

No. 1-11-1242

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

BANK OF NEW YORK, <i>et al.</i> ,)	Appeal from the
)	Circuit Court of
Plaintiff,)	Cook County.
)	
vs.)	
)	
UNKNOWN HEIRS AND LEGATEES OF RUTH)	
HATCH, <i>et al.</i> ,)	
)	
Defendants,)	
<hr/>)	
JESSE M. HATCH,)	No. 07 CH 24518
)	formerly: No. 03 CH 12460
Plaintiff-Appellant,)	
)	
vs.)	consolidated with:
)	No. 07 CH 17140
)	
SHEILA PORTLOCK, DEWEY HALL and)	
KURIAN THURUTHIKARA,)	
)	
Defendants-Appellees,)	
<hr/>)	
)	

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SHEILA PORTLOCK and DEWEY HALL,)	
)	
Counter-Plaintiffs,)	
)	
vs.)	
)	
KURIAN THURUTHIKARA,)	Honorable
)	Mathias W. Delort,
Counter-Defendant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Lampkin and Justice R.E. Gordon concurred in the judgment.

ORDER

HELD: Trial court did not err in finding that plaintiff-appellant, Jesse M. Hatch did not have standing to bring ejectment action.

¶ 1 Plaintiff-appellant, Jesse M. Hatch¹ appeals *pro se* the trial court's order denying his motion to join his two brothers Elijah R. Hatch and Hosie Hatch as party plaintiffs in his ejectment action against defendants-appellees Kurian Thuruthikara, Sheila Portlock, and Dewey J. Hall. For the reasons that follow, we affirm.

¶ 2 The underlying facts of this case are set out in *Bank of New York v. Unknown Heirs and Legatees*, 369 Ill. App. 3d 472 (2006). Therefore, we repeat only those facts necessary to resolve the issues raised on appeal.

¶ 3 This appeal originates from a foreclosure action. On July 28, 2003, the Bank of New York ("BNY"), acting in its capacity as trustee for EquiCredit Corporation Trust 2001-2, filed a complaint

¹ We note that at all times relevant, Jesse M. Hatch was and is an inmate at the Stateville Correctional Center in Joliet, Illinois where he is serving a natural life sentence for first-degree murder. See *People ex rel. Hatch v. Elrod*, 190 Ill. App. 3d 1004, 1017 (1989).

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seeking to foreclose a mortgage secured by residential property owned by the decedent Ruth Hatch. The foreclosure complaint named as defendants, the unknown heirs and legatees, if any, of Ruth Hatch, a/k/a Ruth Slater, unknown owners and nonrecord claimants. *Bank of New York*, 369 Ill. App. 3d at 473.

¶ 4 On December 4, 2003, Jesse filed a *pro se* motion to dismiss the foreclosure complaint. He alleged he was an heir of Ruth Hatch (her son) and that service by publication was insufficient to confer personal jurisdiction over him because BNY had failed to conduct a proper investigation to locate his whereabouts and effect personal service upon him prior to service by publication in the Chicago Daily Law Bulletin. He attached an affidavit to his motion, stating he mailed a copy of the motion to BNY's attorney's office. *Id.*

¶ 5 On December 8, 2003, Jesse wrote the clerk of the court inquiring as to the status of his motion. Four days later, Hosie Hatch filed an answer and appearance, along with an application to sue or defend as an indigent person.

¶ 6 On January 14, 2004, BNY mailed Jesse a notice advising him that the case had been set for hearing in February 2004, at which time BNY would move for entry of orders for summary judgment, default, judgment of foreclosure and sale, and appointment of a foreclosure sale officer. *Bank of New York*, 369 Ill. App. 3d at 473-74.

¶ 7 On February 3, 2004, Jesse filed a *pro se* supplemental motion to dismiss for insufficiency of service of process. He argued, among other things, that the foreclosure action should be dismissed because the insufficient service defrauded Ruth Hatch's heirs of their right to be served with copies of the summons and foreclosure complaint thereby preventing them from setting forth reasonable

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and informed answers and defenses. Two days later, counsel for Elijah R. Hatch was granted leave to file a substitute appearance on his behalf and given seven days to answer or otherwise plead. The matter was continued to February 26, 2004. *Bank of New York*, 369 Ill. App. 3d at 474.

¶ 8 On February 26, 2004, the circuit court entered a judgment of foreclosure and sale, along with summary judgment in favor of BNY and against Hosie and Elijah. The circuit court entered the judgment of foreclosure and sale without first ruling on Jesse's prior *pro se* motions to dismiss. *Id.*

¶ 9 In April 2004, Elijah was appointed administrator of his mother's estate. The probate case is currently pending. *In re Estate of Slater*, No. 04 P 1464 (Cir. Ct. Cook County). On May 28, 2004, Jesse wrote the clerk of the circuit court, inquiring as to whether his *pro se* motions to dismiss had been ruled upon, and if not, to alert the court to his inquiry and request for a ruling on the matter. *Id.*

¶ 10 On July 13, 2004, Kurian Thuruthikara, a third-party bidder, purchased the subject property for an amount greater than the outstanding debt. The judicial sale was approved by the court on August 19, 2004, with a 30-day stay on possession.

¶ 11 On September 7, 2004, Jesse filed a *pro se* motion to vacate the judgment of foreclosure and sale. On October 15, 2004, he filed a *pro se* motion requesting a hearing and/or ruling on his motion for relief from judgment. The trial court stated it first became aware of Jesse's existence the first week of November 2004, when it received a letter from him postmarked September 28, 2004. *Id.*

¶ 12 On December 16, 2004, Kurian Thuruthikara sold the subject property to Sheila Portlock and Dewey J. Hall pursuant to a warranty deed.

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¶ 13 On February 8, 2005, pursuant to section 2-1401 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2002)), the trial court granted Jesse's motion for relief from judgment. The court determined that BNY had failed in its obligation to make the court timely aware of Jesse's existence. The court concluded that BNY knew of Jesse's existence prior to the judgment of foreclosure and sale and as early as December 4, 2003, when it received his pleadings, and yet it had failed to personally serve Jesse, make him a party defendant, or make the court aware of his existence. As a result, the trial court vacated the judgment of foreclosure and declared the sale void *ab initio*. *Id.* at 474-75.

¶ 14 BNY responded by filing a motion to reconsider. Sheila Portlock and Dewey J. Hall requested and were granted leave to intervene and file their motion to vacate. On May 31, 2005, the trial court granted the motions. The court determined that the intervenors' interest in the subject property was protected by section 2-1401(e) of the Code.

¶ 15 This section of the Code protects *bona fide* purchasers of property from the effects of an order setting aside a judgment affecting title to the property if the purchasers were not parties to the original action and lack of jurisdiction did not affirmatively appear in the record. See *Christiansen v. Saylor*, 297 Ill. App. 3d 719, 724 (1998); see also *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294, 306 (1986) (section 2-1401(e) of the Code protects the rights of innocent third-party purchasers, not parties to the original action, who purchased the property in reliance upon a court decree, unless a lack of jurisdiction affirmatively appears from the record). "A *bona fide* purchaser is a person who takes title to real property in good faith for value without notice of outstanding rights or interests of others." *Daniels v. Anderson*, 162 Ill. 2d 47, 57 (1994).

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¶ 16 Jesse appealed. On appeal, we found that BNY failed to exercise the due inquiry and reasonable diligence required by section 2-206(a) of the Code (735 ILCS 5/2-206(a) (West 2004)), in attempting to locate Jesse and therefore, service by publication was not sufficient to give the trial court personal jurisdiction over him. As a result, we determined that the judgment of foreclosure and sale was void *ab initio*. *Bank of New York*, 369 Ill. App. 3d at 476.

¶ 17 We also found that Portlock and Hall were not *bona fide* purchasers of the subject property entitled to the protections of section 2-1401(e) of the Code, because the court record contained information giving them constructive notice of Jesse's interest in the property and putting them on notice that service by publication might have been insufficient to obtain personal jurisdiction over him. *Id.*

¶ 18 The foreclosure case was remanded to the circuit court.² Following remand, Jesse filed a number of *pro se* pleadings, including an ejectment action (*Hatch v. Portlock*, No. 07 CH 171140), which has been consolidated with the original foreclosure case. The ejectment action is the subject of the present appeal.

¶ 19

ANALYSIS

¶ 20 On appeal, Jesse claims the trial court erred in denying his motion to join his brothers Elijah and Hosie as party plaintiffs in his ejectment action against Kurian Thuruthikara, Sheila Portlock, and Dewey J. Hall. We need not consider the merits of this claim because Jesse does not have standing to bring the ejectment action.

¶ 21 The object of an ejectment action is to restore possession of property to the person entitled

² After remand, the case number was changed from 03 CH 12460 to 07 CH 24518.

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to possess it. See *Bulatovic v. Dobritchandin*, 252 Ill. App. 3d 122, 128 (1993) ("object of an ejectment action is to obtain possession of land and involves a question of which party holds legal title."). By statute, in an ejectment action, the plaintiff must allege and prove: (1) he had possession of the subject premises after obtaining legal title; (2) that defendant subsequently took possession of the premises; and (3) that, at present, defendant unlawfully withholds possession from plaintiff. *Bulatovic*, 252 Ill. App. 3d at 128; *Cree Development Corp. v. Mid-America Advertising Co.*, 294 Ill. App. 3d 324, 330 (1997); 735 ILCS 5/6-109 (West 1992).

¶ 22 Jesse filed the ejectment action as an alleged heir of his deceased mother. However, the well established rule in this state is that the executor or administrator of a decedent's estate has standing to file suit on behalf of the decedent, but the legatees, heirs, and devisees have no such standing. See *McGill v. Lazzaro*, 92 Ill. App. 3d 393, 395 (1980). Therefore, Jesse does not have standing to bring the ejectment action.

¶ 23 Jesse's brother Elijah was appointed administrator of their mother's estate. It would appear that Elijah has standing to bring the ejectment action, but so far he has chosen not to participate.³ We agree with the trial court's ruling that Elijah and Hosie may not be joined in an ejectment action unless they choose to do so.

³ We find it worthwhile repeating the cautionary statements of the trial court, "The sale of Ruth's home generated a surplus of funds that would have normally have been distributed to Ruth's heirs, including Jesse. In today's real estate market, foreclosure sales generating surpluses are exceedingly rare. The chance of it happening again in a future resale of this property are almost nil."

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¶ 24 Accordingly, for the reasons set forth above, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.