

No. 1-12-3635

**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

---

DEUTSCHE BANK NATIONAL TRUST COMPANY, as	)	Appeal from the
Trustee for Ameriquest Mortgage Securities Inc., asset-backed	)	Circuit Court of
pass-through certificates, series ARSI 2006-M3,	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
ALLAN PORCHE,	)	No. 11 CH 25838
Defendant-Appellant,	)	
	)	
(Current spouse or civil union partner, if any, of Allan Porche,	)	
Deutsche Bank National Trust Company, as Trustee for	)	
Ameriquest Mortgage Securities Inc., asset-backed pass-through	)	
certificates, series ARSI 2006-M3, Unknown Owners, generally,	)	Honorable
and Non-Record Claimants,	)	Jesse G. Reyes,
Defendants).	)	Judge Presiding.

---

JUSTICE CUNNINGHAM delivered the judgment of the court.  
Presiding Justice Connors and Justice Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* The judgment of the circuit court is affirmed because the plaintiff complied with the requirements for service by publication, and the trial court did not abuse its discretion in denying the defendant's motion to quash service and motion to reconsider.

¶ 2 This appeal arises from a November 14, 2012 order entered by the circuit court of Cook County which denied defendant-appellant Allan Porche's (Porche) motion to reconsider; and a June 25, 2012 order entered by the circuit court which denied Porche's motion to quash service by publication and vacate judgment (motion to quash service). On appeal, Porche argues that the trial court erred in denying his motion to quash service and motion to reconsider because the court did not acquire personal jurisdiction over him. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 **BACKGROUND**

¶ 4 On August 15, 2006, Argent Mortgage Company, LLC (Argent) and Porche executed a mortgage agreement through which Argent loaned Porche \$168,000 in exchange for a mortgage on the property located at 16424 Roy Street, Oak Forest, Illinois (the property). In February 2009, Argent assigned the mortgage to plaintiff-appellee Deutsche Bank National Trust Company (Deutsche Bank), as trustee for Ameriquest Mortgage Securities Inc. On February 18, 2009, the assignment was recorded. On July 25, 2011, Deutsche Bank filed a complaint against Porche in the circuit court of Cook County to foreclose the mortgage. The complaint alleged that beginning on April 1, 2011, Porche defaulted on the principal and interest payments for the mortgage. The complaint further alleged that as of July 6, 2011, the total amount due was \$208,336.31.

¶ 5 During the subsequent months, Deutsche Bank attempted to effect service of process on Porche. On August 22, 2011, Deutsche Bank filed an affidavit of special process server, Firefly Legal, Inc. (Firefly). Firefly's affidavit stated that Porche was not served on August 8, 2011. Also on August 22, 2011, Deutsche Bank filed affidavits of special process servers, Brad LaHood (LaHood) and Peter Valente (Valente). LaHood's affidavit was executed on August 9,

2011, and detailed his attempts at serving Porche. LaHood stated that he was an employee of Firefly. He stated that he made four unsuccessful attempts to serve Porche at 16705 Gentry Lane Apt. 304, Tinley Park, Illinois (alternative residence). LaHood's attempts to serve Porche at the alternative residence occurred on the following dates: Wednesday, July 27, 2011 at 6:39 p.m.; Tuesday, August 2, 2011 at 12:42 p.m.; Thursday, August 4, 2011 at 9:03 p.m.; and Monday, August 8, 2011 at 4:32 p.m. LaHood stated that there was no name on unit 304 and that he rang both the front and back buzzers but got no answer. Further, he stated that he spoke to the property manager who informed him that unit 304 is vacant and that Porche moved out of that unit in August 2006.<sup>1</sup>

¶ 6 Valente's affidavit was executed on August 16, 2011, and detailed his attempts at serving Porche. Valente stated that he was an employee of Firefly. He stated that he made 10 unsuccessful attempts to serve Porche at the property.<sup>2</sup> Also, Valente stated that he could not make contact with Porche and there was no evidence that the property was vacant. Valente further stated that on one attempt, there was a car in the driveway that was registered to Vicki D. Brudnicki (Brudnicki) of 16423 Roy Street, Oak Forest, Illinois. Additionally, Valente stated that the shades were closed and there was a dog barking inside the back door. Valente stated in his affidavit that he was unable to verify the current occupant residing at the property.

¶ 7 On September 14, 2011, Deutsche Bank filed a notice of publication to Porche, his spouse, if any, and unknown owners and non-record claimants. On September 15, 2011, Deutsche Bank filed a notice of initial case management conference, which contained a

---

<sup>1</sup>LaHood's affidavit does not explain why he attempted to serve Porche at the alternative residence as opposed to the property.

<sup>2</sup> Valente's attempts to serve Porche at the property occurred over an 11-day period during July and August 2011. Valente attempted to serve Porche during the following times: Wednesday, July 27 at 11:26 a.m.; Thursday, July 28 at 12:35 p.m.; Friday, July 29 at 11:01 a.m.; Saturday, July 30 at 11:34 a.m.; Sunday, July 31 at 10:11 p.m.; Monday, August 1 at 8:31 p.m.; Tuesday, August 2 at 7:26 a.m.; Wednesday, August 3 at 8:53 p.m.; Saturday, August 6 at 2:15 p.m.; and Sunday, August 7 at 7:11 a.m.

certificate of service that stated that the notice was mailed to Porche at his alternative residence. On September 22, 2011, Deutsche Bank filed an affidavit for service by publication executed by Deutsche Bank's counsel. The affidavit stated that Porche could not be found on diligent inquiry and that process could not be served on him. Attached to the affidavit for service by publication was another affidavit executed by David Ricker (Ricker), an employee of Firefly. Ricker's affidavit stated that he made a due and diligent search and inquiry to discover Porche's name and/or alternative current residence by searching various public and non-public databases. Ricker stated that after diligent search and inquiry, he was unaware of Porche's current residence and whereabouts. Ricker's affidavit stated that he performed a credit information inquiry that revealed that the property was Porche's last known address. Notably, the results of Ricker's driver's license search stated "no record of a current residence found"; and his motor vehicle search stated "no record indicating that the subject has registered any vehicles to an alternate current residence."

¶ 8 On September 9, 16, and 23, 2011, Deutsche Bank published notice of the complaint in the *Chicago Daily Law Bulletin*. On October 19, 2011, Deutsche Bank filed a motion for default judgment and foreclosure and sale of the property. The notice of motion contained a certificate of service that stated that the motion was mailed to Porche at the alternative residence address. On November 16, 2011, the trial court entered a judgment of foreclosure and sale and an order of default. On February 24, 2012, an attorney for the Intercounty Judicial Sales Corporation mailed a notice of sale to Porche at the property. On March 12, 2012, Deutsche Bank purchased the property for \$75,523. On April 11, 2012, the trial court entered an order approving the sale.

¶ 9 On May 7, 2012, Porche filed a motion to quash service pursuant to section 2-301 of the Code of Civil Procedure (Code) (735 ILCS 5/2-301 (West 2012)). In his motion, Porche argued

that Deutsche Bank did not comply with the due inquiry and diligent inquiry requirements for service by publication, thus the trial court never obtained personal jurisdiction over him.

Attached to the motion was an affidavit executed by Porche. In his affidavit, Porche stated that he has lived at the property since 2006, and that he was in town from July 27, 2011 through August 7, 2011. Also, he stated that he has had the same occupation for nine years. Porche stated that he worked during the hours of 8:30 a.m. to 6 p.m. on the days: July 27, 2011 through July 29, 2011; August 1, 2011 through August 5, 2011; and on August 8, 2011. Further, he stated that the address 16423 Roy Street is across the street from the property.

¶ 10 On June 25, 2012, the trial court entered an order denying Porche's motion to quash service. On July 17, 2012, Porche filed a motion to reconsider the trial court's denial of his motion to quash service. In his motion to reconsider, Porche mainly relied on this court's May 9, 2012 opinion *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213. Porche argued that *Brewer* held that process server affidavits do not comply with the requirements for service by publication under section 2-206(a) of the Code (735 ILCS 5/2-206(a) (West 2010)), if the affidavits do not identify who attempted to serve process on the defendant. On October 16, 2012, Deutsche Bank filed a response to Porche's motion to reconsider. In its response, Deutsche Bank argued that this case is distinguishable from *Brewer* because it is clear that the process servers who executed the affidavits in this case were the actual people who attempted to serve Porche. On October 22, 2012, Porche filed a reply in support of his motion to reconsider, to which he attached a copy of his driver's license, State ID, and vehicle registration.

¶ 11 On November 14, 2012, the trial court held a hearing on Porche's motion to reconsider. The parties presented substantially similar arguments to the arguments in their motions. Notably, Porche's counsel argued that Ricker's affidavit in support of service by publication did

not meet the requirements of due and diligent inquiry because counsel was able to search and locate Porche's driver's license and vehicle registration. In making its ruling, the trial court stated that this case differs from *Brewer* because the affidavits in this case show that the process servers who executed the affidavits were the actual people who attempted to serve Porche. Also, the court stated that the affidavit for service by publication was in compliance with Cook County Circuit Court Rule 7.3 (Oct. 1, 1996). Thus, the trial court denied Porche's motion to reconsider. On December 4, 2012, Porche filed a timely notice of appeal pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. May 30, 2008). Therefore, this court has jurisdiction to consider Porche's arguments on appeal.

¶ 12

#### ANALYSIS

¶ 13 As a preliminary matter, we note that Deutsche Bank did not file a brief on appeal. However, we are still able to consider the merits of Porche's appeal pursuant to the legal principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976).

¶ 14 Turning to the merits of Porche's appeal, we determine whether the trial court erred in denying Porche's motion to quash service and motion to reconsider on the ground that the court did not acquire personal jurisdiction over him.

¶ 15 Porche argues that the trial court erred in denying his motion to quash service and motion to reconsider because Deutsche Bank did not comply with the requirements for service by publication. Porche points out that before the plaintiff can properly serve the defendant by publication, the plaintiff must conduct both "diligent inquiry" and "due inquiry" in ascertaining the defendant's whereabouts. Porche argues that Deutsche Bank failed to meet those requirements because its affidavits in support of service by publication did not identify who

attempted to serve process on Porche. He claims that Deutsche Bank's affidavits use the passive voice, which makes it unclear as to whether the affiant was the individual who performed the service attempts or whether another individual performed the service attempts. In support of his argument, Porche points out that Local Rule 7.3 requires that affidavits for service by publication must be accompanied by a sworn affidavit executed by the individual who made due inquiry to find the defendant, before service by publication is allowed. Porche contends that it is unclear whether the affiants in this case were the actual individuals who attempted personal service on him, therefore Deutsche Bank did not comply with the requirements for valid service by publication.

¶ 16 Next, Porche argues that Deutsche Bank did not comply with the requirements for service by publication because the process servers' efforts in this case did not constitute due inquiry and diligent inquiry. Specifically, Porche claims that Ricker's affidavit did not meet the requirements of due inquiry and diligent inquiry because Ricker's database search was superficial at best. Porche argues that if Ricker actually conducted the searches that he described in his affidavit, then he would have found Porche's driver's license and vehicle registration. Additionally, Porche attacks the authenticity of Valente's affidavit. Porche argues that the contents of Valente's affidavit present questions as to its truthfulness. Porche points out that in Valente's affidavit, he stated that during one of his attempts to personally serve Porche at the property, he noticed a vehicle in the driveway that was registered to Brudnicki who lives at the address across the street from the property. Porche asserts that this suggests that Valente went to the wrong house in an attempt to serve him. Further, Porche contends that Valente should have put forth more effort in attempting to serve him. Porche points out that Valente's affidavit stated that he was unable to determine who was living at the property. Thus, Porche argues that Valente should have

attempted to locate Porche at other places in addition to the property. Accordingly, Porche asserts that Ricker's and Valente's affidavits failed to comply with the due inquiry and diligent inquiry requirements. Porche argues that the affidavits in support of service by publication were deficient, thus the trial court erred in denying his motion to quash service and motion to reconsider.

¶ 17 Porche argues that the trial court's denial of his motion to reconsider was in error. The purpose of a motion to reconsider is to bring to the trial court's attention changes in the law, newly discovered evidence not available at the time of the hearing, or a mistake in the court's previous application of the law. *Duresa v. Commonwealth Edison Co.*, 348 Ill. App. 3d 90, 97 (2004). This court applies the abuse of discretion standard when reviewing the trial court's denial of a motion to reconsider that was based on new arguments or new legal theories. *Muhammad v. Muhammad-Rahmah*, 363 Ill. App. 3d 407, 415 (2006). The trial court abuses its discretion when no reasonable person would take the view adopted by the court. *In re Marriage of Pearson*, 236 Ill. App. 3d 337 (1992). In this case, Porche filed his motion to quash service on May 7, 2012. On May 9, 2012, this court filed its opinion in *Deutsche Bank National Trust Co. v. Brewer*, 2012 IL App (1st) 111213. On June 25, 2012, the trial court denied Porche's motion to quash service without any mention of the *Brewer* case. In Porche's motion to reconsider, he argued that *Brewer* represented a change in the law and he relied heavily on this court's reasoning and holding in support of his arguments. Thus, Porche's motion to reconsider was based on a new legal theory that was not presented to the trial court in the earlier proceedings. Accordingly, we apply the abuse of discretion standard of review to the trial court's denial of Porche's motion to reconsider.

¶ 18 If the defendant is not served with process as required by law, the court has no jurisdiction over the defendant and a default judgment entered against the defendant is void. *Equity Residential Properties Management Corp. v. Nasolo*, 364 Ill. App. 3d 26, 32 (2006). The method of service at issue in this case is service by publication. Section 2-206(a) of the Code sets forth the requirements for service by publication, and states as follows:

"(a) Whenever, in any action affecting property or status within the jurisdiction of the court, \*\*\* plaintiff or his or her attorney shall file, at the office of the clerk of the court in which the action is pending, an affidavit showing that the defendant resides or has gone out of this State, or 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(a) (West 2010).

¶ 19 Local Rule 7.3 of the circuit court of Cook County prescribes further requirements for service by publication, and states as follows:

"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).

¶ 20 “The plaintiff must conduct both ‘diligent inquiry’ in ascertaining the defendant’s residence and ‘due inquiry’ in ascertaining the defendant’s whereabouts before the plaintiff can properly execute an affidavit stating that the defendant cannot be found.” *Citimortgage, Inc. v. Cotton*, 2012 IL App (1st) 102438, ¶ 18 (citing *Bell Federal Savings & Loan Ass’n v. Horton*, 59 Ill. App. 3d 923, 927–28 (1978)). In order to challenge an affidavit in support of service by publication, the defendant may present an affidavit showing that upon due inquiry he could have been found. *Household Finance Corp., III v. Volpert*, 227 Ill. App. 3d 453, 455 (1992). In response, the plaintiff must “either successfully question the conclusory nature of the challenge or \*\*\* produce evidence showing in fact that [p]laintiff had made ‘due inquiry’ to locate the [d]efendants so that process could be served upon them.” *Horton*, 59 Ill. App. 3d at 927. “If the defendant is able to present a significant issue with respect to the truthfulness of the affidavit filed by the plaintiff’s agent for service by publication, then the trial court should hold an evidentiary hearing on the issue with the burden of proof being upon the plaintiff to establish that due inquiry was made to locate the defendant.” *Cotton*, 2012 IL App (1st) 102438, ¶ 18 (citing *First Federal Savings & Loan Ass’n v. Brown*, 74 Ill. App. 3d 901, 907–08 (1979)).

¶ 21 We disagree with Porche’s arguments. In this case, Deutsche Bank complied with the due inquiry and diligent inquiry requirements for service by publication. In the first part of

Porche's argument, he relies heavily on this court's decision in *Brewer*. The *Brewer* court held that service by publication was improper because the process servers' affidavits in support of service by publication used the passive voice and did not identify who attempted personal service on the defendant. *Brewer*, 2012 IL App (1st) 111213, ¶¶ 21-23. Specifically, the court noted that "[the process servers'] affidavits said 'attempts were made' to serve [the defendant] at her home address on listed dates, but failed to identify the persons who attempted the service." *Id.* ¶ 21. This court found that the affidavits were deficient because they would be true if the affiants simply took the unsworn word of someone else who claimed to have attempted to personally serve the defendant; however, such an affidavit would not show that the affiant has personal knowledge of an attempt to personally serve the defendant. *Id.* ¶ 23. Accordingly, this court found that the process servers' affidavits did not comply with Local Rule 7.3. *Id.*

¶ 22 We find this case to be distinguishable from *Brewer*. In this case, both Valente's and Ricker's affidavits established that they were the individuals who performed the actions described within their affidavits. Valente's affidavit states "I, Peter Valente, being first duly sworn on oath depose and state as follows: I am \*\*\* an employee or agent of [Firefly], a licensed private detective agency, \*\*\* appointed by the court to serve process in the above referenced case." Valente's affidavit further states "after due search, careful inquiry and diligent attempts at [the property], *I have been* unable to effect process upon [Porche] for the following reason(s)." (Emphasis added.) The affidavit then goes on to describe Valente's findings during his various service attempts. Finally, the affidavit is signed and sworn by Valente at the bottom of the page. Those portions of Valente's affidavit clearly show that he was the person who attempted to personally serve Porche at the property. There is no indication that someone other than Valente performed the service attempts. Porche points out that the section in which Valente describes his

service attempts begins with the phrase "attempts were made." Porche argues that pursuant to *Brewer*, this phrase fails to identify the person who made the service attempts. We disagree. This phrase alone does not negate the identifying aspects of Valente's affidavit. The other portions of the affidavit clearly show that *he* attempted to serve Porche. As such, the mere inclusion of the phrase "attempts were made" does not invalidate an otherwise sufficient affidavit. Also, Porche points out that the portion of Valente's affidavit that states "I have been unable to effect process" was a form part of the affidavit that Valente did not actually write. However, Porche overlooks the fact that Valente still swore to all the statements within his affidavit and signed the affidavit himself. This is not a situation in which it is unclear who made the service attempts. Rather, all aspects of the affidavit indicate that Valente was the one who conducted the actions described in the affidavit.

¶ 23 Likewise, Ricker's affidavit clearly shows that he was the one who performed the database searches in an attempt to locate Porche. Ricker's affidavit states:

"Before me, the undersigned authority, this day personally appeared, David Ricker ('Affiant') employed by [Firefly] \*\*\* who upon being first duly sworn, upon his/her oath, deposes and says:

Affiant is an employee/agent of [Firefly], and he/she has made due and diligent search and inquiry to discover the name and/or alternative current residence of [Porche] searching public and non-public databases.

\*\*\*

After diligent search and inquiry by Affiant, the current residence and whereabouts of the subject person is unknown to the affiant."

Similar to Valente, in Ricker's affidavit he identifies himself as the affiant, and then states that the affiant made due and diligent search and inquiry in an effort to locate Porche. The affidavit clearly states that the affiant performed the searches and Ricker affirmatively identified himself as the affiant. There is no question as to the identity of the person who performed the searches in this affidavit. Therefore, Porche's argument fails. Accordingly, Valente's and Ricker's affidavits were not deficient pursuant to *Brewer*.

¶ 24 We are also unpersuaded by Porche's argument that Deutsche Bank did not comply with the requirements for service by publication because the process servers' efforts in this case did not constitute due inquiry and diligent inquiry. Porche first argues that Ricker's failure to locate Porche's driver's license and motor vehicle registration shows that Ricker's search attempts were "superficial at best." Although Ricker's failure to find this information is inexplicable, we note that Ricker's credit information inquiry revealed that Porche's last known address was the property. As such, Ricker's search revealed accurate information for the address of Porche's residence. There was no dispute as to whether the property was the correct address for service. Thus, the fact that Ricker's search did not find Porche's motor vehicle registration was not a fatal factor in the process because, ultimately the process servers had the correct address.

¶ 25 Accordingly, we find that Valente's efforts in attempting to personally serve Porche satisfied the due inquiry and diligent inquiry requirements for service by publication. Valente attempted to serve Porche 10 times over an 11-day period at different times of the day and night (see footnote 1 *supra*). According to Porche's own affidavit, only 3 of Valente's 10 attempts

occurred while Porche was working and therefore away from the property. As such, there were many service attempts that occurred when Porche might or could have been at home. Also, we note that in Porche's affidavit, he states without further explanation, that he has had the same occupation for nine years. This does not negate the assertion that the property was the best possible place to personally serve Porche. Porche points out that during one of Valente's attempts at service, he stated that he saw a car that was registered to a neighbor in the driveway of the property. Porche argues that this shows that Valente was attempting to serve him at the wrong address. However, it is equally likely that the neighbor parked her car in Porche's driveway for some reason. Porche's affidavit did not contain any statements alleging that Valente's affidavit was false or that Valente was at the wrong address. Neither did Porche state that he does not know the neighbor or that she does not park in his driveway. Thus, we cannot say that the process servers' affidavits in this case did not comply with the due inquiry and diligent inquiry requirements for service by publication.

¶ 26 We note that Porche argues that this case is analogous to several previous appellate court cases. See *Cotton*, 2012 IL App (1st) 102438; *Nasolo*, 364 Ill. App. 3d 26; *Brown*, 74 Ill. App. 3d 901. However, we find that those cases are clearly distinguishable from the instant case. *Cotton*, 2012 IL App (1st) 102438, ¶¶ 28-30 (service by publication invalid where defendant presented photographic proof and affidavit statements establishing numerous inconsistencies with two process servers' affidavits); *Nasolo*, 364 Ill. App. 3d at 33-34 (service by publication improper where sheriff only attempted to serve the defendant at a property where it appeared that the defendant had moved and the property was vacant); *Brown*, 74 Ill. App. 3d at 903 (service by publication improper where sheriff attempted to serve defendant at a property occupied by an unknown woman. Upon learning that the woman occupying the property was defendant's ex-

wife, plaintiff did nothing more to determine if the property was defendant's current address).

Thus, Porche's reliance on those cases is misplaced. We hold that the trial court did not abuse its discretion in denying Porche's motion to quash service and motion to reconsider.

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

¶ 28 Affirmed.