

FIFTH DIVISION
September 14, 2012

No. 1-11-3555

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

FIFTH THIRD MORTGAGE COMPANY,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CH 30973
)	
PIOTR SULEWSKI a/k/a PIOTR MICHAL SULEWSKI;)	
CITY OF CHICAGO, ALICJA SULEWSKI, 7916 W.)	
LAWRENCE AVE. HOMEOWNERS)	
ASSOCIATION, UNKNOWN OWNERS, AND)	
NONRECORD CLAIMANTS,)	Honorable
)	David B. Atkins,
Defendants-Appellant.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Epstein and Taylor concurred in the judgment.

ORDER

¶ 1 HELD: Denial of defendant's motion to quash service by publication was not against the manifest weight of the evidence.

1-11-3555

¶ 2 Defendant, Piotr Sulewski, appeals from an order of the circuit court denying his motion to quash service by publication in a mortgage foreclosure action filed by plaintiff, Fifth Third Mortgage Company (Fifth Third). For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Fifth Third filed a foreclosure action on July 20, 2010, for property located at 7916 West Lawrence, Unit A, in Norridge, Illinois, against several defendants, including Piotr and his former wife Alice. A summons was issued on July 20, 2010, and directed service for defendant at the property address and also at 3708 North Odell in Chicago. According to the record, special process servers, Steven Stosur and John F. Jacobs, unsuccessfully attempted to serve defendant several times at various addresses.

¶ 5 According to the July 23, 2010, affidavit of the special process server, service was unsuccessfully attempted at the Chicago address on July 21, 2010. The affidavit specified how service was attempted and why service was unsuccessful. A second affidavit filed by the special process server on July 28, 2010, indicated that service was unsuccessfully attempted on July 21, July 23, and July 25 at the Norridge address. This affidavit also specified how service was attempted and why service was unsuccessful. A third affidavit filed by the special process server on August 8, 2010, indicated that service was unsuccessful at 10512 Crown Road in Franklin Park on July 22, July 25, July 26, July 27, July 28, July 29, July 30, July 31, August 2, August 3, August 4, and August 5. Specifically, the affidavit indicated that the property was inaccessible because it was gated and locked; there were no bells or mailboxes outside of the gate; and there were several calls made to the number provided and messages were left, but the calls were never

1-11-3555

returned. The affidavit also noted that service was attempted at various times of the day.

¶ 6 An affidavit to allow service by publication was filed on August 17, 2010, and signed by Fifth Third's attorney. The affidavit indicated that defendant either resided or had gone out of the state, or upon due inquiry could not be found or was concealed within the state, so that due process could not be served upon him; that diligent inquiry had been made as to defendant's whereabouts; and listed defendant's last known residences as the Norridge and the Franklin Park addresses. An affidavit indicating no military service by defendant was filed on January 10, 2011, with records from the Department of Defense attached.

¶ 7 A motion for default was filed on January 10, 2011, and a certificate for prove-up was filed the same day. An affidavit for the mortgage balance was filed on Fifth Third's behalf by a foreclosure analyst on January 20, 2011. The trial court entered a default judgment of foreclosure on January 20, 2011. The judgment order further indicated that defendant's redemption period expired on April 21, 2011. The sale of the Norridge property was set for April 25, 2011.

¶ 8 Proof of mailing the notice of sale to defendants was filed on March 14, 2011, and the motion to approve sale was filed on May 2, 2011, along with the receipt and certificate of sale. An order approving the report of sale and distribution, confirming the sale and an order of possession were all entered on June 13, 2011.

¶ 9 Defendant filed an appearance through counsel on October 19, 2011, and filed a motion to quash service the same day. In his motion and attached affidavit, defendant averred that he could have been found at the Franklin Park address, and argued that under the law, once

1-11-3555

defendant states that on due inquiry he could have been served, plaintiff must show the due inquiry it made, and requested that service be quashed. The trial court denied defendant's motion on November 1, 2011, without a hearing, and this timely appeal followed.

¶ 10 ANALYSIS

¶ 11 Defendant contends that the trial court erred in denying his motion to quash service by publication in the foreclosure action and requests a remand for a hearing on his motion and a requirement that Fifth Third respond to his motion. Defendant contends that the applicable standard of review is *de novo* because a question of law is raised. Defendant is incorrect.

¶ 12 When we review a motion to quash service of process, we must determine whether the trial court's findings of fact are against the manifest weight of the evidence. *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213, ¶17.

¶ 13 We first note that defendant has failed to provide this court with a transcript of proceedings or bystander's report from the hearing when his motion to quash was presented. The record only contains a draft order, prepared by defendant's counsel and entered by the trial court, which states in pertinent part:

"This motion to be heard before this Court on Defendant's Motion to Quash with both parties present and the Court duly apprised, it is
HEREBY ORDERED that Defendant's Motion to Quash is
denied."

The wording of the draft order indicates that there was some discussion regarding defendant's motion before the trial court denied it. As the appellant, defendant has the burden of providing a

1-11-3555

sufficiently complete record to support any claim of error. *Government Employees Insurance Co. v. Buford*, 338 Ill. App. 3d 448, 453 (2003). In the absence of such a record, we must presume that the trial court's order of November 1, 2011, was in conformity with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). However, because we find the instant record sufficiently complete to support defendant's claim of error (See *Medow v. Flavin*, 336 Ill. App. 3d 20, 36 (2002)), we will review his claim on the merits.

¶ 14 A judgment entered without jurisdiction over the parties is void *ab initio* and lacks legal effect. *Deutsche Bank*, 2012 IL App (1st) 111213, ¶15. In the absence of a general appearance, personal jurisdiction is acquired only through service of process according to statute. *Marathon Finance Co. v. Pioneer Bank & Trust Co.*, 168 Ill. App. 3d 148, 151 (1988).

¶ 15 Section 2-206 of the Code of Civil Procedure (735 ILCS 5/2-206 (West 2010)) allows a plaintiff to serve process on a defendant by publication, but it restricts this kind of service to limited cases and only when the plaintiff has strictly complied with the requirements for such service. *Deutsche Bank*, 2012 IL App (1st) 111213, ¶18. In pertinent part, section 2-206 provides:

"Whenever, in any action affecting property or status within the jurisdiction of the court, * * * plaintiff or his attorney shall file * * * an affidavit showing that the defendant * * * on due inquiry cannot be found, or is concealed within this State, so that process cannot be served upon him or her, and stating the place of residence of the defendant, if known, or that upon diligent inquiry

his or her place of residence cannot be ascertained, the clerk shall cause publication to be made in some newspaper published in the county in which the action is pending." 735 ILCS 5/2-206 (West 2010); *Deutsche Bank*, 2012 IL App (1st) 111213, ¶18.

¶ 16 Additionally, the Cook County circuit court has adopted a rule that augments the requirement for the affidavit:

"Pursuant to 735 ILCS 5/2-206(a), due inquiry shall be made to find the defendant(s) prior to service of summons by publication. In mortgage foreclosure cases, all affidavits for service of summons by publication must be accompanied by a sworn affidavit by the individual(s) making such 'due inquiry' setting forth with particularity the action taken to demonstrate an honest and well directed effort to ascertain the whereabouts of the defendant(s) by inquiry as full as circumstances permit prior to placing any service of summons by publication." Cook Co. Cir. Ct. R. 7.3 (Oct. 1, 1996); *Deutsche Bank*, 2012 IL (1st) 111213, ¶19.

¶ 17 Hence, the rule requires sworn affidavits by the individual who tried to serve process on the defendant and ascertain the defendant's whereabouts, setting forth the specific actions they took to find and serve process on the defendant. *Deutsche Bank*, 2012 IL App (1st) 111213, ¶20.

¶ 18 Turning to the instant case, that is precisely the action that Fifth Third took. The record

1-11-3555

contains three affidavits, filed by special process servers Steven Stosur and John F. Jacobs, detailing their unsuccessful attempts to serve defendant at any of the three addresses they were able to locate for him and detailing the actions took in attempting service. Most notably, in Jacobs' affidavit relating to the unsuccessful attempts to serve defendant at the Franklin Park address, which was filed on August 8, 2010, service was attempted 12 times on several different days at various times throughout the day. The affidavit further indicated that the property was unaccessible because it was gated and locked; there were no bells or mailboxes outside of the gate; and there were several calls made to the number provided and messages were left, but the calls were never returned. According to the documents filed in the circuit court, Fifth Third also made an inquiry as to whether defendant served in the military, reviewed defendant's credit report, inquired through directory assistance, inquired through the Department of Motor Vehicles, reviewed defendant's voter registration, checked for any professional licenses that may have been issued to defendant, inquired through the Department of Corrections, checked for any property tax listings and any alternate addresses listed for defendant, all as part of its due diligence in attempting to locate defendant prior to requesting service by publication. We find that Fifth Third strictly complied with the requirements of section 2-206 and the Cook County circuit court rule, and conclude that the trial court's denial of defendant's motion to quash service was not against the manifest weight of the evidence.

¶ 19 CONCLUSION

¶ 20 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 21 Affirmed.