

No. 1-10-3120

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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1840 MAPLE AVENUE, LLC, an Illinois	)	
limited liability company,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County,
	)	
-v-	)	No. 10 M2 642
	)	
CHARLES WEST and UNKNOWN	)	
OCCUPANTS,	)	
Defendants,	)	
	)	
and	)	
	)	
THOMAS DART, as Sheriff of Cook County,	)	
Illinois,	)	The Honorable
	)	James N. Karahalios,
Respondent-Appellant.	)	Judge Presiding.

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**ORDER**

JUSTICE SALONE delivered the judgment of the court.  
Presiding Justice Steele and Justice Murphy concurred in the judgment.

*HELD:* Exceptions to the mootness doctrine apply to allow appellate review of eviction order resulting from a mortgage foreclosure; the provisions of

section 15-1701(h)(4) are not ambiguous and clearly provide for a 90-day notice of intent to file an eviction action against tenants unnamed in the original mortgage foreclosure action.

¶ 1 This appeal arises from the October 5, 2010, order of the circuit court granting plaintiff 1840 Maple Avenue, LLC's (1840) motion to compel the Sheriff of Cook County, Thomas Dart (Sheriff), to evict defendant Charles West following a mortgage foreclosure proceeding for the property that defendant was then leasing. For the following reasons, we reverse.

¶ 2 Although neither plaintiff nor defendant has filed a brief on appeal, we will consider the appeal pursuant to the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

### ¶ 3 BACKGROUND

¶ 4 On August 4, 2008, Northview Bank & Trust (Northview) filed a mortgage foreclosure action against the mortgagors of residential real property located at 1840 Maple Avenue in Northbrook, Illinois (*Northview Bank & Trust v. Brown*, 08 CH 28197). On March 17, 2009, a judgment of foreclosure and sale of the property was entered, and on August 3, 2009, the property was sold at public auction to Northview. On September 24, 2009, a judicial sale deed for the property was recorded with the recorder of deeds showing 1840 Maple Avenue, LLC as the grantee. On November 16, 2009, the foreclosure order for possession of the property was placed with the Sheriff's office.

¶ 5 On April 7, 2010, pursuant to department guidelines, officers from the Sheriff's office went to the property to post for the eviction of Timothy Brown, the named party in the foreclosure suit. On April 13, 2010, in response to the Sheriff's posting, defendant went to the

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Sheriff's office and produced an Illinois driver's license and utility bill as proof of his occupancy of the property. Because defendant was not named in the foreclosure order for possession, the Sheriff did not enforce it.

¶ 6 On April 16, 2010, 1840 sought possession of the property by filing a forcible entry and detainer action against defendant and unknown occupants. On May 21, 2010, an order for possession was entered. 1840 subsequently presented the detainer order for possession and an eviction disclosure form to the Sheriff's office. Based on the eviction disclosure form, the Sheriff's office determined that 1840 had not provided defendant with a prior 90-day notice of intent to file a forcible entry and detainer case as required by statute (735 ILCS 5/15-1701(h)(4) (West 2010)). Accordingly, the Sheriff did not enforce the detainer order for possession.

¶ 7 1840 subsequently filed a motion to compel the Sheriff to enforce the detainer order, and on October 5, 2010, after briefing and a hearing, the circuit court granted 1840's motion to compel. The eviction order mandated that the Sheriff enforce the eviction "forthwith" and extended the detainer order for possession to January 3, 2011. The court further determined that it would not hold the Sheriff in contempt because reasonable minds could differ on the interpretation of the statute. After the ruling, the Sheriff made an oral motion to stay enforcement of the eviction order pending appeal, which was denied. The Sheriff filed a timely notice of appeal on October 19, 2010.

¶ 8 On November 4, 2010, the Sheriff filed a written motion to stay enforcement of the eviction order, which was denied on November 24, 2010. The Sheriff's subsequent motion to reconsider was denied on December 30, 2010.

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¶ 9 On December 17, 2010, 1840 initiated further proceedings in the circuit court by moving for a rule to show cause against the Sheriff for failing to enforce the October 5, 2010, eviction order. After issuing a rule on December 27, 2010, the court scheduled a contempt hearing for January 3, 2011. During the contempt hearing, a representative from the Sheriff's office testified that the Sheriff had enforced the eviction order before its expiration that same day. The court then discharged the rule based on the Sheriff's compliance with its October 5, 2010, eviction order, which is the subject of this appeal.

#### ¶ 10 DISCUSSION

¶ 11 The Sheriff has raised the following issues on appeal: (1) whether there is an exception to the mootness doctrine that would allow this court to consider the Sheriff's claim; (2) whether the circuit court erred in finding that the 90-day notice of intent provision of the Illinois Mortgage Foreclosure Act (735 ILCS 5/15-1701(h)(4) (West 2010)) did not apply; and (3) whether the Sheriff of Cook County properly declined to enforce an order for possession where plaintiff failed to provide the 90-day notice of intent.

#### ¶ 12 Mootness Doctrine

¶ 13 We begin by addressing the mootness doctrine. It must be noted that there is no dispute that the underlying case is moot as the eviction order has already been enforced. The existence of an actual controversy is an essential requisite to jurisdiction. *People v. Hill*, 2011 IL 110928, ¶6. The court cannot decide any case in which its judgment would be wholly advisory and ineffectual for want of a concrete dispute. *Hill*, 2011 IL 110928, ¶6. The mootness doctrine provides that an appeal must be dismissed when the issues involved have ceased to exist because

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intervening events have made it impossible for the court to grant effectual relief. *Hill*, 2011 IL 110928, ¶6. Accordingly, we must determine whether there is an exception to the mootness doctrine that would allow it to consider the merits of respondent's appeal. *In re Albert H.H.*, 233 Ill. 2d 345, 351 (2009). Whether a case falls within an established exception to the mootness doctrine is a case-by-case determination. *Albert H.H.*, 233 Ill. 2d at 355.

¶ 14 An issue raised in an otherwise moot appeal may be addressed when it falls within two established exceptions to the mootness doctrine: (1) the "public interest" exception; and (2) the "capable of repetition yet evading judicial review" exception. *In re Robin C.*, 395 Ill. App. 3d 958, 963 (2009).

¶ 15 The public interest exception allows a court to consider an otherwise moot case when (1) the question presented is of a public nature; (2) there is a need for an authoritative determination for the future guidance of public officers; and (3) there is a likelihood of future recurrence of the question. *Albert H.H.*, 233 Ill. 2d at 355. The second capable of repetition yet avoiding review exception has two elements: (1) the challenged action must be of a duration too short to be fully litigated prior to its cessation; and (2) there must be a reasonable expectation that the "same complaining party would be subjected to the same action again." *Albert H.H.*, 233 Ill. 2d at 358, quoting *In re Barbara H.*, 183 Ill. 2d 482, 491 (1998). Exceptions to the mootness doctrine are to be construed narrowly, and a clear showing must be made that each requirement is met. *In re Marie M.*, 374 Ill. App. 3d 913, 915 (2007).

¶ 16 Here, the public interest exception is met because the substantive issue on appeal involves the Sheriff's compliance with section 15-1701(h)(4) of the Act. The question presented

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is of a public nature and our determination will guide the Sheriff as well as courts in applying the provisions of the Act and contribute to the efficient operation of our judicial system. Moreover, the application of section 15-1701(h)(4) to future cases involving the eviction of tenants who were not named in foreclosure actions will likely recur.

¶ 17 Additionally, this issue is also capable of repetition yet avoiding judicial review. There is no question that forcible entry and detainer actions are of short duration and unable to be fully litigated prior to cessation. There is also a reasonable expectation that the Sheriff would again be subject to a contempt action based on the application of section 15-1701(h)(4) in the discharge of his duties.

¶ 18 Under these circumstances, we conclude that both the "public interest" exception and the "capable of repetition yet evading review" exception apply. Accordingly, we will review respondent's argument on the merits.

¶ 19 Section 15-1701(h)(4)

¶ 20 The Sheriff next contends that the circuit court erred in finding that the 90-day notice of intent provision of the Act (735 ILCS 5/15-1701(h)(4) (West 2010)) did not apply and that he properly declined to enforce an order for possession where plaintiff failed to provide the 90-day notice of intent.

¶ 21 The issue presented in the case at bar appears to be one of first impression as no previously reported decision in Illinois appears to have addressed the issue. Resolution of the issue involves a question of statutory interpretation.

¶ 22 Section 15-1701(h)(4) of the Act provides, in pertinent part, as follows:

"(4) \* \* \* No mortgagee-in-possession, receiver, or holder of a certificate of sale or deed, or purchaser who fails to file a supplemental petition under this subsection during the pendency of a mortgage foreclosure shall file a forcible entry and detainer action against an occupant of the mortgaged real estate until 90 days after a notice of intent to file such action has been properly served upon the occupant." 735 ILCS 5/15-1701(h)(4) (West 2010).

¶ 23 Legal questions of statutory interpretation are reviewed *de novo*. *In re Estate of Lower*, 365 Ill. App. 3d 469, 478 (2006). As in all cases of statutory interpretation, the court's duty is to ascertain and give effect to the legislature's intent. *Hadley v. Illinois Department of Corrections*, 224 Ill. 2d 365, 371 (2007). The best evidence of the legislature's intent is the language of the statute, which must be given its plain and ordinary meaning. *Hadley*, 224 Ill. 2d at 371. Where the statutory language is clear, it will be given effect without resort to other aids of construction. *Hadley*, 224 Ill. 2d at 371.

¶ 24 A similar issue was considered by this court in *Fairbanks Capital v. Coleman*, 352 Ill. App. 3d 550 (2004) and is instructive on this appeal even though it involves an earlier version of the Act. In that case, the mortgagee petitioned for a rule to show cause why the sheriff should not be held in contempt for refusing to enforce a possession order pursuant to the Forcible Entry and Detainer Act (735 ILCS 5/9-101 *et seq.* West 2002)) after mortgagee obtained possession of the property through foreclosure sale. *Fairbanks*, 352 Ill. App. 3d at 551. When sheriff's

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deputies arrived at the property to enforce the possession order, they found information to substantiate that the individuals in possession resided at the premises and were not named in the foreclosure action. *Fairbanks*, 352 Ill. App. 3d at 553. Based on this information, the deputies followed the sheriff's office procedures and refrained from executing the possession order against the occupants. *Fairbanks*, 352 Ill. App. 3d at 553.

¶ 25 Evidence was presented at the contempt hearing which established that the policies and procedures regarding evictions followed by the deputies were developed as a result of a case previously filed against the sheriff in federal district court. *Fairbanks*, 352 Ill. App. 3d at 553. In that case, *Rembert v. Sheahan*, No 92 C 67, tenants alleged that the sheriff's office routinely enforced possession orders in mortgage foreclosure cases against generically described occupants and thereby violated the due process rights of those occupants. *Fairbanks*, 352 Ill. App. 3d at 553. See also *Rembert v. Sheahan*, 62 F. 3d 937-38 (7th Cir. 1995). The Seventh Circuit remanded the case, directing the district court to determine whether sheriff had refrained from engaging in the complained of practices, thus rendering the claim moot. *Rembert*, 62 F. 3d at 943. Additionally, the Seventh Circuit specified that if the district court found that the issue was not moot, it should then decide whether the sheriff's practices comport with Illinois law and whether Illinois law comports with the United States Constitution. *Rembert*, 62 F. 3d at 941-43.

¶ 26 The district court ultimately entered a judgment order that included an injunction prohibiting the sheriff from executing possession orders in foreclosure actions against defendants not specifically named in those orders, and provided guidelines for the sheriff's office to follow. *Fairbanks*, 352 Ill. App. 3d at 554. The district court subsequently modified the injunction order

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on October 8, 1999, providing that the order applied only to forcible entry and detainer actions seeking possession of foreclosed premises solely by virtue of the foreclosure purchase and not for any separate reason. *Fairbanks*, 352 Ill. App. 3d at 554. The Illinois legislature subsequently enacted Public Act 92-823 (Pub. Act 92-823, eff. August 21, 2002), which amended the Detainer Act to provide for service upon and eviction of unknown occupants who were neither served nor named in the complaint (735 ILCS 5/9-104, 9-107 (West 2002)). The district court declined to further modify its judgment order following the legislative change, finding that its order was rendered moot. *Fairbanks*, 352 Ill. App. 3d at 554.

¶ 27 In the *Fairbanks* appeal, a sheriff's deputy testified that whenever the sheriff's office had a forcible entry and detainer case indicating that it was based on a mortgage foreclosure case, the policy was to notify the officers that the possession order should be enforced as a mortgage foreclosure case based on the judgment in *Rembert* and that the deputies in the instant case refrained from executing the possession order based on the policy. *Fairbanks*, 352 Ill. App. 3d at 554.

¶ 28 This court found that the sheriff was improperly held in civil contempt based on his refusal to execute the possession order against the two individuals who were found at the premises but not specifically named in the possession order. *Fairbanks*, 352 Ill. App. 3d at 555. This court specifically found that the sheriff acted in good faith in light of the following:

"(1) the *Rembert* decision issued by the Seventh Circuit  
Court of Appeals, (2) the federal district court's judgment order and

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injunction on remand prohibiting possession orders in foreclosure actions against defendants not specifically named, (3) the district court's October 8, 1999, modification to the injunction included in that judgment order, (4) the uncertainty regarding how, if at all, the amendments to the Detainer Act included in Public Act 92-923 relate to the procedure [sheriff] was required to follow in the instant case, and (5) the refusal of the federal district court to further modify its judgment order based on its finding that the amendments to the Detainer Act rendered its October 8, 1999, order moot. *Fairbanks*, 352 Ill. App. 3d at 556.

¶ 29 This court further noted that the second and primary issue on appeal was whether the possession order authorized the sheriff to assert possession against "unknown occupants" pursuant to the Detainer Act was valid. *Fairbanks*, 352 Ill. App. 3d at 556. Resolution of the issue required the court "to determine whether the Foreclosure Law or the Detainer Act governed how occupants must be identified in possession orders entered in detainer actions that derive from foreclosure actions and are filed less than 90 days after entry of sale and possession orders in those foreclosure actions." *Fairbanks*, 352 Ill. App. 3d at 556. The court concluded that the plain language of section 15-1701(f) of the Foreclosure Law (735 ILCS 5/15-1701(f) (West 2002)) superceded the seemingly contradictory provisions of the Detainer Act, thus those provisions controlled. *Fairbanks*, 352 Ill. App. 3d at 559. Additionally, the *Fairbanks* court noted that the specific provisions of the Foreclosure Law controlled over the general provisions

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of the Detainer Act. *Fairbanks*, 352 Ill. App. 3d at 559. The court concluded that "while a claimant may seek possession under the Detainer Act against specifically named occupants at any time, his right to exercise a possession order under the Detainer Act against generically named occupants on mortgaged property may only be exercised after 90 days have elapsed from the date of the initial order of possession in the foreclosure action." *Fairbanks*, 352 Ill. App. 3d at 560.

¶ 30 Section 15-1701 has been amended several times over the years. Subsection (h) was initially added by Public Act 88-265 (Pub. Act 88-265, eff. January 1, 1994). Subsection (h)(4) was added by Public Act 95-262 §5 (Pub. Act 95-262, eff. January 1, 2008) and rewritten in Public Act 95-933 §5 (Pub. Act 95-933, eff. August 26, 2008). Finally, Public Act 96-111 §5 (Pub. Act 96-111, eff. October 29, 2009) amended subsection (h)(4) by changing "occupant" to "tenant" throughout and inserted, " provided that if the duration of his or her lease is less than 30 days from the date of the order, the order shall allow the occupant to retain possession for 30 days from the date of the order. A mortgagee in possession, receiver, holder of a certificate of sale or deed, or purchaser at the judicial sale, who asserts that the occupant is not current in rent, shall file an affidavit to that effect in the supplemental petition proceeding."

¶ 31 In the case at bar, the circuit court, in interpreting section 15-1701(h)(4), found that "the filing of a notice of intent after the expiration of 90 days following the conclusion of the foreclosure action, the confirmation of sale does not apply during the period thereafter." The circuit court further found that "it does not apply in perpetuity once a foreclosure action has been filed, and that the intent of the legislature was to provide a 90-day window for those individuals."

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¶ 32 The circuit court's reasoning is erroneous. Looking at the plain language of the pertinent provision contained in section 15-1701(h)(4), it clearly and unequivocally states that no purchaser who fails to file a supplemental petition during the pendency of a foreclosure shall file a forcible entry and detainer action against an occupant of the mortgaged real estate until 90 days after a notice of intent to file such action has been properly served upon the occupant. That is precisely what happened here and precisely what the law was designed to prevent; defendant was an unnamed occupant of the property and without the requisite 90-day notice of intent, the purchaser filed a forcible entry and detainer action. As such, the trial court improperly concluded that section 15-1701(h)(4) did not apply.

¶ 33 Accordingly, we conclude that the Sheriff properly declined enforcement of the possession order which was in violation of section 15-1701(h)(4).

#### ¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Cook County is reversed.

¶ 36 Reversed.