

No. 1-13-2906

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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BANK OF AMERICA, N.A.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	
	)	
JENNIFER ARTIS,	)	No. 12 CH 008103
	)	
Defendant-Appellant,	)	
	)	
(JPMorgan Chase Bank, N.A., Unknown Owners,	)	
and Nonrecord Claimants,	)	The Honorable
	)	Jean Prendergast Rooney,
Defendants.)	)	Judge Presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

**O R D E R**

¶1 *HELD:* Where the record on appeal does not contain a transcript from the hearing on defendant's motion to vacate a default judgment entered against her, this court cannot review whether the circuit court abused its discretion in denying the motion.

¶2 Defendant, Jennifer Artis, appeals the order of the circuit court denying her motion to vacate a default judgment entered against her in the underlying foreclosure action in favor of plaintiff, Bank of America, N.A. Defendant contends the circuit erred in granting the order on a date not scheduled with the clerk of the court and without notice to her. Based on the following, we affirm.

¶3 FACTS

¶4 On March 7, 2012, plaintiff filed a complaint to foreclose mortgage against defendant. Defendant's counsel filed an appearance on April 3, 2012. On May 9, 2012, a case management conference was held and defendant was given until June 6, 2012, to file an answer or otherwise plead. On June 6, 2012, defendant filed a motion for an extension of time to file an answer or otherwise plead. On July 25, 2012, the motion was granted and defendant was given until August 1, 2012, to file an answer or otherwise plead.

¶5 On August 1, 2012, defendant filed a motion to dismiss the complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619 (West 2012)), alleging plaintiff failed to state a sufficient cause of action and lacked standing, respectively. On September 26, 2012, the circuit court denied the motion to dismiss and gave defendant until October 10, 2012, to file an answer.

¶6 On September 28, 2012, plaintiff filed a motion requesting leave to amend its complaint. The amended complaint was not attached to the motion. A hearing date was set for November 28, 2012. A certificate of service was file-stamped on October 2, 2012, and stated that the notice of motion and motion were mailed on October 2, 2012.

Plaintiff, however, did not proceed on its motion to amend.

¶7 On October 31, 2012, plaintiff filed a motion for default and judgment for foreclosure and sale. The notice of motion indicated that the motion would be heard by the circuit court on January 7, 2013, at 10 a.m. Plaintiff then filed an amended notice of motion filed stamped with the date November 2, 2012, indicating the motion for default would be heard on January 17, 2013, at 10 a.m.<sup>1</sup>

¶8 Defendant presented a notice of filing dated December 24, 2012, stating that she planned to appear in court on January 7, 2013, to request an extension of time to file an answer *instanter*. The notice of filing was stamped "filed" with the date December 25, 2012. Defendant's motion for an extension to file an answer *instanter* was file stamped twice: the first stamp bearing the date December 25, 2012, was crossed out and a second stamp bearing the date December 27, 2012, remained intact. In the motion, defendant stated that plaintiff filed an amended complaint on November 28, 2012, and, therefore, defendant had until December 26, 2012, to file an amended answer. Defendant argued that, due to the holidays and a change within her law firm's representation, the circuit court should grant her timely request for an extension of time to file her answer *instanter*.

¶9 No court proceedings related to this case took place on January 7, 2013. However, on January 8, 2013, defendant filed another motion for an extension of time to file an answer *instanter*, alleging plaintiff's motion to amend its complaint caused defendant to fail to timely file her answer. Specifically, defendant argued that "[w]ere it not for the fact that Plaintiff filed a Motion to File an Amended Complaint and then failed

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<sup>1</sup> The amended notice of motion stated that plaintiff's attorney mailed the notice to defendant's attorney on November 2, 2012.

to inform Defendant's counsel that the motion was withdrawn, Ms. Artis would have filed an Answer in a timely manner." According to defendant, she relied on plaintiff's motion to amend, which was filed before the expiration of defendant's time to answer, in assuming that her time to file an amended answer to the amended complaint started anew. Defendant set the hearing date for April 15, 2013.

¶10 On January 17, 2013, the circuit court entered a default judgment against defendant. On January 25, 2013, defendant filed a motion to vacate the default judgment. In the motion, defendant alleged the January 17, 2013, hearing took place due to a scrivener's error. The circuit court denied the motion on April 15, 2013. The circuit court's April 15, 2013, order notes that the court reviewed plaintiff's amended notice of motion for default judgment from November 2, 2012, which listed the hearing date as January 17, 2013.

¶11 A judicial sale of the subject property occurred on May 20, 2013, and plaintiff was the successful bidder. On June 13, 2013, plaintiff moved to confirm the judicial sale and a briefing schedule was set with the matter being continued to July 24, 2013. On July 24, 2013, the case was continued to August 19, 2013. On August 19, 2013, plaintiff's motion to confirm the sale of the property was granted. On September 18, 2013, defendant filed a notice of appeal, seeking review of the January 17, 2013, order granting default judgment against defendant, the April 15, 2013, order denying

defendant's motion to vacate the default judgment, and the August 19, 2013, order confirming the judicial sale.<sup>2</sup>

#### ¶12 ANALYSIS

¶13 Defendant contends the circuit court erred in denying her motion to vacate the default judgment entered against her where she was not given notice of the hearing date on which the judgment was entered. Defendant argues the scheduled hearing date for plaintiff's motion for default and judgment of foreclosure and sale was January 7, 2013. Because the hearing did not take place on that date, the pleading was stricken according to defendant and never re-noticed for the date on which the hearing took place, *i.e.*, January 17, 2013. As a result, defendant argues that her notice and procedural due process rights were violated by the entry of the default judgment. Plaintiff responds that defendant's argument lacks merit and is not supported by the record. Plaintiff adds that defendant failed to meet her burden of demonstrating the default judgment should be vacated where the challenged pleading complied with the requirements to set a matter for hearing. Defendant replies that the amended notice of motion for default judgment was not part of the record, maintaining that, although it bears a file stamp, there was no evidence the pleading was filed with the clerk of the court. According to defendant, the pleading was a "ghost" document that did not provide proper notice for the hearing during which the default judgment was entered against her.

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<sup>2</sup> Defendant only presents arguments challenging the April 15, 2013, order denying her motion to vacate. Any challenges to the other orders listed in the notice of appeal have been waived pursuant to Illinois Supreme Court Rule 341(h)(7).

¶14 The challenged pleading was not part of the original record on appeal. Instead, *plaintiff-appellee* supplemented the appellate record with its amended notice of motion for default judgment. It is well established that the burden of providing a sufficient record on appeal rests with the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In absence of a complete record, a reviewing court will presume that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Id.* at 392. Any doubts arising from the incomplete record are resolved against the appellant. *Id.*

¶15 The amended notice of motion provides that plaintiff shall appear in the circuit court on January 17, 2013, to present its motion for default and judgment of foreclosure and sale. The amended notice of motion was addressed, in relevant part, to "Robert L. Stone, Property Rights Law Group, P.C., Attorney for Jennifer Artis, 161 North Clark Street, Ste. 4700, Chicago, IL 60601." The amended notice of motion was stamped "filed" with the date November 2, 2012, and was certified by plaintiff's attorney that the document was mailed on November 2, 2012. There is no dispute that defendant's attorney is as named on the pleading and that defendant's attorney's office is as listed. To the extent, defendant contends the pleading was not properly filed and delivered to the clerk of the court, we must disagree. In its April 15, 2013, order denying defendant's motion to vacate the default judgment, the circuit court expressly stated that it reviewed plaintiff's amended notice of motion filed on November 2, 2012. With the *Foutch* principles in mind, we note that defendant failed to provide any evidence in the record to dispute the veracity of the subject pleading. *Id.* at 392. We, therefore, conclude the notice of the amended hearing date was proper.

¶16 Turning to whether the circuit court properly denied defendant's motion to vacate the default judgment, section 2-1301(e) of the Code of Civil Procedure (735 ILCS 5/2-1301 (West 2012)) provides that a trial court "may on motion filed within 30 days after entry [of an order of default] set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2012). The overriding concern in ruling on a motion to vacate is whether substantial justice is being done between the litigants, and whether, under the circumstances, it is reasonable to compel the nonmovant to proceed to a trial on the merits. *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469 ¶ 16.

¶17 We review the denial of a section 2-1301 motion to vacate for an abuse of discretion. *Aurora Loan Services, LLC*, 2013 IL App (1st) 121700, ¶ 26. An abuse of discretion will be found when the circuit court "acts arbitrarily without the employment of conscientious judgment or if its decision exceeds the bounds of reason and ignores principles of law such that substantial prejudice has resulted." *Id.* (quoting *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 941 (1999)). On review, we must determine whether the circuit court's decision was fair and just without denying the moving party substantial justice. *Id.* (citing *Deutsche Bank National v. Burtley*, 371 Ill. App. 3d 1, 5 (2006), *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367, 377 (2001)).

¶18 The record does not include a transcript from the hearing on defendant's motion to vacate the default judgment. As stated, defendant had the burden of providing a sufficient record on appeal. *Foutch*, 99 Ill. 2d at 391-92. Without the transcript from the hearing, we do not have a sufficient basis to review the circuit court's decision for an

abuse of discretion. We, therefore, must presume that the order entered by the circuit court was in conformity with the law and had a sufficient factual basis. *Id.* at 392.

¶19 Simply put, where we must resolve any doubts arising from the incomplete record against defendant (*id.*), we conclude the circuit court's judgment denying defendant's motion to vacate was fair and just.

¶20 CONCLUSION

¶21 We affirm the circuit court's order denying defendant's motion to vacate the default judgment.

¶22 Affirmed.