

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CV-14-810

STEPHEN BRIAN COLLINS and
KIMBERLY DIANE COLLINS

APPELLANTS

V.

DEUTSCHE BANK NATIONAL
TRUST CO., et al.

APPELLEES

Opinion Delivered April 22, 2015

APPEAL FROM THE MILLER
COUNTY CIRCUIT COURT
[NO. CV 2010-292-2]

HONORABLE BRENT HALTOM,
JUDGE

APPEAL DISMISSED

RITA W. GRUBER, Judge

Stephen and Kimberly Collins bring this interlocutory appeal from an order of the Miller County Circuit Court dissolving a temporary restraining order (TRO) and allowing a statutory foreclosure action to proceed. Their sole issue in this appeal is that the circuit court abused its discretion in dissolving the TRO because appellee Deutsche Bank National Trust Co. failed to strictly comply with the provisions of the Statutory Foreclosure Act, Ark. Code Ann. §§ 18-50-101 to -116 (Repl. 2003 & Supp. 2013) (the SFA).¹ We must dismiss this appeal for lack of jurisdiction due to the untimely filing of the record.

On August 25, 2006, the Collinses financed their home through Hurricane Mortgage Company, Inc. On the same day, Hurricane assigned the mortgage to Wells Fargo Bank. The

¹Deutsche Bank holds title as trustee of a residential mortgage-backed securitization trust, the Soundview Home Loan Trust 2006-WF2. For convenience, we simply refer to Deutsche Bank as such, meaning in its representative capacity.

mortgage was recorded on September 11, 2006. Wells Fargo did not record the assignment from Hurricane until July 9, 2007. Wells Fargo endorsed the note in blank to Deutsche Bank in October 2006. Deutsche Bank has had possession of the original note since that time.

Financial problems began for the Collinses in 2008–09 and, eventually, the Collinses were unable to keep up with their mortgage payments. In October and November 2009, the Collinses contacted Wells Fargo about a potential loan modification and were advised to apply for a loan modification under the Home Affordable Modification Program.

On February 22, 2010, Deutsche Bank started foreclosure proceedings under the SFA by recording a Mortgagee's notice of default and intention to sell. The notice set a foreclosure sale for April 27, 2010. Wells Fargo was not sent a copy of this notice. Deutsche Bank eventually purchased the property at the foreclosure sale, and its deed was recorded on May 3, 2010.

On June 10, 2010, Deutsche Bank filed a complaint for writ of assistance against the Collinses in the Miller County Circuit Court. The complaint stated that Deutsche Bank was the successful bidder at the foreclosure sale, but that the home remained occupied. The circuit court entered an order on July 7, 2010, directing the sheriff to immediately serve a writ of assistance and deliver possession of the home to Deutsche Bank. The writ was served on the Collinses on July 22, 2010, and, according to the Collinses, they would be forcibly removed from the home on July 29, 2010.

On July 29, 2010, the Collinses, acting pro se, sought a TRO, which the circuit court granted the same day, specifically concluding that the Collinses would suffer irreparable harm

if the TRO was not issued and that they would likely have the writ set aside.

On September 20, 2010, Deutsche Bank filed a motion to dissolve the TRO, arguing that the foreclosure sale complied with the SFA, and that Deutsche Bank was the rightful owner of the home. The Collinses opposed the motion, arguing that Deutsche Bank did not strictly comply with the SFA because it did not show that the mortgage had ever been negotiated from Wells Fargo to Deutsche Bank and that the public records showed that Deutsche Bank had no interest in their home. Following a May 6, 2011 hearing, the circuit court denied the motion to dissolve the TRO on the basis that Deutsche Bank had not shown it owned the mortgage.

There were additional claims filed by the Collinses, asserting causes of action under the Arkansas Deceptive Trade Practices Act, unjust enrichment, trespass, contempt, and slander of title. Deutsche Bank and Wells Fargo renewed the motion to dissolve the TRO as well as filed a motion to dismiss the Collinses' additional claims. The Collinses opposed the motions.

On June 9, 2014, the circuit court held a hearing on whether to dissolve the TRO and the pending motions to dismiss. The court determined that it must first decide whether the TRO should remain in effect. The court found that Deutsche Bank had strictly complied with the SFA in giving notice of the foreclosure sale. The court concluded that the need for the TRO no longer existed and dissolved the TRO. The court also dismissed all of the Collinses' claims, except for trespass, under Rule 12(b)(6) for failing to state a cause of action. The court also allowed the Collinses thirty days to remove their belongings from their home. The order memorializing the ruling was entered on August 8, 2014. The Collinses filed their

notice of appeal from the dissolution of the TRO on August 21, 2014.

The question whether an order is appealable is jurisdictional, and we are obligated to consider the issue on our own even if the parties do not raise it. See *Advanced Env'tl. Recycling Techs., Inc. v. Advanced Control Solutions, Inc.*, 372 Ark. 286, 275 S.W.3d 162 (2008).

Our rules provide that “[a]n appeal may be taken from a circuit court . . . from . . . [a]n interlocutory order by which an injunction is granted, continued, modified, refused, or dissolved, or by which an application to dissolve or modify an injunction is refused.” Ark. R. App. P.–Civ. 2(a)(6). Because this is an appeal from an order dissolving a temporary restraining order, appeal was proper, as our supreme court has not drawn a distinction between temporary restraining orders and injunctions when accepting appeals under Rule 2(a)(6). *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark. 167, 72 S.W.3d 95 (2002).

When an appeal is taken from an interlocutory order pursuant to Rule 2(a)(6), “the record must be filed with the Clerk of the Supreme Court within thirty (30) days *from the entry of such order.*” Ark. R. App. P.–Civ. 5(a) (emphasis added); see also *Murphree v. Giraffe Tree Serv., Inc.*, 2011 Ark. App. 721; *Murphy v. Michelle Smith Designs*, 100 Ark. App. 384, 269 S.W.3d 390 (2007); *Johnson v. Langley*, 93 Ark. App. 214, 218 S.W.3d 363 (2005). That was not done here. The order dissolving the TRO from which the Collinses appeal was entered on August 8, 2014. However, the record was not lodged with our clerk until September 23, 2014, well beyond thirty days. By failing to timely file the record, the Collinses are barred from pursuing their point on appeal. *Ricks, LLC v. Kent*, 2014 Ark. 269; *U.S. Bank, N.A. v. Milburn*, 352 Ark. 144, 100 S.W.3d 674 (2003).

Appeal dismissed.

VIRDEN and WHITEAKER, JJ., agree.

Emerson Poynter LLP, by: *Scott E. Poynter* and *Corey D. McGaha*;
Joel Hargis;

Arnold, Batson, Turner & Turner, by: *Todd M. Turner*; and
The Cruz Law Firm, by: *Kathy A. Cruz*, for appellants.

Conner & Winters, LLP, by: *Todd P. Lewis* and *Kerri E. Kobbeman*; and
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