

No. 1-11-1851

**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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US BANK, N.A.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 CH 3783
	)	
EDMUND ORR, et al.,	)	Honorable
	)	Darryl B. Simko,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE JOSEPH GORDON delivered the judgment of the court.  
Presiding Justice Epstein and Justice McBride concurred in the judgment.

**ORDER**

¶ 1 *HELD:* Denial of defendant's motion to quash service affirmed because he did not comply with statutory requirements for preserving an objection to the trial court's personal jurisdiction over him.

¶ 2 In this mortgage foreclosure action, defendant, Edmund Orr, appeals from the denial of his motion to quash service of process and set aside any orders or judgments previously entered against him. He argues that no responsive pleading or motion was filed that would constitute a waiver of service and submission to the jurisdiction of the trial court. Plaintiff, United States

Bank National Association, responds that defendant waived any challenges to jurisdiction by making a motion for an extended stay of possession without first challenging the trial court's jurisdiction over his person.

¶ 3 The record shows that on October 9, 2008, plaintiff filed a mortgage foreclosure complaint against defendant for property commonly known as 4709 West Gladys Avenue, Chicago, Illinois, 60644. The affidavits of a special process server indicate that on October 14, 2008, a copy of the complaint and summons was left at defendant's usual abode, the subject real property, with Willie Henderson, a roommate, described as a 60-year-old African American male, 5 feet 7 inches tall, between 176 and 200 pounds, and white hair. Copies of the complaint and summons were also mailed to defendant at the same address.

¶ 4 On March 27, 2009, after defendant failed to file an appearance or otherwise respond, the trial court granted plaintiff's motion for entry of an order of default, and entered a judgment of foreclosure and sale of defendant's real property. Several notices of the impending foreclosure sale were mailed to defendant at the West Gladys Avenue address by the Judicial Sales Corporation, which sold the subject property to plaintiff at a public auction on October 8, 2010.

¶ 5 On October 15, 2010, plaintiff filed a motion to confirm the sale and for an order for possession. The trial court granted plaintiff's motion after a hearing on January 24, 2011. In the corresponding draft order, the trial court modified the stay of possession from 30 to 90 days, initialed the change and then signed the order.

¶ 6 On May 17, 2011, defendant's privately retained counsel filed a motion, pursuant to section 2-301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-301 (West 2008)), to quash service of process and set aside any order or judgments that were entered in the cause as void for lack of personal jurisdiction. In the motion, defendant alleged that he was never properly served with process in this case, and that he neither knew, nor lived with, anyone named Willie

Henderson. He claimed that the service must be quashed because plaintiff failed to comply with "735 ILCS 5/2-203." In his supporting affidavit, defendant stated that on October 14, 2008, the date purported service of process was made, he lived alone at 4709 West Gladys Avenue.

¶ 7 After a hearing on May 26, 2011, the trial court denied defendant's motion to quash service. In its written order, the trial court found that defendant "waived any objection to jurisdiction by obtaining a 90 day stay of possession at confirmation of sale on January 24, 2011."

¶ 8 In this court, defendant challenges the trial court's finding that he waived any jurisdictional objection by obtaining a 90-day stay of possession. He asserts that there is no record evidence that he filed an appearance prior to the motion to quash service of process, or that he asked for a 90-day stay of possession. He argues that "[n]o case under the law 735 ILCS 5/2-301 waives jurisdiction by merely appearing even if that appearance grants minor relief, such as extending possession by sixty (60) days," and "the mere fact that this relief was granted does not mean it was asked for."

¶ 9 The parties agree that the motion to quash service was substantively a petition seeking relief from a final judgment pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2008)) as it sought relief from a final judgment more than 30 days after confirmation. We observe that a typical section 2-1401 petition must show the existence of a meritorious defense and due diligence in presenting that defense to the trial court in the original action. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 103 (2002). However, under paragraph (f) of section 2-1401 (735 ILCS 5/2-1401(f) (West 2008)), a petition alleging voidness is exempt from these general requirements. *In re County Treasurer*, 2012 IL App (1st) 101976, ¶ 31. The allegation of voidness substitutes for, and negates, the need to allege a meritorious defense and due diligence. *Sarkissian*, 201 Ill. 2d at 104. Such is the case here where defendant claims

voidness due to a lack of personal jurisdiction, and our review is *de novo*. *Deutsche Bank National Trust Company v. Hall-Pilate*, 2011 IL App (1st) 102632, ¶ 12.

¶ 10 Personal jurisdiction may be obtained over a defendant by his appearance or by service of summons in a manner prescribed by statute. *Metrobank v. Cannatello*, 2012 IL App (1st) 110529, ¶ 15. Section 2-301 of the Code governs challenges to personal jurisdiction and provides, in pertinent part:

"(a) Prior to the filing of any other pleading or motion other than a motion for an extension of time to answer or otherwise appear, a party may object to the court's jurisdiction over the party's person, either on the ground that the party is not amenable to process of a court of this State or on the ground of insufficiency of process or insufficiency of service of process, by filing a motion to dismiss the entire proceeding or any cause of action involved in the proceeding or by filing a motion to quash service of process. Such a motion may be made singly or included with others in a combined motion, but the parts of a combined motion must be identified in the manner described in Section 2-619.1. Unless the facts that constitute the basis for the objection are apparent from papers already on file in the case, the motion must be supported by an affidavit setting forth those facts.

(a-5) If the objecting party files a responsive pleading or a motion (other than a motion for an extension of time to answer or otherwise appear) prior to the filing of a motion in compliance with subsection (a), that party waives all objections to the court's jurisdiction over the party's person." 735 ILCS 5/2-301 (West 2008).

¶ 11 We initially note that the record on appeal does not include a transcript of the confirmation hearing or any other hearings, and thus our review is limited to the orders contained in the record. *Deutsche Bank National Trust Company*, 2011 IL App (1st) 102632, ¶ 16. We further note that any doubts arising from the incompleteness of the record will be resolved against the appellant (*Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)); and that under these circumstances, we must presume that the trial court's order finding personal jurisdiction over

defendant has a sufficient factual basis and conforms with the law (*In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 423-24 (2009)).

¶ 12 Here, the draft order of January 24, 2011, confirming the sale of the property, reflects the trial court's modification of the stay of possession from 30 to 90 days. Nearly four months later, defendant's privately retained counsel filed the subject motion to quash service of process and set aside any orders or judgments previously entered against defendant. The trial court's written order denying defendant's motion explicitly found that defendant "waived any objection to jurisdiction by obtaining a 90 day stay of possession at confirmation of sale on January 24, 2011."

¶ 13 In an attempt to avoid the inescapable conclusion that he waived any objection to the trial court's jurisdiction over his person, defendant suggests that he simply appeared, *pro se*, at the confirmation hearing and did not ask the court to extend the stay of possession. He further maintains that even if he requested that relief, it did not constitute a motion (other than a motion for an extension of time to answer or otherwise appear) under section 2-301(a-5) (735 ILCS 5/2-301(a-5) (West 2008)), and subject him to waiver of all jurisdictional objections.

¶ 14 Considering the orders contained in the record, we find that it strains credulity to believe that defendant did not ask the court to extend the stay of possession. Viewed in context, it is readily apparent that defendant's oral request was a motion seeking relief from the court and recognizing the court's jurisdiction over his person; there is nothing to show that he was merely seeking an extension of time to answer the complaint or otherwise appear, the only type of motion permitted under section 2-301(a-5). *Deutsche Bank National Trust Company*, 2011 IL App (1st) 102632, ¶ 18. Accordingly, we invoke the presumption that the contested order has a sufficient factual basis and conforms with the law. *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d at 424.

¶ 15 In doing so, we remind that *pro se* litigants are presumed to know, and must comply with, the applicable court rules and procedures. *Steinbrecher v. Steinbrecher*, 197 Ill.2d 514, 528 (2001). Thus, the fact that defendant appeared *pro se* and asked the trial court to extend the stay of possession does not affect his waiver of any objection to personal jurisdiction. *In re Estate of Pellico*, 394 Ill. App. 3d 1052, 1067 (2009). In this case, defendant waived his challenge to the trial court's jurisdiction over his person because he did not comply with section 2-301(a-5) (*Deutsche Bank National Trust Company*, 2011 IL App (1st) 102632, ¶ 18), and we affirm the judgment of the circuit court of Cook County to that effect.

¶ 16 Affirmed.