

2012 IL App (2d) 110571-U
No. 2-11-0571
Order filed February 29, 2012

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
SECOND DISTRICT

M&T BANK, N.A.)	Appeal from the Circuit Court
)	of Kane County.
Plaintiff-Appellee,)	
)	
v.)	No. 09-CH-4039
)	
CRESCENCIO LEZAMA,)	
)	
Defendant-Appellant)	
)	
(Mortgage Electronic Registration Systems,)	
Inc., as Nominee for Cima Financial Corp.;)	
Unknown Heirs and Legatees of Crescencio)	Honorable
Lezama, if any; and Unknown Owners and)	Mark A. Pheanis,
Non Record Claimants, Defendants).)	Judge, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

ORDER

Held: The trial court did not err in denying defendant's motion to quash service.

¶1 On October 15, 2009, plaintiff, M&T Bank, N.A., filed a complaint to foreclose the mortgage on property belonging to defendant, Crescencio Lezama. Defendant did not appear, and on January 13, 2010, the trial court entered a default judgment and a judgment for foreclosure and sale. The trial

court confirmed the sale of the property on June 21, 2010. On January 5, 2011, defendant filed a motion to quash service, alleging that the orders entered in the case were void for lack of personal jurisdiction. Defendant alleged that the service of process was insufficient because the summons erroneously directed him to file his answer and appearance at a post office box. He also alleged that plaintiff's substitute service on him was ineffective because he did not receive the complaint and summons that was allegedly left with a man renting another room in the same abode. The trial court denied defendant's motion to quash on May 13, 2011. We affirm.

¶ 2 Defendant's sole argument on appeal is that the summons was legally insufficient because it listed a post office box instead of stating a street address where he should file his appearance and answer. Specifically, the summons stated in relevant part:

"To Each Defendant:

YOU ARE SUMMONED and required to file an answer in this case, or otherwise file your appearance in the Office of the Clerk of this Court:

Deborah Seyller

Circuit Court Clerk

P.O. Box 112

Geneva, IL 60134

within 30 days after service of this summons, not counting the day of service. IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE TAKEN AGAINST YOU FOR THE RELIEF ASKED IN THE COMPLAINT, A COPY OF WHICH IS HERETO ATTACHED."

¶ 3 Illinois Supreme Court Rule 101(d) (eff. May 30, 2008) provides in relevant part that in cases where a defendant is required to file his answer or otherwise file his appearance within 30 days of service, the summons:

“shall be in substantially the following form:

* * *

To each defendant:

You are summoned and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, in the office of the clerk of this court within 30 days after service of this summons, not counting the day of service. If you fail to do so, a judgment by default may be entered against you for the relief asked in the complaint.”

¶ 4 Defendant argues that “[had] the Clerk listed no address then the Summons would be in compliance with Supreme Court Rule 101(d),” but the inclusion of a post office box rather than a street address rendered the summons legally insufficient. Defendant acknowledges that the post office box address is the correct mailing address for the clerk, but he argues that the courthouse’s street address was required for the summons if an address was included at all.

¶ 5 Defendant cites *In re Application of the County Treasurer & ex officio County Collector*, 359 Ill. App. 3d 763 (2005), and *In re Application of the County Collector*, 356 Ill. App. 3d 668 (2005). In the latter case, the appellate court examined section 22-10 of the Property Tax Code (35 ILCS 200/22-10 (West 2002)), which dealt with notice of the expiration of the redemption period before the issuance of a tax deed. *In re Application of the County Collector*, 356 Ill. App. 3d at 669. The statute stated, in relevant part: “ ‘In counties with 3,000,000 or more inhabitants, the notice shall also

state the address, room number and time at which the matter is set for hearing.’ ” *Id.* at 669-70 (quoting 35 ILCS 200/22-10 (West 2002)). The notice at issue stated that the hearing would be held in “ ‘Room 1704, Richard J. Daley Center in Chicago, Illinois.’ ” *Id.* at 669. The respondent argued that the notice was insufficient because it failed to include the street address of the Daley Center. *Id.* The appellate court agreed, stating that precedent required that tax buyers strictly comply with statutory notice requirements, and a notice missing even one essential statutory element renders the deed issued pursuant to the notice void. *Id.* at 670. The appellate court stated that the “Daley Center” was the “ ‘Vanity Name,’ ” of the building, and the legislature intended that the notice under section 22-10 include the street address of the courthouse. *Id.* at 673. In *In re Application of the County Treasurer*, the appellate court determined that the holding in *In re Application of the County Collector* should be applied retroactively to other notices not containing the street address of the Daley Center. *In re Application of the County Treasurer*, 359 Ill. App. 3d at 773.

¶ 6 Plaintiff argues that the aforementioned cases are distinguishable because they interpreted a statute which mandates strict compliance, whereas Rule 101(d) mandates only substantial adherence. Plaintiff argues that the summons issued complies with all of Rule 101(d)’s requirements, in that it advises the defendant that he is required to file an answer with the clerk of the court within 30 days after service of the summons, and that the failure to do so may result in a default judgment being entered against him. Plaintiff maintains that while Rule 101(d) does not require the clerk’s address, it also does not preclude its inclusion.

¶ 7 We review *de novo* the legal question of whether a trial court obtained personal jurisdiction over a party. *In re Dar. C.*, 2011 IL 111083, ¶60. The interpretation of a supreme court rule also presents a question of law that we review *de novo*. *People v. Snyder*, 2011 IL 111382, ¶21. We

construe supreme court rules according to the principles that govern the construction of statutes. *Robidoux v. Oliphant*, 201 Ill. 2d 324, 332 (2002). Our primary task is to ascertain and give effect to the drafter's intent. *Id.* “The best indication of the drafter’s intent is the plain language of the rule itself.” *Timothy Whelan Law Associates, Ltd. v. Kruppe*, 409 Ill. App. 3d 359, 375 (2011).

¶ 8 Rule 101(d) requires only that the summons be “substantially” in the same form as the example, rather than identical to the example. Ill. S. Ct. R. 101(d) (eff. May 30, 2008). Further, case law dictates that we construe a summons liberally and not elevate form over substance. *Charter Bank & Trust of Illinois v. Novak*, 218 Ill. App. 3d 548, 552 (1991). We agree with plaintiff that Rule 101(d) is therefore distinguishable from section 22-10, which requires strict compliance, rendering *In re Application of the County Collector* and *In re Application of the County Treasurer* inapposite. Here, the summons contained all of the information required by Rule 101(d), and the addition of the clerk’s mailing address did not render the notice insufficient. Accordingly, the trial court did not err in denying defendant’s motion to quash service.

¶ 9 For the reasons stated, we affirm the judgment of the Kane County circuit court.

¶ 10 Affirmed.