

No. 1-10-1877

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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U.S. BANK NATIONAL ASSOCIATION,	)	Appeal from the
as Trustee for the Benefit of Citigroup Mortgage	)	Circuit Court of
Loan Trust Inc. Asset-Backed Through Certificates	)	Cook County.
Series 2007-AHL2,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 08 CH 29204
	)	
FRANK DIAZ,	)	The Honorable
	)	Darryl B. Simko
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE LAVIN delivered the judgment of the court.  
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

**ORDER**

*Held:* The trial court had the authority to enter General Administrative Order (GAO) 2007-03 and the GAO did not violate due process.

¶ 1 This appeal arises from a foreclosure action brought by plaintiff U.S. Bank National Association against defendant Frank Diaz. The trial court ultimately entered a default order, judgment of foreclosure and an order approving the sale of the subject property.

Defendant's attempts to obtain an order quashing service of the complaint were unsuccessful. On appeal, defendant asserts that the trial court's orders were null and void because service was improper. Specifically, he asserts that service was improper because the standing order appointing plaintiff with special process servers was based on an invalid general administrative order entered by the circuit court, General Administrative Order (GAO) 2007-03. We affirm.

¶ 2

### I. BACKGROUND

¶ 3

Plaintiff apparently filed a complaint against defendant to foreclose a mortgage on the property located at 1338 South Oakley Avenue on August 12, 2008. The complaint, which is not included in our record, was apparently filed through the Wirbicki Law Group (Wirbicki). It is undisputed that Pro-Vest, LLC was appointed to serve process for Wirbicki for a three-month period, which encompassed the filing of the present complaint, pursuant to GAO 2007-03. The GAO, titled "Standing Orders for Appointment of Special Process Servers in Mortgage Foreclosure Cases," was entered by Judge Dorothy Kirie Kinnaird, presiding judge of the chancery division of the Cook County circuit court, on June 22, 2007. The GAO states as follows:

"For many years, service of summons in most mortgage foreclosure cases filed in the Chancery Division of the Circuit Court of Cook County has been accomplished through the appointment of special process servers. Due to insufficient resources in personnel, equipment and technological capabilities, the Sheriff of Cook County has been unable to effectuate service of process promptly

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and accurately in mortgage foreclosure cases.

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In the year 2006, mortgage foreclosure filings in the Circuit Court of Cook County increased from 16,494 (2005 filings) to 22,248. \*\*\*[I]t is estimated that mortgage foreclosure filings for the year 2007 will be in excess of 30,000 cases.

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Because of the increase in mortgage foreclosure filings and insufficient resources allocated to the Chancery Division's Clerk's Office, the Clerk of the Court has been unable to process promptly Motions for the Appointment of Special Process Servers and Orders Appointing Special Process Servers. \*\*\*

IT IS HEREBY ORDERED THAT:

1. Effective immediately, each law firm handling mortgage foreclosure cases in the Chancery Division may by Motion seek a Standing Order for the appointment of designated special process servers. Each Order will have a three (3) month or quarterly duration, with the first such Order to expire on August 31, 2007. Such Motions and proposed Standing Orders shall be presented to the Supervising Judge and should be dropped off as an off-call with the courtroom clerk in the Office of the Supervising Judge.

2. \*\*\* A law firm may designate one or more individuals or companies to serve as special process servers for each quarter of a year on all cases filed by that firm."

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¶ 4 On August 27, 2008, Daniel Walton of Pro-Vest, LLC executed an "Affidavit of Due and Diligent Search," essentially alleging that attempts to serve defendant with process had been unsuccessful. Plaintiff then filed an affidavit for service by publication and notice was subsequently published in the Chicago Daily Law Bulletin. On March 24, 2009, defendant filed a *pro se* motion to quash service, arguing that the court lacked jurisdiction and that notice and service were improper. The trial court subsequently entered an order striking defendant's motion.

On August 26, 2009, plaintiff filed a motion for a default order, arguing that defendant had not filed an appearance or response to the complaint. Plaintiff subsequently filed a motion for a judgment of foreclosure and sale, and a motion to appoint the Intercounty Judicial Sales Corporation (IJSC) as selling officer for the property on October 5, 2009. Four days later, the trial court entered a written order requiring defendant to file an appearance or answer, or otherwise plead by November 6, 2009. Six days after the deadline set by the court had passed, attorney Robert Shearer filed a limited appearance on defendant's behalf and a motion to quash service due to a lack of jurisdiction.

¶ 5 Notwithstanding defendant's motion, on November 13, 2009, the trial court entered a default order, an order appointing the IJSC as selling officer and a judgment of foreclosure providing that the redemption period would expire on February 13, 2010. The record on appeal does not include a transcript of the hearing on November 13, 2009. The IJSC later informed defendant and Shearer that the subject property would be sold on February 16, 2010. On February 11, 2010, defendant filed an emergency motion to

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vacate the orders entered by the court on November 13, 2009. Following a hearing on February 16, 2010, the trial court denied defendant's emergency motion and ordered plaintiff to proceed to the sale of the property. The property was sold to plaintiff at a public auction on the same day.

¶ 6 Following the sale, defendant again moved to quash service of the complaint and vacate the orders entered on November 13, 2009. Defendant argued, in pertinent part, that GAO 2007-03 was invalid, rendering all orders and judgments in this case void. In addition, plaintiff subsequently moved for an order approving the report of sale and distribution and an order of possession. Following a hearing, for which defendant has not provided a transcript, the trial court denied defendant's motion and entered a written order approving the report of sale and distribution, and an order for the possession of the subject property.

¶ 7

## II. ANALYSIS

¶ 8 On appeal, defendant solely asserts that GAO 2007-03 is invalid because the trial court lacked the authority to enter the GAO and the GAO otherwise violates defendant's right to due process. We review such legal questions *de novo*. See *Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 21 (2003). Defendant first argues that the GAO entered by Judge Kinnaird was invalid because she was the chief judge of only the chancery division of the Cook County circuit court, rather than the chief judge of the entire Cook County circuit court. Supreme Court Rule 21(c) states that "[t]he chief judge of each circuit may enter general orders in the exercise of his or her general administrative authority, including orders providing for assignment of judges, general or specialized divisions, and

times and places of holding court." Ill. S. Ct. R. 21(c) (eff. Dec. 1, 2008). This court has interpreted Rule 21(c) to allow the chief judge of the circuit court to delegate his authority under Rule 21(c) to the presiding judges of the divisions within the circuit court. *U.S. Bank, N.A. v. Dzis*, 2011 IL App (1st) 102812, ¶ 19 (citing *Blair v. Mackoff*, 284 Ill. App. 3d 836 (1996); *People v. Hattery*, 183 Ill. App. 3d 785 (1989)). Defendant has not persuaded us to depart from these cases. Accordingly, his argument fails.

¶ 9 Defendant also argues that GAO 2007-03 is invalid because it is substantive in nature and conflicts with section 2-202 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-202 (West 2008)). Rules promulgated by the circuit court must be procedural and are not permitted to alter the substantive law. *Leonard C. Arnold, LTD v. Northern Trust Co.*, 116 Ill. 2d 157, 167 (1987). In addition, section 2-202 states, in pertinent part, as follows:

"(a) Process shall be served by a sheriff, or if the sheriff is disqualified, by a coroner of some county of the State. \*\*\* The court may, in its discretion upon motion, order service to be made by a private person over 18 years of age and not a party to the action. It is not necessary that service be made by a sheriff or coroner of the county in which service is made. If served or sought to be served by a sheriff or coroner, he or she shall endorse his or her return thereon, and if by a private person the return shall be by affidavit.

(a-5) Upon motion and in its discretion, the court may appoint as a special process server a private detective agency certified under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004.

Under the appointment, any employee of the private detective agency who is registered under that Act may serve the process." 735 ILCS 5/2-202 (West 2008).

- ¶ 10 This court recently determined that there was no conflict between GAO 2007-03 and section 2-202 of the Code, as no provision in that section restricts the trial court from disqualifying the sheriff from service of process for a class of cases, such as the mortgage foreclosure cases addressed in GAO 2007-03. *U.S. Bank, N.A.*, 2011 IL App (1st) 102812, ¶ 22-23. We also found that service of process was procedural in nature, rather than substantive. *U.S. Bank, N.A.*, 2011 IL App (1st) 102812, ¶ 26-27 (citing *In re Pronger*, 118 Ill. 2d 512, 524 (1987)). Thus, we determined that courts have the authority to adopt procedural rules concerning the service of process. *U.S. Bank, N.A.*, 2011 IL App (1st) 102812, ¶ 27. We add to the court's prior determination in *U.S. Bank, N.A.* that contrary to defendant's assertion, the clear and unambiguous language of 2-202(a)(5) does not restrict its application to counties with a population of less than one million. As we stated in *U.S. Bank, N.A.*, GAO 2007-03 does not alter who serves process for mortgage foreclosure cases but rather "streamlines the procedure for the appointment of the private service providers." *U.S. Bank, N.A.*, 2011 IL App (1st) 102812, ¶ 28. Accordingly, GAO 2007-03 is neither substantive in nature nor in conflict with section 2-202 of the Code.
- ¶ 11 Finally, defendant asserts GAO 2007-03 violates his procedural due process rights, an assertion which was also rejected by this court in *U.S. Bank, N.A.* Specifically, the court observed that to show such a violation, a defendant must demonstrate that the State has interfered with his liberty or property interests. *U.S. Bank, N.A.*, 2011 IL App (1st)

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102812, ¶ 29 (citing *Segers v. Industrial Comm'n*, 191 Ill. 2d 421, 434 (2000)). The court found that for the defendant to prevail, he must demonstrate that he had a liberty or property interest in having the court provide a procedure for the individual appointment of special process servers, rather than a standing order applying to multiple cases. *U.S. Bank, N.A.*, 2011 IL App (1st) 102812, ¶ 29. Because a defendant has no cognizable interest in any particular manner of choosing which statutorily qualified persons will be selected to serve him with process, the GAO has no effect on a cognizable property or liberty interest. *U.S. Bank, N.A.*, 2011 IL App (1st) 102812, ¶ 29. We find no reason to depart from *U.S. Bank, N.A.* Accordingly, defendant cannot demonstrate a violation of his procedural due process rights.

¶ 12 For the foregoing reasons, we affirm the trial court's judgment.

¶ 13 Affirmed.