

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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Filed: September 10, 2021

Ms. Laura C. Baucus

Mr. Darwyn Prentiss Fair

Mr. Ryan Jason VanOver

Ms. Jill Margaret Wheaton

Re: Case No. 20-2005, *Bettie Harris, et al v. US Bank National Association, et al*
Originating Case No. 2:19-cv-12935

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Virginia Lee Padgett
Case Manager
Direct Dial No. 513-564-7032

cc: Ms. Kinikia D. Essix

Enclosure

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 20-2005

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BETTIE J. HARRIS, Deceased; REGINALD
WATKINS; MICHAEL HARRIS,

Plaintiffs-Appellants,

V.

US BANK NATIONAL ASSOCIATION, as
Trustee for the Structured Asset Investment Loan
Trust Mortgage Pass-Through Certificates, Series
2004-2; SELECT PORTFOLIO SERVICING,
INC.,

Defendants-Appellees.

FILED
Sep 10, 2021
DEBORAH S. HUNT, Clerk

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
MICHIGAN

ORDER

Before: SUTTON, Chief Judge; SILER and ROGERS, Circuit Judges.

Reginald Watkins, Michael Harris, and their deceased mother, Bettie J. Harris, appeal through counsel the district court's dismissal of their civil action against U.S. Bank National Association, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2004-2; and Select Portfolio Servicing, Inc. for lack of standing and failure to state a claim. The suit involved the allegedly improper foreclosure of Bettie J. Harris's real property. The district court held that the plaintiffs either lacked standing or failed to state a claim on which relief may be granted. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2003, Bettie J. Harris obtained a loan secured by a mortgage on real estate in Pontiac, Michigan, that she had purchased in 1992. In 2015, Bettie J. Harris passed away. In 2018, that mortgage was assigned to U.S. Bank, and Select Portfolio Servicing serviced it. In that same year, the loan went into default, and U.S. Bank began foreclosure proceedings on the mortgaged real

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estate. In January 2019, the property went to the sheriff's sale, and U.S. Bank purchased it. Both before and after the sheriff's sale, Watkins and Michael Harris attempted to work out a financial accommodation with Select Portfolio Servicing, and the company was allegedly open to it. Nevertheless, in July, the six-month period under Michigan law in which a mortgagor can redeem a foreclosed property expired without redemption.

Watkins and Michael Harris, purporting to act as heirs of Bettie J. Harris, along with the deceased Bettie J. Harris, sued in Michigan state court alleging that Select Portfolio Servicing went forward with the sheriff's sale without posting the required notice, without allowing the plaintiffs to complete the financial accommodation or reinstate the loan, and despite engaging in the financial-accommodation process or what they term "Dual Tracking." They asserted a quiet-title claim under Michigan law; breach of Michigan Compiled Laws § 600.3208, the notice statute; and breach of their request for mortgage assistance, in violation of the Real Estate Settlement Procedures Act ("RESPA"), "Reg X," and regulations in 12 C.F.R. Part 1024. They sought a judgment granting them legal title to the property, damages, costs and attorneys' fees, and an injunction tolling the redemption period.

After removing the case to federal court, *see* 28 U.S.C. § 1441, because the plaintiffs alleged a claim under federal law, *see* 28 U.S.C. § 1331, the defendants moved to dismiss the complaint. They argued that the plaintiffs lacked standing, *see* Fed. R. Civ. P. 12(b)(1), or, in the alternative, that they failed to state a claim on which relief could be granted, *see* Fed. R. Civ. P. 12(b)(6). The district court granted that motion on both theories and dismissed the plaintiffs' complaint. *Harris v. U.S. Bank Nat'l Ass'n as Tr. for Structured Asset Inv. Loan Tr. Mortg. Pass-Through Certificates, Series 2004-2*, No. 19-12935, 2020 WL 5819563 (E.D. Mich. Sept. 30, 2020). In determining that the plaintiffs lacked standing, the district court held that Watkins and Michael Harris were not parties to the mortgage either individually or as representatives of the estate of Bettie J. Harris; therefore, they alleged no legal interest in the property and, consequently, no actual injury. *Id.* at *3-4. The district court also held that, even if the plaintiffs could establish standing, their claims failed because the state-law redemption period had expired and they had not alleged facts that could support setting aside the sheriff's sale. *Id.* at *4. The district court also

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refused to review several additional claims that the plaintiffs alleged in their response to the defendants' motion to dismiss.

On appeal, the plaintiffs argue that the district court erred in holding that they lacked standing because their injury would be redressable by an order rescinding the sheriff's sale. They also argue that they alleged sufficient facts to establish fraud or irregularity in the foreclosure process, to show violations of RESPA and the related federal regulations, and to establish a quiet-title claim.

"This court reviews de novo a district court's dismissal of a complaint for lack of subject-matter jurisdiction. In doing so, we take the allegations in the complaint as true." *Buchholz v. Meyer Njus Tanick*, 946 F.3d 855, 860 (6th Cir. 2020) (citation omitted).

To establish the jurisdictional requirement of standing under Article III of the Constitution, a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).

The district court held that the "Plaintiffs have failed to demonstrate that they have suffered an injury in fact." *Harris*, 2020 WL 5819563, at *4. "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo, Inc.*, 136 S. Ct. at 1548 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

The plaintiffs alleged that the defendants violated state and federal law when they foreclosed on the mortgage and obtained title to the real property owned by Bettie J. Harris. Watkins and Michael Harris did not allege that they were parties to the mortgage; instead, they alleged an interest as "Heirs of Bettie J. Harris." But, as the district court held, they did not allege that Bettie J. Harris left the property to them in a valid will, that they otherwise obtained an interest in the property following her death, or that they had been appointed as the representatives of her estate. And because Watkins and Michael Harris did not plead a legal interest in the mortgage or the real estate, they did not plead that they were injured by the defendants' actions. Therefore, they did not establish that they had standing to sue.

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In their appellate brief, the plaintiffs argue that, with regard to the district court's standing ruling, "[r]edressability [is] the only prong contested." They then assert that the injury is redressable by a ruling in their favor because Michigan courts can, in certain circumstances, set aside statutory foreclosures after the redemption period has closed. But that assumes that the plaintiffs suffered an injury at all, which is "the '[f]irst and foremost' of standing's three elements." *Id.* at 1547 (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998)). And as the district court explained, they did not plead as much in their complaint. *See Turaani v. Wray*, 988 F.3d 313, 317 (6th Cir. 2021). Indeed, in their appellate brief, Watkins and Michael Harris merely reiterate that they "claim as interest in the subject property as follows: Heirs of Bettie J. Harris." The district court correctly explained why that allegation was insufficient to plead a legally cognizable interest that could support an injury in fact. And Article III does not permit a plaintiff to seek a favorable court ruling (and the benefits it might bring) without first establishing an injury in fact. *See Spokeo, Inc.*, 136 S. Ct. at 1547. Therefore, the district court did not err in holding that it lacked jurisdiction because the plaintiffs failed to establish standing.

There is also the issue of Betty J. Harris's status as a litigant, which the district court did not specifically address. The complaint named her as a plaintiff and noted that she was deceased at the time of filing. But it is "self-evident" that "a dead person, *qua* a dead person (as opposed to the dead person's estate . . .) cannot sue, be sued, or be joined to a lawsuit." *LN Mgmt., LLC v. JPMorgan Chase Bank, N.A.*, 957 F.3d 943, 950 (9th Cir. 2020) (Boggs, J.). The plaintiffs also never attempted to substitute the representative of her estate or some other "real party in interest" in her place. Fed. R. Civ. P. 17(a)(1). In short, because "a deceased plaintiff lacks Article III standing," *House v. Mitra QSR KNE LLC*, 796 F. App'x 783, 784 (4th Cir. 2019), we must dismiss Betty J. Harris's appeal. *See also id.* at 788-89 ("Rule 17 does not allow for substitution when a plaintiff is deceased at the time suit is filed.").

Accordingly, we **AFFIRM** the district court's judgment.

ROGERS, J., concurring.

I concur in affirming the judgment of the district court in large part because the plaintiffs lack Article III standing to challenge the sheriff's sale. To the extent that plaintiffs seek other

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relief that would concretely benefit them individually, I would affirm on the substantive legal grounds set forth by the district court.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk