

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

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| WELLS FARGO BANK, NATIONAL | : | APPEAL NO. C-170394 |
| ASSOCIATION as Trustee for | : | TRIAL NO. A-1004308 |
| Securitized Asset Backed Receivables | : | |
| LLC 2005-FR3 Mortgage Pass-Through | : | |
| Certificates, Series 2005-FR3, | : | |
| Plaintiff-Appellee, | : | <i>JUDGMENT ENTRY.</i> |
| vs. | : | |
| DIONNE Y. RIDDLE, a.k.a. DIONNE | : | |
| RIDDLE, | : | |
| and | : | |
| RODNEY RIDDLE, | : | |
| Defendants-Appellants, | : | |
| and | : | |
| MORTGAGE ELECTRONIC | : | |
| REGISTRATION SYSTEM, | : | |
| Defendant. | : | |

We consider this appeal on the accelerated calendar, 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. 11.1.1.

The defendants-appellants Dionne and Rodney Riddle appeal from the trial court's July 6, 2017 judgment in a foreclosure action involving property located at 11440 Gideon Lane. The property was the subject of a December 14, 2010 decree of foreclosure, issued after summary judgment had been awarded to plaintiff-appellee

Wells Fargo Bank, National Association, as Trustee for Securitized Asset Backed Receivables LLC 2005-FR3 Mortgage Pass-Through Certificates, Series 2005-FR3 (“Wells Fargo”). The Riddles unsuccessfully moved to set aside the foreclosure decree in 2011 and 2012. They filed additional motions to set aside the foreclosure decree in 2014 and 2015. After various delays, the subject property was sold at a sheriff’s sale on June 30, 2016.

The Riddles filed an appeal, numbered C-160626, from the entry journalizing the sale of the property, along with a motion for a “stay of execution” during the appeal. This court later dismissed that appeal, which was not taken from any order or judgment of the court.

In August 2016, while the appeal numbered C-160626 was pending, a magistrate granted Wells Fargo’s motion to strike the motion for stay and denied the Riddles’ amended motion for a stay. In the July 6, 2017 judgment from which the Riddles have now appealed, the trial court adopted the magistrate’s decision with respect to the stay of execution, adopted the December 23, 2014 magistrate’s decision that had denied the Riddles’ 2014 motions to set aside the foreclosure decree, and denied the Riddles’ 2015 motion to set aside the foreclosure decree.

In their first assignment of error, the Riddles attack the 2010 foreclosure decree. We lack jurisdiction to address the merits of this assignment of error as the appeal is timely only with respect to the trial court’s July 6, 2017 judgment. *See* App.R. 4(A).

In their second assignment of error, the Riddles argue that the trial court erred by denying their motions to set aside the 2010 foreclosure decree. These motions were governed by Civ.R. 60(B).

The Riddles contend they were entitled to set aside the 2010 foreclosure decree on the basis of fraud. Although Civ. R. 60(B)(3) allows a judgment to be set aside if it

has been obtained by “fraud,” a motion to set aside a judgment on that basis must be filed within one year of the judgment. *See* Civ.R. 60(B). The Riddles’ motions were filed long after the one-year deadline. Consequently, the trial court cannot be said to have abused its discretion by denying them. *See Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 520 N.E.2d 564 (1988); *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976). Accordingly, we overrule the second assignment of error.

The Riddles’ third assignment of error challenges the sale of the property on June 30, 2016. The Riddles argue that the sale was not authorized, because their 2014 and 2015 motions to set aside the foreclosure decree and their motion to stay the execution of the judgment were still pending in the trial court. But this court lacks jurisdiction in this appeal to review the propriety of the sheriff’s sale, which was beyond the scope of the trial court’s July 6, 2017 judgment.

To the extent that the Riddles’ are also challenging the trial court’s denial of their motions to set aside the foreclosure decree, we hold, as we did under the second assignment of error, that the motions were untimely, and that the Riddles, therefore, have failed to demonstrate any error.

Moreover, any claim of error related to the trial court’s denial of the motion to stay is likewise meritless. As we understand it, the Riddles moved for the stay under Civ.R. 62(B), in conjunction with their untenable “appeal” of the entry showing the sale of the property. That entry was not an order of the court. The motion to stay was not directed to any judgment or to any proceedings to enforce a judgment that could be stayed. *See* Civ.R. 62(B). And the Riddles did not post an adequate supersedeas bond. Thus, the trial court did not err when it struck the motion to stay and denied the later filed amended motion to stay.

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The Riddles' fourth assignment of error raises a similar issue and is meritless for the same reason. For these reasons, we overrule the Riddles' third and fourth assignments of error.

Accordingly, we affirm the trial court's judgment.

Further, a certified copy of this judgement entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

CUNNINGHAM, P.J., MYERS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on May 23, 2018

per order of the court _____
Presiding Judge