

USDA RURAL DEVELOPMENT

v.

BOBBIE JO CONRAD

Submitted on Briefs January 23, 2020  
Decided January 30, 2020

Panel: ALEXANDER, MEAD, GORMAN, JABAR, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Bobbie Jo Conrad appeals from a judgment of the District Court (Houlton, *Larson, J.*) denying her motion for additional findings and to reconsider or amend the order or grant a new trial. *See* M.R. Civ. P. 52(b), 59(e). In March 2018, the USDA filed a complaint for foreclosure against Conrad. Conrad did not file an answer and neither party filed a motion for summary judgment. On the morning set for trial, April 22, 2019, Conrad filed a “Motion *In Limine* to Dismiss and Incorporated Memorandum of Law.” After an unrecorded conversation with counsel in chambers, the court stated on the record that the notice of default was deficient, *see* 14 M.R.S. § 6111 (2015), and the USDA then voluntarily dismissed its complaint pursuant to M.R. Civ. P. 41(a)(1)(i).<sup>1</sup>

Conrad seeks a dismissal with prejudice of the USDA’s complaint for foreclosure, arguing that the court erred when it “allowed the [USDA] to dismiss

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<sup>1</sup> Although the court excused the USDA from the requirement of M.R. Civ. P. 41(a)(1)(i) to file a formal “notice of dismissal,” the record is clear that the USDA’s dismissal of its complaint was pursuant to Rule 41(a)(1)(i).

it[]s complaint, *without prejudice*.”<sup>2</sup> Contrary to Conrad’s contention, the court’s ruling on the sufficiency of the notice of default operated as a ruling on a motion in limine, which was not final and did not constitute a judgment on the merits. This is further confirmed by the fact that the docket entries do not include any order or judgment responding to Conrad’s motion following the April 22, 2019 proceeding.<sup>3</sup> After the court’s ruling on the notice of default, the USDA could have proceeded to trial but instead dismissed its complaint without prejudice pursuant to M.R. Civ. P. 41(a)(1)(i).

In addition, Conrad asserts on appeal that, regardless of the fact that there was no answer or motion for summary judgment filed, the USDA’s M.R. Civ. P. 41(a)(1)(i) dismissal was not timely because it occurred after the beginning of the trial. *See Hall v. Norton*, 549 A.2d 372, 374 (Me. 1988). We decline to reach this argument. Conrad did not tender an objection on this basis during the proceeding, nor did she raise the timing argument in her motion for additional findings and to reconsider or amend the order or grant a new trial, and thus the argument was not preserved for appellate review. *See Warren Constr. Grp., LLC v. Reis*, 2016 ME 11, ¶ 9, 130 A.3d 969.

Finally, we decline to address the USDA’s argument that its notice of default in fact complied with 14 M.R.S. § 6111. In order to pursue this argument, the USDA was required to file a cross-appeal. *See U.S. Bank Tr., N.A. v. Mackenzie*, 2016 ME 149, ¶ 8, 149 A.3d 267 (“A cross-appeal is essential if a party other than the appellant wishes to raise an issue and modify a judgment in a manner that is different from the change in the judgment sought by the appellant.” (quotation marks omitted)). The USDA has forfeited the right to argue the sufficiency of the notice of right to cure on this appeal. *See id.*

The entry is:

Judgment affirmed.

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<sup>2</sup> A dismissal pursuant to M.R. Civ. P. 41(a)(1)(i) does not require the permission of or any other action by the court.

<sup>3</sup> The court wrote “Mooted. Plaintiff dismissed complaint” on Conrad’s motion.

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Richard H. Broderick Jr., Esq., Broderick & Broderick, PA., Lincoln, for appellee USDA Rural Development

Houlton District Court docket number RE-2018-4  
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