default judgment on the amended complaint, attaching an affidavit that Woods was not in military service; a copy of the assignment to U.S. Bank; the default judgment certificate; an affidavit of account; a copy of the note accompanying the mortgage; and items from Mr. Woods’s bankruptcy proceeding. In another filing, U.S. Bank noted that Woods may have engaged in the unauthorized practice of law. As to the merits, it argued that the court had already denied Woods’s motion to dismiss the complaint as untimely and that his lateness had resulted in the waiver of any defenses he had based on standing.

Woods then filed four items in response to the motion for default judgment. The first claimed that U.S. Bank did not have standing to file its initial

complaint because the assignment was not executed until after the original complaint was filed. The second disputed the authenticity of the mortgage documents, and then repeated arguments previously made concerning standing. Woods's third argument asserted that U.S. Bank had committed fraud on the court. The fourth accused counsel for U.S. Bank of unprofessionalism and ethics violations. Each of the four items was signed by Mr. Woods as the "Authorized Representative for the Estate of Patrick Andrae Woods Executor's Office."

After reviewing the filings, Master Commissioner Halbleib recommended that the court enter judgment in favor of U.S. Bank. She did not directly address all of Woods's arguments, but did make findings of fact regarding U.S. Bank's standing to enforce the mortgage and note. Specifically, she found that U.S. Bank had "tendered evidence which shows that it is the holder of the subject note and mortgage." She also noted that service was complete, that the judgment was authorized by the complaint and exhibits, and that all other requirements had been complied with. The circuit court subsequently entered final judgment on December 16, 2011, ordering the sale of the property at issue. It is from that order that Woods now appeals to this Court.

On appeal, Woods makes four arguments.¹ First, he argues that the court was required to rule in his favor because the mortgage was void and

¹ In addressing Woods's arguments, we note that the court below described them as "rambling and disjointed." We agree with this description, and summarize Woods's arguments as we understand them.

defective on its face pursuant to Kentucky Revised Statutes (KRS) 382.270,² 302.280,³ and 382.290.⁴ He states that the mortgage was allegedly re-recorded after the parties realized that a clause relating to the notary public was missing, and because the mortgage was “securitized.”⁵

² KRS 382.270 provides that:

No deed or deed of trust or mortgage conveying a legal or equitable title to real property shall be lodged for record and, thus, valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed or mortgage is acknowledged or proved according to law. However, if a deed or deed of trust or mortgage conveying a legal or equitable title to real property is not so acknowledged or proved according to law, but is or has been otherwise lodged for record, such deed or deed of trust or mortgage conveying a legal or equitable title to real property or creating a mortgage lien on real property shall be deemed to be validly lodged for record for purposes of KRS Chapter 382, and all interested parties shall be on constructive notice of the contents thereof. As used in this section “creditors” includes all creditors irrespective of whether or not they have acquired a lien by legal or equitable proceedings or by voluntary conveyance.

³ KRS 382.280 provides that, “All bona fide deeds of trust or mortgages shall take effect in the order that they are legally acknowledged or proved and lodged for record.”

⁴ KRS 382.290 provides that,

(1) In recording mortgages and deeds in which liens are retained (except railroad mortgages securing bonds payable to bearer), there shall be left a blank space immediately after the record of the deed or mortgage of at least two (2) full lines for each note or obligation named in the deed or mortgage, or in the alternative, at the option of the county clerk, a marginal entry record may be kept for the same purposes as the blank space. Each entry in the marginal entry record shall be linked to its respective referenced instrument in the indexing system for the referenced instruments.

(2) When any note named in any deed or mortgage is assigned to any other person, the assignor may, over his own hand, attested by the clerk, note such assignment in the blank space, or in a marginal entry record, beside a listing of the book and page of the document being assigned, and when any one (1) or more of the notes named in any deed or mortgage is paid, or otherwise released or satisfied, the holder of the note, and who appears from the record to be such holder, may release the lien, so far as such note is concerned, by release, over his own hand, attested by the clerk. Each entry in the marginal entry record shall be linked to its respective

As his second basis for appeal, Woods argues that the court below did not have jurisdiction over this matter because the note and mortgage is governed by the Department of Veterans Affairs (hereinafter “VA”), and that U.S. Bank failed to comply with 38 U.S.C. Chapter 37 Section 3732(a)(1), presumably because it did not notify the VA prior to initiating the action below.

referenced instrument in the indexing system for the referenced instrument.

(3) No person who does not, from such record or assignment of record, appear at the time to be the legal holder of any note secured by lien in any deed or mortgage, shall be permitted to release the lien securing any such note, and any release made in contravention of this section shall be void; but this section does not change the existing law if no such entry is made.

(4) For each assignment and release so made and attested by the clerk, he may charge a fee pursuant to KRS 64.012 to be paid by the person executing the release or noting the assignment.

(5) If such assignment of a note is made by separate instrument or by deed assigning the note, or in a marginal entry record, the instrument of writing or deed or marginal entry record shall set forth the date of notes assigned, a brief description of notes, the name and post office address of assignee, and the deed book and page of the instrument wherein the lien or mortgage is recorded and the clerk or deputy clerk receiving such instrument of writing or deed of assignment for record shall at the option of the county clerk immediately either link the assignment and its filing location to its respective referenced instrument in the indexing system for the referenced instrument, or endorse at the foot of the record in the space provided in subsection (1), “The notes mentioned herein (giving a brief description of notes assigned) have been transferred and assigned to (insert name and address of assignee) by deed of assignment (or describe instrument) dated and recorded in deed book ____ page _____,” and attest such certificate. For making such notation on the record the clerk shall be allowed a fee pursuant to [KRS 64.012](#) for each notation so made, to be paid by the party filing the instrument of writing or deed of assignment.

(6) No holder of a note secured by lien retained in either deed or mortgage shall lodge for record, and no clerk or deputy clerk shall receive and permit to be lodged for record, any deed or instrument of writing that does not comply with the provisions of this section.

⁵ This argument apparently refers to mortgage-backed securities. Woods includes a good deal of information concerning mortgage-backed securities, but no additional detail as to why this would

As his third basis for appeal, Woods argues that U.S. Bank lacked standing at the inception of this suit, because it did not present an interest with its claim until after the commencement of the suit. Woods argues that the mortgage assignment was lodged for the record on October 4th, 2010, by U.S. Bank, whereas the instant suit was filed several months previously, on March 31, 2010. While acknowledging that U.S. Bank amended its complaint to add the assignment of the note and mortgage on March 29, 2011, he argues that the mortgage and note are not negotiable.

As his fourth and final basis for appeal, Woods argues that the mortgage assignment used as evidence in the amended complaint to “enrich its standing” is defective on its face. Though this argument is somewhat disjointed and convoluted, this Court presumes that Woods is arguing that the note and mortgage were discharged in bankruptcy and, accordingly, U.S. Bank had no grounds upon which to proceed with a foreclosure sale.

In response to the arguments made by Woods, U.S. Bank argues that the circuit court correctly granted default judgment on the mortgage and note pursuant to KRS 426.005. That provision provides that:

(1) In an action to enforce a mortgage or lien, judgment may be rendered for the sale of the property and for the recovery of the debt against the defendant personally.

(2) In an action to enforce a mortgage or other lien, a sale of the property may be ordered without giving time to pay money or do other act.

entitle him to a default judgment.

U.S. Bank asserts that as noted by Master Commissioner Halblieb, U.S. Bank had filed an appropriate complaint and judgment form, including the correct affidavits and certificates, had “tendered evidence which shows it is the holder of the subject note and mortgage,” and did so long after the amended complaint was filed and service was completed on every party. U.S. Bank argues that because Woods never filed an answer to the complaint or amended complaint, and never provided a reasonable explanation for his repeated failure to do so, default judgment was appropriate.

U.S. Bank further asserts that Woods has waived his argument on the merits by failing to answer the complaint, by not giving the trial court good cause for his failure to answer, and also by failing to argue on appeal that the trial court should have excused his default. U.S. Bank asserts that default judgment was appropriate because Woods failed entirely to defend as the rules require.

Moreover, and as an alternative ground for affirmance, U.S. Bank notes that because Woods repeatedly signed his filings before the trial court as a representative of a trust or estate, and not in his own name, his filings were not valid. Finally, U.S. Bank argues that in the event that this Court does not find that Woods has waived his arguments, they should still be rejected because they are both unclear and unsupported.

In response to Woods’s first argument that the mortgage was void because it was re-recorded after the parties discovered that a clause relating to the notary public was missing, and because it was “securitized,” U.S. Bank asserts that

these arguments run contrary to the law of this Commonwealth and the plain language of KRS 61.060, which requires that there be evidence of fraud in the case of mistake involving a notary. Further, it argues that KRS 382.270 and KRS 382.280 simply do not state that re-recording a mortgage somehow invalidates it.

Concerning Woods's second argument that U.S. Bank did not present evidence of contacting the VA prior to initiating this action, U.S. Bank asserts that Wood never raised this argument before the trial court and that it is thus unpreserved for appeal. Moreover, he argues that there is nothing in the record to indicate whether U.S. Bank did or did not notify the VA and, further, nothing in the mortgage or note requires the VA to be contacted in the event of foreclosure. Additionally, U.S. Bank notes that Woods had presented no evidence as to whether or not he was a veteran, and asserts that Felicia Woods, who disclaimed any interest in the house, may have actually been the veteran indicated on the loan.

With respect to Woods's third argument - that U.S. Bank lacks standing because the assignment was not recorded until October 2010 after the complaint was filed - U.S. Bank disagrees. It argues that if there was any trouble with the timing of the lawsuit, it was cured by U.S. Bank's amended complaint in March of 2011, which Woods concedes was filed after the assignment was recorded. Further, U.S. Bank asserts that Woods's claim that the note and mortgage are not negotiable runs counter to the words in the documents themselves.⁶

⁶ The note specifically states, "I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this

Finally, concerning Woods's final argument that his note and mortgage were discharged in bankruptcy, U.S. Bank again asserts that this issue was waived because it was not made to the circuit court, and because there is no evidence to support such a claim. U.S. Bank argues that in fact, the bankruptcy judge specifically held on June 7, 2011, that U.S. Bank "is authorized to proceed with its State Law rights, including but not limited to its right to proceed with a foreclosure sale of the real property located at 5919 Woodhaven Ridge Court, Louisville, KY 40291."

In reviewing the arguments of the parties, we note that trial courts have broad discretion when it comes to default judgments, and this Court will not disturb a default judgment unless the trial court abused that broad discretion. *First Horizon Home Loan Corp. v. Barbanel*, 290 S.W.3d 686, 688 (Ky. App. 2009). For a trial court to have abused its discretion, its decision must have been arbitrary, unreasonable, unfair or unsupported by sound legal principles. *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007). We review this matter with these standards in mind.

Ultimately, upon review of the record, the arguments of the parties, and the applicable law, we are in agreement with U.S. Bank that the circuit court correctly granted default judgment on the mortgage and note pursuant to KRS 426.005. As noted by Master Commissioner Halblieb, U.S. Bank had filed an

Note is called the "Note Holder." R. 144. Similarly, the mortgage states, that, "The Note or a parties' interest in the Note (together with this security instrument) can be sold one or more times without prior notice to the Borrower."

appropriate complaint and judgment form, including the correct affidavits and certificates, had “tendered evidence which shows it is the holder of the subject note and mortgage,” and did so long after the amended complaint was filed and service was completed on every party. Further, the record reveals that Woods never filed an answer to the complaint or amended complaint, and never provided a reasonable explanation for his repeated failure to do so. Indeed, our review of the record reveals no good cause for Woods’s failure to answer, nor does he attempt to explain why this was the case on appeal. Accordingly, we believe that default judgment was appropriate. *See First Horizon Home Loan Corp. v. Barbanel*, 290 S.W.3d 686, 688 (Ky. App. 2009).

U.S. Bank has asserted that default judgment was appropriate because Woods failed entirely to defend as the rules require. *See Statewide Env'tl. Services v. Fifth Third Bank*, 352 S.W.3d 927, 933 (Ky. App. 2011). We agree. Having so found, we affirm. In affirming for the foregoing reasons, we decline to address the remainder of the arguments made by Woods on appeal.

Wherefore, for the foregoing reasons, we hereby affirm the December 16, 2011, final judgment and order of the Jefferson Circuit Court, the Honorable Charles L. Cunningham, presiding.

ALL CONCUR.

BRIEFS FOR APPELLANT:

El-Ptah Saa Amenti Ra, *Pro Se*
Jefferson County, Kentucky

BRIEF FOR APPELLEE:

Pierre H. Bergeron
Colter L. Paulson
Cincinnati, Ohio