

No. 1-11-1763

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

FIRST CHICAGO BANK AND TRUST f/k/a)	Appeal from the Circuit
LABE BANK,)	Court of Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08 CH 40817
)	
KYLE M. PETROVIC-KINZY, JABLANKA)	
PETROVIC-KINZY, PK 1 LIMITED)	
PARTNERSHIP, UNKNOWN OWNERS AND)	
NON-RECORD CLAIMANTS,)	The Honorable
)	Franklin U. Valderrama,
Defendants-Appellants.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* Because the defendants presented an insufficient record on appeal to support their claims of error, the circuit court's judgment is affirmed.

¶ 2 The defendants, Kyle Kinzy, Jablanka Petrovic-Kinzy, and PK 1 Limited Partnership, appeal from the judgment of the circuit court denying their motions to vacate or reconsider its decision in favor of the plaintiff, First Chicago Bank and Trust, on the plaintiff's foreclosure action. On appeal,

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the defendants argue, *inter alia*, that certain of the plaintiff's filings in the foreclosure actoin lacked required exhibits, that the plaintiff had an insufficient interest to bring the action, that the procedure followed in this case deprived them of due process, and that the circuit court erred in refusing to re-open this case. For the reasons that follow, we affirm the circuit court's judgment.

¶ 3 In October 2008, the plaintiff (as "First Chicago Bank and Trust f/k/a Labe Bank") filed a foreclosure complaint against the defendants. In May 2009, the defendants filed a motion to dismiss on the ground that the mortgage that was attached to the complaint listed Labe Bank, and not First Chicago Bank and Trust, as their lender. The plaintiff responded by noting its name change, and it also filed a motion to appoint a receiver and take possession of the premises. On July 20, 2009, after a hearing, the circuit court denied the defendants' motion to dismiss. No transcript of that hearing appears in the record on appeal. On July 29, the circuit court entered an order stating that the defendants must "answer or otherwise plead on or before August 17." In August 2009, the circuit court entered orders appointing a receiver for the property and giving the plaintiff possession of the property.

¶ 4 On August 28, after the defendants filed no answer, the plaintiff filed a motion for a default judgment. The notice of motion served on the defendants indicated that the motion would be heard on January 7, 2010. However, another notice of motion served on the defendants indicated that their motion for default would be heard on January 15, 2010. On January 7, 2010, the circuit court entered a default order and judgment of foreclosure in favor of the plaintiff. No transcript of any of the January 7 proceedings appears in the record.

¶ 5 On January 15, 2010, the defendant Kyle Kinzy filed a motion to vacate the default judgment

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against him. On February 9, the circuit court struck Kyle Kinzy's motion without prejudice due to improper service, and it entered further orders scheduling further proceedings relating to the approval of the receiver's reports. On February 26, Kyle Kinzy filed an amended motion to vacate the judgment against the defendants, but that motion was stricken on March 22 due to the defendants' failure to appear in court. No other record of the March 22 proceedings appears in the record on appeal. No defendant filed any further motions until September 2010.

¶ 6 In September 2010, after the circuit court had ordered and approved several receiver's reports, the plaintiff sent the defendants a notice that a judicial sale of the property was set to take place. The property was sold, and, in October 2010, the plaintiff filed a motion to have the sale confirmed. On November 5, 2010, the circuit court ordered a final receiver's report and confirmed the sale.

¶ 7 On November 9, the defendants filed an "emergency" motion to vacate the confirmation of sale, and to vacate the earlier default judgment against them. On November 10, after a hearing, the circuit court denied the defendants' motion as to Kyle Kinzy but ordered further briefing as to the remaining defendants. No transcript of the November 10 hearing appears in the record on appeal.

¶ 8 On November 29, the defendants filed a motion asking the circuit court to reconsider their motion to vacate. In later proceedings, the circuit court granted the defendants leave to file an amended motion to reconsider and set a briefing schedule. On May 28, 2011, after a hearing, the circuit court denied all of the defendants' motions "[f]or the reasons stated from the bench in open court." No transcript of the May 28 proceedings appears in the record on appeal. On June 21, 2011, the defendants filed a notice of appeal.

¶ 9 As a threshold matter, the plaintiff asserts that we lack jurisdiction over this appeal, because

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the defendants' notice of appeal was not timely. As the plaintiff observes in its brief, jurisdiction is conferred upon the appellate court only through the timely filing of a notice of appeal. *Berg v. Allied Security, Inc.*, 193 Ill. 2d 186, 189, 737 N.E.2d 160 (2000). A notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, *** within 30 days after the entry of the order disposing of the last pending postjudgment motion." Ill. Sup. Ct. R. 303(a)(1) (eff. June 4, 2008). As the plaintiff further observes, a judgment ordering the foreclosure of a mortgage is not final and appealable until the court enters orders approving the sale and directing the distribution. *In re Marriage of Verdung*, 126 Ill. 2d 542, 555, 535 N.E.2d 818 (1989).

¶ 10 Here, the circuit court entered its judgment approving the sale on November 5, 2010. Within 30 days of that order, the defendants filed a posttrial motion seeking to vacate the circuit court's judgment. Although the circuit court denied that motion as to the defendant Kyle Kinzy, the motion remained pending with respect to the remaining defendants. While that motion was pending, the circuit court entered various orders asking the parties to continue to litigate the posttrial motion. The court disposed of all those posttrial motions on May 28, 2011, and the defendants filed a notice of appeal less than 30 days later, on June 21. Because the defendants filed their notice of appeal within 30 days of the circuit court's resolution of their posttrial motion, their notice of appeal was timely. For that reason, we have jurisdiction over this appeal.

¶ 11 Although we disagree with the plaintiff on the jurisdictional issue, we agree with the plaintiff that another problem prevents us from reaching the merits of the defendants' contentions of error. On appeal, the defendants assert that the circuit court erred in denying their motion to vacate the

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default judgment against them for various reasons, including that certain of the plaintiff's filings lacked required exhibits, that the plaintiff had an insufficient interest to bring this action, that the procedure followed in this case deprived them of due process, and that the circuit court erred in refusing to re-open this case. To the extent the defendants failed to raise any of these issues to the circuit court, they are, of course, forfeited. See *Frazier v. Dettman*, 212 Ill. App. 3d 139, 148, 569 N.E.2d 1382 (1991). To the extent the defendants did raise these concerns to the circuit court, the record on appeal includes no transcripts or other memorialization of the circuit court's response. It is well established that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392. We may not reverse a circuit court's decision on a motion to vacate a default judgment unless the court abused its discretion. *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 715, 930 N.E.2d 459 (2010). Here, with no record of the reasons the circuit court gave for denying the defendants' requests to reconsider, we have no basis for saying that the circuit court abused its discretion. We must, therefore, affirm the circuit court's judgment.

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 13 Affirmed.