

No. 1-11-3122

**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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CENTRAL MORTGAGE COMPANY,	)	Appeal from the
	)	Circuit Court of
Plaintiffs-Appellees,	)	Cook County.
	)	
v.	)	No. 10 CH 33930
	)	
MONIKA ZAHARKOWOVA,	)	Honorable
	)	Anthony Kyriakopoulos,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Justices Quinn and Murphy concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where defendant was properly served with valid summons, the circuit court acquired personal jurisdiction over her and her motion to quash service was properly denied; judgment affirmed.
- ¶ 2 Monika Zaharkowova, defendant in a mortgage foreclosure suit brought by plaintiff, Central Mortgage Company, appeals from a circuit court order denying her motion to quash service. On appeal, defendant contends, through counsel, that the circuit court erred in denying her motion to quash service because the court did not have personal jurisdiction over her where there were defects in the proof of service. We affirm.

¶ 3 On June 22, 2007, Judge Dorothy Kinnaird entered General Administrative Order No. 2007-03, regarding standing orders for the appointment of special process servers in mortgage foreclosure cases. Pursuant to that order, each law firm handling mortgage foreclosure cases in the Chancery Division could seek a standing order for the appointment of designated special process servers. On May 27, 2010, United Processing, Inc. (License Number "117-001101") was appointed as a standing special process server for the quarter ending August 31, 2010, in cases filed by Codilis & Associates, P.C., which was the law firm that represented plaintiff in this action.

¶ 4 On August 5, 2010, plaintiff filed a complaint in the circuit court to foreclose a mortgage on property located at 5523 West Melrose Street in Chicago, naming defendant as the present owner of the premises and the mortgagor on a mortgage held by plaintiff. On August 7, according to the affidavit of the special process server, defendant was personally served at the property being foreclosed by Terry Ryan. Defendant failed to appear in court or respond to the foreclosure complaint, and plaintiff filed a motion for order of default. On December 14, 2010, on plaintiff's motion, the trial court entered an order of default against defendant and entered a judgment for foreclosure and sale of the subject property. On February 15, 2011, the property in question was sold and plaintiff submitted the winning bid.

¶ 5 On February 24, 2011, plaintiff filed a motion requesting an order approving the selling officer's report of sale and distribution and for possession against defendant. Although defendant never filed a response to plaintiff's motion, she subsequently filed a motion to quash on June 14, 2011, maintaining that Judge Kinnaird's General Administrative Order No. 2007-03 was not valid, and Terry Ryan was not appointed to serve process, nor was he identified as an employee of an appointed company on the return of service.

¶ 6 Plaintiff replied that defendant failed to meet her burden to challenge the validity of the return of service because she did not present clear and convincing evidence to rebut the affidavit of service filed with the court. Plaintiff also contended that General Administrative Order No. 2007-03 is valid, it properly obtained authority of the court to serve process via United Processing, Inc., and it was undisputed that defendant was served. In her response, defendant argued that the burden was on plaintiff to prove that Ryan was an employee appointed to serve process.

¶ 7 On September 26, 2011, after the trial court noted that it was fully advised, the court denied defendant's motion to quash and confirmed the sale of the subject property to plaintiff. Defendant filed a notice of appeal challenging the denial of her motion to quash service and the order confirming sale.

¶ 8 On appeal, defendant appears to contend that the trial court lacked personal jurisdiction over her based on an alleged defect in the return of service and its judgment denying her motion to quash was void. Where defendant appears to claim voidness due to a lack of personal jurisdiction, our review is *de novo*. *Mugavero v. Kenzler*, 317 Ill. App. 3d 162, 164 (2000).

¶ 9 To enter a valid judgment, the circuit court must have jurisdiction over the subject matter of the litigation and jurisdiction over the parties. *Deutsche Bank National Trust Co. v. Hall-Pilate*, 2011 IL App (1st) 102632, ¶13. Personal jurisdiction may be acquired over a defendant by her appearance or by effective service of summons. *Johnson v. Ingalls Memorial Hospital*, 402 Ill. App. 3d 830, 842 (2010). The court lacks jurisdiction over a party when service is flawed and that party has not voluntarily submitted herself to the jurisdiction of the court. *People v. Wallace*, 405 Ill. App. 3d 984, 988 (2010).

¶ 10 Here, we note that the record on appeal does not include a transcript of the hearing on defendant's motion to quash and confirmation of sale, or any other hearings, and thus our review

is limited to the orders contained in the record. *Hall-Pilate*, 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 when a reviewing court is faced with an incomplete record on appeal, we must presume the trial court ruled or acted correctly (*Moening v. Union Pacific R.R Co.*, 2012 IL App (1st) 101866, ¶38).

¶ 11 Turning to the merits, we address defendant's contentions that the return of service was defective because it did not indicate that Terry Ryan was an employee of an agency that was appointed to serve process, nor did it state that Ryan was appointed to serve process.

¶ 12 "In the case of personal service, the return of summons is *prima facie* proof of proper service; that proof can be overcome only by clear and convincing evidence." *Pineschi v. Rock River Water Reclamation District*, 346 Ill. App. 3d 719, 724 (2004), citing *Winning Moves, Inc. v. Hi! Baby, Inc.*, 238 Ill. App. 3d 834, 838 (1992).

¶ 13 Section 2-203(b) of the Code of Civil Procedure (Code) provides the requirements for what must be contained in a return of service. It states:

"The officer, in his or her certificate or in a record filed and maintained in the Sheriff's office, or other person making service, in his or her affidavit or in a record filed and maintained in his or her employer's office, shall (1) identify as to sex, race, and approximate age the defendant or other person with whom the summons was left and (2) state the place where (whenever possible in terms of an exact street address) and the date and time of the day when the summons was left with the defendant or other person."

735 ILCS 5/2-203(b) (West 2010).

¶ 14 Here, the record shows that the affidavit evidencing personal service upon defendant clearly contained all of the information required by applicable law. Specifically, the affidavit served upon defendant stated that she was a 47-year-old Caucasian female, and that service occurred at 5523 West Melrose Street in Chicago on August 7, 2010, at 3 p.m.

¶ 15 In reaching this conclusion, we reject defendant's contention that service was improper because the return of service did not indicate that Ryan was an employee of an agency that was appointed to serve process. Despite defendant's contentions to the contrary, it was not plaintiff's burden to establish Ryan's employment. Instead, the requirements for what must be contained in a return of service are indicated in section 2-203(b) of the Code, and, as we found above, such requirements were met in this case resulting in *prima facie* proof of proper service. Moreover, the only statute cited by defendant, *i.e.*, section 2-202 of the Code (735 ILCS 5/2-202 (West 2010)), supports plaintiff's position that the service affidavit was proper. Section 2-202 establishes the requirements for appointing a special process server, and the only additional requirement the Code imposes when appointing a private detective agency is that the motion and order for appointment must contain the number of the certificate issued to the private detective agency. 735 ILCS 5/2-202(a-5) (West 2010). That requirement was met here where United Processing, Inc.'s license number appeared in the motion and the standing order appointing United Processing, Inc. Therefore, defendant failed to prove by clear and convincing evidence that the return of service was improper.

¶ 16 We further find that *C.T.A.S.S. & U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909 (2008), cited by defendant, is distinguishable from the case at bar. In *Johnson*, 383 Ill. App. 3d at 910, 912, the detective served the defendant before the detective had been appointed as special process server. Here, however, the record clearly shows that the court had appointed United Processing, Inc. to serve process before service occurred in this case.

¶ 17 Defendant also acknowledges in her appellate brief that she argued in the trial court that the general administrative order entered by the trial court was invalid. However, she concedes on appeal that this court has held that the presiding judge of the chancery division had the authority to enter general orders in the exercise of her general administrative authority. See *Onewest Bank, FSB v. Markowicz*, 2012 IL App (1st) 111187; *U.S. Bank, N.A. v. Dzis*, 2011 ILL App (1st) 102812. Defendant, however, asserts that she raised this issue only to preserve it for a possible future petition to the supreme court. Because defendant fails to advance any legal argument pertaining to this issue, we find that she has forfeited any claim regarding the validity of the trial court's general administrative order. See *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶12 (mere contentions, without argument or citation to authority do not merit consideration on appeal).

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

¶ 19 Affirmed.