Summary of SC95755, *David and Crystal Holm v. Wells Fargo Home Mortgage Inc. and Federal Home Loan Mortgage Corporation (Freddie Mac)*
Appeal from the Clinton County circuit court, Judge R. Brent Elliott
Argued and submitted December 13, 2016; opinion issued February 28, 2017

Attorneys: Wells Fargo was represented by Eric D. Martin, Elizabeth C. Carver and Jonathan B. Potts of Bryan Cave LLP in St. Louis, (314) 259-2000; and Robert M. Thompson of Bryan Cave LLP in Kansas City, (816) 374-3200. The Holms were represented by Kenneth B. McClain of Humphrey, Farrington & McClain PC in Independence, (816) 836-5050; and Gregory A. Leyh of Gregory Leyh PC in Gladstone, (816) 283-3380.

Overview: Mortgage companies appeal the circuit court's judgment against them in a wrongful foreclosure case brought by a couple. In a 6-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the judgment finding in the couple's favor on their wrongful foreclosure claim and quieting title to their home. The circuit court also properly exercised its discretion in sanctioning the mortgage companies for their discovery abuses. Although the sanctions effectively amounted to a judgment that the mortgage companies were liable for the wrongful foreclosure, the sanctions cannot deprive the companies of their constitutional right to have a jury decide the amount of the couple's actual and punitive damages, and the companies did not waive their right. As such, the judgment denying a jury trial as to damages is reversed, and the case is remanded (sent back) to the circuit court for this purpose.

Facts: Some time after David and Crystal Holm bought a home in Clinton County, the Federal Home Loan Mortgage Corporation (Freddie Mac) acquired the promissory note securing the mortgage, and Wells Fargo Home Mortgage Inc. began servicing the loan. A dispute later arose over whether the Holms were in default, and they made attempts to work out an agreement with Wells Fargo to avoid foreclosure. They reached an agreement the night before the scheduled sale and followed instructions for payment, but the sale proceeded. The Holms sued the mortgage companies, alleging wrongful foreclosure against Wells Fargo and seeking to quiet title back in their name. For several years, the parties sparred over discovery disputes. Two days before the case was scheduled for trial, the circuit court made a detailed account of the mortgage companies' discovery abuses on the record, concluding the conduct of the mortgage companies and their attorneys demonstrated a pattern of contempt for court rules and orders. Among the sanctions for the discovery abuses, the circuit court struck the mortgage companies' pleadings and prohibited them from offering evidence at trial, cross-examining the Holms' witnesses, and objecting to admission of the Holms' evidence regarding liability and damages. When the parties appeared for trial, the mortgage companies argued they had a constitutional right to a jury trial and had not waived this right. The circuit court concluded they had waived their right by failing to request a jury prior to the trial date and by failing to submit jury instructions when the court requested them. The case proceeded to trial before a judge, and the circuit court entered judgment for the Holms, quieting title in their favor. The court awarded them approximately

$95,900 in compensatory damages, $200,000 for emotional distress and nearly $2.96 million in punitive damages for the wrongful foreclosure. The mortgage companies appeal.

AFFIRMED IN PART; REVERSED IN PART; REMANDED.

Court en banc holds: (1) The circuit court properly exercised its discretion in imposing sanctions. The record supports its conclusion that the mortgage companies had engaged in flagrant and intentionally obstructive conduct during discovery proceedings. The court warned the companies on numerous occasions that their pattern of conduct could result in sanctions and concluded, in the weeks preceding trial, that the companies' "deliberate and calculated effort" to prevent the Holms from preparing their case had prejudiced the Holms.

(2) The circuit court's judgment on the Holms' wrongful foreclosure claim is supported by substantial evidence and is not against the weight of the evidence. Because the court was free to believe any, all or none of the evidence, it was entitled to believe that the Holms were not in default on their loan, that Wells Fargo falsely accelerated the note and that the sale proceeded despite the Holms' agreement with Wells Fargo.

(3) Although the sanctions effectively amounted to a judgment that the mortgage companies were liable for the wrongful foreclosure, the sanctions cannot deprive the companies of their constitutional right to have a jury decide the Holms' damages. This is an issue of first impression for Missouri courts. The state constitution provides a right to a jury trial in a civil action for damages, and state statutes and a court rule reiterate protection for this constitutional right. Because the right to a jury trial is guaranteed absent a waiver through one of certain statutory methods not used here, the mortgage companies were not required to request a jury trial, nor could their failure to file jury instructions waive that right. The case is remanded for the limited purpose of allowing a jury to determine what actual and punitive damages the Holms are entitled to as a result of the wrongful foreclosure.