

No. 1-13-1154

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,)	Appeal from the
as Trustee for American Home Mortgage Assets Trust 2006-5,)	Circuit Court of
Mortgage-Backed Pass-Through Certificates Series 2006-5,)	Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11 CH 29141
)	
PAMELA J. STEWARD,)	
)	
Defendant-Appellant,)	
)	
and)	
)	
PEERLESS CAPITAL MANAGEMENT, LLC,)	The Honorable
)	Lisa Ann Marino,
Intervening Defendant-Appellee.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

HELD: Where appellant's postjudgment motions were inapplicable and did not toll the time for appeal, appellant failed to file timely notice of appeal and, thus, the instant cause must be dismissed for lack of jurisdiction.

ORDER

¶ 1 This cause involves the foreclosure of a mortgage obtained by defendant-appellant Pamela J. Steward (Steward) from plaintiff-appellee Deutsche Bank National Trust Company, as Trustee for American Home Mortgage Assets Trust 2006-5, Mortgage-Backed Pass-Through Certificates Series 2006-5 (Deutsche Bank). Following a judicial sale of the property to Deutsche Bank, Deutsche Bank deeded the property to intervening defendant-appellee Peerless Capital Management, LLC (Peerless Capital). Steward filed several motions, including an "Emergency Motion for Rule 60 Relief from Judgment" and a motion for reconsideration, both of which were denied. Steward appeals from the denial of her motion for reconsideration, raising some eight issues for our review focusing on trial court error, the propriety of service of process, possession, standing, and the authenticity of signatures.

¶ 2 For their part, Deutsche Bank and Peerless Capital have each filed responsive briefs in this court. In addition to addressing the merits of the substantive issues raised by Steward, both of these parties raise a threshold matter, namely, that Steward did not file a timely notice of appeal in this cause. Based upon our review of the record, we agree with Deutsche Bank and Peerless Capital and, for the following reasons, we dismiss the instant appeal.

¶ 3 **BACKGROUND**

¶ 4 As our decision rests conclusively with threshold procedural matter concerning the notice of appeal, we present only a brief summary of the facts relevant to our determination here. In 2006, Steward obtained a mortgage for property located at 1810 North Lotus Avenue in Chicago, Illinois, from American Home Mortgage, for whom Deutsche Bank is trustee. Steward stopped

No. 1-13-1154

paying on the mortgage and Deutsche Bank filed an action for foreclosure. The trial court entered an order for default and a judgment of foreclosure and sale and, by May 2012, the property was sold at public sale to Deutsche Bank. On June 6, 2012, the trial court entered an Order Approving Sale and for Possession, thereby confirming the sale and giving Deutsche Bank a deed to the property.

¶ 5 On July 6, 2012, after only having filed her appearance and never having filed any responsive pleading or taken any other action in this matter, Steward filed a motion entitled "Emergency Motion for Rule 60 Relief from Judgment." This motion, based on Federal Rule of Civil Procedure 60, which Steward now admits on appeal was wholly inapplicable to the matter at hand, was scheduled to be heard on July 23, 2012. However, according to Steward, before the hearing date, she amended her motion to add an alternative claim for relief pursuant to "735 ILCS 5/2-1301,"¹ and a new hearing date was set for November 30, 2012.

¶ 6 Meanwhile, in September 2012, Deutsche Bank deeded the property to Peerless Capital via a special limited warranty deed. In response, in October 2012, Steward filed an emergency motion for temporary stay of possession, asking that possession of the property be stayed until the trial court held its scheduled hearing on her "Emergency Motion for Rule 60 Relief from Judgment." The trial court granted her motion for stay.

¹We note that, pursuant to our search, a motion seeking this alternative relief filed by Steward is not contained in the record on appeal; the only page of the record Steward cites to confirm this motion's existence is to a scheduling order in the trial court which lists a hearing set on a "motion for rule 60 relief from Judgment and 1301," as written in someone's handwriting. However, Deutsche Bank makes mention of this motion in its brief on appeal, and the trial court seemingly acknowledged in open court at a subsequent hearing that Steward did, at some point and in some manner, seek this alternative relief.

No. 1-13-1154

¶ 7 On November 30, 2012, the trial court held its scheduled hearing. It allowed Steward, who appeared *pro se*, to speak at length, at which time she admitted that she had taken out the mortgage and defaulted, but then claimed that she never signed the note at issue. She further admitted that, while she filed an appearance in this cause, she did not do anything more. After allowing Steward to argue all her points, the court denied her motion. In its colloquy, the court explained that her Rule 60 motion involved a federal, rather than a state, rule and, thus, it was "not the appropriate motion to attack" the sale of the property. It also addressed her alternative claim for relief under section 1301, making clear that it could not apply because her motion was filed after the court had approved the sale of the property. And, the court further explained that the proper relief Steward should have sought was pursuant to 735 ILCS 5/15-1508, which lists grounds for not confirming a sale, since, again, the court had already entered its order approving the sale of the property to Deutsche Bank. Ultimately, and after addressing other issues including her dispute over notice, the court concluded that Steward was unable to meet her burden with respect to attacking the court's confirmation of sale and any subsequent transfer of the property from her to a third party, thereby denying her "Emergency Motion for Rule 60 Relief from Judgment."

¶ 8 On December 31, 2012, Steward, now represented by counsel, filed a motion to reconsider. While it was pending, Peerless Capital filed a motion to lift the temporary stay of possession on the property. On March 6, 2013, the trial court held a hearing on both of these motions. With respect to Steward's motion to reconsider, the court denied it, finding that she "has failed to meet her burden justifying the court to reconsider its prior order." With respect to

No. 1-13-1154

Peerless Capital's motion, the trial court granted it and lifted the stay of possession.

¶ 9 On April 5, 2013, Steward filed a notice of appeal, citing the March 6, 2013 order of the trial court denying her motion to reconsider and granting Peerless Capital's motion for lift of stay as the order from which she appealed.

¶ 10 ANALYSIS

¶ 11 Before considering the merits of any appeal, we first have a duty to consider our own jurisdiction over the matters presented before us. See *North Community Bank v. 17011 South Park Avenue, LLC*, 2015 IL App (1st) 133672, ¶ 24; accord *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994). When our jurisdiction is lacking, we must dismiss the appeal. See *North Community Bank*, 2015 IL App (1st) 133672, ¶ 24.

¶ 12 As Deutsche Bank and Peerless Capital aptly point out, the timely filing of a notice of appeal is both mandatory and jurisdictional. See *Dus v. Provena St. Mary's Hospital*, 2012 IL App (3d) 091064, ¶ 10, citing *Archer Daniels Midland Co. v. Barth*, 103 Ill. 2d 536, 539 (1984). To properly confer jurisdiction upon our court, Illinois Supreme Court Rule 303(a)(1) mandates that a party must file a notice of appeal within 30 days after the entry of the final judgment appealed from, or within 30 days of the entry of the order disposing of the last pending postjudgment motion. Ill. S.Ct. R. 303(a)(1) (eff. June 4, 2008); *Huber v. American Accounting Association*, 2014 IL 117293, ¶ 10. Our supreme court requires strict compliance with this rule, and no trial court or appellate court may excuse this compliance on behalf of any party. See *Dus*, 2012 IL App (3d) 091064, ¶ 10, citing *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 150 (1994). An appeal that is untimely pursuant to our supreme court rules must be dismissed, as the

No. 1-13-1154

necessary jurisdiction over it has not been properly conferred. See *Dus*, 2012 IL App (3d) 091064, ¶ 10, quoting *People v. Lyles*, 217 Ill. 2d 210, 217 (2005) ("[w]hen an appeal is untimely under a supreme court rule, the appellate court has 'no discretion to take any action other than dismissing the appeal' "); see also *Huber*, 2014 IL 117293, ¶ 8 (in absence of properly filed notice of appeal, appellate court lacks jurisdiction and must dismiss the appeal).

¶ 13 Steward's notice of appeal, which she did not file until April 5, 2013, was clearly untimely here.

¶ 14 The final and appealable order in this cause was the trial court's June 6, 2012 Order Approving Sale and for Possession of the property, wherein the court confirmed the sale and gave a deed to Deutsche Bank. See *North Community Bank*, 2015 IL App (1st) 133672, ¶ 7 (in a foreclosure action, the order confirming sale is the final and appealable order). Steward filed a postjudgment motion, her "Emergency Motion for Rule 60 Relief from Judgment," on July 6, 2012. However, as Steward herself admits, this motion was wholly bogus; based entirely on Federal Rule of Civil Procedure 60, Steward had no viable legal argument for it and her motion was completely inapplicable. Having failed to file any valid postjudgment motion within the 30 days of the trial court's order confirming sale, the time for filing an appeal had expired.

¶ 15 Moreover, even were we to accept Steward's "Emergency Motion for Rule 60 Relief from Judgment" as a proper postjudgment motion tolling the time for appeal, this still would not save the instant appeal. As noted, it seems from the record that, at some point between the initial filing of her "Emergency Motion" on July 6, 2012 and its initial hearing date set for July 23,

No. 1-13-1154

2012, Steward amended it to add an alternative basis for relief based on 735 ILCS 5/2-1301.²

However, similar to the inapplicability of her asserted relief under Federal Rule of Civil Procedure 60, her asserted relief pursuant to section 2-1301 was likewise inapplicable. As our supreme court has held, up until a motion to confirm judicial sale is filed, a borrower can seek to vacate a default judgment of foreclosure under section 2-1301. See *Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 27. "[H]owever, after a motion to confirm judicial sale has been filed, a borrower seeking to set aside a default judgment of foreclosure may only do so by filing objections to the confirmation of sale under the provisions of section 15-1508(b)." *Wells Fargo*, 2013 IL 115469, ¶ 27; accord *Beal Bank v. Barrie*, 2015 IL App (1st) 133898, ¶ 25 (where borrower did not file her section 2-1301 motion to vacate the default judgment until after the lender had filed its motion to confirm sale, her motion could not stand as, at the moment the lender filed its motion to confirm, her potential relief was now limited to the grounds found in section 15-1508(b)). Here, the trial court entered the order confirming judicial sale, upon Deutsche Bank's motion, on June 6, 2012—long before Steward filed her postjudgment motion, both the initial version and "amended" version alternatively seeking section 2-1301 relief. As the trial court explained, at this point in the case's posture, Steward's only viable basis for a valid postjudgment motion was to seek relief under section 15-1508. Thus, Steward's "amended" motion was still not a proper postjudgment motion that would extend the time to appeal.

¶ 16 Finally, even were we to accept her "amended" motion seeking section 2-1301 postjudgment relief, this, again, would not save Steward's appeal. The trial court denied this

²Again, however, no copy of this is included in the record.

No. 1-13-1154

motion following a hearing on November 30, 2012. Pursuant to Illinois Supreme Court Rule 303(a)(1), Steward would have had 30 days from that date to file her notice of appeal. However, on December 31, 2012,³ Steward did not file a notice of appeal but, instead, chose to file a second postjudgment motion, namely, her motion to reconsider the denial of her "Emergency Motion for Rule 60 Relief from Judgment." It is well established that a "second post-judgment motion (at least if filed more than 30 days after judgment) is not authorized by either the Civil Practice Act or the rules of this court and must be denied." *Sears v. Sears*, 85 Ill. 2d 253, 259 (1981); accord *B-G Associates, Inc. v. Giron*, 194 Ill. App. 3d 52, 57 (1990) (courts have no authority to hear successive postjudgment motions). This is because permitting the opposite would result in prolonged lawsuits and would gravely hinder our court system's policy of promoting the finality of judgments. See *Dus*, 2012 IL App (3d) 091064, ¶ 17, quoting *Sears*, 85 Ill. 2d at 259 (this would " 'permit a losing litigant to return to the trial court indefinitely, hoping for a change of heart' "). Simply put, a "motion to reconsider the trial court's ruling on a postjudgment motion does not extend the time to appeal." *Dus*, 2012 IL App (3d) 091064, ¶ 11; citing Ill. S.Ct. R. 303(a)(2) (eff. May 30, 2008) ("[n]o 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"). Thus, Steward's December 31, 2012 motion to reconsider—her second postjudgment motion—and the trial court's ruling denying it on March 6, 2013, cannot be used to calculate the time for her to file her notice of appeal.

³Although this was a lapse of 31 days, according to the 2012 calendar, the thirtieth day fell on a Sunday, thereby allowing Steward until that following Monday, December 31, 2012, on which to timely file a notice of appeal.

No. 1-13-1154

¶ 17 From all this, it is clear that Steward's notice of appeal was wholly untimely. Following the June 6, 2012 confirmation of the judicial sale of her property, Steward filed a completely inapplicable postjudgment "Emergency Motion for Rule 60 Relief from Judgment" on July 6, 2012. This was denied on November 30, 2012, following an amendment to that motion that also had no legal basis under the circumstances. Then, on December 31, 2012, again instead of filing her notice of appeal, Steward filed a second postjudgment motion seeking to reconsider the denial of her first. Pursuant to our discussion above, this clearly did not extend the time for her appeal. See *Sears*, 85 Ill. 2d at 259; *Dus*, 2012 IL App (3d) 091064, ¶ 17; *B-G Associates*, 194 Ill. App. 3d at 57. Therefore, her delay in filing her notice of appeal until April 5, 2013 rendered this untimely pursuant to our supreme court rules and, having failed to properly confer the necessary jurisdiction with our court, we must dismiss Steward's appeal. See *Huber*, 2014 IL 117293, ¶ 8.

¶ 18

CONCLUSION

¶ 19 Accordingly, for all the foregoing reasons, we dismiss the instant appeal.

¶ 20 Appeal dismissed.