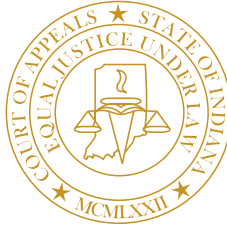


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Joshua W. Schultz,
Appellant-Defendant

v.

Lakeview Loan Servicing, LLC,
Appellee-Plaintiff

July 29, 2024

Court of Appeals Case No.
23A-MF-362

Appeal from the Lake Superior Court
The Honorable Kristina Kantar, Judge

Trial Court Cause No.
45D04-2202-MF-98

Memorandum Decision by Judge Riley
Judges Kenworthy and Felix concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Joshua W. Schultz (Joshua), appeals the trial court's summary judgment in favor of Appellee-Plaintiff, Lakeview Loan Servicing, LLC (Lakeview), for the relief sought in Lakeview's foreclosure Complaint.

[2] We dismiss.

ISSUE

[3] Joshua presents this court with five issues on appeal. However, we find the contention presented by Lakeview dispositive of the issues before us: Whether Joshua's appeal is properly before this court.

FACTS AND PROCEDURAL HISTORY

[4] On October 7, 2016, Joshua and his former spouse, Jillian L. Schultz (Jillian) (collectively, Schultzes), executed a Promissory Note in favor of Everett Financial, Inc. d/b/a Supreme Lending. That same day, the Schultzes executed a Mortgage to secure the balance owed under the Note. On or about May 1, 2019, the Schultzes defaulted on the Note and Mortgage, which were ultimately assigned to Lakeview by an Assignment recorded on May 13, 2021.

[5] On February 10, 2022, Lakeview filed its Complaint on Note and to Foreclose Mortgage on the property located at 4801 Ross Road, Griffith, Lake County, Indiana. In response to Lakeview's foreclosure Complaint, the Schultzes, appearing *pro se*, filed numerous pleadings challenging Lakeview's standing and

the trial court's jurisdiction to hear the Complaint. The volume of the Schultzes' filings prompted the trial court to enter "ground rules" for future *pro se* filings and communications. (Appellants' App. Vol. II, p. 16). On June 28, 2022, the trial court dismissed the Schultzes' filings. The Schultzes did not file an Answer or other response to Lakeview's Complaint.

[6] On September 1, 2022, Lakeview filed a motion for default judgment, which was subsequently denied by the trial court, as well as a motion for summary judgment, together with a memorandum in support thereof and a designation of evidence. On October 11, 2022, the Schultzes filed a response to Lakeview's motion for summary judgment, in which they asserted a cross-motion for summary judgment requesting the trial court to find the mortgage at issue satisfied and to dismiss Lakeview's Complaint. In their memorandum accompanying their response, the Schultzes claimed that they did not execute the Note and Mortgage and that any evidence designated by Lakeview was forged. In support of their claims, the Schultzes submitted their own affidavits in opposition, which alleged that Lakeview's designated evidence was a forgery, that the Schultzes did not fail to make payments, and that they did not default on any loan. No other documents were tendered as evidence in opposition or in support of their cross-motion for summary judgment. Lakeview filed its reply on November 14, 2022.

[7] On November 28, 2022, the trial court filed its Order in open court, which was recorded on the Chronological Case Summary (CCS) on the same day. In its Order, the trial court entered summary judgment in favor of Lakeview and

against the Schultzes. The trial court concluded that Lakeview established its *prima facie* case that it was entitled to foreclose upon the mortgage, noting that Lakeview “met its burden to prove the nature, validity and amount of the contractual debt at issue, the failure to pay same, as well as the demand made for payment.” (Appellants’ App. Vol II, pp. 20-21). Mindful that once the mortgagee established its *prima facie* case, the burden shifts to the mortgagor to show that the Note has been paid in full or to establish any other defenses to the foreclosure, the trial court concluded that the Schultzes failed to submit “sufficient evidence in order to meet their burden to show that a material question of fact exists as to the existence, authenticity or validity of the Note and Mortgage [] presented by” Lakeview. (Appellants’ App. Vol. II, p. 20). Specifically, the trial court noted that although the Schultzes raised the defense that the balance, demanded by Lakeview, was incorrect, they “provide[d] no documents (receipts, correspondences, affidavits from lending institutions) which would show a question of fact exists as to the balance owed under the Note and Mortgage presented as [e]vidence.” (Appellants App. Vol. II, p. 20). The trial court entered summary judgment and a decree of foreclosure in favor of Lakeview, and against the Schultzes, in the amount of \$297,187.31.

- [8] On January 4, 2023, the Schultzes filed a verified motion for stay of execution, and a verified motion for relief from judgment on Order and to correct error. On January 10, 2023, the Schultzes filed leave to file in *Forma Pauperis* on appeal, as well as a motion to schedule a hearing on the motion for relief and stay. Lakeview did not file a response to any of the Schultzes’ motions. On

January 20, 2023, the trial court denied the Schultzes' motion to correct error, finding that no new argument or evidence had been submitted warranting amendment or reversal of the summary judgment, but granted the motion to stay pending appeal.

[9] Joshua¹ now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[10] Initially we note that Joshua has chosen to proceed *pro se*. It is well settled that *pro se* litigants are held to the same legal standards as licensed attorneys and they are afforded no inherent leniency simply by virtue of being self-represented. *Matter of G.P.*, 4 N.E.3d 1158 (Ind. 2014). This means that *pro se* litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004).

[11] The trial court issued its summary judgment on November 28, 2022, and entered the Order on the CCS on the same day. As the Order constituted a final judgment, the deadline to file an appeal was December 28, 2022. *See* Ind. Appellate Rule 9(A) (“A party initiates an appeal by filing a Notice of Appeal within thirty (30) days after the entry of a Final Judgment is noted in the [CCS]”). However, where, as here, a party files a motion to correct error

¹ Jillian does not appeal the trial court's summary judgment.

pursuant to Indiana Trial Rule 59, the motion to correct error must be filed within thirty days after the entry of the final judgment is noted on the CCS and the time to file an appeal is extended until thirty days after the motion to correct is denied. *See* T.R. 59(A), (C). Although the trial court’s Order was entered on the CCS on November 28, 2022, Joshua did not file his motion to correct error² until January 4, 2023, well outside the thirty-day deadline instituted by Trial Rule 59(C). When a motion to correct error is not timely filed, the right to appeal is not preserved. *Dowell v. State*, 922 N.E.2d 605, 609 (Ind. 2010); *Goodman v. State*, 581 N.E.2d 1259, 1260 (Ind. Ct. App. 1991) (appeal dismissed after trial court wrongly purported to grant an extension); *Dixon v. State*, 566 N.E.2d 594, 596 (Ind.Ct.App.1991) (“if an appellant files a motion to correct error that is not mandatory under the rules, the motion must be filed within thirty (30) days after the judgment in order to preserve the appellant’s right to an appeal of all issues”). Accordingly, as Joshua’s motion to correct error was not timely filed, his appeal is not properly before this court.³

² Although Joshua titled his motion as a ‘Verified Motion for Relief from Judgment or Orders and to Correct Errors,’ thereby potentially implicating trial rules 59 and 60, the trial court considered his motion to be a motion to correct error and the Notice of Appeal similarly indicates that Joshua appeals from a motion to correct error. Accordingly, we will proceed by characterizing Joshua’s motion as a motion to correct error pursuant to Indiana Trial Rule 59.

³ Even if Joshua purports to appeal the trial court’s summary judgment issued on November 28, 2022, we would have to dismiss this appeal. The notice of appeal must be filed within thirty days after the entry of the final judgment on the CCS, and Joshua’s was not filed until February 16, 2023, eighty days after the issuance of the summary judgment. *See* Ind. Appellate rule 9(A).

CONCLUSION

[12] Based on the foregoing, we conclude that because his motion to correct error was not timely filed, Joshua failed to preserve his right to appeal.

[13] Dismissed.

Kenworthy, J. and Felix, J. concur.

APPELLANT PRO SE

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