

MEMORANDUM DECISION

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ATTORNEYS FOR APPELLANT

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IN THE COURT OF APPEALS OF INDIANA

Miller's Health Systems, Inc.
Appellant-Defendant,

v.

Chandra L. Garinger,
Appellee-Plaintiff

April 20, 2022

Court of Appeals Case No.
21A-CC-2741

Appeal from the
Grant Superior Court

The Honorable
Jason D. McVicker, Judge

Trial Court Cause No.
27D03-2109-CC-634

Vaidik, Judge.

Case Summary

- [1] Miller’s Health Systems, Inc., appeals the trial court’s denial of its motion for default judgment in its action against Chandra L. Garinger to foreclose a lien. We reverse and remand.

Facts and Procedural History

- [2] In May 2021, Miller’s filed suit against Garinger in Grant County, alleging: (1) Miller’s manages a nursing home in Marion; (2) Garinger’s significant other is a resident of the nursing home; (3) Garinger handles her significant other’s financial affairs and signed an admission agreement as his “Legal Representative” making her liable for his monthly bill; and (4) Garinger was improperly using a portion of her significant other’s income and had failed to pay his bill for many months. *Complaint*, Cause No. 27D03-2105-CC-305. Garinger did not answer the complaint, and in June 2021 Miller’s was awarded a default judgment for \$15,963.68 plus court costs and post-judgment interest.
- [3] In September 2021, Miller’s initiated this second action against Garinger by filing a “Complaint to Foreclose Judicial Lien.” Appellant’s App. Vol. II pp. 6-8. Miller’s alleged: (1) pursuant to Indiana Code section 34-55-9-2, the June 2021 judgment constitutes a lien against a parcel of real estate Garinger owns in Grant County; (2) the June 2021 judgment is unsatisfied; and (3) Miller’s “is entitled to foreclosure of its interest and the interests of Garinger in the Real Estate[.]” *Id.* at 7. Miller’s asked the trial court to:

issue an Order and Judgment of Foreclosure; order that the interests of Garinger be foreclosed and forever barred; order that the Real Estate be sold by the Sheriff of Grant County, Indiana, subject to the laws of the State of Indiana; order that the proceeds of the sale be applied in accordance with the decree of foreclosure rendered in this proceeding; grant an award of attorneys' fees, expenses, and costs incurred in pursuing this action; order the removal of the occupants of the Real Estate and that Miller or the purchaser of the Real Estate by [sic] placed into possession; and grant all other relief deemed just and proper in the premises.

Id. at 7-8.

- [4] Garinger again failed to answer, and Miller's moved for default judgment of foreclosure. The trial court denied the motion with the following CCS entry: "Court Declines to grant Motion for Default Judgment at this time due to a Default Judgment being entered on cause number 27D03-2105-CC-000305 for the same pleadings." *Id.* at 4. Miller's filed a motion to reconsider explaining that it is seeking a judgment of foreclosure that would allow it to collect on the June 2021 judgment, not a second judgment that is "duplicative" of the June 2021 judgment. *Id.* at 58-59. The court denied the motion to reconsider with the following CCS entry: "The Court hereby Denies Plaintiff's request to grant its request for a Decree of Foreclosure by way of Default Judgment[.]" *Id.* at 4. Finally, Miller's moved for summary judgment, which the court denied with the following CCS entry: "The Court hereby denies Plaintiff's request to grant its request for a Decree of Foreclosure by way of Summary Judgment[.]" *Id.*
- [5] Miller's then sought and received permission to bring this interlocutory appeal.

Discussion and Decision

[6] Miller's contends the trial court erred by denying its motion for default judgment.¹ Garinger has not filed a brief. When an appellee does not respond to an appeal, we will not undertake the burden of developing an argument on their behalf. *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). Rather, we will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error. *Id.* In this context, "prima facie error" means error "at first sight, on first appearance, or on the face of it." *Id.* Under that relaxed standard, we conclude that reversal is appropriate.

[7] In denying the motion for default judgment, the trial court indicated it believed Miller's is seeking a judgment that would be duplicative of the original June 2021 judgment. Miller's then filed a motion to reconsider explaining that it is simply seeking a judgment of foreclosure that would allow it to collect on the June 2021 judgment. In its CCS entry denying the motion to reconsider, the court stated, "The Court hereby Denies Plaintiff's request to grant its request for a Decree of Foreclosure by way of Default Judgment[.]" That entry indicates the court was no longer confused about the nature of the second suit but was nonetheless unwilling to order foreclosure via default judgment. However, the

¹ In the alternative, Miller's argues the trial court erred by denying its motion for summary judgment. Because we conclude Miller's is entitled to default judgment, we need not address its argument regarding summary judgment.

court did not offer a rationale for why default judgment would be inappropriate, and we are not aware of any.

[8] First, there is no question the June 2021 judgment—a Grant County money judgment—constitutes a lien on Garinger’s real estate in Grant County. Indiana Code section 34-55-9-2 provides, in part:

All final judgments for the recovery of money or costs in the circuit court and other courts of record of general original jurisdiction in Indiana, whether state or federal, constitute a lien upon real estate and chattels real liable to execution in the county where the judgment has been duly entered and indexed in the judgment docket as provided by law[.]

Second, Indiana law is clear that a judgment lienholder like Miller’s may seek and obtain a decree of foreclosure predicated upon an unsatisfied judgment lien in its favor. *See JPMorgan Chase Bank, N.A. v. Claybridge Homeowners Ass’n, Inc.*, 39 N.E.3d 666, 674 (Ind. 2015); *Herron v. First Fin. Bank, N.A.*, 91 N.E.3d 994 (Ind. Ct. App. 2017). And third, Garinger did not answer the Complaint to Foreclose Judicial Lien, making default judgment appropriate. *See* Ind. Trial Rule 55(A) (“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise comply with these rules and that fact is made to appear by affidavit or otherwise, the party may be defaulted by the court.”). We therefore reverse the denial of the motion for default judgment and remand this matter to the trial court for the entry of such a judgment.

[9] Reversed and remanded.

Crone, J., and Altice, J., concur.