
IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

REPUBLIC BANCORP COMPANY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook Count.
)	
v.)	Nos. 09 CH 19099 &
)	09 CH 48273, consolidated
)	
BARRETT MOORE and MARY MOORE,)	Honorable
)	Lisa R. Curcio,
Defendants-Appellants.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

ORDER

¶ 1 *Held:* Defendants' appeal from an order denying their successive postjudgment motion to vacate certain judgments and orders entered against them in a mortgage foreclosure action was dismissed where the appeal was not timely filed.

¶ 2 Defendants, Barrett Moore and Mary Moore (the Moores), appeal from an order denying their amended motion to quash service of process and void all judgments and orders entered against them in a mortgage foreclosure action that had been consolidated with a suit to foreclose a mechanics lien involving the same parties and property. The Moores argued they had not been properly served in the mortgage foreclosure proceeding. We dismiss for lack of appellate jurisdiction.

¶ 3 On December 3, 2009, plaintiff, Republic Bancorp Company (Republic), filed a complaint

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to foreclose a mortgage and security agreement encumbering the commercial property located at 600 Valley Road, Glencoe, Illinois (property). In its complaint, Republic named as defendants: the Moores; Chicago Title Land Trust Company, not personally but solely as successor trustee to LaSalle National Bank under a trust agreement dated February 20, 2004, known as trust number 132422 (the trust); and Progressive Builders, LLC (Progressive).

¶ 4 The mortgage at issue was executed by the trust on September 27, 2007, and secured a promissory note in the principal amount of \$3,335,000 which had been made by the trust and the Moores. After the loan was made, the Moores moved their family into the home located on the property. On the September 27, 2008, maturity date, the note had an unpaid balance. At the time the complaint was filed, principal and interest in the amount of \$3,926,954.17 was owed.

¶ 5 The affidavits of a special process server, Jeff Brown, averred that he had served the Moores at 600 Valley Road, Glencoe, Illinois, on December 20, 2009, by leaving a copy of the summons and complaint with an unnamed white male, describing him as "a person of the family of the age of 13 years or upwards."

¶ 6 Prior to the filing of the mortgage foreclosure suit, Progressive commenced a suit on June 16, 2009, to foreclose a purported mechanics lien recorded against the property for unpaid labor and material. In its suit, Progressive named as defendants: the trust as owner of the property; the Moores, as owners of the trust's beneficial interests; and Republic, as having a mortgage on the property. In its complaint, Progressive alleged the mortgage was inferior to its mechanics lien and sought a sale of the property. Republic was served and appeared in this action. On January 6, 2009, Progressive served Barrett Moore personally, and served Mary Moore by substitute service on her husband.

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¶ 7 On January 28, 2010, the circuit court entered an order granting Republic's motion to consolidate, thereby consolidating the mortgage foreclosure action with the mechanics lien action. The matters subsequently proceeded under the lower docket number assigned to the mechanics lien case, which was docket number 09 CH 19099.

¶ 8 On March 8, 2010, the circuit court entered default judgments in favor of Progressive and against the Moores and the trust in the mechanics lien suit. On that same date in the mortgage foreclosure action, the circuit court granted Republic's motion for default against the Moores and the trust, entered a judgment in Republic's favor against all defendants, and ordered the sale of the property.

¶ 9 On June 8, 2010, the circuit court granted Republic's motion for an order approving report of sale and distribution, confirming sale, and possession. A personal deficiency judgment was entered against the Moores in the amount of \$1,226,961.77.

¶ 10 On June 28, 2010, the Moores filed a motion to quash service of process in the mortgage foreclosure action, and to void all prior judgments and orders arising out of the mortgage foreclosure action against them. They argued that substitute service was defective. Specifically, the Moores asserted that they resided at 600 Valley Road in Glencoe, Illinois, with only their three sons, the oldest of which was 11 years old and, therefore, substitute service was not made on a family member of 13 years of age or older. The motion was without evidentiary support. On October 6, 2010, the circuit court denied the motion to quash service of process.

¶ 11 Almost 10 months later, on July 28, 2011, the Moores filed an amended motion to quash service of process and to hold void all judgments and orders arising out of the mortgage foreclosure

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action. The Moores again argued that substitute service was defective as their three sons, who were the only other household members, were under the age of 13 years at that time. This amended motion included the affidavits of the Moores stating that they lived with their three sons in Glencoe, Illinois. The affidavits gave the birth dates of their sons as June 26, 1999; April 9, 2003; and March 16, 2005. On August 18, 2011, the circuit court denied the Moores' amended motion. On August 22, 2011, the Moores filed a notice of appeal seeking a reversal of this order.

¶ 12 Republic contends the Moores' notice of appeal is untimely and, therefore, that we lack appellate jurisdiction over their appeal. Even if the jurisdictional issue had not been raised, we have an independent duty to examine our appellate jurisdiction. *In re Marriage of Gaudio*, 368 Ill. App. 3d 153, 156 (2006).

¶ 13 Illinois Supreme Court Rule 303(a)(1) (Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008)) provides that a notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from or, if a timely postjudgment motion directed against the judgment is filed, then within 30 days after the entry of the order disposing of the last pending postjudgment motion. "A motion not filed within 30 days after the judgment (or any extension allowed) is not 'timely' within the meaning of that word as used in Rule 303(a); and an untimely motion, or one not directed against the judgment, neither stays the judgment nor extends the time for appeal." *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981).

¶ 14 In the present case, on June 8, 2010, the circuit court entered a final and appealable order confirming the judicial sale of the property. On June 28, 2010, the Moores filed a timely postjudgment motion to quash service of process, arguing that service was defective because they

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were served by substitute service on a family member under the age of 13, in contravention of section 2-203 of the Code of Civil Procedure, which requires substitute service be made on a family member or person residing at the defendant's usual place of abode "of the age of 13 years or upwards." 735 ILCS 5/2-203(a) (West 2008). On October 6, 2010, the circuit court denied the Moores' postjudgment motion to quash.

¶ 15 Pursuant to Rule 303(a)(1), the Moores had 30 days to appeal the October 6, 2010, order denying their postjudgment motion to quash. The Moores did not file an appeal within that 30-day period. Instead, the Moores filed a successive postjudgment motion to quash almost 10 months later—on July 28, 2011. The circuit court denied this second postjudgment motion on August 18, 2011, and the Moores filed a notice of appeal therefrom on August 22, 2011.

¶ 16 Our supreme court has held:

"A second post-judgment motion (at least if filed more than 30 days after judgment) is not authorized by either the Civil Practice Act or the rules of this court and must be denied. [Citation.] There is no provision in the Civil Practice Act or the supreme court rules which permits a losing litigant to return to the trial court indefinitely, hoping for a change of heart or a more sympathetic judge. Permitting successive post-judgment motions would tend to prolong the life of a lawsuit at a time when the efficient administration of justice demands a reduction in the number of cases pending in trial courts and would lend itself to harassment. There must be finality, a time when the case in the trial court is really over and the loser must appeal or give up. Successive post-judgment motions interfere with that policy. And justice is not served by permitting the losing party to string out his attack on a

judgment over a period of months, one argument at a time, or to make the first motion a rehearsal for the real thing the next month. In the interests of finality, and of certainty and ease of administration in determining when the time for appeal begins to run, we [hold] that successive post-judgment motions are impermissible when the second motion is filed more than 30 days after the judgment or any extension of time allowed for the filing of the post-judgment motion." *Sears*, 85 Ill. 2d at 259.

¶ 17 Pursuant to *Sears*, the Moores' successive postjudgment motion to quash was impermissible as it was filed more than 30 days after judgment and did not extend the time for appeal. See, also Ill. S. Ct. R. 274 (eff. Jan. 1, 2006) ("A party may make only one postjudgment motion directed at a judgment order that is otherwise final.").

¶ 18 Although the Moores' successive postjudgment motion to quash was ostensibly brought as a section 2-1401 petition (735 ILCS 5/2-1401 (West 2010)), which provides a procedure for relief from a final order or judgment after 30 days from the entry thereof, and is not considered a successive postjudgment motion over which the circuit court would lack jurisdiction (See *B-G Associates, Inc. v. Giron*, 194 Ill. App. 3d 52, 59 (1990)), we cannot construe it as such. Section 2-1401 "contemplates the introduction of new or additional information that was not nor could have been included in the first motion." *Id.* The Moores' successive postjudgment motion to quash essentially repeated the allegation of the first postjudgment motion to quash, specifically, that substitute service in the mortgage foreclosure action was defective because it was made on a family member under 13 years of age. Unlike their first postjudgment motion to quash, the successive postjudgment motion included the Moores' affidavits regarding the age of their sons with whom they

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lived in Glencoe, Illinois; however, said affidavits could have been included in the first motion. The Moores' successive postjudgment motion to quash did not comply with the requirements of section 2-1401, and the Moores may not proceed thereunder. *Id.* (The appellate court refused to construe a second postjudgment motion as a section 2-1401 petition where it duplicated the allegations of the first motion and, thus, did not comply with the requirements of section 2-1401.).

¶ 19 The Moores argue that Republic failed to raise the circuit court's lack of jurisdiction over the parties as a defense to the successive postjudgment motion to quash and, instead, argued that service upon the Moores in the mechanics lien action was sufficient to satisfy the service requirements in the mortgage foreclosure action. The Moores contend the circuit court was, thereby, revested with jurisdiction.

¶ 20 Under the doctrine of revestment, " 'the parties can re-vest a court with jurisdiction so long as (1) the court has general jurisdiction over the matter and personal and subject-matter jurisdiction over the particular cause; (2) the parties actively participate without objection; and (3) the proceedings are inconsistent with the merits of the prior judgment.' " *People v. Blalock*, 2012 IL App (4th) 110041, ¶ 12 (quoting *People v. Lindmark*, 381 Ill. App. 3d 638, 652 (2008)).

¶ 21 The Moores' reliance on revestment is misplaced. *Sears* is instructive. In *Sears*, the supreme court found a husband's notice of appeal from the denial of his successive postjudgment motion in his divorce case to be untimely because the husband filed the motion more than 30 days after the judgment and the successive motion did not toll the filing period. *Sears*, 85 Ill. 2d at 259-60. The husband argued that his notice of appeal was timely though because his wife actively participated in the hearing on the successive postjudgment motion and, thus, revested the circuit court with

jurisdiction. *Id.* at 260. The supreme court found the revestment doctrine inapplicable, stating:

"The hearing on [the husband's] motion did not concern the merits of the judgment; the participants did not ignore the judgment and start to retry the case, thereby implying by their conduct their consent to having the judgment set aside. On the contrary, the hearing was about whether the judgment should be set aside; and [the wife] insisted it should not. Nothing in the proceeding was inconsistent with the judgment. Nothing in [the wife's] conduct voluntarily waived her judgment or estopped her to assert it. The old judgment was never touched, and no new one was entered. The hearing on [the husband's] last motion did not render the order denying that motion appealable." *Id.*

¶ 22 Similarly, in the present case, the hearing on the Moores' successive postjudgment motion to quash did not concern the merits of any of the underlying judgments in the mortgage foreclosure action; the participants did not ignore the judgments and start to retry the case, thereby implying by their conduct their consent to having the judgments set aside. On the contrary, the hearing was about whether the judgments in the mortgage foreclosure action should be set aside, and Republic insisted they should not. Nothing in the proceeding was inconsistent with the judgments in the mortgage foreclosure action. Nothing in Republic's conduct voluntarily waived the judgments or estopped Republic from asserting them. The old judgments were never touched, and no new judgments were entered. The hearing on the Moores' successive postjudgment motion to quash did not render the order denying that motion appealable.

¶ 23 The Moores argue that we have "the inherent power" to review their appeal in order to expunge the allegedly void judgments entered against them in the mortgage foreclosure action. In

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support, the Moores cite the well-established principle that "a void order may be attacked at any time or in any court, either directly or collaterally." *People v. Flowers*, 208 Ill. 2d 291, 308 (2003).

However, our supreme court has further held:

"Although a void order may be attacked at any time, the issue of voidness must be raised in the context of a proceeding that is properly pending in the courts. If a court lacks jurisdiction, it cannot confer any relief, even from prior judgments that are void. The reason is obvious. Absent jurisdiction, an order directed at the void judgment would itself be void and of no effect.

Consistent with these principles, the appellate court is not vested with authority to consider the merits of a case merely because the dispute involves an order or judgment that is, or is alleged to be, void. *** Its power attaches only upon compliance with the rules governing appeals." (Citations omitted.) *Id.*

¶ 24 As discussed, the Moores' appeal from their successive postjudgment motion did not comply with Rule 303(a)(1) and, therefore, we lack jurisdiction and cannot confer any relief.

¶ 25 For the foregoing reasons, we dismiss the Moores' appeal for lack of jurisdiction. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 26 Dismissed.