

No. 13-3718

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 DISTRICT

BANK OF AMERICA, N.A.,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	
)	No. 11 CH 36761
SUSIE LANDON)	
)	
Defendant-Appellant.)	Honorable Anthony Kyriakopolous

PRESIDING JUSTICE SIMON delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant failed to meet her burden to demonstrate that service of process was not effected. The trial court properly denied defendant's motion to vacate the judgment.

¶ 2 Plaintiff Bank of America filed a mortgage foreclosure action in the circuit court. After judgment was entered and just prior to the foreclosure sale, Defendant Susie Landon filed an emergency motion to quash service and to vacate the judgment stating that she never received

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notice of the foreclosure action. The trial court denied defendant's motion and ordered that the foreclosure sale could proceed. We affirm.

¶ 3

BACKGROUND

¶ 4 On March 15, 2007, Defendant Susie Landon executed a mortgage on the property located at 1908 S. Troy Street in Chicago in return for a loan of \$244,000.00. Following a merger with the lender, Plaintiff Bank of America became the holder of the mortgage. Bank of America filed a complaint to foreclose the mortgage in the circuit court alleging that Landon had defaulted as a result of nonpayment.

¶ 5 Several months after filing the complaint, Bank of America filed a motion seeking a default judgment. Attached to the motion for a default judgment is an affidavit of personal service in which a special process server avers that he or she personally served Landon with a copy of the complaint on October 25, 2011. On February 28, 2012, the trial court entered a default judgment in Bank of America's favor.

¶ 6 On April 30, 2012, just before the foreclosure sale was set to occur, Landon filed an emergency motion to vacate the judgment. Landon stated that she was never given notice of the foreclosure proceedings and she claimed that the description given by the process server in the affidavit of service did not match her physical appearance. After several continuances, the trial court denied Landon's motion to vacate and indicated that Bank of America was free to go forward with selling the property without further delay.

¶ 7 Landon appeals *pro se* arguing that the trial court erred when it denied her motion to vacate. Landon contends that reversal is warranted because she was never personally served. Landon also claims that the affidavit of personal service was fraudulent and that Bank of America

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lacks standing, among other arguments.

¶ 8

ANALYSIS

¶ 9 To enter a valid judgment, a court must have jurisdiction over the subject matter and jurisdiction over the parties. *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 17. A judgment entered by a court without jurisdiction over the parties is void and may be challenged at any time. *Id.* We review the question of whether the circuit court obtained personal jurisdiction over the defendant *de novo*. *Id.*

¶ 10 To determine whether the circuit court had personal jurisdiction over a defendant, we must consider the whole record, including the pleadings and the return of service. *Central Mortgage Co. v. Kamarauli*, 2012 IL App (1st) 112353, ¶ 28. The process server's return is *prima facie* evidence of personal service that cannot be set aside based upon uncorroborated statements from the person purportedly served. *Id.* The return can only be set aside if it is impeached by clear and satisfactory evidence. *Id.* In fact, we are required to indulge in every reasonable presumption in favor of the return, and the uncorroborated testimony of the party upon whom service is made is not enough to set aside this evidence. *MB Financial Bank, N.A. v. Ted & Paul, LLC*, 2013 IL App (1st) 122077, ¶ 25.

¶ 11 In this case, Landon failed to submit *any* evidence, let alone sufficient evidence to overcome the presumption that she was served. Landon's uncorroborated denial of being served and her uncorroborated contention that her physical appearance does not match the description set forth in the affidavit of service are insufficient. Evidence is required. *Paul v. Ware*, 258 Ill. App. 3d 614, 617-18 (1994). The trial court gave Landon ample opportunity to demonstrate that she was not actually served or that the default judgment was otherwise inequitable. Landon failed

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to meet her burden and there is nothing in the record that compels us to overturn the trial court's ruling.

¶ 12 In her appellate brief, Landon raises a number of matters that are beyond the scope of this appeal. For example, for the first time on appeal, Landon raises issues concerning fraudulent representations made in the proof of service and she questions Bank of America's standing. Those arguments are forfeited for purposes of this appeal. See *Jenna R.P. v. City of Chicago School Dist. No. 229*, 2013 IL App (1st) 112247, ¶ 75. The only issue raised by Landon in the trial court was whether she was served. However, the outcome would not change if we considered the forfeited issues because there is no evidence in the record that would support Landon's contentions that anything fraudulent occurred or that Bank of America lacks standing. Landon's brief also fails to comply with the Supreme Court Rules in many respects such as failing to include citations to the record or an appendix to the record, among other things. See Ill. Sup. Ct. R. 341(h). In any event, Landon's appeal fails on the merits and there is no reason to disturb the trial court's ruling.

¶ 13 CONCLUSION

¶ 14 Based on the foregoing, we affirm the trial court's judgment.

¶ 15 Affirmed.