

2013 IL App (2d) 120495-U
No. 2-12-0495
Order filed February 11, 2013

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

FEDERAL NATIONAL MORTGAGE ASSOCIATION,)	Appeal from the Circuit Court of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CH-3370
)	
SYED P. WASTI,)	
)	
Defendant-Appellant)	
)	
(Syed A. Wasti, Capital One Bank (USA), N.A., Unknown Owners, and Nonrecord Claimants, Defendants).)	Honorable Robert G. Gibson, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's notice of appeal was untimely, as he filed it not within 30 days of the denial of his motion directed against the judgment but within 30 days of the ruling on his motion to reconsider that denial, which motion to reconsider did not extend the time to appeal.
- ¶ 2 Syed P. Wasti (Syed P.) appeals from a judgment of foreclosure in favor of the substituted plaintiff, Federal National Mortgage Association (Fannie Mae) and the subsequent confirmation of

the sheriff's sale. Because the appeal was untimely, we lack jurisdiction, and we therefore dismiss the appeal.

¶ 3

I. BACKGROUND

¶ 4 On June 11, 2010, the original plaintiff, First Horizon Home Loans, a Division of First Tennessee Bank, N.A., filed a foreclosure suit relating to the property at 424 Spruce Avenue in Bensenville. It named as defendants the borrowers, Syed A. Wasti and Syed P. (collectively, the Wastis), Capital One Bank (USA), and unknown owners and nonrecord claimants.

¶ 5 On October 12, 2010, the court found all named defendants in default and entered a judgment of foreclosure. This judgment did not contain a finding under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010)—that is, the court did *not* find that no just reason existed to delay enforcement or appeal of the order. The court that day granted a motion to substitute Fannie Mae as plaintiff; Fannie Mae had purchased the original plaintiff.

¶ 6 The sheriff's sale took place on January 25, 2011, and, on February 7, 2011, Fannie Mae filed a motion for confirmation, which it scheduled for hearing on February 14, 2011.

¶ 7 On February 9, 2011, counsel filed a special and limited appearance for the Wastis. At the hearing on February 14, 2011, he asked for more time to respond, suggesting that service had been insufficient and that he would be filing something to challenge service.

¶ 8 On March 17, 2011, Fannie Mae filed a new motion for confirmation of the sale, setting hearing for March 21, 2011. The court granted the motion at the scheduled hearing, with the Wastis not yet having filed anything.

¶ 9 On March 24, 2011, Syed P. filed a motion to quash service. The gist of the motion was that the special process server had given the documents to Syed P.'s visiting ex-wife, who was not a

proper person to receive service for him under the relevant statute. On October 18, 2011, which was slightly less than seven months after confirmation of the sheriff's sale, the court entered an order stating that it was denying the motion to quash service "for reasons stated upon the record." At the hearing, the court *sua sponte* suggested that, by appearing and asking for time to file a response, he waived the objection to service.

¶ 10 Syed P., on October 31, 2011, filed a motion to reconsider. On April 11, 2012, which was more than a year after the confirmation of the sale, and not quite six months after the denial of the motion to quash, the court denied the motion to reconsider. Syed P. filed his notice of appeal on May 8, 2012.

¶ 11

II. ANALYSIS

¶ 12 This court lacks jurisdiction of the appeal. We have a duty to consider our own jurisdiction and will do so *sua sponte* if need be. *E.g., Department of Health Care & Family Services v. Cortez*, 2012 IL App (2d) 120502, ¶ 7. Here, the jurisdictional issue stems from Syed P.'s having filed his motion to quash service as a postjudgment motion. The trial court had jurisdiction to consider the postjudgment motion, but the motion to reconsider did not further extend that jurisdiction:

"(1) The 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 posttrial motion directed against the judgment is filed ***, within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order, irrespective of whether the circuit court had entered a series of final orders that were modified pursuant to postjudgment motions. ***

(2) *** *No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule.*"

(Emphasis added.) Ill. S. Ct. R. 303(a)(1), (a)(2) (eff. 2008).

(Note that the rule uses "postjudgment motion" and "posttrial motion" without distinction.) Here, as is quite typical in a foreclosure case, the only final and appealable judgment was the confirmation of the sheriff's sale. See *EMC Mortgage Corp. v. Kemp*, 2012 IL 113419, ¶ 11; *In re Marriage of Verdung*, 126 Ill. 2d 542, 555-56 (1989) (holding that, absent a Rule 304(a) finding, the confirmation of sheriff's sale is the appealable judgment in a foreclosure proceeding). (The foreclosure judgment also is a final judgment, but it is immediately appealable only if the court makes a Rule 304(a) finding concerning it. *Kemp*, 2012 IL 113419, ¶ 12; *Verdung*, 126 Ill. 2d at 555-56. The court made no such finding here.) Here, therefore, unless some party filed "a timely posttrial motion directed against the judgment" (Ill. S. Ct. R. 303(a)(1) (eff. June 4, 2008)), any appeal in the foreclosure case would have to be filed no more than 30 days after the March 21, 2011, confirmation.

¶ 13 The motion to quash was a timely postjudgment motion directed against the judgment. "A motion is said to be directed against the judgment when it attacks the judgment in one of the statutorily authorized ways, which include by requesting rehearing, retrial, modification, or vacation of the judgment." *D'Agostino v. Lynch*, 382 Ill. App. 3d 639, 643 (2008). A postjudgment motion to quash is, at least implicitly, a motion for vacation of the judgment. The claim of a motion to quash is, necessarily, that the court failed to obtain personal jurisdiction over the party in question. An order entered by a court that lacks personal jurisdiction over a party is void as to that party and subject to vacation. *C.T.A.S.S. & U. Federal Credit Union v. Johnson*, 383 Ill. App. 3d 909, 910 (2008). The motion was timely, as Syed P. filed it within four days of the confirmation. The filing

of the motion thus extended the time to appeal until 30 days after the decision on that motion—30 days after October 18, 2011.

¶ 14 However, under Rule 303(a)(2), a motion to reconsider the ruling on a postjudgment motion does not further extend that time: “No request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule.” Ill. S. Ct. R. 303(a)(2) (eff. June 4, 2008). The motion for reconsideration was exactly the sort of motion described here. Syed P. did not file his notice of appeal until May 8, 2012, much longer than 30 days after October 18, 2011. The appeal is therefore untimely; we lack jurisdiction and must dismiss the appeal.

¶ 15

III. CONCLUSION

¶ 17 For the reasons stated, we dismiss the appeal for lack of jurisdiction.

¶ 18 Appeal dismissed.