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FIRST DIVISION
March 2, 2015

No. 1-13-1237
2015 IL App (1st) 131237-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

)
U.S. BANK NATIONAL ASSOCIATION,) Appeal from the
Plaintiff-Appellee,) Circuit Court of
v.) Cook County
)
GRACE ODIBO,)) No. 07 CH 9072
Defendant-Appellant.)) The Honorable
)) Michael F. Otto,
)) Judge Presiding.
))

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

Held: Trial court properly denied defendant's section 2-1401 petition; affirmed.

¶ 1 Defendant Grace Odibo appeals from the trial court's order denying her petition to vacate judgment pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2012)). This action originated back in April 2007 when plaintiff U.S. Bank National Association (U.S. Bank) filed a complaint to foreclose mortgage against defendant on a residential property. On February 3, 2009, the trial court entered a judgment of foreclosure and

sale in favor of U.S. Bank. On June 21, 2011, the subject property was sold at a judicial sale and U.S. Bank purchased the property. Defendant then moved to vacate the sale. On December 23, 2011, the trial court confirmed the sale over defendant's objection and denied her motion to vacate the sale.

¶ 2 On January 23, 2012, defendant filed a motion to reconsider the order confirming sale, which was denied on January 30, 2012. Defendant timely appealed from the order confirming sale. Defendant's appeal was dismissed for want of prosecution on September 14, 2012, after defendant failed to file the record. On November 28, 2012, this court vacated that dismissal, and defendant filed the record on appeal. On June 20, 2013, however, after she failed to file her opening brief, this court again dismissed defendant's appeal for want of prosecution.

¶ 3 During the pendency of that appeal, defendant filed a *pro se* petition in the trial court pursuant to section 2-1401 of the Code, arguing that her motion to reconsider, which was denied on January 30, 2012, was done so without giving her proper notice. Defendant also contended that the trial court had no jurisdiction "to hear the case based on the pending appeal." U.S. Bank responded to defendant's petition stating that she failed to meet any of the elements necessary for relief under section 2-1401 of the Code. A hearing was held on defendant's section 2-1401 petition on April 17, 2013, after which the trial court denied the petition "for the reasons stated in open court." The transcript of that hearing is not in the record.

¶ 4 On April 19, 2013, defendant filed a notice of appeal, which stated that she was appealing from the trial court's "April 17, 2013 [order] denying defendant's motion brought pursuant to 735 ILCS 5/2-1401 *** to vacate [the] order of December 23, 2011." On appeal, however, defendant's only contentions involve the trial court's order of December 23, 2011, which is the order confirming the sale of the subject property and denying defendant's motion to vacate the

sale. As U.S. Bank notes, that issue was previously before this court on direct appeal, but was dismissed for want of prosecution. Therefore, the only issue on appeal in this case is whether the trial court properly denied defendant's section 2-1401 petition. *Village of Glenview v. Buschelman*, 296 Ill. App. 3d 35, 39 (1998) (a section 2-1401 petition constitutes a separate action from the original pleading, and is therefore appealable on grounds independent than those used as a basis for appeal from the original judgment).

¶ 5 Initially, we address U.S. Bank's contentions regarding the sufficiency of defendant's *pro se* opening brief. Defendant's opening brief fails to comply with the requirements of Supreme Court Rule 342 (a) (Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005)) because it fails to include in the appendix a copy of the judgment appealed from, the notice of appeal, or a complete table of contents of the record on appeal. Supreme Court Rule 342(a) states that the appellant's brief shall include, as an appendix, "a table of contents to the appendix, a copy of the judgment appealed from, any opinion, memorandum, or findings of fact filed or entered by the trial judge or by any administrative agency or its officers, any pleadings or other materials from the record which are the basis of the appeal or pertinent to it, the notice of appeal, and a complete table of contents, with page references, of the record on appeal." Ill. S. Ct. R. 342(a) (eff. Jan.1, 2005). Adherence to Rule 342(a) "is not an inconsequential matter." *Kulhavy v. Burlington Northern Santa Fe R.R.*, 337 Ill. App. 3d 510, 514 (2003). Where an appellant's brief fails to comply with the rules, this court is within its authority to dismiss the appeal for noncompliance. *Id.* While some deference is afforded *pro se* litigants, such status does not excuse them from complying with the appellate procedures required by our supreme court rules. *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). Although we elect to consider this appeal despite defendant's failure to comply with Supreme Court Rule 342(a), we stress that

we could dismiss the appeal because of this noncompliance. We now turn to the merits of defendant's appeal.

¶ 6 Section 2-1401 of the Code establishes a comprehensive, statutory procedure that allows for the vacatur of a final judgment older than 30 days. 735 ILCS 5/2-1401 (West 2012). Section 2-1401 requires that the petition be filed in the same proceeding in which the order or judgment was entered, but it is not a continuation of the original action. 735 ILCS 5/2-1401(b) (West 2012). The statute requires that the petition be supported by affidavit or other appropriate showing as to matters not of record. 735 ILCS 5/2-1401(b) (West 2012). The statute further requires that petitions must be filed no later than two years after the entry of the order or judgment. 735 ILCS 5/2-1401(c) (West 2012). A section 2-1401 petition constitutes a separate action from the original pleading, and is therefore appealable on grounds independent from those used as a basis for appeal from the original judgment. *In re Custody of C.C.*, 2013 IL App (1st) 120342, ¶ 47; *Glenview*, 296 Ill. App. 3d at 39.

¶ 7 Relief under section 2-1401 is predicated upon proof, by a preponderance of the evidence, of a defense or claim that would have precluded entry of judgment in the original action and diligence in both discovering the defense or claim and presenting the petition. *People v. Vincent*, 226 Ill. 2d 1, 7-8 (2007). The petition is subject to dismissal for want of legal or factual sufficiency. *Id.* at 8. Thus, it may be dismissed upon a challenge that, "even taking as true its allegations, it does not state a meritorious defense or diligence under section 2-1401 case law." *Id.* Like a complaint, the petition may be challenged by a motion to dismiss for failure to state a cause of action or if, on its face, it shows the petitioner is not entitled to relief. *Id.* at 8.

¶ 8 The trial court denied defendant's section 2-1401 petition. Accordingly, the question before the court is whether defendant showed, by a preponderance of the evidence, a claim or

defense that would have precluded entry of judgment in the original action. However, rather than make any argument pertaining to the section 2-1401 petition, defendant states in her opening brief that her argument on appeal is that the circuit court erred in granting judgment of foreclosure and sale in favor of plaintiff where a question of fact remained regarding whether plaintiff actually owned the subject mortgage and loan. Furthermore, in her reply brief, defendant specifically states, “the Plaintiff-Appellee based [its] focus on the 2-1401 motion for re-consideration. This should not be the case, because the 2-1401 was not the basis for Defendant-Appellant filing the case at the Court of Appeal, the underling factor was to set aside the Judgment of sale of her property.” As stated above, defendant already had the chance to appeal that issue on direct appeal from her original action, which was dismissed for want of prosecution.

¶ 9 “A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.” *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1995). Supreme Court Rule 341(h)(7) requires a clear statement of contentions with supporting citation of authorities. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Issues that are ill-defined and insufficiently presented do not satisfy the rule and are considered waived. *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007). “In fact, for these violations, this court may not only strike portions of the brief or consider arguments waived, but strike a brief in its entirety and dismiss the matter.” *Walters v. Rodriguez*, 2011 IL App (1st) 103488, ¶ 6. We will presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law. *Id.*

¶ 10 Here, because defendant makes no argument pertaining to the denial of her section 2-1401 petition, we find that she has waived this argument. *Express Valet*, 373 Ill. App. 3d at 855. Moreover, because the record does not contain the transcript of the hearing on defendant's section 2-1401 petition, we must presume that the trial court had a sufficient factual basis for denying the petition. *Walters*, 2011 IL App (1st) 103488, ¶ 6. See also *People v. Stewart*, 179 Ill. 2d 556, 565 (1997) (when record on appeal is incomplete, a court of review will indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled correctly, and any doubts arising from the incompleteness of the record will be resolved against the appellant).

¶ 11 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 12 Affirmed.