

NOT RECOMMENDED FOR PUBLICATION

No. 21-3088

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED Nov 16, 2021 DEBORAH S. HUNT, Clerk
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JUDY MAE FILLINGER,)

Plaintiff-Appellant,)

v.)

THIRD FEDERAL SAVINGS AND LOAN)
ASSOCIATION,)

Defendant-Appellee.)

) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE NORTHERN DISTRICT OF
) OHIOORDER

Before: MOORE, WHITE, and THAPAR, Circuit Judges.

Judy Fillinger, an Ohio resident represented by counsel, appeals the judgment of the district court dismissing her action against Third Federal Savings and Loan Association, under the Fair Credit Reporting Act and the Equal Credit Opportunity Act, for lack of standing. 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 August 2020, Fillinger applied for a loan with Third Federal. On September 15, because Fillinger disclosed on her loan application that Third Federal had foreclosed on a previous loan, an employee asked her for more information about the foreclosure. That same day, Fillinger provided the employee with documentation of a bankruptcy case that discharged her debt in 2009 and three foreclosure cases in 2010, 2012, and 2014; the 2010 case was dismissed for failure to prosecute, and the latter two ended with a ruling that Fillinger was not a party and therefore had no obligation on the debt. A few days later, on September 19, the employee informed Fillinger by

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email that her application was denied because a previous real estate debt was settled for less than the full balance.

Fillinger requested a review of the denial because none of the documentation she provided indicated that she settled the loan for less than its full balance. On September 29, Third Federal responded by sending Fillinger a Statement of Credit Denial, Termination, or Change on a standard form. The form's bankruptcy and foreclosure checkboxes remained empty, and the form provided that the reason for denying the loan was because the real estate debt was settled for less than its full balance. The form also indicated that the denial was at least partly based on information provided by a company called Factual Data. When Fillinger contacted Factual Data, the company advised that its credit report did not include information about a real estate debt settling for less than the full balance. When Fillinger then contacted Third Federal again with this information, an attorney for the bank responded, stating that the denial "was a proper underwriting decision based upon [Fillinger's] own disclosure that she was a defendant in a foreclosure."

Fillinger subsequently filed suit. The complaint included three claims under the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681-1681x, and two claims under the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§ 1691-1691f, and sought total damages of just over \$50,000, plus costs and attorney's fees. Third Federal filed a motion to dismiss the complaint for failure to state a claim and for lack of standing. The district court concluded that Fillinger could not demonstrate that she suffered an injury in fact, so she did not have standing. Accordingly, the district court granted the motion to dismiss and entered judgment on the dismissal. Fillinger filed a timely notice of appeal.

Fillinger argues that, contrary to the district court's conclusion, she in fact does have standing to pursue her FCRA and ECOA claims. Fillinger points out that her complaint alleged that Third Federal denied her loan application and did not tell her the source of the incorrect credit information used against her, depriving her of the opportunity to contact that source to make corrections. Although Fillinger does argue that Third Federal's FCRA and ECOA violations were

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sufficient to confer standing, she also argues that the loan denial and non-disclosure of the source were injuries sufficient for Article III standing.

Because standing is a matter of subject-matter jurisdiction, we review de novo the dismissal of a complaint for lack of standing. *Buchholz v. Meyer NJUS Tanick*, 946 F.3d 855, 860 (6th Cir. 2020). The complaint was facially challenged on the sufficiency of the pleadings, so we take the allegations of the complaint to be true. *Rote v. Zel Custom Mfg. LLC*, 816 F.3d 383, 387 (6th Cir. 2016). The plaintiff has the burden of establishing standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). “Where, as here, a case is at the pleading stage, the plaintiff must ‘clearly . . . allege facts demonstrating’ each element.” *Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Warth v. Seldin*, 422 U.S. 490, 518 (1975)).

In order to satisfy Article III standing requirements, the plaintiff must demonstrate that (1) she suffered an injury in fact that (2) was caused by the defendant and that (3) can be redressed through a favorable judicial decision. *Spokeo v. Robins*, 136 S. Ct. at 1547. The harm committed by the defendant must be “real, not abstract, actual, not theoretical, concrete, not amorphous” in order to constitute injury in fact. *Huff v. TeleCheck Servs. Inc.*, 923 F.3d 458, 462 (6th Cir. 2019) (citing *Spokeo*, 136 S. Ct. at 1548). The injury in fact may be tangible or intangible. *Spokeo*, 136 S. Ct. at 1549. While Congress can give de facto intangible harms statutory status, such status “does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.” *Id.* Thus, even a statutory violation requires a concrete injury to satisfy Article III standing requirements. *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1620-21 (2020) (citing *Spokeo*, 136 S. Ct. at 1549).

Here, Fillinger has demonstrated standing, contrary to the conclusion reached by the district court. Fillinger’s complaint alleges a concrete injury, specifically the denial of her loan application, which was caused by Third Federal when it committed the alleged FCRA and ECOA violations. This injury would be redressed through a favorable judicial decision based on the remedies requested in the complaint. A difference exists “between failing to establish the elements

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of a cause of action and failing to show an Article III injury. One is a failure of proof. The other is failure of jurisdiction. Yes, there can be overlap between the two inquiries. But they are not one and the same.” *Huff*, 923 F.3d at 462. The denial of Fillinger’s loan application is a harm in the “dollars-and-cents sense of the term.” *See id.* at 463.

We **VACATE** the dismissal for lack of standing and **REMAND** for further proceedings consistent with this order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk